IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

MERCY CRYSTAL LAKE HOSPITAL AND MEDICAL CENTER; MERCY HARVARD HOSPITAL, INC.; and MERCY ALLIANCE, INC.,

Plaintiffs,

vs.

ILLINOIS HEALTH FACILITIES and SERVICES REVIEW BOARD; DALE GALASSIE, in his official capacity as Chairman of the Illinois Health Facilities and Services Review Board; ILLINOIS DEPARTMENT OF PUBLIC HEALTH; DR. LAMAR HASBROUCK, in his official capacity as Acting Director; Illinois Department of Public Health; CENTEGRA HEALTH SYSTEM; CENTEGRA HOSPITAL – HUNTLEY; and ADVOCATE HEALTH AND HOSPITALS CORPORATION D/B/A ADVOCATE GOOD SHEPHERD HOSPITAL,

Defendants.

No.: 12 MR 1824
consolidated with
12 MR 1840

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ADVOCATE HEALTH AND HOSPITALS CORPORATION,

Counter-Plaintiff,

vs.

MERCY CRYSTAL LAKE HOSPITAL AND MEDICAL CENTER; MERCY HARVARD HOSPITAL, INC.; and MERCY ALLIANCE, INC., ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD; DALE GALASSIE, in his official capacity as Chairman of the Illinois Health Facilities and Services Review Board; ILLINOIS DEPARTMENT OF PUBLIC HEALTH; DR. LAMAR HASBROUCK, in his official capacity as Acting Director; Illinois Department of Public Health; CENTEGRA HEALTH SYSTEM; CENTEGRA HOSPITAL – HUNTLEY,

Counter-Defendants.

ORDER

This matter coming before the Court after hearing on the Complaint for Administrative Review and the Counter-Complaint for Administrative Review, with due notice having been given and the Court having considered the briefs and arguments of counsel, as well as the applicable statutory and case law, it is ORDERED:

Complaint for Administrative Review - Mercy

Plaintiffs, Mercy Crystal Lake Hospital and Medical Center, Mercy Harvard Hospital, Inc., and Mercy Alliance, Inc. (hereinafter collectively "Mercy"), filed this Complaint for Administrative Review seeking judicial review of the Illinois Health Facilities and Services Review Board (hereinafter "Board") decision approving Centegra Health System and Central Hospital – Huntley's (hereinafter collectively "Centegra") application for a Certificate of Need (hereinafter "CON") permit to establish a new hospital in Huntley, Illinois. The Complaint alleges that the Illinois Department of Public Health (hereinafter "IDPH") provides services and staff support to the Board; that the staff is responsible for evaluation whether applications for CON permits meet the Board's criteria; that the IDPH staff twice reviewed Centegra's application and twice determined that Centegra failed to meet the Board's requrirements; that the Board reviewed Centegra's application and agreed with the IDPH staff decision and issued an Initial Denial in December 2011; that the Board subsequently reconsidered Centegra's application limited to an expert report authored by Krentz Consulting opposing Centegra's project; that the Board then without explanation or discussion reversed its prior decisions and approved Centegra's application; that on July 30, 2012, the Board issued a permit approval letter to Centegra and this action was thereafter timely commenced.

The Complaint further alleges that Mercy Crystal Lake Hospital and Medical Center (hereinafter "Mercy Crystal Lake") applied for a CON permit to establish an acute-care hospital in Crystal Lake and that although the Board issued an intent to deny, the Board is scheduled to conduct a limited reconsideration of Mercy Crystal Lake's permit application and if approved, the proposed hospital would be less than 10 miles from the proposed Centegra hospital; that Mercy Crystal Lake thereafter intervened as a party opposing Centegra's application; that Mercy Harvard Hospital Inc. (hereinafter "Mercy Harvard") is located in the same health service area and planning area as Centgra's proposed hospital which would be in the same area and that Mercy Harvard intervened as a party opposing the application; that Mercy Alliance Inc. (hereinafter "Mercy Alliance") has thirteen multi-specialty medical clinics located in ten communities in the same health service area as Centegra's proposed hospital; and that Mercy Alliance intervened as a party opposing Centegra's application.

The Complaint contends that Dale Galassie is the Chairman of the Board; that the Dr. LaMar Hasbrouck is the Acting Director of the IDPH; that Centegra Hospital-Huntley filed its application to construct the proposed hospital in Huntley on December 29, 2010; and that Advocate Health and Hospitals Corporation (hereinafter "Advocate") is an Illinois not-for-profit corporation who intervened as a party opposing Centegra's application.

