

March 17, 2011

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Ms. Courtney R. Avery  
Administrator  
Health Facilities and Services Review Board  
525 West Jefferson Street  
2nd Floor  
Springfield, IL 62761

**Public Hearing Submission in Opposition to  
Mercy Crystal Lake Hospital & Medical Center  
Project No. 10-089**

Dear Ms. Avery:

Our firm represents Centegra Health System, Centegra Hospital-McHenry, Centegra Hospital-Woodstock and Centegra Hospital-Huntley. This submission is made on their behalf in opposition to the application of Mercy Crystal Lake Hospital & Medical Center, Project No. 10-009 made by Mercy Alliance, Inc. and its affiliates (collectively "Mercy").

The Statute governing State Board review of Mercy's Certificate of Need ("CON") application is expressly intended to assure that persons establishing a new health care facility in Illinois have the background and character necessary to provide a proper service for the community.<sup>1</sup> To this end, the Statute requires the State Board to affirmatively determine an applicant's fitness to provide a proper standard care "with particular regard to the qualification, background and character of the applicant."<sup>2</sup>

An applicant for a CON puts its background and character at issue. Mercy acknowledges this and submits evidence of its background and character at pages 81-86, 92, 110, and 115 of its CON application. This submission provides additional, relevant documentation of Mercy's background and character.

The last time Mercy filed an application for a new hospital in Crystal Lake, three people connected with that application were indicted including Mercy's contractor, Jacob Kiferbaum, and its attorney, Steven Loren. The third person was Stuart Levine, the State Board's Vice-Chairman. All three pled guilty to a variety of crimes to which they were co-conspirators.<sup>3</sup> Mercy's men on that scandalized 2003 CON application were Javon Bea, Richard Gruber and Herbert Franks, who were Mercy's CEO, Vice President and Registered

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Agent, respectively. Mercy's latest CON application has the same three men on the front page; and they still have the same titles. Nothing has changed.<sup>4</sup>

Herbert Franks filed Mercy's first application in July 2003.<sup>5</sup> According to Steven Loren, it was Franks who brought Mercy together with Kiferbaum.<sup>6</sup> In November 2003, Kiferbaum sent Javon Bea and Richard Gruber a letter stating that Kiferbaum Construction Services was a "full service" firm and that those services included the "securing of the Certificate of Need."<sup>7</sup>

Mercy did not hire Kiferbaum at first. Mercy went before the State Board in December 2003 and its Crystal Lake project was unanimously voted down: zero votes for, eight votes against.<sup>8</sup> The next thing Javon Bea did was hire Kiferbaum. Bea and Kiferbaum entered into a contract in January 2004.<sup>9</sup>

In February 2004, Kiferbaum introduced Richard Gruber to Stuart Levine. According to Gruber's own sworn statement, Levine told Gruber that Kiferbaum was a man of integrity and that Gruber could trust him.<sup>10</sup> Gruber replied that he was impressed with Kiferbaum's construction company.

In addition to his work for Mercy, Herbert Franks was also involved in the attempt to have Edward Hospital hire Kiferbaum on another CON project. In testimony before the Illinois Joint Committee on Government Reform, Edward's CEO, Pamela Davis, said that Franks and Mercy's lobbyist Mike Noonan approached her in March 2004 and said she should hire Kiferbaum for an Edward project because Kiferbaum had influence with members of the State Board. They told her that for the Mercy project, State Board member Levine had personally met with Kiferbaum and Mercy's CEO to reassure Mercy's CEO that Kiferbaum could "get things done."<sup>11</sup>

But Bea apparently needed more reassurance. On April 20, 2004, the day before Mercy's application was reconsidered by the State Board, Kiferbaum called up Levine and said, "Javon Bea is panicking now."<sup>12</sup> Kiferbaum said Bea was panicking because he did not know who the fifth vote would be to approve his CON application. Levine told Kiferbaum that Mercy's lawyer, Steve Loren, "knows exactly what's what and things are fine." Kiferbaum was to tell Bea that he was in good hands.

The next day, Bea, Gruber, Franks and Loren appeared before the State Board for a vote on Mercy's CON application.<sup>13</sup> The approval of Mercy's application was described by one reporter who was there as follows:

"In the middle of the vote, the roll call was halted as [Chairman Thomas] Beck and Levine whispered to each other. Levine then approached Dr. Imad

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Alamanser, who had voted 'pass' instead of 'yes' or 'no.' After another whispered conversation between Levine and Alamanser, Alamanser changed his 'pass' to 'yes,' providing the vote needed to pass the project."<sup>14</sup>

After the State Board meeting, Levine called Steven Loren and discussed the Mercy CON approval. Loren said that, "Javon knows that he stole, he said he's at second base."<sup>15</sup> Loren said that Bea was really upset that two State Board members, Danalynn Rice and Pamela Orr, had not voted for the project. Loren said that Bea "had been promised up and down the wazoo that he was going to get the support of the uh, those 2 women... on, on the theory that the unions were helping him out." Shortly afterwards, Kiferbaum called Levine to discuss the State Board meeting. Kiferbaum told Levine that Javon Bea said "Stuart was masterful" and "we would never ever would of gotten' this."<sup>16</sup> Kiferbaum said Javon Bea knows "how to play the game."

In June 2004, Pamela Davis' whistleblower suit was leaked to the Chicago Sun-Times and her allegations of the conspiracy to rig the Mercy CON vote were made public.<sup>17</sup> That same month, the existence of a federal criminal investigation into the approval of the Mercy Crystal Lake CON was made public.<sup>18</sup> In July 2004, based on the allegations of impropriety relating to State Board actions, the Governor imposed a moratorium on "all meetings and actions of the Board until the Board is reconstituted by law."<sup>19</sup> In August 2004, all of the sitting State Board members were removed from office by an Act of the Illinois General Assembly.<sup>20</sup>

Despite the immediate repercussions of the Mercy scandal, including the federal criminal investigation, the moratorium on State Board action, and the removal of all sitting Board members, Mercy still tried to keep its ill-gotten gain. For over a year, it fought Centegra Health System's lawsuit to overturn the CON permit in the Circuit Court of McHenry County. On May 6, 2005, Judge Maureen McIntyre ruled in Centegra's favor and invalidated the CON for Mercy Crystal Lake Hospital. The judge found that the decision to approve Mercy's CON application was against the manifest weight of the evidence, and was also arbitrary and capricious.<sup>21</sup> The following business day, Monday May 9, 2005, Levine and Kiferbaum were indicted. The United States Attorney's press release announcing the indictments laid out the corrupt scheme to approve Mercy's CON permit:

**"Mercy Hospital - \$1.5 million kickback from Kiferbaum to Levine:** Levine solicited a kickback of approximately \$1.5 million from Kiferbaum relating to the construction of Mercy Hospital's \$49 million Crystal Lake facility. Kiferbaum agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date. Levine used his influence with the Planning Board to ensure that Mercy Hospital received approval of its application to build the Crystal Lake hospital after hiring

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Kiferbaum's company. In voting for, and influencing other Planning Board members to vote for, Mercy's application, Levine concealed from the Planning Board his financial arrangement or contacts with Kiferbaum. After the Planning Board voted to approve Mercy's application on April 21, 2004, Levine reported to Individual 1 that hiring Kiferbaum did it for Mercy. When Levine told Kiferbaum that no one really knew that Levine was orchestrating the approval, Kiferbaum said he could not thank Levine enough, and Levine said they were in this together. Levine directed that Kiferbaum pay the kickback proceeds to Individual 1 pursuant to a sham consulting contract for \$1,728,000, which included the \$1.5 million kickback that Levine had solicited and \$228,000 that Kiferbaum still owed from the CMS addition kickback. On May 1, 2004, Levine told Individual 1 that other people knew that Mercy received its CON because of the combination of Kiferbaum, Hurtgen and a law firm and that this information would spread like wildfire."<sup>22</sup>

After these indictments, Mercy finally threw in the towel and stipulated that it would not appeal Judge McIntyre's decision that invalidated Mercy's CON permit.<sup>23</sup>

In May 2007, the Illinois General Assembly created the Task Force on Health Planning Reform ("Task Force") to investigate and make recommendations regarding the State Board. (Public Act 95-0005, effective May 31, 2007.) In its Final Report, the Task Force noted:

"Both the 93rd and 94th General Assemblies restructured the [State] Board, after extensive debates about the history and performance of the Board, and in response to proposals for its complete elimination. Additionally, illegal activity in 2004, involving conflicts of interest and criminal indictments of a board member for influence peddling, kickbacks, and other corrupt actions by parties involved in applications subject to review, prompted the Governor and General Assembly to reduce the size and makeup of the board, and to impose more strict membership requirements."<sup>24</sup>

The Task Force's Final Report included "recommendations to ensure the integrity of the CON Board and its activities."<sup>25</sup> In response to the Task Force recommendations, the General Assembly made extensive amendments to the Health Facilities Planning Act, including a revision to the Act's purpose statement to now provide: "The integrity of the Certificate of Need process is ensured through revised ethics and communications procedures."<sup>26</sup>

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The integrity of the CON process was destroyed by the activities surrounding the Mercy Crystal Lake scandal in 2004. There is now a new State Board, but the people on Mercy's latest CON application are the same: Javon Bea, Richard Gruber, and Herbert Franks. Less than a month after the latest Crystal Lake application was deemed complete, Mercy hired a professional lobbyist for the stated purpose of lobbying the State Board with regard to the proposed new hospital in Crystal Lake.<sup>27</sup>

I urge the State Board to fulfill its statutory mandate to give "particular regard to the qualification, background and character of the applicant" (20 ILCS 3960/6) and to deny Project No. 10-089, Mercy Crystal Lake Hospital and Medical Center.

Respectfully submitted,

Centegra Health System,  
Centegra Hospital-McHenry,  
Centegra Hospital-Woodstock, and  
Centegra Hospital-Huntley

By:



One of their Attorneys

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- <sup>1</sup> Illinois Health Facilities Planning Act, 20 ILCS 3960/2; Exhibit 1 hereto.  
  
[www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=407&ChapAct=20%20ILCS%203960/&ChapterID=5&ChapterName=EXECUTIVE+BRANCH&ActName=Illinois+Health+Facilities+Planning+Act](http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=407&ChapAct=20%20ILCS%203960/&ChapterID=5&ChapterName=EXECUTIVE+BRANCH&ActName=Illinois+Health+Facilities+Planning+Act)
- <sup>2</sup> Illinois Health Facilities Planning Act, 20 ILCS 3960/6; Exhibit 2 hereto.  
  
[www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=407&ChapAct=20%20ILCS%203960/&ChapterID=5&ChapterName=EXECUTIVE+BRANCH&ActName=Illinois+Health+Facilities+Planning+Act](http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=407&ChapAct=20%20ILCS%203960/&ChapterID=5&ChapterName=EXECUTIVE+BRANCH&ActName=Illinois+Health+Facilities+Planning+Act)
- <sup>3</sup> See Plea Agreements of Stuart Levine, Jacob Kiferbaum and Steven Loren attached hereto as Exhibits 3, 4 and 5, respectively.
- <sup>4</sup> See Front pages of CON applications for Mercy Crystal Lake Hospital project numbers 03-049 and 10-089; Exhibit 6 hereto.
- <sup>5</sup> Letter dated July 9, 2003 from Herb Franks to Jeffrey Mark; Exhibit 7 hereto.
- <sup>6</sup> Levine – Loren Call, April 21, 2004, 8:03 p.m., pages 8-9, Trial Exhibit April 21: 2003\_329, *United States v. Rezko*, 05-CR-0691, U.S. Dist. Court, N.D. 111.; Exhibit 8 hereto.  
  
[www.justice.gov/usao/iln/hot/us\\_v\\_rezko\\_exhibits/2008\\_03\\_20/april\\_21\\_2003\\_329.pdf](http://www.justice.gov/usao/iln/hot/us_v_rezko_exhibits/2008_03_20/april_21_2003_329.pdf)
- <sup>7</sup> Letter dated November 25, 2003 from Jacob Kiferbaum to Javon Bea and Richard Gruber; Exhibit 9 hereto
- <sup>8</sup> Results of December 17, 2003 meeting of the Illinois Health Facilities Planning Board; Exhibit 10 hereto.  
  
[www.hfsrb.illinois.gov/hfpbdec03vote.htm](http://www.hfsrb.illinois.gov/hfpbdec03vote.htm)
- <sup>9</sup> Construction Contract for Mercy Alliance; Exhibit 11 hereto.
- <sup>10</sup> Defendant Mercy Crystal Hospital and Medical Center, Inc.'s Response to Plaintiffs' First Set of Interrogatories filed in *Northern Illinois Medical Center v. Illinois Health*

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*Facilities Planning Board, Case No. 04-MR-106 ("Case No. 04-MR-106") Circuit of McHenry County, Illinois; Exhibit 12 hereto.*

- <sup>11</sup> See Pam Davis' Testimony to Illinois General Assembly Joint Committee on Government Reform and Certified Declaration of Pamela Davis filed in Case No. 04-MR-106 and submitted to the Illinois; attached hereto as Exhibits 13 and 14, respectively.

[www.ilga.gov/joint/Documents/Testimony%20of%20Pam%20Davis.pdf](http://www.ilga.gov/joint/Documents/Testimony%20of%20Pam%20Davis.pdf)

[www.ilga.gov/joint/Documents/Documents%20distributed%20at%205-5-09%20hearing.pdf](http://www.ilga.gov/joint/Documents/Documents%20distributed%20at%205-5-09%20hearing.pdf)

- <sup>12</sup> Levine – Kiferbaum Call, April 20, 2004, 4:52 p.m., Trial Exhibit April 20: 1652\_\_303 in *United States v. Rezko, 05, CR-0691, U.S. Dist. Court, N.D. 111.*; Exhibit 15 hereto.

[www.justice.gov/usao/iln/hot/us\\_v\\_rezko\\_exhibits/2008\\_03\\_20/april\\_20\\_1652\\_303.pdf](http://www.justice.gov/usao/iln/hot/us_v_rezko_exhibits/2008_03_20/april_20_1652_303.pdf)

- <sup>13</sup> Transcript excerpts of Illinois Health Facilities Planning Board Meeting, April 26, 2004; Exhibit 16 hereto.

- <sup>14</sup> "Hospitals Left Scratching Their Heads," by Alice Hohl, Daily Southtown, April 22, 2004; Exhibit 17 hereto.

[www.ilga.gov/joint/Documents/Documents%20distributed%20at%205-5-09%20hearing.pdf](http://www.ilga.gov/joint/Documents/Documents%20distributed%20at%205-5-09%20hearing.pdf)

- <sup>15</sup> Levine-Loren call, April 21, 2004, 8:03 p.m.; Exhibit 8 hereto.

[www.justice.gov/usao/iln/hot/us\\_v\\_rezko\\_exhibits/2008\\_03\\_20/april\\_21\\_2003\\_329.pdf](http://www.justice.gov/usao/iln/hot/us_v_rezko_exhibits/2008_03_20/april_21_2003_329.pdf)

- <sup>16</sup> Levine-Kiferbaum call, April 21, 2004; 8:33 p.m.; Trial Exhibit April 20: 2033\_\_332 in *United States v. Rezko, 05, CR-0691, U.S. Dist. Court, N.D. 111.*; Exhibit 18 hereto.

- <sup>17</sup> See Chicago Sun-Times articles dated June 25 and 27, 2004 attached as Exhibit 19 hereto.

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- 18 "Feds Investigate Mercy Hospital Permit," by Jeff Kolky, Northwest Herald, June 26, 2004; Exhibit 20 hereto.
- 19 Moratorium On All Business of the Health Facilities Planning Board, dated July 7, 2004; Exhibit 21 hereto.
- 20 Public Act 93-889, effective August 2, 2004: "Notwithstanding any provision of this Section to the contrary, the term of office of each member of the State Board is abolished on the effective date of this amendatory Act of the 93<sup>rd</sup> General Assembly and those members no longer hold office."; Exhibit 22 hereto.
- 21 Memorandum Opinion and Order of Judge Maureen McIntyre dated May 6, 2005; attached as Exhibit 23 hereto.
- 22 Press release of Monday May 9, 2005 of United States Attorney, Northern District of Illinois: "Levine, Kiferbaum and Hurtgen Indicted On Fraud Charges Alleging Kickbacks, Influence-Peddling and Insider-Dealing"; Exhibit 24 hereto.
- 23 Stipulation entered June 2, 2005 in Case No. 04-MR-106; Exhibit 25 hereto.
- 24 Final Report of the Task Force on Health Planning Reform to the Illinois General Assembly at page 7; attached as Exhibit 26 hereto.
- [www.idph.state.il.us/tfhpr/reports/TFHPR%20Final%20Report.pdf](http://www.idph.state.il.us/tfhpr/reports/TFHPR%20Final%20Report.pdf)
- 25 Exhibit 26 hereto at page 11.
- 26 20 ILCS 3960/6; attached as Exhibit 2 hereto.
- 27 Amended Lobbyist Registration dated February 9, 2011 and Annual Lobbyist Registration dated January 20, 2011; attached as Exhibit 27 hereto. The Amended Lobbyist Registration shows that the State Board was added as an entity intended to be lobbied and the description of the intended lobbying activity was expanded to include "the siting of new hospital in Crystal Lake."



## Table of Contents

### Exhibit

1. Illinois Health Facilities Planning Act, 20 ILCS 3960/2.
2. Illinois Health Facilities Planning Act, 20 ILCS 3960/6.
3. Plea Agreement of Stuart Levine.
4. Plea Agreement of Jacob Kiferbaum.
5. Plea Agreement of Steven Loren.
6. Front pages of CON applications for Mercy Crystal Lake Hospital Project Numbers 03-049 and 10-089.
7. Letter dated July 9, 2003 from Herbert Franks to Jeffrey Mark.
8. Levine – Loren Call, April 21, 2004, 8:03 p.m., Trial Exhibit April 21: 2003\_329, *United States v. Rezko*, 05-CR-0691, U.S. Dist. Court, N.D. 111.
9. Letter dated November 25, 2003 from Jacob Kiferbaum to Javon Bea and Richard Gruber.
10. Results of December 17, 2003 meeting of the Illinois Health Facilities Planning Board.
11. Kiferbaum Construction Contract for Mercy Alliance.
12. Defendant Mercy Crystal Hospital and Medical Center, Inc.'s Response to Plaintiffs' First Set of Interrogatories filed in *Northern Illinois Medical Center v. Illinois Health Facilities Planning Board*, Case No. 04-MR-106 ("Case No. 04-MR-106") Circuit of McHenry County, Illinois.
13. Pam Davis' Testimony to Illinois General Assembly Joint Committee on Government Reform.
14. Certified Declaration of Pamela Davis filed in Case No. 04-MR-106 and submitted to the Illinois.
15. Levine – Kiferbaum Call, April 20, 2004, 4:52 p.m., Trial Exhibit April 20: 1652\_303 in *United States v. Rezko*, 05, CR-0691, U.S. Dist. Court, N.D. 111.
16. Transcript Excerpts from Illinois Health Facilities Planning Board Meeting, April 26, 2004.
17. "Hospitals Left Scratching Their Heads," by Alice Hohl, Daily Southtown, April 22, 2004.

18. Levine-Kiferbaum call, April 21, 2004; 8:33 p.m.; Trial Exhibit April 20 – 2033 \_\_332 in *United States v. Rezko, 05, CR-0691, U.S. Dist. Court, N.D. 111.*
19. Chicago Sun-Times articles dated June 25 and 27, 2004.
20. "Feds Investigate Mercy Hospital Permit," by Jeff Kolky, Northwest Herald, June 26, 2004.
21. Governor's Moratorium On All Business of the Health Facilities Planning Board, dated July 7, 2004.
22. Public Act 93-889, effective August 2, 2004.
23. Memorandum Opinion and Order of Judge Maureen McIntyre dated May 6, 2005.
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25. Stipulation entered June 2, 2005 in Case No. 04-MR-106.
26. Excerpts of Final Report of the Task Force on Health Planning Reform to the Illinois General Assembly.
27. Amended Lobbyist Registration dated February 9, 2011 and Annual Lobbyist Registration dated January 20, 2011 of Quarles & Brady.

**EXHIBIT 1**

(20 ILCS 3960/2) (from Ch. 111 1/2, par. 1152)

(Section scheduled to be repealed on December 31, 2019)

Sec. 2. Purpose of the Act. This Act shall establish a procedure (1) which requires a person establishing, constructing or modifying a health care facility, as herein defined, to have the qualifications, background, character and financial resources to adequately provide a proper service for the community; (2) that promotes, through the process of comprehensive health planning, the orderly and economic development of health care facilities in the State of Illinois that avoids unnecessary duplication of such facilities; (3) that promotes planning for and development of health care facilities needed for comprehensive health care especially in areas where the health planning process has identified unmet needs; and (4) that carries out these purposes in coordination with the Center for Comprehensive Health Planning and the Comprehensive Health Plan developed by that Center.

The changes made to this Act by this amendatory Act of the 96th General Assembly are intended to accomplish the following objectives: to improve the financial ability of the public to obtain necessary health services; to establish an orderly and comprehensive health care delivery system that will guarantee the availability of quality health care to the general public; to maintain and improve the provision of essential health care services and increase the accessibility of those services to the medically underserved and indigent; to assure that the reduction and closure of health care services or facilities is performed in an orderly and timely manner, and that these actions are deemed to be in the best interests of the public; and to assess the financial burden to patients caused by unnecessary health care construction and modification. The Health Facilities and Services Review Board must apply the findings from the Comprehensive Health Plan to update review standards and criteria, as well as better identify needs and evaluate applications, and establish mechanisms to support adequate financing of the health care delivery system in Illinois, for the development and preservation of safety net services. The Board must provide written and consistent decisions that are based on the findings from the Comprehensive Health Plan, as well as other issue or subject specific plans, recommended by the Center for Comprehensive Health Planning. Policies and procedures must include criteria and standards for plan variations and deviations that must be updated. Evidence-based assessments, projections and decisions will be applied regarding capacity, quality, value and equity in the delivery of health care services in Illinois. The integrity of the Certificate of Need process is ensured through revised ethics and communications procedures. Cost containment and support for safety net services must continue to be central tenets of the Certificate of Need process.

(Source: P.A. 96-31, eff. 6-30-09.)

## **EXHIBIT 2**

(20 ILCS 3960/6) (from Ch. 111 1/2, par. 1156)

(Section scheduled to be repealed on December 31, 2019)

Sec. 6. Application for permit or exemption; exemption regulations.

(a) An application for a permit or exemption shall be made to the State Board upon forms provided by the State Board. This application shall contain such information as the State Board deems necessary. The State Board shall not require an applicant to file a Letter of Intent before an application is filed. Such application shall include affirmative evidence on which the State Board or Chairman may make its decision on the approval or denial of the permit or exemption.

(b) The State Board shall establish by regulation the procedures and requirements regarding issuance of exemptions. An exemption shall be approved when information required by the Board by rule is submitted. Projects eligible for an exemption, rather than a permit, include, but are not limited to, change of ownership of a health care facility. For a change of ownership of a health care facility between related persons, the State Board shall provide by rule for an expedited process for obtaining an exemption. In connection with a change of ownership, the State Board may approve the transfer of an existing permit without regard to whether the permit to be transferred has yet been obligated, except for permits establishing a new facility or a new category of service.

(c) All applications shall be signed by the applicant and shall be verified by any 2 officers thereof.

(c-5) Any written review or findings of the Board staff or any other reviewing organization under Section 8 concerning an application for a permit must be made available to the public at least 14 calendar days before the meeting of the State Board at which the review or findings are considered. The applicant and members of the public may submit, to the State Board, written responses regarding the facts set forth in the review or findings of the Board staff or reviewing organization. Members of the public shall submit any written response at least 10 days before the meeting of the State Board. The Board staff may revise any findings to address corrections of factual errors cited in the public response. At the meeting, the State Board may, in its discretion, permit the submission of other additional written materials.

(d) Upon receipt of an application for a permit, the State Board shall approve and authorize the issuance of a permit if it finds (1) that the applicant is fit, willing, and able to provide a proper standard of health care service for the community with particular regard to the qualification, background and character of the applicant, (2) that economic feasibility is demonstrated in terms of effect on the existing and projected operating budget of the applicant and of the health care facility; in terms of the applicant's ability to establish and operate such facility in accordance with licensure regulations promulgated under pertinent state laws; and in terms of the projected impact on the total health care expenditures in the facility and community, (3) that safeguards are provided which assure that the establishment, construction or modification of the health care facility or acquisition of major medical equipment is consistent with the public interest, and (4) that 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.

(Source: P.A. 95-237, eff. 1-1-08; 96-31, eff. 6-30-09.)

**EXHIBIT 3**



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**FILED**  
OCT 27 2006  
JUDGE AMY ST. EVE  
United States District Court

UNITED STATES OF AMERICA )

v. )

STUART LEVINE )

No. 05 CR 691

Judge Amy J. St. Eve

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant, STUART LEVINE, and his attorney, JEFFREY STEINBACK, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure, and is governed in part by Rule 11(c)(1)(C), as more fully set forth in Paragraph 22, below.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in the above captioned case.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Plea Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities or agencies except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and defendant, STUART LEVINE, and his attorney, JEFFREY STEINBACK, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the Superseding Indictment with 15 counts of mail fraud or wire fraud in violation of 18 U.S.C. §§ 1341, 1343, and 1346 (Counts One through 15), one count of attempted extortion in violation of 18 U.S.C. §§ 1951 and 2 (Count Sixteen), six counts of misapplication of funds in violation of 18 U.S.C. § 666 (Counts Seventeen through Twenty-Two), and two counts of money laundering in violation of 18 U.S.C. § 1956 (Counts Twenty-Three and Twenty-Four).

2. Defendant has read the charges against him contained in the Superseding Indictment in this case and the charges have been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crimes with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to Count One and Count Twenty-Three of the Superseding Indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts One and Twenty-Three of the Superseding Indictment in this case. In pleading guilty, Defendant admits the following facts and that those facts establish his guilt

beyond a reasonable doubt. The following is not a complete statement of all the details known to Defendant regarding the individuals and events described below. The following facts are set forth solely as a factual basis for this guilty plea:

With respect to Count One, beginning no later than in and about the spring of 2003 and continuing through at least in or about July 2004, in the Northern District of Illinois, Eastern Division, and elsewhere, Defendant, Antoin "Tony" Rezko ("Rezko"), Joseph Cari, Steven Loren, Jacob Kiferbaum, Individual A, and others known and unknown to the Grand Jury, devised and intended to devise, and participated in, a scheme and artifice to defraud the beneficiaries of the Teachers' Retirement System of the State of Illinois ("TRS") and the people of the State of Illinois, of money, property, and the intangible right to defendant's honest services, by means of materially false and fraudulent pretenses, representations, and promises, and material omissions, and in furtherance thereof used the United States mails and other interstate carriers, in violation of Title 18, United States Code, Sections 1341, 1346, and 2.

With respect to Count Twenty-Three, on or about March 4, 2004, at Chicago, in the Northern District of Illinois, Eastern Division, Defendant and Rezko knowingly caused to be conducted a financial transaction affecting interstate commerce, when Individual C gave Individual D a \$125,000 check drawn on a JP Morgan Chase Bank

account made out to a company controlled by Individual D, which involved the proceeds of specific unlawful activity, namely mail fraud in violation of Title 18, United States Code, Sections 1341 and 1346, knowing that the transaction was designed in whole and in part to conceal the nature, source, ownership, and control of the proceeds of said specified unlawful activity, and that while conducting and attempting to conduct such financial transaction, Defendant knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, in violation of Title 18, United States Code, Sections 1956(a)(1)(B)(I) and 2.

**Defendant's Position At TRS and the Planning Board**

Defendant was a member of the TRS Board of Trustees from approximately October 2000 through about July 2004. In that capacity, Defendant owed the beneficiaries of TRS a duty of honest services. Defendant was also a member of the Illinois Health Facilities Planning Board ("Planning Board") from about August 1996 through about June 2004, and was last re-appointed to the Planning Board in about August 2003. In that capacity, Defendant owed the people of the State of Illinois a duty of honest services.

In or about the spring of 2003, when certain State of Illinois officials advocated consolidating TRS, the Illinois State Board of Investment, and the State University Retirement System, into a single pension fund, Individual A approached Rezko and Individual

B on behalf of Defendant and Individual A for assistance in defeating this proposal. Defendant and Individual A were against the pension consolidation idea because they wanted to preserve their influence and Defendant's position with TRS. Defendant understood that Rezko and Individual B had significant influence with the State of Illinois administration because of their relationships with senior State of Illinois officials and their roles as important fundraisers. Defendant learned from Individual A that Rezko and Individual B agreed to use their relationships and influence with senior State of Illinois officials to oppose the pension consolidation plan in exchange for the agreement of Defendant and Individual A to use their influence and Defendant's position at TRS to ensure that TRS used investment firms and hired lawyers identified by Rezko and Individual B. Defendant agreed to assist Rezko and Individual B with TRS in exchange for their help defeating the consolidation proposal.

In about August 2003, Defendant was re-appointed to the Planning Board. Prior to that point, Defendant discussed his possible re-appointment with Individual A and, separately, with Individual B. Individual A said he'd get back to Defendant about his request and later called Defendant and said that it would happen. A short time later, Defendant was at a meeting in Rezko's office with Individual B and Individual B said that the board seat Defendant wanted had been taken care of. Defendant understood from

these conversations that he would be re-appointed to the Planning Board.

About the time Defendant was re-appointed, Rezko and Defendant discussed Defendant's appointment and Rezko said that he had suggested that Defendant be made the vice-chairman of the Planning Board and that Rezko expected to influence a certain number of votes on the Planning Board. In February 2004, the Planning Board elected Defendant as vice-chairman.

In or about the spring of 2004, Rezko and Defendant agreed that Defendant, whose term on the TRS Board was due to expire in May 2004, needed to be reappointed to the TRS Board and that additional TRS Board members needed to be appointed who would cooperate with Rezko and Defendant. Rezko agreed to use his relationships and influence with high-ranking State of Illinois officials to facilitate these efforts. Rezko subsequently indicated to Defendant that Rezko had arranged for Defendant to be re-appointed to the TRS Board, and Defendant was re-appointed on about May 14, 2004.

**Defendant's Efforts to Obtain Payments From Investment Firms**

**Investment Firm 1**

In about late 2002, Defendant learned from Individual C that Investment Firm 1 was trying to obtain investment funds from TRS. Defendant understood that Individual C would earn a finder's fee

from Investment Firm 1 if TRS invested with that firm, and Defendant agreed to help Investment Firm 1 obtain TRS funds.

In or about the spring of 2003, Individual A indicated to Defendant that Rezko had complained to Individual A that a certain local public official, who Defendant knew had a relationship with and raised money for a certain public official, had been pushing Rezko and Individual B for money, which Defendant understood to mean that the local public official wanted to make money from the State of Illinois because of his assistance to the certain public official. Defendant offered to have Individual C share his finder's fee with the local public official so that Defendant could gain favor with Rezko, and Individual A later indicated that Rezko wanted Individual C to split his finder's fee with the local public official. Defendant then told Individual C that Individual C would have to split his finder's fee from Investment Firm 1 with a local public official.

Rezko subsequently told Defendant that Rezko did not want Individual C to split his finder's fee with the local public official. Rezko said that he would supply Defendant with the name of another individual who would split Individual C's fee.

On or about August 14, 2003, the TRS Board approved an investment of a total of \$50 million in two investment funds operated by Investment Firm 1. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts

relating to its consideration of the application for funds of Investment Firm 1, including his arrangements with Rezko. Individual C received a total of \$375,000 from Investment Firm 1 for acting as a consultant to Investment Firm 1 in connection with TRS. Defendant, Rezko, and Individual C agreed that Individual C would pay \$250,000 of that fee as he was directed by Defendant.

Defendant asked Steve Loren, who was outside counsel for TRS and an associate of Defendant's, to prepare a draft contract that would appear to justify Individual C's splitting his finder's fee by paying \$250,000 of that fee to a third party, although Defendant knew that the contract would be a sham. Loren drafted a sham consulting agreement for Individual C, in order to conceal the fraudulent nature of the payments by Individual C to a third party, and Defendant arranged to get a copy of the consulting agreement to Individual C.

In or about early 2004, Rezko told Defendant that Individual C should split his finder's fee from Investment Firm 1 with Individual D, who was involved with Rezko in the operation of a chain of pizza restaurants. Defendant relayed this instruction to Individual C, and gave Individual C the sham consulting agreement that Loren had prepared in order to conceal the fraudulent nature of the payments. As Defendant expected, Individual C and Individual D each signed the sham consulting agreement.



As Defendant knew, on or about March 4, 2004, acting at Defendant's direction, Individual C gave Individual D a check in the amount of \$125,000 payable to Individual D's company as the first installment of the money that Individual D would receive. Defendant knew that the purpose of providing the \$125,000 to Individual D was to conceal the nature, source, ownership, and control of the proceeds of the money.

In or about late April 2004, Individual D asked Individual C to pay the remaining \$125,000 immediately, instead of waiting for July. At that point, Individual C refused to make the payment early. After learning that Individual C had refused to pay Individual D the \$125,000 immediately, Rezko spoke with Defendant. Rezko directed Defendant to arrange for Individual C to make the payment to Individual D.

On or about April 26, 2004, Defendant directed Individual C to make the second \$125,000 payment to Individual D immediately, which Individual C agreed to do. Defendant subsequently learned that Individual C gave Individual D a check for \$125,000 made payable to Individual D's company that same day.

On or about July 18, 2003, at Chicago, Investment Firm 1 sent and delivered by UPS, a commercial interstate carrier, an envelope from Investment Firm 1 in Chicago, Illinois, and addressed to TRS in Springfield, Illinois, which envelope contained a TRS Questionnaire that had been completed by Investment Firm 1 as part

of Investment Firm 1's application for TRS funds. Defendant admits that this mailing was in furtherance of scheme, for the purpose of executing the scheme, and attempting to do so and was reasonably foreseeable to him.

**Investment Firms 2 and 3**

In or about late 2003 and early 2004, Defendant agreed with Individual C that Defendant would use his influence and position at TRS to help Investment Firms 2 and 3 get investments from TRS. Individual C agreed that he would split any finder's fees that he received from Investment Firms 2 and 3 at Defendant's direction. Investment Firms 2 and 3 each agreed to pay a finder's fee to Individual C, and each applied for TRS funds.

Defendant directed Loren to assist Individual C by providing advice about the sorts of investments that TRS would consider and reviewing investment proposals submitted by Individual C and others. As Defendant knew, Loren subsequently met with representatives of Investment Firms 2 and 3 and discussed potential TRS investments. Defendant arranged for TRS staff members to meet with representatives of Investment Firms 2 and 3 and indicated to TRS staff that Rezko and Defendant wanted TRS staff to recommend that the TRS Board approve investments in Investment Firms 2 and 3.

On or about April 12, 2004, Defendant directed Individual C to share his potential finder's fees from Investment Firms 2 and 3 with Individual E, who was a friend and business associate of

Defendant. Defendant knew that Individual E would provide no services to Individual C or Investment Firms 2 or 3 in connection with their applications to receive TRS funds. Defendant arranged with Individual E that Defendant would later receive a portion of the payments Individual E received from Individual C.

On or about April 14, 2004, Rezko and Defendant agreed that they would each receive approximately one-third of the finder's fees that they expected Individual C to receive for TRS investments in Investment Firms 2 and 3. At that time, Rezko and Defendant expected that Individual C would receive approximately \$250,000 from Investment Firm 2 and \$1 million from Investment Firm 3.

TRS staff initially recommended that the TRS Board approve a \$25 million investment with Investment Firm 2 and the TRS Board was scheduled to vote on that recommendation at the May 2004 TRS Board meeting. Shortly before the May 2004 TRS Board meeting, TRS staff learned that Investment Firm 2 had not initially disclosed that Individual C would receive a finder's fee as required by a TRS questionnaire. After learning that the TRS staff was concerned about Investment Firm 2's failure to disclose the finder's fee for Individual C, Defendant tried to help Investment Firm 2 remain on the TRS agenda. On or about May 20, 2004, Defendant was approached by law enforcement agents. As a result of that approach, Defendant stopped trying to help Investment Firm 2 remain on the TRS agenda. Defendant intentionally concealed from and failed to disclose to

the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 2, including his arrangements with Rezko.

TRS staff had not completed its review of Investment Firm 3's application when Defendant was approached by law enforcement agents on or about May 20, 2004. After that date, Defendant did not further attempt to assist Investment Firm 3's application. Investment Firm 3's application was never presented to the TRS Board. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 3, including his arrangements with Rezko.

#### Investment Firm 4

In or about late February or early March 2004, after Investment Firm 4 had made a presentation to TRS staff members seeking funds from TRS, Defendant spoke with Joseph Cari about Investment Firm 4's application. Defendant and Cari agreed that Defendant would help Investment Firm 4 get funds from TRS and that Investment Firm 4 would hire a consultant chosen by Defendant.

On or about April 14, 2004, Rezko and Defendant discussed Investment Firm 4's application for TRS funds. Defendant told Rezko that Investment Firm 4 had agreed to hire a consultant chosen by Defendant in exchange for Defendant's help. Rezko told Defendant that he would provide Defendant with the name of a person

who would receive the consulting fee on behalf of Rezko and Defendant. Rezko and Defendant agreed that they would share evenly the finder's fees that Investment Firm 4 paid to the consultant they chose. At that time, Rezko and Defendant expected that Investment Firm 4 would pay the consultant they chose approximately \$750,000.

In that same conversation, Rezko and Defendant discussed an application by Cari's private equity firm for ISBI funds. Defendant had arranged with Cari that Cari's private equity firm would pay a 2% finder's fee to a person identified by Defendant. Rezko and Defendant agreed that they would share evenly the finder's fees that Cari's private equity firm paid, which they expected would be approximately \$700,000.

In or about late April 2004, Rezko provided Defendant with the name of Individual F as the person who would receive the consulting fee from Investment Firm 4. Defendant spoke with Individual F and confirmed that Individual F would receive a finder's fee from Investment Firm 4, although Individual F would not be expected to do any actual work for Investment Firm 4. Defendant and Individual F agreed that Individual F would send a portion of the finder's fee he received from Investment Firm 4 to a company controlled by Individual E.

In or about late April 2004, Defendant directed Loren to prepare a draft contract for Investment Firm 4. Defendant told

Loren that there was going to be a split of finder's fees relating to the TRS investment in Investment Firm 4. Loren prepared a draft compensation agreement, which Defendant sent to Individual F.

On or about May 1, 2004, Defendant discussed with Individual E the possibility of changing the agreement between Rezko and Defendant so that Rezko would keep the entire \$750,000 fee from Investment Firm 4 while Defendant and Individual E would keep the entire \$700,000 fee that Defendant expected from Cari's private equity firm.

Defendant directed Cari to make sure that Investment Firm 4 hired Individual F as a consultant, and knew that Cari in turn put pressure on Investment Firm 4 to hire Individual F, such as by threatening Investment Firm 4 that it would not get TRS money if it did not hire a consultant.

After Defendant was approached by law enforcement agents on or about May 20, 2004, he did not try to interfere with Investment Firm 4 or its application for TRS funds. Investment Firm 4 received approval for an approximately \$85 million investment at the May 25, 2004 TRS Board meeting. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 4, including his arrangements with Rezko.

#### Investment Firm 5

In about 2003, Rezko told Defendant that Individual G, who

worked with Rezko's real estate business, would act as a finder on Rezko's behalf. Defendant agreed with Rezko to use Defendant's influence and position at TRS on behalf investment firms that Individual G brought to TRS, including Investment Firm 5. Defendant used his influence with the TRS staff to ensure that Individual G and representatives of Investment Firm 5 met with key members of the TRS staff, as well as with Loren. Defendant encouraged TRS staff to recommend that TRS place funds with Investment Firm 5.

TRS staff indicated to Defendant and others that the TRS staff would recommend that Investment Firm 5 receive a \$25 million investment from TRS at the May 2004 TRS Board meeting. On or about May 20, 2004, a TRS staff member expressed concern to Defendant that Investment Firm 5 had disclosed that Individual H, with whom TRS staff members had not had contact, would be the recipient of a finder's fee. In response, Defendant tried to allay the TRS staff member's concerns in order to help Investment Firm 5.

After Defendant was approached by law enforcement agents later that day, Defendant no longer tried to help Investment Firm 5. Investment Firm 5's application for TRS investment funds was not addressed at the May 2004 TRS Board meeting. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the

application for funds of Investment Firm 5, including his arrangements with Rezko.

#### Investment Firm 6

In about early 2004 Defendant learned from Individual I and others that Investment Firm 6 was interested in attracting investments from Illinois state pension funds, including TRS. Defendant agreed with Individual I that Defendant and Rezko would use Defendant's position at TRS and their influence at TRS and other state pension funds to help Investment Firm 6 obtain investments. Individual I agreed that he would split any finder's fees he received from Investment Firm 6 with Defendant in exchange for Defendant's assistance. Individual I further agreed to split with Defendant the ongoing management fees that Investment Firm 6 would earn from investments from TRS. Individual I agreed to pay Defendant two-thirds of the finder's fees and management fees that Individual I received so that Defendant could share those fees with Rezko.

On or about April 14, 2004, Defendant advised Rezko about Defendant's arrangement with Individual I. Rezko and Defendant agreed that they would share evenly the fees that Individual I would receive for TRS and other Illinois state pension fund investments in Investment Firm 6. Rezko also agreed to use his influence with other Illinois state pension funds to help Investment Firm 6 obtain investments from those entities. Rezko



and Defendant each expected to receive at least approximately \$1.3 million in fees from Individual I, based on the size of the investment that Rezko and Defendant believed TRS would make in Investment Firm 6.

To assist Investment Firm 6, Defendant arranged for a meeting with Defendant, Loren, Individual I, and representatives of Investment Firm 6 so that the Investment Firm 6 representatives could explain their firm and investment products to Loren. At Defendant's request, Loren provided Investment Firm 6 with advice about how Investment Firm 6 should proceed with an application for funds from TRS.

On or about May 19, 2004, Defendant told Individual I that he intended to recommend Investment Firm 6 to TRS staff after the May 2004 TRS Board meeting.

At the time that Defendant was approached by law enforcement agents on or about May 20, 2004, Investment Firm 6 had not yet applied for TRS funds. Defendant did not attempt to help Investment Firm 6 obtain TRS funds after that date. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to the potential application for funds by Investment Firm 6, including his arrangements with Rezko.

#### **Investment Firm 7**

In about early 2004, Defendant learned that TRS staff had decided to recommend that the TRS Board allocate available funds

for real estate investments among the existing TRS real estate managers, which included Investment Firm 7, and that TRS staff were going to recommend that TRS invest \$220 million with Investment Firm 7 at the February 2004 TRS Board meeting.

Defendant arranged to postpone the planned TRS allocation to Investment Firm 7 in order to force Investment Firm 7 or Individual J, a principal with Investment Firm 7, to pay a fee to Defendant for his support for the potential allocation. Defendant provided information to TRS staff about a possible sale of Investment Firm 7, which resulted in TRS staff recommending at the February 2004 TRS Board meeting that the TRS Board postpone the planned allocation to Investment Firm 7. The TRS Board, including Defendant, agreed that TRS would not allocate \$220 million to Investment Firm 7 pending further investigation.

In or about April 2004, Rezko and Defendant agreed to use their influence and Defendant's position at TRS to prevent Investment Firm 7 from getting its \$220 million allocation unless Individual J agreed either to pay an approximately \$2 million fee to a consultant chosen by Rezko and Defendant, or to arrange for approximately \$1.5 million in political contributions to be made to a certain public official. Rezko and Defendant agreed that they would split the fee paid to the consultant if that was what Individual J chose to do. Rezko and Defendant further agreed that Defendant would arrange for an intermediary, namely Individual A,

to indicate to Individual J that Investment Firm 7 had not received its \$220 million allocation because Investment Firm 7 had not contributed significantly to a certain public official.

In about early May 2004, Defendant directed Individual A to tell Individual J that there had been a meeting involving Rezko and Individual B concerning plans for raising political donations from pension fund managers, and that during this meeting Rezko had observed that Investment Firm 7 had a lot of TRS funds under management but had not made any political donations. Subsequently, Defendant learned from Individual A that Individual A told Individual J words to the effect that Investment Firm 7 had not gotten its \$220 million allocation from TRS because of its failure to make political donations.

On or about May 8, 2004, Individual J advised Individual A that he would not be extorted. Individual A advised Defendant of this conversation and told Defendant that Individual J had threatened to inform law enforcement about what Rezko and Individual B were doing. Individual A and Defendant agreed to discuss the matter with Rezko.

On or about May 10, 2004, Rezko, Defendant, Individual A, and Individual B agreed that in light of Individual J's reaction, it was too risky to continue demanding money from Investment Firm 7 or blocking its \$220 million allocation. They further agreed that although Investment Firm 7 would receive the \$220 million

allocation, it would not receive any further business from any State of Illinois entity, including TRS.

On about May 25, 2004, the TRS Board, including Defendant, voted to invest a total of \$220 million with Investment Firm 7. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 7, including his arrangements with Rezko, Individual A, and Individual B.

#### **TRS Asset Manager**

In or about the Spring of 2004, Rezko, Individual E, and Defendant agreed to establish or obtain a company that they or their nominees would own and control. Rezko, Individual E, and Defendant further agreed that they would use their influence and Defendant's position at TRS to ensure that TRS would make hundreds of millions of dollars of real estate investments with their company. Defendant, Rezko and Individual E expected to share the profits from the company. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to his plan to establish a real estate asset management company, including his arrangements with Rezko and Individual E.

#### **Mercy Health System Corporation's Application for a CON**

In late 2003, Defendant and Kiferbaum agreed that Defendant would use his position as a Planning Board member to influence the Planning Board to approve the application of Mercy Health System

Corporation ("Mercy") for a Certificate of Need ("CON") so that Kiferbaum's construction company could build its new hospital in Crystal Lake, Illinois. In exchange for Defendant's help, Defendant and Kiferbaum agreed that Kiferbaum would pay a kickback as directed by Defendant, with the exact amount and manner of the payments to be determined at a later date.

After agreeing with Kiferbaum about the kickback, Defendant met with Rezko and told Rezko that Kiferbaum was willing to pay a kickback to ensure that Mercy's application would be approved. Rezko then agreed to use his influence with the Planning Board to support Mercy's application in exchange for a share of that kickback. Defendant and Rezko agreed they would evenly divide the kickback from Kiferbaum, which they expected would be approximately \$1 million or more.

At its meeting on December 17, 2003, the Planning Board issued an intent-to-deny with respect to Mercy's CON application. Defendant voted to deny Mercy's application with the expectation that Mercy would respond to the intent-to-deny and the Planning Board would approve Mercy's application at a subsequent meeting with Rezko's support from behind the scene.

Shortly before the Planning Board meeting on April 21, 2004, Defendant had several telephone conversations with another Planning Board member about Mercy and its application for a CON. That Planning Board member said he had his "marching orders" from Rezko and that Rezko wanted to help on Mercy's application. In another

telephone conversation with the same Planning Board member, Defendant said that it was important that Rezko's direction on the vote be communicated to the other Planning Board members that Rezko influenced on the Planning Board.

At its meeting on April 21, 2004, the Planning Board considered Mercy's application for a CON. At this meeting, Defendant and a majority of the Planning Board voted in favor of Mercy's application. Defendant intentionally concealed from and failed to disclose to the Planning Board material facts relating to its consideration of Mercy's application, including his arrangements with Rezko and Kiferbaum. After the meeting concluded, another Planning Board member and Defendant met with Rezko and discussed the Mercy vote.

After the April 21, 2004, Planning Board meeting, Defendant directed Kiferbaum to pay the kickback relating to Mercy to Individual E pursuant to a sham consulting contract. Steve Loren drafted the contract. Defendant, Kiferbaum, and Individual E agreed that the purpose of the contract was to make Kiferbaum's payments to Individual E look legitimate; that Individual E would not, in fact, to do any work for Kiferbaum; and that Individual E would share the Mercy kickback with Defendant.

Defendant and Kiferbaum also discussed the fact that Kiferbaum was paying money at Defendant's direction to John Glennon in connection with another contract and the fact that Kiferbaum still owed Glennon \$200,000 to \$300,000 on that an earlier contract.

Defendant told Kiferbaum to stop paying Glennon and said that the money remaining to be paid to Glennon would be rolled into the dollar amount of the kickback to be paid on Mercy.

6. Defendant also acknowledges that for the purpose of computing his sentence under the U.S. Sentencing Guidelines, the following conduct, to which he stipulates, constitutes other instances of fraudulent conduct, and admits that these facts constitute relevant conduct under Section 1B1.3 of the Guidelines beyond a reasonable doubt. The following is not a complete statement of all the details known to Defendant regarding the individuals and events described below.

#### **Investment Firm 7 (2001)**

In about late 2001, Defendant learned that Investment Firm 7 was seeking an approximately \$100 million investment from TRS. Defendant spoke with Individual J about that potential allocation. Defendant wanted Individual J to pay Defendant and Individual E \$500,000 plus a portion of the fees that Investment Firm 7 would earn on an annual basis from TRS if Investment Firm 7 received the allocation in exchange for Defendant's help ensuring that TRS approved the \$100 million allocation. Defendant understood that Individual J had agreed to Defendant's demand, and voted in favor of the allocation without disclosing his interest in the matter to the TRS Board in December 2001, when the \$100 million investment was approved. After the allocation was approved, however,

Individual J, refused to pay Defendant the \$500,000 that Defendant believed was owed to him.

Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 7 in 2001, including his discussions with Individual J.

#### **Investment Firm 8**

In about early 2002, Defendant learned that Investment Firm 8 wanted to obtain an investment from TRS. Individual K, who Defendant understood was going to receive a finder's fee from Investment Firm 8 if it received a TRS investment, asked Defendant to help Investment Firm 8 obtain an investment from TRS. Defendant agreed to help and subsequently attempted to assist Investment Firm 8 to receive investment funds from TRS. Individual A subsequently indicated to Defendant that because he had helped Individual K, Defendant could stop paying fees to Individual K for lobbying the state of Illinois on behalf of a client of Defendant's. Investment Firm 8 received an investment of approximately \$150 million from TRS in about August 2002. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 8, including his arrangements with Individual A and Individual K.

#### **Investment Firm 9**

In about 2003, Defendant learned from Individual C that Investment Firm 9 was looking for investors for an investment into



senior living facilities. Defendant agreed to help Investment Firm 9 and expected to receive a kickback if he could arrange for TRS money to be invested with Investment Firm 9.

Defendant encouraged Individual A to arrange for his real estate asset management firm, which invested hundreds of millions of dollars in TRS funds, to invest in Investment Firm 9. Defendant explained to Individual A that Defendant and Individual E would make money if Individual A's firm invested in Investment Firm 9. Individual A agreed to investigate Investment Firm 9 to determine if he wanted his firm to make an investment.

Defendant, Loren, Individual A, and another individual met in about early 2004 to discuss the amount of money that Individual A's firm would receive in TRS funds at the February 2004 TRS Board meeting. At that meeting, Individual A indicated that he wanted his real estate asset management firm to receive a larger allocation of money from TRS if his firm was going to invest money with Investment Firm 9. It was agreed that TRS would increase the amount of money allocate a larger amount of money to Individual A's firm to cover any investment that Individual A's firm made with Investment Firm 9, which investment Defendant expected would be in the tens of millions of dollars.

Individual A's firm received a total allocation of \$220 million from TRS at the February 2004 TRS Board meeting. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the

allocation for funds of Investment Firm 9, including his arrangements with Individuals A and E.

Individual A's firm did not invest any money in Investment Firm 9, so Defendant did not receive any kickback.

**Edward Hospital's Application for a CON**

Beginning in late 2003, Defendant, Kiferbaum, and P. Nicholas Hurtgen ("Hurtgen") agreed that Defendant would use his position as a Planning Board member to attempt to force Edward Hospital ("Edward") to hire Kiferbaum's construction company to build Edward's Plainfield, Illinois hospital and medical office building by threatening representatives of Edward that the Planning Board would not approve Edward's application for the hospital facility unless Kiferbaum's construction company was given the construction contracts to build them. The total costs of constructing the hospital were projected to be approximately \$90 million, and the total costs of constructing the medical office building were projected to be approximately \$23 million. In exchange for Defendant's assistance, Defendant and Kiferbaum agreed that Kiferbaum would pay an Edward related kickback to Defendant or Defendant's designee. Hurtgen assisted with the Edward scheme because he wanted his employer, Bear Stearns & Co. ("Bear Stearns"), to receive the financing work for the new hospital.

Shortly before the Planning Board meeting on December 17, 2003, Hurtgen told Defendant that his client, Edward, had a CON application before the Planning Board, and Hurtgen asked Defendant

to find out how the application was going. Defendant made inquiry and then told Hurtgen that Edward would get an intent-to-deny for the medical office building at the December meeting if it did not agree to defer that application so that its medical office building application and its hospital application could be heard at the same time.

At the Planning Board meeting on December 17, 2003, Edward did not request to defer the medical office building application, and the Planning Board issued an intent-to-deny with respect to that application. Soon thereafter, Hurtgen asked Defendant if it would make a difference for Edward if Edward hired Kiferbaum's construction company to build the hospital. Defendant said it might and asked Hurtgen to introduce Kiferbaum to the CEO of Edward. Hurtgen agreed to make that introduction.

No later than early 2004, Kiferbaum and Hurtgen knew that Defendant was prohibited by law from engaging in *ex parte* communications with applicants with matters pending before the Planning Board, and each knew that Defendant could not communicate with representatives from Edward about their pending applications. Therefore, in order to protect Defendant and conceal his role, Kiferbaum and Hurtgen communicated with Edward representatives, in place of and on behalf of Defendant, in order to communicate Defendant's threats and promises to Edward.

On or about December 22, 2003, Hurtgen talked to the Edward CEO and said, among other matters, that if Edward hired Kiferbaum,

Hurtgen thought Edward would not have any further difficulties with the Planning Board. Hurtgen also said he was selling "clout," and that Defendant is the "clout." The following day, on or about December 23, 2003, Kiferbaum and Hurtgen met with the Edward CEO to persuade the Edward CEO to hire Kiferbaum's construction company to build the two pending projects. Kiferbaum told the CEO that he had been working with Mercy on its new project, and that its application to build a new hospital in Crystal Lake was going to be approved.

In response to representations by Kiferbaum and Hurtgen that they were working with Defendant, and that Defendant had the ability to, and would, cause the Planning Board to approve or deny Edward's application - depending on whether or not Edward Hospital hired Kiferbaum - the Edward CEO requested that Kiferbaum and Hurtgen demonstrate that they were telling the truth about Defendant's role by setting up a meeting with Defendant, which Kiferbaum and Hurtgen agreed to do.

On or about April 17, 2004, Defendant told Kiferbaum that he would speak to Kiferbaum and the Edward CEO at a restaurant on April 18, and he would have Hurtgen or someone else with him. On or about April 17, 2004, Hurtgen and Defendant agreed that Hurtgen would join Defendant at the breakfast the next day.

On or about April 18, 2004, Defendant and Kiferbaum talked about the meeting that they were going to have that morning at a restaurant. Defendant said he would talk to Kiferbaum and the

Edward CEO at the restaurant. Defendant instructed Kiferbaum to tell the Edward CEO that because of the ethics law concerning ex parte communications relating to pending projects, the CEO should not ask anything direct about her particular project. Defendant said that the CEO knew why she was there with Kiferbaum, and she was either going to do it or she was not going to do it. Defendant said he would bump into Kiferbaum "by mistake" a little later that day.

On or about Sunday, April 18, 2004, Defendant and Hurtgen went to a restaurant in Deerfield, Illinois, as planned, in order to prove to the CEO that Defendant, Hurtgen, and Kiferbaum were working together, and to prove that their representations concerning Defendant and the Planning Board were real. Defendant and Hurtgen walked over to the table where Kiferbaum and the CEO were sitting. Defendant said that he was the Chairman of the Board of CMS, and that Kiferbaum had done a project for them. Defendant said that Kiferbaum is a person upon whom one can rely, and he is a person whose word can be depended on.

Shortly after that meeting, Kiferbaum thanked Defendant for what he had done at the restaurant. Kiferbaum said that it went perfectly and the CEO understood. Kiferbaum said that he told the CEO that they had to come to some sort of agreement. Defendant said that he had never been in a better position. Defendant said that if the CEO promised to sign a contract, Kiferbaum should say that he accepted her word, and that he would do whatever he could.

On or about April 20, 2004, the Edward Project Administrator faxed Kiferbaum a letter stating that Edward would not hire Kiferbaum Construction Company for their project. When Kiferbaum received the letter of rejection from Edward, he called Defendant and told him about the letter. Defendant indicated that Edward's application would not be approved.

On or about April 21, 2004, the Planning Board held a Board meeting at which Edward's application for a permit to build the Plainfield hospital was considered. Edward had not hired Kiferbaum, and Defendant voted against Edward's application to build a new hospital, and the Planning Board issued a notice of its intent-to-deny the application.

Defendant acknowledges that a reasonable estimate of the net value of the benefit that would have been received by the contractor that would have built the new hospital and medical building for Edward was approximately \$1,810,000.

7. For the purpose of calculating his sentence under the Sentencing Guidelines, Defendant also admits to the following facts and that these facts constitute a criminal offense and prove it beyond a reasonable doubt, and pursuant to Section 1B1.2 of the Guidelines, defendant stipulates to having committed the following criminal offense. The following is not a complete statement of all the details known to Defendant regarding the individuals or the events described below.

Chicago Medical School and Northshore Supporting Organization

Beginning no later than in or about early 2001 and continuing through at least in or about June 2004, in the Northern District of Illinois, Eastern Division, and elsewhere, Defendant and others devised and intended to devise, and participated in, a scheme and artifice to defraud the Finch University of Health Sciences/Chicago Medical School, now known as the Rosalind Franklin University of Medicine and Science ("Chicago Medical School" or "CMS"), a not-for-profit private education institution located in North Chicago, Illinois, and the Northshore Supporting Organization ("NSO"), a charitable trust established to support and operate for the benefit of CMS, of money, property, and the intangible right to the honest services of Defendant and Kiferbaum by means of materially false and fraudulent pretenses, representations, and promises, and material omissions, and in furtherance thereof used and caused the use of the United States mails and other interstate carriers, and interstate and foreign wires.

It was part of the scheme that Defendant, with the assistance of Kiferbaum, Individual E, and others, fraudulently obtained and sought to obtain millions of dollars for the benefit of Defendant and his nominees and associates which conduct involved a series of kickbacks related to construction contracts and a real estate contract, as well as the diversion of assets from CMS and NSO. In carrying out this scheme, Defendant misused the positions of trust that he held with CMS and NSO and defrauded these institutions of

their rights to his honest services. Defendant's fraudulent transactions in the course of the scheme included a kickback and deceit relating to the construction of an addition to the Chicago Medical School; a kickback and deceit relating to the construction of student housing at CMS; a kickback and deceit relating to CMS's sale of real property at 1101 N. Dearborn St., Chicago; and deceit in connection with the diversion of assets from CMS and NSO, the charitable trust established to support CMS.

More specifically, Defendant admits as follows:

**The CMS Addition**

Defendant and Kiferbaum were each members of the CMS Board of Trustees ("CMS Board") and in that capacity they each owed a fiduciary duty and a duty of honest services to the Chicago Medical School.

In or about the summer of 2001, CMS was considering the construction of an addition to the Chicago Medical School. Defendant and Kiferbaum talked about this project and Kiferbaum determined to submit a proposed contract for the project on behalf of his construction company. Defendant told Kiferbaum to include within the costs of his proposed contract an extra \$1 million for Defendant. Defendant had sufficient power on the CMS Board to determine whether Kiferbaum received the CMS addition construction contract and Kiferbaum knew that Defendant had that power. If Kiferbaum refused to pay this kickback, Defendant would prevent Kiferbaum from getting this contract. Kiferbaum agreed to pay this



kickback of \$1 million and did in fact pay approximately \$700,000 of that kickback as directed by Defendant.

The CMS Board voted to award the construction contract for the CMS addition to Kiferbaum's construction company. In connection with the CMS Board's consideration of the construction contract, Defendant and Kiferbaum concealed from the CMS Board that they had agreed to Kiferbaum paying a \$1 million kickback to Defendant using CMS funds, and that Defendant - who participated in the CMS Board's consideration of the contract - had a substantial personal financial interest in its approval.

Thereafter, Defendant and Kiferbaum caused CMS to pay an extra \$1 million in connection with the construction of the CMS addition by Kiferbaum inflating the total cost of the contract, resulting in a contract of approximately \$18 million.

In order to conceal the fraudulent nature of the extra \$1 million paid by CMS to Kiferbaum's construction company, Defendant directed Kiferbaum to pay the extra \$1 million to North American Capital Opportunities, LLC ("NACO"), the consulting company belonging to Defendant's business associate, John Glennon, and Kiferbaum agreed to do so. Defendant understood that Glennon was not then required to pay any of the \$1 million to Defendant but Defendant understood that Defendant, Glennon, and Individual E contemplated future business endeavors together. In order to conceal the fraudulent nature of the payments to Glennon, Defendant caused a sham marketing contract to be prepared, which was signed

by Kiferbaum and Glennon in or about early December 2001. This contract provided that Kiferbaum's construction company would pay Glennon's company \$28,000 a month for approximately three years, for a total of approximately \$1 million. Defendant and Kiferbaum did not disclose the contract to CMS.

Beginning in or about December 2001 and continuing on a monthly basis through in or about June 2004, Glennon sent to Kiferbaum an invoice requesting payment of \$28,000 each month, despite the fact that Glennon and his company did not provide any substantial services to Kiferbaum's company in exchange for those payments. Over time, Kiferbaum caused his company to pay Glennon's company a total of approximately \$700,000.

In or about December 2003 or January 2004, Defendant and Kiferbaum agreed that the balance that Kiferbaum still owed on the kickback relating to the CMS addition would be combined with the kickback payment that Kiferbaum would make relating to Mercy Hospital. Based on that agreement, Kiferbaum stopped paying Glennon's company in approximately January 2004. Neither Glennon nor his company sued for the balance of the contract, an amount in the range of \$200,000 to \$300,000.

As described above, in paragraph 5, in or about April 29, 2004, Defendant and Individual E caused a sham consulting contract to be drafted and sent to Kiferbaum, providing that Kiferbaum's construction company would pay approximately \$1,728,000 million to Individual E's company. Defendant arranged for that contract to

include the payment of the kickback relating to Mercy and, additionally, to include the balance of the kickback owed to Defendant in connection with the construction of the CMS addition.

Notwithstanding their positions as members of the CMS Board, Defendant and Kiferbaum intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements for the construction of the CMS addition, including, specifically, the nature or purpose of the additional costs to CMS, their agreements and actions concerning the \$1 million kickback described above, and the sham marketing and consulting contracts to conceal the fraudulent nature of the diversion, and the planned diversion, of CMS funds to Glennon and Individual E.

