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By Email Dana.S.Selover@state.or.us and First Class Mail

Dana Selover, M.D., M.P.H.
Section Manager
Health Care Regulation & Quality Improvement
Oregon Health Authority
800 N.E. Oregon Street, Suite 465
Portland, OR 97232

Re: Post Acute Medical Application for Certificate of Need, CN # 680
Withdrawal of Application for Certificate of Need

Dear Dr. Selover:

We have been instructed by our client Post Acute Medical LLC ("PAM") to withdraw PAM's pending application for a certificate of need, and we hereby do so on PAM's behalf. To state that this is disappointing, and a loss to the citizens of Oregon, is an understatement.

PAM filed its application for a CON in the fall of 2018, almost five years ago, and has been required since that time to support both the holding costs for its real estate and the legal and administrative expenses to pursue this application, expenses that now have exceeded PAM's willingness to invest more in this state pending however long the Court of Appeals may take and any efforts that PAM's opponents may make to get review of OHA's decision in the Oregon Supreme Court, which as you know may go on for additional years.

Although your proposed order recognized that PAM's application should be granted, the dogged self-interest of PAM's opponents (who have sought delay at every turn and plainly have no concern about the patients who would benefit from PAM's services) shows no sign of abating, and the Oregon appellate courts promise to give those opponents years of further delay at the very best. PAM has decided to divert its investment funds to states without Oregon's barriers to innovation in health care. There are ample states wanting these services, and even other states in which PAM has needed a CON have not imposed the costs and delay that PAM has here experienced.

It is particularly offensive that Legacy, which has its statutory charter as a "public benefit" nonprofit, appeared in this case expressly to defend its own financial interests, which are not supposed to be adverse to the public interest. Rather, Legacy's stated position has the effect of denying access to intensive medical rehabilitation services for otherwise qualified patients, in

service to a Legacy-defined "delicate equilibrium." Such a cozy "equilibrium" is the antithesis of the purposes of the Certificate of Need law and of common sense.

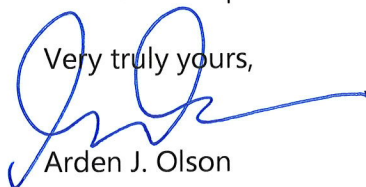
The United States Department of Justice and the Federal Trade Commission have recently issued a joint statement on this precise issue. Specifically, in discussing potentially improper use of CON programs, DOJ/FTC outlined a series of improper acts, to include incumbents attempting to take "advantage of the CON process – not merely its outcome – to protect their revenues," attempting to "use the CON process to forestall competitors from entering the incumbent's market," and to otherwise engage in anticompetitive behavior. See Joint Statement of the Antitrust Division of the U.S. Department of Justice and the Federal Trade Commission on Certificate-of-Need Laws and Alaska Senate Bill 62.

Here the opponents of this project made very clear that their desired "system" places naked self-interest ahead of the best interests of patients – real people who have complex medical conditions and rehabilitative needs. Such a "system" is precisely what DOJ/FTC identified as an improper use of the CON process and is wholly contrary to the express purposes of Oregon's Certificate of Need law. Sadly, their efforts have proven successful with respect to PAM, all to the detriment of those Oregon citizens who needs the services most. Perhaps only litigation at a federal level, as suggested by DOJ/FTC, can stem such an abuse of the CON process.

You must deal with the realities of the system that the Legislature and your agency's prior rules have given you. Hopefully your future legislative and rulemaking priorities will address whether Oregon should rethink a certificate of need system that erects the kind of costs and disincentives to innovation that PAM's experience here reflects. On behalf of PAM, we need to say that we truly appreciate your efforts, and the efforts of OHA on this project. There is, and will continue to be, a desperate need for inpatient rehabilitation beds in Oregon.

Perhaps Encompass will be able to persevere despite the similar costs being imposed on it. PAM wishes Encompass well in building its proposed IRF in Hillsboro.

Very truly yours,



Arden J. Olson

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