The Complaint describes the purpose and requirements of the Illinois Health Facilities Planning Act (hereinafter the "Act"), as well as the requirements of the Board in evaluating permit applications and the review criteria as set forth in the Board's regulations. The Complaint provides background regarding the application filed by Centegra and the public hearing held regarding Centegra's application on February 16, 2011; that the IDPH staff issued a State Agency Report (hereinafter "SAR") for the Centegra project indicating that the Centegra application failed to meet three of the Board criteria; that the Board issued an Intent to Deny Centegra's application at its June 28, 2011 meeting; that the Board requested Centegra address additional questions; that thereafter Centegra made a supplemental application as requested; that the IDPH staff reviewed the supplemental application and determined that Centegra again failed to demonstrate compliance with the Board criteria; that at its December 7, 2011 meeting the Board again voted to deny Centegra's application and identified that the supplemental application failed to comply with the Board's criteria.

The Complaint thereafter notes that Centegra requested an additional hearing and administrative proceedings were conducted by Administrative Law Judge Richard Hart; that during the proceedings, Board attorneys discovered that the record was missing two reports authored by Krentz Consulting LLC that opposed Mercy Crystal Lake's and Centegra's applications; that thereafter, the Board's attorneys spoke with Chairman Grassie who directed the Board attorneys to request that both applications were to be returned to the Board for review and reconsideration; and that thereafter the Administrative Law Judge filed a report with the Board recommending that the Board include the Krentz Centegra report and exclude the Krentz Mercy report and reconsider Centegra's application with the corrected record.

The Complaint further alleges that at the meeting on June 5, 2012, the Board adopted the Administrative Law Judge's recommendations to correct Centegra's record; that the Board ruled it would conduct a limited reconsideration of Centegra's application based only on the addition of the Krentz Centegra report; that the Board denied a motion to allow for an opportunity for a public hearing and written public comments as to its limited reconsideration of Centegra application based on the report; that the Board thereafter voted 6-3 to approve Centegra's application; and that the Board had no public discussion and provided no rationale as to why it reversed its previous denials.

The Complaint finally alleges that Centegra's application does not meet the Board's criteria and contends that the Board's decision must be reversed because the decision is against the manifest weight of the evidence and was arbitrary and capricious.

Counter-Complaint for Administrative Review - Advocate

Defendant Advocate Health and Hospitals Corporation (hereinafter "Advocate") filed a Counter-Complaint seeking judicial review of the final administrative decision of the Board approving Centegra's application for CON permit to establish a new hospital in Huntley. The Counter-Complaint contains similar allegations to the Complaint for Administrative Review and requests that this Court grant Plaintiffs' request for administrative review and reverse the Board's approval of Centegra's application for a CON permit.

Complaint for Administrative Review – Sherman Hospital

Sherman Hospital and Sherman Health Systems (hereinafter collectively "Sherman") filed this Complaint seeking review of the same decision. The Complaint alleges that Sherman is located approximately 20 minutes from the proposed Centegra site and within the same Health Service Area (hereinafter "HSA VIII") and that Sherman would be adversely affected if Centegra is allowed to construct its proposed facility. The Complaint contains similar allegations and background as noted above in the Complaint and Counter-Complaint and seeks judicial review of the final administrative decision of the Board approving Centegra's application for CON permit to establish a new hospital in Huntley.

Decision of the Board

On July 30, 2012, the Board issued a letter addressed to the Director of Planning and Business Development of Centegra stating:

> On July 24, 2012, the Illinois Health Facilities and Services Review Board approved the application for permit for the referenced project based upon the project's substantial conformance with the applicable standards and criteria of 77 Ill. Adm. Code 1110 and 1120. In arriving at a decision, the State Board considered the findings contained in the State Agency Report, the application material, public hearing testimony and documents, any testimony made before the State Board, and the Illinois Health Facilities Planning Act (20 ILCS 3960).

Standard of Review

> Section 3-110 of the Administrative Review Act states:
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> Every action to review any final administrative decision shall be heard and determined by the court with all convenient speed. The hearing and determination shall extend to all questions of law and fact presented by the entire record before the court. No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court. The findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct.

735 Ill. Comp. Stat. Ann. 5/3-110 (West). The applicable standard of review depends on whether the question presented to the court is one of fact, of law or a mixed question of fact and law. In addition, the standard of review also determines the degree of deference given to the agency's decision. AFM Messenger Service v. Department of Employment Security, 198 Ill. 2d 380, 390, 763 N.E.2d 272, 279 (2001).

If the case on review presents a question of fact, the applicable review standard is whether the agency's finding of facts are against the manifest weight of the evidence. It is the role of the agency to resolve conflicts in the evidence, to assess the credibility of witnesses and to assign weight to their testimony. See Paganelis v. Industrial Comm'n, 132 Ill. 2d 468, 483-84, 548 N.E.2d 1033 (Ill. 1989); Edward Hines Precision Components v. Industrial Comm'n, 356

Ill. App. 3d 186, 825 N.E.2d 773 (2d Dist. 2005); Navistar International Transp. Corp. v. Industrial Comm'n, 331 Ill. App. 3d 405, 771 N.E.2d 35 (1st Dist. 2002). The reviewing court will not set aside the Commission's decision unless it is contrary to law or its fact determinations are against the manifest weight of the evidence. Roberson v. Industrial Comm'n, 225 Ill. 2d 159, 866 N.E.2d 191 (Ill. 2007). In order for a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. Edward Hines Precision Components, 356 Ill. App. 3d at 194, 825 N.E.2d at 782.