#### **CMS Student Housing**

In or about the summer of 2002, CMS was considering the construction of new student housing. Defendant and Kiferbaum talked about this project and Kiferbaum determined to submit a proposed contract for the project on behalf of his construction company. Defendant again told Kiferbaum to include within the costs of his proposed contract an extra \$1 million for Defendant. Defendant had sufficient power on the CMS Board to determine whether Kiferbaum received the CMS student housing construction contract and Kiferbaum knew that Defendant had that power. If Kiferbaum refused to pay this kickback, Defendant would prevent Kiferbaum from getting this contract. Kiferbaum agreed to pay this

kickback of \$1 million and did in fact pay \$1 million as directed by Defendant.

The CMS Board voted to award the construction contract for the student housing to Kiferbaum's construction company. In connection with the CMS Board's consideration of the student housing contract, Defendant and Kiferbaum concealed from the CMS Board that they had agreed to Kiferbaum paying a \$1 million kickback to Defendant using CMS funds, and that Defendant - who participated in the CMS Board's consideration of the contract - had a substantial personal financial interest in its approval.

Thereafter, Defendant and Kiferbaum caused CMS to pay an extra \$1 million in connection with the construction of the CMS student housing by Kiferbaum inflating the total cost of the contract, resulting in a contract of approximately \$22 million.

In order to conceal the fraudulent nature of the extra \$1 million paid by CMS to Kiferbaum's construction company, in or about December 2002, Defendant directed Kiferbaum to pay this extra \$1 million to Individual L, an associate of Defendant's, and Kiferbaum agreed to do. Based on Defendant's direction, on or about December 12, 2002, Kiferbaum caused his company to issue a check in the amount of \$628,000, made payable to Individual L. About three months later, on or about March 13, 2003, and again at Defendant's direction, Kiferbaum caused his company to issue a check in the amount of \$372,000, also made payable to Individual L. Further, in an effort to conceal the fraudulent nature of the

payments made to Individual L, in or about March 2003, some months after the first check had been issued, Defendant caused a sham marketing contract to be prepared and sent to Kiferbaum. Although the contract stated that Individual L would provide services to Kiferbaum's construction company, Individual L did not provide any such services and Defendant understood that none would be provided.

Notwithstanding their positions as members of the CMS Board, Defendant and Kiferbaum intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements for the construction of the CMS student housing, including, specifically, the nature or the purpose of the additional costs to CMS, their agreements and actions concerning the \$1 million kickback described above, and the use of a sham marketing contract to conceal the fraudulent nature of the diversion of CMS funds to Individual L.

#### **The Scholl Property**

In connection with CMS's sale of real property at 1101 N. Dearborn Street, Chicago, the long time location of the Dr. William M. Scholl School of Podiatric Medicine ("the Scholl Property"), in or about late 2002, Defendant solicited a sales transaction which would include a kickback of money to Defendant. Defendant agreed to support the sale of the Scholl Property to a certain buyer in exchange for a portion of a third party's finder fee, a portion subsequently estimated to be approximately \$1.5 million. Defendant did support that buyer's bid for the Scholl Property and,

notwithstanding his position as a member of the CMS Board, Defendant intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements concerning the sale, including, specifically, his agreement and actions concerning the approximately \$1.5 kickback described above.

Because of the federal investigation and the incomplete nature of the underlying transaction, Defendant was never paid the approximately \$1.5 million.

**Northshore Supporting Organization ("NSO")**

Defendant also fraudulently diverted a total of \$6 million NSO, a charitable trust established to support CMS and for which Defendant served as a trustee, by causing NSO to lend \$3 million to a company controlled by Defendant and \$3 million to a company controlled by Individual E, and by subsequently arranging to have both of those loans "gifted" without repayment, as set forth below.

In or about the spring and summer of 2001, Defendant and Individual E caused NSO to be created with the purpose of supporting CMS. On or about July 19, 2002, Defendant fraudulently caused NSO to lend \$3 million to Defendant's company, S.L. Investment Enterprises, L.P., and \$3 million to a company controlled by Individual E. In connection with those loans, notes were executed on behalf of the companies requiring each company to repay the \$3 million loan to NSO at the end of 20 years, with an

interest rate of 7.5% per annum, resulting in each company owing approximately \$12.5 million in 20 years.

On or about December 1, 2002, Defendant and Individual E each signed a promissory note agreeing to substitute as the borrower of the funds borrowed from NSO by their respective companies. Defendant then used his position as an NSO trustee to cause NSO to donate those two promissory notes to CMS but only on the condition that CMS immediately sell the promissory notes to Individual L for \$1 million, the same amount of the kickback that Defendant and Kiferbaum had fraudulently obtained from CMS in connection with the construction of the student housing and diverted to Individual L.

To accomplish this fraudulent transaction, Defendant initially agreed to act as an escrow holder for the notes pursuant to an escrow agreement that required that the notes be maintained in a sealed envelope, thereby concealing from CMS the amounts of the notes and the fact that Defendant and Individual E were the obligors on the notes. On or about January 9, 2003, Defendant arranged to have the Chairman of the CMS Board sign two documents, one accepting the promissory notes as a donation and the other agreeing to sell the promissory notes to Individual L for \$1 million, and Defendant never revealed to the Chairman the amounts of the notes of that Defendant and Individual E were the obligors.

On or about January 31, 2003, Defendant and Individual L caused a check for \$1 million, drawn on an account belonging to Individual L, to be sent to Defendant. On or about February 3,

2003, Defendant presented the check for \$1 million to the President/CEO of CMS. In order to conceal the fraudulent nature of this transaction, Defendant falsely represented to the President/CEO that the \$1 million was a personal donation from Defendant and Individual E. Defendant failed to disclose to the President/CEO any information concerning the \$6 million promissory notes, including the fact that Defendant had previously arranged with the Chairman of the CMS Board that the \$1 million from Individual L would constitute Individual L's payment for the purchase of the NSO promissory notes.

After purchasing the promissory notes for \$1 million, Individual L transferred the promissory notes to Defendant and Individual E, respectively, as "gifts," thereby freeing Defendant and Individual E from any obligation to repay the \$3 million each had purported to borrow from NSO. By means of this sequence of transactions, Defendant fraudulently obtained and converted \$3 million to his personal use, and \$3 million to the use of his longtime associate, Individual E.

Notwithstanding his position as a member of the CMS Board of Trustees, Defendant intentionally concealed from and failed to disclose to CMS material facts relating to the series of transactions involving NSO and Individual L, including Defendant's role in these transactions, the personal financial interests of Defendant and Individual E in these transactions, Kiferbaum's earlier payments to Individual L, and that the promissory notes



sold by CMS for \$1 million had a total face value substantially in excess of that amount.

In order to conceal the fraudulent nature of this transaction, on or about December 22, 2003, Defendant caused a tax return to be filed with the IRS on behalf of NSO and which Defendant signed, and in which Defendant claimed that NSO donated notes receivable with a value of \$6 million to CMS's Scholarship Fund. Defendant intentionally failed to disclose to the IRS certain material facts concerning this transaction, including the fact that the donation of the promissory notes was conditioned on the School's agreement to sell the promissory notes for \$1 million, as part of a series of transactions that resulted in the transfer of the \$6 million to two NSO trustees, namely, Defendant and Individual E.

#### **Other Transaction**

While on the CMS Board, Defendant also solicited other personal financial gain in connection with other CMS assets, including CMS's real property at 2020 W. Ogden Ave., Chicago ("2020 Property"). In that regard, in or about 2000, Defendant solicited a sale transaction for the real property at 2020 Property which would provide a kickback of money to Defendant. The amount of the kickback was never finalized and the proposed sales transaction never occurred. As a member of the CMS Board, Defendant intentionally concealed from and failed to disclose to CMS material facts relating to the proposed sale transaction, including,

specifically, his solicitation of personal financial gain in connection with the proposed transaction.

In furtherance of this scheme, on or about December 12, 2001, at Deerfield, in the Northern District of Illinois, Eastern Division, Defendant, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be placed in an authorized depository for mail matter, to be sent and delivered by the United States Postal Service, according to the directions thereon, an envelope containing a check in the amount of approximately \$28,000, from Kiferbaum Construction Company, payable to Glennon's consulting company, NACO, which envelope was addressed to the company's address in Chicago, Illinois; in violation of Title 18, United States Code, Sections 1341, 1346, and 2.

8. For purposes of calculating the Sentencing Guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties stipulate and agree on the following points:

a. The Sentencing Guidelines effective on November 1, 2005 apply.

b. Count One -- Mail Fraud

i. The applicable Guidelines Section is § 2C1.1.

ii. Pursuant to Guideline § 2C1.1(a)(1), the base offense level is 14 because defendant was a public official;

iii. Pursuant to Guideline § 2C1.1(b)(1), the offense level is increased 2 levels because the offense involved more than one bribe or extortion;

iv. Pursuant to Guideline §§ 2C1.1(b)(2) and 2B1.1(b)(1)(L), the offense level is increased by 20 levels because the intended loss was more than \$7 million and less than \$20 million.

v. Pursuant to Guideline § 2C1.1(b)(3), the offense level is increased 4 levels because the offense involved a public official in a high-level decision-making and sensitive position;

vi. Pursuant to Guideline § 3B1.1(a), the offense level is increased by 4 levels because defendant was an organizer and leader of criminal activity that involved five or more participants;

vii. Based on the above, the adjusted offense level for Count One is 44.

c. Count Twenty-Three -- Money Laundering

i. The applicable Guidelines Section is § 2S1.1.

ii. Pursuant to Guideline § 2S1.1(a)(1), the base offense level is determined by the underlying offense from which the laundered funds were derived, which is 40.

iii. Pursuant to Guideline § 2S1.1(b)(2)(B), the offense level is increased by 2 levels because defendant was convicted under 18 U.S.C. § 1956;

iv. Pursuant to Guideline § 3B1.1(c), the offense level is increased 2 levels because defendant was an organizer and leader in criminal activity that involved fewer than five participants;

v. Based on the above, the adjusted offense level for Count Twenty-Three is 44.

d. Stipulated Offense in Paragraph 7

i. The applicable Guidelines Section is § 2B1.1.

ii. Pursuant to Guideline § 2B1.1(a)(1), the base offense level is 7 because the offense is referenced in Guideline § 2B1.1 and has a statutory maximum term of imprisonment of 20 years or more;

iii. Pursuant to Guideline § 2B1.1(b)(1)(K), the offense level is increased by 20 levels because the intended loss was more than \$7 million and less than \$20,000,000;

iv. Pursuant to Guideline § 2B1.1(b)(8), the offense level is increased by 2 levels because the offense involved a misrepresentation that defendant was acting on behalf of charitable and educational organizations;

v. Pursuant to Guideline § 2B1.1(b)(9), the offense level is increased by 2 levels because the offense involved sophisticated means;

vi. Pursuant to Guideline § 3B1.1(a), the offense level is increased by 4 levels because defendant was an organizer

and leader of criminal activity that involved five or more participants;

vii. Pursuant to Guideline § 3B1.3, the offense level is increased by 2 levels because defendant abused a position of private trust in a manner that significantly facilitated the commission and concealment of the offense;

viii. Based on the above, the adjusted offense level for the Stipulated Offense is 37.

e. Grouping - Multiple Counts:

i. Pursuant to Guideline § 3D1.2(c), Counts One and Twenty-Three are grouped together in a single group for sentencing purposes because the mail fraud scheme (Count One) embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to the money laundering count (Count Twenty-Three). Pursuant to Guideline § 3D1.3(a), the offense level applicable to this group is 44;

ii. Pursuant to Guideline § 3D1.2(d), the Stipulated Offense is grouped with Counts One and Twenty-Three in a single group for sentencing purposes because the offense level is determined largely on the basis of the total amount of harm or loss;

iii. Pursuant to Guideline § 3D1.3(b), the offense level for the group of the Stipulated Offense, Count One, and Count Twenty-Three is determined under Guideline § 2C1.1 because the

counts involve offenses of the same general type and Guideline § 2C1.1 produces the highest offense level. As the aggregated quantity involves more than \$20 million and less than \$50 million of intended loss, the adjusted offense level is 46.

f. The parties agree that Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if Defendant continues to accept responsibility for his actions, within the meaning of Guideline § 3E1.1, a 2-level reduction in the offense level is appropriate.

g. The parties agree that Defendant has provided truthful information and timely notice of his intention to enter a plea of guilty, within the meaning of Guideline § 3E1.1(b), so that an additional 1-level reduction in the offense level is appropriate, if the offense level is 16 or greater, and the Court finds that a reduction under Guideline § 3E1.1(a) is appropriate.

h. Based on the facts known to the government, Defendant's criminal history points equal 0, and Defendant's criminal history category is I.

i. Based on the above calculations, which are preliminary in nature, and assuming that defendant's criminal history category is I, the preliminary projected applicable offense level is a level 43, so that the preliminary projected applicable sentencing range is a life term of imprisonment.

j. Defendant and his attorneys and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this plea agreement. Defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

9. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or Court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and Defendant shall not have a right to withdraw his plea on the basis of such corrections.

10. Defendant understands that, in imposing the sentence, the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

11. Defendant understands: (a) Count One, to which he will plead guilty, carries a maximum penalty of 20 years' imprisonment;

a maximum fine of \$250,000, or twice the gross gain or twice the gross loss, whichever is greater; and a term of supervised release of at least two but not more than three years, as well as any restitution ordered by the Court; and (b) Count Twenty-Three, to which he will also plead guilty, carries a maximum penalty of 20 years' imprisonment, a maximum fine of \$500,000, or twice the property involved with the transaction, whichever is greater, a term of supervised release of at least two but not more than three years which the Court may specify, as well as any restitution the Court may order. Defendant understands that the terms of imprisonment and supervised release on each count could be imposed consecutively and that the fines imposed on each count could be cumulative.

12. Defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, Defendant will be assessed \$100 on each count to which he has pled guilty, in addition to any other penalty imposed. Defendant agrees to pay the special assessment of \$200 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

13. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. If defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by



the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, Defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

b. If the trial is a jury trial, the jury would be composed of twelve layperson selected at random. Defendant and his attorneys would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt, and that it was to consider each count of the indictment separately.

c. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

d. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorneys would be able to

cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.

e. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

14. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorneys have explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

15. Defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, Defendant knowingly waives the right to appeal any sentence within the maximum provided in the statutes of conviction (or the manner in which that sentence was determined), in exchange for the concessions made by the United States in this Plea Agreement. Defendant also waives his right to challenge his sentence or the manner in which it was determined in any collateral attack, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of

involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

16. Defendant understands that the Superseding Indictment and this Plea Agreement are matters of public record and may be disclosed to anyone.

17. Defendant agrees he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate by representatives of the United States Attorney's Office for the Northern District of Illinois, including the following:

a. Defendant agrees to provide complete and truthful information in any investigation and pre-trial preparation, and complete and truthful testimony, if called upon to testify, before any grand jury and court proceeding, and any related civil, administrative, or court proceeding.

b. The parties agree that they will jointly recommend that defendant's sentencing be postponed until after the conclusion of any ongoing investigation in which Defendant is cooperating, and the conclusion of any prosecution arising from that investigation.

18. Nothing in this Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest or penalties from defendant. If requested to do so by the IRS, Defendant agrees to transmit his original records, or copies thereof, and any additional books and records which may be helpful, for any years requested by the IRS, to the Examination Division of the IRS so that the IRS can conduct a civil audit of defendant.

19. Defendant understands that pursuant to Title 12, United States Code, Section 1829, his conviction in this case will prohibit him from directly or indirectly participating in the affairs of any financial institution insured by the Federal Deposit Insurance Corporation (FDIC) except with the prior written consent of the FDIC and, during the ten years following his conviction, the additional approval of this Court. Defendant further understands that if he violates this prohibition, he may be punished by imprisonment for up to five years and a fine of up to \$1,000,000.

20. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him in this case, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

21. The government and defendant agree that at the time defendant began to cooperate with the government, defendant's guidelines calculation would have been determined pursuant to the Sentencing Guidelines effective on November 5, 2003, but that, due to a change in the applicable law, defendant's guidelines calculation must now be determined pursuant to the Sentencing Guidelines in effect on the day that defendant will be sentenced. In order to reflect the parties' mutual expectations at the time defendant began his cooperation with the government, and in light of the fact that defendant's cooperation required delaying his

guilty plea and sentencing, the government and defendant agree that if the government makes a motion for departure pursuant to Guideline § 5K1.1, the government will use the Sentencing Guidelines in effect on November 5, 2003 as the starting point for determining the extent of the downward departure that the parties will propose to the Court in this case.

22. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation, and, if Defendant continues to provide full and truthful cooperation, shall move the Court, pursuant to Sentencing Guideline § 5K1.1, to depart downward from the applicable sentencing guidelines range, and pursuant to Rule 11(c)(1)(C), to impose an agreed sentence of imprisonment of 67 months incarceration. Other than the agreed term of incarceration, the Court remains free to impose any sentence the Court deems appropriate. However, under Rule 11(c)(1)(C), the plea will be null and void if the Court refuses to impose the 67 month sentence of incarceration to which the parties have agreed.

23. a. Regarding restitution as to the offenses of conviction, defendant understands that pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant to make restitution in any case in which the Court determines that there is a property loss to the victim of the offense of conviction, minus any credit for funds repaid prior to sentencing.

b. Regarding restitution as to the aspects of the stipulated offense relating to the Scholl Property, Defendant further voluntarily agrees to pay restitution in an amount up to \$1.5 million, minus any credit for funds repaid prior to sentencing by any party, to Rosalind Franklin University of Medicine and Science, formerly known as Finch University of Health Sciences/the Chicago Medical School, pursuant to Title 18, United States Code, Sections 3663A(a)(3) and 3664.

c. Defendant further understands that while forfeiture of property is not typically treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose, it is agreed by the parties that any payments made in satisfaction of the civil forfeiture judgment discussed in paragraph 24 below shall be credited to any outstanding restitution judgment.

d. Defendant understands that Title 18, United States Code, Section 3664 and Sections 5E1.1 and 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in setting a fine and in determining the schedule, if any, according to which restitution is to be paid in this case. Defendant agrees to provide full and truthful information to the Court and United States Probation Officer regarding all details of his economic circumstances, and to provide such information to the United States Attorney's office. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title

18, United States Code, Section 1001, or as a contempt of the Court, and would constitute a breach of this Plea Agreement.

24. Defendant further acknowledges that the government will file a civil complaint against certain property, namely \$5 million, alleging that the property is subject to forfeiture. Defendant relinquishes all right, title, and interest he may have in this property that is used to satisfy the amount due and further agrees to the entry of a judgment against him, extinguishing any interest or claim he may have had in the property subject to forfeiture. Defendant further agrees to cooperate fully and truthfully in identifying and forfeiting tainted assets subject to forfeiture, regardless of where they may have been transferred or hidden. Any attempt on the part of defendant to conceal property prior to the satisfaction of this judgment shall be deemed to violate this plea agreement. Defendant agrees that no transfers of property available to satisfy this judgment can be effectuated by Defendant or his agents without concurrence of the government or approval of the Court. To the extent that Defendant owns any property available to satisfy this judgment jointly, he agrees that any efforts to sell, to transfer, or otherwise convey his interest shall be subject to the same conditions. Further, defendant agrees maintain all financial obligations relating to any property so as to preserve and protect the availability of the property to satisfy the forfeiture judgment.

25. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Plea Agreement. He further understands that in the event he violates this Plea Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute Defendant not subject to any of the limits set forth in this Plea Agreement, or to resentence Defendant. Defendant understands and agrees that in the event that Defendant's plea is subsequently withdrawn, vacated or breached by Defendant, and the Government elects to void the Plea Agreement and prosecute Defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Plea Agreement may be commenced against Defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Plea Agreement and the commencement of such prosecutions.

26. Defendant and the government agree that after Defendant has entered a plea of guilty in this case, the government will move to dismiss the indictment and superseding indictment without prejudice against Defendant in United States v. Stuart Levine, 05 CR 408-1 (Grady, J.). Defendant understands and agrees that in the event that Defendant's Plea is subsequently withdrawn, vacated or breached by Defendant, and the Government elects to void the Plea Agreement and prosecute Defendant, the government may bring charges



against Defendant based on any of the allegations in the superseding indictment in United States v. Stuart Levine, 05 CR 408 (Grady, J.) that are not time-barred by the applicable statute of limitations on the date of the signing of this Plea Agreement in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Plea Agreement and the commencement of such prosecutions.

27. After sentence has been imposed on the counts to which Defendant pleads guilty as agreed herein, the government will move to dismiss the original indictment and the remaining counts of the Superseding Indictment in this case as to Defendant.

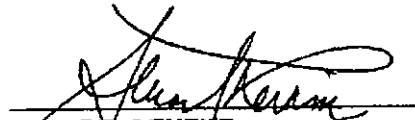
28. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement, to cause Defendant to plead guilty.

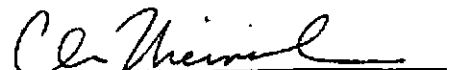
29. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

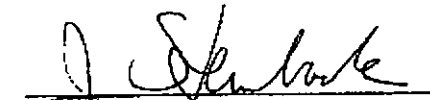
30. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.


AGREED THIS DATE: October 27, 2006

  
PATRICK J. FITZGERALD  
UNITED STATES ATTORNEY

  
STUART LEVINE  
Defendant

  
CHRISTOPHER S. NIEWOEHNER  
Assistant United States Attorney

  
JEFFREY STEINBACK  
Attorney for Defendant

  
KAARINA SALOVAARA  
Assistant United States Attorney

**EXHIBIT 4**

**FILED**

JUN 20 2005

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA )

v. )

JACOB KIFERBAUM )

UNITED STATES DISTRICT COURT

No. 05 CR 408-2

Judge John F. Grady

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, JACOB KIFERBAUM, and his attorneys, JAMES R. STREICKER and THEODORE POULOS, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure, and is governed in part by Rule 11(c)(1)(C), as more fully set forth in Paragraph 19, below.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in the above captioned case.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities or agencies except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, JACOB KIFERBAUM, and his attorneys, JAMES R. STREICKER and THEODORE POULOS, have agreed upon the following:

1. Defendant acknowledges that he has been charged in Counts 1 through 7, and 9 through 20 of the indictment in this case with mail fraud and wire fraud, namely, participating in a scheme to defraud and to obtain money and property by means of material false and fraudulent pretenses and misrepresentations in violation of 18 U.S.C. §§ 1341, 1343, 1346 and 2. Defendant further acknowledges that he has been charged in Count 24 with attempted extortion, namely attempting to obtain property with the consent of the victim, induced under the color of official right, and by the wrongful use of actual and threatened fear of economic harm in violation of 18 U.S.C. §§ 1951 and 2, and that he has been charged in Counts 27 and 28 with the misapplication of funds, namely, construction funds belonging to the Finch University of Health Sciences/Chicago Medical School ("Chicago Medical School" and "CMS"), now known as the Rosalind Franklin University of Medicine and Science, in violation of 18 U.S.C. §§ 666 and 2.

2. Defendant has read the charges against him contained in the indictment in this case and the charges have been fully explained to him by his attorneys.

3. Defendant fully understands the nature and elements of the crimes with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to Count 24 of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charge contained in Count 24 of the indictment in this case. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt. The following is not a complete statement of all the details known to the defendant regarding the defendant's criminal conduct. The following facts are set forth solely as a factual basis for this guilty plea:

**COUNT TWENTY-FOUR**

**Planning Board/Edward Hospital**

Defendant JACOB KIFERBAUM ("Kiferbaum" or "defendant") admits that he owned and operated Kiferbaum Construction Company, a construction company located in Deerfield, Illinois. Beginning in or about December 2003 and continuing through in about May 2004, at Deerfield, Highland Park, and Naperville, Illinois, Kiferbaum, together with Stuart Levine ("Levine") and P. Nicholas Hurtgen ("Hurtgen"), did attempt to commit extortion, which extortion would obstruct, delay, and affect commerce, in that the defendants attempted to obtain property, in the form of a construction contract from Edward Health Services Corporation ("Edwards Hospital"), on behalf of and for the benefit of Kiferbaum, with Edward Hospital's consent induced under the color of official right, and by the wrongful use of actual and threatened fear of economic harm; in violation of Title 18, United States Code, Sections 1951, and 2.

Levine was a member of the Illinois Health Facilities Planning Board ("Planning Board"), and in that capacity he owed a duty of honest services to the Planning Board, the State of Illinois, and the people of the State Illinois. State law required an entity

seeking to build a hospital, medical office building, or other medical facility in Illinois to obtain a permit, known as a "Certificate of Need" ("CON"), from the Planning Board prior to beginning construction. Beginning in or about 2003, Edward Hospital sought CONs to construct a hospital and a medical office building in Plainfield, Illinois.

Beginning in or about December 2003, and continuing through approximately May 2004, Kiferbaum, Levine, and Hurtgen agreed that they would use Levine's position as a member of the Planning Board to force Edward Hospital to hire Kiferbaum Construction Company to build Edward Hospital's Plainfield facility, and would do so by threatening representatives of Edward Hospital that the Planning Board would not approve those facilities unless Kiferbaum Construction Company was given the construction contracts to build them. The total costs of constructing the hospital were projected to be approximately \$90 million, and the total costs of constructing the medical office building were projected to be approximately \$23 million.

If Kiferbaum Construction Company had obtained the contracts to build those facilities, the company, and/or its subcontractors, would have purchased items from out of state. Moreover, if the Planning Board had approved those facilities, Edward Hospital would have purchased items from out of state.

Kiferbaum understood that Hurtgen participated in this scheme with Kiferbaum and Levine because Hurtgen wanted his employer, Bear Stearns, to receive the financing work for the new hospital. Hurtgen agreed that he would introduce Kiferbaum to the CEO of Edward Hospital. From prior business dealings with Levine, in which Levine had asked for and received kickbacks from Kiferbaum, Kiferbaum understood that Levine would require Kiferbaum to pay a kickback to Levine or Levine's designee in connection with the Edward Hospital projects.

No later than early 2004, Kiferbaum knew that Levine was prohibited by law from engaging in ex parte communications with applicants with matters pending before the Planning Board, and knew that Levine could not communicate with representatives from Edward Hospital about their pending applications. Therefore, in order to protect Levine and conceal his role, Kiferbaum and Hurtgen communicated with Edward Hospital representatives, in place of and on behalf of Levine, in order to communicate Levine's threats and promises to Edward Hospital.

On or about December 23, 2003, Kiferbaum and Hurtgen met with the Edward Hospital CEO to persuade the CEO to hire Kiferbaum Construction Company to build the pending projects. Kiferbaum told the CEO that he had been working with Mercy Health System Corporation ("Mercy Hospital") on its new project, and that Mercy's application to build a new hospital in Crystal Lake was going to be approved. Unbeknownst to Kiferbaum and Hurtgen, the Edward Hospital CEO, and the Edward Hospital Project Administrator, were cooperating with the government.

On or about January 15, 2004, Kiferbaum met with Edward Hospital's CEO, and the Project Administrator, at Edward Hospital. Kiferbaum confirmed that if Edward Hospital hired Kiferbaum, they would get approval from the Planning Board, but if they did not hire him, Edward Hospital would not get approval.

On or about February 10, 2004, Kiferbaum met with the Edward Hospital CEO, and the Project Administrator, at Edward Hospital. Kiferbaum said that he was confident that Edward Hospital's project would be approved if they signed a contract with him.

In response to representations by Kiferbaum and Hurtgen that they were working with Levine, and that Levine had the ability to, and would, cause the Planning Board to approve or deny Edward Hospital's application - depending on whether or not Edward Hospital hired Kiferbaum - the Edward Hospital CEO requested that Kiferbaum and Hurtgen demonstrate that they were telling the truth about Levine's role by setting up a meeting with Levine, which Kiferbaum and Hurtgen agreed to do.

On or about April 16, 2004, Kiferbaum talked with the Edward Hospital CEO about setting up a meeting that would demonstrate that Kiferbaum and Levine knew each other.

On or about Friday, April 17, 2004, Levine told Kiferbaum that he would speak to Kiferbaum and the CEO at the restaurant on Sunday, and he would have Hurtgen or someone else with him.

On or about Sunday, April 18, 2004, Levine and Kiferbaum talked about the meeting that they were going to have that morning at a restaurant. Levine said he would talk to Kiferbaum and the CEO at the restaurant. Levine instructed Kiferbaum to tell the CEO that because of the ethics law concerning *ex parte* communications relating to pending projects, the CEO should not ask anything direct about her particular project. Levine said that the CEO knew why she was there with Kiferbaum, and she was either going to do it or she was not going to do it. Levine said he would bump into Kiferbaum "by mistake" a little later that day.



On or about Sunday, April 18, 2004, Levine and Hurtgen went to a restaurant in Deerfield, Illinois, as planned, in order to prove to the CEO that Levine, Hurtgen, and Kiferbaum were working together, and to prove that their representations concerning Levine and the Planning Board were real. Levine and Hurtgen walked over to the table where Kiferbaum and the CEO were sitting. Levine said that he was the Chairman of the Board of CMS, and that Kiferbaum had done a project for them. Levine said that Kiferbaum is a person upon whom one can rely, and he is a person whose word can be depended on.

Shortly after that meeting, Kiferbaum thanked Levine for what he had done at the restaurant. Kiferbaum said that it went perfectly and the CEO understood. Kiferbaum said that he told the CEO that they had to come to some sort of agreement. Levine said that they would find out what she's made of. Levine said that he had never been in a better position. Levine said that if the CEO promised to sign a contract, Kiferbaum should say that he accepted her word, and that he would do whatever he could.

On or about April 20, 2004, the Edward Hospital Project Administrator faxed Kiferbaum a letter stating that Edward Hospital would not hire Kiferbaum Construction Company for their project. When Kiferbaum received the letter of rejection from Edward Hospital, he called Levine and told him about the letter. Levine indicated that Edward Hospital's application would not be approved.

On or about April 21, 2004, the Planning Board held a Board meeting at which Edward Hospital's application for a permit to build the Plainfield hospital was considered. Edward Hospital had not hired Kiferbaum, and Levine voted against Edward Hospital's application to build a new hospital, and the Planning Board issued a notice of its intent to deny the application.

Kiferbaum acknowledges that a reasonable estimate of the net value of the benefit that would have been received by the contractor that would have built the new hospital and medical building for Edward Hospital was between \$1,000,000 and \$2,500,000.

**PROFFER PROTECTED INFORMATION**

**Chicago Medical School and Mercy Hospital**

The parties agree that information concerning the Chicago Medical School, and Mercy Hospital, provided by the defendant pursuant to § 1B1.8, and the terms of the Proffer Letter dated June 4, 2004 ("Proffer Letter"), cannot be used against the defendant in aggravation of his sentence, except as provided in the Proffer Letter, the Letter Agreement entered into by the parties, dated April 13, 2005 ("Letter Agreement"), and this plea agreement. Pursuant to § 1B1.8, the defendant states the following:

**CHICAGO MEDICAL SCHOOL**

**The CMS Addition**

Kiferbaum and Levine were each members of the Board of Trustees of the Chicago Medical School. In that capacity, they each owed a fiduciary duty and a duty of honest services to the Chicago Medical School.

In or about the summer of 2001, Levine told Kiferbaum to include an extra \$1,000,000 for Levine in the costs set forth in the proposed construction contract, that Kiferbaum Construction was seeking to obtain, to build an addition to the School. Based on conversations with Levine, Kiferbaum believed that Levine was powerful enough to control whether Kiferbaum received the CMS construction contract. Kiferbaum also believed that, if he refused to pay that kickback, Levine would prevent Kiferbaum from getting this contract. Kiferbaum agreed to pay a secret kickback of \$1,000,000 to Levine, and, did in fact pay approximately \$700,000 of that kickback, as directed by Levine.

CMS awarded to Kiferbaum Construction Company the construction contract for the addition to the School. Levine and Kiferbaum caused CMS to pay an extra \$1,000,000 in connection with the construction of that building by inflating the total cost of the contract, resulting in a contract of approximately \$18 million. In connection with the consideration of the construction contract by the CMS Board of Trustees, Levine and Kiferbaum concealed from the Board of Trustees that they had agreed to the payment of this kickback using CMS funds, and that Levine - who participated in the CMS Board of Trustees' consideration of the contract - had a substantial personal financial interest in its approval.

In order to conceal the fraudulent nature of the extra \$1 million to be paid by CMS to Kiferbaum Construction Company, Levine directed Kiferbaum to pay this extra \$1 million to Individual 2's consulting company, and Kiferbaum agreed to do so.

In order to conceal the fraudulent nature of the payments to Individual 2, Levine caused a sham marketing contract to be prepared, which was signed by Kiferbaum and Individual 2 in or about early December 2001. This contract provided that Kiferbaum Construction Company would pay Individual 2's company \$28,000 a month for approximately three years, for a total of approximately \$1 million.

Beginning in or about December 2001 and continuing through in or about June 2004, Individual 2 sent invoices requesting payment of \$28,000 every month, despite the fact that Individual 2 and his company did not provide any substantial services in exchange for those payments. Kiferbaum caused his company to pay Individual 2's company a total of approximately \$700,000.

In or about December 2003 or January 2004, Levine and Kiferbaum agreed that the balance that Kiferbaum still owed on the kickback relating to the CMS addition would be combined with kickback payments that Kiferbaum would make relating to Mercy Hospital. Based on that agreement, Kiferbaum stopped paying Individual 2's company in approximately January 2004.

In or about April 29, 2004, Levine and Individual 1 caused a sham consulting contract to be drafted and sent to Kiferbaum, providing that Kiferbaum Construction Company would pay approximately \$1,728,000 million to Individual 1's company. Levine arranged for that contract to include payments for a kickback relating to Mercy Hospital, as described below, and to include payments completing the kickback relating to the construction of the CMS addition.

Notwithstanding their positions as members of the CMS Board of Trustees, Levine and Kiferbaum intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements for the construction of the CMS addition, including, specifically, their agreements and actions concerning the \$1 million kickback described above.

CMS Student Housing

In or about the summer of 2002, Levine told Kiferbaum to include an extra \$1,000,000 for Levine in the costs set forth in the proposed construction contract relating to the construction of student housing. Kiferbaum agreed to pay a kickback of \$1,000,000 to Levine, and did in fact pay \$1,000,000 million as a kickback, as directed by Levine. Kiferbaum understood that, if he did not agree to pay the kickback, Levine would prevent him from obtaining the student housing construction contract.

CMS awarded to Kiferbaum Construction Company the construction contract for the addition to the School. Levine and Kiferbaum caused CMS to pay an extra \$1,000,000 in connection with the construction of that building by inflating the total cost of the contract, resulting in a contract of approximately \$22 million.

In order to conceal the fraudulent nature of the extra \$1 million to be paid by CMS to Kiferbaum Construction Company, in or about December 2002, Levine directed Kiferbaum to pay this extra \$1 million to Individual 3, which Kiferbaum agreed to do.

Based on Levine's direction, on or about December 12, 2002, Kiferbaum caused his company to issue a check in the amount of \$628,000, made payable to Individual 3.

Based on Levine's direction, on or about March 13, 2003, Kiferbaum caused his company to issue a check in the amount of \$372,000, made payable to Individual 3.

In order to conceal the fraudulent nature of the payments made to Individual 3, in or about March 2003, Levine caused a sham marketing contract to be prepared and sent to Kiferbaum. Although the contract stated that Individual 3 would provide services to Kiferbaum Construction Company, no such services were ever provided.

Notwithstanding their positions as members of the CMS Board of Trustees, Levine and Kiferbaum intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements for the construction of the CMS student housing, including, specifically, their agreements and actions concerning the \$1,000,000 kickback described above.

Planning Board/Mercy Hospital

Levine solicited a kickback of approximately \$1.5 million from Kiferbaum relating to the construction of Mercy Hospital's Crystal Lake facility. Kiferbaum agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date. At Levine's direction, the kickback proceeds were to be paid to Individual 1 pursuant to a sham consulting contract. Levine agreed to and, according to Levine, did use his influence with the Planning Board to ensure that Mercy Hospital would and did receive approval of its application to build the Crystal Lake facility after it contracted with Kiferbaum Construction Company to build that facility.

In or about late 2003, Levine and Kiferbaum agreed that Levine would use his position as a Planning Board member to influence the Planning Board to approve Mercy's application, if Mercy gave Kiferbaum Construction Company the construction contract - of approximately \$49 million - to build Mercy's proposed hospital. In exchange, Levine asked Kiferbaum for a kickback of approximately \$1.5 million, to be paid at Levine's direction. Kiferbaum agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date.

On or about January 23, 2004, approximately one month after the Planning Board had made known its intent to deny Mercy Hospital's application to build the Crystal Lake facility, Kiferbaum and Mercy Hospital signed a construction contract, agreeing that Kiferbaum Construction Company would build the new hospital for Mercy.

On or about April 21, 2004, the Planning Board voted in favor of granting Mercy's application for a permit to build a new hospital; Levine voted to approve the application. According to Levine, he also took steps to cause other Planning Board members to vote to approve Mercy's application.

On or about April 21, 2004, Levine told Kiferbaum what happened at the Planning Board meeting. Levine said that nobody could have gotten this done but Levine; there was a mutiny with the Board members who did not want to approve Mercy's application; and nobody really knew that Levine was orchestrating it. Kiferbaum said that he could not thank Levine enough. Levine said that they were in this together.

Shortly after Mercy's application was approved, Levine directed Kiferbaum to make the kickback payments relating to Mercy Hospital to Individual 1. Levine told Kiferbaum he would have a

consulting agreement prepared for Kiferbaum Construction Company and Individual 1's company.

On or about April 29, 2004, Individual 1 sent a sham consulting agreement to Kiferbaum, which provided that Kiferbaum Construction Company would make payments to a company operated by Individual 1, totaling approximately \$1,728,000. This amount included proposed kickback payments relating to Mercy, and payments that Kiferbaum still owed as part of the kickback relating to the CMS addition. This agreement was never signed by Kiferbaum.

6. For purposes of calculating the Guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties stipulate and agree on the following points:

a. The Guideline calculations are based on facts relating to Edward Hospital and events concerning Edward Hospital.

b. The applicable Guidelines version is the 2003 Guidelines Manual.

c. The applicable Guidelines Section is § 2C1.1, and the base offense level is 10.

d. The parties agree that pursuant to Guideline §§ 2C1.1(b)(2)(A) and 2B1.1(b)(1)(I), the base offense level should be increased by 16 levels because a reasonable estimate of the net value of the benefit to be received in connection with the Edward Hospital contracts relating to the construction of a new hospital and medical office building was between \$1,000,000 and \$2,500,000.

e. The parties agree that the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for his actions, within the meaning of Guideline § 3E1.1, a 2 level reduction in the offense level is appropriate.

f. The parties agree that the defendant has provided truthful information and timely notice of his intention to enter a plea of guilty, within the meaning of Guideline § 3E1.1(b), so that an additional 1 point reduction in the offense level is appropriate, if the offense level is 16 or greater, and the Court finds that a reduction under Guideline § 3E1.1(a) is appropriate.

g. Based on the facts known to the government, the defendant's criminal history points equal 0, and the defendant's criminal history category is I.

h. Based on the above calculations, which are preliminary in nature, and assuming that defendant's criminal history category is I, the preliminary projected applicable offense level is a level 23, so that the preliminary projected applicable sentencing range is 46 to 57 months.

i. The defendant and his attorneys and the government acknowledge that the above calculations are preliminary in nature

and based on facts known to the government as of the time of this plea agreement. The defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

7. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and the defendant shall not have a right to withdraw his plea on the basis of such corrections.

8. The defendant understands that, in imposing the sentence, the court will be guided by the United States Sentencing Guidelines. The defendant understands that the Guidelines are advisory, not mandatory, but that the court must consider the Guidelines in determining a reasonable sentence.

9. Defendant understands that Count 24 of the indictment to which he will plead guilty carries a maximum penalty of 20 years' imprisonment; a maximum fine of \$250,000, twice the gross gain to



the defendant, or twice the gross loss to the victims, whichever is greatest; and a term of supervised release of at least three years but not more than five years, as well as any restitution ordered by the Court.

10. The defendant understands that in accordance with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$100 on Count 24 of the Indictment to which he has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of \$100 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

11. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve layperson selected at random. Defendant and his

attorneys would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt, and that it was to consider each count of the indictment separately.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorneys would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.

(e) At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no

inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

12. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorneys have explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

13. The defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, in exchange for the concessions made by the United States in this Plea Agreement, the defendant knowingly agrees to waive the right to appeal any sentence imposed that is within or below the guidelines range of 23, and knowingly agrees to waive the right to appeal any stipulated guideline calculations. The defendant also waives his right to challenge any sentence imposed that is within or below the guidelines range of 23, and/or any stipulated guideline calculations, or the manner in which the sentence was determined, in any collateral attack, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

14. Defendant understands that the indictment and this Plea Agreement are matters of public record and may be disclosed to anyone.

15. Defendant agrees he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate, including the following:

a. Defendant agrees to provide complete and truthful information and testimony, (i) in any criminal investigation and any pre-trial preparation if called upon to do so by the government; (ii) before any grand jury, and (iii) in any United States District Court proceeding, state court proceeding, and civil, administrative, or other court proceeding, if called upon to do so by the government;

b. The parties agree that the parties will jointly recommend that the defendant's sentencing be postponed until after the conclusion of any on-going investigation in which the defendant is cooperating, and the conclusion of any prosecution arising from that investigation;

c. Defendant agrees to provide complete and truthful testimony before the United States District Court in any criminal proceeding, if called to testify by any defendant;

d. Defendant agrees that in the event that he breaches the terms of this plea agreement, or the plea agreement is vacated for any reason - other than the government's breaching the terms of this plea agreement, when there has been no breach, withdrawal, or rejection by the defendant - then the defendant's grand jury testimony, in part and/or in whole, can be used against him in any proceeding, including, but not limited to, before the grand jury and/or in any criminal prosecution against him, without restriction, and all proffer protection provided pursuant to the Proffer Letter, and under Guideline § 1B1.8, shall be null and void.

e. In the event that the defendant's grand jury testimony can be used against him, pursuant to subsection (d) of this paragraph, as stated above, the parties agree and stipulate that the admissibility and use of the defendant's grand jury testimony is not governed by Rule 11 of the Federal Rules of Criminal Procedure. Specifically, the defendant's testimony is not governed by Rule 11(f), or Rule 410 of the Federal Rules of Evidence, because the defendant's grand jury testimony does not constitute a plea of guilty which was later withdrawn, or a statement made in the course of any proceedings under Rule 11 regarding a plea of guilty or a plea of nolo contendere, or a statement made in the course of plea discussions with an attorney for the government.

The defendant agrees that he will not seek to use Rule 11 or Rule 410 to prevent the admission of his grand jury testimony into evidence.

f. Defendant understands and agrees that the information concerning Edward Hospital and events concerning Edward Hospital, provided by the defendant pursuant to § 1B1.8, and the terms of the Proffer Letter, may be presented to the court, may be used in the factual foundation of this plea agreement, may be used in calculating the defendant's sentence, and may be used in any other manner.

g. The defendant understands and agrees that information concerning CMS and Mercy Hospital, provided by the defendant pursuant to § 1B1.8, and the terms of the Proffer Letter, may be disclosed to the court, the grand jury, and as otherwise deemed appropriate by the government.

16. Nothing in this Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest or penalties from the defendant, or his business, the KCC Group Design+Build, Inc., formerly known as Kiferbaum Construction Company ("KCC Group"). If requested to do so by the IRS, the defendant agrees to transmit his original records, and KCC Group's original records, or copies thereof, and any additional books and records which may be helpful, for any years requested by the IRS.

to the Examination Division of the IRS so that the IRS can conduct a civil audit of defendant, and his business.

17. The United States Attorney's Office for the Northern District of Illinois agrees not to seek additional criminal charges against the defendant, and agrees not to seek criminal charges against KCC Group, Design+Build, Inc., formerly known as Kiferbaum Construction Company, in the Northern District of Illinois, for the events between January 1, 2001 and June 1, 2004, which occurred in the Northern District of Illinois, relating to CMS, Mercy Hospital, and Edward Hospital, which the defendant has described in the grand jury and in any proffer provided to the United States, and which are described in this plea agreement. However, nothing in this Agreement limits the United States in the prosecution of the defendant or KCC Group in other districts, or for crimes which the defendant has not disclosed in the grand jury or in any proffer provided to the United States, or which are not described in this plea agreement.

18. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him in this case, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

19. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation, and, if the defendant continues to provide full and truthful cooperation, shall move the Court, pursuant to Sentencing Guideline § 5K1.1, to depart downward from the applicable sentencing guidelines range, and pursuant to Rule 11(c)(1)(C), to impose an agreed sentence of imprisonment of 27 months incarceration. Other than the agreed term of incarceration, the Court remains free to impose any sentence the Court deems appropriate. Under Rule 11(c)(1)(C), the plea will be null and void if the Court refuses to impose the 27 month sentence of incarceration to which the parties have agreed.

20. It is understood by the parties that the sentencing judge is obligated to consult and take into account the Sentencing Guidelines in imposing a reasonable sentence.

21. Regarding restitution:

a. The parties agree that the offense of conviction results in no restitution;

b. The parties agree that pursuant to Title 18, United States Code, Section 3663(a)(3), based on the agreement of the parties, the defendant will cause KCC Group, Design+Build, Inc., formerly known as Kiferbaum Construction Company, which the defendant is the 100% owner, to pay \$7,050,908 in restitution to CMS, on or before July 1, 2005, thereby disgorging Kiferbaum



Construction Company's net profits before taxes from the construction of the CMS addition and the CMS student housing;

c. The parties agree and that a failure of KCC Group to pay \$7,050,908 on or before July 1, 2005 means that the defendant is in breach of this plea agreement;

d. The defendant agrees that the money paid pursuant to this Paragraph shall be non-refundable.

22. The defendant understands that Title 18, United States Code, Section 3664 and Sections 5E1.1 and 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in setting a fine and in determining the schedule, if any, according to which restitution is to be paid in this case. The defendant agrees to provide full and truthful information to the court and United States Probation Officer regarding all details of his economic circumstances, and to provide such information to the United States Attorney's office. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court, and would constitute a breach of this Plea Agreement.

23. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. He further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it

null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that the defendant's Plea is subsequently withdrawn, vacated or breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

24. Defendant and his attorneys acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

25. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

26. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.

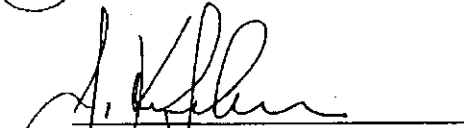
27. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment.


28. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorneys. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

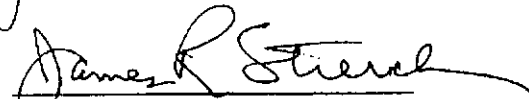
AGREED THIS DATE:

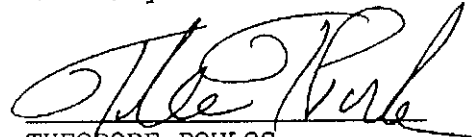
June 20, 2005

  
PATRICK J. FITZGERALD  
UNITED STATES ATTORNEY

  
JACOB RIFERBAUM  
Defendant

  
JACQUELINE STERN  
Assistant United States Attorney

  
JAMES R. STREICKER  
Attorney for Defendant

  
THEODORE POULOS  
Attorney for Defendant

**EXHIBIT 5**

AE

**FILED**

SEP 15 2005  
SEP 15 2005  
JUDGE AMY ST. EVE  
United States District Court

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 05 CR 691-3
	)	Judge Amy J. St. Eve
STEVEN LOREN	)	

**PLEA AGREEMENT**

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, STEVEN LOREN, and his attorney, MICHAEL L. SIEGEL, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in the above captioned case.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities or agencies except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, STEVEN LOREN, and his attorney, MICHAEL L. SIEGEL, have agreed upon the following:

1. Defendant acknowledges that he has been charged in Count 14 of the indictment in this case with corruptly endeavoring to obstruct and impede the due administration of the internal revenue laws in violation of 26 U.S.C. § 7212(a).

2. Defendant has read the charge against him contained in the indictment in this case and the charge has been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crime with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to Count 14 of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charge contained in Count 14 of the indictment in this case. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt. The following is not a complete statement of all the details known to the defendant regarding the defendant's criminal conduct. The following facts are set forth solely as a factual basis for this guilty plea:

Individual A - Investment Firm 1 (Count 14)

Defendant Steven Loren ("Loren" or "defendant") admits that he was an attorney; he and his law firm were outside counsel to the Teachers' Retirement System of the State of Illinois ("TRS"), which was a public pension plan for certain Illinois teachers. Stuart Levine ("Levine") was a member of the TRS Board of Trustees. Individual A acted as a placement agent for Investment Firm 1, an asset management company located in Chicago, Illinois, that solicited and received \$50 million in TRS funds to invest. Individual A also acted as a placement agent for Investment Firm 2 and Investment Firm 3 in connection with those firms' efforts to obtain funds from TRS.

Beginning in or about the fall of 2003 and continuing until in or about May 2004, Loren corruptly endeavored to obstruct and impede the due administration of the internal revenue laws.

In or about the fall of 2003, Levine told Loren that he had arranged for Individual A to find potential investments for TRS; entities receiving funds from TRS that were introduced to TRS by Individual A would pay a finder's fee to Individual A; and Individual A would split his placement fees with certain individuals at the direction of Levine and his associates. Based on his conversations with Levine, it was Loren's understanding that Levine's associates, who were close to a high ranking public official, would use those placement fees as an incentive or reward to those who made campaign contributions that would benefit the high ranking public official, and that Levine's associates would be able to steer money to the people that they selected, and those people would get money without providing any services.

At Levine's direction, Loren assisted Levine by advising Individual A as to the sorts of investments that TRS would consider, and reviewing investment proposals submitted by Individual A and others. Levine told Loren that, based on Levine's request, Individual A had agreed to split a finder's fee with a person identified by Levine.

Levine directed Loren to prepare a sham consulting contract that would appear to justify Individual A's splitting his finder's fee with a third party. Levine instructed Loren to draft a consulting agreement that would pass scrutiny if someone like the U.S. Attorney looked at it. Levine did not give Loren the names of the parties but, instead, told Loren to use "X" and "Y" in place of the parties' names. Loren agreed to draft the sham contract.

knowing that the contract would be used to make a fraudulent transaction appear legitimate.

In order to conceal the fraudulent nature of the transaction, Loren included certain terms and conditions in the contract that Loren believed would be typical in a legitimate consulting contract. Loren drafted an agreement that he thought would be plausible in the context of a third party working with Individual A.

Loren drafted the contract knowing that it falsely represented that services would be provided by the third party, when in fact Loren believed that no services would be provided by the third party. Loren drafted the sham contract in a manner that he believed would make it falsely appear that payments by Individual A to the third party constituted legitimate business expenses to Individual A, and legitimate income to the third party. Loren believed that the payments would be reported to the Internal Revenue Service as legitimate expenses of Individual A, and legitimate income to the third party, even though the payments did not constitute legitimate expenses or income. Loren expected Individual A to deduct the payment, although the payment could not be lawfully deducted.

Loren gave the draft consulting agreement to Levine. Loren instructed his secretary not to save the consulting agreement on the computer.

When Loren prepared the sham agreement for Individual A and an unknown third party, Loren knew that the sham agreement was wrong because it was concealing an illegal fee arrangement.

Loren understood that Levine had agreed to use his official position at TRS to help Individual A get additional TRS funding for investments that Individual A introduced to TRS, in exchange for Individual A's sharing his finder's fees at Levine's direction, with Levine getting his directions from another individual.

Loren, Levine, Individual A, and others, took steps to hide and conceal, and to attempt to hide and conceal, the purposes of the corrupt endeavor, and acts done as part of the corrupt endeavor.

Loren acknowledges that he abused his position as outside counsel to TRS, which was a position of trust, by aiding and abetting Levine and by failing to report Levine's conduct to TRS,



and that Loren used his skills as an attorney to prepare the contract.

Loren acknowledges that Individual A paid a portion of his fee to a third party, and that it was reasonably foreseeable to Loren that the fee would be approximately \$250,000. It was also reasonably foreseeable to Loren that Individual A would deduct that payment as being a legitimate expense, even though, Loren believed that the payment was an illegal payment. Loren further acknowledges that by preparing the sham contract at Levine's direction, Loren corruptly endeavored to obstruct and impede the due administration of the internal revenue laws, by impeding the Internal Revenue Service's ability to review the true facts concerning that transaction. Loren further acknowledges that it was reasonably foreseeable to Loren that Individual A's future deduction of that payment of \$250,000 as a legitimate business expense would cause a tax loss of approximately \$70,000.

All in violation of Title 26, United States Code, Section 7212(a).

**Individual A - Investment Firms 2 and 3**

In or about late 2003 and early 2004, based on Levine's direction, Loren met with Individual A and other individuals to review information concerning certain potential TRS investments, including information relating to Investment Firms 2 and 3. It was not a routine part of Loren's duties as TRS's outside counsel to meet with entities seeking TRS investment dollars. It was Loren's understanding that Levine wanted TRS to invest funds with Investment Firms 2 and 3 because each of those firms agreed to pay a finder's fee to Individual A, and Individual A agreed to split his finder's fees as directed by Levine.

Loren and Levine each concealed from and failed to disclose to the TRS Board material facts relating to Investment Firms 1, 2, and 3, including Levine's arrangement with Individual A that Individual A would split each of his finder's fees at Levine's direction in exchange for Levine's assistance in obtaining TRS funds.

As an attorney for TRS, Loren knew that he had a duty to be truthful with TRS, and to act honestly. Loren understood that withholding the information about Levine's arrangements concerning Individual A's placement fees was a breach of Loren's attorney/client responsibilities to TRS, and it meant that Loren was not being honest or truthful with TRS. Loren acknowledges that

he failed to provide TRS with material information which had come into his possession.

**PROFFER PROTECTION**

The parties agree that Loren has provided information to the government under Sentencing Guideline § 1B1.8, pursuant to the terms of a proffer letter dated November 23, 2004 ("Proffer Letter"), and pursuant to the terms of a Letter Agreement, dated July 5, 2005 ("Letter Agreement"), including, but not limited to information concerning the following: (1) The Illinois Teachers Retirement System pension fund (TRS) and events relating to TRS during 1991-2004; (2) Rosalind Franklin University of Medicine & Science, f/k/a Finch University of Health Sciences/the Chicago Medical School ("CMS") and events relating to the School in 2002-2004; (3) Mercy Alliance, Inc. ("Mercy Hospital") and events concerning Mercy Hospital in 2003-2004; (4) All information relating to Individual B; (5) Individual A and various entities that Individual A owned, operated, or controlled, or for which Individual A was an agent or representative (hereinafter collectively referred to as "Individual A") and events relating to Individual A in 2003-2004.

**Individual A:** Loren agrees that the information concerning Individual A provided by Loren pursuant to § 1B1.8, and the terms of the Proffer Letter, Letter Agreement, and this Plea Agreement, may be used in any manner, including in the factual foundation of a plea agreement, in calculating Loren's sentence, and before the grand jury or court. The information concerning Individual A includes any information concerning, relating to, or surrounding: (i) Individual A's statements, actions, and conduct; (ii) any statements, actions, conduct, events, and transactions, relating to Individual A; and (iii) any documents or materials that Individual A created, used, or reviewed or caused to be created, used or reviewed, or that relate to Individual A or to any event or transaction relating to Individual A.

**Proffer Protected Statements:** The parties agree that other statements made by Loren pursuant to § 1B1.8, and the terms of the Proffer Letter and Letter Agreement, cannot be used against Loren in the government's case-in-chief, or in aggravation of Loren's sentence, except as provided in the proffer letter, and the Letter Agreement. Those statements, however, may be used in any other manner, including being disclosed to the court, the grand jury, witnesses, and defendants. Those statements include the following:

**Financial Benefits:** Levine, with the assistance of Loren, and others, fraudulently used and sought to use Levine's position and influence as a member of the TRS Board of Trustees to obtain financial benefits for Levine's nominees and associates.

**Splitting Fees:** Levine advised Loren that Levine intended to use, and was using, his official position on the TRS Board, to assist other people, besides Individual A, in obtaining TRS funds for certain entities, and that in return, those people would split placement fees with persons identified by Levine. Levine advised Loren that he was acting in concert with others in connection with the splitting of placement fees.

Levine asked Loren to help in this scheme by providing advice concerning investments to certain potential applicants, and by reviewing materials concerning possible TRS investments, which Loren agreed to do. At Levine's direction, Loren assisted Levine by advising certain people as to the sorts of investments that TRS would consider, and by reviewing various investment proposals and various documents. At Levine's request, Loren described for certain individuals the types of private equity investments TRS might be interested in, and gave them an overview as to how TRS was planning on allocating its private equity investments.

**Sham Contracts for Investment Firm 4:** In the spring of 2004, after Investment Firm 4 had submitted an application to receive funds from TRS, Levine attempted to steer a consulting contract relating to the TRS transaction to a particular individual.

After Loren had started working on Firm 4's documents, Levine told Loren, in substance, to make sure the deal did not get killed. Levine told Loren to keep Levine apprised of what happened, and Loren did so.

In or about April 2004, Levine said there was going to be a split of a placement fee related to the TRS investment in Investment 4. Levine directed Loren to prepare a draft contract for Investment Firm 4, which Loren agreed to do. Levine directed Loren to include certain terms in the contract, including the amounts to be paid and the dates of payment. Levine did not give Loren the names of the parties, but instead, told Loren to use "X" and "Y" in place of the parties' names. On or about April 29, 2004, Loren prepared a draft compensation agreement using "X" and "Y" in place of the parties' names. Loren drafted the contract believing that it falsely represented that services would be provided by the consultant, when in fact Loren believed that no services would be provided. Loren drafted the sham contract in a

manner that he believed would make it falsely appear that payments by Investment Firm 4 constituted legitimate payments for services rendered, even though no such services were rendered.

Levine and Loren concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 4, including Levine's attempt to steer placement fees to a consultant named by Levine.

In or about May 2004, Levine also directed Loren to prepare a sham contract relating to Investment Firm 4 and another state pension board. On or about May 15, 2004, Loren prepared the sham contract that Levine requested. Based on conversations with Levine, Loren understood that one of Levine's close associates was going to receive a part of the placement fee that Investment Firm 4 would have to pay in order to obtain funding from the other state pension board. Loren thought that Levine was facilitating a placement fee for his close associate, even though that individual was not going to provide any services in exchange for the money. Loren drafted the contract knowing that it falsely represented that services would be provided by the Levine's close associate. Loren drafted the sham contract in order to make it appear that the payments to Levine's close associate were legitimate payments in exchange for services.

**Asset Managers for TRS:** In or about April 2004, Levine met with Loren to find out how Levine's nominees or associates could do business with TRS, and to discuss the possibility of Levine doing business with TRS in the future, including the possibility of setting up a company to do business with TRS as an asset manager. Levine asked Loren to present ideas to Levine that would allow participation by Levine's nominees or associates, without such participation being disclosed to TRS. Loren subsequently explained to Levine that if a development company entered into a business relationship with an asset manager, there would be no requirement to disclose the ownership of the developer.

**Information Concerning Levine:** Over the course of time, Loren withheld information concerning various actions that Levine took that Loren believed breached Levine's fiduciary duty to TRS. Loren believed that he had a duty to disclose to TRS what Levine was doing, and did not do so. By failing to disclose information about Levine's on-going conduct, Loren was not being honest with TRS, and Loren breached his attorney/client responsibilities.

6. For purposes of calculating the Guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties stipulate and agree on the following points:

a. The parties agree that the Guideline calculations are based on information relating to Individual A and events concerning Individual A in 2003-2004.

b. The parties agree that the applicable Guidelines version is the 2003 Guidelines Manual.

c. The parties agree that the applicable Guidelines Section is § 2T1.1(1), which refers to the Tax Table in § 2T4.1.

d. The parties agree that pursuant to Guideline § 2T1.1, the base offense level is 14, because the intended tax loss ( $\$250,000 \times 28\%$ ) was approximately \$70,000, in that defendant Loren knew that the payment to be made by Individual A to a third party was an illegal payment, and defendant Loren acknowledges that it was reasonably foreseeable to the defendant that Individual A's future deduction of that payment of \$250,000 as a legitimate business expense would cause a tax loss of approximately \$70,000.

e. The parties agree that the base offense level should be increased by 2 levels, pursuant to Guideline § 3B1.3, because the defendant abused a position of trust, and used a special skill, in carrying out the offense, in a manner that significantly facilitated the commission and concealment of the offense, namely,

the defendant abused his position as outside counsel to TRS by aiding and abetting Levine's scheme involving Individual A and by failing to report Levine's conduct relating to Individual A to TRS, and the defendant used his skills as an attorney to prepare the sham contract for Individual A.

f. The parties agree that the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for his actions, within the meaning of Guideline § 3E1.1, a 2 level reduction in the offense level is appropriate.

g. The parties agree that the defendant has provided timely notice of his intention to enter a plea of guilty, and has provided truthful information, within the meaning of Guideline § 3E1.1(b), so that an additional 1 point reduction in the offense level is appropriate, if the offense level is 16 or greater, and the Court finds that a reduction under Guideline § 3E1.1(a) is appropriate.

h. Based on the facts known to the government, the defendant's criminal history points equal 0 and the defendant's criminal history category is I.

i. Based on the above calculations, which are preliminary in nature, and assuming that the defendant's criminal history

category is I, the preliminary projected applicable offense level is a level 13, so that the preliminary projected applicable sentencing range is 12 to 18 months.

j. The defendant and his attorney, and the government, acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this plea agreement. The defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this plea agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

7. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and the defendant shall not have a right to withdraw his plea on the basis of such corrections.

8. The defendant understands that, in imposing the sentence, the court will be guided by the United States Sentencing Guidelines. The defendant understands that the Guidelines are

advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. Defendant understands that Count 14 of the indictment to which he will plead guilty carries a maximum penalty of 3 years' imprisonment, a maximum fine of \$250,000, any costs of prosecution, and a term of supervised release of one year, as well as any restitution ordered by the Court.

10. The defendant understands that in accordance with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$100 on Count 14 of the Indictment to which he has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of \$100 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

11. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charge against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government, and the



judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve layperson selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would

not appear voluntarily, he could require their attendance through the subpoena power of the court.

(e) At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

12. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

13. The defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, in exchange for the concessions made by the United States in this Plea Agreement, the defendant knowingly agrees to waive the right to appeal any sentence imposed that is within or below the guidelines range corresponding to offense level 13, Criminal History Category I, and waives the right to appeal any stipulated guideline calculation. The defendant also waives his right to challenge any sentence imposed that is within or below that guidelines range, and any stipulated guideline calculation, or the manner in which the sentence was determined, in any collateral attack, including but

not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

14. Defendant understands that the indictment and this Plea Agreement are matters of public record and may be disclosed to anyone.

