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Division of Licensing and
Regulatory Services

December 21, 2010

VIA E-MAIL AND REGULAR MAIL

Ms. Phyllis Powell
Certificate of Need Unit
Division of Licensing & Regulatory Services
11 State House Station
Augusta, Maine 04333-0011

**Re: Letter of Intent and Request for Confirmation of Non-Applicability of
the Certificate of Need ("C.O.N.") Application Requirements**

Dear Ms. Powell:

This office represents Central Maine Orthopaedics, P.A. ("CMO"), a professional services corporation providing orthopaedic surgical and related services (the "Ambulatory Center"). The entity operates, and holds a license as, an ambulatory clinic and surgical facility in Auburn, Maine. On behalf of CMO, this letter serves both as a letter of intent pursuant to 22 M.R.S.A 337(1), and chapter 6 of the Maine Certificate of Need Procedures Manual, and as an inquiry regarding the applicability of the Certificate of Need Program to the proposed undertaking by CMO. Essentially, CMO seeks confirmation that the activity described below is not subject to C.O.N. review.

Background

The activity that is the subject of this Letter of Intent involves CMO's plan to provide physical therapy services in connection with its Ambulatory Center ("the Project"). This Project *resurrects* services provided by CMO in past years, including the year 2000 and for many years before that. In 2000, CMO divested itself of its physical therapy staff and assets, and has been referring any post-surgical or other patients in need of physical or other rehabilitative services (other than occupational therapy) to other providers. CMO has always continued to provide occupational therapy and sports medicine services. The reintegration of physical therapy services would mean making available physical therapy to CMO patients without the need for referral to third party providers, including for exercise therapy, ultrasound, and heat therapy, thereby improving continuity and management of care.

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CMO believes that it is an important part of its efforts to provide global, orthopaedic services to its patients, as part of its ongoing plan to meet the quality, efficiency, utilization and stream-lined management standards of today and of the future. The physical therapy services would be rendered in the same building where CMO is located, in space currently leased by a national physical therapy company (“the Current PT Provider”), from the owner of the property, OMC, LLC. The current lease is due to expire in February of 2012, leaving a potential gap in the availability of physical therapy services and providers in the area. Accordingly, although an implementation date has not been determined for the Project, it is likely February of 2012, when this particular space will become available. The services would be rendered by qualified individuals to be hired by CMO as employees of CMO.

Evaluation of the Certificate of Need Criteria

For the reasons set forth below, the subject transaction should be deemed to fall outside of the purview of the C.O.N. statute, 22 M.R.S.A. §329,¹ and thus review and approval of the transaction by the State should not be required. Pertinent aspects of the planned Project include the following:

- There will not be a transfer of ownership of a health care facility. (22 M.R.S. A. §329 (1)). However, CMO may purchase certain hard assets of the current physical therapy practice from the Current PT Provider; then CMO would provide the services on its own, through employed physical therapists and other staff. CMO will also explore having the CMO physical therapy services managed by the Current PT Provider, pursuant to a management contract.
- To the extent this is a pre-existing service: there will not be an acquisition of major medical equipment in excess of \$1.6 million dollars. 22 M.R.S.A. §329 (2-A). CMO is not planning to purchase any assets, and if any are purchased the amount would be nominal – in any event far less than the \$1.6 million dollar ceiling. No other major medical equipment would be required for, or anticipated in connection with, the Project.
- The Project will not require a capital expenditure of \$3,100,000.00 or more. 22 M.R.S.A. §329(3). No capital expenditure is anticipated.
- The Project will not entail the construction, development or other establishment of a new health care facility. 22 M.R.S.A. 329 §4-A. The currently existing CMO facilities will remain intact. CMO would expand its lease to include additional

¹ The statute precludes a person or entity from entering into any commitment for financing a project that requires a certificate of need or from incurring any expenditure for the project without having sought and received a certificate of need. A C.O.N. is not required for an entity, unless the specific criteria of the statute are met.

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space in the same building. The additional space is already fully functioning solely as a center for physical therapy services, so no major renovations or alterations, or capital improvements would be required.

- The Project will not impact or involve changes in bed complement (22 M.R.S.A. 329 §5), nursing facilities (22 M.R.S.A. 329 §6), or major medical equipment for serving inpatients of a hospital.
- Although the physical therapy services have not been offered by CMO providers for approximately ten (10) years, it is a service that is a natural component of orthopaedic care, whether post-surgical, rehabilitative, strengthening, or otherwise. Accordingly, it should not be deemed a “new health service,” 22 M.R.S.A. §329(4), and C.O.N. review should not be triggered.

Regardless of whether the physical therapy services are viewed as a “new health service” for the purposes of §329, the C.O.N. review process should not be triggered. First, CMO would not be assuming an obligation for capital expenditures of \$140,000.00 or more. Second year operating costs are estimated to be less than five hundred and nine thousand four hundred and forty nine dollars (\$509,449.000)². Information from the current physical therapy service provider to CMO suggests that operating costs are approximately \$500,000.00 annually. While it is a bit premature for submitting exact numbers and details, it is anticipated that the costs would include salaries of personnel (likely two therapists and three support staff), and fair market lease costs of approximately \$200,000 per annum, plus equipment maintenance charges, and the costs of a potential management contract. CMO’s plan is to create economies of scale and duplicate, if not decrease, operating costs associated with the physical therapy service. If it is determined that the submission of an application for a C.O.N. is required, CMO will develop its business plan and related data further, for submission to the Department.

Based upon the above, CMO respectfully requests that you will issue a determination that the proposed is not subject to C.O.N. review. If it is determined that this Project is subject to review under Maine’s Certificate of Need Program, an application will be timely submitted, likely with a request for a simplified review and approval process, pursuant to 22 M.R.S.A. §336.

Please let me know if you would like any further information to assist with your consideration of this matter. Of course, CMO representatives can be available, to the extent necessary over the next thirty days in accordance with 22 M.R.S.A. §337(2)(B), to meet with the Department staff to answer questions or provide technical or other assistance to the Department.

² Confirmed by the C.O.N. Unit, as the current regulatory ceiling established by the Department for C.O.N. reviewed operating costs.

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Sincerely,


Jennifer S. Riggle, Esq. (VE)
Legal Counsel to CMO

JSR/j

cc: Stephen Keaten (Via e-mail and regular mail)