If the case presents a pure question of law, then the standard of review is de novo. Carpetland v. Illinois Department of Employment Security, 201 Ill. 2d 351, 369, 776 N.E.2d 166, 177 (2002). When the review involves a mixed question of law and fact – that is questions that require an examination of the legal effect of a given set of facts – the standard is whether the Board's decision was clearly erroneous. Oleszczuk v. Dept. of Employment Security, 336 Ill. App. 3d 46, 782 N.E.2d 808 (1st Dist. 2002). Applying this standard provides deference to the agency's experience and expertise. City of Belvidere v. Illinois State Labor Relations Board, 181 Ill.2d 191, 692 N.E.2d 295 (1998). An agency decision is clearly erroneous when the review of the record leaves the court with a "definite and firm conviction that a mistake has been committed." Oleszczuk, 336 Ill. App. 3d at 50, 782 N.E.2d at 812. In Provena Health v. Illinois Health Facilities Planning Bd., 382 Ill. App. 3d 34, 886 N.E.2d 1054 (Ill. App. Ct. 2008), the Court stated:

> A mixed question of law and fact "involves an examination of the legal effect of a given set of facts." City of Belvidere v. Illinois State Labor Relations Board, 181 Ill. 2d 191, 205, 229 Ill. Dec. 522, 692 N.E.2d 295 (1998). The Board's decision is, in part, factual because it involves deciding whether the facts support the issuance of a permit to Sherman. The Board also had to determine the legal effect of its regulations and resolve the potential conflict between the statute and the regulations. Accordingly, we apply a clearly erroneous standard of review. City of Belvidere, 181 Ill. 2d at 205, 229 Ill. Dec. 522, 692 N.E.2d 295.
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> Under this standard, while the agency's decision is accorded deference, a reviewing court will reverse the decision where there is evidence supporting reversal and the court "is left with the definite and firm conviction that a mistake has been committed." AFM Messenger Service, Inc. v. Department of Employment Security, 198 Ill. 2d 380, 393, 261 Ill. Dec. 302, 763 N.E.2d 272 (2001), quoting United States v. United States Gypsum Co., 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746, 766 (1948). . . .

Provena Health, 382 Ill. App. 3d at 38-39, 886 N.E.2d at 1059-60.

Mercy, Advocate and Sherman contend that the Board's approval of Centegra's hospital application was arbitrary and capricious because the Board refused to explain why it changed its mind and provided no reasoning for its decision.

In Provena Health v. Illinois Health Facilities Planning Bd., 382 Ill. App. 3d 34, 38-39, 886 N.E.2d 1054, 1059-60 (Ill. App. Ct. 2008)

> The purpose of the Act is "to establish a procedure designed to reverse the trends of increasing costs of health care resulting from unnecessary construction or modification of health care facilities." 20 ILCS 3960/2 (West 2004). Under the Act, no person may construct, modify, or establish a health care facility without first obtaining a permit or exemption from the Board. 20 ILCS 3960/5 (West 2004).
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> The Board has the power to prescribe rules and regulations to carry out the purpose of the Act and to develop criteria and standards for health care facilities planning. 20 ILCS 3960/12(1), (4) (West 2004). The Department shall "review applications for permits and exemptions in accordance with the standards, criteria, and plans of need established by the State Board under this Act and certify its finding to the State Board." 20 ILCS 3960/12.2(1) (West 2004). As the CON applicant, [the applicant] has the burden of proof on all issues pertaining to its application. 77 Ill. Adm.Code § 1130.130(a) (2006).
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> The Board is to approve and authorize the issuance of a permit if it finds (1) the applicant is fit, willing, and able to provide a proper standard of health care service for the community, (2) economic feasibility is demonstrated, (3) safeguards are provided assuring that the establishment or construction of the health care facility is consistent with the public interest, and (4) the proposed project is consistent with the orderly and economic development of such facilities and equipment and is *in accord with standards, criteria, or plans of need adopted and approved pursuant to the provisions of Section 12 of this Act.* (Emphasis added.) 20 ILCS 3960/6(d) (West 2004).

Provena Health, 382 Ill. App. 3d at 39, 886 N.E.2d at 1060.