15. Defendant agrees he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate, including the following:

a. Defendant agrees to provide complete and truthful information and testimony, (i) in any criminal investigation and any pre-trial preparation if called upon to do so by the government; (ii) before any grand jury, and (iii) in any United States District Court proceeding, state court proceeding, and civil, administrative, or other court proceeding, if called upon to do so by the government;

b. The parties agree that the parties will jointly recommend that the defendant's sentencing be postponed until after the conclusion of any on-going investigation in which the defendant is cooperating, and the conclusion of any prosecution arising from that investigation, if the government deems such postponement appropriate;

c. Defendant agrees that in the event that he breaches the terms of this plea agreement, or the plea agreement is vacated for any reason - other than the government's breaching the terms of this plea agreement, when there has been no breach, withdrawal, or rejection by the defendant - then any grand jury testimony provided by the defendant, in part and/or in whole, can be used against him in any proceeding, including, but not limited to, before the grand jury and/or in any criminal prosecution against him, without restriction;

d. In the event that the defendant's grand jury testimony can be used against him, pursuant to subsection <sup>(c)</sup>~~(d)~~ of this paragraph, as stated above, the parties agree and stipulate that the admissibility and use of the defendant's grand jury testimony is not governed by Rule 11 of the Federal Rules of Criminal Procedure or Rule 410 of the Federal Rules of Evidence. The defendant agrees that he will not seek to use Rule 11 or Rule 410 to prevent the admission of his grand jury testimony into evidence.

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*88*  
*ms*

16. The United States agrees not to seek additional criminal charges against the defendant, in the Northern District of Illinois, for the events between January 1, 2000 and November 23, 2004, which occurred in the Northern District of Illinois, relating to Individual A, TRS, CMS, and Mercy Hospital, which the defendant has described in the grand jury or in proffers provided to the United States, or which are described in this plea agreement.

However, nothing in this Agreement limits the United States in prosecution of the defendant in other districts, or for crimes which the defendant has not disclosed in the grand jury or in proffers provided to the United States, or which are not described in this plea agreement.

17. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him in this case, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

18. At the time of sentencing, the government shall make known to the sentencing judge the extent of the defendant's cooperation, and, assuming the defendant's full and truthful cooperation, shall move the Court, pursuant to Sentencing Guideline § 5K1.1, to depart downward from the applicable sentencing guidelines range. The government shall make no recommendation concerning the imposition of a term of imprisonment, but remains free to make any other recommendations that it deems appropriate. The defendant is free to recommend whatever sentence he deems appropriate.

19. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose the maximum penalties as set forth in paragraph 9 above. However,

the sentencing court is obligated to consult and take into account the Sentencing Guidelines in imposing a reasonable sentence. The defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, the defendant will have no right to withdraw his guilty plea.

20. Regarding restitution, the parties agree that the offense of conviction resulted in no loss and therefore restitution is inappropriate.

21. The defendant understands that Title 18, United States Code, Section 3664 and Section 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in setting a fine. The defendant agrees to provide full and truthful information to the court and United States Probation Officer regarding all details of his economic circumstances, and to provide such information to the United States Attorney's office. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court, and would constitute a breach of this Plea Agreement.

22. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. He further understands that in the event he violates this Agreement, the government, at

its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that the defendant's Plea is subsequently withdrawn, vacated or breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.


23. Defendant and his attorneys acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

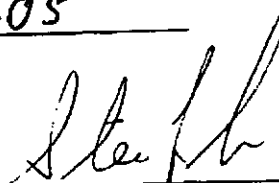
24. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

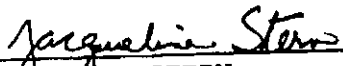
25. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.


26. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorneys. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: 9-15-05

  
PATRICK J. FITZGERALD  
UNITED STATES ATTORNEY

  
STEVEN LOREN  
Defendant

  
JACQUELINE STERN  
Assistant United States Attorney

  
MICHAEL L. SIEGEL  
Attorney for Defendant



**EXHIBIT 6**

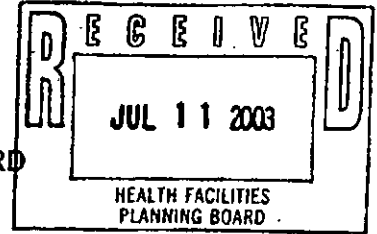
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03-049

Illinois Health Facilities Planning Board

Application for Permit April 2000 Edition  
Page 1

Ray Passeri, Executive Secretary  
Illinois Health Facilities Planning Board  
525 W. Jefferson Street - Second Floor  
Springfield, Illinois 62761



**ILLINOIS HEALTH FACILITIES PLANNING BOARD**  
**APPLICATION FOR PERMIT**

**SECTION I. IDENTIFICATION, GENERAL INFORMATION, AND CERTIFICATION (IDEN)**

This section must be completed for all projects.

**A Facility/Project Identification**

Facility Name: Mercy Crystal Lake Hospital and Medical Center  
Location: East side State Rd. 31 between Three Oaks & Raymond Roads City: Crystal Lake  
County: McHenry Zip: 60014 Illinois State Representative District: 64

**B. Applicant Identification (provide for each co-applicant [refer to Part 1130.220] and insert after this page)**

Exact Legal Name: Mercy Crystal Lake Hospital and Medical Center, Inc.  
Address: 2000 Lake Avenue, Woodstock IL 60098  
Name of Registered Agent: Herbert Franks, Esq., Marengo, IL  
Name of Chief Executive Officer: Javon R. Bea Title: President/CEO  
CEO Address: Same as applicant Telephone No. (815) 337-5739

Type of Ownership:  Non-profit Corporation  For-profit Corporation  Limited Liability Company  
 Partnership  Governmental  Sole Proprietorship  Other (specify)

Corporations and limited liability companies must provide an Illinois certificate of good standing; partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.

**APPEND DOCUMENTATION AS ATTACHMENT IDEN-1 AFTER THE LAST PAGE OF THIS SECTION.**

**C. Primary Contact Person (person who is to receive correspondence or inquiries during the review period)**

Name: Eli L. Beeding Jr. Title: The Beeding Group  
Address: 7488 County Road 3, Marble, CO 81623  
Telephone No. 970-963-4877 E-mail Address: \_\_\_\_\_  
Fax Number 970-704-0794

**D. Additional Contact Person (person such as consultant, attorney, financial representative, registered agent, etc. who also is authorized to discuss application and act on behalf of applicant)**

Name Richard H. Gruber Title: Vice President  
Address: Same as B. above  
Telephone No. (608) 756-6112 E-mail Address: rgruber@mhsjvl.org Fax Number (608) 756-6236

\* See bottom of page 2

**ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD  
APPLICATION FOR PERMIT**

**SECTION I. IDENTIFICATION, GENERAL INFORMATION, AND CERTIFICATION**

This Section must be completed for all projects.

**Facility/Project Identification**

Facility Name: Mercy Crystal Lake Hospital and Medical Center, Inc.		
Street Address: SE Corner of State Rte 31 & Three Oaks Road		
City and Zip Code: Crystal Lake, IL 60014		
County: McHenry	Health Service Area: 8	Health Planning Area: A-10

**Applicant /Co-Applicant Identification**

[Provide for each co-applicant [refer to Part 1130.220].

Exact Legal Name: Mercy Crystal Lake Hospital and Medical Center, Inc.		
Address: 2000 Lake Avenue, Woodstock, IL 60098		
Name of Registered Agent: Herbert Franks		
Name of Chief Executive Officer: Javon R. Bea		
CEO Address: 1000 Mineral Point Avenue, Janesville, WI 53548		
Telephone Number: 608-756-6112		

**Type of Ownership of Applicant/Co-Applicant**

<input checked="" type="checkbox"/> Non-profit Corporation	<input type="checkbox"/> Partnership	
<input type="checkbox"/> For-profit Corporation	<input type="checkbox"/> Governmental	
<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Other

o Corporations and limited liability companies must provide an Illinois certificate of good standing.

o Partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.

APPEND DOCUMENTATION AS ATTACHMENT-1 IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Primary Contact**

[Person to receive all correspondence or inquiries during the review period]

Name: Dan Colby
Title: Vice President
Company Name: Mercy Health System Corporation, Inc.
Address: 1000 Mineral Point Avenue, Janesville, WI 53548
Telephone Number: 608-756-6123
E-mail Address: dcolby@mhsjvl.org
Fax Number: 608-756-6236

**Additional Contact**

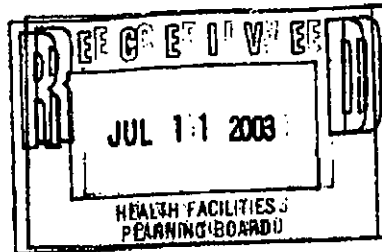
[Person who is also authorized to discuss the application for permit]

Name: Richard H. Gruber
Title: Vice President
Company Name: Mercy Health System Corporation, Inc.
Address: 1000 Mineral Point Avenue, Janesville, WI 53548
Telephone Number: 608-756-6112
E-mail Address: rgruber@mhsjvl.org
Fax Number: 608-756-6236

**EXHIBIT 7**

Franks Gerkin McKenna, P.C.  
Lawyers

July 9, 2003



Mr. Jeffrey Mark  
Executive Secretary  
Illinois Health Facilities  
Planning Board, 2nd Floor  
525 W. Jefferson Street  
Springfield, IL 62761

Re: Application for Permit


Dear Mr. Mark:

I am pleased to enclose the original and five copies of an Application for Permit for the Mercy Crystal Lake Hospital and Medical Center. Also enclosed is our \$700.00 check for a filing fee. I understand that you will be reviewing this application for completeness in the next two weeks. If there is anything that you need, please call me or fax me so we can expedite the proceedings.

We are looking forward to working with you.

Very truly yours,

FRANKS, GERKIN & MCKENNA, P.C.

  
Herbert H. Franks

HHF/db  
Enclosures

19333 East Grant Highway  
P.O. Box 5  
Marengo, Illinois 60152-0005  
Tel 815.923.2107  
Email: franklaw@mc.net  
Fax 815.923.2114

00001

**EXHIBIT 8**

DATE: 4/21/04  
TIME: 8:03 p.m.  
ACTIVITY: Home Telephone 1 outgoing to (847) 432-0498  
CALL#: 329

SPEAKERS:  
LEVINE: Stuart Levine  
LOREN: Steven Loren

\* \* \* \*

1 LOREN Hi.  
2 LEVINE You have no idea.  
3 LOREN Let, let me get this on the other phone,  
4 one second.  
5 (PAUSE)  
6 LOREN Hi.  
7 LEVINE Uh, from the minute, from the minute I  
8 walked in there uh, Beck, Beck, Beck  
9 wanted to resign uh, uh, he, and, and,  
10 and uh, ih, ih, ih, because see there's,  
11 there's much more here than uh, than uh,  
12 meets the eye because other people had  
13 been promised that this wouldn't happen.  
14 LOREN Mm hm.  
15 LEVINE And uh, and um, and of course no-,  
16 nobody, nobody knows that it's me. And  
17 nobody really knows that it's Tony for  
18 the reason that it's Tony.  
19 LOREN Right.  
20 LEVINE And, and um, uh, I kept the whole thing  
21 together boy, and Beck's not resigning.  
22 LOREN Oh a-, after the hearing itself it  
23 wouldn't of been hard for anyone who was  
24 present to see that you were the one who  
25 moved this.  
26 LEVINE Well, but I had no choice.

1        LOREN                                I, I understand that.

2        LEVINE                                But I mean, but I mean but all through  
3    the whole day and, and, and I took Beck  
4    over to Tony's and now Beck's not  
5    resigning.

6        LOREN                                Mm hm.

7        LEVINE                                I mean I kept the whole, you know uh,  
8    but uh, but oh what I fuckin' thing.

9        LOREN                                Oh, he threatened to resign over this?

10       LEVINE                                No he was, he, he didn't want it to take  
11    place. Tony and I both decided we  
12    wanted, I like getting things done. And  
13    he, he wanted all the hospitals up in  
14    the same time.

15       LOREN                                Right.

16       LEVINE                                Now, I mean Mercy is not Edward's  
17    problem so you know I mean uh, uh, I  
18    mean uh, uh, and you know, he thought,  
19    he thought it got uh that the Board  
20    would look uh, foolish uh, giving it to  
21    uh, to uh, uh, uh, Mercy with uh, uh,  
22    you know uh, given the uh, the, the  
23    staff findings uh and uh, that there was  
24    you know no, no chance for real cover.  
25    And another problem is that, that  
26    there's really no control over the staff  
27    because...  
28

29       LOREN                                (UI).

30       LEVINE                                The staff doesn't report to the  
31    Executive Director. But that's all  
32    going to get cured now. Now that I see  
33    Tom's problems, I'm gonna get those  
34    cured. But um, uh, but uh, tell me do  
35    you think the other hospital systems in  
36    McHenry could successfully keep you out  
37    with litigation?

38       LOREN                                Well, Centegra approached uh, Javon.



1 LEVINE Mm hm.

2 LOREN And you know the President of Centegra  
3 who was there uh, said that he thought  
4 his Board was going to bring some kind  
5 of challenge and Javon volunteered and  
6 they're going to get together one day,  
7 not next week but the week after, to try  
8 and see if they can work out their  
9 differences and Javon was saying you  
10 know that this, this market's large  
11 enough for both of us and all you're  
12 going to do with litigation is alienate  
13 yourself from the Board in the future so  
14 why would you want to do that. Maybe  
15 they can work something out.

16 LEVINE Well that was, that was interesting that  
17 uh, that he took it upon himself to say  
18 I'm the strong man. Of course he was  
19 that day.

20 LOREN Right.

21 LEVINE Uh, but...

22 LOREN But he, he's also, you know the, the guy  
23 from Mercy is pretty polished and to the  
24 extent he can work something out.

25 LEVINE Well I, I, that, that would be, that  
26 would be very smart and very good. Uh,  
27 um,...

28 LOREN Now, now the, the other uh, you know  
29 Centegra can bring a lawsuit, but the  
30 lawsuit wouldn't be against the Board it  
31 would be against uh, more, more likely  
32 would be against uh, Mercy under the  
33 fact that the CON shouldn't of been  
34 issued which is kind of screwy  
35 procedural issue.

36 LEVINE Well now my, my only point is the, the  
37 thing would be delayed in getting built.

38 LOREN Right.

1       LEVINE                   I don't give a shit about the rest.  
2                               (laughs)

3       LOREN                   Well Ja, Ja, Javon knows that he stole,  
4                               he said he's at second base.

5       LEVINE                   Ah, he, he understands what we got  
6                               pulled off for him? The magnitude of  
7                               it.

8       LOREN                   Ah, he, he, he's no dummy. You know  
9                               what he was really upset about?

10      LEVINE                   Mmmm.

11      LOREN                   He had been promised up and down the  
12                               wazoo that he was going to get the  
13                               support of the uh, those 2 women...on,  
14                               on the theory that the unions were  
15                               helping him out. You know both Rice and  
16                               Orr and uh, Orr, Orr, Orr got up to  
17                               leave just 'cause she didn't want to be  
18                               there for the vote.

19      LEVINE                   Uh, well that she, so uh, who's he work  
20                               with, with the unions?

21      LOREN                   Balanoff.

22      LEVINE                   He worked with Balanoff?

23      LOREN                   Someone did for him.

24      LEVINE                   Well...

25      LOREN                   (UI) Victor.

26      LEVINE                   Oh I see. Well I, I hope that Javon is  
27                               going to complain loudly.

28      LOREN                   Uh, he probab-, well, I, I think he also  
29                               appreciates that the last thing that he  
30                               and Mercy need is any kind of spotlight.  
31                               So I don't think he's going to go, I  
32                               think he's going to try and work  
33                               something out quietly.

34      LEVINE                   Oh that's good. Well that's good. But,

1 but he understands the magnitude...

2 LOREN Yeah.

3 LEVINE Of what was done on the, on that Board  
4 by me today.

5 LOREN He does. In fact he said he can't  
6 believe that you did what you did on  
7 their behalf.

8 (PAUSE)

9 LEVINE Uh, I didn't do it on their behalf.  
10 (laughs)

11 LOREN Well...

12 LEVINE Why, but why, why, well, he, I'm sh-,  
13 that's good, it's good, it's good that  
14 he thinks that because he uh, uh, uh, he  
15 um, um, uh, thinks that uh, that for  
16 some reason I'm just doing it for Jacob.

17 LOREN Pam uh, out did herself.

18 LEVINE She is, what an arrogant bitch.

19 LOREN (UI).

20 LEVINE What an arrogant bitch. Can you imagine  
21 walkin' out that she still had to come  
22 back. You know what she is absolutely  
23 appalled that she didn't get her CON  
24 today. I mean she just can't believe  
25 it. I mean she came in to get her CON  
26 and they didn't give it to her. She is  
27 fuckin' nuts.

28 LOREN She is what she is. Now is she going to  
29 get hers in June?

30 LEVINE No.

31 LOREN (laughs)

32 LEVINE She's not going to get shit. Because  
33 uh, uh, um, the, the Adventist are going

1 to get it there. She's fucked.

2 LOREN Now what's Ladd going to do?

3 LEVINE Regarding? Oh, he represents the  
4 Adventist. He's getting (UI).

5 LOREN He represents Centegra too.

6 LEVINE Yeah I know but uh, he can't have  
7 everything. He, he, he got, he, he uh,  
8 got fucked here, but he's going to, his  
9 client will get the Bolingbrook  
10 Hospital.

11 LOREN Well, can someone communicate to him  
12 that Bolingbrook won't happen either if  
13 he can't...

14 LEVINE No because it don't work that way.

15 LOREN Oh.

16 LEVINE Well we'll see. We'll see, we'll see,  
17 we'll see, we'll see.

18 LOREN Well I just cannot believe that that  
19 woman got up and walked out.

20 LEVINE Uh, did you see what Beck did? (laughs)

21 LOREN Mm hm.

22 LEVINE (sighs)

23 LOREN Now there, there obviously is not much  
24 inter-action or coordination amongst  
25 those Board members.

26 LEVINE Oh this, this, this was a little bit,  
27 they did not want to do uh, uh, I'll,  
28 the problem was...

29 LOREN They didn't want to take one hospital  
30 out of turn.

31 LEVINE Exactly. And they, they were bent out  
32 of shape about it, but, but uh, when

1 push came to shove there it was.

2 LOREN Mm hm. What did you have to tell, say  
3 to uh, that one doctor you uh...

4 LEVINE Oh no this was, Beck uh, uh, Beck didn't  
5 want to vote for it unless he had to.

6 LOREN Mm hm.

7 LEVINE So he passed. So you had, you had three  
8 votes, three passes and three no's. If  
9 Beck didn't want to vote, if he voted  
10 yes and, and the other guy voted no we  
11 would of lost and that would of been it.

12 LOREN Mm hm.

13 LEVINE He wanted to know what he was going to  
14 vote uh, um, uh, because if, if, if the  
15 other guy was going to vote no, Beck  
16 would have made a move to, to have it  
17 deferred.

18 LOREN Hasn't Anne Murphy ever said anything to  
19 any of you about uh, these side bars?

20 LEVINE Fuck her she thinks she's powerful to  
21 stop it? I had a deal to close.

22 LOREN (laughs)

23 LEVINE Please. She, sh-, she tried to help a  
24 little bit you noticed.

25 LOREN Oh she definitely did.

26 LEVINE And that other idiot, wait 'til I finish  
27 with him. He, he, he hasn't got a clue  
28 and all of a sudden he's makin' a speech  
29 why they shouldn't expect to get a CON.  
30 And I'm sittin' there waiting to vote it  
31 in. (laughs) I don't know, I can't  
32 imagine what it look like from out there  
33 with a, with Beck comin' to talk to me,  
34 and my goin' to talk to the other guy.

1 LOREN Well it, it, it looked like there was  
2 orchestration going on.

3 LEVINE Looked like there was a shoe hitting  
4 somebody over the head. Could you, did,  
5 did you ever in your life see a vote  
6 stop in the middle?

7 LOREN No, no.

8 LEVINE Neither did I.

9 LOREN Uh, now it, it made no difference, you  
10 know the, the, the basis that Mercy put  
11 out on the record there was some common  
12 sense to what they were saying.

13 LEVINE It is a, it is a legitimate CON.

14 LOREN Right.

15 LEVINE Uh, uh, you know so the uh, the, uh, uh  
16 where they getting the physicians from?  
17 They bringin' 'em all in from Wisconsin?

18 LOREN I have no idea. They're probably coming  
19 from Guadalajara as we speak. (laughs)

20 LEVINE (laughs)

21 LOREN (UI).

22 LEVINE (laughs) Oh Lord.

23 LOREN I, I finally figured out though when I  
24 met Herb Frank how the whole thing fell  
25 into place.

26 LEVINE When you met who?

27 LOREN Her-, Herb Frank...

28 LEVINE Oh.

29 LOREN Is good friends with Izzy Levy.

30 LEVINE Right.

1 LOREN And Herb Frank represents Harvard  
2 Hospital and Harvard got acquired by  
3 Mercy.

4 LEVINE I see.

5 LOREN So I, I'm assuming that Mercy probably  
6 went to Herb Frank and said can you, can  
7 you, can you find out how we can get  
8 somebody on the, on the uh,...

9 LEVINE No, no, uh,...

10 LOREN And then the thing with the JUF.

11 LEVINE No, no, that, that's, that's exactly how  
12 it happened. They uh, they um, um,  
13 with, that that's when it came to Jacob  
14 and said...

15 LOREN They got an invitation with Izzy's name  
16 on it and they saw you were the honor,  
17 the honoree.

18 LEVINE And Massuda was on the dinner committee.

19 LOREN Mm hm.

20 LEVINE Um, did you, were you there this morning  
21 with Northwestern and Massuda?

22 LOREN Yeah.

23 LEVINE Could you fuckin' believe it?

24 LOREN I actually thought it was kind of  
25 amusing.

26 LEVINE Amusing. If you want our help you, you  
27 better let podiatrists in. I said  
28 Fortunee, I said you must never do that  
29 again. She said well I want Pod...I  
30 said, I said, I said you're not here for  
31 the podiatrists' interests...you're here  
32 for the people of the State of Illinois.

33 LOREN (laughs)

1     LEVINE                    Okay. (laughs)

2     LOREN                     Medicine at its best.

3     LEVINE                     Well she, you know she's not subtle.  
4                               (laughs) Northwestern called and  
5                               complained.  Meanwhile if I were them...

6     LOREN                     Called to complain...who, who'd they  
7                               call?

8     LEVINE                     They called staff to complain it was a  
9                               terrible thing she did.  Meanwhile when  
10                              she got those three women to vote  
11                              against their thing.

12    LOREN                     Mm hm.

13    LEVINE                     To me if they have half a brain they  
14                              would do somethin' with...she could  
15                              cause them an enormous problem.  She,  
16                              she could cause the situation where  
17                              sometime they need a vote they can't get  
18                              it.  It would be stupid on her part to  
19                              do it, but she would do it.

20    LOREN                     Yeah that's a, none of those hospitals  
21                              really appreciate that, whether they  
22                              like the treatment or not, they're at  
23                              the mercy of that Board, so why would  
24                              they go and alienate people.

25    LEVINE                     Um, well first of all Northwestern is  
26                              Northwestern.  They worship, everybody  
27                              has to be honored that they walked in  
28                              the room.  And I'm telling you that Pam  
29                              could not believe she didn't get her  
30                              CON.

31    LOREN                     Well actually I would have thought it  
32                              would of been much more entertaining had  
33                              you given her the CON for the office  
34                              building.

35    LEVINE                     That's what I wanted to do.

36    LOREN                     And not the hospital.



1 LEVINE That's what I wanted to do. Could you  
2 imagine she said we bought this land we  
3 had no thought of building a hospital.  
4 Can you imagine that baldface lying  
5 cunt.

6 LOREN Well why don't you let her build the,  
7 the office building.

8 LEVINE Huh?

9 LOREN Why don't you let her have her, her cake  
10 (UI).

11 LEVINE I suggested, I suggested it to 'em, they  
12 don't want to give her anything.

13 LOREN Well, the, they're really in a pickle  
14 now 'cause based on what they said  
15 today...I think they probably have to  
16 take down that option between now and  
17 the time, they better get an extension,  
18 otherwise they're going to own 60 acres  
19 of land in Plainfield with nothin' to do  
20 with it.

21 LEVINE Good. (chuckles) Serves 'em right.  
22 She's responsible for this, this was a  
23 terrible strategy. Of course um, Honey  
24 was their lawyer.

25 LOREN Mm hm. (UI).

26 LEVINE She's pissed. Oh, she's pissed at me  
27 because uh, um, um, Pam who went around  
28 her back all over the place because Pam  
29 is such a fucky-doddy, she knows that  
30 uh, that um, I'm, I'm sure that Pam said  
31 that Nick was talkin' to me. So she's,  
32 she's probably um, uh, pissed.

33 LOREN Well I heard, you know I went outside  
34 and eavesdropped.

35 LEVINE Mm hm.

36 LOREN On Pam, on Pam and Honey's conversation.

1 LEVINE Mm hm.

2 LOREN I, I was around the corner.

3 LEVINE Mm hm.

4 LOREN And, and Honey was saying you know Pam,  
5 you can't do what you just did. She  
6 said, you know, you know what I really  
7 wanted to tell him. She said no, what  
8 did you want to tell him. I wanted to  
9 tell him next time I see you you'll be  
10 in prison.

11 LEVINE (chuckles) To say to who?

12 LOREN Beck.

13 LEVINE To Beck.

14 LOREN Yeah.

15 LEVINE What'd he do?

16 LOREN Nothing and when she, when she turned,  
17 when she walked out and turned her back  
18 on the guy.

19 LEVINE He, he'd be in prison?

20 LOREN Yeah, yeah.

21 LEVINE Maybe she knows somethin' we don't.  
22 (laughs)

23 LOREN (laughs) But you know she was besides  
24 herself because you know it, it was  
25 embarrassing to her.

26 LEVINE It was embarrassing to her?

27 LOREN To Honey.

28 LEVINE Oh of course it was embarrassing to her.  
29 But you know I mean uh, uh,...

30 LOREN So they clearly, now...look, I was  
31 watching the body language.

1 LEVINE Mm hm.

2 LOREN They clearly believe that what Beck was  
3 doin' was begging them to defer so he  
4 could give them, give them the CON in  
5 June.

6 LEVINE Edwards thinks that?

7 LOREN Mm hm.

8 LEVINE No. (chuckles)

9 LOREN Clearly with her, that's the  
10 expectation.

11 LEVINE Oh they're so wrong. He was just trying  
12 to uh, to be uh, to talk a little bit  
13 nice. After the, after the big blow up  
14 uh, and, well I mean everybody likes to  
15 be a, to a, to, they cannot give it to  
16 uh, to the Adventist, then there's only  
17 going to be one.

18 LOREN Mm hm.

19 LEVINE And Jeff Ladd represents them.

20 (PAUSE)

21 LOREN Which is the uh, oh Bolingbrook is the  
22 Adventist.

23 LEVINE Yeah, the Adventist. Advocate...

24 LOREN I'm surprised you guys gave the  
25 Ambulatory Care to Provena uh, today  
26 based on what I thought were their  
27 problems with the Board. I thought they  
28 had a personality issue with uh, with  
29 one of their people.

30 LEVINE Uh, apparently (UI).

31 LOREN (UI) Hospital.

32 LEVINE Uh, uh, apparently whatever it was been  
33 solved.

1 LOREN You know I and, and some of these CON's  
2 that were up today, I asked Herb Frank,  
3 who was sitting next to me for part of  
4 the hearing.

5 LEVINE Mm hm.

6 LOREN I said you know do, do these people have  
7 to come in for a CON when they decide to  
8 go from 2-ply to 1-ply toilet paper.

9 LEVINE (laughs)

10 LOREN Do you have any idea of the application  
11 fee that these hospitals have to pay?

12 LEVINE No.

13 LOREN It's enormous. How much you think Mercy  
14 had to submit for the CON application?

15 LEVINE How much?

16 LOREN \$100,000.

17 LEVINE And you know that the governor's office  
18 had taken away from the CON Board. We  
19 don't even have an employee.

20 LOREN No.

21 LEVINE Anyway that's, that, I'm going to clean  
22 up. I think I'm going to clean up that  
23 Board so, 'cause it'll be easier to work  
24 for poor Tom. I have to pitch in and be  
25 a spokesman.

26 LOREN Well you have two vacancies there.

27 LEVINE No, they're filled. Bernie Weiner.

28 LOREN So why, why were people not there?

29 LEVINE Well he wasn't appointed in time to be  
30 at this meeting.

31 LOREN Mm hm.,

1 LEVINE And the other, Orr was there.

2 LOREN I thought you only had eight people  
3 there today?

4 LEVINE Uh, everybody was there.

5 LOREN Oh the Board's nine.

6 LEVINE The Board's nine, right. (laughs)

7 LOREN What's going on with the other Board  
8 appointments, you heard anything?

9 LEVINE No we'll get into that tomorrow. That's  
10 enough for one day.

11 LOREN Well, I hope you enjoyed, you know I do  
12 not understand how anyone can expect any  
13 of you to serve on this Board. You know  
14 the, the amount of work that, that, if  
15 it's, this is done properly.

16 LEVINE Oh I, I,...

17 LOREN It's a full time job.

18 LEVINE I don't, I don't do a goddamn thing. I  
19 don't even, I don't read a goddamn  
20 thing. If there's, if there's, if, ,if  
21 there's, if there's something I have an  
22 interest in it uh, I mean I, I, I don't  
23 do anything. I don't read a goddamn  
24 thing unless there's a particular thing  
25 that I gotta, I gotta bone up on a  
26 little.

27 LOREN It's a full-time job.

28 LEVINE Beck has a full-time job.

29 LOREN Then what is it?

30 LEVINE Pardon?

31 LOREN What, what does he do full time?

32 LEVINE No, no, Beck, he uh, Beck he, he's a

1 consultant uh, uh, various, Beck's done  
2 very well for himself because he, he was  
3 uh, he was in the right place with the  
4 right guys at the County and uh, he did  
5 what he was supposed to and um, and he  
6 came out uh, fine and he's a, he's got  
7 some great relationships. He's like  
8 Stricklin.

9 LOREN So what did Tony think of the whole  
10 thing today?

11 LEVINE He don't give a shit. He wanted to make  
12 sure that it got done. He was  
13 grateful...

14 LOREN He should be royally upset that these 2  
15 union people are, are causing problems.

16 LEVINE He, he needs 5 votes. He has 5 votes.

17 LOREN So he doesn't care.

18 LEVINE And he had to give the union, I mean you  
19 know they, they, they have uh, uh, the  
20 Service Employees always had a person on  
21 that Board.

22 LOREN Mm hm.

23 LEVINE Um,...

24 LOREN Well you know who, who Orr works for?

25 LEVINE Emil, well she comes from Emil Jones  
26 doesn't she?

27 LOREN No.

28 LEVINE Who?

29 LOREN She works for Ed Smith.

30 LEVINE Oh she does.

31 LOREN Yeah. She works, she's an organizer for  
32 the Laborers.

1 LEVINE Oh.  
2 (PAUSE)  
3 LEVINE Oh well that's good to know. I'll have  
4 to work on that.  
5 LOREN That's what Stricklin told me. I asked,  
6 you know he, that, that's Ed Smith's  
7 person. She didn't get on there by  
8 accident.  
9 LEVINE I could, see, see, if I would of known,  
10 I could of um, uh, I can uh, I can get  
11 there. But they were just, Balanoff was  
12 supposed to deliver her?  
13 LOREN Yeah. Both of 'em, Rice too.  
14 LEVINE He failed.  
15 LOREN She seems to be quite the uh, unpleasant  
16 person.  
17 LEVINE Balanoff?  
18 LOREN No, Rice.  
19 LEVINE The big fat one?  
20 LOREN No that's Orr.  
21 LEVINE Oh.  
22 LOREN Rice is the (UI).  
23 LEVINE No, no, Orr, Orr is the new one. Pam  
24 Orr is the, is the new Board member.  
25 LOREN The black woman.  
26 LEVINE Yeah.  
27 LOREN Oh no, no, I'm, I'm, I'm thinkin' of the  
28 heavy set woman who was sitting next to  
29 (UI).  
30 LEVINE Yeah she, she's uh, uh, she's a union

**EXHIBIT 9**





November 25, 2003

Mr. Javon R. Bea, President/CEO  
Mr. Richard H. Gruber, Vice President  
Mercy Alliance, Inc.  
Mercy Woodstock Medical Center  
2000 Lake Avenue  
Woodstock, IL 60098

Re: Mercy Crystal Lake

Gentlemen:

We would like to thank you for taking the time to share your plans for Mercy Crystal Lake and allow us to introduce you to Kiferbaum Construction Corporation.

As we discussed, Kiferbaum is a full service design/build firm that can assist Mercy through the entire development process for this exciting project. By establishing a relationship early, Kiferbaum will provide Mercy with a single source of responsibility and accountability. Our delivery system ties all the facets of the project together from preliminary planning through facility turn over. This would include programming, design, budgeting, securing of the Certificate of Need, obtaining municipal and other governmental entitlements as well as quality, on-time construction. Our established project control systems and web based document sharing will provide a platform allowing us to be easily integrated with your internal project team.

Kiferbaum Construction Corporation will be delighted to move forward with you as part of your team. Over the next several days I will be forwarding an agreement to solidify our relationship for your review and approval.

In the interim, should you have any questions or require additional information please do not hesitate to contact Jeff Kaplan, Paul Chuma or myself. We look forward to working with Mercy Alliance.

Sincerely,

KIFERBAUM CONSTRUCTION CORPORATION

A handwritten signature in black ink, appearing to read 'J. Kiferbaum', is written over a printed name and title.

Jacob Kiferbaum  
President

C: Herbert H. Franks

790 Estate Drive / Deerfield, IL 60015 / 847.914.9600 / FAX 847.914.9650 / [www.kiferbaum.com](http://www.kiferbaum.com)

JB 000001

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**EXHIBIT 10**



## RESULTS OF DECEMBER 17, 2003, MEETING OF THE ILLINOIS HEALTH FACILITIES PLANNING BOARD

**Members present**

Dr. Alamanscer, Thomas Beck, Michael Gonzales, Stuart Levine, Dr. Malek, Dr. Massuda, Danalynn Rice and Annamarie York.

**Members absent**

Thomas Balanoff

**PROJECT**

**VOTE**

**Permit renewal requests**

Marion Healthcare (01-076)	Approved 7-0 (Rice declared a conflict)
St. Mary Medical Center (03-015)	Approved 8-0
Condell Medical Center (00-002)	Approved 6-2
Austin Comm. Kidney Center (01-004)	Approved 8-0

**Exemption requests**

Neomedica - Evergreen Park (E-045-03)	Approved 8-0
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**Extension requests**

West Frankfort Comm Hospital (02-021)	Approved 6-2
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**Alterations**

Condell Medical Center (00-002)	Approved 6-2
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**Compliance issues/Settlement agreements**

None

**Declaratory Rulings**

None

**Health Worker Self-Referral Act**

None

**Completion Reports on Conditional Permits**

None

**Applications subsequent to initial review**

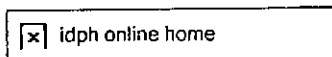
St. James Hospital (03-008)	Approved 8-0
RCG-Merrionette Park (03-045)	Board voted 4-4 and issued an Intent-to-Deny
Hillsboro Area Hospital (03-051)	Approved 7-0 (Rice declared a conflict)
Oakview (03-052)	Approved 8-0
Iroquois Memorial Hospital (03-057)	Approved 8-0
CGH Medical Center (03-062)	Approved 8-0
Lake Villa Dialysis (03-067)	Approved 8-0
Rockford Dialysis (03-068)	Approved 8-0
DeKalb Dialysis (03-069)	Approved 8-0
Tri-Cities Dialysis (03-070)	Approved 8-0
Dixon Kidney Center (03-071)	Approved 8-0
Freeport Dialysis (03-072)	Approved 8-0
Highland Ambulatory Surgery Center (03-013)	Applicant deferred
Carle Foundation Hospital (03-041)	Approved 6-2
Provena St. Joseph Med. Center (03-042)	Approved 7-0 (Malek declared a conflict)
Edward Healthcare Center (03-043)	Board voted 2-6 and issued an Intent-to-Deny
Eye Surgery Center-Hinsdale (03-048)	Approved 6-2
Mercy Crystal Lake Hospital (03-049)	Board voted 0-8 and issued an Intent-to-Deny
Surgery Center of Joliet (03-053)	Board voted 1-6 and issued an Intent-to-Deny (Malek declared a conflict)
St. Joseph Village (03-066)	Approved 8-0

**Applications subsequent to intent-to-deny**

None

**Other Business**

None



**about the department**

Illinois Department of Public Health  
 535 West Jefferson Street  
 Springfield, Illinois 62761  
 Phone 217-782-4977  
 Fax 217-782-3987  
 TTY 800-547-0466  
[Questions or Comments](#)

**EXHIBIT 11**

**Construction Contract**  
**For**  
**Mercy Alliance, Inc.**  
**Crystal Lake, Illinois**

JK 00605

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## CONSTRUCTION CONTRACT

For

MERCY ALLIANCE, INC.

Crystal Lake, Illinois

THIS AGREEMENT (the "Agreement"), made this 23<sup>rd</sup> day of January, 2004, by and between KIFERBAUM CONSTRUCTION CORPORATION, hereinafter called "Contractor", with its principal place of business at 790 Estate Drive, Deerfield, IL 60015 and MERCY ALLIANCE, INC., hereinafter called "Owner", with its principal place of business 1000 Mineral Point Avenue, Janesville, WI, 53547-5003.

### WITNESSETH:

Owner is the owner of the real estate legally described in Exhibit "A" attached hereto (the "Site").

Contractor and Owner, in consideration of the mutual covenants and agreements contained herein, hereby agree as follows:

#### Article 1. Scope of the Work

Contractor shall furnish, or cause to be furnished, all of the material and perform, or cause to be performed, all of the work necessary for construction work and at Owner's option, for certain design work at the site as set forth below (the "Work"). The Work includes the design and completion of certain site improvement work (the "Site Work") and an approximate seventy (70)-bed hospital and multi-specialty physician clinic (the "Building Work", and collectively with the Site Work referred to as the "Work" and the project is referred to herein as the "Project"). Contractor's Work shall consist of the following:

A. **Contractor's Design Services.** At Owner's option, and to the extent determined by Owner, Contractor shall cause to be prepared the civil engineering drawings necessary for the Site Work and all of the mechanical, electrical, plumbing, and fire protection drawings and specifications for the design of the systems identified below necessary for the construction of the Building Work (collectively referred to as the "Contractor's Design Services"):

1. **Mechanical System.** Mechanical drawings consisting of plans showing single line layouts with approximate sizing of major duct and piping systems, plans showing sizes and outline of central heating, cooling and ventilation equipment and riser diagrams showing distribution system.

2. **Electrical System.** Electrical drawings consisting of plans showing sizes and outline of fixed equipment; riser diagrams for construction, showing arrangements of feeders, sub-feeders, bus ducts, load centers, and branch circuit panels, typical lighting layout, and typical electrical plan layout showing switches, and outlets.

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3. Plumbing System. Plumbing drawings showing the completed plumbing system.
4. Fire Protection System. Fire protection drawings showing the completed fire protection system.
5. Such Work within the same general scope as may be designated by Owner.

The above referenced design documents (the "Contractor's Design Documents") shall be prepared in accordance with the preliminary architectural plans (the "Preliminary Plans") attached hereto as part of Exhibit "B" and made a part hereof, the "Owner's Design Documents" (defined below) and Applicable Laws. The Contractor shall not be responsible for any design services except those outlined above.

**B. Construction Services.** Contractor shall furnish, or cause to be furnished, all of the material and labor necessary for the Work in accordance with the Contract Documents and all Work shall be performed in accordance with all Applicable Laws.

**C. Other Design Work.** The Owner has entered into a separate contract with Hammel, Green and Abrahamson, Inc. (the "Architect") for the design of the hospital and clinic and other separate contracts for all other design work, including but not limited to structural engineering and landscape design work (the "Owner's Design Work"). All architectural services shall be rendered by the Architect. The Architect will have direct supervision of the architectural work and the Contractor shall have no liability relating to the errors and omissions of the Architect or Owner's other design professionals and Contractor shall be entitled to rely upon all such design work as having been prepared in accordance with all applicable building and zoning codes and all other laws and regulations in effect as of the date hereof ("Applicable Laws"). The design documents caused to be prepared by Owner (the "Owner's Design Documents") shall be prepared in accordance with the Preliminary Plans. If anything contained in the Contract Documents is inconsistent with this Agreement, the document with the most specific provision or information shall govern.

Upon completion of the Preliminary (Scope) Design Documents, Contractor and Owner shall establish a target guaranteed maximum price ("GMP") for each of the following: (i) the Site Work (the "Site Work Target GMP") and (ii) the Building Work (the "Building Target GMP"), which target maximum prices shall be set forth on Exhibit D attached hereto. The Owner and Contractor agree to cause their respective design work (i.e. the Owner's Design Documents and the Contractor's Design Documents") to be prepared with scope and budget controls that are consistent with and in reasonable conformance with the Site Work Target GMP and Building Target GMP and each will advise the other when either party becomes aware that either target GMP may be exceeded. Contractor and Owner shall each submit to the other its design documents for approval. Both parties agree that they will promptly review and approve, or disapprove (with specifically stated reasons therefor) the applicable design documents, and that they will not withhold their approval except for matters which in their reasonable opinion are warranted. Each party shall reasonably address the other's reasonable objections and make requested changes. When Contractor's Design Documents and Owner's Design



Documents have been approved by Contractor and Owner by affixing thereon the signature or initials of an authorized officer or employee of each of said respective parties, the Contractor's Design Documents and Owner's Design Documents shall be deemed to be made a part hereof. Upon Owner's reasonable request, Contractor shall make minor modifications to any documents delivered by Contractor and identify areas of possible cost savings or time savings in order to reduce the Site Work Target GMP or the Building Target GMP. Upon Owner's approval of the Contractor's Design Documents and finalization of the Owner's Design Documents for the particular phase, Contractor shall, within thirty (30) days of each separate approval date, guarantee and establish a lump sum price for the relevant phase of the Work (such price being hereinafter referred to as the "Site Work Price" and "Building Price", as the case may be, or in general as a "Phase Price") and Exhibit D attached hereto shall be amended accordingly. In addition, Exhibit D will be amended to set forth the date for substantial completion of the particular phase of the Work (i.e. the Site Work or the Building Work) and to identify all appropriate "Contract Documents". This Agreement and all Change Orders issued after the execution of this Agreement and all exhibits attached hereto from time to time are referred to herein as the Contract Documents. In the event the Site Work Price or Building Price exceeds the Site Work Target GMP or Building Target GMP, and Owner requests that the Project be redesigned for value engineering purposes, then the Contractor and Owner agree to work in good faith to redesign the particular phase until the Work for that phase can be completed for an amount equal to or less than the relevant Target GMP. Neither Contractor nor Owner will not act in an unreasonable, arbitrary or capricious manner with respect to withholding its approval of any documents delivered to the other. Upon the relevant Phase Price being determined and Contractor obtaining all necessary permits for each phase of the Work, Contractor shall commence the applicable phase of the Work.

#### Article 2. Time of Completion

The Work shall be substantially completed, in conformance with the Contract Documents (as such shall be amended from time to time in accordance with the terms of Article 1 hereof) and a detailed schedule for each phase shall be approved by Owner and Contractor as Exhibit "E" (individually or collectively, as the context dictates, referred to as the "Contract Time"). If Contractor is delayed at any time in the progress of the Work by any act or neglect of Owner, or by any employee of Owner, or by any separate contractor employed by Owner, or by changes ordered in the Work, or by labor disputes, weather, fire, unusual delay in transportation, fuel, material, or labor shortages or unavailability, unavoidable casualties or any causes beyond Contractor's control, then the Contract Time shall be extended by a period equal to such delay. Such delay shall hereinafter be referred to as "excused delay". All claims for extension of time shall be made, in writing, to Owner no more than twenty (20) days after the occurrence of the delay; otherwise they shall be waived. In the case of a continuing cause of delay, only one (1) claim is necessary.

Article 3. Contract Sum

2,510 *Ben J. K.*

The Site Work Price and Building Work Price referred to above shall be the aggregate of (i) the sum of the cost of all work to be performed under all Subcontracts entered into by the Contractor for the Site Work and Building Work and the costs associated with the Contractor's insurance and general conditions, (as per Exhibit "G" attached) (ii) a payment to Contractor equal to four and eight tenths percent (4.8%) of the sum of the amounts specified at subsection (i) above for Contractor's overhead; and (iii) a fee to Contractor equal to three and two tenths percent (3.2%) of the aggregate of the amounts described in (i) and (ii) above (collectively referred to as the "Contract Sum", which amounts will be set forth in Exhibit "D", as revised from time to time in accordance with the terms of Article 1. Owner shall pay the Contract Sum in current funds. The Contract Sum shall become a guaranteed lump sum price for the Work as provided for at Article 1 subject to further modification only for Change Orders as provided for in Article 6, for additional costs arising out of excused delays and for such other reasons as may be expressly set forth herein. All other costs of the Project in excess of the Contract Sum shall be borne by the Contractor.

Article 4. Payment for Design Services and Construction Services and the Contract Sum

A. **Payments for Contractor's Design Services.** Owner shall pay Contractor for Contractor's Design Services within twenty-one (21) days of Contractor's invoice on a monthly progress payment basis. The total cost for the Contractor's Design Services shall be \$\_\_\_\_\_ and such amount shall not be included in the Contract Sum.

B. **Construction Services - Progress Payments of the Contract Sum.** Owner shall make monthly payments on account of this Agreement within fifteen (15) business days after receipt of Application for Payment, as set forth in Exhibit "F", by Contractor, as follows:

1. Until fifty percent (50%) of each of the three phases of the Work is completed, Owner shall make payments on account to the Contractor equal to ninety percent (90%) of the aggregate value of the respective phase of Work completed, based upon the value of labor, services and materials incorporated in that phase of the Work and of materials stored at the site up to the last day of the preceding month, less the aggregate amount of previous payments made by Owner to Contractor.
2. After fifty percent (50%) of the Work for the applicable phase is completed, Owner shall make payments on account to Contractor equal to ninety-five percent (95%) of the aggregate value of labor, services and materials incorporated in that portion of the Work and of materials stored at the site up to the last day of the preceding month, less the aggregate amount of previous payments made by Owner to Contractor.

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3. Along with each Application for Payment to Owner or contemporaneous with payment, Contractor shall deliver its general lien waiver and further lien waivers from all "major" Subcontractors on the project waiving liens for Work for which payment was requested by Contractor and paid for by Owner on the preceding Application for Payment. Major Subcontractors shall mean those Subcontractors and material suppliers having contracts with Contractor in respect to the project contemplated hereby in excess of \$25,000.00.

C. Final Payment. Full payment of the Site Work Price and the Building Price ("Final Payment(s)") shall be due and payable separately at such times as each of the phases of the Work are substantially complete and this Agreement substantially performed. Issuance of a temporary certificate of occupancy (with respect to the Building Work only), I.D.P.H approval (with respect to the Building Work only), and the issuance by Architect of its Certificate of Substantial Completion shall be deemed to be conclusive evidence that the Work is substantially complete in the event of a dispute. If there should remain minor items to be completed, Contractor and Owner shall list such items and Contractor shall deliver, in writing, its unconditional promise to complete said items within a reasonable time thereafter. Owner may retain a sum equal to one hundred fifty percent (150%) of the estimated cost of completing any unfinished item, provided that said unfinished items are listed separately and the estimated cost of completing each item is likewise listed separately. Thereafter, Owner shall pay to Contractor monthly, on the 10th day of each month, the amount retained for incomplete items as each of said items is completed.

In the event any payment by Owner to Contractor is due, and is not paid by Owner to Contractor on such due date, Owner shall pay interest on said unpaid amount (upon receipt of invoice) from and after its due date, to and including the date of payment, at the rate of four percent (4%) per annum over the prime rate of interest charged to its largest commercial corporate borrowers by Harris Bank of Chicago (or similar institutions if said Bank shall cease to exist or to publish such a prime rate) from the date when the same is due hereunder until the same shall be paid, but if such rate shall exceed the highest rate allowed by law, such rate shall be reduced to the highest rate allowed by law.

Contractor's request for Final Payment for a particular phase (less sums withheld for incomplete items) shall be accompanied by the following instruments:

1. Contractor's affidavit that all payrolls and bills for materials and equipment, and other indebtedness connected with the Work for which Owner has paid Contractor prior to the time of application have been paid or otherwise satisfied, and
2. Consent of surety, if any, to final payment.
3. Final lien waivers.

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Article 5. (For Future Use)

Article 6. Changes in the Work

Owner, without invalidating this Agreement, may order changes in the Work within the general scope of this Agreement, consisting of additions, deletions or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by a Change Order and shall be executed under the applicable conditions of the Contract Documents.

A Change Order is a written order to Contractor signed by Owner issued after the execution of the Agreement authorizing a change in the Work or an adjustment in the Contract Sum or Contract Time. A Change Order shall be signed by Contractor and Owner if there is an adjustment in the Contract Sum or Contract Time. The Contract Sum and Contract Time may be changed only by a Change Order.

The cost or credit to Owner resulting from a change in the Work shall be determined in one or more of the following ways:

- A. By mutual acceptance of a lump sum properly itemized;
- B. By unit prices stated in the Contract Documents or subsequently agreed upon; or
- C. By cost and a mutually acceptable fixed or percentage fee.

If none of the methods set forth above is agreed upon, Contractor, provided it received a Change Order, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of Contractor's reasonable expenditures and savings, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, Contractor shall keep and present an itemized accounting, together with appropriate supporting data. The amount of credit to be allowed by Contractor to Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease in the cost of the Work. When both additions and credits are involved in any one change, the allowance for Contractor's general conditions/insurance and overhead/fee shall be figured on the basis of net increase, if any.

If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will create a hardship on Contractor or Owner, the applicable unit prices shall be equitably adjusted to prevent such hardship.

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**Article 7. Correction of Work**

If during the period of construction the Work is found to be defective or not in accordance with the Contract Documents, Contractor shall correct it with reasonable promptness after receipt of written notice from Owner to do so unless Owner has previously given Contractor written acceptance of such condition. Owner shall give such notice promptly after discovery of the condition.

All such defective or nonconforming Work shall be corrected or removed from the site, if necessary, and the Work shall be corrected to comply with the Contract Documents without cost to Owner. Contractor shall bear the cost of making good all Work of separate contractors destroyed or damaged by such removal or correction.

If Contractor does not remove such defective or nonconforming Work within a reasonable time, Owner may remove it and store the materials or equipment at the expense of Contractor. If Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, Owner may, upon ten (10) additional days written notice, sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all costs that should have been borne by Contractor. If such proceeds of sale do not cover all costs which Contractor should have borne, the difference shall be charged to Contractor and an appropriate Change Order shall be issued. If payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to Owner.

Contractor guarantees the Work for a period of one (1) year only after the date the Work is substantially complete or for such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents. Any guarantee Work shall be done in accordance with the requirements above as to correction, repair or replacement of Work during the construction period. Owner shall be required to perform routine and appropriate regular maintenance during the guarantee period. To the extent products, equipment, systems or materials incorporated in the Work are specified and purchased by the Owner, they shall be covered exclusively by the warranty of the manufacturer.

**Article 8. Insurance**

**A. Contractor's Liability Insurance.** Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from Contractor's operations under this Agreement, whether such operations be by Contractor, by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

1. Claims under workmen's compensation, disability benefits, and other similar employee benefit acts;

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2. Claims for damages arising out of bodily injury, occupational sickness or disease, or death of its employees;
3. Claims for damages arising out of bodily injury, sickness or disease, or death of any person other than its employees;
4. Claims for damages insured by usual personal injury liability coverage which are sustained by (i) any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (ii) any other person;
5. Claims for damages arising out of injury to or destruction of tangible property, and
6. Claims for damages because of bodily injury or property damage arising out of the ownership, maintenance or use of motor vehicles.

The insurance required by Subparagraphs (A) (3), (A) (4), (A) (5) and (A) (6) of this Article 8 shall be written for limits of liability of not less than One Million & NO/100 Dollars (\$1,000,000.00) each occurrence with a general aggregate limit of Two Million & NO/100 Dollars (\$2,000,000.00). The insurance required by Subparagraphs (A) (1) and (A) (2) of this Article 8 shall be written for limits required by law. Said insurance shall include contractual liability insurance as applicable to Contractor's obligations to indemnify Owner as required by Subparagraph (P) of Article 9. In addition to the foregoing, Contractor shall maintain a general liability umbrella of Ten Million & NO/100 Dollars (\$10,000,000.00).

**B. Owner's Liability Insurance.** Owner shall be responsible for purchasing and maintaining such other insurance as will protect it against claims which may arise from operations under this Agreement.

**C. Property Insurance.** Contractor shall purchase and maintain until the date the Work is substantially complete All Risk Builder's Risk insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of Contractor, Owner, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils normally insured against in an All Risk Builder's Risk policy.

Contractor shall purchase and maintain such steam boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of Contractor, Owner, Subcontractors and Sub-subcontractors in the Work.

Any insured loss is to be adjusted with Contractor and made payable to Contractor, as trustee for the insureds as their interests may appear.

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If Owner requests, in writing, that insurance for special hazards be included in the property insurance policy, Contractor shall, if possible include such insurance and the cost thereof shall be charged to Owner by appropriate Change Order.

Contractor and Owner waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under Paragraphs (C) and (D) of Article 8, except such rights as they may have to the proceeds of such insurance.

If required, in writing, by any party in interest, Contractor, as trustee, shall, upon the occurrence of an insured loss, give bond for the proper performance of its duties. Contractor shall deposit in a separate account any money so received and it shall distribute it in accordance with such agreement as the parties in interest may reach. If, after such loss, no other special agreement is made, replacement of damaged Work shall be covered by an appropriate Change Order.

Contractor, as trustee, shall have power to adjust and settle any loss with the insurers. Priority in distribution shall be given so as to reimburse Contractor for Work for which payment had not been made by Owner as of the date of loss.

D. Loss of Use Insurance. Owner, at its option, may purchase and maintain such insurance as will insure it against loss of use of its property due to fire or other hazards, however caused, and shall look only to such insurance in respect to such loss. Owner hereby releases Contractor from all claims for loss or damage to its business or property, lost profits, and indirect or consequential damages.

E. Owner-Contractor Protective Liability Insurance. In lieu of providing Owner with the insurance specified at Section 8.A., Contractor may purchase Owner-Contractor Protective insurance from the Contractor's usual sources as primary coverage for the Owner's vicarious liability for construction operations under the Agreement. In such case the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate limits required for Contractor's Liability Insurance under Section 8.A.

F. Professional Liability. [to be discussed].

JK 00614

#### Article 9. Miscellaneous Provisions

A. Supervision and Construction Procedure. Contractor shall supervise and direct the Work and shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Agreement.

B. Labor and Materials. Unless otherwise specifically noted, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, transportation, and other facilities and services necessary for the proper execution and completion of the Work. All materials shall be new unless otherwise specified. Owner shall not

hire any non-union contractors or subcontractors to perform work at the Site until Contractor has completed the Work.

C. **Discipline of Employees.** Contractor shall, at all times, enforce strict discipline and good order among its employees, and shall not knowingly employ on the Work any unfit person or anyone not skilled in the task assigned to him.

D. **Surveys and Easements.** Owner shall furnish all boundary and topographical surveys (showing the location of all existing improvements, building, set back lines and easements), unless otherwise specified, and shall furnish all easements necessary for access to the site, including easements for installation and maintenance of utilities.

E. **Taxes.** Contractor shall pay all sales, consumer, use and other similar taxes required by law. If the Project is exempt from state sales tax, Owner shall provide Contractor with reasonably satisfactory evidence of such prior to the commencement of the Work.

F. **Permits and Fees.** Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all building permits, and all governmental building fees and licenses (except environmental permits, impact fees, annexation fees, tap-on fees, recapture charges or municipal donations) necessary for the proper execution and completion of the Work which are applicable at the date of this Agreement.

G. **Concealed Conditions.** If in the performance of the Work the Contractor finds latent or concealed conditions or soil conditions which materially differ from the conditions the Contractor reasonably anticipated, or normally encountered, then the Contract Sum and/or the Contract Time shall be equitably adjusted by Change Order within a reasonable time after the conditions are first observed.

Contractor represents that it has no knowledge whether the site of the Work is located in an area that has been or may be designated as a flood plain, flood way and/or wetlands. Owner acknowledges and agrees that in the event that the Work is delayed, disrupted or suspended as a result of any action of any public authority because the site of the Work is found to be in or on a flood plain, flood way or wetlands, then the Contract Time shall be extended for the period of disruption, delay or suspension. Contractor shall be reimbursed by Owner for any costs, damages or losses, including loss of anticipated profit which arise as a result of any delay, disruption or suspension mentioned above.

Owner represents and warrants that to the best of its knowledge the Owner, is not in violation of any Federal, state or local environmental law, statute or ordinance, and that the Site is free from any hazardous materials that would trigger response or remedial action under any existing environmental laws, or any existing common law theory based on a nuisance or strict liability.

H. **Notices.** Contractor shall comply with all Applicable Laws. If Contractor observes that any of the Contract Documents are at variance any Applicable Laws, it shall promptly notify Owner, in writing, and any necessary changes shall be made by appropriate modification. If

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Contractor performs any Work actually knowing it to be contrary to such Applicable Laws, and without such notice to Owner, it shall assume full responsibility therefore and shall bear all costs attributable thereto, provided however, to the extent of any changes in, or adoption of new laws, ordinances or regulations, after the date of this Agreement, Owner shall be responsible for all costs attributable thereto.

I. **Cash Allowance.** Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. These allowances, unless otherwise stated, shall cover the cost of the materials and equipment delivered and unloaded at the site and all applicable taxes, Contractor's handling costs on the site, labor and installation costs. Contractor's general conditions/insurance and overhead/fee and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance. If the cost, when determined, is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order which will include additional handling costs on the site, labor, installation costs, general conditions, insurance, overhead, fee and other expenses.

J. **Superintendent.** Contractor shall employ a competent superintendent who shall be in attendance at the Site at all reasonable times during the progress of the Work.

K. **Responsibility of Contractor.** Contractor shall be responsible to Owner for the acts and omissions of all of its employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work under a contract with Contractor.

L. **Progress Schedule.** Contractor, after being awarded the Agreement, shall prepare and submit to Owner an estimated progress schedule for the Work. This schedule shall indicate the dates for starting and completion of various stages of construction and shall be revised as required by the conditions of the Work.

M. **Drawings and Specifications at Site.** Contractor shall maintain at the Site for Owner one (1) copy of all drawings, specifications, addenda, approved shop drawings, Change Orders and other modifications in good order and marked to record all changes made during construction. These materials shall be available to Owner. The drawings marked to record all changes made during construction shall be delivered to Owner upon completion of the Work and receipt of Payment.

N. **Use of Site.** Contractor shall confine operations at the Site to areas permitted by all Applicable Laws, permits and the Contract Documents and shall not unreasonably encumber the Site with any materials or equipment.

O. **Cutting and Patching.** Contractor shall do all cutting, fitting or patching of its Work that may be required to make the several parts of the Work fit together properly and shall not endanger any Work by cutting, excavating or otherwise altering the Work or any part of it.

P. **Cleaning Up.** Contractor, at all times, shall keep the Site reasonably free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work, Contractor shall remove all its waste materials and rubbish from and about the project as well as all of its tools, construction equipment, machinery and surplus materials, and shall clean all glass surfaces and leave the building "broom clean", or its equivalent, except as otherwise specified. If Contractor fails to clean up, Owner may do so and the cost thereof shall be charged to Contractor.

Q. **Indemnification.** Contractor shall indemnify and hold harmless Owner and its employees, from and against all claims, damages, losses and reasonable expenses, including reasonable attorneys' fees (unless caused in whole or in part by a party indemnified hereunder or any of its contractors or agents), arising out of or resulting from the performance of the Work, provided that such claim, damage, loss or expense is (i) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself); and (ii) caused by any negligent act or omission of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The indemnification obligations under this Subparagraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts. Owner shall notify Contractor of any claim under this indemnity in such time as to avoid prejudice to Contractor and Contractor shall have the right to defend with its own counsel, provided such is reasonably acceptable to Owner. Such indemnification shall not include, nor shall the Contractor be liable for, indirect, special or consequential costs, expenses or damages.

R. **Written Notice.** Written notice shall be deemed to have been deemed duly served on the first business day following receipt if delivered in person, by messenger or by nationally recognized overnight courier for next business day delivery or by facsimile transmission to the individual or member of the firm or to an officer of the corporation for whom it was intended, or, if delivered at or sent by registered or certified mail three (3) business days after being deposited in the United States mail, postage prepaid, to the last business address known to the party who gives the notice,

If to Owner: David E. Kurtz  
Mercy Alliance  
1000 Mineral Point Avenue  
Janesville, WI 54547-5003  
608-756-6173

If to Contractor: Mr. Jacob Kiferbaum  
Kiferbaum Construction Corporation  
790 Estate Drive  
Deerfield, IL 60015  
Fax: (847) 914-9650

JK 00617

or at such other address as the parties may hereafter designate by written notice to the other.

S. **Claims for Damages.** Should either party to this Agreement suffer injury or damage to persons or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, claim shall be made, in writing, to such other party within a reasonable time after the first observance of such injury or damage.

T. **Royalties and Patents.** Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights relating to equipment or materials incorporated in the Work and shall save Owner harmless from loss on account thereof, except that Owner shall be responsible for all such loss when a particular design process or the product of a particular manufacturer or manufacturers is specified by Owner, but if Contractor has actual knowledge that the design, process or product specified is an infringement of a patent, it shall be responsible for such loss unless it promptly gives such information to Owner.

U. **Termination of Agreement by Contractor.** In the event (i) the Work is stopped by any public authority, or through the act, omission, or inaction of Owner, without the fault of Contractor, (ii) Owner fails to pay Contractor any payment after it is due, (iii) Owner breaches any of its other obligations under the Agreement, (iv) a voluntary or involuntary petition shall be filed by Owner under any law having for its purpose the adjudication of Owner as bankrupt, (v) a receiver is appointed for the property of Owner by reason of the insolvency of Owner, (vi) any department of the State or Federal government, or any officer thereof, duly authorized, shall take possession of the business or property of Owner by reason of the insolvency of Owner, (vii) Owner makes an assignment for the benefit of its creditors, such shall be deemed to be a default by Owner. In the event of a default by Owner, Contractor may cease all or any portion of the Work and Owner shall be responsible for all increased costs arising out of such delay and such delay shall extend the Contract Time. Further, in any such event and irrespective of whether or not Contractor ceases all or any portion of the Work, after thirty (30) days written notice to Owner and failure of Owner to remove the default or cure such default, Contractor may terminate this Agreement, remove any materials, equipment, and tools from the Site, and recover from Owner payment for all Work executed, any loss sustained by Contractor, Contractor's reasonable profit and such other damages as Contractor may sustain by reason of Owner's default and the termination of the Agreement and all amounts set forth in Section 9.2 below.