Recently, in Medina Nursing Center, Inc., v. The Health Facilities and Services Review Board, 2013 IL App (4th) 120554, ___ Ill. App. 3d ___, No. 4-12-0554, slip op. (4th Dist. July 12, 2013), the Court confronted a very similar situation. In that case, Pecatonica (hereinafter "the applicant") filed an application with the Board for a new nursing facility. Medina, supra, ¶ 8. Plaintiffs were competitors. As required by the Illinois Health Facilities Planning Act, public hearings were held by IDPH where testimony and written comments were provided by the Plaintiffs in opposition to the application. Medina, supra, ¶¶ 10-11. Plaintiffs objected that the proposed facility failed to meet the requirements of the Act and that there was no need for a new facility. Medina, supra, ¶11. Thereafter, IDPH Staff prepared its report where it was determined that the application met some criteria but that it failed to meet other criteria. Medina, supra, ¶ 12. Thus, the IDPH Staff concluded that the application was not in substantial conformance with parts 1110 and 1120 of the Board's regulations under 77 Ill. Adm. Code 1110, 1120. Medina, supra, ¶12.

Thereafter, the Board held a meeting where it considered the applicant's application, as well as some others. Medina, supra, ¶14. The Board heard a short presentation by the applicant and there was some dialogue between Board members and applicant's representatives. Medina, supra, ¶ 15. The chairman of the Board asked if there were questions, and hearing none, called for a motion to approve the application, which was made and passed with all members in attendance voting yes. Medina, supra, ¶ 15.An approval letter was thereafter issued, addressed solely to applicant, which stated:

> On March 21, 2011, the Illinois Health Facilities and Services Review Board approved the application for permit for the referenced project based upon the project's substantial conformance with the applicable standards and criteria of Part[s] 1110 and 1120. In arriving at a decision, the State Board considered the findings contained in the State Agency Report, the application material, and any testimony made before the State Board.

Medina, supra, ¶ 17.

Plaintiffs filed a complaint for administrative review arguing that there was no reasoning provided for the Board's decision. Medina, supra, ¶¶ 19-20. The Court noted that the approval letter contained no reasoned explanation for the decision and did not note which standards and criteria were even applicable, let alone which ones the project met or did not meet, if any. Medina, supra, ¶ 23. The Court further noted that the letter contained no specific findings, but only the conclusion that the project substantially conformed to "the applicable standards and criteria" and stated:

> Without such written findings by the agency, we cannot comply with section 3-110 of the Administrative Review Law (735 ILCS 5/3-110 (West 2010)). That section says, under the heading "Scope of Review," that "[t]he findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct." Id. Obviously, to hold the Board's findings of fact to be prima facie true and correct, we must be informed by the Board what, precisely, those findings of fact are. We do not know which standards and criteria in parts 1110 and 1120 the Board found the project to meet and which ones the Board found the project not to meet. The Board did not adopt the state agency report. Obviously, the Board disagreed with the Department's conclusion that the project did not substantially conform to parts 1110 and 1120. We have the Department's findings and conclusions, but we do not have the Board's findings and conclusions.
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> "[I]f the requirement of findings means anything, it must compel administrative agencies adequately to articulate the bases of their action, showing a rational connection between the facts found and the choice made." Schwartz, supra, at 460. The grounds of the administrative decision must be " 'adequately sustained,' " that is, by a reasoned explanation. Reinhardt, 61 Ill. 2d at 103 (quoting Chenery Corp., 318 U.S. at 94). "The necessity for administrative agencies to provide a statement of reasons *** is a fundamental principle of administrative law." Brooks v. Atomic Energy Comm'n, 476 F.2d 924, 926-27 (D.C. Cir. 1973). Due process requires the administrative decisionmaker to "state the reasons for his determination." Goldberg v. Kelly, 397 U.S. 254, 271 (1970). See Schwartz, supra, at 463 ("Our system may thus be moving toward a more general requirement for reasoned administrative decisions.").

Medina, supra, ¶¶ 23-24. The Court did not attempt to determine the reasoning for the Board's decision and determined that the better course was to remand the matter for "the Board to issue a reasoned opinion so as to make possible a meaningful judicial review." Medina, supra, ¶ ¶ 26-27. The Court thus remanded the matter to the Board with directions. Medina, supra, ¶ 29.

This case is almost identical. The administrative record contains over 9,000 pages of materials, consisting of five bankers' boxes of documents, as well as additional volumes of material. The Board's decision approving the permit has the exact same one paragraph of language approving the application. However, the decision contains no findings of fact, no adoption of the SAR, no indications as to which criteria and standards were met or were not met, no indication as to why the Board must have disagreed with the SAR and no conclusions by the Board. As such, like the above recent case, this case is remanded to the Board for further explanation.

WHEREFORE, this matter is REMANDED to the Board. The motion date set for July 17, 2013 is STRICKEN. The Clerk is ORDERED to return the record to the Board. Clerk to notify via facsimile.

7/15/13
Date

Hon. Bobbi N. Petrungaro