V. **Termination of Agreement by Owner.** If Contractor is adjudged a bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if it fails to make uncontested payment to Subcontractors or for materials or labor, or persistently disregards Applicable Laws or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then Owner may, without prejudice to any right or remedy

and after giving Contractor and its surety, if any, thirty (30) days written notice (and failure of Contractor to cure or commence to cure with all due diligence such matter within such thirty (30) day period), terminate the employment of Contractor and take possession of the Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor and may finish the Work by whatever method it may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, such excess shall be paid to Contractor. If such cost exceeds such unpaid balance of the Contract Sum, Contractor shall pay the difference to Owner.

W. **Inspection.** Owner and its representative shall, at their sole risk, and at reasonable times, have access to the Work whenever it is in preparation or progress, and Contractor shall permit and facilitate inspection of the Work by Owner, its agents, and public authorities concerned with such Work. Owner shall hold Contractor harmless from any injury sustained by Owner or any of its employers or agents during such inspections.

X. **Financing.** Contractor shall comply with all reasonable compliance requests from Owner's lender, however, consent or approval must not require Contractor to subordinate its lien rights; must not materially increase the scope of Contractor's obligations under this Agreement; must not decrease the scope of Contractor's rights under this Agreement and must be consistent with lending practices typical of institutional lenders for commercial real estate development in the metropolitan Chicago area.

Y. **Consequential Damages.** Except as expressly provided for in Section 9, the Owner and Contractor agree to waive all claims against the other for all consequential damages that may arise out of or relate to this Agreement. The Owner agrees to waive damages including, but not limited to the Owner's loss of use of the Property, all rental expenses incurred, loss of services of employees, or loss of reputation. Except as expressly provided for in Section 9, the Contractor agrees to waive damages including but not limited to the loss of business, loss of financing, principal office overhead and profits, loss of profits not related to this Project, or loss of reputation. The provisions of this Paragraph shall govern the termination of this Agreement and shall survive such termination.

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Z. **Payment in the Event of Termination.**

1. At any time, Owner may terminate this Agreement for its convenience. If Owner terminates this Agreement for its convenience and neither it, nor any of its affiliates proceeds with the Project for any reason and the Project is abandoned, Owner shall pay the following termination fee to Contractor: (i) all of Contractor's actual out-of-pocket expenses through the date of termination, including, but not limited to, amounts expended by Contractor for general conditions, insurance and overhead; and (ii) a termination fee as liquidated damages, and not as a penalty, as the parties acknowledge that the Contractor's damages will be difficult or impossible to ascertain, equal to one percent (1%) of the estimated cost of the Work as set forth in the Owner's application for a certificate of need

("CON") (as designated in the Owner's Illinois Health Facilities Planning Board CON application, Section N, Project Costs and Sources of Funds, line items for site preparation, off-site work and new construction contracts). It will be deemed that Owner has terminated this Agreement for convenience if Owner obtains a CON and prior to Contractor commencing the Work, Owner allows it to expire. Notwithstanding anything contained above, Owner will not owe any amounts to Contractor under either this Subsection Z.1 or Subsection Z.2 below if Owner does not obtain a CON.

2. If Owner terminates this Agreement for convenience or any other reason, except for Contractor's material breach and failure to cure pursuant to Section 9.V hereof, and Owner, or its affiliate, proceeds with the Project at any time thereafter, Owner shall pay the following termination fee to Contractor: (i) all of Contractor's actual out-of-pocket expenses through the date of termination, including, but not limited to, amounts expended by Contractor for general conditions, insurance and overhead; and (ii) a termination fee as liquidated damages, and not as a penalty, as the parties acknowledge that the Contractor's damages will be difficult or impossible to ascertain, equal to five percent (5%) of the estimated cost of the Work as set forth in the Owner's application for a CON (as designated in the Owner's Illinois Health Facilities Planning Board CON application, Section N, Project Costs and Sources of Funds, line items for site preparation, off-site work and new construction contracts). The above amounts are intended to be the parties' good faith estimate of the value of Contractor's consulting services rendered through the date of termination and Contractor's estimated damages, including, but not limited to, lost profits and lost opportunity costs.

#### Article 10. Titles

Titles of articles are used in this Agreement solely for the convenience of those examining it and are not to be resorted to as aids in its construction or interpretation.

#### Article 11. Successors

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

#### Article 12. Law Governing

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. The parties hereto irrevocably agree that all actions or proceedings in any way, manner or respect arising out of or from or related to this Agreement shall be litigated only in courts having situs in Illinois. All costs and reasonable attorneys' fees incurred by the prevailing party in enforcing this Agreement shall be paid to the prevailing party by the other party to this Agreement.

#### Article 13. Financing Contingency

JK 00620

Prior to [Date], and prior to Contractor being required to commence the Work, Owner shall provide to Contractor reasonably satisfactory evidence indicating that firm financing is available to pay for all costs of the project of which the improvements contemplated hereunder are a part (with all pre-construction and pre-disbursement contingencies satisfied), said financing to provide payment to Contractor under and according to the terms of this Agreement. Further, Owner agrees to refrain from taking any action which might directly or indirectly void or constitute a default under any loan agreements in connection with the project and agrees that all agreements made in connection with such financing are deemed made for the benefit of Contractor. Owner shall be responsible for all costs arising out of delays in securing financing.

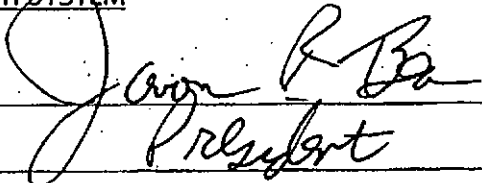
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

KIFERBAUM CONSTRUCTION CORPORATION (Contractor)

BY:  \_\_\_\_\_

ITS: PRESIDENT \_\_\_\_\_

MERCY HEALTH SYSTEM

BY:  \_\_\_\_\_

ITS: President \_\_\_\_\_

Construction Contract  
Mercy Alliance, Inc.  
Page 17

EXHIBIT "A"

LEGAL DESCRIPTION

The North 1464.54 feet of the West 580.14 feet of the Southeast Quarter of Section 10  
(exception therefrom that part taken for State Route 31 and Three Oaks Road), all in  
Township 43 North, Range 8 East of the Third Principal Meridian in McHenry County, Illinois.

The Parcel contains approximately 16.71 acres.

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EXHIBIT "B"

The Contract Documents for this project are as follows:

Drawings     A200, A200A thru A200D, A201A thru A201D,  
                  A202A thru A202D, A203C, A203D, A204C, A204D,  
                  A205C, A205D, A210, A220, A230, A250, A400, C300,  
                  C400, C500, and Site Plan by Hammel, Green,  
                  and Abrahamson, Inc. (Dated 5/22/03)



EXHIBIT "D"

This \_\_\_\_\_ day of \_\_\_\_\_, 2003, Mercy Alliance, Inc. and Kiferbaum Construction Corporation in accordance with Article 1 of the Construction Contract hereby amend the Agreement as follows:

1. Building Target GMP is \$ [To be Determined].
2. The Site Work GMP is \$ [To Be Determined].
3. The Building Price is \$ [To Be Determined]
4. The Site Work Price is \$ [ To Be Determined]
5. The Contract Sum is \$ [ To Be Determined]
6. The Construction Documents which form the basis for the Building Price are:  
\_\_\_\_\_  
\_\_\_\_\_
7. The Construction Documents which form the basis for the Site Work Price are: [To Be Determined].

Mercy Alliance, Inc.

Kiferbaum Construction Corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

JK 00624

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EXHIBIT "E"

MILESTONE SCHEDULE

JK 00625

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EXHIBIT "F"

APPLICATION FOR PAYMENT FORM  
(CONTRACTOR'S SWORN STATEMENT)

Proposals/mercy crystal lake/contract/mercy contract.1.23.04

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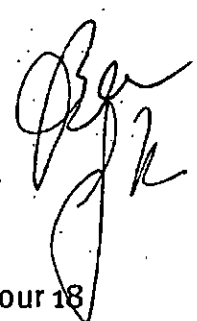
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EXHIBIT "G"

MERCY CRYSTAL LAKE - SUMMARY OF FIXED LINE ITEMS.

January 28, 2004

		FIXED
1. General Conditions	2.70	2.70%
<del>2. Insurance</del>	<del>0.65</del>	<del>0.65%</del>
3. Overhead	4.80	4.80%
4. Fee	2.50	3.20%
Total	<u>10.00</u>	<u>11.35%</u>



Note: Items 1, 2, & 3 are time sensitive and are calculated based upon our 18 month construction projection. In the event that this project extends beyond 20 months, due to circumstances beyond Kiferbaum's control, additional general conditions, insurance and overhead will be assessed on a pro-rata basis.

JK 00627

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**EXHIBIT 12**

THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
MCHENRY COUNTY, ILLINOIS

NORTHERN ILLINOIS MEDICAL CENTER, )  
MEMORIAL MEDICAL CENTER, and )  
CENTEGRA HEALTH SYSTEM, )

Plaintiffs, )

v. )

No. 04-MR-106 )

ILLINOIS HEALTH FACILITIES PLANNING )  
BOARD, ILLINOIS DEPARTMENT OF )  
PUBLIC HEALTH, MERCY CRYSTAL )  
LAKE HOSPITAL AND MEDICAL CENTER, )  
INC., MERCY HEALTH SYSTEM )  
CORPORATION, ELI L. BEEDING JR., and )  
THE BEEDING GROUP, )

Defendants. )

**DEFENDANT MERCY CRYSTAL LAKE HOSPITAL AND  
MEDICAL CENTER, INC.'S RESPONSE TO PLAINTIFFS'  
FIRST SET OF INTERROGATORIES**

Defendant Mercy Crystal Lake Hospital and Medical Center, Inc. states as its responses  
to the Plaintiffs' First Set of Interrogatories as follows:

Interrogatories

1. State whether any director, officer, employee, attorney or agent of Mercy Crystal Lake Hospital and Medical Center Inc., Mercy Health System Corporation or Mercy Alliance Inc. had any communication with Stuart Levine relating in any way to: a proposed hospital in Crystal Lake, Illinois; Jacob Kiferbaum; Kiferbaum Construction; Nicholas Hurtgen; or Bear Stearns & Co. during the period January, 1, 2003 to the present. If so, state as to each such communication the date, the name and address of each person who was a participant to the communication or present during any such communication, and the substance of what was said.

**ANSWER:** Other than communications to the Illinois Health Facilities Planning Board, defendant knows of only one communication involving Stuart Levine and an employee of defendant. In or about February 2004, Mercy employee Rich Gruber had a brief conversation with Stuart Levine and Jacob Kiferbaum. Kiferbaum introduced Levine and Gruber to each

other, and Levine told Gruber that Kiferbaum was a man of integrity and that Gruber could trust him, or words to that effect. Gruber replied that he was impressed with Kiferbaum's construction company, or words to that effect. Gruber, Levine, and Kiferbaum were present during this conversation.

2. State whether any director, officer, employee, attorney or agent of Mercy Crystal Lake Hospital and Medical Center Inc., Mercy Health System Corporation or Mercy Alliance Inc. had any communication with Thomas Beck, Michael Malek, Fortune Massuda, Annamarie Carrie-York, Danalyn Rice, Imad Almanaseer, or Pamela Orr relating in any way to: a proposed hospital in Crystal Lake, Illinois; Jacob Kiferbaum; Kiferbaum Construction; Nicholas Hurtgen; or Bear Stearns & Co. during the period January 1, 2003 through April 21, 2004. If so, state as to each such communication the date, the name and address of each person who was a participant to the communication or present during any such communication, and the substance of what was said.

ANSWER: Other than communications to the Illinois Health Facilities Planning Board, defendant knows of no such communication.

3. State whether Herbert Franks or Mike Noonan had any communication with Pamela Meyer Davis or William Kottman or any other officer, employee or agent of Edward Hospital between January 1, 2004 and April 21, 2004 in which any of the following was mentioned: a proposed hospital in Crystal Lake, Illinois; a proposed hospital in Plainfield, Illinois; Jacob Kiferbaum or Kiferbaum Construction; Stuart Levine; or the Illinois Health Facilities Planning Board. If so, state as to each such communication the date, the name and

address of each person who was a participant to the communication or present during any such communication, and the substance of what was said.

ANSWER: Defendants object to this interrogatory because it seeks information covered by the attorney work product doctrine and attorney-client privilege. Subject to these objections, defendant knows of no such communication.

Dated: March 9, 2005

Respectfully submitted,

Mercy Crystal Lake Hospital and Medical  
Center, Inc.

By: Brett Johnson  
One of its attorneys

Steven H. Hoefft  
Brett R. Johnson  
McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago IL 60606  
(312)-372-2000



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies under penalty of perjury under the laws of the State of Illinois that, on March 9, 2005, he caused to be served on the person(s) listed below in the manner shown Defendant Mercy Crystal Lake Hospital And Medical Center, Inc.'s Response To Plaintiffs' First Set Of Interrogatories:

Mr. Jeffrey R. Ladd  
Daniel J. Lawler  
Lawrence M. Gavin  
Bell Boyd & Lloyd  
Three First National Plaza  
70 W. Madison - Suite 3100  
Chicago, IL 60602

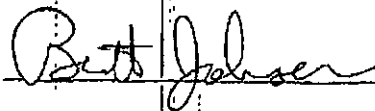
David G. Phoenix  
Thomas C. Zanck  
Militello Zanck & Coen PC  
40 Brink Street  
Crystal Lake, IL 60014

Katherine H. Laurent  
Assistant Attorney General  
Office of the Attorney General  
General Law Bureau  
James R. Thompson Center  
100 W. Randolph - 13th Floor  
Chicago, IL 60601  
(312) 814-3327

Mr. Eli L. Beeding, Jr.  
The Beeding Group  
7488 County Road 3  
Marble, CO 81623

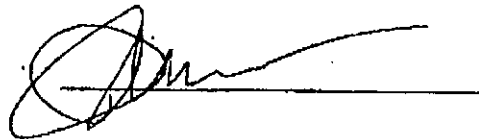
- United States Mail, First Class
- By Messenger
- By Overnight Delivery
- By Facsimile

Dated at Chicago, Illinois, this 9th day of March, 2005.

  
\_\_\_\_\_

VERIFICATION

I, Richard Gruber, being first duly sworn on oath, state the I am a Vice President of Mercy Health System Corporation, authorized for the purpose of executing this document on behalf of Mercy Health System Corporation, that I do not have personal knowledge of all the facts recited in the foregoing document, and that certain statements and information made herein have been collected and made available to me by counsel and employees of Mercy Health System Corporation and others; and based on this information, in addition to my personal knowledge, I certify on behalf of Mercy Health System Corporation that the answers made herein are true and correct.



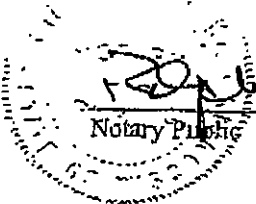
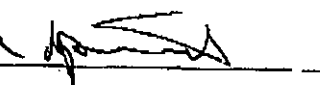
STATE OF WISCONSIN

ROCK COUNTY

)  
) ss.  
)

On March 9, 2005 before me, Ralph Tupiwo, Notary Public, personally appeared Richard Gruber, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

**EXHIBIT 13**

May 5, 2009

**Pam Davis' Testimony to Illinois General Assembly  
Joint Committee on Government Reform**

Good morning, I'm Pam Davis, President & CEO of Edward Hospital & Health Services. Thank you for inviting me to testify this morning to the Joint Committee on Government Reform. I am testifying today in support of House Amendment number four of Senate Bill 1905.

There are two compelling reasons to take strong action and support this amendment.

First and foremost is **accountability to the public**. In order to restore what shred of public trust still remains in the process of health care expansion review and approvals, also known as Certificate of Need, **the General Assembly needs to hit the reset button**. The state officials who hold the two positions specifically mentioned in Amendment Four were directly connected to the Planning Board as the corruption played out more than five years ago. When the scandal broke in 2004, every Planning Board member, regardless of any alleged involvement, was excused. However, two key players in the process mentioned in Amendment Four, for some reason, were kept on. I agree with the criteria that Speaker Madigan put forth in the case of the Teacher's Retirement Fund. Speaker Madigan is quoted in the State Journal Register on April 4 of this year talking about TRS's Jon Bauman...and I quote... "Mr. Bauman was on deck before, during and after the scandal at TRS." While I am certainly not accusing either the Executive Secretary or Deputy Director of illegal behavior, I submit that this General Assembly must act as they did in the TRS case, and remove all remnants from the former Planning Board or risk tainting all of their C-O-N reform efforts.

The second reason to support Amendment Four is to **improve the competency of health care planning in Illinois**. New rules were supposed to have been completed by December 31, 2004 – that's more than four years ago. Under the leadership of these two

public officials, the rules process has been fraught with delays, uncertainty and lack of transparency.

Let's start with accountability.

I have been president at Edward Hospital in Naperville for more than 20 years. We have grown from a small community provider into our region's most preferred hospital. Over the years we have carefully planned and built a medical center with more than 20 locations to keep up with the demand of one of the fastest growing areas in the state, if not the nation.

Back in 2003 we were planning to expand into Plainfield by building an outpatient center and a new hospital. At the time, we were very crowded on our Naperville campus—in fact, we were running at 106% occupancy—mostly because of the growing number of patients coming from south of Naperville including Plainfield. It just made sense to bring services closer to this growing region in Plainfield.

In December 2003 we appeared before the Planning Board with the Edward Plainfield Outpatient Center – not the hospital just yet, but the outpatient center application. To our knowledge, an outpatient center like this had never been turned down by the Planning Board. However, the Planning Board including Chair Tom Beck and Vice Chair Stuart Levine, among others, attacked the project and voted an intent-to-deny. I was stunned. Something was terribly wrong.

I had been approached separately a few days prior to, and immediately after the hearing by Nick Hurtgen of Bear Stearns and Jacob Kiferbaum of Kiferbaum Construction who said they had the clout to get the votes I needed. After how badly the hearing had gone, I felt certain that I, and Edward, were in the process of being extorted.

I went to the FBI with my suspicions.

As you can imagine, the FBI agents had suspicions of their own about my story. They don't get many cold calls like this.

But to their credit, the FBI agreed to take action.

On January 6, 2004, the FBI recorded a meeting I held with Hurtgen who reiterated that he was politically connected to the Illinois state government and could get things done, and that our projects would not be approved unless I went along.

On March 17, 2004, I met with Herbert Franks and Mike Noonan who were assisting Mercy Hospital in seeking to obtain approval of Mercy's Crystal Lakes CON. They told me that I should hire Kiferbaum to construct our hospital in Plainfield because Kiferbaum wielded influence with two or three Planning Board members. They said that for the Mercy project, Board member Levine personally met with Kiferbaum and Mercy's CEO to reassure the Mercy's CEO that Kiferbaum could get things done.

In April of 2004 I met with Jacob Kiferbaum at the Egg Shell Café in Deerfield and he told me point blank that Mercy was going to be approved because it was using his company for construction...and that I had to use Kiferbaum Construction or my project would not be approved. Levine and Hurtgen were seated at another table. Mr. Levine walked over and said that I could trust Kiferbaum and that Kiferbaum's word was good. Of course, the FBI had surveillance of this meeting.

For eight months, I worked undercover with the FBI and wore a recording device for hours at a time including many phone calls and other meetings with the schemers.

This was one of the most stressful times of my life. I couldn't eat properly, my blood pressure shot up, and my finger nails were actually cracking under the stress. In the end, as you know, the investigation led to the conviction of Planning Board Vice Chair Stu Levine, Nick Hurtgen, Jacob Kiferbaum among others. I'm proud of what I did along with Bill Kottmann, a colleague and Vice President at Edward. I'm also proud, and

saddened, that these tapes opened the door into the pay-to-play world of our former Governor.

When all of this was happening in December 2003 and into 2004, where was the executive secretary of the Planning Board along with the deputy director of the Department of Public Health? Sitting right there at the Planning Board meetings watching the corruption play out publicly while doing little if anything to stop it.

The most compelling example of the corruption playing out publicly happened in April 2004 in connection to the Mercy Hospital decision. During the hearing, which played out publicly in front of hundreds of onlookers, the Mercy Hospital project was approved.

Here's how Alice Hohl, the reporter from the Daily Southtown reported the vote on the Mercy Hospital application which won approval 4-3 on April 21, 2004...and I quote from her 2004 story... "Board members spoke of the Board's power to ignore state criteria. They whispered in conferences during the vote, and one member changed his mind after seeing the vote of his peers...In the middle of the vote, the roll call was halted as Beck and Levine whispered to each other. Levine then approached Dr. Imad Alamanseer, who had voted 'pass' instead of 'yes' or 'no'. After another whispered conversation between Levine and Alamanseer, Alamanseer changed his 'pass' to 'yes', providing the vote needed to pass the project." Unquote.

Members of this Joint Committee, I was there. I watched this happening. There was an audible gasp in the room when Alamanseer changed his vote and Mercy was approved. It was apparent to me and many others in the room that the fix was in. If ever there was a smoking gun, this was it. Yet, as the reporter writes in her story, and I quote... "Stunned by what unfolded, hospital executives did not want to comment on the 'irregularities' because many of them have projects pending before the board" endquote.

With Illinois hospitals basically held hostage by the audacity of the corrupt Board members, the Executive Secretary and Deputy Director watched along with the rest of us.

Yet, to the best of my knowledge, they did little or nothing to report the irregularities or to stop the corruption. And there are plenty of other hospital officials who feel as I do about the leadership of the Planning Board, yet they are too afraid to testify.

Even Stu Levine found the whole situation amusing. During a taped conversation on April 21, 2004, which was revealed during the Tony Rezko trial, Mr. Levine refers to the Mercy vote and says, and I quote, "Looked liked there was a shoe hitting somebody over the head. Could you, did, did you ever in your life see a vote stop in the middle?" endquote.

During 2003 and 2004, the Executive Secretary and Deputy Director were also part of closed-door sessions with Levine, Beck and the other Planning Board members – sessions that were not open to the public. We have no idea what exactly was said, or what was concocted during these private sessions. Again, while not pointing to any illegalities by either public official, I can only imagine that the corrupt Board members were emboldened by this lack of transparency.

What we do know is that the tip of the iceberg was clearly on display at the April 20, 2004, hearing regarding Mercy Hospital.

The Mercy Hospital approval was later set aside because of the corruption.

In fact the only new hospital built in the past 20 plus years is Adventist Bolingbrook Hospital. Adventist Bolingbrook was favored by Tony Rezko. We know this from another transcript from the Rezko trial where former Planning Board Chair Tom Beck says of Rezko, and I quote... "he wants Edwards down and Bolingbrook up...he wants them yes...he wants Edwards to have nothing." End-quote.

Throughout the past five or six years, the Executive Secretary and Deputy Director have also treated Edward disrespectfully during our many appearances before them seeking a hospital in Plainfield. I'd be happy to send this Committee a list of our grievances about



past applications. However, I'd like to focus my support for Amendment Four on the big picture – on accountability and competence.

During the many months of testimony connected to the Illinois Task Force on Health Planning Reform which some of you served on, one thing became abundantly clear: the need for a proactive statewide health plan.

The Executive Secretary and Deputy Director are two of the key public health officials responsible for overseeing the proper execution of the Illinois Health Facilities Planning Act. Section 1100.30 currently states that, and I quote... "This State Plan is...specifically designed to develop a procedure which establishes an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public" and "which promotes through the process of comprehensive health planning the orderly and economic development of health care facilities in the State of Illinois to avoid unnecessary duplication of facilities or services." End quote.

This section provides a clear direction for public health that has not been followed. The fact that the Task Force recommendations spell out a new structure and process for achieving the stated goals of the Health Facilities Planning Act is evidence that the job has been seriously botched.

Plus, health planning in Illinois will only have integrity if it's supported by rules that make sense, rules that are transparent, and rules that are easy to understand and are applied consistently and in a way that supports such a plan. We are nowhere close to that in Illinois under the current leadership in public health. If the CON process is to continue, it needs to be supported by good rulemaking. Further, someone needs to look at how these rules are implemented.

For instance, Public Act 05-005, which was passed nearly unanimously and intended to ensure high growth areas of the state had adequate access to hospital services, was not

implemented as intended—and it has not had the desired effect. Why? Because, under the Deputy Director's supervision, inputs into the bed need formula remain outdated, flawed and extremely difficult to understand. And staunch defense of this flawed formula has stymied effective health planning, rational allocation of services, and access to health care.

The IDPH Bed Inventory, which provides information on the supply and future demand for various hospital services across the state, provides clear evidence of the mess that has developed. There are thousands of excess beds in the City of Chicago, and huge excesses in other areas of the State. But then you have some areas where there aren't enough beds. There is large variation in bed supply and bed need across Planning Areas. There is a strange imbalance of bed supply and bed need within Planning Areas. Obviously, things have not been working as they should.

What we are missing in Illinois is a participative and interactive planning process where we look at this as a whole and say, 'something's not right,' and 'what are we going to do to fix this?' Instead, we have a process where we hear 'this is the way it is,' and 'the rules are the rules.'

In conclusion, House Amendment Four of Senate Bill 1905 deserves your support.

All holdovers in a leadership position of public health should not be connected to any reformed planning board or certificate of need process. State officials – especially those appointed by the Governor and/or holding high level state positions – should be held accountable for their actions, and in-action.

One of the primary reasons that health care planning in Illinois needs to be reformed is because leadership has been clearly ineffective in dealing with these issues. We need new blood and new ideas to get what you want done enacted properly.

Ladies and gentlemen, approximately \$5 billion dollars worth of hospital expansion projects were reviewed by the Health Facilities Planning Board last year. That's \$5 billion dollars with a "B". No wonder pay-to-play schemes have been targeted at hospitals. The temptation for corruption is huge. This system needs a complete overhaul including new leadership and ex-officio members. The system is broken. In a joint statement to the Illinois Task Force on Health Planning Reform, the U.S. Department of Justice and Federal Trade Commission said, and I quote, "C-O-N laws can be subject to various types of abuse, creating additional barriers to entry, as well as opportunities for anticompetitive behavior by private parties." End-quote. The report went on to say that, and I quote, "The CON process itself may sometimes be susceptible to corruption." End-quote.

We know that all too well in Illinois.

Please step to your responsibilities and help overhaul this system...or send it to the scrap heap.

-end-

**EXHIBIT 14**

CERTIFIED DECLARATION OF PAMELA DAVIS

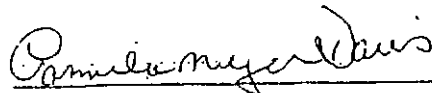
I, PAMELA DAVIS, declare under penalty of perjury under the laws of the United States of America that the following statements of fact are true and correct:

1. I am over eighteen years of age. I have personal knowledge of the facts stated in this declaration and I could testify competently to such facts.
2. Since 1988, I have been the President and Chief Executive Office of the Edward Health Services Corporation (EHSC), the parent of Edward Hospital (EH).
3. In November 2003, Edward Hospital filed a permit application, Certificate of Need (CON), with the Illinois Health Facilities Planning Board to establish a medical office building (MOB) in Plainfield, Illinois.
4. On January 6, 2004, I met with Mr. Hurtgen of Bear Stearns. He said he was politically connected to the Illinois state government and can "get things done." Hurtgen further told us that Stuart Levine and the Illinois State Facilities Planning Board Chairman Thomas Beck would decide the fate of both Edward's application for a permit to construct a new hospital in Plainfield and Mercy's in Crystal Lake. He told us to use Kiferbaum's construction company or the Edward CON would not be approved.
5. I met with Herbert Franks and Mike Noonan on or about March 17, 2004. They were assisting Mercy Hospital in seeking to obtain approval of Mercy's Crystal Lakes hospital construction permit. They told me that I should hire Kiferbaum to construct the new Edward facility, because Kieferbaum wielded influence with 2-3

members of the State Board. They said that for the Mercy project, Board member Levine had personally met with Kiferbaum and Mercy's CEO to reassure the Mercy's CEO that Kiferbaum could "get things done."

6. On or about April 19, 2004, I met with Jacob Kieferbaum at the Egg Shell Café in Deerfield, Illinois. Kieferbaum said that he was good friends with Levine and with five of the existing Board members; that the Mercy construction would be approved at the Board meeting of April 21, 2004; and that if we did not use Kieferbaum's company, the Certificate of Need to build the new Edward Hospital in Plainfield would not be approved by the Board. Stuart Levine and Nicholas Hurtgen were also at the Egg Shell Café although they were seated at another table. Mr. Levine walked over to our table. He said that I could trust Kiferbaum and that Kieferbaum's word was good.

FURTHER THE DECLARANT SAYETH NOT.



Executed on March 4, 2005

**EXHIBIT 15**

DATE: 4/20/04  
TIME: 4:52 p.m.  
ACTIVITY: Home Telephone 1 incoming from (847) 833-7300  
CALL#: 303

SPEAKERS:  
LEVINE: Stuart Levine  
KIFERBAUM: Jacob Kiferbaum

\* \* \* \*

1 LEVINE Hello.  
2 KIFERBAUM Stuart, Jacob.  
3 LEVINE Hi Jacob.  
4 KIFERBAUM Am I disturbing you?  
5 LEVINE No, not at all.  
6 KIFERBAUM Javon Bea is panicking now.  
7 LEVINE Alright now, now, now I want you to  
8 listen to me real good. He's got a  
9 lawyer. His lawyer's with him as a  
10 matter of fact and everything is just  
11 fine and just, and, and, and that, that,  
12 that's that. You can not respond. His  
13 lawyer is with him and uh, his lawyer's  
14 been communicating. He knows exactly  
15 what's what and things are fine.  
16 KIFERBAUM Okay. So that, that's who I'm gonna  
17 call. He asked me about the fifth vote  
18 (UI) I said...  
19 LEVINE He asked you about what?  
20 KIFERBAUM A fifth vote.  
21 LEVINE You know what, you know what. You, you  
22 just uh, ...  
23 KIFERBAUM Okay, I know what to say.  
24 LEVINE I, I, I'm, I am telling you that a,  
25 that, that uh, uh, uh, uh his lawyer's



1                                been with him all afternoon. I mean you  
2                                know Steve. And, and, and, and, and I'm  
3                                telling you that things are uh, things  
4                                are fine. And, and but having him, you  
5                                know it's just uh, uh, uh if he, if he  
6                                wants to panic let him panic. But he's  
7                                got a lawyer. And uh, and uh, I don't  
8                                want him uh, you know think that you  
9                                can, you call and (UI) get you know uh,  
10                              uh, it's, it's, it's gonna be...what he  
11                              wants you to do? Or what does he, what  
12                              does he...

13        KIFERBAUM                    I hear you.

14        LEVINE                      Yeah what, what, what did, what he  
15                              called and says uh, what is he panicking  
16                              about?

17        KIFERBAUM                    Well he said that he heard, he spent  
18                              some time with Steve and Steve was  
19                              telling him, telling him, telling him  
20                              that it's not, he's not sure that it's  
21                              going to go through tomorrow because uh,  
22                              they...

23        LEVINE                      Well there, there, there was just, just,  
24                              you just, uh yeah you know what uh, uh,  
25                              uh, uh, uh, there uh, uh, uh, everything  
26                              is fine.

27        KIFERBAUM                    Okay.

28        LEVINE                      And, and there was, there was a  
29                              possibility that uh, that the  
30                              presentation will be made and it would  
31                              have been put off uh, uh, to uh, to  
32                              June, and Steve was right to uh, to say  
33                              that he's not sure that it's going to  
34                              uh, uh, uh, to go which would not have  
35                              been adverse to his client's uh, uh,  
36                              position. This is, you know it's  
37                              complicated, this and that, but uh, uh,  
38                              uh, uh, you know, you don't want to give  
39                              him any, any, any special uh,  
40                              information. And uh, if you want to uh,  
41                              ca-, what are you gonna do?

1 KIFERBAUM Apparently he knows the special...He  
2 went on and on with names, and this  
3 name, and that name, and you know I  
4 said, "listen, you know, I, I let me  
5 find out". I didn't tell him where.

6 LEVINE Well, yeah but will he know (UI). But,  
7 uh, but, you just, you, you just tell  
8 him that, that um, uh, he's, that he  
9 couldn't have a better team (UI)...

10 KIFERBAUM Good hands.

11 LEVINE Uh, huh?

12 KIFERBAUM That he is in good hands.

13 LEVINE He's in good hands. And, and, and, and  
14 uh, and that's that. If he wants to  
15 sweat all night uh, let him sweat all  
16 night. The fact of the matter is he'll  
17 find out tomorrow. You can't, you know  
18 they're all fucking nuts.

19 KIFERBAUM (laughs)

20 LEVINE Ah, but I'll tell you who's going to go  
21 nuts tomorrow is, is, is that other  
22 bitch. But let's forget (laughs) not  
23 worry about that.

24 KIFERBAUM Huh?

25 LEVINE Huh?

26 KIFERBAUM I love to hear that. (laughs)

27 LEVINE Yea, now you're not gonna be there.

28 KIFERBAUM I'm not?

29 LEVINE Yeah, right.

30 KIFERBAUM Okay. I, I will uh,...

31 LEVINE No. I think it's good because, because  
32 uh, uh, she'll say it's not...it serves  
33 no purpose uh, at all.

1 KIFERBAUM Okay.

2 LEVINE Uh, to the contrary. Uh, because uh,  
3 she'll uh, you know.

4 KIFERBAUM I, I hear you.

5 LEVINE Yeah.

6 KIFERBAUM I know, I know what to do now. I'm  
7 going to tell him you're in good hands.

8 LEVINE Yeah abs, uh, uh, uh, uh, uh, uh, abs,  
9 absolutely. I've been on, but you know  
10 this is uh, uh, uh, we're fine.

11 KIFERBAUM Thank you.

12 LEVINE And, and I'll be there. And, and, then,  
13 and circumstances being what they are,  
14 I'm participating fully.

15 KIFERBAUM Okay.

16 LEVINE Okay.

17 KIFERBAUM I'll talk to you.

18 LEVINE Okay. Bye-bye.

**EXHIBIT 16**

STATE OF ILLINOIS  
DEPARTMENT OF PUBLIC HEALTH

HEALTH FACILITIES PLANNING BOARD  
BOARD MEETING

B-4 Mercy Crystal Lake Hosp. and Med. Cntr:  
Construct and establish a 70-bed  
hsopital with a 45-physician clinic  
attached which consists of offices,  
treatment rooms & suppiort space.

REPORT OF PROCEEDINGS held at  
the Holiday Inn Mart Plaza, 350 North  
Orleans, Chicago, Illinois on the 21st day  
of April, 2004 at 9:10 o'clock a.m, before:  
Thomas Beck, Chairman.

PRESENT:

THOMAS BECK, CHAIRMAN  
STUART LEVINE, VICE CHAIRMAN  
ANNE MURPHY, LEGAL COUNSEL  
DAVID CARVALLO  
DR. IMAD ALMANSEER  
ANNAMARIE CARRIE YORK  
DANALYN RICE  
FRANK URSO, LEGAL COUNSEL  
PAMELA ORR  
DR. MICHAEL MALEK  
JEFFREY MARK  
DONALD JONES  
DR. FORUNEE MASSUDA

1 CHAIRMAN BECK: Would the applicant  
2 be sworn in, please?

3 (Witnesses sworn.)

4 COURT REPORTER: Thank you. Please  
5 state your names for the record?

6 MR. BEA: Javon Bea, J-a-v-o-n, last  
7 name B-e-a.

8 MR. GRUBER: Richard Gruber,  
9 R-i-c-h-a-r-d G-r-u-b-e-r.

10 MR. GLASER: Lou Glaser,  
11 G-l-a-s-e-r.

12 MR. COLBY: Sam Colby, S-a-m  
13 C-o-l-b-y.

14 MS. RIPSCH: Sue Ripsch,  
15 R-i-p-s-c-h.

16 MR. NEMEPH: Joe Nemeph,  
17 N-e-m-e-p-h.

18 MR. LOREN: Steven Loren, L-o-r-e-n.

19 MR. STRICKLIN: David Stricklin,  
20 S-t-r-i-c-k-l-i-n.

21 MR. FRANKS: Herb Franks,  
22 F-r-a-n-k-s.

23 CHAIRMAN BECK: Is that all? Mr.  
24 Jones.

1 motion? Mr. Levine moves. Is there a  
2 second? Dr. Massuda seconds.

3 Call the roll, please.

4 MR. MARK: Mr. Levine.

5 MR. LEVINE: Yes.

6 MR. MARK: Dr. Almanseer.

7 DR. ALMANSEER: Can I pass?

8 MR. MARK: Dr. Malek.

9 DR. MALEK: Yes.

10 MR. MARK: Dr. Massuda.

11 DR. MASSUDA: Yes.

12 MR. MARK: Ms. Orr.

13 MS. ORR: Pass.

14 MR. MARK: Ms. Rice?

15 MS. RICE: No.

16 MR. MARK: Ms. Carrie York.

17 MS. YORK: No.

18 MR. MARK: Mr. Beck?

19 CHAIRMAN BECK: Where are we at?

20 MR. MARK: Mr. Beck.

21 CHAIRMAN BECK: Yes.

22 MR. LEVINE: I change my vote.

23 MR. MARK: Anyone else wish to

24 multiply their votes? Okay.

1  
2  
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24

The motion is currently passed.

CHAIRMAN BECK: The motion is approved.

MR. GRABER: Thank you very much.



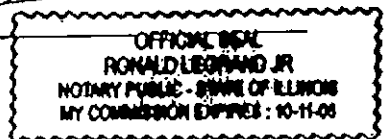
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF C O O K )

I, STUART KAROUBAS depose and say that I am an electronic reporter doing business in the State of Illinois; that I reported verbatim the foregoing proceedings and that the foregoing is a true and correct transcript to the best of my knowledge and ability.

Stuart Karoubas  
STUART KAROUBAS

SUBSCRIBED AND SWORN TO  
BEFORE ME THIS 3RD DAY OF  
MAY, A.D. 2004.

[Signature]  
NOTARY PUBLIC



**EXHIBIT 17**



- ◀ News
- ◀ Sports
- ◀ Business
- ◀ Entertainment/Lifestyles
- ◀ Editorials/Letters/Columns
- ◀ Obituaries/Death Notices
- ◀ Classifieds
- ◀ Contact Information
- ◀ Archive Information
- ◀ Southtown Home



## SOUTH

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### Hospitals left scratching their heads

#### Unknown what vote means for Orland plans

Thursday, April 22, 2004

By Alice Hohl  
Staff writer

A strange turn of events at the Illinois Health Facilities Planning Board on Wednesday has stoked fears the board — which will decide the fate of two Orland Park hospital plans in June — is being politicized.

On Wednesday, the board narrowly approved Illinois' first new hospital in almost 25 years — a 70-bed hospital to open in 2006 as Mercy Crystal Lake Hospital and Health Center.

The board turned down two hospitals proposed for Plainfield and Bolingbrook, saying they did not meet state criteria.

The Crystal Lake plan, put forth by Mercy Health System, was unanimously rejected in December.

It won approval on a 4-to-3 vote Wednesday, with one pass, after several speeches and developments that left health care professionals in the audience puzzled.

Board members spoke of the board's power to ignore state criteria. They whispered in conferences during the vote, and one board member changed his mind after seeing the votes of his peers.

Those for and against the two proposed hospitals in the Orland Park/Tinley Park

Interstate 80 corridor came to the hearing and watched closely for signs of what to expect in June, when their proposals come before the board.

Stunned by what unfolded, hospital executives did not want to comment on the "irregularities" because many of them have projects pending before the board.

In December, the board denied Mercy's Crystal Lake proposal. Hospital planners had a chance to modify their plans to meet state standards. Those guidelines are intended to keep health care costs down by regulating the number and cost of new facilities.

On Wednesday, some of the board's eight members expressed concern about Mercy's system of hospitals. Mercy Alliance Inc. is the parent company of Mercy Health System, which operates 49 facilities in 21 Illinois communities. Mercy directly employs all the physicians and specialists who practice there.

Others were concerned the hospital didn't propose at least 100 medical-surgical beds — the minimum by state standards for establishing a new full-service hospital in the area. Mercy also proposed a hospital in an area, fast-growing McHenry County, that has too many licensed beds already, according to state calculations.

It appeared the proposal would be turned down again until board chairman Thomas Beck signaled his support.

Also supporting the proposal was Stuart Levine.

Levine and Beck are the only two members who have served on the board before the election of Democratic Gov. Rod Blagojevich.

In the middle of the vote, the roll call was halted as Beck and Levine whispered to each other. Levine then approached Dr. Imad Alamanseer, who had voted "pass" instead of "yes" or "no." After another whispered conversation between Levine and Alamanseer, Alamanseer changed his "pass" to "yes," providing the vote needed to pass the project.

Asked after the meeting about what happened, Alamanseer said, "I was convinced that there was merit to the project; I just wanted to see how the others would view the project."

Another board member, Pamela Orr, who's new to her post, left the meeting during discussion of the Crystal Lake project. When she returned, she decided to pass on the Crystal Lake vote.

The overall vote crystallized competing philosophies on the board.

The board's assistant legal counsel, David Carvalho, has tried to push the new board members toward a strict reading of state regulations, asking the board members to adhere to existing standards and avoid approving projects that do not meet those standards.

Carvalho said approving new facilities in areas where too many licensed beds already exist is unfair to those health care facilities who "sit on the sidelines" waiting to propose

projects until existing beds are filled.

"It makes it difficult for the board going forward," Carvalho said.

Beck and Levine said they disagree and value the board's freedom.

During the meeting, the two joked about "the old days" when they approved projects bearing all negative staff recommendations and turned down projects that met each and every criterion.

"You never know what we're going to do," Beck said.

Sources said parties with projects that come before the board are concerned Beck and Levine — a politically connected member who formerly served on the Illinois Gaming Board — will take control and leave board decisions vulnerable to lobbyists.

Political powerbrokers including Jeff Ladd and David Wilhelm are representing some of the major players with desires to build hospitals in affluent, high-growth areas.

Also Wednesday, Beck announced the board's newest member will be Bernard Weiner, who has previously served on the Health Facilities Planning Board with Beck and Levine. He's been a contributor to the campaigns of Republicans Lee Daniels and George Ryan.

The power balance on the board is particularly crucial because four more hospital proposals are pending and the board is in the midst of rewriting its rules and standards.

Naperville-based Edward Hospital's plan for Plainfield, denied on a 7-to-1 vote, and Adventist Health System's plan for Bolingbrook, denied by unanimous vote, can be brought back to the board for reconsideration.

The proposals by St. Francis Hospital to build a new hospital at LaGrange Road and 171st Street and by Advocate to build a new hospital at LaGrange Road and 179th Street will be considered at the board's June 16 meeting in Chicago.

*Southtown health writer*

Alice Hohl may be reached at [ahohl@dailysouthtown.com](mailto:ahohl@dailysouthtown.com) or (708) 633-5993.

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**EXHIBIT 18**

DATE: 4/21/04  
TIME: 8:33 p.m.  
ACTIVITY: Home Telephone 1 incoming from (847) 833-7300  
CALL#: 332

SPEAKERS:  
LEVINE: Stuart Levine  
KIFERBAUM: Jacob Kiferbaum

\* \* \* \*

1 LEVINE Hello.  
2  
3 KIFERBAUM Stuart.  
4 LEVINE Jacob, how are you?  
5 KIFERBAUM I'm fine. How are you doing?  
6 LEVINE You have no, I'm gonna tell you  
7 something. Nobody, nobody could have  
8 gotten this done but me and I'll tell  
9 you what I mean by that.  
10 KIFERBAUM They told me.  
11 LEVINE It real-, it real-, it real-,...  
12 KIFERBAUM They told me.  
13 LEVINE (UI) it required there was a mutiny  
14 first thing this morning um one of the  
15 Board members that didn't wanna do it.  
16 But for reasons that uh, that uh, have  
17 nothin' to do with specifically with  
18 this, but because other people have been  
19 promised this wouldn't happen. You know  
20 uh, and, and, and, and, and of course  
21 nobody really knows that I'm...they,  
22 they know that I'm handling it, but they  
23 don't know that I'm really orchestrating  
24 it. And, and I just stay calm and you  
25 know this and that. I mean the chairman  
26 was gonna resign. You cannot imagine.  
27 But it was all fine by the end of the  
28 day. I mean all fine. They actually,  
29 we, we, uh, the vote had to be stopped  
30 and I had to go and sraighten people out

1 right there in front of the entire  
2 audience. (laughs)

3 KIFERBAUM I heard and I couldn't believe. I  
4 couldn't believe it. You know and then  
5 I heard the story about the bitch.

6 LEVINE Oh, she wa-, you know what, she is so  
7 fuckin' arrogant. She could not believe  
8 that she didn't get her CON. She  
9 actually walked out on the chairman.

10 KIFERBAUM I heard it. (laughs) She is, you know  
11 what, if she even calls tomorrow...

12 LEVINE Yeah.

13 KIFERBAUM (UI) said you know I don't want even to  
14 get close...

15 LEVINE No, no don't, don't even return her  
16 calls.

17 KIFERBAUM No I'm not returning calls. I have  
18 nothing. You know she sent me a letter.

19 LEVINE What'd she say?

20 KIFERBAUM The letter said you know after  
21 deliberation we've decided not (UI)  
22 services.

23 LEVINE (laughs)

24 KIFERBAUM I, you know okay.

25 LEVINE Well she got a letter today too.

26 KIFERBAUM Okay.

27 LEVINE (laughs)

28 KIFERBAUM But, you know but listen, I, I'm telling  
29 you I can't thank you enough.

30 LEVINE Well, no we're, we're in this together.

31 KIFERBAUM (UI) I could tell you the people that I



1 spend, I had dinner with all are in awe  
2 and know that they would have never...

3 LEVINE Never.

4 KIFERBAUM (UI) anything close to it.

5 LEVINE Um, they, they still have a struggle you  
6 know because you know they go, the other  
7 hospital systems wanna sue 'em and all  
8 this and that, but Steve told me that  
9 Javon is a very cool guy and...

10 KIFERBAUM Yeah.

11 LEVINE He said to the chairman of Centegra or  
12 somebody said that, that, that, the uh,  
13 Centegra Board is thinkin' of suing try  
14 to stop 'em from happening and, and he's  
15 sitting down with them because you know  
16 he knows that it's not in his interest  
17 so I hope he works somethin' out.

18 KIFERBAUM He worked something out he's already  
19 told...come to the side and say you know  
20 what it's not gonna be to your benefit,  
21 to my benefit you're gonna waste money  
22 on lawyers. We're gonna waste money on  
23 lawyers. Let's figure it out. We're  
24 building only a 70 bed hospital. We're  
25 gonna work on, let's divide the turf to  
26 make sure that we don't hurt you. The  
27 guy listened to him and he said you know  
28 you think that you're gonna get anywhere  
29 with it. You're not gonna get anywhere.  
30 Apparently they've done it before in  
31 some other spot which it came to bite  
32 them in the ass. So...

33 LEVINE Well be that it may, but Steve told me  
34 he said something I thought was very  
35 clever, he said, why would you wanna  
36 piss off this Board.

37 KIFERBAUM (UI).

38 LEVINE Meaning, meaning that he's got the Board  
39 at the moment Javon.

1 KIFERBAUM Yeah.

2 LEVINE At the moment he does.

3 KIFERBAUM Yeah. So I mean he's a very...

4 LEVINE Gotta make sure the thing gets built.

5 KIFERBAUM Yeah. Well...(laughs)

6 LEVINE (laughs)

7 KIFERBAUM But I, I felt so bad, when I heard what  
8 was goin' on over there and I, I got a  
9 report afterwards I was just...

10 LEVINE Well I mean you know listen this is,  
11 this is...but, but uh, Ja-, nobody could  
12 have kept this together because, bec-...

13 KIFERBAUM No doubt in my mind. No doubt in their  
14 mind.

15 LEVINE (laughs)

16 KIFERBAUM (UI) Those idiots. I'll tell you  
17 something. They paid money to this guy  
18 uh, Cruz or whatever his name I forgot.

19 LEVINE Reyes. You know what, it's...

20 KIFERBAUM Reyes.

21 LEVINE It's, but you see everybody thinks  
22 that's why it was done. If it, it's,  
23 you have no idea what a wonderful cover  
24 it is for me. They think that the  
25 governor told Tony to do this for Victor  
26 Reyes.

27 KIFERBAUM Yeah, for Victor (laughs) Reyes.

28 LEVINE That, that's what they think. I mean  
29 they would, I mean uh, Tony promised  
30 other people this wouldn't happen. He  
31 don't want them to think it's him. The  
32 world we live in.

1 KIFERBAUM (laughs) Listen, I heard one word,  
2 people, you know Javon came to me and  
3 said, Stuart was masterful.

4 LEVINE (laughs)

5 KIFERBAUM All he said is one word he was, no he  
6 said Jacob I wanna let you know, we  
7 would never ever would of gotten' this.

8 LEVINE So I take it he's not nervous anymore.  
9 (laughs)

10 KIFERBAUM Oh you know but it, it's nice that he  
11 recognized (UI).

12 LEVINE No ab-, a-, a-, a-, absolutely I mean  
13 he's gonna be doing business here.  
14 We'll all be doing business here.

15 KIFERBAUM Yeah he, he knows how to, how to play  
16 the game. He's not stupid.

17 LEVINE Steve Loren told me that Javon told him  
18 that Jacob Kiferbaum is the smoothest  
19 guy he's ever done business with. How  
20 do you like that? Huh.

21 KIFERBAUM (laughs)

22 LEVINE So not too bad.

23 KIFERBAUM Well I, I hope, I hope this is gonna be  
24 uh, a good thing for both of us, you  
25 know we'll move on. And uh, I'm just  
26 now, try to figure out how uh, you know  
27 I heard that Bolingbrook also was there.

28 LEVINE Well Bolingbrook. No because they were  
29 both, they both had their, their, their,  
30 we, Javon was there on, because he  
31 already had it denied and you get one  
32 more shot.

33 KIFERBAUM Yeah.

34 LEVINE These people were up for the first time,  
35 Pam and Bolingbrook and they each got

1 uh, uh, uh, turned down and they'll come  
2 back for the second try. But only one  
3 of 'em could get it.

4 KIFERBAUM Interesting.

5 LEVINE And it ain't gonna be Pam.

6 KIFERBAUM Good.

7 LEVINE Because Jeff Ladd represents the uh, uh,  
8 Ad uh, the Ad, the, the Adventist at  
9 uh,...

10 KIFERBAUM You know the mayor.

11 LEVINE And he rep-, and, and Jeff Ladd  
12 represents Centegra.

13 KIFERBAUM Yeah.

14 LEVINE And Jeff Ladd got fucked today, but  
15 we'll make it up for him over there.

16 KIFERBAUM Huh. Interesting.

17 LEVINE And there's no room for Pam.

18 KIFERBAUM Well I'll go and figure this whole  
19 thing. You know my head is spinning by  
20 trying to figure out (laughs) who, who  
21 got fucked and who uh, but you know the  
22 mayor of Bolingbrook is a very good  
23 friend of mine. He's a Republican. I  
24 don't know if you know him Roger Claar.

25 LEVINE Hm mm.

26 KIFERBAUM I, he's uh, he's a nice man I've built  
27 in Bolingbrook like 10 million square  
28 feet.

29 LEVINE Mm hm.

30 KIFERBAUM So, I have very, very, very close  
31 relationship with him. I contribute to  
32 his campaign and all the time if I ever  
33 need anything he's always, any ground

1 breaking that I do over there and so on.

2 LEVINE Mm hm.

3 KIFERBAUM Very good relationship with him. I  
4 haven't approached him on this thing.

5 LEVINE You know what, you know you gotta be  
6 very careful 'cause Pam thinks, if she  
7 sees...

8 KIFERBAUM Absolutely. No I don't want, I agree  
9 with you. If she sees that I've joined  
10 the other side that'll be...

11 LEVINE No uh, well then, then, then and how,  
12 you know (UI) but, but b-, believe me  
13 uh, uh, um, uh, uh, uh Tony sees an  
14 avenue of doing business uh, with uh,  
15 with uh, um, uh, I'm doing business with  
16 him. And, and he's got the power boy.

17 KIFERBAUM Good.

18 LEVINE And, and, and it's only,...

19 KIFERBAUM I can't, I can't thank you enough...

20 LEVINE it's only guaranteed for...

21 KIFERBAUM I know that you had to step up to the  
22 plate more than you anticipated or I  
23 anticipated.

24 LEVINE but, eh, listen, y-, eh, y-, you don't  
25 like the heat, stay out of the fire,  
26 fire, you don't like the heat, stay out  
27 of, what the fuck is this, you know what  
28 I'm talkin' about. You gotta do,  
29 listen, we, we wanna get things done,  
30 you do what you gotta do to get it done.  
31 (talking in background)

32 KIFERBAUM I hear you. I appreciate it.

33 LEVINE Alright.

34 KIFERBAUM We'll talk.

1     LEVINE                    Okay Jacob.  
2     KIFERBAUM                Take care. Thank you.  
3     LEVINE                    Bye-bye. Yeah. Bye.  
4     KIFERBAUM                Bye.

**EXHIBIT 19**

# Hospital president alleges

**Whistleblower lawsuit may taint Wall Street, Springfield**

BY CHRIS FUSCO, LORI RACKL, DAVE MCKINNEY, STEVE WARMBEIR AND TIM NOVAK  
Staff Reporters

A top Chicago financial power broker allegedly tried to shake down a Naperville hospital seeking to expand, a lawsuit says.

Either give the \$200 million project to a contractor friendly with a state official who must approve the expansion or the project dies.

The hospital balked.

And the state all but killed the expansion two months ago.

That deal was just one of a host of shake-down schemes involving financial powerbroker Nicholas Hurtgen, who runs the Chicago office of Bear, Stearns & Co. Inc., according to a federal whistleblower lawsuit. The civil suit was filed under seal in May by administrators at Edward Hospital in Naperville. The Chicago Sun-Times obtained it Thursday.

While the alleged schemes vary in detail, Hurtgen is described as one of the key players.

Also named was Jacob Kiferbaum, who runs a Deerfield construction company.

Kiferbaum is friends with Stuart Levine, a millionaire political powerbroker. Until he resigned this month, Levine was vice chairman of the state board that decides whether hospitals can open or expand.

None of the men returned messages for comment. Bear, Stearns declined to comment, as did the lawyer for the two plaintiffs, Edward executives Pamela Meyer Davis and William G. Kottmann.

The lawsuit describes an earlier scheme also involving Edward Hospital.

The hospital wound up getting \$189 million in state funding in 2001 after agreeing to work with Bear, Stearns, the lawsuit alleges.

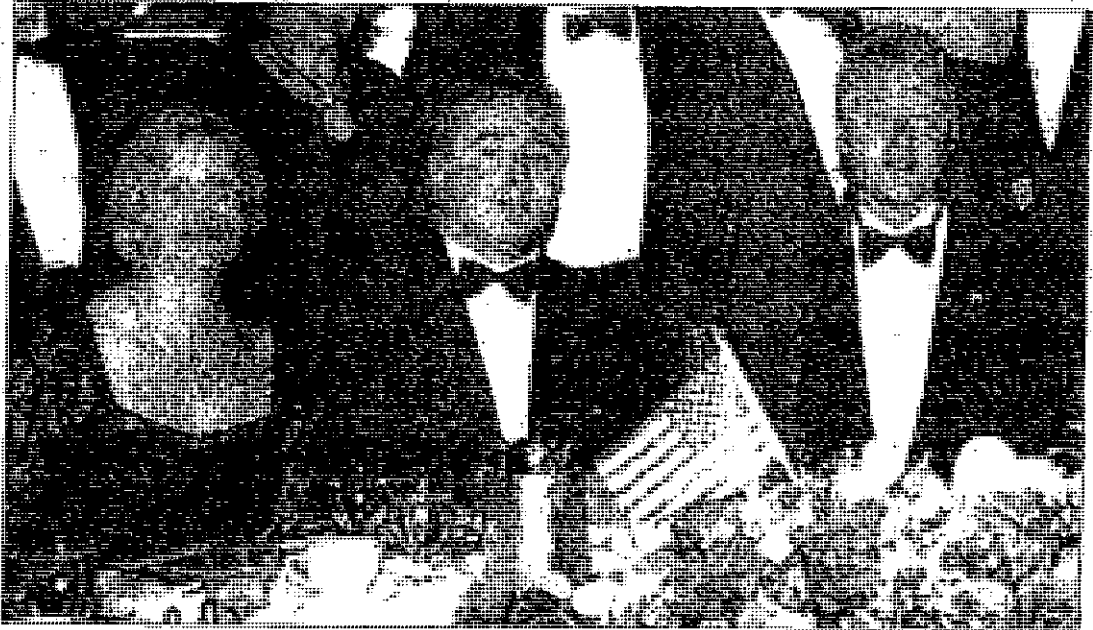
Another scheme was just this year. It involves a proposed hospital in Crystal Lake.

Levine and the board approved the project — that Kiferbaum is building, according to the lawsuit. Bear, Stearns did the work to finance the deal, with \$69 million in state money.

The final deal is the biggest. The lawsuit, with no details, contends there was a "kickback" scheme involving the \$10 billion deal that Gov. Blagojevich pushed through last year to bail out the state pension plans. Bear, Stearns played a major role in that deal too. No details were given concerning the alleged kickback.

Sometime after the lawsuit was filed on May 24 federal subpoenas were issued to members of the Illinois Health Facilities Planning Board. A criminal investigation is under way into the approval of the Marcy Crystal Lake Hospital and Medical Center, the governor's office confirmed Thursday.

"We asked the inspector general's office to step in and investi-



Jacob Kiferbaum, with Sandy Kiferbaum and Bill Clinton in 2001, is accused in a suit filed by Edward Hospital of being part of a shake-down scheme. The hospital says it was pressed to give business to certain firms in return for favorable state treatment. —COURTESY OF MIDWEST CONSTRUCTION

## KEY PLAYERS

### JACOB KIFERBAUM

Kiferbaum, 52, is president and founder of Kiferbaum Construction Corp. in Deerfield. He's one of the top contractors in Illinois and has been involved in the design and construction of more than 220 projects. He's vice president of the American-Israel Chamber of Commerce and — along with Stuart Levine — is on the board of trustees of the Rosalind Franklin University of Medicine and Science, formerly known as Finch University of Health Sciences/The Chicago Medical School in North Chicago. Kiferbaum's company has built some multimillion-dollar buildings at the medical school.

gata," the governor's spokeswoman, Cheryl Jackson, said late Thursday. "Subsequently, the U.S. attorney's office asked that the inspector general's office pull back and stop its investigation until the U.S. attorney can complete its investigation."

Subpoenas recently were sent to Thomas P. Beck, chairman of the Illinois Health Facilities Planning Board, and all the other board members.

Levine, fund-raising chief for Republican Jim Ryan's failed 2002 campaign for governor, resigned from the board June 7.

Another board member, Dr. Imad Almansoor, asked not to be reappointed. He cast a controversial deciding vote on the new hospital in Crystal Lake. At first, Almansoor passed on the vote but after Levine got up and whispered in his ear, Almansoor cast the crucial fifth vote needed to pass the project.

### STUART P. LEVINE

Levine, a Chicago attorney who made a fortune through HMOs, is a major political power player in Illinois, contributing more than \$1.5 million to politicians since 1994. More than half that money went to former Illinois Attorney General James Ryan, who unsuccessfully ran for governor in 2002. More than \$340,000 went to Lee Daniels, who stepped down as House Minority leader in 2002 and is under federal investigation because his staffers allegedly did political work on the taxpayers' dime. Levine, 58, of Highland Park, received his law degree from Chicago-Kent College of Law and is chairman of the board of trustees of Rosalind Franklin

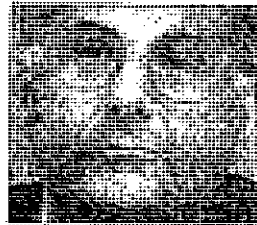
### Wall Street to Springfield

The various allegations in the lawsuit, if proven, could touch Wall Street, Springfield and even President Bush's campaign.

The campaign is headed in the Midwest by a Bear, Stearns consultant whose firm received an \$809,133 commission on the \$10 billion bond deal. That consultant is Robert Kjellender, the Illinois National Republican Committeeman. He is not named anywhere in the suit.

Whistleblower lawsuits such as the one in the Bear, Stearns case are filed under seal and given to the U.S. attorney's office but the defendants do not immediately receive a copy. Such cases are assigned to the chief judge of the U.S. District Court.

The U.S. attorney's office has 60 days by law to investigate the claims in the lawsuit and decide whether or not it wants to intervene in the law-



Stuart P. Levine

University of Medicine and Science. He was also knighted by the King of Sweden in 1994 for promoting economic ties between the United States and that country.

suit. But the U.S. attorney's office can ask the chief judge for extensions to that deadline and often receives them for further investigation. A U.S. attorney's spokesman declined to comment on the whistleblower lawsuit.

The scheme outlined in that lawsuit begins in 2001. That's when Hurtgen was introduced to Edward Hospital officials by Donald Udstuen. Udstuen was a former close advisor to Gov. Ryan. Udstuen has pleaded guilty to corruption charges. Udstuen, a former chief operating officer of the Illinois State Medical Society, has since cooperated with the feds. Ryan has also been charged and is awaiting trial.

Initially, Edward Hospital wanted to use Morgan Stanley for financing their 2001 project, but Udstuen insisted that it was "important" for the hospital to give the deal to Hurtgen at Bear, Stearns.

### BEAR, STEARNS & CO.

Bear, Stearns has a long history of helping Illinois governments raise money by issuing bonds. The firm helped sell bonds for McCormick Piacco's latest expansion and Gov. Blagojevich's \$10 billion deal to bail out the state pension systems. The company's Chicago office is run by P. Nicholas Hurtgen, 41, of Glenview, once a top aide to former Wisconsin Gov. Tommy Thompson.

The hospital did, and the state approved the deal.

But in another deal, Edward Hospital didn't go along with the program, the lawsuit says.

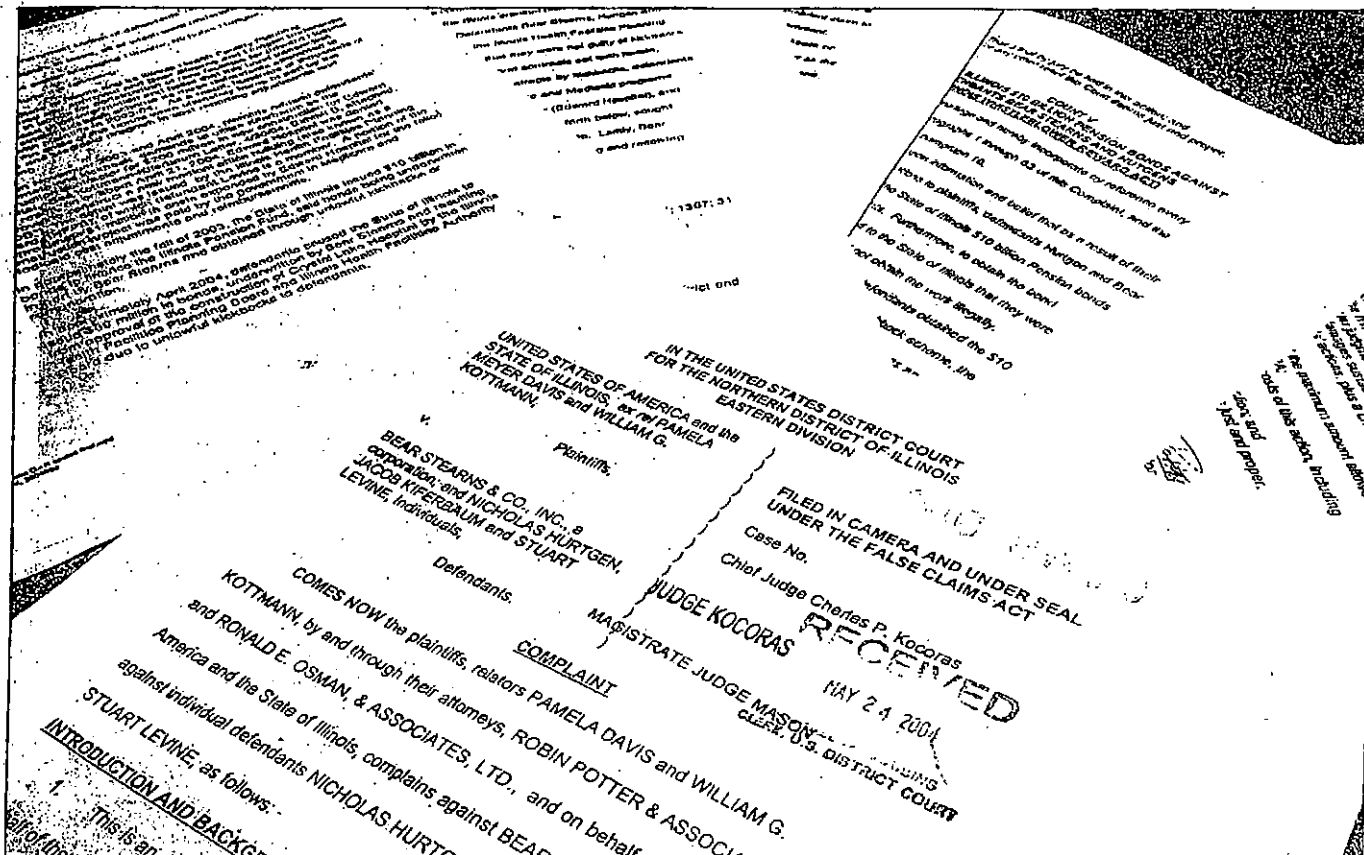
When Edward approached the board to build a new hospital in nearby Plainfield, Edward wouldn't cave into pressure to hire Kiferbaum Construction Corp.

Kiferbaum and Levine are friends. Both serve on the board of the Rosalind Franklin University of Medicine and Science, formerly known as Finch University of Health Sciences/The Chicago Medical School in North Chicago. Kiferbaum's company has received tens of millions of dollars to build several projects at the school.

In a Jan. 6, 2004, meeting with Edward officials, Bear Stearns' Hurtgen told them "he was politically connected to the Illinois state government administration and can 'get things done,'" the suit reads.



# shakedown by power broker



The U.S. attorney is investigating the allegations made in the whistleblower lawsuit filed by Naperville's Edward Hospital. —TOM CRUZEL/SUN-TIMES

Hurtgen told the Edward officials that Levine and Beck would decide the fate of Edward's plans.

Edward officials pressed Kiferbaum to prove that he had influence with state regulators.

They got their proof during a meeting at the Egg Shell Cafe in Deerfield, the lawsuit alleges.

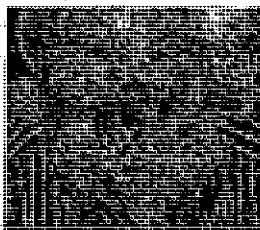
Kiferbaum met the Edward Hospital officials there, telling them he was "good friends" with Levine and a majority of the nine-member state board. Kiferbaum told them if his company wasn't used, Edward's plans would not be approved.

Also at the restaurant, at the same time, was Levine and Hurtgen, but they were sitting somewhere else.

Levine walked over to the table and told the Edward officials that they could "trust" Kiferbaum and "that his word was good," the lawsuit says.

Shortly before the board meeting, Edward officials told Kiferbaum that he wouldn't be getting the contract because his fees were too high, and he lacked experience in building hospitals.

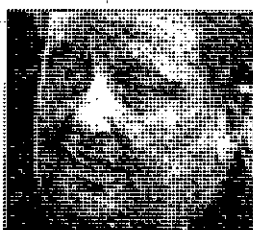
On April 21, the state board indicated its intentions to deny Edward's plans for a new hospital in nearby Plainfield and a delayed a final vote on Edward's medical office building, also in Plainfield.



### Pension questions

Another alleged kickback scheme doesn't involve hospitals but pensions. The lawsuit contends that a \$10 billion deal to bail out state pension plans was "underwritten in part by Bear Stearns and obtained through unlawful kickbacks or remuneration."

"Had the State of Illinois known that defendants obtained the \$10 billion Pension Bond underwriting as part of a criminal kickback scheme, the State of Illinois would not have issued or approved Bear Stearns as an underwriter," the suit claims. As a result, the state is entitled to at least \$8 million to \$10 million in damages, the amount paid to



Donald Udstuen  
Ryan pal admitted corruption

Bear Stearns, the suit alleges.

The lawsuit, however, does not provide specifics nor does it say who paid or received the "kickbacks."

### Budget plugged

Bear Stearns was handpicked by Blagojevich's budget office as the lead underwriter for the administration's \$10 billion pension borrowing program last year, a deal designed to shore up the state's poorly funded employee pension systems.

The largest borrowing deal in state history was put on a legislative fast-track last year. It sprinted out of the General Assembly in April 2003, only six weeks after the governor proposed the plan as a

"Had the State of Illinois known that defendants obtained the \$10 billion Pension Bond underwriting as part of a criminal kickback scheme, the State of Illinois would not have issued or approved Bear Stearns as an underwriter,"

### THE LAWSUIT CLAIMS

key to helping bail Illinois out of a \$5 billion budget hole.

Republicans largely opposed the plan, describing it as fraught with risk. But one of the GOP's most prominent players wound up reaping an unexpected financial bonanza as a result of the deal.

Kjellander, a well-known Republican lobbyist who is the Midwest coordinator for President Bush's re-election campaign, was hired by Bear Stearns as a consultant to secure "state-level business."

In a company filing, Bear Stearns disclosed it had paid Kjellander's firm \$809,133 in fees in 2003 — an amount that stunned Democrats because of its size.

The state GOP's national committeeman and a personal friend of White House senior advisor Karl

Rove, Kjellander's involvement in the bond deal became an issue last May in his successful bid to retain the party post.

Conservative critics accused Kjellander of putting personal gain above party loyalty but could not block him from winning re-election to a four-year term as Republican national committeeman, a post he has held since 1995.

Kjellander said his consulting firm did not represent Bear Stearns before the Health Facilities Planning Board in any capacity. As for the questions about the pension bond deal he said, "I'm not a lawyer so I can't begin to respond to that. All I know is the bond deal was scrutinized every which way possible, and there was nothing wrong with it."

# Lawsuit spurs questions on how hospitals get OK'd

## Whistleblowers allege shakedown by state health planning board

BY LORI RACKL AND CHRIS FUSCO

Staff Reporters

When a state board recently approved a new hospital for Crystal Lake, some members of the audience reportedly gasped in disbelief.

After all, the hospital plan appeared doomed. Staff had clearly recommended against it. The board itself had initially panned it. The only thing that saved it was a last-minute vote switch by a board member.

Mysterious? You bet.

Now, answers to the mystery may be surfacing in a federal whistleblower lawsuit alleging kickbacks and shakedowns in the way new hospitals get approved in Illinois.

The lawsuit alleges that the Illinois Health Facilities Planning Board approved Mercy Health System's plans for the McHenry County hospital because it would be built by politically connected contractor Jacob Kiferbaum.

The civil suit, which is under seal but was obtained last week by

the Chicago Sun-Times, got the feds' attention. The governor's office has confirmed that a criminal investigation is under way.

Mercy officials released a written statement Friday saying it intends "to cooperate with the inquiry" but believes "we have acted properly."

Shortly after the whistleblower suit was filed, the U.S. attorney's office issued subpoenas to members of the planning board, a little-known panel that decides whether new hospitals and other major health-related projects get the go-ahead.

At the heart of both the lawsuit and the criminal investigation is whether the board's decisions are being made for the public good or to line the pockets of a few politically plugged-in power brokers.

The suit was filed last month by administrators of Naperville's Edward Hospital who wanted the board to approve a new hospital and medical office building in Plainfield.

Edward officials claim they were told they'd get board approval if they hired Kiferbaum Construction Corp. of Deerfield to build it.

The Edward administrators describe a March meeting with two lobbyists who had represented

the board of trustees of a North Chicago medical school, where Kiferbaum's firm has done tens of millions of dollars worth of construction work. Levine has pumped well over \$1 million into candidates' coffers.

The lawsuit alleges that Kiferbaum and Levine were joined by financial heavyweight Nicholas Hurlgen in pressuring Edward officials to give their business to Kiferbaum or see their plans shot down. Hurlgen heads the Chicago office of Bear, Stearns & Co. Inc., which stood to benefit by providing the financing for the projects, the suit claims.

Edward officials refused to hire Kiferbaum. The state board in April indicated it planned to deny Edward's Plainfield hospital request.

At that same April meeting, the board went against staff recommendation and narrowly approved Mercy Crystal Lake Hospital and Medical Center. The 70-bed, \$81 million hospital is to be built by Kiferbaum, according to the lawsuit. And it's being financed through \$69 million in state-issued bonds, which the suit says are being underwritten by Bear, Stearns.

When it appeared Mercy might not muster the five votes needed for approval, Levine whispered in the ear of fellow board member Dr.



Stuart P. Levine  
Quit board



Jacob Kiferbaum  
Contractor

Mercy's Crystal Lake hospital project: Mike Noonan, with the firm Greenberg Traurig, which includes Chicago power broker Victor Reyes, and Herb Franks, a McHenry County lawyer and father of state Rep. Jack Franks (D-Woodstock).

State records show that Kiferbaum contributed \$1,500 to Jack Franks' campaign. Both Noonan and Herb Franks declined to comment for this story.

Edward officials claim the lobbyists told them they should hire Kiferbaum because the firm wielded influence on the state board. To back up their claims, they noted that board Vice Chairman Stuart Levine had personally assured Mercy's CEO that Kiferbaum could "get things done."

Levine and Kiferbaum serve on

Imad Almanaseer, who then changed his vote from a "pass" to a "yes," giving Mercy the go-ahead.

Shortly afterward, two McHenry County hospitals owned by Centegra Health System filed a lawsuit seeking to overturn the board's ruling, calling the decision "arbitrary and capricious."

State Sen. Pamela Althoff (R-Crystal Lake) called for the state to investigate the board's action.

Levine abruptly resigned from the board earlier this month. Almanaseer was a no-show for the board's June meeting. His term expires July 1.

Four new hospital proposals — including Edward's — still stand before the beleaguered board, which meets again in August. Officials at each of the hospitals except Edward said they were not being pressured to go with Kiferbaum for their construction or Bear, Stearns for their financing.

Advertiser Health System executive Ernie Sadau said in a written statement that his company was "shocked" by the Sun-Times' report of the controversy swirling around the planning board.

"We sincerely hope that our application to build a hospital in Bolingbrook will not be unjustly affected by this news."

Contributing: Dave McKinney,

**EXHIBIT 20**

## Feds investigate Mercy hospital permit

Publication Northwest Herald  
Date June 26, 2004  
Section(s) Main  
Page

By JEFF KOLKEY

[jkolkey@nwherald.com](mailto:jkolkey@nwherald.com)

and ERIC R. OLSON

[eolson@nwherald.com](mailto:eolson@nwherald.com)

The U.S. attorney general's office is conducting a criminal investigation into a decision to approve a permit to build Mercy Crystal Lake Hospital and Medical Center, officials confirmed Friday.

Federal prosecutors have subpoenaed documents from the Illinois Health Facilities Planning Board, said Jeffrey Mark, executive secretary for the board.

Mercy officials said they are cooperating.

"We can tell you that we believe that we have acted properly," Mercy spokeswoman Barb Bortner said in a written statement. "In addition, we have been cooperative and intend to continue to cooperate with the inquiry."

Mercy's proposal to build the \$81 million hospital was approved April 21 in a controversial vote in which one planning board member changed his vote after a whispered conversation with a colleague.

The proposal was approved despite failing to meet most state criteria for building a hospital.

Since the vote, the board members involved in the whispered exchange, Stuart Levine and Imad Almanaseer, have quit. Levine resigned June 7, and Almanaseer asked not to be reappointed when his term expires July 1.

Levine, a wealthy lawyer who has donated more than \$1 million to political candidates since 1994, may be the focus of the investigation. A sealed lawsuit filed by Edward Hospital in Naperville claims that Levine used his influence with the planning board to win contracts for friends in the construction and finance industries, according to a report in the Chicago Sun-Times.

The U.S. attorney general's office declined to comment on the case.

But Cheryl Jackson, spokeswoman for Gov. Rod Blagojevich,

said an independent state inquiry started several weeks ago was halted at the request of federal prosecutors.

"We asked for the inspector general to investigate," Jackson said. "Soon after the inspector general began their investigation, the U.S. attorney's office asked for the inspector general to hold off on their investigation until they had completed their own investigation."

Health facilities planning board members are appointed by Blagojevich, but Jackson said the governor will take no action until the investigation concludes.

Centegra Health System, the largest health-care provider in McHenry County, is suing to invalidate the planning board's decision to allow the 70-bed hospital at Route 31 and Three Oaks Road in Crystal Lake. The lawsuit claims that the board disregarded its own rules when it approved the hospital.

"We raised our concern after the board's approval by filing the appeal with the McHenry County Circuit Court," Centegra spokesman Geoff Huys said. "Others are now having some concerns about the actions of the planning board."

Planning board member Danalynn Rice of Marion voted against the Mercy proposal. She said she was unaware of any wrongdoing by her colleagues on the board.

"It's unfortunate if those people have done anything they shouldn't have done," Rice said. "I'm sorry for that if that's happened. They made their choice."

**EXHIBIT 21**



OFFICE OF THE GOVERNOR  
207 STATE CAPITOL, SPRINGFIELD, ILLINOIS 62706

ROD BLAGOJEVICH  
GOVERNOR

ADMINISTRATIVE ORDER

Number 1 (2004)  
July 7, 2004

**MORATORIUM ON ALL BUSINESS OF THE  
HEALTH FACILITIES PLANNING BOARD**

Pursuant to its authorizing legislation, "[t]he State [Health Facilities Planning] Board shall meet at least once each quarter, or as often as the Chairman of the State Board deems necessary, or upon the request of a majority of the members." 20 ILCS 3960/4 (West 2004). The Board most recently met on June 15 and June 16, 2004. In light of recent allegations concerning the propriety of certain Board actions, the Governor hereby imposes a moratorium on all meetings and actions of the Board until the Board is reconstituted by law.

Any questions regarding the implementation of this Order should be directed to the Governor's Office.

**EXHIBIT 22**



Public Act 093-0889

HB7307 Enrolled

LRB093 22682 AMC 52334 b

AN ACT concerning executive agencies.

Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:

Section 5. The Illinois Health Facilities Planning Act is amended by changing Sections 4, 4.2, and 19.6 as follows:

(20 ILCS 3960/4) (from Ch. 111 1/2, par. 1154)

(Section scheduled to be repealed on July 1, 2008)

Sec. 4. Health Facilities Planning Board; membership; appointment; term; compensation; quorum. There is created the Health Facilities Planning Board, which shall perform the functions described in this Act.

The State Board shall consist of 5 voting members. Each member shall have a reasonable knowledge of health planning, health finance, or health care at the time of his or her appointment. No person shall be appointed or continue to serve as a member of the State Board who is, or whose spouse, parent, or child is, a member of the Board of Directors of, has a financial interest in, or has a business relationship with a health care facility.

Notwithstanding any provision of this Section to the contrary, the term of office of each member of the State Board is abolished on the effective date of this amendatory Act of the 93rd General Assembly and those members no longer hold office.

~~Notwithstanding any provision of this Section to the contrary, the term of office of each member of the State Board is abolished on the effective date of this amendatory Act of the 93rd General Assembly, but all incumbent members shall continue to exercise all of the powers and be subject to all of the duties of members of the State Board until all new members of the 9-member State Board authorized under this amendatory Act of the 93rd General Assembly are appointed and take office. Beginning on the effective date of this amendatory Act of the 93rd General Assembly, the State Board shall consist of 9 voting members.~~

The State Board shall be appointed by the Governor, with the advice and consent of the Senate. Not more than 3 5 of the appointments shall be of the same political party at the time of the appointment. No person shall be appointed as a State Board member if that person has served, after the effective date of Public Act 93-41 this amendatory Act of the 93rd General Assembly, 2 3-year terms as a State Board member, except for ex officio non-voting members.

The Secretary of Human Services, the Director of Public Aid, and the Director of Public Health, or their designated representatives, shall serve as ex-officio, non-voting members of the State Board.

Of those members initially appointed by the Governor under this amendatory Act of the 93rd General Assembly, 2 shall serve

for terms expiring July 1, 2005, 2 shall serve for terms expiring July 1, 2006, and 1 shall serve for a term expiring July 1, 2007. Of those members initially appointed by the Governor under this amendatory Act of the 93rd General Assembly, 3 shall serve for terms expiring July 1, 2004, 3 shall serve for terms expiring July 1, 2005, and 3 shall serve for terms expiring July 1, 2006. Thereafter, each appointed member shall hold office for a term of 3 years, provided that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term and the term of office of each successor shall commence on July 1 of the year in which his predecessor's term expires. Each member appointed after the effective date of this amendatory Act of the 93rd General Assembly shall hold office until his or her successor is appointed and qualified.

State Board members, while serving on business of the State Board, shall receive actual and necessary travel and subsistence expenses while so serving away from their places of residence. A member of the State Board who experiences a significant financial hardship due to the loss of income on days of attendance at meetings or while otherwise engaged in the business of the State Board may be paid a hardship allowance, as determined by and subject to the approval of the Governor's Travel Control Board.

The Governor shall designate one of the members to serve as Chairman and shall name as full-time Executive Secretary of the State Board, a person qualified in health care facility planning and in administration. The Agency shall provide administrative and staff support for the State Board. The State Board shall advise the Director of its budgetary and staff needs and consult with the Director on annual budget preparation.

The State Board shall meet at least once each quarter, or as often as the Chairman of the State Board deems necessary, or upon the request of a majority of the members.

~~Three~~ Five members of the State Board shall constitute a quorum. The affirmative vote of ~~3~~ 5 of the members of the State Board shall be necessary for any action requiring a vote to be taken by the State Board. A vacancy in the membership of the State Board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the State Board as provided by this Act.

A State Board member shall disqualify himself or herself from the consideration of any application for a permit or exemption in which the State Board member or the State Board member's spouse, parent, or child: (i) has an economic interest in the matter; or (ii) is employed by, serves as a consultant for, or is a member of the governing board of the applicant or a party opposing the application.

(Source: P.A. 93-41; eff. 6-27-03.)

(20 ILCS 3960/4.2)

(Section scheduled to be repealed on July 1, 2008)

Sec. 4.2. Ex parte communications.

(a) Except in the disposition of matters that agencies are authorized by law to entertain or dispose of on an ex parte basis including, but not limited to rule making, the State Board, any State Board member, employee, or a hearing officer shall not engage in ex parte communication, ~~after an~~

~~application for a permit is received~~, in connection with the substance of any pending or impending application for a permit with any person or party or the representative of any party. This subsection (a) applies when the Board, member, employee, or hearing officer knows, or should know upon reasonable inquiry, that the application is pending or impending.

(b) A State Board member or employee may communicate with other members or employees and any State Board member or hearing officer may have the aid and advice of one or more personal assistants.

(c) An ex parte communication received by the State Board, any State Board member, employee, or a hearing officer shall be made a part of the record of the ~~pending~~ matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.

(d) "Ex parte communication" means a communication between a person who is not a State Board member or employee and a State Board member or employee that reflects on the substance of a pending or impending State Board proceeding and that takes place outside the record of the proceeding. Communications regarding matters of procedure and practice, such as the format of pleading, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications. Technical assistance with respect to an application, not intended to influence any decision on the application, may be provided by employees to the applicant. Any assistance shall be documented in writing by the applicant and employees within 10 business days after the assistance is provided.

(e) For purposes of this Section, "employee" means a person the State Board or the Agency employs on a full-time, part-time, contract, or intern basis.

(f) The State Board, State Board member, or hearing examiner presiding over the proceeding, in the event of a violation of this Section, must take whatever action is necessary to ensure that the violation does not prejudice any party or adversely affect the fairness of the proceedings.

(g) Nothing in this Section shall be construed to prevent the State Board or any member of the State Board from consulting with the attorney for the State Board.

(Source: P.A. 91-782, eff. 6-9-00; revised 1-28-04.)

(20 ILCS 3960/19.6)

(Section scheduled to be repealed on July 1, 2008)

Sec. 19.6. Repeal. This Act is repealed on July 1, 2006 2008.

(Source: P.A. 93-41, eff. 6-27-03.)

Section 10. The Lobbyist Registration Act is amended by changing Section 8 as follows:

(25 ILCS 170/8) (from Ch. 63, par. 178)

Sec. 8. Contingent fees prohibited.

No person shall retain or employ another to lobby with respect to any legislative, executive, or administrative action ~~promote or oppose legislation~~ for compensation contingent in whole or in part upon the outcome of the action ~~passage or defeat of any legislation, or the approval or vote~~

~~of any legislation by the Governor, and no person shall accept any such employment or render any such service for compensation contingent upon the outcome of the legislative, executive, or administrative action passage or defeat of any legislation or the approval or veto of any legislation by the Governor.~~  
(Source: P.A. 76-1848.)

Section 99. Effective date. This Act takes effect upon becoming law.

Effective Date: 8/9/2004

Floor Actions

Date	Action
8/9/2004	Public Act . . . . . 093-0889

**EXHIBIT 23**

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

NORTHERN ILLINOIS MEDICAL )  
CENTER, MEMORIAL MEDICAL )  
CENTER, AND CENTEGRÁ HEALTH )  
SYSTEM, )

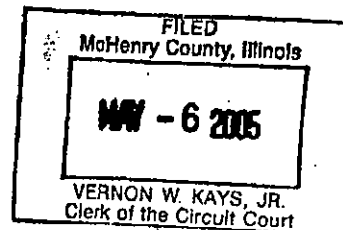
Plaintiff )

vs. )

ILLINOIS HEALTH FACILITIES )  
PLANNING BOARD, ILLINOIS )  
DEPARTMENT OF PUBLIC HEALTH, )  
MERCY CRYSTAL LAKE HOSPITAL )  
AND MEDICAL CENTER, INC. )  
MERCY HEALTH SYSTEM )  
CORPORATION, ELI L. BEEDING JR. )  
AND THE BEEDING GROUP, )

Defendants )

CASE NO: 04 MR 106



COPY

MEMORANDUM OPINION AND ORDER

This cause came before the Court on Count I of the Complaint filed by the Plaintiffs' Northern Illinois Medical Center, Memorial Medical Center and Centegra Health System for Administrative Review of the Decision of Illinois Health Facilities Planning Board ("State Board") pursuant to 735 ILCS 5/3-110, 5/3-111 20 ILCS 3960/11. Plaintiffs seek reversal of the Administrative Decision of the State Board which granted a permit to the Mercy Crystal Lake Hospital and Medical Center, Inc. ("Mercy Hospital") to construct a new hospital in Crystal Lake. Plaintiffs contend that the State Board's actions in approving the issuance of the permit were against the manifest weight of the evidence and arbitrary and capricious, particularly in light of the negative reports of the Illinois Department of Public Health ("State Agency").

The Court has reviewed all the relevant pleadings, including Count I of the Complaint for Administrative Review, Plaintiffs' Motion to Reverse Administrative Decision, the Memorandum in support of said Motion, the Response of Mercy Hospital and Mercy Health System Corporation and Reply of Plaintiffs thereto. The Court has further reviewed the entire certified record of administrative proceedings which includes the Application for Permit, documents in support of the application, the State Agency reports, the Record of Public Hearing on September 29, 2003 and the transcripts of hearings before the State Board on December 17, 2003 and April 21, 2004, with corrections made at the June 15, 2004 State Board meeting. The Court has reviewed the case law cited by the parties in their written submissions and has had the benefit of the oral arguments of the attorneys for the Plaintiffs and Defendants.

## **BACKGROUND**

The Illinois Health Facilities Planning Act was instituted "to establish a procedure designed to reverse the trends of increasing in costs of health care resulting from unnecessary construction or modification of health care facilities ... and to improve the financial ability of the public to obtain necessary health services and to establish an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public". 20 ILCS 3960/2 To that end, the Planning Act provided for the creation of a Board and defined its duties and functions. The powers and duties of the State Board include the prescribing of rules, regulations, standards, criteria and procedures to carry out the provisions of the Act. 20 ILCS 3960/12 The regulations and criteria are contained in Sections 1110 through 1260 of Title 77 of the Illinois Administrative Code. A health care facility cannot be modified or constructed unless the Board issues a permit. 20 ILCS 3060/5.1 In evaluating an application for

permit or Certificate of Need, the Board is assisted by Illinois Department of Public Health which serves as administrative and staff support for the Board. 20 ILCS 3960/4

On July 11, 2003, Mercy Hospital filed an Application for Certificate of Need (CON) with the Illinois Health Facilities Planning Board. The application requests a permit for establishment and construction of a new 70 bed hospital with adjacent office facilities for 45 physicians in Crystal Lake, Illinois. The proposed hospital would have 56 medical/surgical beds; 10 obstetrics beds and 4 intensive care beds. The hospital site is located within a MSA, known as area A-10. The initial application was deemed incomplete on July 24, 2003 and by letter of that date, additional information was requested. That information was provided on July 30, 2003, which included a listing of all hospitals within 45 minutes of the proposed facility.

A public hearing was conducted on September 29, 2003 in Crystal Lake, Illinois. In addition to persons associated with Mercy Hospital and its parent corporation, Mercy Health System, hundreds of interested persons testified or offered written submissions both in favor of and in opposition of the proposed project.

The Illinois Department of Public Health issued its initial report evaluating Mercy Hospital's application. The report found that overall, Mercy Hospital did not meet the review criteria of Illinois Administrative Code, Sections 1110 and 1120. The State Agency submitted its report to the Board on December 17, 2003 and the Board conducted a hearing on that same date. At the meeting the Board denied the application.

Thereafter, Mercy Hospital submitted additional information for the project to the State Agency and requested another hearing date before the State Board. A Supplemental Agency Report was prepared based on the new materials and submitted to the State Board at its April 21, 2004 meeting. The report did change some of its findings in the supplemental report dealing



with financial and economic considerations under Section 1120 of the Illinois Administrative Code. The evaluations pertaining to Section 1110 remained unchanged. At the Board meeting on April 21, 2004, the Board approved Mercy Hospital's application. The State Agency issued a letter on May 15, 2004 informing the applicant of the State Board's approval of the project.

On May 26, 2004, the Plaintiffs filed its Complaint for Administrative Review of the State Board's decision to grant the CON to Mercy Hospital. The Plaintiffs assert that the decision of the State Board should be reversed because (a) it is against the manifest weight of the evidence; (b) the issuance of the permit was arbitrary and capricious; (c) the vote of the Board on April 21<sup>st</sup> did not specify the action proposed and the Board did not make any findings; and, (d) the voting process was improper and evidence of arbitrary conduct.

## **REVIEW OF THE BOARD'S DECISION**

### **A. MANIFEST WEIGHT OF THE EVIDENCE:**

The Plaintiffs contend that the Decision of the Board to issue the permit to Mercy Hospital for the establishment and construction of a new hospital in Crystal Lake, Illinois was against the manifest weight of the evidence.

If factual findings are made by an administrative agency, they are viewed as prima facie correct and a reviewing court will not disturb those findings, unless they are contrary to the manifest weight of the evidence. BRIDGESTONE/FIRESTONE, INC. vs. DOHERTY, 305 Ill. App. 3d 141 (1999).

At the administrative hearing on April 21, 2004, no factual findings were made by the State Board. On May 14, 2004, the executive secretary of the Board issued a letter notifying Mercy Hospital that the State Board had approved the Application for Permit. That letter

indicated that Board based its approval upon the project's substantial conformance with the applicable standards and criteria of Part 1110 and 1120. It further stated that, "In arriving at a decision, the State Board considered the findings contained in the State Agency Report, the application material, the State Agency's Report of Public Hearing held on September 29, 2003 and any testimony made before the State Board".

The aforesaid letter does not set forth specific findings of fact. It does state the Board's conclusions and the basis therefore. Section 10 of the Planning Act does not require the Board to specify its findings of facts and conclusions unless negative action on an Application is taken. 20 ILCS 3960/10 In addition, Section 1130.680 of the Administrative Code requires the Board to specify its "finding of fact and conclusions of law" only when the Board denies an application. ACCESS CENTER FOR HEALTH, LTD. Vs. HEALTH FACILITIES PLANNING BOARD, 283 Ill App 3d 227 (1996).

In the case at bar, the State Board did not deny Mercy Hospital's Application for Permit or CON. Even if findings were necessary, that may not be enough for the trial court to reverse the Board's decision. If the record contains competent and sufficient evidence that supports the agency's decision, the decision should be affirmed. CATHEDRAL ROCK OF GRANITE CITY, INC. vs. ILLINOIS HEALTH FACILITIES PLANNING BOARD. 308 Ill App 3d 529 (1999).

An administrative agency's decision is against the weight of the evidence only if the opposite conclusion is clearly evident. The mere fact that the opposite conclusion is reasonable or that the reviewing court may have ruled differently does not justify reversal of an administrative decision. A trial court may not reweigh the evidence or make an independent

determination of the facts. ABRAHAMSON vs. ILLINOIS DEPARTMENT OF PROFESSIONAL REGULATION, 153 Ill. App 2d 76 (1992)

In order to approve and authorize the issuance of a permit if it finds the State Board must find that the proposed project is consistent with the orderly and economic development of such facilities and is in accord with standards, criteria or plans of need adopted and approved pursuant to provisions of Section 12 of 20 ILCS 3960.

Section 12 of the Illinois Health Facilities Planning Act authorizes the State Board to prescribe rules, regulations, criteria and procedures to carry out the purposes of the Act. That section further enumerates certain factors the Board shall consider in developing health care facility plans. Those factors include the number of existing and planned facilities offering similar programs, the extent of utilization of existing facilities, the availability of facilities which may serve as alternatives or substitutes and the availability of personnel necessary to operate the facility. 20 ILCS 3960/12(1) and (4).

Acting as an administrative and support arm of the State Board, the State Agency prepared two reports for the Board's review and consideration. Those reports consider the application and supporting documentation submitted. The State Agency evaluated Mercy Hospital's application with respect to financial and economic criteria set forth in Section 1120 of Title 77 of the Illinois Administrative Code and the general review criteria and needed related criteria set forth in Section 1110 of the Illinois Administrative Code 77 Illinois Adm. Code. The Administrative Code has the force and effect of law. MEDCAT LEASING CO. vs. WHITLEY, 253 Ill App 3<sup>rd</sup> 801 (1993).

The Agency report completed for submission to the State Board Hearing on December 17, 2003 found that the Mercy Hospital Application, was in conformity with three of the four

applicable economic feasibility criteria and that the financial feasibility criteria were not applicable. The Agency report found that aside from meeting the background of applicant criterion (1110.230), that Mercy Hospital met none of the other criteria under Section 1110, the general or need related criteria, including the criteria for a variance to bed need.

At the December 17, 2003 State Board Hearing, Mercy Hospital had various representatives present who presented testimony regarding the application and in response to questioning by Board members. Those present for Mercy were Javon Bea, President of Mercy Hospital; Richard Gruber, Vice President of Mercy Hospital; Dan Colby, President of mercy Harvard Hospital and three attorneys representing Mercy. The Board addressed concerns regarding the bed variance, the shortage of obstetrical beds in the M.S.A., the additional physicians that Mercy would bring to staff its proposed hospital and the impact of the hospital on staffing in other area hospitals. At the conclusion of the hearing, the State Board denied Mercy Hospital's application. No findings were made. However, before the Notice of Intent to Deny was sent on January 27, 2004, Mercy Hospital on January 15, 2004 sent a letter with supplemental information requesting leave to reappear before the Board at the February meeting.

After receipt of the supplemental information from Mercy Hospital, the State Agency issued another report for submission to the Board at its April 21, 2004 meeting. No hearing was held regarding Mercy's application between December 17 and the April 21<sup>st</sup> meeting. The report of the State Agency for the April hearing contained the same findings regarding the general criteria and needed related criteria; that being that except for applicant meeting the background criteria, Mercy Hospital did not meet the other 1110 criteria. The State Agency found that with the change in cost submitted by Mercy in the supplemental materials, Mercy now met all of the economic feasibility factors.

At the hearing on April 21, 2004 before the Board representatives of Mercy appeared as well as its legal counsel. With respect to bed need, Mercy Hospital had submitted data from the Center for Disease Control which indicated that 76% of the hospitals in the United States have less than 100 beds. Upon questioning, hospital personnel acknowledged that this study was not Illinois or McHenry County based but rather reflected nationwide statistics. Documentation regarding the decrease in average patient stays was discussed using 980 figures versus today. Testimony was received regarding the 45 new physicians Mercy would bring to the proposed hospital, which physicians would be in their employ. Mercy representatives opined that with these new doctors in place, patients who resided in the M.S.A. who sought treatment outside of the M.S.A. would return for care. There was discussion concerning the findings by the State Agency on the general criteria and need criteria not being met. Board member Levine believed that the rules were outdated and needed to be revised to reflect current data. He was particularly impressed with the 45 physicians who would be moving to McHenry County to staff the proposed hospital. At the conclusion of the hearing, the Board voted to approve the application and the motion passed. On May 14, 2003, a letter advising of the approval of the application for permit was sent to Mercy Hospital.

Plaintiffs assert that the decision of the State Board is against the manifest weight of the evidence because the proposed project was not in accordance with the standards, criteria or plans of need adopted and approved pursuant to the provisions of the Illinois Health Facilities Planning Act. In particular, the Plaintiffs direct the Court to the State Agency reports wherein it was noted that Mercy Hospital's proposed project was not in conformity with the general review criteria and need related criteria under Sections 1110 of the Illinois Administrative Code.

The Defendants counter Plaintiffs assertions by directing the Court to the standard of review and the discretionary authority the State Board has under 1130.660 of the Illinois Administrative Code. That provision states in pertinent part the follows:

“The State Board shall consider the application and any supplemental information or modification submitted by the applicant, IDPH report(s), the public hearing testimony, if any and other information coming before it in making its determination whether to approve the project. The applications are reviewed to determine compliance with review criteria enumerated in 77 Ill. Adm. Code 1110 and 1120. The failure of a project to meet one or more review criteria, as set forth in 77 Ill. Adm. Code 1110 and 1120 shall not prohibit the issuance of a permit.”

The applicability of Section 1130.660 has been addressed in a number of cases, which cases have been cited by the parties herein. With the exception of the Court in SPRINGBOARD, the Courts have recognized that the State Board does have the authority to approve an application where one or more of the review criteria were not met. DIMENSIONS MEDICAL CENTER, LTD. Vs. SUBURBAN ENDOSCOPY CENTER, 298 Ill App 3d 93 (1998). ACCESS CENTER FOR HEALTH LTD. vs. HEALTH FACILITIES PLANNING BOARD, 283 Ill App 3d 227 (1996), CATHEDRAL ROCK OF GRANITE CITY vs. ILLINOIS HEALTH FACILITIES PLANNING BOARD, 308 Ill. App 3d 529 (1999) and MARION HOSPITAL CORPORATION vs. ILLINOIS HEALTH PLANNING BOARD, FACILITIES SPRINGWOOD is distinguishable from the aforementioned cases because the Court did not consider the applicability of 1130.660 in that case. SPRINGWOOD ASSOCIATES vs. HEALTH FACILITIES PLANNING BOARD, 269 Ill App 3d 944 (1995).

However, in each of the cases where the Courts upheld the Board's decision to exercise its discretionary authority, the courts looked to the record to determine if there was adequate evidence to support the Board's decision. None of the cases cited by the Defendants have State

Agency Reports that found lack of conformity with essentially all of the need related and general criteria as in the case at bar.

The letter of May 14, 2004, issued on behalf of the State Board found substantial conformance with the applicable standards and criteria of part 1110 and 1120 based on its consideration of the findings contained in the State Agency reports, the application material, the report of public hearing on September 29, 2003 and any testimony made before the State Board.

At the public hearing the majority of those who testified were in opposition to the proposed project. Almost 2000 letters were submitted both in support of and in opposition to Mercy Hospital. More letters were in opposition. Many of the letters submitted were form letters used by supporters of Plaintiffs' and Defendants' respective positions. Some of the letters were from Mercy's website, which did not allow negative input.

The State Agency Reports submitted to the State Board for hearings on December 17, 2003 and April 21, 2004 found that the proposed project was not in conformity with the following general review and need related criteria: 110.320(a): Establishment of Additional Hospitals, 110.320(b); Allocation of Additional Beds, 1110.520(a); Unit Size; 1110.520(b); Variances to Bed Needs, 110.520(b)(2); Medically Underserved Variance, 1110.230(a); Location, 1110.230(c); Alternatives, 1110.230(d); Need for the Project, 1110.230(e); and Size of the Project. The project was in conformity with 1110.230(b), Background of Applicant, which provided that the applicants complied with the necessary licensure and certification information required and are fit, willing, able and have the necessary background to provide a proper standard of healthcare service for the community.

In response to the adverse reports of the State Agency, Mercy Hospital addressed the growing population trends in McHenry County, the shortage of physicians in McHenry County

and the changes in the practice of medicine that have reduced the average length of patient stays in hospitals. Mercy Hospital asserts that as a result of the decline in the patient length of stays, there is no longer a need for the requirement of 100 medical/surgical beds as established in 1980 and that only 67 beds are needed to serve the same number of patients.

Section 1110.320(2) of the Illinois Administrative Code requires that hospitals within a M.S.A. must have a minimum of 100 medical/surgical beds. Hospitals situated outside a M.S.A. do not have such a limitation. Mercy Hospital proposes 56 med/surg. beds with initially 32 of the entire 70 beds being built out and the remaining 38 being shells for later construction. The Defendant hospital did not identify how the 32 beds would be allocated. At the Board hearing of April 21, 2004, Mr. Glaser, on behalf of Mercy Hospital stated that all 70 beds would immediately be built out, contrary to the data in the application and earlier testimony. (R3541) (R.14) Section 1110.230.530(a)(1)(A) provides that a new obstetric unit with a M.S.A. must have 20 beds. Mercy proposal is for 10 obstetric beds.

Mercy Hospital submitted material based on average length of patient stays in 1980 to the present, claiming that 67 beds would now provide care for the same number of patients in a 100 bed facility in 1980. The documentation presented gives nationwide figures with no specific data for Illinois.

The 100 bed standard was established in 1992 and not 1980 and is applicable only to hospitals within a Metropolitan Statistical Area, such as the proposed location. Furthermore, according to the bed inventory data, the A-10 planning area (M.S.A.), where the proposed facility would be located, has 35 excess medical surgical beds and 7 excess ICU beds. Assuming that the present average length of patient stays reduces the need for beds, then the proposed additional beds at Mercy Hospital would only increase the surplus but also affect the target



utilization rates at neighboring hospitals, which is also taken into account under the need related criteria. Presently the hospitals in proximity to the proposed project are generally not operating at the State's target utilization rates.

The only shortage of beds in the M.S.A. is obstetrical beds, which shortage is 20 beds. Mercy's application proposes 10 obstetrical beds. Mercy Health System Corporation operates Mercy Harvard Hospital, which is within M.S.A. 10. Mercy Harvard Hospital closed its obstetrical unit approximately three years ago and has not reopened since Mercy acquired the hospital approximately two years ago.

There are located within planning Area 10 three hospitals which offer the same services as the proposed project. Two of these three hospitals are within 30 minutes of the proposed facility. These are Northern Illinois Medical Center in McHenry and Memorial Medical Center in Woodstock. The third hospital, Mercy Harvard is within 45 minutes of the proposed facility. Additionally, there are four other hospitals not within the planning area, but within 30 minutes of the site of Mercy Hospital. They are Advocate Good Shepherd, Barrington, St. Alexius Medical Center, Hoffman Estates, Sherman Hospital, Elgin and Provena St. Joseph Hospital in Elgin. Each of these health facilities offer the same services as the proposed hospital.

Defendant acknowledges the presence of these other hospitals and that Mercy will offer no services not already provided by these facilities. However, Mercy contends that with the growth of population within the county, the travel times will increase in the future and thereby increasing the travel times in excess of 30 minutes to those hospitals. The estimates of future travel times do not take in account road expansion projects which might be undertaken. The evidence on the travel times and future projections offered by the Defendant are in some instances inaccurate and other instances speculative.

Mercy opines that a significant percentage of patients are leaving the planning area for health care and that with the establishment of a new hospital, a good percentage of those patients will return to the area for treatment. Competent evidence is lacking to support this opinion. Evidence at the public hearing and elsewhere in the record shows that approximately 75% of the residents within zip code targeted area received care at existing hospitals and that other patients leaving the target area are doing so for specialized or tertiary care. It is also unclear if Mercy's opinion takes into account the services received at the hospitals located within 30 minutes but outside of area A-10.

The review criteria does provide for variance for bed need. 77 Ill. Adm. Code 1110.530(b)(2). In order to satisfy the variance to bed need requirements, Mercy Hospital had to document that access to the proposed service is restricted in the planning area by documenting at least one of the following: (i) the absence of service within the planning area; (ii) limitations on government funded or charity patients; (iii) restrictive admissions policies of existing providers; (iv) the area population and existing care system exhibits indicators of median care problems such as an average family income level below the state poverty level, high infant mortality or designation as a "Health Manpower Shortage Area; or (v) the project will provide for a portion of the population who must currently travel over 45 minutes to receive service. Mercy Hospital was found to have documented none of the aforesaid criteria in order to receive a variance. Evidence presented showed that seven hospitals are within 45 minutes and all offer the same services Mercy will offer, if not more. Travel studies submitted by mercy were in some ways misleading as they included round trip travel times which is not the standard for review or were based on future projections. No evidence whatsoever was submitted to document items (i) through (iv).

Much was made by the Board at the April 21, 2003 hearing about the 45 physicians Mercy Hospital would bring to staff its hospital and adjacent offices. It is unclear from the evidence where these physicians will come from. However, Mercy did indicate that with the opening a new hospital, it would close three of its physician staffed facilities now located in and Cary and Crystal Lake. Board member, Mr. Levine, commented at the April 21<sup>st</sup> meeting how impressed he was that these new physicians would help make a dent in the shortage of physicians in the area. There was a chart provided showing a physician shortage in McHenry County. The underlying data for the information in the chart is unknown. While the Board addressed the shortage of physicians in the area, it appears not to have adequately considered the shortage of healthcare support staff. The evidence in the record reflects that there is a shortage of health care personnel needed to staff hospitals. There are not enough nurses, medical technicians and laboratory technicians to staff hospitals nationwide and in McHenry County. Testimony at the public hearing expressed a concern that the new hospital would not be able to adequately staff its facility and would have to recruit medical personnel from other area hospitals, thereby causing shortages of necessary and required staff in those facilities. Area hospitals have experienced staffing problems which have resulted in their not being able to maximize the use of their facilities.

The record further documents that the proposed hospital would adversely impact the utilization rates at hospitals within the M.S.A. and nearby. Mr. Ryder, of Advocate Health Care in Barrington testified at the public hearing that more than 25% of its patients are from the towns targeted by Mercy Hospital. A study submitted at the public hearing by Plaintiffs and prepared by Deloitte and Touche, at Plaintiff's instance concluded that Northern Illinois Medical Center and Memorial Medical Center, both in A-10 would lose approximately 9,500 cases annually.

Upon a review of the record, there is not sufficient and competent evidence supporting the State Board's decision to grant the issuance of the permit to Mercy Hospital. While the Board has the authority to issue a permit when all of the criteria under 1110 are not met, there needs to be some rationale basis to excuse compliance with the criteria. The record does not reflect that Mercy Hospital presented sufficient evidence showing that the proposed hospital facility was needed, was the most effective or least costly alternative and was in a medically underserved planning area. Sufficient evidence did not establish that the project warranted a variance to bed need.

Mercy Hospital's application did not meet the necessary general review and need related criteria and the factors set forth in 20 ILCS 3960/12. The written submissions and oral testimony did not rebut the Agency's findings that Mercy Hospital's application was not in conformity with the criteria set forth in 77 Ill. Adm. Code 1110. This Court finds that the State Board's decision is against the manifest weight of the evidence.

## B. ARBITRARY AND CAPRICIOUS

The Plaintiffs also contend that the Board's decision was arbitrary and capricious. The Illinois Supreme Court in GREER vs. ILLINOIS HOUSING DEVELOPMENT AUTHORITY, 122 Ill 2d 462 (1988) set forth guidelines to be applied by the Court in determining whether the decision of an Agency is arbitrary and capricious. Those guidelines direct the Court to consider: 1. Did the Agency rely on factors the legislature did not intend the agency to consider; 2. Did the Agency fail to consider an important aspect of the problem, or 3. Did the Agency offer an explanation for its decision which runs counter to the evidence before the agency or which is so

implausible that it could not be ascribed to a difference in view or the product of agency expertise.

The State Board in the case at bar excused the mercy Hospital's failure to comply with essentially all of the general and need related criteria. The only rationale for the Board's actions capable of being gleaned from the hearing on April 21<sup>st</sup> was that the rules and review criteria are outdated and that this new facility will help fill the shortage of physicians in the service area.

At that April Board meeting, Board members expressed concern about the Board's decision being termed "arbitrary and capricious" if it approved the Mercy Hospital Application for Permit in light of the State Agency's two reports showing non conformity with the 1110 criteria. In response thereto, Board member Stuart Levine stated that the rules and criteria are "woefully out of date". He further stated that he has participated in "a lot of applications that were granted that had complete negative findings. And those occurred in instances where there were valid reasons and justifications given in each of the areas that, of course, are in the Board's discretion to do". R 3264. Yet, Mr. Levine did not offer any explanation or justification for the Board's approval in the instant case, other than he was impressed with the 45 new physicians who would be coming to McHenry County and who would make a dent in the physician shortage.

The Board hearing on April 21 focused in large part on the new physicians who would be employed by Mercy Hospital. However, the rules governing the Board's decisions do not provide for criteria which address physician shortages. The documentation provided by Mercy regarding physician shortages was done by Solucient and is in the record at page 2913. The chart shows that Crystal Lake, the location of the proposed hospital, has no physician shortage. Lake in the Hills, Cary and Algonquin are the other target service areas. No data is provided for

physicians in Lake in the Hills. On Solucient's documentation, Cary and Algonquin do show physician shortages. The source for the data is not disclosed. Even with these claimed shortages, Mercy System Corporation is going to close its two physician offices in Crystal Lake and one in Cary.

Furthermore, while there may be a shortage of physicians in the area, the Board did not discuss and apparently did not consider the evidence in the record of the shortages of registered nurses, laboratory technicians and medical technologists in the area. The public hearing record is replete with testimony of medical personnel on the shortage of such personnel. These personnel are needed to staff a hospital. Mercy Hospital offered no evidence where this staff would come from other than stating they would recruit medical personnel who worked outside of the area. Nothing in the record indicates a surplus of such personnel in other areas of the state. No evidence was presented on the number of resident medical personnel who worked outside of the M.S.A. or beyond the 30 minute travel time. Testimony at the public hearing showed a concern among McHenry County health care workers that Mercy would recruit staff from area facilities thereby affecting the viability of those hospitals.

Upon a review of the record, the Court finds that State Board relied on factors not intended by the legislature and that they failed to consider important aspects of the problem concerning the shortage of medical support staff and the impact the proposed hospital would have on the hospitals within the M.S.A. and within 30 minutes travel time. When the Board first denied the Mercy Hospital's application, it had information on the 45 new employee-physicians who would be at the physician offices adjacent to the hospital. Yet, at the April 21<sup>st</sup> meeting, the new physicians appeared to be the primary basis for the affirmative vote.

The Court finds that the actions of the State Board, in approving the application for permit for the Mercy Hospital project, was arbitrary and capricious.

### C. NECESSARY PARTIES

Plaintiffs contend that the decision should be reversed because the proper party was not joined as a party to the application. Particularly, Plaintiffs claim that Section 1130.220(b) of the Illinois Administrative Code requires that Mercy Health Systems Corporation be a co-applicant.

Section 1130.220 provides in pertinent part as follows:

“The following person(s) must be the applicant(s) for permit or exemption, as applicable:

(b)(3) any related person who is or will be financially responsible for guaranteeing or making payments on any debt related to the project.”

It is undisputed that Mercy Health System falls within that classification and that they were not parties to the application. The State Agency Report, however, reflects that is considered that entity to be a co-applicant even though it wasn't. Documentation was submitted verifying the bond rating of Mercy Health System Corporation and other data was provided regarding its corporate structure and related entities.

The non inclusion of Mercy Health System as an applicant may have affected the economic review criteria under 1120.310(a). The State Agency found that Criterion 1120.310(a) was “not applicable as the applicant's document proof of an “A “bond rating”. Mercy Health System should have been a party to the application for permit. However, the failure to include Mercy Health System Corporation as a co-applicant, standing alone, would not be a basis for a finding of the State Board's decision being against the manifest weight of the evidence.

D. THE VOTING PROCESS

The Plaintiffs claim that the voting process was improper by the Board not specifying the nature of the motion voted on and Board members engaging in off the record discussions. It is apparent from the record that the Board on motion knew that it was voting to approve the permit. While formality is lacking, the record reflects that in the other proceedings that day, which are part of the record the Board used the same methodology in voting.

While the off record comments by Board members may be irregular, they do not constitute ex parte communications. The Court can not attribute any significance to the off record comments in this review.

Based on a review of the record and for the foregoing reasons, the Court hereby finds that the Decision of the Illinois Health Planning Board to grant the issuance of the permit to Mercy Hospital and Mercy Health Systems was against the manifest weight of the evidence and arbitrary and capricious.

IT IS HEREBY ORDERED that the Decision of the Illinois Health Planning Board to issue a permit in Project No. 03-049 is reversed.

DATED: May 6, 2005

ENTERED Maureen P. McIntyre  
MAUREEN P. McINTYRE  
CIRCUIT JUDGE



**EXHIBIT 24**



U. S. Department of Justice

United States Attorney  
Northern District of Illinois  
Federal Building

Patrick J. Fitzgerald  
United States Attorney

219 South Dearborn Street, Fifth Floor  
Chicago, Illinois 60604  
(312) 353-3300

FOR IMMEDIATE RELEASE  
MONDAY MAY 9, 2005

PRESS CONTACT:  
Randall Samborn (312)353-5318  
U.S. Attorney's Office

**LEVINE, KIFERBAUM AND HURTGEN INDICTED ON FRAUD CHARGES  
ALLEGING KICKBACKS, INFLUENCE-PEDDLING AND INSIDER-DEALING**

**Hospital projects in McHenry and Will counties subjected to pay-to-play scheme**

CHICAGO – Three Chicago area executives – one of them a former member of the Illinois Health Facilities Planning Board, which controls medical facility construction projects in Illinois, and one a managing director of Bear Stearns & Co., an investment firm that arranges financing for public works projects in Illinois – were indicted on federal charges for allegedly engaging in insider-dealing, influence-peddling, kickbacks and corruption involving their private interests and public duties, federal officials announced today. One defendant, **Stuart Levine**, a lawyer and businessman, allegedly engaged in a fraud scheme to obtain a total of at least \$9.5 million for himself and certain associates, while the other two defendants, **Jacob Kiferbaum**, an architect and construction firm executive, and **P. Nicholas Hurtgen**, a lawyer and investment banker, allegedly participated in the same fraud scheme to obtain multi-million dollar contracts for their businesses through construction kickbacks or other fraudulent deals. Levine and Hurtgen were arrested this morning by federal agents. Kiferbaum is cooperating with the investigation and was not arrested. All three were charged with various counts of fraud and extortion in a 28-count indictment that was returned by a

federal grand jury last Wednesday and unsealed today, announced Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois.

Levine, 59, of Highland Park, and Hurtgen, 42, of Glencoe, were expected to be arraigned later today in U.S. District Court in Chicago. Kiferbaum, 52, also of Glencoe, will be arraigned at a later date. Through his attorney, Kiferbaum has authorized the government to disclose that he is cooperating in the investigation.

The indictment identifies the defendants, with the charges against each, as follows:

**Stuart Levine** – 19 counts of mail fraud, 4 counts of wire fraud, 2 counts of misapplication of funds, 2 counts of money laundering and one count of extortion – a businessman whose interests included S.L. Investment Enterprises, L.P., and a former member of the Illinois Health Facilities Planning Board (Planning Board), a state commission appointed by the Governor that grants or denies a permit, known as a “Certificate of Need” (CON), to build hospitals, physician offices or other medical facilities statewide. Levine was also a member of the board of trustees of Rosalind Franklin University of Medicine and Science, formerly known as Finch University of Health Sciences/Chicago Medical School (Chicago Medical School or CMS) in North Chicago, and he was chairman of its real estate committee. He was also a trustee of the Northshore Supporting Organization (NSO), a charitable trust that supported Chicago Medical School;

**Jacob Kiferbaum** – 16 counts of mail fraud, 3 counts of wire fraud, 2 counts of misapplication of funds and one count of extortion – chief executive officer of KCC Group Design + Build, Inc., formerly known as Kiferbaum Construction Corp., of Deerfield. Kiferbaum was also a trustee of Chicago Medical School; and

**P. Nicholas Hurtgen** – 3 counts of mail fraud, 3 counts of wire fraud and 1 count of extortion – formerly senior managing director in the Chicago office of Bear Stearns & Co., an investment bank that did business and sought to do business with the State of Illinois, Edward Hospital in Naperville, part of Edward Health Services Corp., and Mercy Health System Corp., of Janesville, Wis.

The indictment also seeks forfeiture from Levine alone of approximately \$9.5 million as proceeds of the alleged fraud, and approximately \$1 million in alleged money laundering proceeds, as well as his residence at 57 South Deere Park Dr., Highland Park, and a residence in Weston, Fla.

The indictment alleges that Levine, Hurtgen and Kiferbaum engaged in a fraud scheme between early 2001 through at least June 2004 to defraud Chicago Medical School, NSO, the Planning Board and the State of Illinois of money and the honest services of Levine and Kiferbaum in connection with four construction projects and a fraudulent transaction involving \$6 million belonging to the charity.

According to the indictment, the fraud scheme included the following fraudulent transactions:

**Edward Hospital:** Levine, Kiferbaum and Hurtgen agreed that they would use Levine's position on the Planning Board to attempt to force Edward Hospital to hire Kiferbaum's company to build a \$90 million hospital and \$23 million medical office building in Plainfield, by threatening Edward Hospital representatives that the Planning Board would not approve those projects unless Kiferbaum was hired to build them. Hurtgen assisted in the scheme because he wanted his employer, Bear Stearns, to receive the financing work from the new Edward hospital.

Hurtgen agreed to introduce Kiferbaum to the CEO of Edward Hospital. As a result of Kiferbaum's recent prior dealings with Levine, Kiferbaum understood that Levine would direct him to provide a kickback. According to the indictment, in mid-December 2003, Hurtgen called Edward's CEO and said that the hospital should postpone its application before the Planning Board on Dec. 17 to allow time to hire Kiferbaum if it wanted to have its CON approved; otherwise, it would be denied -- which, in fact, is what occurred at the Dec. 17 meeting. Although Levine was barred from *ex parte* communications with Edward representatives about its pending application, on Dec. 23, 2003, Hurtgen and Kiferbaum met with Edward's CEO to attempt to force the hiring of Kiferbaum's company. On Jan. 8, 2004, Hurtgen met again with the CEO and also Edward's project administrator. The defendants were unaware that the hospital officials were cooperating with the FBI at the time of those meetings. In explaining his role in persuading Edward officials to hire Kiferbaum's company, Hurtgen said that Bear Stearns would finance the hospital if it was approved, the indictment alleges. During the January meeting, Hurtgen said he might be able to arrange a situation in which Levine would inadvertently bump into the CEO and Hurtgen in response to the CEO's request for proof that the threats and promises were real. After further discussions among various parties related to proving that Levine and Hurtgen knew each other and were talking, Levine and Hurtgen went to a restaurant in Deerfield on April 18, 2004, to prove to the CEO that Levine, Hurtgen and Kiferbaum were working together and that their threats and promises were real. Levine and Hurtgen walked over to the table where Kiferbaum and the CEO were sitting. Levine said that he was the board chairman of CMS and

that Kiferbaum had done a project for them, adding that Kiferbaum is a person who could be relied upon and whose word could be depended on, according to the indictment. At the April 21 Planning Board meeting, Edward had not hired Kiferbaum and, with Levine voting against the project, its Plainfield hospital application was denied;

**CMS addition – \$1 million kickback from Kiferbaum at direction of Levine:** In connection with an \$18 million contract in the summer of 2001 for Kiferbaum's company to build an addition to CMS, Levine and Kiferbaum agreed that Kiferbaum would include an extra \$1 million for Levine in the cost of the project. Kiferbaum then paid approximately \$700,000, at Levine's direction, to a business operated by Individual 2, an attorney and CEO of a consulting company in Chicago. Levine and Kiferbaum later agreed that the remaining amount would be paid to a company operated by Individual 1, a medical doctor and businessman who shared a business suite with Levine, and who was also a trustee of CMS and NSO. Levine and Kiferbaum did not disclose to CMS the nature or purpose of the additional costs to CMS, nor did they disclose that Levine was directing the payment of CMS funds, or that Individuals 1 and 2 had agreed to receive them. Levine, Kiferbaum and Individuals 1 and 2, used sham marketing and consulting contracts to conceal the fraudulent nature of the diversion, and the planned diversion, of CMS funds to Individuals 1 and 2;

**CMS student housing – \$1 million kickback from Kiferbaum at direction of Levine:** In connection with a \$22 million contract in the summer of 2002 for Kiferbaum's company to build a student dormitory for CMS, Levine and Kiferbaum agreed that Kiferbaum would include an extra \$1 million for Levine in the cost of the project. Kiferbaum then paid the money, at Levine's direction, in the form of a \$628,000 check on Dec. 12, 2002, and a \$372,000 check on March 13, 2003, to Individual 3, a European businessman who maintained financial accounts in Chicago. Levine and Kiferbaum did not disclose to CMS the nature or purpose of the additional costs to CMS, nor did they disclose that Levine was directing the payment of CMS funds. Levine and Kiferbaum concealed the fraudulent nature of the diversion of CMS funds to Individual 3 through the use of a sham marketing contract;

**Diversion of \$6 million by Levine from NSO:** On July 19, 2002, Levine caused NSO to lend \$3 million to his company, S.L. Investment Enterprises, and \$3 million to a company controlled by Individual 1, and then arranged to have both loans forgiven without repayment. Each company executed promissory notes requiring them to repay NSO after 20 years, with an annual interest rate of 7.5 percent, resulting in each company owing NSO approximately \$12.5 million at that time. On Dec. 1, 2002, Levine and Individual 1 signed promissory notes substituting themselves as the borrowers. Levine then used his position as an NSO trustee to

arrange for NSO to "donate" the notes to CMS in a sealed envelope and with the condition that CMS would immediately sell the notes to Individual 3 for \$1 million, which was the amount of the kickback that Levine and Kiferbaum fraudulently obtained from CMS in building the student dormitory and diverted to Individual 3. After purchasing the notes from CMS for \$1 million, Individual 3 transferred them to Levine and Individual 1 as "gifts," thus freeing Levine and Individual 1 from any obligation to repay the \$6 million that they had purportedly borrowed from NSO. As a result, Levine fraudulently obtained \$3 million for himself, and \$3 million for Individual 1, through the use of the \$1 million that was fraudulently obtained from CMS by Levine and Kiferbaum; and

**Mercy Hospital - \$1.5 million kickback from Kiferbaum to Levine:** Levine solicited a kickback of approximately \$1.5 million from Kiferbaum relating to the construction of Mercy Hospital's \$49 million Crystal Lake facility. Kiferbaum agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date. Levine used his influence with the Planning Board to ensure that Mercy Hospital received approval of its application to build the Crystal Lake hospital after hiring Kiferbaum's company. In voting for, and influencing other Planning Board members to vote for, Mercy's application, Levine concealed from the Planning Board his financial arrangement or contacts with Kiferbaum. After the Planning Board voted to approve Mercy's application on April 21, 2004, Levine reported to Individual 1 that hiring Kiferbaum did it for Mercy. When Levine told Kiferbaum that no one really knew that Levine was orchestrating the approval, Kiferbaum said he could not thank Levine enough, and Levine said they were in this together. Levine directed that Kiferbaum pay the kickback proceeds to Individual 1 pursuant to a sham consulting contract for \$1,728,000, which included the \$1.5 million kickback that Levine had solicited and \$228,000 that Kiferbaum still owed from the CMS addition kickback. On May 1, 2004, Levine told Individual 1 that other people knew that Mercy received its CON because of the combination of Kiferbaum, Hurtgen and a law firm and that this information would spread like wildfire.

Mr. Fitzgerald announced the charges with Robert D. Grant, Special Agent-in-Charge of the Chicago Office of the Federal Bureau of Investigation; Kenneth T. Laag, Inspector-in-Charge of the U.S. Postal Inspection Service; James Vanderberg, Special Agent-in-Charge of the U.S. Department of Labor Office of Inspector General in Chicago; and Byram Tichenor, Special Agent-in-Charge of the Internal Revenue Service Criminal Investigation Division in Chicago. The U.S. Attorney's

Office in Milwaukee also cooperated with the investigation, and the investigation is continuing, the officials said.

“Individuals who serve on public boards or boards of private institutions and charities must serve the interests of the public or the institution and not steal for themselves,” Mr. Fitzgerald said. “Beyond owing basic duties of honesty and integrity, hospital Planning Board members play an important role in providing access to health care while containing costs. The indictment charges that Levine instead sold out his duties and gave out state approvals and hospital contracts on the basis of ‘who you know’ and worse, ‘who you pay,’” he added.

The government is being represented by Assistant U.S. Attorneys Jacqueline Stern, Christopher Niewoehner, Kaarina Salovaara and James Barz.

Upon conviction, the charges alleged in the indictment carry the following maximum penalties on each count: mail fraud, wire fraud and extortion – 20 years in prison and a \$250,000 fine; and misapplication of government funds – 10 years and a \$250,000 fine. One of the money laundering counts carries a maximum prison term of 20 years and the other count a maximum of 10 years, and both carry a maximum fine of \$500,000 or twice the amount of the money involved in the transaction. As an alternative maximum fine, the Court could impose a fine of twice the gross profit to any defendant or twice the loss to any victim. The Court, however, would determine the appropriate sentence to be imposed.

The public is reminded that an indictment contains only charges and is not evidence of guilt. The defendants are presumed innocent and are entitled to a fair trial at which the government has the burden of proving guilt beyond a reasonable doubt.

###

**EXHIBIT 25**



IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

NORTHERN ILLINOIS MEDICAL CENTER, )  
MEMORIAL MEDICAL CENTER, and )  
CENTEGRA HEALTH SYSTEM, )

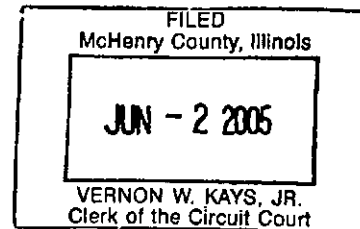
Plaintiffs, )

v. )

No. 04-MR-106

ILLINOIS HEALTH FACILITIES PLANNING )  
BOARD, ILLINOIS DEPARTMENT OF )  
PUBLIC HEALTH, MERCY CRYSTAL )  
LAKE HOSPITAL AND MEDICAL CENTER, )  
INC., MERCY HEALTH SYSTEM )  
CORPORATION, ELI L. BEEDING JR., and )  
THE BEEDING GROUP, )

Defendants. )



**STIPULATION**

The parties, through their respective counsel, stipulate and agree as follows:

1. On May 6, 2005, the Court in the above captioned case entered a Memorandum Opinion and Order with respect to Count I of the Complaint, in which the Court ordered that the decision of the Illinois Health Facilities Planning Board to issue a permit in Project No. 03-049 is reversed.
2. There remains pending before the Court: (a) Plaintiffs' Motion For Leave To Add Additional Grounds To Reverse Administrative Decision And For Other Relief, which seeks to add additional grounds to reverse the permit under Count I; and (b) Second Amendment To Complaint, which contains Counts II, III and IV and which seeks to reverse the permit on independent grounds.
3. Defendants Illinois Health Facilities Planning Board, Illinois Department of Public Health, Mercy Crystal Lake Hospital and Medical Center Inc., Mercy Health System

Corporation, Eli L. Beeding, Jr. and The Beeding Group, hereby stipulate and agree to waive all rights to appeal the Order entered on May 6, 2005 which ordered that the decision of the Illinois Health Facilities Planning Board to issue a permit in Project No. 03-049 is reversed, and to waive all rights to appeal the Final Judgment Order entered on this Stipulation.

4. In reliance on defendants' waiver of any rights to appeal, Plaintiffs stipulate and agree that Plaintiffs' Motion For Leave To Add Additional Grounds To Reverse Administrative Decision And For Other Relief may be denied as moot and that the Second Amendment to Complaint may be dismissed as moot.

5. Then parties agree that this Stipulation may be signed in counterparts.

Stipulated and Agreed:

NORTHERN ILLINOIS MEDICAL CENTER,  
MEMORIAL MEDICAL CENTER, and  
CENTEGRA HEALTH SYSTEM, Plaintiffs,

Dated: May 27, 2005


By: 

Jeffrey R. Ladd, Reg. No. 1157289  
Lawrence M. Gavin, Reg. No. 0926108  
Daniel J. Lawler, Reg. No. 6180981  
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Thomas C. Zanck, Reg. No. 3102122  
Militello, Zanck & Coen PC  
40 Brink Street  
Crystal Lake, Illinois 60014  
Phone: (815) 459-8800  
Fax: (815) 459-8429

MERCY CRYSTAL LAKE HOSPITAL  
AND MEDICAL CENTER INC. and  
MERCY HEALTH SYSTEM  
CORPORATION, Defendants

Dated: May 26, 2005

By:   
Steven H. Hoeft, Esq.  
McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago, Illinois 60606-5096


ILLINOIS HEALTH FACILITIES  
PLANNING BOARD and ILLINOIS  
DEPARTMENT OF PUBLIC HEALTH,  
Defendants

Dated: May \_\_\_\_, 2005

By: \_\_\_\_\_  
Deborah L. Simpson, Esq.  
Katherine H. Laurent, Esq.  
Office of the Attorney General  
General Law Bureau  
James R. Thompson Center  
100 West Randolph – 13<sup>th</sup> Floor  
Chicago, Illinois 60601

ELI L. BEEDING, JR. and THE BEEDING  
GROUP, Defendants

Dated: May 25, 2005

By:   
Eli L. Beeding, Jr.

MERCY CRYSTAL LAKE HOSPITAL  
AND MEDICAL CENTER INC. and  
MERCY HEALTH SYSTEM  
CORPORATION, Defendants

Dated: May \_\_\_, 2005

By: \_\_\_\_\_  
Steven H. Hoeft, Esq.  
McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago, Illinois 60606-5096

ILLINOIS HEALTH FACILITIES  
PLANNING BOARD and ILLINOIS  
DEPARTMENT OF PUBLIC HEALTH,  
Defendants

Dated: May 25, 2005

By: Katherine Laurent  
Deborah L. Simpson, Esq.  
Katherine H. Laurent, Esq.  
Office of the Attorney General  
General Law Bureau  
James R. Thompson Center  
100 West Randolph – 13<sup>th</sup> Floor  
Chicago, Illinois 60601

ELI L. BEEDING, JR. and THE BEEDING  
GROUP, Defendants

Dated: May \_\_\_, 2005

By: \_\_\_\_\_  
Eli L. Beeding

**EXHIBIT 26**

# The Illinois Task Force on Health Planning Reform

Pursuant to  
Public Act 095-0005

**Co-chairs:**

Senator Susan Garrett, *Co-Chair*

Representative Lisa Dugan, *Co-Chair*

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**Illinois Task Force on Health Planning Reform Members**

**Committee Members**

<b>Member</b>	<b>Affiliation</b>
Sen. Susan Garrett, Co-Chair	State Senate (D)
Rep. Lisa Dugan, Co-Chair	State House of Representatives (D)
Gary Barnett	Sara Bush Lincoln Health Center
Kenneth Robbins	Illinois Hospital Association
Jay Doherty	City Club of Chicago
Sister Sheila Lyne	Mercy Hospital and Medical Center
Hal Ruddick	SEIU Local #4
Donna Thompson	Access Community Health Network
Sen. Pamela Althoff	State Senate (R)
Sen. Bill Brady	State Senate (R)
Rep. Louis Lang	State House of Representatives (D)
Rep. Brent Hassert	State House of Representatives (R)
Rep. Renée Kosel	State House of Representatives (R)
Claudia Lenhoff	Champaign County Health Care Consumers
William McNary	Citizen Action Illinois
Heather O'Donnell	Center for Tax and Budget Accountability
Margie Schaps	Health and Medicine Policy Research Group
Lisa Madigan represented by Paul Gaynor	Office of the Attorney General
Vacancy	State Senate (D)

**Ex-Officio Members**

<b>Member</b>	<b>Affiliation</b>
Secretary Carol Adams represented by Dr. Myrtis Sullivan	Illinois Department of Human Services
Director Damon T. Arnold represented by David Carvalho	Illinois Department of Public Health
Director Barry Maram, and designee Mike Jones	Illinois Department of Healthcare and Family Services
Executive Secretary Jeffrey S. Mark	Illinois Health Facilities Planning Board
Ginger Ostro	Governor's Office of Management and Budget

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# Memorandum

December 31, 2008

to: Members, Illinois House of Representative  
Members, Illinois Senate

from: Senator Susan Garrett, *Co-Chair*  
Representative Lisa Dugan, *Co-Chair*

re: **Illinois Task Force on Health Planning Reform**

---

This document is the final report of the **Task Force on Health Planning Reform** ("Task Force") required by Senate Bill 244 (PA 95-0005) of the 95<sup>th</sup> General Assembly. Senate Bill 244 amended the Illinois Health Facilities Planning Act to create a 19-member Task Force to evaluate the current "Certificate of Need" (CON) program and recommend changes to the structure and function of both the Illinois Health Facilities Planning Board and the Illinois Department of Public Health (IDPH) in the review of applications to establish, expand, or modify health facilities and related capital expenditures.

The Task Force met 14 times to meet our goals, with the final 3 meetings focused on developing a consensus on the recommendations. On December 19, 2008, the Task Force voted 12 to 1 to approve the attached final recommendations. With one dissenting opinion, a minority report has been provided to the Task Force (see Appendix A).

The Task Force determined its main reform goal as follows:

The State of Illinois will promote the distribution of health care services and improve the healthcare delivery system in Illinois by establishing a statewide comprehensive plan and ensuring a predictable, transparent and efficient CON process.

In order to meet this goal, the Task Force recommends the establishment of a Statewide Comprehensive Health Plan, as well as reforms to the Illinois Health Facilities Planning Board, in order to increase the efficiency and effectiveness of both overall health planning and the CON process. The Comprehensive Health Plan will comprehensively address health and mental health services, to specifically focus on identifying health disparities, identifying state-level and regional needs, and determining the impact of market forces on access to high quality services for uninsured and underinsured residents. Cost containment and support for safety net services will continue to be tenets of the CON process. The process will lead to evidence-based assessments, projections and decisions applied to capacity, quality, value and equity in health care delivery. Further, the CON Process will result in written and consistent decisions based on the Comprehensive Health Plan, as well as other plans recommended by the Center for Comprehensive Health Planning, a new unit to be established under IDPH. In addition, the integrity of the CON Process will be insured through revised structure and policies, including the introduction of a Special Nomination Panel for the CON Board membership, along with improved ethics and communications procedures.

The **Illinois Health Facilities Planning Act** (20 ILCS 3960, et seq.) became effective in 1974. It created a 13-member **Illinois Health Facilities Planning Board** ("CON Board") to review the

necessity of capital expenditures for the establishment or modification of health facilities and the procurement of medical equipment. Both the 93<sup>rd</sup> and 94<sup>th</sup> General Assemblies restructured the Board, after extensive debates about the history and performance of the Board, and in response to proposals for its complete elimination. Additionally, illegal activity in 2004, involving conflicts of interest and criminal indictments of a board member for influence peddling, kickbacks, and other corrupt actions by parties involved in applications subject to review, prompted the Governor and General Assembly to reduce the size and makeup of the board, and to impose more strict membership requirements.

In response, the 95<sup>th</sup> General Assembly enacted House Resolution 1497, which required the Legislative Commission on Government Forecasting & Accountability to conduct a comprehensive evaluation of the Illinois Health Facilities Planning Act, including a review of the performance of the Illinois Health Facilities Planning Board. The Commission contracted with the Lewin Group to conduct the evaluation. Their subsequent report, entitled "An Evaluation of Illinois' 'Certificate of Need' Program" was submitted in February 2007 and had 6 main recommendations, including "the Illinois legislature continue the 'Certificate-of-Need' program with an abundance of caution."

The Lewin Group recommendations were the catalyst for the creation of this Task Force, which began a long and deliberative process on January 31, 2008. The Task Force engaged in a course of action to review the health planning process in an open and impartial fashion. As testimony was received and discussed, it became evident that Illinois needed the safeguards in place which are afforded by the regulated health facility planning process, and an initial decision was made to maintain the CON process. From then on, the Task Force focused on how to restructure the process. The principle findings outlined in this report stem from the intent of the Task Force to streamline the CON process, take significant steps toward transparency, and unite comprehensive health planning and health facility efforts for statewide gains.

The Task Force urges the General Assembly to implement its recommendations to establish and implement a Statewide Comprehensive Health Plan, as well as to reform the Certificate of Needs process. We believe that the overall changes included in the recommendations will have the effect of rejuvenating and insulating the Illinois Health Facilities Planning Board. Our work concluded on December 31, 2008 and any proposed reforms are due to be implemented by July 1, 2009, which corresponds to the sunset date for the CON program in House Bill 5017. The Task Force expects to be available to the 96<sup>th</sup> General Assembly for the legislative implementation of these recommendations. A complete record of the Task Force activities is available on the Illinois Department of Public Health website.

Signers,

  
\_\_\_\_\_  
Susan Garrett  
Illinois State Senator

  
\_\_\_\_\_  
Lisa Dugan  
Illinois State Representative

## **Introduction**

This document is the final report of the **Task Force on Health Planning Reform** ("Task Force") required by Senate Bill 244 (PA 95-0005) of the 95<sup>th</sup> General Assembly. Senate Bill 244 amended the Illinois Health Facilities Planning Act to create a 19-member Task Force to evaluate the current "Certificate of Need" (CON) program and recommend changes to the structure and function of both the Illinois Health Facilities Planning Board and the Illinois Department of Public Health (IDPH) in the review of applications to establish, expand, or modify health facilities and related capital expenditures. The Task Force concluded its work on December 31, 2008 and any proposed reforms are due to be implemented by July 1, 2009. A complete record of the Task Force activities is available on the Illinois Department of Public Health website (see Appendix C for further information).

## **Background**

The **Illinois Health Facilities Planning Act** (20 ILCS 3960, et seq.) became effective in 1974. It created a 13-member **Illinois Health Facilities Planning Board** ("CON Board") to review the necessity of capital expenditures for the establishment or modification of health facilities and the procurement of medical equipment. Entities subject to the Act include licensed and state-operated: hospitals; long-term care facilities; dialysis centers; ambulatory surgery centers; and alternative health care delivery models. Facilities operated by the federal government are exempt. Transactions requiring a permit now include any: construction or modification by or on behalf of a health care facility exceeding the expenditure minimum (\$8,850,717); substantial increase in a facility's bed capacity; substantial change in the scope or functional operation of a facility; and, proposed establishment or discontinuation of a facility or category of service. In addition, the acquisition of major medical equipment (valued at more than \$8,850,717) or health and fitness centers (valued at more than \$4,231,660) must obtain a permit or exemption. These thresholds are updated annually for inflation<sup>1</sup>.

Proposals to repeal the Illinois Health Facilities Planning Act have not been enacted, but there has been a substantial reorganization of the CON Board. Proponents have successfully argued that although the CON Board has not historically denied many projects, the review process requires applicants to more carefully develop and scale their projects to established criteria and standards of need. Many existing hospitals and the communities they serve have generally supported the "Certificate of Need" law, because elimination could jeopardize their economic vitality by a radical proliferation or expansion of unnecessary facilities.

Both the 93<sup>rd</sup> and 94<sup>th</sup> General Assemblies restructured the CON Board after extensive debates about the history and performance of the Board, and in response to proposals for its complete elimination. Additionally, illegal activity in 2004, involving conflicts of interest and criminal indictments of a board member for influence peddling, kickbacks, and other corrupt actions by parties involved in applications subject to review, prompted the Governor and General Assembly to reduce the size and makeup of the board, and to impose more strict membership requirements.

The 94<sup>th</sup> General Assembly subsequently enacted Senate Bill 2436 (P.A. 94-0983) that extended the "Sunset" date to April 1, 2007, so that the status of the Board and the "Certificate of Need" program would be subject to further and more intensive evaluation, given the acceleration of health facility capital expenditures, the national trends of such health care regulation, continuing concerns about increasing health care costs, the need for more effective cost containment, and the controversial history of Illinois' current system.

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<sup>1</sup> Figures from the Illinois Health Facilities Planning Board, Memo dated June 18, 2008

House Resolution 1497, enacted by the 95<sup>th</sup> General Assembly, required the Legislative Commission on Government Forecasting & Accountability to conduct a comprehensive evaluation of the Illinois Health Facilities Planning Act. This included a review of the performance of the Illinois Health Facilities Planning Board to determine if it was meeting the goals and objectives that were originally intended, as well as meeting the goals of subsequent amendments and revised Board policies.

The Commission contracted with the Lewin Group to conduct the evaluation. Their subsequent report, entitled "An Evaluation of Illinois' 'Certificate of Need' Program" was submitted in February 2007, and recommended "the Illinois legislature continue the 'Certificate-of-Need' program with an abundance of caution." Specifically, six main recommendations of the Lewin Group report were as follows: 1) the CON program be extended for 3 years; 2) other policies which support safety-net hospitals be evaluated; 3) a more proactive Charter for the Health Facilities Planning Board be considered; 4) CON Board size and composition be modified; 5) CON Board member compensation be considered; and 6) the workload of the CON Board be focused on reviewing new facilities, as well as monitoring the viability of safety net hospitals. The Lewin Group also found that given the potential for harm to specific critical elements of the health care system, non-traditional rationales for maintaining "Certificate-of-Need" laws deserve consideration, until further study is conducted on the impact that specialty providers and ambulatory surgery centers may have on safety-net providers. Explicit transfers of funds to safety-net hospitals may also be more direct policy tools for their protection.

In response to the Lewin Group analysis and additional concerns regarding health planning in Illinois, the 95th General Assembly enacted Senate Bill 611 (Public Act 95-0001) that extended the "sunset" date of the Illinois Health Facilities Planning Act from April 1, 2007 to May 31, 2007 so that interested parties could agree on a strategy to further extend the "sunset" date, and develop a more comprehensive reform agenda.

Subsequently, the 95<sup>th</sup> General Assembly enacted Senate Bill 244 (PA 95-0005) which created the Task Force on Health Planning Reform. House Bill 5017 extended the conclusion of the Task Force to December 31, 2008 and the sunset for the CON program to July 1, 2009.

### **Task Force Activities**

The Task Force on Health Planning Reform began a long and deliberative process on January 31, 2008 and engaged in a review of the health planning process in an open and impartial fashion.

The 19 member Task Force was co-chaired by Senator Susan Garrett and Representative Lisa Dugan (for further detail on members see page 3). The Task Force was designed to include:

- 6 persons appointed by the Director of IDPH;
- 2 appointed by the President of the Senate (1 as co-chair);
- 2 appointed by the Senate Minority Leader;
- 2 appointed by the Speaker of the House of Representatives (1 as co-chair);
- 2 appointed by the House Minority Leader;
- 1 The Attorney General, or designee; and
- 4 appointed by the Attorney General representing health care consumers.

A vote of 12 appointed Task Force members is required to adopt recommendations for the Governor and General Assembly, as well as for the final report.

In accordance with Senate Bill 244 (PA 95-0005), the Task Force gathered information and heard testimony concerning:

1. The impact of health planning on the provision of essential and accessible health care services, including; prevention of duplication of facilities and services; improved efficiency of the health care system; maintenance of an environment in the health care system that supports quality care; economic use of resources; and the effect of repealing the Act.
2. Reform of the Illinois Health Facilities Planning Board, including identifying and recommending initiatives to meet special needs.
3. Reforms to ensure that health planning under the Illinois Health Facilities Planning Act is coordinated with other health planning laws and activities of the State.
4. Reforms to enable the Planning Board to focus its review efforts on CON applications involving new facilities, discontinuation of services, major expansions, and volume-sensitive services, and to expedite review of other projects to the maximum extent possible.
5. Reforms to enable the Planning Board to determine how procedures should be amended to give special attention to the impact of those projects on traditional community hospitals.
6. Implementation of policies and procedures which give special consideration to the impact of the projects it reviews on access to "safety net" services.
7. Changes to make the planning policies and procedures predictable, transparent, and as efficient as possible.
8. Reforms which ensure that patient access to new and modernized services are not delayed during a transition period.
9. Identification of necessary resources to support the work of the Agency and the Board.

The legislation also directed the Task Force to recommend reforms regarding:

1. Size and membership of the Illinois Health Facilities Planning Board.
2. Changes in the state's long-range health facilities plan (10-year scope, to be updated every year).
3. Changes in regulations that establish separate criteria, standards and procedures when necessary to adjust for structural, functional, and operational differences between long-term care facilities and acute care facilities.
4. Changes in policies and procedures which ensure that the planning board updates standards and criteria on a regular basis and proposes standards to keep pace with the health care system.
5. Expediting the review and approval of projects and determining their impact on "safety net" services.
6. Revisions of enforcement processes and compliance standards to ensure fairness and consistency with the severity of the violations.
7. Conflict-of-interest standards and increases in penalties for violations.
8. Other changes determined necessary to improve the administration of this Act.

The Illinois Department of Public Health was required to provide staff support services. The Department, as directed by the Task Force, was authorized to hire staff or consultants and incur other expenditures from appropriated funds. The Department received assistance from the Illinois Public Health Institute and contracted for technical assistance from Laura McAlpine (McAlpine Consulting for Growth).

The Task Force conducted public hearings from January to December 2008 in Chicago and Springfield with video conferencing. The initial meeting focused on review of the statutory requirements and determination of future meetings dates. In the February meetings, the Task Force agreed on changes to the timeline, organized the work plan, reviewed the current

structure of the CON process and evaluated the Lewin Group study. Although the Act originally abolished the Task Force on March 1, 2008, the Task Force requested an extension to their deadline to December 31, 2008 during their February 8<sup>th</sup> meeting. During subsequent public hearings, the Task Force heard from fifty expert witnesses and interested parties, including representatives of unions, health facilities, the Justice Department, the Federal Trade Commission, health professionals, as well as previous and current representatives of the CON Board (for a detailed list of presenters and website information on their testimony see Appendix B and Appendix C). Presentations varied from clarification and analysis of the current CON process to specific recommendations on Safety Net Hospitals. One of the initial decisions of the Task Force members was to maintain the CON process. Moving forward, the Task Force focused on recommendations to improve and re-structure the CON process.

### **Final Recommendations:**

#### ***Overview***

The Task Force began extensive deliberations on September 15, 2008 with the assistance of a facilitator in order to allow all Task Force members to participate in the discussion. These deliberations, using a draft Blueprint document of recommendations and a draft organizational chart, continued on October 8<sup>th</sup>, October 30<sup>th</sup>, and December 8<sup>th</sup>, concluding on December 19<sup>th</sup> with a vote of 12 to 1 on the final Blueprint recommendations<sup>2</sup>. A minority report is attached in Appendix A.

As testimony was received and discussed, it became evident that Illinois should continue with the safeguards in place, which are afforded by the regulated health facility planning process. The principle findings outlined in this report stem from the intent of the Task Force to streamline the process, take significant steps toward transparency, and to unite comprehensive health planning and health facility efforts for statewide gains.

The Task Force determined its main reform goal as follows:

The State of Illinois will promote the distribution of health care services and improve the healthcare delivery system in Illinois by establishing a statewide comprehensive plan and ensuring a predictable, transparent and efficient CON process.

In order to meet this goal, the Task Force recommends the establishment of a comprehensive health planning agency charged with creating a plan, which will allow for a stronger CON process. At present, the statewide health planning efforts have been fragmented at best, with no single source for health planning in a global sense. The inability of the current CON Board to conduct sufficient planning was determined by the Task Force as a major deficit in its functioning. Significant reforms are also being recommended for the CON process. Implementation of these recommendations will increase the efficiency and effectiveness of both overall health planning and the CON process.

The objectives of the Comprehensive Health Plan are to assess existing community resources and determine health care needs, to support safety net services for the uninsured and underinsured residents, to promote adequate financing for health care services, and to recognize and respond to changes in community health care needs. To this end, strategies include conducting a biennial comprehensive assessment of health resources and service needs, conducting needs assessments, collecting and analyzing relevant, objective and

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<sup>2</sup> Aye: Chicago - Garrett, Dugan, Althoff, Gaynor, Lyne, McNary, Robbins, Ruddick, Schaps; Phone - Barnett, Kosel, Lenhoff

Nay: Chicago - Brady



accurate data, identifying issues related to health care financing, evaluating the findings of the inventory/needs assessment and annually reporting to the General Assembly and the public. The Comprehensive Health Plan will comprehensively address health and mental health services, specifically focus on identifying health disparities, identify state-level and regional needs, and determine the impact of market forces on access to high quality services for uninsured and underinsured residents.

The existing objectives of the current Certificate of Need Process include improving the financial ability of the public to obtain necessary health services, establishing an orderly and comprehensive health care delivery system, maintaining and improving the provision of essential health care services, increasing the accessibility of these services, assuring the reduction and closure of health care services and/or facilities is performed in an orderly and timely manner while considering the public interest, and assessing the financial burden patients experience as a result of unnecessary health care construction and modification.

In order to reform the CON process and better meet the existing objectives, the Task Force recommends applying the findings from the Comprehensive Health Plan and the establishment of mechanisms to support adequate financing of the health care delivery system. Cost containment and support for safety net services will continue to be tenets of the CON process. The process will lead to evidence-based assessments, projections and decisions applied to capacity, quality, value and equity in health care delivery. Further, the CON Process will result in written and consistent decisions based on the Comprehensive Health Plan, as well as other plans recommended by the Center for Comprehensive Health Planning, a new unit to be established under IDPH.

Restructuring the Illinois Health Facilities Planning Board is a principal element of the recommendations, based upon consideration of the Lewin Report and testimony gathered by the Task Force. We recommend the CON Board be made up of 9 paid members, with a Chairman as the principal officer of the Board, and the elimination of the Executive Secretary position. The duties of the Executive Secretary, to the greatest extent possible, will be assumed by the Chairman. This board will continue to be located at IDPH with operational support. The Task Force suggests reviewing the compensation levels paid to the members of the Election Board for comparable salaries.

Recommendations to streamline the application process include the elimination of the letter of intent. Additional recommendations to refocus and streamline the CON process include a separate cost threshold for hospital and non-hospital applications, as well as the removal of the application of common financing as a test for whether projects are inter-related. In order to increase support for safety net services, recommendations drafted jointly by the Attorney General's Office and the Illinois Hospital Association were accepted. Charity care and safety net service recommendations include, but are not limited to, the following: 1) reasonable conditions or stipulations agreed to by the applicant that address health resource needs; 2) special consideration to the impact of the project on access to safety net services; 3) definitions of safety net services and charity care; and, 4) establishment of a review standard requiring a 'Safety Net Impact Statement' with CON applications, including a mechanism for public comment on such statements.

The Task Force is also making recommendations to ensure the integrity of the CON Board and its activities. These include the use of a Special Nomination Panel to provide some independence in the appointment of Board members, clarifying limits on ex parte communication, and a renewed emphasis on ethics for CON Board and staff. The composition

and qualifications of this new Nomination Panel may be revised to ensure its timely formation and effectiveness. This, and oversight of the Panel, will be addressed during the drafting of legislation.

Given the important nature of the work coming before the CON Board, we are recommending an orderly, acceptable and timely transition process that preserves the existing authority of the CON Board while adjustments are made to comply with new rules formulated from legislation. Further, the Task Force also recommends that the "sunset" of the existing law be extended for at least 10 years, in order to provide stability and continuity to the process.

The following sections provide the following: a) Organizational Chart of the proposed reorganization of the CON Board and the implementation of the Center for Comprehensive Health Planning; b) Blueprint of the Task Force recommendations; and c) Financial estimates on the cost of establishing the Center for Comprehensive Health Planning, as well as the reorganization of the CON Board.

**EXHIBIT 27**



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111 E. Monroe  
Springfield, IL 62756  
217-782-7017  
www.cyberdriveillinois.com

Registration Type: Annual

Registration Date: 01-20-2011

**Entity Information**

Entity ID: 1564

Reg Year: 2011

Name: QUARLES & BRADY

Address: 300 N. LASALLE STREET SUITE 4000

City: CHICAGO State: IL Zip Code: 60654-3422

Phone: (312) 715-5000 Extension: \_\_\_\_\_ Fax: \_\_\_\_\_

**Authorized Agent Information**

Name: SANFORD M. STEIN

Address: QUARLES & BRADY 300 N. LASALLE STREET, SUITE 4000

City: CHICAGO State: IL Zip Code: 60654

Phone: (312) 715-6162 Extension: \_\_\_\_\_ Fax: \_\_\_\_\_



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**Clients**

DEUTSCHE BANK NATIONAL TRUST COMPANY  
ONE HOPE UNITED  
SUNOVION PHARMACEUTICALS, INC.  
VILLAGE OF LYNWOOD  
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- CENTRAL MANAGEMENT SERVICES, DEPT. OF
- CHILDREN AND FAMILY SERVICES, DEPT. OF
- COMMERCE COMMISSION
- FINANCIAL AND PROFESSIONAL REGULATION, DEPT. OF
- GAMING BOARD
- GENERAL ASSEMBLY MEMBERS
- GOVERNOR'S OFFICE
- HEALTHCARE AND FAMILY SERVICES
- HUMAN SERVICES, DEPT. OF
- ILLINOIS STATE TOLL HIGHWAY AUTHORITY
- TRANSPORTATION, DEPT. OF

The registrant intends to lobby the following subject matter:

- BANKING AND FINANCIAL SERVICES
- ECONOMIC DEVELOPMENT
- EDUCATION
- HEALTH CARE
- PUBLIC HEALTH
- SOCIAL SERVICES
- TRAVEL OR TOURISM



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Registration Type: Annual

Entity Name: QUARLES & BRADY

The registrant's intended activity description involves the following actions:

Executive

Legislative

Administrative

Brief description of the lobbying activity which the registrant intends to perform:

Quarles & Brady intends to monitor developments and advocate on behalf of firm client sin the areas of funding opportunities for child and family welfare service programs; public health; banking and financial services; issues related to gaming expansion, expansion of medical and hospital services; procurement and public finance.



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Reg Year: 2011

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City: CHICAGO State: IL Zip Code: 60654-3422

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## Contractual Lobbying Firms

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## Clients

DEUTSCHE BANK NATIONAL TRUST COMPANY  
MERCY HEALTH SYSTEM CORPORATION, INC.  
ONE HOPE UNITED  
SUNOVION PHARMACEUTICALS, INC.  
VILLAGE OF LYNWOOD

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- CHILDREN AND FAMILY SERVICES, DEPT. OF
- COMMERCE COMMISSION
- FINANCIAL AND PROFESSIONAL REGULATION, DEPT. OF
- GAMING BOARD
- GENERAL ASSEMBLY MEMBERS
- GOVERNOR'S OFFICE
- HEALTH FACILITIES AND SERVICES REVIEW BOARD
- HEALTHCARE AND FAMILY SERVICES
- HUMAN SERVICES, DEPT. OF
- ILLINOIS STATE TOLL HIGHWAY AUTHORITY
- TRANSPORTATION, DEPT. OF

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- ECONOMIC DEVELOPMENT
- EDUCATION
- HEALTH CARE
- PUBLIC HEALTH
- SOCIAL SERVICES
- TRAVEL OR TOURISM



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Entity Name: QUARLES & BRADY

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STEIN, SANFORD M.

300 N. LASALLE STREET CHICAGO, IL 60654

[This section contains multiple horizontal lines for additional lobbyist information.]

March 17, 2011

Ms. Courtney R. Avery  
Administrator  
Health Facilities and Services Review Board  
525 West Jefferson Street  
2nd Floor  
Springfield, IL 62761

**Public Hearing Submission in Opposition to  
Mercy Crystal Lake Hospital & Medical Center  
Project No. 10-089**

Dear Ms. Avery:

Our firm represents Centegra Health System, Centegra Hospital-McHenry, Centegra Hospital-Woodstock and Centegra Hospital-Huntley. This submission is made on their behalf in opposition to the application of Mercy Crystal Lake Hospital & Medical Center, Project No. 10-009 made by Mercy Alliance, Inc. and its affiliates (collectively "Mercy").

The Statute governing State Board review of Mercy's Certificate of Need ("CON") application is expressly intended to assure that persons establishing a new health care facility in Illinois have the background and character necessary to provide a proper service for the community.<sup>1</sup> To this end, the Statute requires the State Board to affirmatively determine an applicant's fitness to provide a proper standard care "with particular regard to the qualification, background and character of the applicant."<sup>2</sup>

An applicant for a CON puts its background and character at issue. Mercy acknowledges this and submits evidence of its background and character at pages 81-86, 92, 110, and 115 of its CON application. This submission provides additional, relevant documentation of Mercy's background and character.

The last time Mercy filed an application for a new hospital in Crystal Lake, three people connected with that application were indicted including Mercy's contractor, Jacob Kiferbaum, and its attorney, Steven Loren. The third person was Stuart Levine, the State Board's Vice-Chairman. All three pled guilty to a variety of crimes to which they were co-conspirators.<sup>3</sup> Mercy's men on that scandalized 2003 CON application were Javon Bea, Richard Gruber and Herbert Franks, who were Mercy's CEO, Vice President and Registered

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Agent, respectively. Mercy's latest CON application has the same three men on the front page; and they still have the same titles. Nothing has changed.<sup>4</sup>

Herbert Franks filed Mercy's first application in July 2003.<sup>5</sup> According to Steven Loren, it was Franks who brought Mercy together with Kiferbaum.<sup>6</sup> In November 2003, Kiferbaum sent Javon Bea and Richard Gruber a letter stating that Kiferbaum Construction Services was a "full service" firm and that those services included the "securing of the Certificate of Need."<sup>7</sup>

Mercy did not hire Kiferbaum at first. Mercy went before the State Board in December 2003 and its Crystal Lake project was unanimously voted down: zero votes for, eight votes against.<sup>8</sup> The next thing Javon Bea did was hire Kiferbaum. Bea and Kiferbaum entered into a contract in January 2004.<sup>9</sup>

In February 2004, Kiferbaum introduced Richard Gruber to Stuart Levine. According to Gruber's own sworn statement, Levine told Gruber that Kiferbaum was a man of integrity and that Gruber could trust him.<sup>10</sup> Gruber replied that he was impressed with Kiferbaum's construction company.

In addition to his work for Mercy, Herbert Franks was also involved in the attempt to have Edward Hospital hire Kiferbaum on another CON project. In testimony before the Illinois Joint Committee on Government Reform, Edward's CEO, Pamela Davis, said that Franks and Mercy's lobbyist Mike Noonan approached her in March 2004 and said she should hire Kiferbaum for an Edward project because Kiferbaum had influence with members of the State Board. They told her that for the Mercy project, State Board member Levine had personally met with Kiferbaum and Mercy's CEO to reassure Mercy's CEO that Kiferbaum could "get things done."<sup>11</sup>

But Bea apparently needed more reassurance. On April 20, 2004, the day before Mercy's application was reconsidered by the State Board, Kiferbaum called up Levine and said, "Javon Bea is panicking now."<sup>12</sup> Kiferbaum said Bea was panicking because he did not know who the fifth vote would be to approve his CON application. Levine told Kiferbaum that Mercy's lawyer, Steve Loren, "knows exactly what's what and things are fine." Kiferbaum was to tell Bea that he was in good hands.

The next day, Bea, Gruber, Franks and Loren appeared before the State Board for a vote on Mercy's CON application.<sup>13</sup> The approval of Mercy's application was described by one reporter who was there as follows:

"In the middle of the vote, the roll call was halted as [Chairman Thomas] Beck and Levine whispered to each other. Levine then approached Dr. Imad

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Alamanseer, who had voted 'pass' instead of 'yes' or 'no.' After another whispered conversation between Levine and Alamanseer, Alamanseer changed his 'pass' to 'yes,' providing the vote needed to pass the project."<sup>14</sup>

After the State Board meeting, Levine called Steven Loren and discussed the Mercy CON approval. Loren said that, "Javon knows that he stole, he said he's at second base."<sup>15</sup> Loren said that Bea was really upset that two State Board members, Danalynn Rice and Pamela Orr, had not voted for the project. Loren said that Bea "had been promised up and down the wazoo that he was going to get the support of the uh, those 2 women.... on, on the theory that the unions were helping him out." Shortly afterwards, Kiferbaum called Levine to discuss the State Board meeting. Kiferbaum told Levine that Javon Bea said "Stuart was masterful" and "we would never ever would of gotten' this."<sup>16</sup> Kiferbaum said Javon Bea knows "how to play the game."

In June 2004, Pamela Davis' whistleblower suit was leaked to the Chicago Sun-Times and her allegations of the conspiracy to rig the Mercy CON vote were made public.<sup>17</sup> That same month, the existence of a federal criminal investigation into the approval of the Mercy Crystal Lake CON was made public.<sup>18</sup> In July 2004, based on the allegations of impropriety relating to State Board actions, the Governor imposed a moratorium on "all meetings and actions of the Board until the Board is reconstituted by law."<sup>19</sup> In August 2004, all of the sitting State Board members were removed from office by an Act of the Illinois General Assembly.<sup>20</sup>

Despite the immediate repercussions of the Mercy scandal, including the federal criminal investigation, the moratorium on State Board action, and the removal of all sitting Board members, Mercy still tried to keep its ill-gotten gain. For over a year, it fought Centegra Health System's lawsuit to overturn the CON permit in the Circuit Court of McHenry County. On May 6, 2005, Judge Maureen McIntyre ruled in Centegra's favor and invalidated the CON for Mercy Crystal Lake Hospital. The judge found that the decision to approve Mercy's CON application was against the manifest weight of the evidence, and was also arbitrary and capricious.<sup>21</sup> The following business day, Monday May 9, 2005, Levine and Kiferbaum were indicted. The United States Attorney's press release announcing the indictments laid out the corrupt scheme to approve Mercy's CON permit:

**"Mercy Hospital - \$1.5 million kickback from Kiferbaum to Levine:**  
Levine solicited a kickback of approximately \$1.5 million from Kiferbaum relating to the construction of Mercy Hospital's \$49 million Crystal Lake facility. Kiferbaum agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date. Levine used his influence with the Planning Board to ensure that Mercy Hospital received approval of its application to build the Crystal Lake hospital after hiring

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Kiferbaum's company. In voting for, and influencing other Planning Board members to vote for, Mercy's application, Levine concealed from the Planning Board his financial arrangement or contacts with Kiferbaum. After the Planning Board voted to approve Mercy's application on April 21, 2004, Levine reported to Individual 1 that hiring Kiferbaum did it for Mercy. When Levine told Kiferbaum that no one really knew that Levine was orchestrating the approval, Kiferbaum said he could not thank Levine enough, and Levine said they were in this together. Levine directed that Kiferbaum pay the kickback proceeds to Individual 1 pursuant to a sham consulting contract for \$1,728,000, which included the \$1.5 million kickback that Levine had solicited and \$228,000 that Kiferbaum still owed from the CMS addition kickback. On May 1, 2004, Levine told Individual 1 that other people knew that Mercy received its CON because of the combination of Kiferbaum, Hurtgen and a law firm and that this information would spread like wildfire."<sup>22</sup>

After these indictments, Mercy finally threw in the towel and stipulated that it would not appeal Judge McIntyre's decision that invalidated Mercy's CON permit.<sup>23</sup>

In May 2007, the Illinois General Assembly created the Task Force on Health Planning Reform ("Task Force") to investigate and make recommendations regarding the State Board. (Public Act 95-0005, effective May 31, 2007.) In its Final Report, the Task Force noted:

"Both the 93rd and 94th General Assemblies restructured the [State] Board, after extensive debates about the history and performance of the Board, and in response to proposals for its complete elimination. Additionally, illegal activity in 2004, involving conflicts of interest and criminal indictments of a board member for influence peddling, kickbacks, and other corrupt actions by parties involved in applications subject to review, prompted the Governor and General Assembly to reduce the size and makeup of the board, and to impose more strict membership requirements."<sup>24</sup>

The Task Force's Final Report included "recommendations to ensure the integrity of the CON Board and its activities."<sup>25</sup> In response to the Task Force recommendations, the General Assembly made extensive amendments to the Health Facilities Planning Act, including a revision to the Act's purpose statement to now provide: "The integrity of the Certificate of Need process is ensured through revised ethics and communications procedures."<sup>26</sup>



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The integrity of the CON process was destroyed by the activities surrounding the Mercy Crystal Lake scandal in 2004. There is now a new State Board, but the people on Mercy's latest CON application are the same: Javon Bea, Richard Gruber, and Herbert Franks. Less than a month after the latest Crystal Lake application was deemed complete, Mercy hired a professional lobbyist for the stated purpose of lobbying the State Board with regard to the proposed new hospital in Crystal Lake.<sup>27</sup>

I urge the State Board to fulfill its statutory mandate to give "particular regard to the qualification, background and character of the applicant" (20 ILCS 3960/6) and to deny Project No. 10-089, Mercy Crystal Lake Hospital and Medical Center.

Respectfully submitted,

Centegra Health System,  
Centegra Hospital-McHenry,  
Centegra Hospital-Woodstock, and  
Centegra Hospital-Huntley

By:



One of their Attorneys

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- <sup>1</sup> Illinois Health Facilities Planning Act, 20 ILCS 3960/2; Exhibit 1 hereto.  
  
[www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=407&ChapAct=20%20ILCS%203960/&ChapterID=5&ChapterName=EXECUTIVE+BRANCH&ActName=Illinois+Health+Facilities+Planning+Act](http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=407&ChapAct=20%20ILCS%203960/&ChapterID=5&ChapterName=EXECUTIVE+BRANCH&ActName=Illinois+Health+Facilities+Planning+Act)
- <sup>2</sup> Illinois Health Facilities Planning Act, 20 ILCS 3960/6; Exhibit 2 hereto.  
  
[www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=407&ChapAct=20%20ILCS%203960/&ChapterID=5&ChapterName=EXECUTIVE+BRANCH&ActName=Illinois+Health+Facilities+Planning+Act](http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=407&ChapAct=20%20ILCS%203960/&ChapterID=5&ChapterName=EXECUTIVE+BRANCH&ActName=Illinois+Health+Facilities+Planning+Act)
- <sup>3</sup> See Plea Agreements of Stuart Levine, Jacob Kiferbaum and Steven Loren attached hereto as Exhibits 3, 4 and 5, respectively.
- <sup>4</sup> See Front pages of CON applications for Mercy Crystal Lake Hospital project numbers 03-049 and 10-089; Exhibit 6 hereto.
- <sup>5</sup> Letter dated July 9, 2003 from Herb Franks to Jeffrey Mark; Exhibit 7 hereto.
- <sup>6</sup> Levine – Loren Call, April 21, 2004, 8:03 p.m., pages 8-9, Trial Exhibit April 21: 2003\_329, *United States v. Rezko*, 05-CR-0691, U.S. Dist. Court, N.D. 111.; Exhibit 8 hereto.  
  
[www.justice.gov/usao/iln/hot/us\\_v\\_rezko\\_exhibits/2008\\_03\\_20/april\\_21\\_2003\\_329.pdf](http://www.justice.gov/usao/iln/hot/us_v_rezko_exhibits/2008_03_20/april_21_2003_329.pdf)
- <sup>7</sup> Letter dated November 25, 2003 from Jacob Kiferbaum to Javon Bea and Richard Gruber; Exhibit 9 hereto
- <sup>8</sup> Results of December 17, 2003 meeting of the Illinois Health Facilities Planning Board; Exhibit 10 hereto.  
  
[www.hfsrb.illinois.gov/hfpbdec03vote.htm](http://www.hfsrb.illinois.gov/hfpbdec03vote.htm)
- <sup>9</sup> Construction Contract for Mercy Alliance; Exhibit 11 hereto.
- <sup>10</sup> Defendant Mercy Crystal Hospital and Medical Center, Inc.'s Response to Plaintiffs' First Set of Interrogatories filed in *Northern Illinois Medical Center v. Illinois Health*

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*Facilities Planning Board, Case No. 04-MR-106 ("Case No. 04-MR-106") Circuit of McHenry County, Illinois; Exhibit 12 hereto.*

- <sup>11</sup> See Pam Davis' Testimony to Illinois General Assembly Joint Committee on Government Reform and Certified Declaration of Pamela Davis filed in Case No. 04-MR-106 and submitted to the Illinois; attached hereto as Exhibits 13 and 14, respectively.

[www.ilga.gov/joint/Documents/Testimony%20of%20Pam%20Davis.pdf](http://www.ilga.gov/joint/Documents/Testimony%20of%20Pam%20Davis.pdf)

[www.ilga.gov/joint/Documents/Documents%20distributed%20at%205-5-09%20hearing.pdf](http://www.ilga.gov/joint/Documents/Documents%20distributed%20at%205-5-09%20hearing.pdf)

- <sup>12</sup> Levine – Kiferbaum Call, April 20, 2004, 4:52 p.m., Trial Exhibit April 20: 1652 \_\_303 in *United States v. Rezko, 05, CR-0691, U.S. Dist. Court, N.D. 111.*; Exhibit 15 hereto.

[www.justice.gov/usao/iln/hot/us\\_v\\_rezko\\_exhibits/2008\\_03\\_20/april\\_20\\_1652\\_303.pdf](http://www.justice.gov/usao/iln/hot/us_v_rezko_exhibits/2008_03_20/april_20_1652_303.pdf)

- <sup>13</sup> Transcript excerpts of Illinois Health Facilities Planning Board Meeting, April 26, 2004; Exhibit 16 hereto.

- <sup>14</sup> "Hospitals Left Scratching Their Heads," by Alice Hohl, Daily Southtown, April 22, 2004; Exhibit 17 hereto.

[www.ilga.gov/joint/Documents/Documents%20distributed%20at%205-5-09%20hearing.pdf](http://www.ilga.gov/joint/Documents/Documents%20distributed%20at%205-5-09%20hearing.pdf)

- <sup>15</sup> Levine-Loren call, April 21, 2004, 8:03 p.m.; Exhibit 8 hereto.

[www.justice.gov/usao/iln/hot/us\\_v\\_rezko\\_exhibits/2008\\_03\\_20/april\\_21\\_2003\\_329.pdf](http://www.justice.gov/usao/iln/hot/us_v_rezko_exhibits/2008_03_20/april_21_2003_329.pdf)

- <sup>16</sup> Levine-Kiferbaum call, April 21, 2004; 8:33 p.m.; Trial Exhibit April 20: 2033 \_\_332 in *United States v. Rezko, 05, CR-0691, U.S. Dist. Court, N.D. 111.*; Exhibit 18 hereto.

- <sup>17</sup> See Chicago Sun-Times articles dated June 25 and 27, 2004 attached as Exhibit 19 hereto.

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- <sup>18</sup> "Feds Investigate Mercy Hospital Permit," by Jeff Kolky, Northwest Herald, June 26, 2004; Exhibit 20 hereto.
- <sup>19</sup> Moratorium On All Business of the Health Facilities Planning Board, dated July 7, 2004; Exhibit 21 hereto.
- <sup>20</sup> Public Act 93-889, effective August 2, 2004: "Notwithstanding any provision of this Section to the contrary, the term of office of each member of the State Board is abolished on the effective date of this amendatory Act of the 93<sup>rd</sup> General Assembly and those members no longer hold office."; Exhibit 22 hereto.
- <sup>21</sup> Memorandum Opinion and Order of Judge Maureen McIntyre dated May 6, 2005; attached as Exhibit 23 hereto.
- <sup>22</sup> Press release of Monday May 9, 2005 of United States Attorney, Northern District of Illinois: "Levine, Kiferbaum and Hurtgen Indicted On Fraud Charges Alleging Kickbacks, Influence-Peddling and Insider-Dealing"; Exhibit 24 hereto.
- <sup>23</sup> Stipulation entered June 2, 2005 in Case No. 04-MR-106; Exhibit 25 hereto.
- <sup>24</sup> Final Report of the Task Force on Health Planning Reform to the Illinois General Assembly at page 7; attached as Exhibit 26 hereto.
- [www.idph.state.il.us/tfhpr/reports/TFHPR%20Final%20Report.pdf](http://www.idph.state.il.us/tfhpr/reports/TFHPR%20Final%20Report.pdf)
- <sup>25</sup> Exhibit 26 hereto at page 11.
- <sup>26</sup> 20 ILCS 3960/6; attached as Exhibit 2 hereto.
- <sup>27</sup> Amended Lobbyist Registration dated February 9, 2011 and Annual Lobbyist Registration dated January 20, 2011; attached as Exhibit 27 hereto. The Amended Lobbyist Registration shows that the State Board was added as an entity intended to be lobbied and the description of the intended lobbying activity was expanded to include "the siting of new hospital in Crystal Lake."

## Table of Contents

### Exhibit

1. Illinois Health Facilities Planning Act, 20 ILCS 3960/2.
2. Illinois Health Facilities Planning Act, 20 ILCS 3960/6.
3. Plea Agreement of Stuart Levine.
4. Plea Agreement of Jacob Kiferbaum.
5. Plea Agreement of Steven Loren.
6. Front pages of CON applications for Mercy Crystal Lake Hospital Project Numbers 03-049 and 10-089.
7. Letter dated July 9, 2003 from Herbert Franks to Jeffrey Mark.
8. Levine – Loren Call, April 21, 2004, 8:03 p.m., Trial Exhibit April 21: 2003\_329, *United States v. Rezko*, 05-CR-0691, U.S. Dist. Court, N.D. 111.
9. Letter dated November 25, 2003 from Jacob Kiferbaum to Javon Bea and Richard Gruber.
10. Results of December 17, 2003 meeting of the Illinois Health Facilities Planning Board.
11. Kiferbaum Construction Contract for Mercy Alliance.
12. Defendant Mercy Crystal Hospital and Medical Center, Inc.'s Response to Plaintiffs' First Set of Interrogatories filed in *Northern Illinois Medical Center v. Illinois Health Facilities Planning Board*, Case No. 04-MR-106 ("Case No. 04-MR-106") Circuit of McHenry County, Illinois.
13. Pam Davis' Testimony to Illinois General Assembly Joint Committee on Government Reform.
14. Certified Declaration of Pamela Davis filed in Case No. 04-MR-106 and submitted to the Illinois.
15. Levine – Kiferbaum Call, April 20, 2004, 4:52 p.m., Trial Exhibit April 20: 1652\_\_303 in *United States v. Rezko*, 05, CR-0691, U.S. Dist. Court, N.D. 111.
16. Transcript Excerpts from Illinois Health Facilities Planning Board Meeting, April 26, 2004.
17. "Hospitals Left Scratching Their Heads," by Alice Hohl, Daily Southtown, April 22, 2004.

18. Levine-Kiferbaum call, April 21, 2004; 8:33 p.m.; Trial Exhibit April 20 – 2033\_\_332 in *United States v. Rezko, 05, CR-0691, U.S. Dist. Court, N.D. 111.*
19. Chicago Sun-Times articles dated June 25 and 27, 2004.
20. "Feds Investigate Mercy Hospital Permit," by Jeff Kolky, Northwest Herald, June 26, 2004.
21. Governor's Moratorium On All Business of the Health Facilities Planning Board, dated July 7, 2004.
22. Public Act 93-889, effective August 2, 2004.
23. Memorandum Opinion and Order of Judge Maureen McIntyre dated May 6, 2005.
24. Press release of Monday May 9, 2005 of United States Attorney, Northern District of Illinois: "Levine, Kiferbaum and Hurtgen Indicted On Fraud Charges Alleging Kickbacks, Influence-Peddling and Insider-Dealing."
25. Stipulation entered June 2, 2005 in Case No. 04-MR-106.
26. Excerpts of Final Report of the Task Force on Health Planning Reform to the Illinois General Assembly.
27. Amended Lobbyist Registration dated February 9, 2011 and Annual Lobbyist Registration dated January 20, 2011 of Quarles & Brady.

(20 ILCS 3960/2) (from Ch. 111 1/2, par. 1152)

(Section scheduled to be repealed on December 31, 2019)

Sec. 2. Purpose of the Act. This Act shall establish a procedure (1) which requires a person establishing, constructing or modifying a health care facility, as herein defined, to have the qualifications, background, character and financial resources to adequately provide a proper service for the community; (2) that promotes, through the process of comprehensive health planning, the orderly and economic development of health care facilities in the State of Illinois that avoids unnecessary duplication of such facilities; (3) that promotes planning for and development of health care facilities needed for comprehensive health care especially in areas where the health planning process has identified unmet needs; and (4) that carries out these purposes in coordination with the Center for Comprehensive Health Planning and the Comprehensive Health Plan developed by that Center.

The changes made to this Act by this amendatory Act of the 96th General Assembly are intended to accomplish the following objectives: to improve the financial ability of the public to obtain necessary health services; to establish an orderly and comprehensive health care delivery system that will guarantee the availability of quality health care to the general public; to maintain and improve the provision of essential health care services and increase the accessibility of those services to the medically underserved and indigent; to assure that the reduction and closure of health care services or facilities is performed in an orderly and timely manner, and that these actions are deemed to be in the best interests of the public; and to assess the financial burden to patients caused by unnecessary health care construction and modification. The Health Facilities and Services Review Board must apply the findings from the Comprehensive Health Plan to update review standards and criteria, as well as better identify needs and evaluate applications, and establish mechanisms to support adequate financing of the health care delivery system in Illinois, for the development and preservation of safety net services. The Board must provide written and consistent decisions that are based on the findings from the Comprehensive Health Plan, as well as other issue or subject specific plans, recommended by the Center for Comprehensive Health Planning. Policies and procedures must include criteria and standards for plan variations and deviations that must be updated. Evidence-based assessments, projections and decisions will be applied regarding capacity, quality, value and equity in the delivery of health care services in Illinois. The integrity of the Certificate of Need process is ensured through revised ethics and communications procedures. Cost containment and support for safety net services must continue to be central tenets of the Certificate of Need process.

(Source: P.A. 96-31, eff. 6-30-09.)

(20 ILCS 3960/6) (from Ch. 111 1/2, par. 1156)

(Section scheduled to be repealed on December 31, 2019)

Sec. 6. Application for permit or exemption; exemption regulations.

(a) An application for a permit or exemption shall be made to the State Board upon forms provided by the State Board. This application shall contain such information as the State Board deems necessary. The State Board shall not require an applicant to file a Letter of Intent before an application is filed. Such application shall include affirmative evidence on which the State Board or Chairman may make its decision on the approval or denial of the permit or exemption.

(b) The State Board shall establish by regulation the procedures and requirements regarding issuance of exemptions. An exemption shall be approved when information required by the Board by rule is submitted. Projects eligible for an exemption, rather than a permit, include, but are not limited to, change of ownership of a health care facility. For a change of ownership of a health care facility between related persons, the State Board shall provide by rule for an expedited process for obtaining an exemption. In connection with a change of ownership, the State Board may approve the transfer of an existing permit without regard to whether the permit to be transferred has yet been obligated, except for permits establishing a new facility or a new category of service.

(c) All applications shall be signed by the applicant and shall be verified by any 2 officers thereof.

(c-5) Any written review or findings of the Board staff or any other reviewing organization under Section 8 concerning an application for a permit must be made available to the public at least 14 calendar days before the meeting of the State Board at which the review or findings are considered. The applicant and members of the public may submit, to the State Board, written responses regarding the facts set forth in the review or findings of the Board staff or reviewing organization. Members of the public shall submit any written response at least 10 days before the meeting of the State Board. The Board staff may revise any findings to address corrections of factual errors cited in the public response. At the meeting, the State Board may, in its discretion, permit the submission of other additional written materials.

(d) Upon receipt of an application for a permit, the State Board shall approve and authorize the issuance of a permit if it finds (1) that the applicant is fit, willing, and able to provide a proper standard of health care service for the community with particular regard to the qualification, background and character of the applicant, (2) that economic feasibility is demonstrated in terms of effect on the existing and projected operating budget of the applicant and of the health care facility; in terms of the applicant's ability to establish and operate such facility in accordance with licensure regulations promulgated under pertinent state laws; and in terms of the projected impact on the total health care expenditures in the facility and community, (3) that safeguards are provided which assure that the establishment, construction or modification of the health care facility or acquisition of major medical equipment is consistent with the public interest, and (4) that 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.



(Source: P.A. 95-237, eff. 1-1-08; 96-31, eff. 6-30-09.)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**FILED**  
OCT 27 2006  
JUDGE AMY ST. EVE  
United States District Court

UNITED STATES OF AMERICA

v.

STUART LEVINE

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)  
)  
)  
)

No. 05 CR 691  
Judge Amy J. St. Eve

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant, STUART LEVINE, and his attorney, JEFFREY STEINBACK, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure, and is governed in part by Rule 11(c)(1)(C), as more fully set forth in Paragraph 22, below.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in the above captioned case.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Plea Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities or agencies except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and defendant, STUART LEVINE, and his attorney, JEFFREY STEINBACK, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the Superseding Indictment with 15 counts of mail fraud or wire fraud in violation of 18 U.S.C. §§ 1341, 1343, and 1346 (Counts One through 15), one count of attempted extortion in violation of 18 U.S.C. §§ 1951 and 2 (Count Sixteen), six counts of misapplication of funds in violation of 18 U.S.C. § 666 (Counts Seventeen through Twenty-Two), and two counts of money laundering in violation of 18 U.S.C. § 1956 (Counts Twenty-Three and Twenty-Four).

2. Defendant has read the charges against him contained in the Superseding Indictment in this case and the charges have been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crimes with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to Count One and Count Twenty-Three of the Superseding Indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts One and Twenty-Three of the Superseding Indictment in this case. In pleading guilty, Defendant admits the following facts and that those facts establish his guilt

beyond a reasonable doubt. The following is not a complete statement of all the details known to Defendant regarding the individuals and events described below. The following facts are set forth solely as a factual basis for this guilty plea:

With respect to Count One, beginning no later than in and about the spring of 2003 and continuing through at least in or about July 2004, in the Northern District of Illinois, Eastern Division, and elsewhere, Defendant, Antoin "Tony" Rezko ("Rezko"), Joseph Cari, Steven Loren, Jacob Kiferbaum, Individual A, and others known and unknown to the Grand Jury, devised and intended to devise, and participated in, a scheme and artifice to defraud the beneficiaries of the Teachers' Retirement System of the State of Illinois ("TRS") and the people of the State of Illinois, of money, property, and the intangible right to defendant's honest services, by means of materially false and fraudulent pretenses, representations, and promises, and material omissions, and in furtherance thereof used the United States mails and other interstate carriers, in violation of Title 18, United States Code, Sections 1341, 1346, and 2.

With respect to Count Twenty-Three, on or about March 4, 2004, at Chicago, in the Northern District of Illinois, Eastern Division, Defendant and Rezko knowingly caused to be conducted a financial transaction affecting interstate commerce, when Individual C gave Individual D a \$125,000 check drawn on a JP Morgan Chase Bank

account made out to a company controlled by Individual D, which involved the proceeds of specific unlawful activity, namely mail fraud in violation of Title 18, United States Code, Sections 1341 and 1346, knowing that the transaction was designed in whole and in part to conceal the nature, source, ownership, and control of the proceeds of said specified unlawful activity, and that while conducting and attempting to conduct such financial transaction, Defendant knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, in violation of Title 18, United States Code, Sections 1956(a) (1) (B) (I) and 2.

Defendant's Position At TRS and the Planning Board

Defendant was a member of the TRS Board of Trustees from approximately October 2000 through about July 2004. In that capacity, Defendant owed the beneficiaries of TRS a duty of honest services. Defendant was also a member of the Illinois Health Facilities Planning Board ("Planning Board") from about August 1996 through about June 2004, and was last re-appointed to the Planning Board in about August 2003. In that capacity, Defendant owed the people of the State of Illinois a duty of honest services.

In or about the spring of 2003, when certain State of Illinois officials advocated consolidating TRS, the Illinois State Board of Investment, and the State University Retirement System, into a single pension fund, Individual A approached Rezko and Individual

B on behalf of Defendant and Individual A for assistance in defeating this proposal. Defendant and Individual A were against the pension consolidation idea because they wanted to preserve their influence and Defendant's position with TRS. Defendant understood that Rezko and Individual B had significant influence with the State of Illinois administration because of their relationships with senior State of Illinois officials and their roles as important fundraisers. Defendant learned from Individual A that Rezko and Individual B agreed to use their relationships and influence with senior State of Illinois officials to oppose the pension consolidation plan in exchange for the agreement of Defendant and Individual A to use their influence and Defendant's position at TRS to ensure that TRS used investment firms and hired lawyers identified by Rezko and Individual B. Defendant agreed to assist Rezko and Individual B with TRS in exchange for their help defeating the consolidation proposal.

In about August 2003, Defendant was re-appointed to the Planning Board. Prior to that point, Defendant discussed his possible re-appointment with Individual A and, separately, with Individual B. Individual A said he'd get back to Defendant about his request and later called Defendant and said that it would happen. A short time later, Defendant was at a meeting in Rezko's office with Individual B and Individual B said that the board seat Defendant wanted had been taken care of. Defendant understood from

these conversations that he would be re-appointed to the Planning Board.

About the time Defendant was re-appointed, Rezko and Defendant discussed Defendant's appointment and Rezko said that he had suggested that Defendant be made the vice-chairman of the Planning Board and that Rezko expected to influence a certain number of votes on the Planning Board. In February 2004, the Planning Board elected Defendant as vice-chairman.

In or about the spring of 2004, Rezko and Defendant agreed that Defendant, whose term on the TRS Board was due to expire in May 2004, needed to be reappointed to the TRS Board and that additional TRS Board members needed to be appointed who would cooperate with Rezko and Defendant. Rezko agreed to use his relationships and influence with high-ranking State of Illinois officials to facilitate these efforts. Rezko subsequently indicated to Defendant that Rezko had arranged for Defendant to be re-appointed to the TRS Board, and Defendant was re-appointed on about May 14, 2004.

Defendant's Efforts to Obtain Payments From Investment Firms

Investment Firm 1

In about late 2002, Defendant learned from Individual C that Investment Firm 1 was trying to obtain investment funds from TRS. Defendant understood that Individual C would earn a finder's fee

from Investment Firm 1 if TRS invested with that firm, and Defendant agreed to help Investment Firm 1 obtain TRS funds.

In or about the spring of 2003, Individual A indicated to Defendant that Rezko had complained to Individual A that a certain local public official, who Defendant knew had a relationship with and raised money for a certain public official, had been pushing Rezko and Individual B for money, which Defendant understood to mean that the local public official wanted to make money from the State of Illinois because of his assistance to the certain public official. Defendant offered to have Individual C share his finder's fee with the local public official so that Defendant could gain favor with Rezko, and Individual A later indicated that Rezko wanted Individual C to split his finder's fee with the local public official. Defendant then told Individual C that Individual C would have to split his finder's fee from Investment Firm 1 with a local public official.

Rezko subsequently told Defendant that Rezko did not want Individual C to split his finder's fee with the local public official. Rezko said that he would supply Defendant with the name of another individual who would split Individual C's fee.

On or about August 14, 2003, the TRS Board approved an investment of a total of \$50 million in two investment funds operated by Investment Firm 1. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts



relating to its consideration of the application for funds of Investment Firm 1, including his arrangements with Rezko. Individual C received a total of \$375,000 from Investment Firm 1 for acting as a consultant to Investment Firm 1 in connection with TRS. Defendant, Rezko, and Individual C agreed that Individual C would pay \$250,000 of that fee as he was directed by Defendant.

Defendant asked Steve Loren, who was outside counsel for TRS and an associate of Defendant's, to prepare a draft contract that would appear to justify Individual C's splitting his finder's fee by paying \$250,000 of that fee to a third party, although Defendant knew that the contract would be a sham. Loren drafted a sham consulting agreement for Individual C, in order to conceal the fraudulent nature of the payments by Individual C to a third party, and Defendant arranged to get a copy of the consulting agreement to Individual C.

In or about early 2004, Rezko told Defendant that Individual C should split his finder's fee from Investment Firm 1 with Individual D, who was involved with Rezko in the operation of a chain of pizza restaurants. Defendant relayed this instruction to Individual C, and gave Individual C the sham consulting agreement that Loren had prepared in order to conceal the fraudulent nature of the payments. As Defendant expected, Individual C and Individual D each signed the sham consulting agreement.

As Defendant knew, on or about March 4, 2004, acting at Defendant's direction, Individual C gave Individual D a check in the amount of \$125,000 payable to Individual D's company as the first installment of the money that Individual D would receive. Defendant knew that the purpose of providing the \$125,000 to Individual D was to conceal the nature, source, ownership, and control of the proceeds of the money.

In or about late April 2004, Individual D asked Individual C to pay the remaining \$125,000 immediately, instead of waiting for July. At that point, Individual C refused to make the payment early. After learning that Individual C had refused to pay Individual D the \$125,000 immediately, Rezko spoke with Defendant. Rezko directed Defendant to arrange for Individual C to make the payment to Individual D.

On or about April 26, 2004, Defendant directed Individual C to make the second \$125,000 payment to Individual D immediately, which Individual C agreed to do. Defendant subsequently learned that Individual C gave Individual D a check for \$125,000 made payable to Individual D's company that same day.

On or about July 18, 2003, at Chicago, Investment Firm 1 sent and delivered by UPS, a commercial interstate carrier, an envelope from Investment Firm 1 in Chicago, Illinois, and addressed to TRS in Springfield, Illinois, which envelope contained a TRS Questionnaire that had been completed by Investment Firm 1 as part

of Investment Firm 1's application for TRS funds. Defendant admits that this mailing was in furtherance of scheme, for the purpose of executing the scheme, and attempting to do so and was reasonably foreseeable to him.

**Investment Firms 2 and 3**

In or about late 2003 and early 2004, Defendant agreed with Individual C that Defendant would use his influence and position at TRS to help Investment Firms 2 and 3 get investments from TRS. Individual C agreed that he would split any finder's fees that he received from Investment Firms 2 and 3 at Defendant's direction. Investment Firms 2 and 3 each agreed to pay a finder's fee to Individual C, and each applied for TRS funds.

Defendant directed Loren to assist Individual C by providing advice about the sorts of investments that TRS would consider and reviewing investment proposals submitted by Individual C and others. As Defendant knew, Loren subsequently met with representatives of Investment Firms 2 and 3 and discussed potential TRS investments. Defendant arranged for TRS staff members to meet with representatives of Investment Firms 2 and 3 and indicated to TRS staff that Rezko and Defendant wanted TRS staff to recommend that the TRS Board approve investments in Investment Firms 2 and 3.

On or about April 12, 2004, Defendant directed Individual C to share his potential finder's fees from Investment Firms 2 and 3 with Individual E, who was a friend and business associate of

Defendant. Defendant knew that Individual E would provide no services to Individual C or Investment Firms 2 or 3 in connection with their applications to receive TRS funds. Defendant arranged with Individual E that Defendant would later receive a portion of the payments Individual E received from Individual C.

On or about April 14, 2004, Rezko and Defendant agreed that they would each receive approximately one-third of the finder's fees that they expected Individual C to receive for TRS investments in Investment Firms 2 and 3. At that time, Rezko and Defendant expected that Individual C would receive approximately \$250,000 from Investment Firm 2 and \$1 million from Investment Firm 3.

TRS staff initially recommended that the TRS Board approve a \$25 million investment with Investment Firm 2 and the TRS Board was scheduled to vote on that recommendation at the May 2004 TRS Board meeting. Shortly before the May 2004 TRS Board meeting, TRS staff learned that Investment Firm 2 had not initially disclosed that Individual C would receive a finder's fee as required by a TRS questionnaire. After learning that the TRS staff was concerned about Investment Firm 2's failure to disclose the finder's fee for Individual C, Defendant tried to help Investment Firm 2 remain on the TRS agenda. On or about May 20, 2004, Defendant was approached by law enforcement agents. As a result of that approach, Defendant stopped trying to help Investment Firm 2 remain on the TRS agenda. Defendant intentionally concealed from and failed to disclose to

the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 2, including his arrangements with Rezko.

TRS staff had not completed its review of Investment Firm 3's application when Defendant was approached by law enforcement agents on or about May 20, 2004. After that date, Defendant did not further attempt to assist Investment Firm 3's application. Investment Firm 3's application was never presented to the TRS Board. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 3, including his arrangements with Rezko.

#### Investment Firm 4

In or about late February or early March 2004, after Investment Firm 4 had made a presentation to TRS staff members seeking funds from TRS, Defendant spoke with Joseph Cari about Investment Firm 4's application. Defendant and Cari agreed that Defendant would help Investment Firm 4 get funds from TRS and that Investment Firm 4 would hire a consultant chosen by Defendant.

On or about April 14, 2004, Rezko and Defendant discussed Investment Firm 4's application for TRS funds. Defendant told Rezko that Investment Firm 4 had agreed to hire a consultant chosen by Defendant in exchange for Defendant's help. Rezko told Defendant that he would provide Defendant with the name of a person

who would receive the consulting fee on behalf of Rezko and Defendant. Rezko and Defendant agreed that they would share evenly the finder's fees that Investment Firm 4 paid to the consultant they chose. At that time, Rezko and Defendant expected that Investment Firm 4 would pay the consultant they chose approximately \$750,000.

In that same conversation, Rezko and Defendant discussed an application by Cari's private equity firm for ISBI funds. Defendant had arranged with Cari that Cari's private equity firm would pay a 2% finder's fee to a person identified by Defendant. Rezko and Defendant agreed that they would share evenly the finder's fees that Cari's private equity firm paid, which they expected would be approximately \$700,000.

In or about late April 2004, Rezko provided Defendant with the name of Individual F as the person who would receive the consulting fee from Investment Firm 4. Defendant spoke with Individual F and confirmed that Individual F would receive a finder's fee from Investment Firm 4, although Individual F would not be expected to do any actual work for Investment Firm 4. Defendant and Individual F agreed that Individual F would send a portion of the finder's fee he received from Investment Firm 4 to a company controlled by Individual E.

In or about late April 2004, Defendant directed Loren to prepare a draft contract for Investment Firm 4. Defendant told

Loren that there was going to be a split of finder's fees relating to the TRS investment in Investment Firm 4. Loren prepared a draft compensation agreement, which Defendant sent to Individual F.

On or about May 1, 2004, Defendant discussed with Individual E the possibility of changing the agreement between Rezko and Defendant so that Rezko would keep the entire \$750,000 fee from Investment Firm 4 while Defendant and Individual E would keep the entire \$700,000 fee that Defendant expected from Cari's private equity firm.

Defendant directed Cari to make sure that Investment Firm 4 hired Individual F as a consultant, and knew that Cari in turn put pressure on Investment Firm 4 to hire Individual F, such as by threatening Investment Firm 4 that it would not get TRS money if it did not hire a consultant.

After Defendant was approached by law enforcement agents on or about May 20, 2004, he did not try to interfere with Investment Firm 4 or its application for TRS funds. Investment Firm 4 received approval for an approximately \$85 million investment at the May 25, 2004 TRS Board meeting. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 4, including his arrangements with Rezko.

#### Investment Firm 5

In about 2003, Rezko told Defendant that Individual G, who

worked with Rezko's real estate business, would act as a finder on Rezko's behalf. Defendant agreed with Rezko to use Defendant's influence and position at TRS on behalf investment firms that Individual G brought to TRS, including Investment Firm 5. Defendant used his influence with the TRS staff to ensure that Individual G and representatives of Investment Firm 5 met with key members of the TRS staff, as well as with Loren. Defendant encouraged TRS staff to recommend that TRS place funds with Investment Firm 5.

TRS staff indicated to Defendant and others that the TRS staff would recommend that Investment Firm 5 receive a \$25 million investment from TRS at the May 2004 TRS Board meeting. On or about May 20, 2004, a TRS staff member expressed concern to Defendant that Investment Firm 5 had disclosed that Individual H, with whom TRS staff members had not had contact, would be the recipient of a finder's fee. In response, Defendant tried to allay the TRS staff member's concerns in order to help Investment Firm 5.

After Defendant was approached by law enforcement agents later that day, Defendant no longer tried to help Investment Firm 5. Investment Firm 5's application for TRS investment funds was not addressed at the May 2004 TRS Board meeting. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the



application for funds of Investment Firm 5, including his arrangements with Rezko.

#### Investment Firm 6

In about early 2004 Defendant learned from Individual I and others that Investment Firm 6 was interested in attracting investments from Illinois state pension funds, including TRS. Defendant agreed with Individual I that Defendant and Rezko would use Defendant's position at TRS and their influence at TRS and other state pension funds to help Investment Firm 6 obtain investments. Individual I agreed that he would split any finder's fees he received from Investment Firm 6 with Defendant in exchange for Defendant's assistance. Individual I further agreed to split with Defendant the ongoing management fees that Investment Firm 6 would earn from investments from TRS. Individual I agreed to pay Defendant two-thirds of the finder's fees and management fees that Individual I received so that Defendant could share those fees with Rezko.

On or about April 14, 2004, Defendant advised Rezko about Defendant's arrangement with Individual I. Rezko and Defendant agreed that they would share evenly the fees that Individual I would receive for TRS and other Illinois state pension fund investments in Investment Firm 6. Rezko also agreed to use his influence with other Illinois state pension funds to help Investment Firm 6 obtain investments from those entities. Rezko

and Defendant each expected to receive at least approximately \$1.3 million in fees from Individual I, based on the size of the investment that Rezko and Defendant believed TRS would make in Investment Firm 6.

To assist Investment Firm 6, Defendant arranged for a meeting with Defendant, Loren, Individual I, and representatives of Investment Firm 6 so that the Investment Firm 6 representatives could explain their firm and investment products to Loren. At Defendant's request, Loren provided Investment Firm 6 with advice about how Investment Firm 6 should proceed with an application for funds from TRS.

On or about May 19, 2004, Defendant told Individual I that he intended to recommend Investment Firm 6 to TRS staff after the May 2004 TRS Board meeting.

At the time that Defendant was approached by law enforcement agents on or about May 20, 2004, Investment Firm 6 had not yet applied for TRS funds. Defendant did not attempt to help Investment Firm 6 obtain TRS funds after that date. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to the potential application for funds by Investment Firm 6, including his arrangements with Rezko.

#### Investment Firm 7

In about early 2004, Defendant learned that TRS staff had decided to recommend that the TRS Board allocate available funds

for real estate investments among the existing TRS real estate managers, which included Investment Firm 7, and that TRS staff were going to recommend that TRS invest \$220 million with Investment Firm 7 at the February 2004 TRS Board meeting.

Defendant arranged to postpone the planned TRS allocation to Investment Firm 7 in order to force Investment Firm 7 or Individual J, a principal with Investment Firm 7, to pay a fee to Defendant for his support for the potential allocation. Defendant provided information to TRS staff about a possible sale of Investment Firm 7, which resulted in TRS staff recommending at the February 2004 TRS Board meeting that the TRS Board postpone the planned allocation to Investment Firm 7. The TRS Board, including Defendant, agreed that TRS would not allocate \$220 million to Investment Firm 7 pending further investigation.

In or about April 2004, Rezko and Defendant agreed to use their influence and Defendant's position at TRS to prevent Investment Firm 7 from getting its \$220 million allocation unless Individual J agreed either to pay an approximately \$2 million fee to a consultant chosen by Rezko and Defendant, or to arrange for approximately \$1.5 million in political contributions to be made to a certain public official. Rezko and Defendant agreed that they would split the fee paid to the consultant if that was what Individual J chose to do. Rezko and Defendant further agreed that Defendant would arrange for an intermediary, namely Individual A,

to indicate to Individual J that Investment Firm 7 had not received its \$220 million allocation because Investment Firm 7 had not contributed significantly to a certain public official.

In about early May 2004, Defendant directed Individual A to tell Individual J that there had been a meeting involving Rezko and Individual B concerning plans for raising political donations from pension fund managers, and that during this meeting Rezko had observed that Investment Firm 7 had a lot of TRS funds under management but had not made any political donations. Subsequently, Defendant learned from Individual A that Individual A told Individual J words to the effect that Investment Firm 7 had not gotten its \$220 million allocation from TRS because of its failure to make political donations.

On or about May 8, 2004, Individual J advised Individual A that he would not be extorted. Individual A advised Defendant of this conversation and told Defendant that Individual J had threatened to inform law enforcement about what Rezko and Individual B were doing. Individual A and Defendant agreed to discuss the matter with Rezko.

On or about May 10, 2004, Rezko, Defendant, Individual A, and Individual B agreed that in light of Individual J's reaction, it was too risky to continue demanding money from Investment Firm 7 or blocking its \$220 million allocation. They further agreed that although Investment Firm 7 would receive the \$220 million

allocation, it would not receive any further business from any State of Illinois entity, including TRS.

On about May 25, 2004, the TRS Board, including Defendant, voted to invest a total of \$220 million with Investment Firm 7. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 7, including his arrangements with Rezko, Individual A, and Individual B.

#### **TRS Asset Manager**

In or about the Spring of 2004, Rezko, Individual E, and Defendant agreed to establish or obtain a company that they or their nominees would own and control. Rezko, Individual E, and Defendant further agreed that they would use their influence and Defendant's position at TRS to ensure that TRS would make hundreds of millions of dollars of real estate investments with their company. Defendant, Rezko and Individual E expected to share the profits from the company. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to his plan to establish a real estate asset management company, including his arrangements with Rezko and Individual E.

#### **Mercy Health System Corporation's Application for a CON**

In late 2003, Defendant and Kiferbaum agreed that Defendant would use his position as a Planning Board member to influence the Planning Board to approve the application of Mercy Health System

Corporation ("Mercy") for a Certificate of Need ("CON") so that Kiferbaum's construction company could build its new hospital in Crystal Lake, Illinois. In exchange for Defendant's help, Defendant and Kiferbaum agreed that Kiferbaum would pay a kickback as directed by Defendant, with the exact amount and manner of the payments to be determined at a later date.

After agreeing with Kiferbaum about the kickback, Defendant met with Rezko and told Rezko that Kiferbaum was willing to pay a kickback to ensure that Mercy's application would be approved. Rezko then agreed to use his influence with the Planning Board to support Mercy's application in exchange for a share of that kickback. Defendant and Rezko agreed they would evenly divide the kickback from Kiferbaum, which they expected would be approximately \$1 million or more.

At its meeting on December 17, 2003, the Planning Board issued an intent-to-deny with respect to Mercy's CON application. Defendant voted to deny Mercy's application with the expectation that Mercy would respond to the intent-to-deny and the Planning Board would approve Mercy's application at a subsequent meeting with Rezko's support from behind the scene.

Shortly before the Planning Board meeting on April 21, 2004, Defendant had several telephone conversations with another Planning Board member about Mercy and its application for a CON. That Planning Board member said he had his "marching orders" from Rezko and that Rezko wanted to help on Mercy's application. In another

telephone conversation with the same Planning Board member, Defendant said that it was important that Rezko's direction on the vote be communicated to the other Planning Board members that Rezko influenced on the Planning Board.

At its meeting on April 21, 2004, the Planning Board considered Mercy's application for a CON. At this meeting, Defendant and a majority of the Planning Board voted in favor of Mercy's application. Defendant intentionally concealed from and failed to disclose to the Planning Board material facts relating to its consideration of Mercy's application, including his arrangements with Rezko and Kiferbaum. After the meeting concluded, another Planning Board member and Defendant met with Rezko and discussed the Mercy vote.

After the April 21, 2004, Planning Board meeting, Defendant directed Kiferbaum to pay the kickback relating to Mercy to Individual E pursuant to a sham consulting contract. Steve Loren drafted the contract. Defendant, Kiferbaum, and Individual E agreed that the purpose of the contract was to make Kiferbaum's payments to Individual E look legitimate; that Individual E would not, in fact, to do any work for Kiferbaum; and that Individual E would share the Mercy kickback with Defendant.

Defendant and Kiferbaum also discussed the fact that Kiferbaum was paying money at Defendant's direction to John Glennon in connection with another contract and the fact that Kiferbaum still owed Glennon \$200,000 to \$300,000 on that an earlier contract.

Defendant told Kiferbaum to stop paying Glennon and said that the money remaining to be paid to Glennon would be rolled into the dollar amount of the kickback to be paid on Mercy.

6. Defendant also acknowledges that for the purpose of computing his sentence under the U.S. Sentencing Guidelines, the following conduct, to which he stipulates, constitutes other instances of fraudulent conduct, and admits that these facts constitute relevant conduct under Section 1B1.3 of the Guidelines beyond a reasonable doubt. The following is not a complete statement of all the details known to Defendant regarding the individuals and events described below.

#### Investment Firm 7 (2001)

In about late 2001, Defendant learned that Investment Firm 7 was seeking an approximately \$100 million investment from TRS. Defendant spoke with Individual J about that potential allocation. Defendant wanted Individual J to pay Defendant and Individual E \$500,000 plus a portion of the fees that Investment Firm 7 would earn on an annual basis from TRS if Investment Firm 7 received the allocation in exchange for Defendant's help ensuring that TRS approved the \$100 million allocation. Defendant understood that Individual J had agreed to Defendant's demand, and voted in favor of the allocation without disclosing his interest in the matter to the TRS Board in December 2001, when the \$100 million investment was approved. After the allocation was approved, however,



Individual J, refused to pay Defendant the \$500,000 that Defendant believed was owed to him.

Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 7 in 2001, including his discussions with Individual J.

#### Investment Firm 8

In about early 2002, Defendant learned that Investment Firm 8 wanted to obtain an investment from TRS. Individual K, who Defendant understood was going to receive a finder's fee from Investment Firm 8 if it received a TRS investment, asked Defendant to help Investment Firm 8 obtain an investment from TRS. Defendant agreed to help and subsequently attempted to assist Investment Firm 8 to receive investment funds from TRS. Individual A subsequently indicated to Defendant that because he had helped Individual K, Defendant could stop paying fees to Individual K for lobbying the state of Illinois on behalf of a client of Defendant's. Investment Firm 8 received an investment of approximately \$150 million from TRS in about August 2002. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 8, including his arrangements with Individual A and Individual K.

#### Investment Firm 9

In about 2003, Defendant learned from Individual C that Investment Firm 9 was looking for investors for an investment into

senior living facilities. Defendant agreed to help Investment Firm 9 and expected to receive a kickback if he could arrange for TRS money to be invested with Investment Firm 9.

Defendant encouraged Individual A to arrange for his real estate asset management firm, which invested hundreds of millions of dollars in TRS funds, to invest in Investment Firm 9. Defendant explained to Individual A that Defendant and Individual E would make money if Individual A's firm invested in Investment Firm 9. Individual A agreed to investigate Investment Firm 9 to determine if he wanted his firm to make an investment.

Defendant, Loren, Individual A, and another individual met in about early 2004 to discuss the amount of money that Individual A's firm would receive in TRS funds at the February 2004 TRS Board meeting. At that meeting, Individual A indicated that he wanted his real estate asset management firm to receive a larger allocation of money from TRS if his firm was going to invest money with Investment Firm 9. It was agreed that TRS would increase the amount of money allocate a larger amount of money to Individual A's firm to cover any investment that Individual A's firm made with Investment Firm 9, which investment Defendant expected would be in the tens of millions of dollars.

Individual A's firm received a total allocation of \$220 million from TRS at the February 2004 TRS Board meeting. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the

allocation for funds of Investment Firm 9, including his arrangements with Individuals A and E.

Individual A's firm did not invest any money in Investment Firm 9, so Defendant did not receive any kickback.

**Edward Hospital's Application for a CON**

Beginning in late 2003, Defendant, Kiferbaum, and P. Nicholas Hurtgen ("Hurtgen") agreed that Defendant would use his position as a Planning Board member to attempt to force Edward Hospital ("Edward") to hire Kiferbaum's construction company to build Edward's Plainfield, Illinois hospital and medical office building by threatening representatives of Edward that the Planning Board would not approve Edward's application for the hospital facility unless Kiferbaum's construction company was given the construction contracts to build them. The total costs of constructing the hospital were projected to be approximately \$90 million, and the total costs of constructing the medical office building were projected to be approximately \$23 million. In exchange for Defendant's assistance, Defendant and Kiferbaum agreed that Kiferbaum would pay an Edward related kickback to Defendant or Defendant's designee. Hurtgen assisted with the Edward scheme because he wanted his employer, Bear Stearns & Co. ("Bear Stearns"), to receive the financing work for the new hospital.

Shortly before the Planning Board meeting on December 17, 2003, Hurtgen told Defendant that his client, Edward, had a CON application before the Planning Board, and Hurtgen asked Defendant

to find out how the application was going. Defendant made inquiry and then told Hurtgen that Edward would get an intent-to-deny for the medical office building at the December meeting if it did not agree to defer that application so that its medical office building application and its hospital application could be heard at the same time.

At the Planning Board meeting on December 17, 2003, Edward did not request to defer the medical office building application, and the Planning Board issued an intent-to-deny with respect to that application. Soon thereafter, Hurtgen asked Defendant if it would make a difference for Edward if Edward hired Kiferbaum's construction company to build the hospital. Defendant said it might and asked Hurtgen to introduce Kiferbaum to the CEO of Edward. Hurtgen agreed to make that introduction.

No later than early 2004, Kiferbaum and Hurtgen knew that Defendant was prohibited by law from engaging in *ex parte* communications with applicants with matters pending before the Planning Board, and each knew that Defendant could not communicate with representatives from Edward about their pending applications. Therefore, in order to protect Defendant and conceal his role, Kiferbaum and Hurtgen communicated with Edward representatives, in place of and on behalf of Defendant, in order to communicate Defendant's threats and promises to Edward.

On or about December 22, 2003, Hurtgen talked to the Edward CEO and said, among other matters, that if Edward hired Kiferbaum,

Hurtgen thought Edward would not have any further difficulties with the Planning Board. Hurtgen also said he was selling "clout," and that Defendant is the "clout." The following day, on or about December 23, 2003, Kiferbaum and Hurtgen met with the Edward CEO to persuade the Edward CEO to hire Kiferbaum's construction company to build the two pending projects. Kiferbaum told the CEO that he had been working with Mercy on its new project, and that its application to build a new hospital in Crystal Lake was going to be approved.

In response to representations by Kiferbaum and Hurtgen that they were working with Defendant, and that Defendant had the ability to, and would, cause the Planning Board to approve or deny Edward's application - depending on whether or not Edward Hospital hired Kiferbaum - the Edward CEO requested that Kiferbaum and Hurtgen demonstrate that they were telling the truth about Defendant's role by setting up a meeting with Defendant, which Kiferbaum and Hurtgen agreed to do.

On or about April 17, 2004, Defendant told Kiferbaum that he would speak to Kiferbaum and the Edward CEO at a restaurant on April 18, and he would have Hurtgen or someone else with him. On or about April 17, 2004, Hurtgen and Defendant agreed that Hurtgen would join Defendant at the breakfast the next day.

On or about April 18, 2004, Defendant and Kiferbaum talked about the meeting that they were going to have that morning at a restaurant. Defendant said he would talk to Kiferbaum and the

Edward CEO at the restaurant. Defendant instructed Kiferbaum to tell the Edward CEO that because of the ethics law concerning ex parte communications relating to pending projects, the CEO should not ask anything direct about her particular project. Defendant said that the CEO knew why she was there with Kiferbaum, and she was either going to do it or she was not going to do it. Defendant said he would bump into Kiferbaum "by mistake" a little later that day.

On or about Sunday, April 18, 2004, Defendant and Hurtgen went to a restaurant in Deerfield, Illinois, as planned, in order to prove to the CEO that Defendant, Hurtgen, and Kiferbaum were working together, and to prove that their representations concerning Defendant and the Planning Board were real. Defendant and Hurtgen walked over to the table where Kiferbaum and the CEO were sitting. Defendant said that he was the Chairman of the Board of CMS, and that Kiferbaum had done a project for them. Defendant said that Kiferbaum is a person upon whom one can rely, and he is a person whose word can be depended on.

Shortly after that meeting, Kiferbaum thanked Defendant for what he had done at the restaurant. Kiferbaum said that it went perfectly and the CEO understood. Kiferbaum said that he told the CEO that they had to come to some sort of agreement. Defendant said that he had never been in a better position. Defendant said that if the CEO promised to sign a contract, Kiferbaum should say that he accepted her word, and that he would do whatever he could.

On or about April 20, 2004, the Edward Project Administrator faxed Kiferbaum a letter stating that Edward would not hire Kiferbaum Construction Company for their project. When Kiferbaum received the letter of rejection from Edward, he called Defendant and told him about the letter. Defendant indicated that Edward's application would not be approved.

On or about April 21, 2004, the Planning Board held a Board meeting at which Edward's application for a permit to build the Plainfield hospital was considered. Edward had not hired Kiferbaum, and Defendant voted against Edward's application to build a new hospital, and the Planning Board issued a notice of its intent-to-deny the application.

Defendant acknowledges that a reasonable estimate of the net value of the benefit that would have been received by the contractor that would have built the new hospital and medical building for Edward was approximately \$1,810,000.

7. For the purpose of calculating his sentence under the Sentencing Guidelines, Defendant also admits to the following facts and that these facts constitute a criminal offense and prove it beyond a reasonable doubt, and pursuant to Section 1B1.2 of the Guidelines, defendant stipulates to having committed the following criminal offense. The following is not a complete statement of all the details known to Defendant regarding the individuals or the events described below.

Chicago Medical School and Northshore Supporting Organization

Beginning no later than in or about early 2001 and continuing through at least in or about June 2004, in the Northern District of Illinois, Eastern Division, and elsewhere, Defendant and others devised and intended to devise, and participated in, a scheme and artifice to defraud the Finch University of Health Sciences/Chicago Medical School, now known as the Rosalind Franklin University of Medicine and Science ("Chicago Medical School" or "CMS"), a not-for-profit private education institution located in North Chicago, Illinois, and the Northshore Supporting Organization ("NSO"), a charitable trust established to support and operate for the benefit of CMS, of money, property, and the intangible right to the honest services of Defendant and Kiferbaum by means of materially false and fraudulent pretenses, representations, and promises, and material omissions, and in furtherance thereof used and caused the use of the United States mails and other interstate carriers, and interstate and foreign wires.

It was part of the scheme that Defendant, with the assistance of Kiferbaum, Individual E, and others, fraudulently obtained and sought to obtain millions of dollars for the benefit of Defendant and his nominees and associates which conduct involved a series of kickbacks related to construction contracts and a real estate contract, as well as the diversion of assets from CMS and NSO. In carrying out this scheme, Defendant misused the positions of trust that he held with CMS and NSO and defrauded these institutions of



their rights to his honest services. Defendant's fraudulent transactions in the course of the scheme included a kickback and deceit relating to the construction of an addition to the Chicago Medical School; a kickback and deceit relating to the construction of student housing at CMS; a kickback and deceit relating to CMS's sale of real property at 1101 N. Dearborn St., Chicago; and deceit in connection with the diversion of assets from CMS and NSO, the charitable trust established to support CMS.

More specifically, Defendant admits as follows:

**The CMS Addition**

Defendant and Kiferbaum were each members of the CMS Board of Trustees ("CMS Board") and in that capacity they each owed a fiduciary duty and a duty of honest services to the Chicago Medical School.

In or about the summer of 2001, CMS was considering the construction of an addition to the Chicago Medical School. Defendant and Kiferbaum talked about this project and Kiferbaum determined to submit a proposed contract for the project on behalf of his construction company. Defendant told Kiferbaum to include within the costs of his proposed contract an extra \$1 million for Defendant. Defendant had sufficient power on the CMS Board to determine whether Kiferbaum received the CMS addition construction contract and Kiferbaum knew that Defendant had that power. If Kiferbaum refused to pay this kickback, Defendant would prevent Kiferbaum from getting this contract. Kiferbaum agreed to pay this

kickback of \$1 million and did in fact pay approximately \$700,000 of that kickback as directed by Defendant.

The CMS Board voted to award the construction contract for the CMS addition to Kiferbaum's construction company. In connection with the CMS Board's consideration of the construction contract, Defendant and Kiferbaum concealed from the CMS Board that they had agreed to Kiferbaum paying a \$1 million kickback to Defendant using CMS funds, and that Defendant - who participated in the CMS Board's consideration of the contract - had a substantial personal financial interest in its approval.

Thereafter, Defendant and Kiferbaum caused CMS to pay an extra \$1 million in connection with the construction of the CMS addition by Kiferbaum inflating the total cost of the contract, resulting in a contract of approximately \$18 million.

In order to conceal the fraudulent nature of the extra \$1 million paid by CMS to Kiferbaum's construction company, Defendant directed Kiferbaum to pay the extra \$1 million to North American Capital Opportunities, LLC ("NACO"), the consulting company belonging to Defendant's business associate, John Glennon, and Kiferbaum agreed to do so. Defendant understood that Glennon was not then required to pay any of the \$1 million to Defendant but Defendant understood that Defendant, Glennon, and Individual E contemplated future business endeavors together. In order to conceal the fraudulent nature of the payments to Glennon, Defendant caused a sham marketing contract to be prepared, which was signed

by Kiferbaum and Glennon in or about early December 2001. This contract provided that Kiferbaum's construction company would pay Glennon's company \$28,000 a month for approximately three years, for a total of approximately \$1 million. Defendant and Kiferbaum did not disclose the contract to CMS.

Beginning in or about December 2001 and continuing on a monthly basis through in or about June 2004, Glennon sent to Kiferbaum an invoice requesting payment of \$28,000 each month, despite the fact that Glennon and his company did not provide any substantial services to Kiferbaum's company in exchange for those payments. Over time, Kiferbaum caused his company to pay Glennon's company a total of approximately \$700,000.

In or about December 2003 or January 2004, Defendant and Kiferbaum agreed that the balance that Kiferbaum still owed on the kickback relating to the CMS addition would be combined with the kickback payment that Kiferbaum would make relating to Mercy Hospital. Based on that agreement, Kiferbaum stopped paying Glennon's company in approximately January 2004. Neither Glennon nor his company sued for the balance of the contract, an amount in the range of \$200,000 to \$300,000.

As described above, in paragraph 5, in or about April 29, 2004, Defendant and Individual E caused a sham consulting contract to be drafted and sent to Kiferbaum, providing that Kiferbaum's construction company would pay approximately \$1,728,000 million to Individual E's company. Defendant arranged for that contract to

include the payment of the kickback relating to Mercy and, additionally, to include the balance of the kickback owed to Defendant in connection with the construction of the CMS addition.

Notwithstanding their positions as members of the CMS Board, Defendant and Kiferbaum intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements for the construction of the CMS addition, including, specifically, the nature or purpose of the additional costs to CMS, their agreements and actions concerning the \$1 million kickback described above, and the sham marketing and consulting contracts to conceal the fraudulent nature of the diversion, and the planned diversion, of CMS funds to Glennon and Individual E.

#### **CMS Student Housing**

In or about the summer of 2002, CMS was considering the construction of new student housing. Defendant and Kiferbaum talked about this project and Kiferbaum determined to submit a proposed contract for the project on behalf of his construction company. Defendant again told Kiferbaum to include within the costs of his proposed contract an extra \$1 million for Defendant. Defendant had sufficient power on the CMS Board to determine whether Kiferbaum received the CMS student housing construction contract and Kiferbaum knew that Defendant had that power. If Kiferbaum refused to pay this kickback, Defendant would prevent Kiferbaum from getting this contract. Kiferbaum agreed to pay this

kickback of \$1 million and did in fact pay \$1 million as directed by Defendant.

The CMS Board voted to award the construction contract for the student housing to Kiferbaum's construction company. In connection with the CMS Board's consideration of the student housing contract, Defendant and Kiferbaum concealed from the CMS Board that they had agreed to Kiferbaum paying a \$1 million kickback to Defendant using CMS funds, and that Defendant - who participated in the CMS Board's consideration of the contract - had a substantial personal financial interest in its approval.

Thereafter, Defendant and Kiferbaum caused CMS to pay an extra \$1 million in connection with the construction of the CMS student housing by Kiferbaum inflating the total cost of the contract, resulting in a contract of approximately \$22 million.

In order to conceal the fraudulent nature of the extra \$1 million paid by CMS to Kiferbaum's construction company, in or about December 2002, Defendant directed Kiferbaum to pay this extra \$1 million to Individual L, an associate of Defendant's, and Kiferbaum agreed to do. Based on Defendant's direction, on or about December 12, 2002, Kiferbaum caused his company to issue a check in the amount of \$628,000, made payable to Individual L. About three months later, on or about March 13, 2003, and again at Defendant's direction, Kiferbaum caused his company to issue a check in the amount of \$372,000, also made payable to Individual L. Further, in an effort to conceal the fraudulent nature of the

payments made to Individual L, in or about March 2003, some months after the first check had been issued, Defendant caused a sham marketing contract to be prepared and sent to Kiferbaum. Although the contract stated that Individual L would provide services to Kiferbaum's construction company, Individual L did not provide any such services and Defendant understood that none would be provided.

Notwithstanding their positions as members of the CMS Board, Defendant and Kiferbaum intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements for the construction of the CMS student housing, including, specifically, the nature or the purpose of the additional costs to CMS, their agreements and actions concerning the \$1 million kickback described above, and the use of a sham marketing contract to conceal the fraudulent nature of the diversion of CMS funds to Individual L.

#### **The Scholl Property**

In connection with CMS's sale of real property at 1101 N. Dearborn Street, Chicago, the long time location of the Dr. William M. Scholl School of Podiatric Medicine ("the Scholl Property"), in or about late 2002, Defendant solicited a sales transaction which would include a kickback of money to Defendant. Defendant agreed to support the sale of the Scholl Property to a certain buyer in exchange for a portion of a third party's finder fee, a portion subsequently estimated to be approximately \$1.5 million. Defendant did support that buyer's bid for the Scholl Property and,

notwithstanding his position as a member of the CMS Board, Defendant intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements concerning the sale, including, specifically, his agreement and actions concerning the approximately \$1.5 kickback described above.

Because of the federal investigation and the incomplete nature of the underlying transaction, Defendant was never paid the approximately \$1.5 million.

**Northshore Supporting Organization ("NSO")**

Defendant also fraudulently diverted a total of \$6 million NSO, a charitable trust established to support CMS and for which Defendant served as a trustee, by causing NSO to lend \$3 million to a company controlled by Defendant and \$3 million to a company controlled by Individual E, and by subsequently arranging to have both of those loans "gifted" without repayment, as set forth below.

In or about the spring and summer of 2001, Defendant and Individual E caused NSO to be created with the purpose of supporting CMS. On or about July 19, 2002, Defendant fraudulently caused NSO to lend \$3 million to Defendant's company, S.L. Investment Enterprises, L.P., and \$3 million to a company controlled by Individual E. In connection with those loans, notes were executed on behalf of the companies requiring each company to repay the \$3 million loan to NSO at the end of 20 years, with an

interest rate of 7.5% per annum, resulting in each company owing approximately \$12.5 million in 20 years.

On or about December 1, 2002, Defendant and Individual E each signed a promissory note agreeing to substitute as the borrower of the funds borrowed from NSO by their respective companies. Defendant then used his position as an NSO trustee to cause NSO to donate those two promissory notes to CMS but only on the condition that CMS immediately sell the promissory notes to Individual L for \$1 million, the same amount of the kickback that Defendant and Kiferbaum had fraudulently obtained from CMS in connection with the construction of the student housing and diverted to Individual L.

To accomplish this fraudulent transaction, Defendant initially agreed to act as an escrow holder for the notes pursuant to an escrow agreement that required that the notes be maintained in a sealed envelope, thereby concealing from CMS the amounts of the notes and the fact that Defendant and Individual E were the obligors on the notes. On or about January 9, 2003, Defendant arranged to have the Chairman of the CMS Board sign two documents, one accepting the promissory notes as a donation and the other agreeing to sell the promissory notes to Individual L for \$1 million, and Defendant never revealed to the Chairman the amounts of the notes of that Defendant and Individual E were the obligors.

On or about January 31, 2003, Defendant and Individual L caused a check for \$1 million, drawn on an account belonging to Individual L, to be sent to Defendant. On or about February 3,



2003, Defendant presented the check for \$1 million to the President/CEO of CMS. In order to conceal the fraudulent nature of this transaction, Defendant falsely represented to the President/CEO that the \$1 million was a personal donation from Defendant and Individual E. Defendant failed to disclose to the President/CEO any information concerning the \$6 million promissory notes, including the fact that Defendant had previously arranged with the Chairman of the CMS Board that the \$1 million from Individual L would constitute Individual L's payment for the purchase of the NSO promissory notes.

After purchasing the promissory notes for \$1 million, Individual L transferred the promissory notes to Defendant and Individual E, respectively, as "gifts," thereby freeing Defendant and Individual E from any obligation to repay the \$3 million each had purported to borrow from NSO. By means of this sequence of transactions, Defendant fraudulently obtained and converted \$3 million to his personal use, and \$3 million to the use of his longtime associate, Individual E.

Notwithstanding his position as a member of the CMS Board of Trustees, Defendant intentionally concealed from and failed to disclose to CMS material facts relating to the series of transactions involving NSO and Individual L, including Defendant's role in these transactions, the personal financial interests of Defendant and Individual E in these transactions, Kiferbaum's earlier payments to Individual L, and that the promissory notes

sold by CMS for \$1 million had a total face value substantially in excess of that amount.

In order to conceal the fraudulent nature of this transaction, on or about December 22, 2003, Defendant caused a tax return to be filed with the IRS on behalf of NSO and which Defendant signed, and in which Defendant claimed that NSO donated notes receivable with a value of \$6 million to CMS's Scholarship Fund. Defendant intentionally failed to disclose to the IRS certain material facts concerning this transaction, including the fact that the donation of the promissory notes was conditioned on the School's agreement to sell the promissory notes for \$1 million, as part of a series of transactions that resulted in the transfer of the \$6 million to two NSO trustees, namely, Defendant and Individual E.

#### Other Transaction

While on the CMS Board, Defendant also solicited other personal financial gain in connection with other CMS assets, including CMS's real property at 2020 W. Ogden Ave., Chicago ("2020 Property"). In that regard, in or about 2000, Defendant solicited a sale transaction for the real property at 2020 Property which would provide a kickback of money to Defendant. The amount of the kickback was never finalized and the proposed sales transaction never occurred. As a member of the CMS Board, Defendant intentionally concealed from and failed to disclose to CMS material facts relating to the proposed sale transaction, including,

specifically, his solicitation of personal financial gain in connection with the proposed transaction.

In furtherance of this scheme, on or about December 12, 2001, at Deerfield, in the Northern District of Illinois, Eastern Division, Defendant, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be placed in an authorized depository for mail matter, to be sent and delivered by the United States Postal Service, according to the directions thereon, an envelope containing a check in the amount of approximately \$28,000, from Kiferbaum Construction Company, payable to Glennon's consulting company, NACO, which envelope was addressed to the company's address in Chicago, Illinois; in violation of Title 18, United States Code, Sections 1341, 1346, and 2.

8. For purposes of calculating the Sentencing Guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties stipulate and agree on the following points:

a. The Sentencing Guidelines effective on November 1, 2005 apply.

b. Count One -- Mail Fraud

i. The applicable Guidelines Section is § 2C1.1.

ii. Pursuant to Guideline § 2C1.1(a)(1), the base offense level is 14 because defendant was a public official;

iii. Pursuant to Guideline § 2C1.1(b)(1), the offense level is increased 2 levels because the offense involved more than one bribe or extortion;

iv. Pursuant to Guideline §§ 2C1.1(b)(2) and 2B1.1(b)(1)(L), the offense level is increased by 20 levels because the intended loss was more than \$7 million and less than \$20 million.

v. Pursuant to Guideline § 2C1.1(b)(3), the offense level is increased 4 levels because the offense involved a public official in a high-level decision-making and sensitive position;

vi. Pursuant to Guideline § 3B1.1(a), the offense level is increased by 4 levels because defendant was an organizer and leader of criminal activity that involved five or more participants;

vii. Based on the above, the adjusted offense level for Count One is 44.

c. Count Twenty-Three -- Money Laundering

i. The applicable Guidelines Section is § 2S1.1.

ii. Pursuant to Guideline § 2S1.1(a)(1), the base offense level is determined by the underlying offense from which the laundered funds were derived, which is 40.

iii. Pursuant to Guideline § 2S1.1(b)(2)(B), the offense level is increased by 2 levels because defendant was convicted under 18 U.S.C. § 1956;

iv. Pursuant to Guideline § 3B1.1(c), the offense level is increased 2 levels because defendant was an organizer and leader in criminal activity that involved fewer than five participants;

v. Based on the above, the adjusted offense level for Count Twenty-Three is 44.

d. Stipulated Offense in Paragraph 7

i. The applicable Guidelines Section is § 2B1.1.

ii. Pursuant to Guideline § 2B1.1(a)(1), the base offense level is 7 because the offense is referenced in Guideline § 2B1.1 and has a statutory maximum term of imprisonment of 20 years or more;

iii. Pursuant to Guideline § 2B1.1(b)(1)(K), the offense level is increased by 20 levels because the intended loss was more than \$7 million and less than \$20,000,000;

iv. Pursuant to Guideline § 2B1.1(b)(8), the offense level is increased by 2 levels because the offense involved a misrepresentation that defendant was acting on behalf of charitable and educational organizations;

v. Pursuant to Guideline § 2B1.1(b)(9), the offense level is increased by 2 levels because the offense involved sophisticated means;

vi. Pursuant to Guideline § 3B1.1(a), the offense level is increased by 4 levels because defendant was an organizer

and leader of criminal activity that involved five or more participants;

vii. Pursuant to Guideline § 3B1.3, the offense level is increased by 2 levels because defendant abused a position of private trust in a manner that significantly facilitated the commission and concealment of the offense;

viii. Based on the above, the adjusted offense level for the Stipulated Offense is 37.

e. Grouping - Multiple Counts:

i. Pursuant to Guideline § 3D1.2(c), Counts One and Twenty-Three are grouped together in a single group for sentencing purposes because the mail fraud scheme (Count One) embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to the money laundering count (Count Twenty-Three). Pursuant to Guideline § 3D1.3(a), the offense level applicable to this group is 44;

ii. Pursuant to Guideline § 3D1.2(d), the Stipulated Offense is grouped with Counts One and Twenty-Three in a single group for sentencing purposes because the offense level is determined largely on the basis of the total amount of harm or loss;

iii. Pursuant to Guideline § 3D1.3(b), the offense level for the group of the Stipulated Offense, Count One, and Count Twenty-Three is determined under Guideline § 2C1.1 because the

counts involve offenses of the same general type and Guideline § 2C1.1 produces the highest offense level. As the aggregated quantity involves more than \$20 million and less than \$50 million of intended loss, the adjusted offense level is 46.

f. The parties agree that Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if Defendant continues to accept responsibility for his actions, within the meaning of Guideline § 3E1.1, a 2-level reduction in the offense level is appropriate.

g. The parties agree that Defendant has provided truthful information and timely notice of his intention to enter a plea of guilty, within the meaning of Guideline § 3E1.1(b), so that an additional 1-level reduction in the offense level is appropriate, if the offense level is 16 or greater, and the Court finds that a reduction under Guideline § 3E1.1(a) is appropriate.

h. Based on the facts known to the government, Defendant's criminal history points equal 0, and Defendant's criminal history category is I.

i. Based on the above calculations, which are preliminary in nature, and assuming that defendant's criminal history category is I, the preliminary projected applicable offense level is a level 43, so that the preliminary projected applicable sentencing range is a life term of imprisonment.

j. Defendant and his attorneys and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this plea agreement. Defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

9. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or Court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and Defendant shall not have a right to withdraw his plea on the basis of such corrections.

10. Defendant understands that, in imposing the sentence, the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

11. Defendant understands: (a) Count One, to which he will plead guilty, carries a maximum penalty of 20 years' imprisonment;



a maximum fine of \$250,000, or twice the gross gain or twice the gross loss, whichever is greater; and a term of supervised release of at least two but not more than three years, as well as any restitution ordered by the Court; and (b) Count Twenty-Three, to which he will also plead guilty, carries a maximum penalty of 20 years' imprisonment, a maximum fine of \$500,000, or twice the property involved with the transaction, whichever is greater, a term of supervised release of at least two but not more than three years which the Court may specify, as well as any restitution the Court may order. Defendant understands that the terms of imprisonment and supervised release on each count could be imposed consecutively and that the fines imposed on each count could be cumulative.

12. Defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, Defendant will be assessed \$100 on each count to which he has pled guilty, in addition to any other penalty imposed. Defendant agrees to pay the special assessment of \$200 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

13. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. If defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by

the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, Defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

b. If the trial is a jury trial, the jury would be composed of twelve layperson selected at random. Defendant and his attorneys would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt, and that it was to consider each count of the indictment separately.

c. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

d. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorneys would be able to

cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.

e. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

14. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorneys have explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

15. Defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, Defendant knowingly waives the right to appeal any sentence within the maximum provided in the statutes of conviction (or the manner in which that sentence was determined), in exchange for the concessions made by the United States in this Plea Agreement. Defendant also waives his right to challenge his sentence or the manner in which it was determined in any collateral attack, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of

involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

16. Defendant understands that the Superseding Indictment and this Plea Agreement are matters of public record and may be disclosed to anyone.

17. Defendant agrees he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate by representatives of the United States Attorney's Office for the Northern District of Illinois, including the following:

a. Defendant agrees to provide complete and truthful information in any investigation and pre-trial preparation, and complete and truthful testimony, if called upon to testify, before any grand jury and court proceeding, and any related civil, administrative, or court proceeding.

b. The parties agree that they will jointly recommend that defendant's sentencing be postponed until after the conclusion of any ongoing investigation in which Defendant is cooperating, and the conclusion of any prosecution arising from that investigation.

18. Nothing in this Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest or penalties from defendant. If requested to do so by the IRS, Defendant agrees to transmit his original records, or copies thereof, and any additional books and records which may be helpful, for any years requested by the IRS, to the Examination Division of the IRS so that the IRS can conduct a civil audit of defendant.

19. Defendant understands that pursuant to Title 12, United States Code, Section 1829, his conviction in this case will prohibit him from directly or indirectly participating in the affairs of any financial institution insured by the Federal Deposit Insurance Corporation (FDIC) except with the prior written consent of the FDIC and, during the ten years following his conviction, the additional approval of this Court. Defendant further understands that if he violates this prohibition, he may be punished by imprisonment for up to five years and a fine of up to \$1,000,000.

20. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him in this case, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

21. The government and defendant agree that at the time defendant began to cooperate with the government, defendant's guidelines calculation would have been determined pursuant to the Sentencing Guidelines effective on November 5, 2003, but that, due to a change in the applicable law, defendant's guidelines calculation must now be determined pursuant to the Sentencing Guidelines in effect on the day that defendant will be sentenced. In order to reflect the parties' mutual expectations at the time defendant began his cooperation with the government, and in light of the fact that defendant's cooperation required delaying his

guilty plea and sentencing, the government and defendant agree that if the government makes a motion for departure pursuant to Guideline § 5K1.1, the government will use the Sentencing Guidelines in effect on November 5, 2003 as the starting point for determining the extent of the downward departure that the parties will propose to the Court in this case.

22. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation, and, if Defendant continues to provide full and truthful cooperation, shall move the Court, pursuant to Sentencing Guideline § 5K1.1, to depart downward from the applicable sentencing guidelines range, and pursuant to Rule 11(c)(1)(C), to impose an agreed sentence of imprisonment of 67 months incarceration. Other than the agreed term of incarceration, the Court remains free to impose any sentence the Court deems appropriate. However, under Rule 11(c)(1)(C), the plea will be null and void if the Court refuses to impose the 67 month sentence of incarceration to which the parties have agreed.

23. a. Regarding restitution as to the offenses of conviction, defendant understands that pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant to make restitution in any case in which the Court determines that there is a property loss to the victim of the offense of conviction, minus any credit for funds repaid prior to sentencing.

b. Regarding restitution as to the aspects of the stipulated offense relating to the Scholl Property, Defendant further voluntarily agrees to pay restitution in an amount up to \$1.5 million, minus any credit for funds repaid prior to sentencing by any party, to Rosalind Franklin University of Medicine and Science, formerly known as Finch University of Health Sciences/the Chicago Medical School, pursuant to Title 18, United States Code, Sections 3663A(a)(3) and 3664.

c. Defendant further understands that while forfeiture of property is not typically treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose, it is agreed by the parties that any payments made in satisfaction of the civil forfeiture judgment discussed in paragraph 24 below shall be credited to any outstanding restitution judgment.

d. Defendant understands that Title 18, United States Code, Section 3664 and Sections 5E1.1 and 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in setting a fine and in determining the schedule, if any, according to which restitution is to be paid in this case. Defendant agrees to provide full and truthful information to the Court and United States Probation Officer regarding all details of his economic circumstances, and to provide such information to the United States Attorney's office. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title

18, United States Code, Section 1001, or as a contempt of the Court, and would constitute a breach of this Plea Agreement.

24. Defendant further acknowledges that the government will file a civil complaint against certain property, namely \$5 million, alleging that the property is subject to forfeiture. Defendant relinquishes all right, title, and interest he may have in this property that is used to satisfy the amount due and further agrees to the entry of a judgment against him, extinguishing any interest or claim he may have had in the property subject to forfeiture. Defendant further agrees to cooperate fully and truthfully in identifying and forfeiting tainted assets subject to forfeiture, regardless of where they may have been transferred or hidden. Any attempt on the part of defendant to conceal property prior to the satisfaction of this judgment shall be deemed to violate this plea agreement. Defendant agrees that no transfers of property available to satisfy this judgment can be effectuated by Defendant or his agents without concurrence of the government or approval of the Court. To the extent that Defendant owns any property available to satisfy this judgment jointly, he agrees that any efforts to sell, to transfer, or otherwise convey his interest shall be subject to the same conditions. Further, defendant agrees maintain all financial obligations relating to any property so as to preserve and protect the availability of the property to satisfy the forfeiture judgment.



25. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Plea Agreement. He further understands that in the event he violates this Plea Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute Defendant not subject to any of the limits set forth in this Plea Agreement, or to resentence Defendant. Defendant understands and agrees that in the event that Defendant's plea is subsequently withdrawn, vacated or breached by Defendant, and the Government elects to void the Plea Agreement and prosecute Defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Plea Agreement may be commenced against Defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Plea Agreement and the commencement of such prosecutions.

26. Defendant and the government agree that after Defendant has entered a plea of guilty in this case, the government will move to dismiss the indictment and superseding indictment without prejudice against Defendant in United States v. Stuart Levine, 05 CR 408-1 (Grady, J.). Defendant understands and agrees that in the event that Defendant's Plea is subsequently withdrawn, vacated or breached by Defendant, and the Government elects to void the Plea Agreement and prosecute Defendant, the government may bring charges

against Defendant based on any of the allegations in the superseding indictment in United States v. Stuart Levine, 05 CR 408 (Grady, J.) that are not time-barred by the applicable statute of limitations on the date of the signing of this Plea Agreement in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Plea Agreement and the commencement of such prosecutions.

27. After sentence has been imposed on the counts to which Defendant pleads guilty as agreed herein, the government will move to dismiss the original indictment and the remaining counts of the Superseding Indictment in this case as to Defendant.

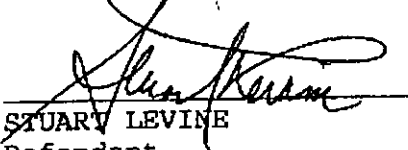
28. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement, to cause Defendant to plead guilty.

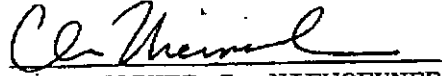
29. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

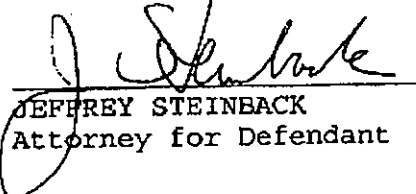
30. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.


AGREED THIS DATE: October 27, 2006

  
PATRICK J. FITZGERALD  
UNITED STATES ATTORNEY

  
STUART LEVINE  
Defendant

  
CHRISTOPHER S. NIEWOEHNER  
Assistant United States Attorney

  
JEFFREY STEINBACK  
Attorney for Defendant

  
KAARINA SALOVAARA  
Assistant United States Attorney

**FILED**

JUN 20 2005

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA )

v. )

JACOB KIFERBAUM )

UNITED STATES DISTRICT COURT

No. 05 CR 408-2  
Judge John F. Grady

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, JACOB KIFERBAUM, and his attorneys, JAMES R. STREICKER and THEODORE POULOS, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure, and is governed in part by Rule 11(c)(1)(C), as more fully set forth in Paragraph 19, below.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in the above captioned case.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities or agencies except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, JACOB KIFERBAUM, and his attorneys, JAMES R. STREICKER and THEODORE POULOS, have agreed upon the following:

1. Defendant acknowledges that he has been charged in Counts 1 through 7, and 9 through 20 of the indictment in this case with mail fraud and wire fraud, namely, participating in a scheme to defraud and to obtain money and property by means of material false and fraudulent pretenses and misrepresentations in violation of 18 U.S.C. §§ 1341, 1343, 1346 and 2. Defendant further acknowledges that he has been charged in Count 24 with attempted extortion, namely attempting to obtain property with the consent of the victim, induced under the color of official right, and by the wrongful use of actual and threatened fear of economic harm in violation of 18 U.S.C. §§ 1951 and 2, and that he has been charged in Counts 27 and 28 with the misapplication of funds, namely, construction funds belonging to the Finch University of Health Sciences/Chicago Medical School ("Chicago Medical School" and "CMS"), now known as the Rosalind Franklin University of Medicine and Science, in violation of 18 U.S.C. §§ 666 and 2.

2. Defendant has read the charges against him contained in the indictment in this case and the charges have been fully explained to him by his attorneys.

3. Defendant fully understands the nature and elements of the crimes with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to Count 24 of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charge contained in Count 24 of the indictment in this case. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt. The following is not a complete statement of all the details known to the defendant regarding the defendant's criminal conduct. The following facts are set forth solely as a factual basis for this guilty plea:

COUNT TWENTY-FOUR

Planning Board/Edward Hospital

Defendant JACOB KIFERBAUM ("Kiferbaum" or "defendant") admits that he owned and operated Kiferbaum Construction Company, a construction company located in Deerfield, Illinois. Beginning in or about December 2003 and continuing through in about May 2004, at Deerfield, Highland Park, and Naperville, Illinois, Kiferbaum, together with Stuart Levine ("Levine") and P. Nicholas Hurtgen ("Hurtgen"), did attempt to commit extortion, which extortion would obstruct, delay, and affect commerce, in that the defendants attempted to obtain property, in the form of a construction contract from Edward Health Services Corporation ("Edwards Hospital"), on behalf of and for the benefit of Kiferbaum, with Edward Hospital's consent induced under the color of official right, and by the wrongful use of actual and threatened fear of economic harm; in violation of Title 18, United States Code, Sections 1951, and 2.

Levine was a member of the Illinois Health Facilities Planning Board ("Planning Board"), and in that capacity he owed a duty of honest services to the Planning Board, the State of Illinois, and the people of the State Illinois. State law required an entity

seeking to build a hospital, medical office building, or other medical facility in Illinois to obtain a permit, known as a "Certificate of Need" ("CON"), from the Planning Board prior to beginning construction. Beginning in or about 2003, Edward Hospital sought CONs to construct a hospital and a medical office building in Plainfield, Illinois.

Beginning in or about December 2003, and continuing through approximately May 2004, Kiferbaum, Levine, and Hurtgen agreed that they would use Levine's position as a member of the Planning Board to force Edward Hospital to hire Kiferbaum Construction Company to build Edward Hospital's Plainfield facility, and would do so by threatening representatives of Edward Hospital that the Planning Board would not approve those facilities unless Kiferbaum Construction Company was given the construction contracts to build them. The total costs of constructing the hospital were projected to be approximately \$90 million, and the total costs of constructing the medical office building were projected to be approximately \$23 million.

If Kiferbaum Construction Company had obtained the contracts to build those facilities, the company, and/or its subcontractors, would have purchased items from out of state. Moreover, if the Planning Board had approved those facilities, Edward Hospital would have purchased items from out of state.

Kiferbaum understood that Hurtgen participated in this scheme with Kiferbaum and Levine because Hurtgen wanted his employer, Bear Stearns, to receive the financing work for the new hospital. Hurtgen agreed that he would introduce Kiferbaum to the CEO of Edward Hospital. From prior business dealings with Levine, in which Levine had asked for and received kickbacks from Kiferbaum, Kiferbaum understood that Levine would require Kiferbaum to pay a kickback to Levine or Levine's designee in connection with the Edward Hospital projects.

No later than early 2004, Kiferbaum knew that Levine was prohibited by law from engaging in ex parte communications with applicants with matters pending before the Planning Board, and knew that Levine could not communicate with representatives from Edward Hospital about their pending applications. Therefore, in order to protect Levine and conceal his role, Kiferbaum and Hurtgen communicated with Edward Hospital representatives, in place of and on behalf of Levine, in order to communicate Levine's threats and promises to Edward Hospital.

On or about December 23, 2003, Kiferbaum and Hurtgen met with the Edward Hospital CEO to persuade the CEO to hire Kiferbaum Construction Company to build the pending projects. Kiferbaum told the CEO that he had been working with Mercy Health System Corporation ("Mercy Hospital") on its new project, and that Mercy's application to build a new hospital in Crystal Lake was going to be approved. Unbeknownst to Kiferbaum and Hurtgen, the Edward Hospital CEO, and the Edward Hospital Project Administrator, were cooperating with the government.

On or about January 15, 2004, Kiferbaum met with Edward Hospital's CEO, and the Project Administrator, at Edward Hospital. Kiferbaum confirmed that if Edward Hospital hired Kiferbaum, they would get approval from the Planning Board, but if they did not hire him, Edward Hospital would not get approval.

On or about February 10, 2004, Kiferbaum met with the Edward Hospital CEO, and the Project Administrator, at Edward Hospital. Kiferbaum said that he was confident that Edward Hospital's project would be approved if they signed a contract with him.

In response to representations by Kiferbaum and Hurtgen that they were working with Levine, and that Levine had the ability to, and would, cause the Planning Board to approve or deny Edward Hospital's application - depending on whether or not Edward Hospital hired Kiferbaum - the Edward Hospital CEO requested that Kiferbaum and Hurtgen demonstrate that they were telling the truth about Levine's role by setting up a meeting with Levine, which Kiferbaum and Hurtgen agreed to do.

On or about April 16, 2004, Kiferbaum talked with the Edward Hospital CEO about setting up a meeting that would demonstrate that Kiferbaum and Levine knew each other.

On or about Friday, April 17, 2004, Levine told Kiferbaum that he would speak to Kiferbaum and the CEO at the restaurant on Sunday, and he would have Hurtgen or someone else with him.

On or about Sunday, April 18, 2004, Levine and Kiferbaum talked about the meeting that they were going to have that morning at a restaurant. Levine said he would talk to Kiferbaum and the CEO at the restaurant. Levine instructed Kiferbaum to tell the CEO that because of the ethics law concerning *ex parte* communications relating to pending projects, the CEO should not ask anything direct about her particular project. Levine said that the CEO knew why she was there with Kiferbaum, and she was either going to do it or she was not going to do it. Levine said he would bump into Kiferbaum "by mistake" a little later that day.



On or about Sunday, April 18, 2004, Levine and Hurtgen went to a restaurant in Deerfield, Illinois, as planned, in order to prove to the CEO that Levine, Hurtgen, and Kiferbaum were working together, and to prove that their representations concerning Levine and the Planning Board were real. Levine and Hurtgen walked over to the table where Kiferbaum and the CEO were sitting. Levine said that he was the Chairman of the Board of CMS, and that Kiferbaum had done a project for them. Levine said that Kiferbaum is a person upon whom one can rely, and he is a person whose word can be depended on.

Shortly after that meeting, Kiferbaum thanked Levine for what he had done at the restaurant. Kiferbaum said that it went perfectly and the CEO understood. Kiferbaum said that he told the CEO that they had to come to some sort of agreement. Levine said that they would find out what she's made of. Levine said that he had never been in a better position. Levine said that if the CEO promised to sign a contract, Kiferbaum should say that he accepted her word, and that he would do whatever he could.

On or about April 20, 2004, the Edward Hospital Project Administrator faxed Kiferbaum a letter stating that Edward Hospital would not hire Kiferbaum Construction Company for their project. When Kiferbaum received the letter of rejection from Edward Hospital, he called Levine and told him about the letter. Levine indicated that Edward Hospital's application would not be approved.

On or about April 21, 2004, the Planning Board held a Board meeting at which Edward Hospital's application for a permit to build the Plainfield hospital was considered. Edward Hospital had not hired Kiferbaum, and Levine voted against Edward Hospital's application to build a new hospital, and the Planning Board issued a notice of its intent to deny the application.

Kiferbaum acknowledges that a reasonable estimate of the net value of the benefit that would have been received by the contractor that would have built the new hospital and medical building for Edward Hospital was between \$1,000,000 and \$2,500,000.

**PROFFER PROTECTED INFORMATION**

**Chicago Medical School and Mercy Hospital**

The parties agree that information concerning the Chicago Medical School, and Mercy Hospital, provided by the defendant pursuant to § 1B1.8, and the terms of the Proffer Letter dated June 4, 2004 ("Proffer Letter"), cannot be used against the defendant in aggravation of his sentence, except as provided in the Proffer Letter, the Letter Agreement entered into by the parties, dated April 13, 2005 ("Letter Agreement"), and this plea agreement. Pursuant to § 1B1.8, the defendant states the following:

**CHICAGO MEDICAL SCHOOL**

**The CMS Addition**

Kiferbaum and Levine were each members of the Board of Trustees of the Chicago Medical School. In that capacity, they each owed a fiduciary duty and a duty of honest services to the Chicago Medical School.

In or about the summer of 2001, Levine told Kiferbaum to include an extra \$1,000,000 for Levine in the costs set forth in the proposed construction contract, that Kiferbaum Construction was seeking to obtain, to build an addition to the School. Based on conversations with Levine, Kiferbaum believed that Levine was powerful enough to control whether Kiferbaum received the CMS construction contract. Kiferbaum also believed that, if he refused to pay that kickback, Levine would prevent Kiferbaum from getting this contract. Kiferbaum agreed to pay a secret kickback of \$1,000,000 to Levine, and, did in fact pay approximately \$700,000 of that kickback, as directed by Levine.

CMS awarded to Kiferbaum Construction Company the construction contract for the addition to the School. Levine and Kiferbaum caused CMS to pay an extra \$1,000,000 in connection with the construction of that building by inflating the total cost of the contract, resulting in a contract of approximately \$18 million. In connection with the consideration of the construction contract by the CMS Board of Trustees, Levine and Kiferbaum concealed from the Board of Trustees that they had agreed to the payment of this kickback using CMS funds, and that Levine - who participated in the CMS Board of Trustees' consideration of the contract - had a substantial personal financial interest in its approval.

In order to conceal the fraudulent nature of the extra \$1 million to be paid by CMS to Kiferbaum Construction Company, Levine directed Kiferbaum to pay this extra \$1 million to Individual 2's consulting company, and Kiferbaum agreed to do so.

In order to conceal the fraudulent nature of the payments to Individual 2, Levine caused a sham marketing contract to be prepared, which was signed by Kiferbaum and Individual 2 in or about early December 2001. This contract provided that Kiferbaum Construction Company would pay Individual 2's company \$28,000 a month for approximately three years, for a total of approximately \$1 million.

Beginning in or about December 2001 and continuing through in or about June 2004, Individual 2 sent invoices requesting payment of \$28,000 every month, despite the fact that Individual 2 and his company did not provide any substantial services in exchange for those payments. Kiferbaum caused his company to pay Individual 2's company a total of approximately \$700,000.

In or about December 2003 or January 2004, Levine and Kiferbaum agreed that the balance that Kiferbaum still owed on the kickback relating to the CMS addition would be combined with kickback payments that Kiferbaum would make relating to Mercy Hospital. Based on that agreement, Kiferbaum stopped paying Individual 2's company in approximately January 2004.

In or about April 29, 2004, Levine and Individual 1 caused a sham consulting contract to be drafted and sent to Kiferbaum, providing that Kiferbaum Construction Company would pay approximately \$1,728,000 million to Individual 1's company. Levine arranged for that contract to include payments for a kickback relating to Mercy Hospital, as described below, and to include payments completing the kickback relating to the construction of the CMS addition.

Notwithstanding their positions as members of the CMS Board of Trustees, Levine and Kiferbaum intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements for the construction of the CMS addition, including, specifically, their agreements and actions concerning the \$1 million kickback described above.

CMS Student Housing

In or about the summer of 2002, Levine told Kiferbaum to include an extra \$1,000,000 for Levine in the costs set forth in the proposed construction contract relating to the construction of student housing. Kiferbaum agreed to pay a kickback of \$1,000,000 to Levine, and did in fact pay \$1,000,000 million as a kickback, as directed by Levine. Kiferbaum understood that, if he did not agree to pay the kickback, Levine would prevent him from obtaining the student housing construction contract.

CMS awarded to Kiferbaum Construction Company the construction contract for the addition to the School. Levine and Kiferbaum caused CMS to pay an extra \$1,000,000 in connection with the construction of that building by inflating the total cost of the contract, resulting in a contract of approximately \$22 million.

In order to conceal the fraudulent nature of the extra \$1 million to be paid by CMS to Kiferbaum Construction Company, in or about December 2002, Levine directed Kiferbaum to pay this extra \$1 million to Individual 3, which Kiferbaum agreed to do.

Based on Levine's direction, on or about December 12, 2002, Kiferbaum caused his company to issue a check in the amount of \$628,000, made payable to Individual 3.

Based on Levine's direction, on or about March 13, 2003, Kiferbaum caused his company to issue a check in the amount of \$372,000, made payable to Individual 3.

In order to conceal the fraudulent nature of the payments made to Individual 3, in or about March 2003, Levine caused a sham marketing contract to be prepared and sent to Kiferbaum. Although the contract stated that Individual 3 would provide services to Kiferbaum Construction Company, no such services were ever provided.

Notwithstanding their positions as members of the CMS Board of Trustees, Levine and Kiferbaum intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements for the construction of the CMS student housing, including, specifically, their agreements and actions concerning the \$1,000,000 kickback described above.

Planning Board/Mercy Hospital

Levine solicited a kickback of approximately \$1.5 million from Kiferbaum relating to the construction of Mercy Hospital's Crystal Lake facility. Kiferbaum agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date. At Levine's direction, the kickback proceeds were to be paid to Individual 1 pursuant to a sham consulting contract. Levine agreed to and, according to Levine, did use his influence with the Planning Board to ensure that Mercy Hospital would and did receive approval of its application to build the Crystal Lake facility after it contracted with Kiferbaum Construction Company to build that facility.

In or about late 2003, Levine and Kiferbaum agreed that Levine would use his position as a Planning Board member to influence the Planning Board to approve Mercy's application, if Mercy gave Kiferbaum Construction Company the construction contract - of approximately \$49 million - to build Mercy's proposed hospital. In exchange, Levine asked Kiferbaum for a kickback of approximately \$1.5 million, to be paid at Levine's direction. Kiferbaum agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date.

On or about January 23, 2004, approximately one month after the Planning Board had made known its intent to deny Mercy Hospital's application to build the Crystal Lake facility, Kiferbaum and Mercy Hospital signed a construction contract, agreeing that Kiferbaum Construction Company would build the new hospital for Mercy.

On or about April 21, 2004, the Planning Board voted in favor of granting Mercy's application for a permit to build a new hospital; Levine voted to approve the application. According to Levine, he also took steps to cause other Planning Board members to vote to approve Mercy's application.

On or about April 21, 2004, Levine told Kiferbaum what happened at the Planning Board meeting. Levine said that nobody could have gotten this done but Levine; there was a mutiny with the Board members who did not want to approve Mercy's application; and nobody really knew that Levine was orchestrating it. Kiferbaum said that he could not thank Levine enough. Levine said that they were in this together.

Shortly after Mercy's application was approved, Levine directed Kiferbaum to make the kickback payments relating to Mercy Hospital to Individual 1. Levine told Kiferbaum he would have a

consulting agreement prepared for Kiferbaum Construction Company and Individual 1's company.

On or about April 29, 2004, Individual 1 sent a sham consulting agreement to Kiferbaum, which provided that Kiferbaum Construction Company would make payments to a company operated by Individual 1, totaling approximately \$1,728,000. This amount included proposed kickback payments relating to Mercy, and payments that Kiferbaum still owed as part of the kickback relating to the CMS addition. This agreement was never signed by Kiferbaum.

6. For purposes of calculating the Guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties stipulate and agree on the following points:

a. The Guideline calculations are based on facts relating to Edward Hospital and events concerning Edward Hospital.

b. The applicable Guidelines version is the 2003 Guidelines Manual.

c. The applicable Guidelines Section is § 2C1.1, and the base offense level is 10.

d. The parties agree that pursuant to Guideline §§ 2C1.1(b)(2)(A) and 2B1.1(b)(1)(I), the base offense level should be increased by 16 levels because a reasonable estimate of the net value of the benefit to be received in connection with the Edward Hospital contracts relating to the construction of a new hospital and medical office building was between \$1,000,000 and \$2,500,000.

e. The parties agree that the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for his actions, within the meaning of Guideline § 3E1.1, a 2 level reduction in the offense level is appropriate.

f. The parties agree that the defendant has provided truthful information and timely notice of his intention to enter a plea of guilty, within the meaning of Guideline § 3E1.1(b), so that an additional 1 point reduction in the offense level is appropriate, if the offense level is 16 or greater, and the Court finds that a reduction under Guideline § 3E1.1(a) is appropriate.

g. Based on the facts known to the government, the defendant's criminal history points equal 0, and the defendant's criminal history category is I.

h. Based on the above calculations, which are preliminary in nature, and assuming that defendant's criminal history category is I, the preliminary projected applicable offense level is a level 23, so that the preliminary projected applicable sentencing range is 46 to 57 months.

i. The defendant and his attorneys and the government acknowledge that the above calculations are preliminary in nature

and based on facts known to the government as of the time of this plea agreement. The defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

7. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and the defendant shall not have a right to withdraw his plea on the basis of such corrections.

8. The defendant understands that, in imposing the sentence, the court will be guided by the United States Sentencing Guidelines. The defendant understands that the Guidelines are advisory, not mandatory, but that the court must consider the Guidelines in determining a reasonable sentence.

9. Defendant understands that Count 24 of the indictment to which he will plead guilty carries a maximum penalty of 20 years' imprisonment; a maximum fine of \$250,000, twice the gross gain to



the defendant, or twice the gross loss to the victims, whichever is greatest; and a term of supervised release of at least three years but not more than five years, as well as any restitution ordered by the Court.

10. The defendant understands that in accordance with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$100 on Count 24 of the Indictment to which he has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of \$100 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

11. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve layperson selected at random. Defendant and his

attorneys would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt, and that it was to consider each count of the indictment separately.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorneys would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.

(e) At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no

inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

12. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorneys have explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

13. The defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, in exchange for the concessions made by the United States in this Plea Agreement, the defendant knowingly agrees to waive the right to appeal any sentence imposed that is within or below the guidelines range of 23, and knowingly agrees to waive the right to appeal any stipulated guideline calculations. The defendant also waives his right to challenge any sentence imposed that is within or below the guidelines range of 23, and/or any stipulated guideline calculations, or the manner in which the sentence was determined, in any collateral attack, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

14. Defendant understands that the indictment and this Plea Agreement are matters of public record and may be disclosed to anyone.

15. Defendant agrees he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate, including the following:

a. Defendant agrees to provide complete and truthful information and testimony, (i) in any criminal investigation and any pre-trial preparation if called upon to do so by the government; (ii) before any grand jury, and (iii) in any United States District Court proceeding, state court proceeding, and civil, administrative, or other court proceeding, if called upon to do so by the government;

b. The parties agree that the parties will jointly recommend that the defendant's sentencing be postponed until after the conclusion of any on-going investigation in which the defendant is cooperating, and the conclusion of any prosecution arising from that investigation;

c. Defendant agrees to provide complete and truthful testimony before the United States District Court in any criminal proceeding, if called to testify by any defendant;

d. Defendant agrees that in the event that he breaches the terms of this plea agreement, or the plea agreement is vacated for any reason - other than the government's breaching the terms of this plea agreement, when there has been no breach, withdrawal, or rejection by the defendant - then the defendant's grand jury testimony, in part and/or in whole, can be used against him in any proceeding, including, but not limited to, before the grand jury and/or in any criminal prosecution against him, without restriction, and all proffer protection provided pursuant to the Proffer Letter, and under Guideline § 1B1.8, shall be null and void.

e. In the event that the defendant's grand jury testimony can be used against him, pursuant to subsection (d) of this paragraph, as stated above, the parties agree and stipulate that the admissibility and use of the defendant's grand jury testimony is not governed by Rule 11 of the Federal Rules of Criminal Procedure. Specifically, the defendant's testimony is not governed by Rule 11(f), or Rule 410 of the Federal Rules of Evidence, because the defendant's grand jury testimony does not constitute a plea of guilty which was later withdrawn, or a statement made in the course of any proceedings under Rule 11 regarding a plea of guilty or a plea of nolo contendere, or a statement made in the course of plea discussions with an attorney for the government.

The defendant agrees that he will not seek to use Rule 11 or Rule 410 to prevent the admission of his grand jury testimony into evidence.

f. Defendant understands and agrees that the information concerning Edward Hospital and events concerning Edward Hospital, provided by the defendant pursuant to § 1B1.8, and the terms of the Proffer Letter, may be presented to the court, may be used in the factual foundation of this plea agreement, may be used in calculating the defendant's sentence, and may be used in any other manner.

g. The defendant understands and agrees that information concerning CMS and Mercy Hospital, provided by the defendant pursuant to § 1B1.8, and the terms of the Proffer Letter, may be disclosed to the court, the grand jury, and as otherwise deemed appropriate by the government.

16. Nothing in this Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest or penalties from the defendant, or his business, the KCC Group Design+Build, Inc., formerly known as Kiferbaum Construction Company ("KCC Group"). If requested to do so by the IRS, the defendant agrees to transmit his original records, and KCC Group's original records, or copies thereof, and any additional books and records which may be helpful, for any years requested by the IRS,

to the Examination Division of the IRS so that the IRS can conduct a civil audit of defendant, and his business.

17. The United States Attorney's Office for the Northern District of Illinois agrees not to seek additional criminal charges against the defendant, and agrees not to seek criminal charges against KCC Group, Design+Build, Inc., formerly known as Kiferbaum Construction Company, in the Northern District of Illinois, for the events between January 1, 2001 and June 1, 2004, which occurred in the Northern District of Illinois, relating to CMS, Mercy Hospital, and Edward Hospital, which the defendant has described in the grand jury and in any proffer provided to the United States, and which are described in this plea agreement. However, nothing in this Agreement limits the United States in the prosecution of the defendant or KCC Group in other districts, or for crimes which the defendant has not disclosed in the grand jury or in any proffer provided to the United States, or which are not described in this plea agreement.

18. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him in this case, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

19. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation, and, if the defendant continues to provide full and truthful cooperation, shall move the Court, pursuant to Sentencing Guideline § 5K1.1, to depart downward from the applicable sentencing guidelines range, and pursuant to Rule 11(c)(1)(C), to impose an agreed sentence of imprisonment of 27 months incarceration. Other than the agreed term of incarceration, the Court remains free to impose any sentence the Court deems appropriate. Under Rule 11(c)(1)(C), the plea will be null and void if the Court refuses to impose the 27 month sentence of incarceration to which the parties have agreed.

20. It is understood by the parties that the sentencing judge is obligated to consult and take into account the Sentencing Guidelines in imposing a reasonable sentence.

21. Regarding restitution:

a. The parties agree that the offense of conviction results in no restitution;

b. The parties agree that pursuant to Title 18, United States Code, Section 3663(a)(3), based on the agreement of the parties, the defendant will cause KCC Group, Design+Build, Inc., formerly known as Kiferbaum Construction Company, which the defendant is the 100% owner, to pay \$7,050,908 in restitution to CMS, on or before July 1, 2005, thereby disgorging Kiferbaum



Construction Company's net profits before taxes from the construction of the CMS addition and the CMS student housing;

c. The parties agree and that a failure of KCC Group to pay \$7,050,908 on or before July 1, 2005 means that the defendant is in breach of this plea agreement;

d. The defendant agrees that the money paid pursuant to this Paragraph shall be non-refundable.

22. The defendant understands that Title 18, United States Code, Section 3664 and Sections 5E1.1 and 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in setting a fine and in determining the schedule, if any, according to which restitution is to be paid in this case. The defendant agrees to provide full and truthful information to the court and United States Probation Officer regarding all details of his economic circumstances, and to provide such information to the United States Attorney's office. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court, and would constitute a breach of this Plea Agreement.

23. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. He further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it

null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that the defendant's Plea is subsequently withdrawn, vacated or breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

24. Defendant and his attorneys acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

25. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

26. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.

27. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment.

28. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorneys. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE:

June 20, 2005

Patrick J. Fitzgerald  
PATRICK J. FITZGERALD  
UNITED STATES ATTORNEY

J. Kiferbaum  
JACOB KIFERBAUM  
Defendant

Jacqueline Stern  
JACQUILINE STERN  
Assistant United States Attorney

James R. Streicker  
JAMES R. STREICKER  
Attorney for Defendant

Theodore Poulos  
THEODORE POULOS  
Attorney for Defendant

AE

**FILED**

SEP 15 2005  
SEP 15 2005  
JUDGE AMY ST. EVE  
United States District Court

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 05 CR 691-3
	)	Judge Amy J. St. Eve
STEVEN LOREN	)	

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, STEVEN LOREN, and his attorney, MICHAEL L. SIEGEL, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in the above captioned case.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities or agencies except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, STEVEN LOREN, and his attorney, MICHAEL L. SIEGEL, have agreed upon the following:

1. Defendant acknowledges that he has been charged in Count 14 of the indictment in this case with corruptly endeavoring to obstruct and impede the due administration of the internal revenue laws in violation of 26 U.S.C. § 7212(a).

2. Defendant has read the charge against him contained in the indictment in this case and the charge has been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crime with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to Count 14 of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charge contained in Count 14 of the indictment in this case. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt. The following is not a complete statement of all the details known to the defendant regarding the defendant's criminal conduct. The following facts are set forth solely as a factual basis for this guilty plea:

Individual A - Investment Firm 1 (Count 14)

Defendant Steven Loren ("Loren" or "defendant") admits that he was an attorney; he and his law firm were outside counsel to the Teachers' Retirement System of the State of Illinois ("TRS"), which was a public pension plan for certain Illinois teachers. Stuart Levine ("Levine") was a member of the TRS Board of Trustees. Individual A acted as a placement agent for Investment Firm 1, an asset management company located in Chicago, Illinois, that solicited and received \$50 million in TRS funds to invest. Individual A also acted as a placement agent for Investment Firm 2 and Investment Firm 3 in connection with those firms' efforts to obtain funds from TRS.

Beginning in or about the fall of 2003 and continuing until in or about May 2004, Loren corruptly endeavored to obstruct and impede the due administration of the internal revenue laws.

In or about the fall of 2003, Levine told Loren that he had arranged for Individual A to find potential investments for TRS; entities receiving funds from TRS that were introduced to TRS by Individual A would pay a finder's fee to Individual A; and Individual A would split his placement fees with certain individuals at the direction of Levine and his associates. Based on his conversations with Levine, it was Loren's understanding that Levine's associates, who were close to a high ranking public official, would use those placement fees as an incentive or reward to those who made campaign contributions that would benefit the high ranking public official, and that Levine's associates would be able to steer money to the people that they selected, and those people would get money without providing any services.

At Levine's direction, Loren assisted Levine by advising Individual A as to the sorts of investments that TRS would consider, and reviewing investment proposals submitted by Individual A and others. Levine told Loren that, based on Levine's request, Individual A had agreed to split a finder's fee with a person identified by Levine.

Levine directed Loren to prepare a sham consulting contract that would appear to justify Individual A's splitting his finder's fee with a third party. Levine instructed Loren to draft a consulting agreement that would pass scrutiny if someone like the U.S. Attorney looked at it. Levine did not give Loren the names of the parties but, instead, told Loren to use "X" and "Y" in place of the parties' names. Loren agreed to draft the sham contract.

knowing that the contract would be used to make a fraudulent transaction appear legitimate.

In order to conceal the fraudulent nature of the transaction, Loren included certain terms and conditions in the contract that Loren believed would be typical in a legitimate consulting contract. Loren drafted an agreement that he thought would be plausible in the context of a third party working with Individual A.

Loren drafted the contract knowing that it falsely represented that services would be provided by the third party, when in fact Loren believed that no services would be provided by the third party. Loren drafted the sham contract in a manner that he believed would make it falsely appear that payments by Individual A to the third party constituted legitimate business expenses to Individual A, and legitimate income to the third party. Loren believed that the payments would be reported to the Internal Revenue Service as legitimate expenses of Individual A, and legitimate income to the third party, even though the payments did not constitute legitimate expenses or income. Loren expected Individual A to deduct the payment, although the payment could not be lawfully deducted.

Loren gave the draft consulting agreement to Levine. Loren instructed his secretary not to save the consulting agreement on the computer.

When Loren prepared the sham agreement for Individual A and an unknown third party, Loren knew that the sham agreement was wrong because it was concealing an illegal fee arrangement.

Loren understood that Levine had agreed to use his official position at TRS to help Individual A get additional TRS funding for investments that Individual A introduced to TRS, in exchange for Individual A's sharing his finder's fees at Levine's direction, with Levine getting his directions from another individual.

Loren, Levine, Individual A, and others, took steps to hide and conceal, and to attempt to hide and conceal, the purposes of the corrupt endeavor, and acts done as part of the corrupt endeavor.

Loren acknowledges that he abused his position as outside counsel to TRS, which was a position of trust, by aiding and abetting Levine and by failing to report Levine's conduct to TRS.

and that Loren used his skills as an attorney to prepare the contract.

Loren acknowledges that Individual A paid a portion of his fee to a third party, and that it was reasonably foreseeable to Loren that the fee would be approximately \$250,000. It was also reasonably foreseeable to Loren that Individual A would deduct that payment as being a legitimate expense, even though, Loren believed that the payment was an illegal payment. Loren further acknowledges that by preparing the sham contract at Levine's direction, Loren corruptly endeavored to obstruct and impede the due administration of the internal revenue laws, by impeding the Internal Revenue Service's ability to review the true facts concerning that transaction. Loren further acknowledges that it was reasonably foreseeable to Loren that Individual A's future deduction of that payment of \$250,000 as a legitimate business expense would cause a tax loss of approximately \$70,000.

All in violation of Title 26, United States Code, Section 7212(a).

**Individual A - Investment Firms 2 and 3**

In or about late 2003 and early 2004, based on Levine's direction, Loren met with Individual A and other individuals to review information concerning certain potential TRS investments, including information relating to Investment Firms 2 and 3. It was not a routine part of Loren's duties as TRS's outside counsel to meet with entities seeking TRS investment dollars. It was Loren's understanding that Levine wanted TRS to invest funds with Investment Firms 2 and 3 because each of those firms agreed to pay a finder's fee to Individual A, and Individual A agreed to split his finder's fees as directed by Levine.

Loren and Levine each concealed from and failed to disclose to the TRS Board material facts relating to Investment Firms 1, 2, and 3, including Levine's arrangement with Individual A that Individual A would split each of his finder's fees at Levine's direction in exchange for Levine's assistance in obtaining TRS funds.

As an attorney for TRS, Loren knew that he had a duty to be truthful with TRS, and to act honestly. Loren understood that withholding the information about Levine's arrangements concerning Individual A's placement fees was a breach of Loren's attorney/client responsibilities to TRS, and it meant that Loren was not being honest or truthful with TRS. Loren acknowledges that



he failed to provide TRS with material information which had come into his possession.

**PROFFER PROTECTION**

The parties agree that Loren has provided information to the government under Sentencing Guideline § 1B1.8, pursuant to the terms of a proffer letter dated November 23, 2004 ("Proffer Letter"), and pursuant to the terms of a Letter Agreement, dated July 5, 2005 ("Letter Agreement"), including, but not limited to information concerning the following: (1) The Illinois Teachers Retirement System pension fund (TRS) and events relating to TRS during 1991-2004; (2) Rosalind Franklin University of Medicine & Science, f/k/a Finch University of Health Sciences/the Chicago Medical School ("CMS") and events relating to the School in 2002-2004; (3) Mercy Alliance, Inc. ("Mercy Hospital") and events concerning Mercy Hospital in 2003-2004; (4) All information relating to Individual B; (5) Individual A and various entities that Individual A owned, operated, or controlled, or for which Individual A was an agent or representative (hereinafter collectively referred to as "Individual A") and events relating to Individual A in 2003-2004.

**Individual A:** Loren agrees that the information concerning Individual A provided by Loren pursuant to § 1B1.8, and the terms of the Proffer Letter, Letter Agreement, and this Plea Agreement, may be used in any manner, including in the factual foundation of a plea agreement, in calculating Loren's sentence, and before the grand jury or court. The information concerning Individual A includes any information concerning, relating to, or surrounding: (i) Individual A's statements, actions, and conduct; (ii) any statements, actions, conduct, events, and transactions, relating to Individual A; and (iii) any documents or materials that Individual A created, used, or reviewed or caused to be created, used or reviewed, or that relate to Individual A or to any event or transaction relating to Individual A.

**Proffer Protected Statements:** The parties agree that other statements made by Loren pursuant to § 1B1.8, and the terms of the Proffer Letter and Letter Agreement, cannot be used against Loren in the government's case-in-chief, or in aggravation of Loren's sentence, except as provided in the proffer letter, and the Letter Agreement. Those statements, however, may be used in any other manner, including being disclosed to the court, the grand jury, witnesses, and defendants. Those statements include the following:

**Financial Benefits:** Levine, with the assistance of Loren, and others, fraudulently used and sought to use Levine's position and influence as a member of the TRS Board of Trustees to obtain financial benefits for Levine's nominees and associates.

**Splitting Fees:** Levine advised Loren that Levine intended to use, and was using, his official position on the TRS Board, to assist other people, besides Individual A, in obtaining TRS funds for certain entities, and that in return, those people would split placement fees with persons identified by Levine. Levine advised Loren that he was acting in concert with others in connection with the splitting of placement fees.

Levine asked Loren to help in this scheme by providing advice concerning investments to certain potential applicants, and by reviewing materials concerning possible TRS investments, which Loren agreed to do. At Levine's direction, Loren assisted Levine by advising certain people as to the sorts of investments that TRS would consider, and by reviewing various investment proposals and various documents. At Levine's request, Loren described for certain individuals the types of private equity investments TRS might be interested in, and gave them an overview as to how TRS was planning on allocating its private equity investments.

**Sham Contracts for Investment Firm 4:** In the spring of 2004, after Investment Firm 4 had submitted an application to receive funds from TRS, Levine attempted to steer a consulting contract relating to the TRS transaction to a particular individual.

After Loren had started working on Firm 4's documents, Levine told Loren, in substance, to make sure the deal did not get killed. Levine told Loren to keep Levine apprised of what happened, and Loren did so.

In or about April 2004, Levine said there was going to be a split of a placement fee related to the TRS investment in Investment 4. Levine directed Loren to prepare a draft contract for Investment Firm 4, which Loren agreed to do. Levine directed Loren to include certain terms in the contract, including the amounts to be paid and the dates of payment. Levine did not give Loren the names of the parties, but instead, told Loren to use "X" and "Y" in place of the parties' names. On or about April 29, 2004, Loren prepared a draft compensation agreement using "X" and "Y" in place of the parties' names. Loren drafted the contract believing that it falsely represented that services would be provided by the consultant, when in fact Loren believed that no services would be provided. Loren drafted the sham contract in a

manner that he believed would make it falsely appear that payments by Investment Firm 4 constituted legitimate payments for services rendered, even though no such services were rendered.

Levine and Loren concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 4, including Levine's attempt to steer placement fees to a consultant named by Levine.

In or about May 2004, Levine also directed Loren to prepare a sham contract relating to Investment Firm 4 and another state pension board. On or about May 15, 2004, Loren prepared the sham contract that Levine requested. Based on conversations with Levine, Loren understood that one of Levine's close associates was going to receive a part of the placement fee that Investment Firm 4 would have to pay in order to obtain funding from the other state pension board. Loren thought that Levine was facilitating a placement fee for his close associate, even though that individual was not going to provide any services in exchange for the money. Loren drafted the contract knowing that it falsely represented that services would be provided by the Levine's close associate. Loren drafted the sham contract in order to make it appear that the payments to Levine's close associate were legitimate payments in exchange for services.

**Asset Managers for TRS:** In or about April 2004, Levine met with Loren to find out how Levine's nominees or associates could do business with TRS, and to discuss the possibility of Levine doing business with TRS in the future, including the possibility of setting up a company to do business with TRS as an asset manager. Levine asked Loren to present ideas to Levine that would allow participation by Levine's nominees or associates, without such participation being disclosed to TRS. Loren subsequently explained to Levine that if a development company entered into a business relationship with an asset manager, there would be no requirement to disclose the ownership of the developer.

**Information Concerning Levine:** Over the course of time, Loren withheld information concerning various actions that Levine took that Loren believed breached Levine's fiduciary duty to TRS. Loren believed that he had a duty to disclose to TRS what Levine was doing, and did not do so. By failing to disclose information about Levine's on-going conduct, Loren was not being honest with TRS, and Loren breached his attorney/client responsibilities.

6. For purposes of calculating the Guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties stipulate and agree on the following points:

a. The parties agree that the Guideline calculations are based on information relating to Individual A and events concerning Individual A in 2003-2004.

b. The parties agree that the applicable Guidelines version is the 2003 Guidelines Manual.

c. The parties agree that the applicable Guidelines Section is § 2T1.1(1), which refers to the Tax Table in § 2T4.1.

d. The parties agree that pursuant to Guideline § 2T1.1, the base offense level is 14, because the intended tax loss (\$250,000 x 28%) was approximately \$70,000, in that defendant Loren knew that the payment to be made by Individual A to a third party was an illegal payment, and defendant Loren acknowledges that it was reasonably foreseeable to the defendant that Individual A's future deduction of that payment of \$250,000 as a legitimate business expense would cause a tax loss of approximately \$70,000.

e. The parties agree that the base offense level should be increased by 2 levels, pursuant to Guideline § 3B1.3, because the defendant abused a position of trust, and used a special skill, in carrying out the offense, in a manner that significantly facilitated the commission and concealment of the offense, namely,

the defendant abused his position as outside counsel to TRS by aiding and abetting Levine's scheme involving Individual A and by failing to report Levine's conduct relating to Individual A to TRS, and the defendant used his skills as an attorney to prepare the sham contract for Individual A.

f. The parties agree that the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for his actions, within the meaning of Guideline § 3E1.1, a 2 level reduction in the offense level is appropriate.

g. The parties agree that the defendant has provided timely notice of his intention to enter a plea of guilty, and has provided truthful information, within the meaning of Guideline § 3E1.1(b), so that an additional 1 point reduction in the offense level is appropriate, if the offense level is 16 or greater, and the Court finds that a reduction under Guideline § 3E1.1(a) is appropriate.

h. Based on the facts known to the government, the defendant's criminal history points equal 0 and the defendant's criminal history category is I.

i. Based on the above calculations, which are preliminary in nature, and assuming that the defendant's criminal history

category is I, the preliminary projected applicable offense level is a level 13, so that the preliminary projected applicable sentencing range is 12 to 18 months.

j. The defendant and his attorney, and the government, acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this plea agreement. The defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this plea agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

7. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and the defendant shall not have a right to withdraw his plea on the basis of such corrections.

8. The defendant understands that, in imposing the sentence, the court will be guided by the United States Sentencing Guidelines. The defendant understands that the Guidelines are

advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. Defendant understands that Count 14 of the indictment to which he will plead guilty carries a maximum penalty of 3 years' imprisonment, a maximum fine of \$250,000, any costs of prosecution, and a term of supervised release of one year, as well as any restitution ordered by the Court.

10. The defendant understands that in accordance with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$100 on Count 14 of the Indictment to which he has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of \$100 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

11. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charge against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government, and the

judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve layperson selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would



not appear voluntarily, he could require their attendance through the subpoena power of the court.

(e) At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

12. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

13. The defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, in exchange for the concessions made by the United States in this Plea Agreement, the defendant knowingly agrees to waive the right to appeal any sentence imposed that is within or below the guidelines range corresponding to offense level 13, Criminal History Category I, and waives the right to appeal any stipulated guideline calculation. The defendant also waives his right to challenge any sentence imposed that is within or below that guidelines range, and any stipulated guideline calculation, or the manner in which the sentence was determined, in any collateral attack, including but

not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

14. Defendant understands that the indictment and this Plea Agreement are matters of public record and may be disclosed to anyone.

15. Defendant agrees he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate, including the following:

a. Defendant agrees to provide complete and truthful information and testimony, (i) in any criminal investigation and any pre-trial preparation if called upon to do so by the government; (ii) before any grand jury, and (iii) in any United States District Court proceeding, state court proceeding, and civil, administrative, or other court proceeding, if called upon to do so by the government;

b. The parties agree that the parties will jointly recommend that the defendant's sentencing be postponed until after the conclusion of any on-going investigation in which the defendant is cooperating, and the conclusion of any prosecution arising from that investigation, if the government deems such postponement appropriate;

c. Defendant agrees that in the event that he breaches the terms of this plea agreement, or the plea agreement is vacated for any reason - other than the government's breaching the terms of this plea agreement, when there has been no breach, withdrawal, or rejection by the defendant - then any grand jury testimony provided by the defendant, in part and/or in whole, can be used against him in any proceeding, including, but not limited to, before the grand jury and/or in any criminal prosecution against him, without restriction;

d. In the event that the defendant's grand jury testimony can be used against him, pursuant to subsection (c) of this paragraph, as stated above, the parties agree and stipulate that the admissibility and use of the defendant's grand jury testimony is not governed by Rule 11 of the Federal Rules of Criminal Procedure or Rule 410 of the Federal Rules of Evidence. The defendant agrees that he will not seek to use Rule 11 or Rule 410 to prevent the admission of his grand jury testimony into evidence.

16. The United States agrees not to seek additional criminal charges against the defendant, in the Northern District of Illinois, for the events between January 1, 2000 and November 23, 2004, which occurred in the Northern District of Illinois, relating to Individual A, TRS, CMS, and Mercy Hospital, which the defendant has described in the grand jury or in proffers provided to the United States, or which are described in this plea agreement.

However, nothing in this Agreement limits the United States in prosecution of the defendant in other districts, or for crimes which the defendant has not disclosed in the grand jury or in proffers provided to the United States, or which are not described in this plea agreement.

17. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him in this case, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

18. At the time of sentencing, the government shall make known to the sentencing judge the extent of the defendant's cooperation, and, assuming the defendant's full and truthful cooperation, shall move the Court, pursuant to Sentencing Guideline § 5K1.1, to depart downward from the applicable sentencing guidelines range. The government shall make no recommendation concerning the imposition of a term of imprisonment, but remains free to make any other recommendations that it deems appropriate. The defendant is free to recommend whatever sentence he deems appropriate.

19. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose the maximum penalties as set forth in paragraph 9 above. However,

the sentencing court is obligated to consult and take into account the Sentencing Guidelines in imposing a reasonable sentence. The defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, the defendant will have no right to withdraw his guilty plea.

20. Regarding restitution, the parties agree that the offense of conviction resulted in no loss and therefore restitution is inappropriate.

21. The defendant understands that Title 18, United States Code, Section 3664 and Section 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in setting a fine. The defendant agrees to provide full and truthful information to the court and United States Probation Officer regarding all details of his economic circumstances, and to provide such information to the United States Attorney's office. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court, and would constitute a breach of this Plea Agreement.

22. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. He further understands that in the event he violates this Agreement, the government, at

its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that the defendant's Plea is subsequently withdrawn, vacated or breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.


23. Defendant and his attorneys acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

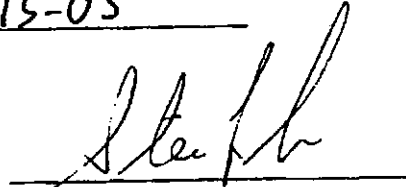
24. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

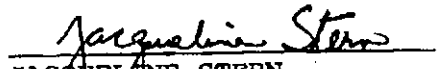
25. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.


26. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorneys. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: 9-15-05

  
PATRICK J. FITZGERALD  
UNITED STATES ATTORNEY

  
STEVEN LOREN  
Defendant

  
JACQUELINE STERN  
Assistant United States Attorney

  
MICHAEL L. SIEGEL  
Attorney for Defendant

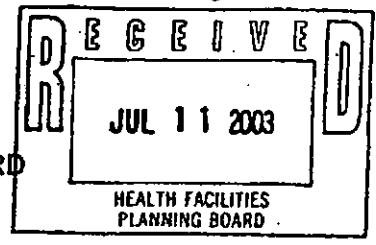
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03-049

Illinois Health Facilities Planning Board

Application for Permit April 2000 Edition  
Page 1

Ray Passeri, Executive Secretary  
Illinois Health Facilities Planning Board  
525 W. Jefferson Street - Second Floor  
Springfield, Illinois 62761



ILLINOIS HEALTH FACILITIES PLANNING BOARD  
APPLICATION FOR PERMIT

SECTION I. IDENTIFICATION, GENERAL INFORMATION, AND CERTIFICATION (IDEN)

This section must be completed for all projects.

A Facility/Project Identification

Facility Name: Mercy Crystal Lake Hospital and Medical Center  
Location: East side State Rd. 31 between Three Oaks & Raymond Roads City: Crystal Lake  
County: McHenry Zip: 60014 Illinois State Representative District: 64

B. Applicant Identification (provide for each co-applicant [refer to Part 1130.220] and insert after this page)

Exact Legal Name: Mercy Crystal Lake Hospital and Medical Center, Inc.  
Address: 2000 Lake Avenue, Woodstock IL 60098  
Name of Registered Agent: Herbert Franks, Esq., Marengo, IL  
Name of Chief Executive Officer: Javon R. Bea Title: President/CEO  
CEO Address: Same as applicant Telephone No. (815) 337-5739

Type of Ownership:  Non-profit Corporation  For-profit Corporation  Limited Liability Company  
 Partnership  Governmental  Sole Proprietorship  Other (specify)

Corporations and limited liability companies must provide an Illinois certificate of good standing; partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.

APPEND DOCUMENTATION AS ATTACHMENT IDEN-1 AFTER THE LAST PAGE OF THIS SECTION.

C. Primary Contact Person (person who is to receive correspondence or inquiries during the review period)

Name: Eli L. Beeding Jr Title: The Beeding Group  
Address: 7488 County Road 3, Marble, CO 81623  
Telephone No. 970-963-4877 E-mail Address: \_\_\_\_\_  
Fax Number 970-704-0794

D. Additional Contact Person (person such as consultant, attorney, financial representative, registered agent, etc. who also is authorized to discuss application and act on behalf of applicant)

Name Richard H. Gruber Title: Vice President  
Address: Same as B. above  
Telephone No. (608) 756-6112 E-mail Address: rgruber@mhsjvl.org Fax Number (608) 756-6236

\* See bottom of page 2



**ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD  
APPLICATION FOR PERMIT**

**SECTION I. IDENTIFICATION, GENERAL INFORMATION, AND CERTIFICATION**

This Section must be completed for all projects.

**Facility/Project Identification**

Facility Name: Mercy Crystal Lake Hospital and Medical Center, Inc.		
Street Address: SE Corner of State Rte 31 & Three Oaks Road		
City and Zip Code: Crystal Lake, IL 60014		
County: McHenry	Health Service Area: 8	Health Planning Area: A-10

**Applicant /Co-Applicant Identification**

[Provide for each co-applicant [refer to Part 1130.220].

Exact Legal Name: Mercy Crystal Lake Hospital and Medical Center, Inc.		
Address: 2000 Lake Avenue, Woodstock, IL 60098		
Name of Registered Agent: Herbert Franks		
Name of Chief Executive Officer: Javon R. Bea		
CEO Address: 1000 Mineral Point Avenue, Janesville, WI 53548		
Telephone Number: 608-756-6112		

**Type of Ownership of Applicant/Co-Applicant**

<input checked="" type="checkbox"/> Non-profit Corporation	<input type="checkbox"/> Partnership	
<input type="checkbox"/> For-profit Corporation	<input type="checkbox"/> Governmental	
<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Other

o Corporations and limited liability companies must provide an Illinois certificate of good standing.

o Partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.

APPEND DOCUMENTATION AS ATTACHMENT-1 IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Primary Contact**

[Person to receive all correspondence or inquiries during the review period]

Name: Dan Colby
Title: Vice President
Company Name: Mercy Health System Corporation, Inc.
Address: 1000 Mineral Point Avenue, Janesville, WI 53548
Telephone Number: 608-756-6123
E-mail Address: dcolby@mhsjvl.org
Fax Number: 608-756-6236

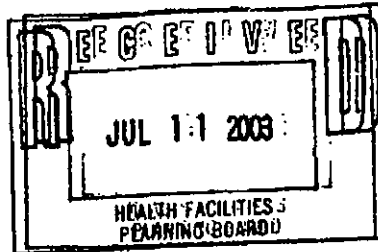
**Additional Contact**

[Person who is also authorized to discuss the application for permit]

Name: Richard H. Gruber
Title: Vice President
Company Name: Mercy Health System Corporation, Inc.
Address: 1000 Mineral Point Avenue, Janesville, WI 53548
Telephone Number: 608-756-6112
E-mail Address: rgruber@mhsjvl.org
Fax Number: 608-756-6236

Franks Gerkin McKenna, P.C.  
Lawyers

July 9, 2003



Mr. Jeffrey Mark  
Executive Secretary  
Illinois Health Facilities  
Planning Board, 2nd Floor  
525 W. Jefferson Street  
Springfield, IL 62761

Re: Application for Permit


Dear Mr. Mark:

I am pleased to enclose the original and five copies of an Application for Permit for the Mercy Crystal Lake Hospital and Medical Center. Also enclosed is our \$700.00 check for a filing fee. I understand that you will be reviewing this application for completeness in the next two weeks. If there is anything that you need, please call me or fax me so we can expedite the proceedings.

We are looking forward to working with you.

Very truly yours,

FRANKS, GERKIN & MCKENNA, P.C.

  
Herbert H. Franks

HHE/db  
Enclosures

19333 East Grant Highway  
P.O. Box 5  
Marengo, Illinois 60152-0005  
Tel 815.923.2107  
Email: franklaw@mc.net  
Fax 815.923.2114

60001

DATE: 4/21/04  
TIME: 8:03 p.m.  
ACTIVITY: Home Telephone 1 outgoing to (847) 432-0498  
CALL#: 329

SPEAKERS:  
LEVINE: Stuart Levine  
LOREN: Steven Loren

\* \* \* \*

1 LOREN Hi.  
2 LEVINE You have no idea.  
3 LOREN Let, let me get this on the other phone,  
4 one second.  
5 (PAUSE)  
6 LOREN Hi.  
7 LEVINE Uh, from the minute, from the minute I  
8 walked in there uh, Beck, Beck, Beck  
9 wanted to resign uh, uh, he, and, and,  
10 and uh, ih, ih, ih, because see there's,  
11 there's much more here than uh, than uh,  
12 meets the eye because other people had  
13 been promised that this wouldn't happen.  
14 LOREN Mm hm.  
15 LEVINE And uh, and um, and of course no-,  
16 nobody, nobody knows that it's me. And  
17 nobody really knows that it's Tony for  
18 the reason that it's Tony.  
19 LOREN Right.  
20 LEVINE And, and um, uh, I kept the whole thing  
21 together boy, and Beck's not resigning.  
22 LOREN Oh a-, after the hearing itself it  
23 wouldn't of been hard for anyone who was  
24 present to see that you were the one who  
25 moved this.  
26 LEVINE Well, but I had no choice.

1 LOREN I, I understand that.

2 LEVINE But I mean, but I mean but all through  
3 the whole day and, and, and I took Beck  
4 over to Tony's and now Beck's not  
5 resigning.

6 LOREN Mm hm.

7 LEVINE I mean I kept the whole, you know uh,  
8 but uh, but oh what I fuckin' thing.

9 LOREN Oh, he threatened to resign over this?

10 LEVINE No he was, he, he didn't want it to take  
11 place. Tony and I both decided we  
12 wanted, I like getting things done. And  
13 he, he wanted all the hospitals up in  
14 the same time.

15 LOREN Right.

16  
17 LEVINE Now, I mean Mercy is not Edward's  
18 problem so you know I mean uh, uh, I  
19 mean uh, uh, and you know, he thought,  
20 he thought it got uh that the Board  
21 would look uh, foolish uh, giving it to  
22 uh, to uh, uh, uh, Mercy with uh, uh,  
23 you know uh, given the uh, the, the  
24 staff findings uh and uh, that there was  
25 you know no, no chance for real cover.  
26 And another problem is that, that  
27 there's really no control over the staff  
28 because...

29 LOREN (UI).

30 LEVINE The staff doesn't report to the  
31 Executive Director. But that's all  
32 going to get cured now. Now that I see  
33 Tom's problems, I'm gonna get those  
34 cured. But um, uh, but uh, tell me do  
35 you think the other hospital systems in  
36 McHenry could successfully keep you out  
37 with litigation?

38 LOREN Well, Centegra approached uh, Javon.

1 LEVINE Mm hm.

2 LOREN And you know the President of Centegra  
3 who was there uh, said that he thought  
4 his Board was going to bring some kind  
5 of challenge and Javon volunteered and  
6 they're going to get together one day,  
7 not next week but the week after, to try  
8 and see if they can work out their  
9 differences and Javon was saying you  
10 know that this, this market's large  
11 enough for both of us and all you're  
12 going to do with litigation is alienate  
13 yourself from the Board in the future so  
14 why would you want to do that. Maybe  
15 they can work something out.

16 LEVINE Well that was, that was interesting that  
17 uh, that he took it upon himself to say  
18 I'm the strong man. Of course he was  
19 that day.

20 LOREN Right.

21 LEVINE Uh, but...

22 LOREN But he, he's also, you know the, the guy  
23 from Mercy is pretty polished and to the  
24 extent he can work something out.

25 LEVINE Well I, I, that, that would be, that  
26 would be very smart and very good. Uh,  
27 um,...

28 LOREN Now, now the, the other uh, you know  
29 Centegra can bring a lawsuit, but the  
30 lawsuit wouldn't be against the Board it  
31 would be against uh, more, more likely  
32 would be against uh, Mercy under the  
33 fact that the CON shouldn't of been  
34 issued which is kind of screwy  
35 procedural issue.

36 LEVINE Well now my, my only point is the, the  
37 thing would be delayed in getting built.

38 LOREN Right.

1 LEVINE I don't give a shit about the rest.  
2 (laughs)

3 LOREN Well Ja, Ja, Javon knows that he stole,  
4 he said he's at second base.

5 LEVINE Ah, he, he understands what we got  
6 pulled off for him? The magnitude of  
7 it.

8 LOREN Ah, he, he, he's no dummy. You know  
9 what he was really upset about?

10 LEVINE Mmmm.

11 LOREN He had been promised up and down the  
12 wazoo that he was going to get the  
13 support of the uh, those 2 women...on,  
14 on the theory that the unions were  
15 helping him out. You know both Rice and  
16 Orr and uh, Orr, Orr, Orr got up to  
17 leave just 'cause she didn't want to be  
18 there for the vote.

19 LEVINE Uh, well that she, so uh, who's he work  
20 with, with the unions?

21 LOREN Balanoff.

22 LEVINE He worked with Balanoff?

23 LOREN Someone did for him.

24 LEVINE Well...

25 LOREN (UI) Victor.

26 LEVINE Oh I see. Well I, I hope that Javon is  
27 going to complain loudly.

28 LOREN Uh, he probab-, well, I, I think he also  
29 appreciates that the last thing that he  
30 and Mercy need is any kind of spotlight.  
31 So I don't think he's going to go, I  
32 think he's going to try and work  
33 something out quietly.

34 LEVINE Oh that's good. Well that's good. But,

1 but he understands the magnitude...

2 LOREN Yeah.

3 LEVINE Of what was done on the, on that Board  
4 by me today.

5 LOREN He does. In fact he said he can't  
6 believe that you did what you did on  
7 their behalf.

8 (PAUSE)

9 LEVINE Uh, I didn't do it on their behalf.  
10 (laughs)

11 LOREN Well...

12 LEVINE Why, but why, why, well, he, I'm sh-,  
13 that's good, it's good, it's good that  
14 he thinks that because he uh, uh, uh, he  
15 um, um, uh, thinks that uh, that for  
16 some reason I'm just doing it for Jacob.

17 LOREN Pam uh, out did herself.

18 LEVINE She is, what an arrogant bitch.

19 LOREN (UI).

20 LEVINE What an arrogant bitch. Can you imagine  
21 walkin' out that she still had to come  
22 back. You know what she is absolutely  
23 appalled that she didn't get her CON  
24 today. I mean she just can't believe  
25 it. I mean she came in to get her CON  
26 and they didn't give it to her. She is  
27 fuckin' nuts.

28 LOREN She is what she is. Now is she going to  
29 get hers in June?

30 LEVINE No.

31 LOREN (laughs)

32 LEVINE She's not going to get shit. Because  
33 uh, uh, um, the, the Adventist are going

1 to get it there. She's fucked.

2 LOREN Now what's Ladd going to do?

3 LEVINE Regarding? Oh, he represents the  
4 Adventist. He's getting (UI).

5 LOREN He represents Centegra too.

6 LEVINE Yeah I know but uh, he can't have  
7 everything. He, he, he got, he, he uh,  
8 got fucked here, but he's going to, his  
9 client will get the Bolingbrook  
10 Hospital.

11 LOREN Well, can someone communicate to him  
12 that Bolingbrook won't happen either if  
13 he can't...

14 LEVINE No because it don't work that way.

15 LOREN Oh.

16 LEVINE Well we'll see. We'll see, we'll see,  
17 we'll see, we'll see.

18 LOREN Well I just cannot believe that that  
19 woman got up and walked out.

20 LEVINE Uh, did you see what Beck did? (laughs)

21 LOREN Mm hm.

22 LEVINE (sighs)

23 LOREN Now there, there obviously is not much  
24 inter-action or coordination amongst  
25 those Board members.

26 LEVINE Oh this, this, this was a little bit,  
27 they did not want to do uh, uh, I'll,  
28 the problem was...

29 LOREN They didn't want to take one hospital  
30 out of turn.

31 LEVINE Exactly. And they, they were bent out  
32 of shape about it, but, but uh, when



1 push came to shove there it was.

2 LOREN Mm hm. What did you have to tell, say  
3 to uh, that one doctor you uh...

4 LEVINE Oh no this was, Beck uh, uh, Beck didn't  
5 want to vote for it unless he had to.

6 LOREN Mm hm.

7 LEVINE So he passed. So you had, you had three  
8 votes, three passes and three no's. If  
9 Beck didn't want to vote, if he voted  
10 yes and, and the other guy voted no we  
11 would of lost and that would of been it.

12 LOREN Mm hm.

13 LEVINE He wanted to know what he was going to  
14 vote uh, um, uh, because if, if, if the  
15 other guy was going to vote no, Beck  
16 would have made a move to, to have it  
17 deferred.

18 LOREN Hasn't Anne Murphy ever said anything to  
19 any of you about uh, these side bars?

20 LEVINE Fuck her she thinks she's powerful to  
21 stop it? I had a deal to close.

22 LOREN (laughs)

23 LEVINE Please. She, sh-, she tried to help a  
24 little bit you noticed.

25 LOREN Oh she definitely did.

26 LEVINE And that other idiot, wait 'til I finish  
27 with him. He, he, he hasn't got a clue  
28 and all of a sudden he's makin' a speech  
29 why they shouldn't expect to get a CON.  
30 And I'm sittin' there waiting to vote it  
31 in. (laughs) I don't know, I can't  
32 imagine what it look like from out there  
33 with a, with Beck comin' to talk to me,  
34 and my goin' to talk to the other guy.

1 LOREN Well it, it, it looked like there was  
2 orchestration going on.

3 LEVINE Looked like there was a shoe hitting  
4 somebody over the head. Could you, did,  
5 did you ever in your life see a vote  
6 stop in the middle?

7 LOREN No, no.

8 LEVINE Neither did I.

9 LOREN Uh, now it, it made no difference, you  
10 know the, the, the basis that Mercy put  
11 out on the record there was some common  
12 sense to what they were saying.

13 LEVINE It is a, it is a legitimate CON.

14 LOREN Right.

15 LEVINE Uh, uh, you know so the uh, the, uh, uh  
16 where they getting the physicians from?  
17 They bringin' 'em all in from Wisconsin?

18 LOREN I have no idea. They're probably coming  
19 from Guadalajara as we speak. (laughs)

20 LEVINE (laughs)

21 LOREN (UI).

22 LEVINE (laughs) Oh Lord.

23 LOREN I, I finally figured out though when I  
24 met Herb Frank how the whole thing fell  
25 into place.

26 LEVINE When you met who?

27 LOREN Her-, Herb Frank...

28 LEVINE Oh.

29 LOREN Is good friends with Izzy Levy.

30 LEVINE Right.

1 LOREN And Herb Frank represents Harvard  
2 Hospital and Harvard got acquired by  
3 Mercy.

4 LEVINE I see.

5 LOREN So I, I'm assuming that Mercy probably  
6 went to Herb Frank and said can you, can  
7 you, can you find out how we can get  
8 somebody on the, on the uh,...

9 LEVINE No, no, uh,...

10 LOREN And then the thing with the JUF.

11 LEVINE No, no, that, that's, that's exactly how  
12 it happened. They uh, they um, um,  
13 with, that that's when it came to Jacob  
14 and said...

15 LOREN They got an invitation with Izzy's name  
16 on it and they saw you were the honor,  
17 the honoree.

18 LEVINE And Massuda was on the dinner committee.

19 LOREN Mm hm.

20 LEVINE Um, did you, were you there this morning  
21 with Northwestern and Massuda?

22 LOREN Yeah.

23 LEVINE Could you fuckin' believe it?

24 LOREN I actually thought it was kind of  
25 amusing.

26 LEVINE Amusing. If you want our help you, you  
27 better let podiatrists in. I said  
28 Fortunee, I said you must never do that  
29 again. She said well I want Pod...I  
30 said, I said, I said you're not here for  
31 the podiatrists' interests...you're here  
32 for the people of the State of Illinois.

33 LOREN (laughs)

1 LEVINE Okay. (laughs)

2 LOREN Medicine at its best.

3 LEVINE Well she, you know she's not subtle.  
4 (laughs) Northwestern called and  
5 complained. Meanwhile if I were them...

6 LOREN Called to complain...who, who'd they  
7 call?

8 LEVINE They called staff to complain it was a  
9 terrible thing she did. Meanwhile when  
10 she got those three women to vote  
11 against their thing.

12 LOREN Mm hm.

13 LEVINE To me if they have half a brain they  
14 would do somethin' with...she could  
15 cause them an enormous problem. She,  
16 she could cause the situation where  
17 sometime they need a vote they can't get  
18 it. It would be stupid on her part to  
19 do it, but she would do it.

20 LOREN Yeah that's a, none of those hospitals  
21 really appreciate that, whether they  
22 like the treatment or not, they're at  
23 the mercy of that Board, so why would  
24 they go and alienate people.

25 LEVINE Um, well first of all Northwestern is  
26 Northwestern. They worship, everybody  
27 has to be honored that they walked in  
28 the room. And I'm telling you that Pam  
29 could not believe she didn't get her  
30 CON.

31 LOREN Well actually I would have thought it  
32 would of been much more entertaining had  
33 you given her the CON for the office  
34 building.

35 LEVINE That's what I wanted to do.

36 LOREN And not the hospital.

1       LEVINE                   That's what I wanted to do. Could you  
2                                imagine she said we bought this land we  
3                                had no thought of building a hospital.  
4                                Can you imagine that baldface lying  
5                                cunt.

6       LOREN                   Well why don't you let her build the,  
7                                the office building.

8       LEVINE                   Huh?

9       LOREN                   Why don't you let her have her, her cake  
10                               (UI).

11      LEVINE                   I suggested, I suggested it to 'em, they  
12                               don't want to give her anything.

13      LOREN                   Well, the, they're really in a pickle  
14                               now 'cause based on what they said  
15                               today...I think they probably have to  
16                               take down that option between now and  
17                               the time, they better get an extension,  
18                               otherwise they're going to own 60 acres  
19                               of land in Plainfield with nothin' to do  
20                               with it.

21      LEVINE                   Good. (chuckles) Serves 'em right.  
22                               She's responsible for this, this was a  
23                               terrible strategy. Of course um, Honey  
24                               was their lawyer.

25      LOREN                   Mm hm. (UI).

26      LEVINE                   She's pissed. Oh, she's pissed at me  
27                               because uh, um, um, Pam who went around  
28                               her back all over the place because Pam  
29                               is such a fucky-doodo, she knows that  
30                               uh, that um, I'm, I'm sure that Pam said  
31                               that Nick was talkin' to me. So she's,  
32                               she's probably um, uh, pissed.

33      LOREN                   Well I heard, you know I went outside  
34                               and eavesdropped.

35      LEVINE                   Mm hm.

36      LOREN                   On Pam, on Pam and Honey's conversation.

1       LEVINE                               Mm hm.

2       LOREN                               I, I was around the corner.

3       LEVINE                               Mm hm.

4       LOREN                               And, and Honey was saying you know Pam,  
5    you can't do what you just did. She  
6    said, you know, you know what I really  
7    wanted to tell him. She said no, what  
8    did you want to tell him. I wanted to  
9    tell him next time I see you you'll be  
10   in prison.

11       LEVINE                              (chuckles) To say to who?

12       LOREN                               Beck.

13       LEVINE                              To Beck.

14       LOREN                               Yeah.

15       LEVINE                              What'd he do?

16       LOREN                              Nothing and when she, when she turned,  
17   when she walked out and turned her back  
18   on the guy.

19       LEVINE                              He, he'd be in prison?

20       LOREN                               Yeah, yeah.

21       LEVINE                              Maybe she knows somethin' we don't.  
22   (laughs)

23       LOREN                              (laughs) But you know she was besides  
24   herself because you know it, it was  
25   embarrassing to her.

26       LEVINE                              It was embarrassing to her?

27       LOREN                               To Honey.

28       LEVINE                              Oh of course it was embarrassing to her.  
29   But you know I mean uh, uh,...

30       LOREN                               So they clearly, now...look, I was  
31   watching the body language.

1 LEVINE Mm hm.

2 LOREN They clearly believe that what Beck was  
3 doin' was begging them to defer so he  
4 could give them, give them the CON in  
5 June.

6 LEVINE Edwards thinks that?

7 LOREN Mm hm.

8 LEVINE No. (chuckles)

9 LOREN Clearly with her, that's the  
10 expectation.

11 LEVINE Oh they're so wrong. He was just trying  
12 to uh, to be uh, to talk a little bit  
13 nice. After the, after the big blow up  
14 uh, and, well I mean everybody likes to  
15 be a, to a, to, they cannot give it to  
16 uh, to the Adventist, then there's only  
17 going to be one.

18 LOREN Mm hm.

19 LEVINE And Jeff Ladd represents them.

20 (PAUSE)

21 LOREN Which is the uh, oh Bolingbrook is the  
22 Adventist.

23 LEVINE Yeah, the Adventist. Advocate...

24 LOREN I'm surprised you guys gave the  
25 Ambulatory Care to Provena uh, today  
26 based on what I thought were their  
27 problems with the Board. I thought they  
28 had a personality issue with uh, with  
29 one of their people.

30 LEVINE Uh, apparently (UI).

31 LOREN (UI) Hospital.

32 LEVINE Uh, uh, apparently whatever it was been  
33 solved.

1 LOREN You know I and, and some of these CON's  
2 that were up today, I asked Herb Frank,  
3 who was sitting next to me for part of  
4 the hearing.

5 LEVINE Mm hm.

6 LOREN I said you know do, do these people have  
7 to come in for a CON when they decide to  
8 go from 2-ply to 1-ply toilet paper.

9 LEVINE (laughs)

10 LOREN Do you have any idea of the application  
11 fee that these hospitals have to pay?

12 LEVINE No.

13 LOREN It's enormous. How much you think Mercy  
14 had to submit for the CON application?

15 LEVINE How much?

16 LOREN \$100,000.

17 LEVINE And you know that the governor's office  
18 had taken away from the CON Board. We  
19 don't even have an employee.

20 LOREN No.

21 LEVINE Anyway that's, that, I'm going to clean  
22 up. I think I'm going to clean up that  
23 Board so, 'cause it'll be easier to work  
24 for poor Tom. I have to pitch in and be  
25 a spokesman.

26 LOREN Well you have two vacancies there.

27 LEVINE No, they're filled. Bernie Weiner.

28 LOREN So why, why were people not there?

29 LEVINE Well he wasn't appointed in time to be  
30 at this meeting.

31 LOREN Mm hm.



1 LEVINE And the other, Orr was there.

2 LOREN I thought you only had eight people  
3 there today?

4 LEVINE Uh, everybody was there.

5 LOREN Oh the Board's nine.

6 LEVINE The Board's nine, right. (laughs)

7 LOREN What's going on with the other Board  
8 appointments, you heard anything?

9 LEVINE No we'll get into that tomorrow. That's  
10 enough for one day.

11 LOREN Well, I hope you enjoyed, you know I do  
12 not understand how anyone can expect any  
13 of you to serve on this Board. You know  
14 the, the amount of work that, that, if  
15 it's, this is done properly.

16 LEVINE Oh I, I,...

17 LOREN It's a full time job.

18 LEVINE I don't, I don't do a goddamn thing. I  
19 don't even, I don't read a goddamn  
20 thing. If there's, if there's, if, ,if  
21 there's, if there's something I have an  
22 interest in it uh, I mean I, I, I don't  
23 do anything. I don't read a goddamn  
24 thing unless there's a particular thing  
25 that I gotta, I gotta bone up on a  
26 little.

27 LOREN It's a full-time job.

28 LEVINE Beck has a full-time job.

29 LOREN Then what is it?

30 LEVINE Pardon?

31 LOREN What, what does he do full time?

32 LEVINE No, no, Beck, he uh, Beck he, he's a

1 consultant uh, uh, various, Beck's done  
2 very well for himself because he, he was  
3 uh, he was in the right place with the  
4 right guys at the County and uh, he did  
5 what he was supposed to and um, and he  
6 came out uh, fine and he's a, he's got  
7 some great relationships. He's like  
8 Stricklin.

9 LOREN So what did Tony think of the whole  
10 thing today?

11 LEVINE He don't give a shit. He wanted to make  
12 sure that it got done. He was  
13 grateful...

14 LOREN He should be royally upset that these 2  
15 union people are, are causing problems.

16 LEVINE He, he needs 5 votes. He has 5 votes.

17 LOREN So he doesn't care.

18 LEVINE And he had to give the union, I mean you  
19 know they, they, they have uh, uh, the  
20 Service Employees always had a person on  
21 that Board.

22 LOREN Mm hm.

23 LEVINE Um,...

24 LOREN Well you know who, who Orr works for?

25 LEVINE Emil, well she comes from Emil Jones  
26 doesn't she?

27 LOREN No.

28 LEVINE Who?

29 LOREN She works for Ed Smith.

30 LEVINE Oh she does.

31 LOREN Yeah. She works, she's an organizer for  
32 the Laborers.

1 LEVINE Oh.

2 (PAUSE)

3 LEVINE Oh well that's good to know. I'll have  
4 to work on that.

5 LOREN That's what Stricklin told me. I asked,  
6 you know he, that, that's Ed Smith's  
7 person. She didn't get on there by  
8 accident.

9 LEVINE I could, see, see, if I would of known,  
10 I could of um, uh, I can uh, I can get  
11 there. But they were just, Balanoff was  
12 supposed to deliver her?

13 LOREN Yeah. Both of 'em, Rice too.

14 LEVINE He failed.

15 LOREN She seems to be quite the uh, unpleasant  
16 person.

17 LEVINE Balanoff?

18 LOREN No, Rice.

19 LEVINE The big fat one?

20 LOREN No that's Orr.

21 LEVINE Oh.

22 LOREN Rice is the (UI).

23 LEVINE No, no, Orr, Orr is the new one. Pam  
24 Orr is the, is the new Board member.

25 LOREN The black woman.

26 LEVINE Yeah.

27 LOREN Oh no, no, I'm, I'm, I'm thinkin' of the  
28 heavy set woman who was sitting next to  
29 (UI).

30 LEVINE Yeah she, she's uh, uh, she's a union



November 25, 2003

Mr. Javon R. Bea, President/CEO  
Mr. Richard H. Gruber, Vice President  
Mercy Alliance, Inc.  
Mercy Woodstock Medical Center  
2000 Lake Avenue  
Woodstock, IL 60098

Re: Mercy Crystal Lake

Gentlemen:

We would like to thank you for taking the time to share your plans for Mercy Crystal Lake and allow us to introduce you to Kiferbaum Construction Corporation.

As we discussed, Kiferbaum is a full service design/build firm that can assist Mercy through the entire development process for this exciting project. By establishing a relationship early, Kiferbaum will provide Mercy with a single source of responsibility and accountability. Our delivery system ties all the facets of the project together from preliminary planning through facility turn over. This would include programming, design, budgeting, securing of the Certificate of Need, obtaining municipal and other governmental entitlements as well as quality, on-time construction. Our established project control systems and web based document sharing will provide a platform allowing us to be easily integrated with your internal project team.

Kiferbaum Construction Corporation will be delighted to move forward with you as part of your team. Over the next several days I will be forwarding an agreement to solidify our relationship for your review and approval.

In the interim, should you have any questions or require additional information please do not hesitate to contact Jeff Kaplan, Paul Chuma or myself. We look forward to working with Mercy Alliance.

Sincerely,

KIFERBAUM CONSTRUCTION CORPORATION



Jacob Kiferbaum  
President

C: Herbert H. Franks

790 Estate Drive / Deerfield, IL 60015 / 847.914.9600 / FAX 847.914.9650 / [www.kiferbaum.com](http://www.kiferbaum.com)

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Illinois Department of Public Health - Pat Quinn, Governor - Damon E. Arno, M.D., M.P.H., Director

**health facilities and services review board****RESULTS OF DECEMBER 17, 2003, MEETING OF THE  
ILLINOIS HEALTH FACILITIES PLANNING BOARD****Members present**

Dr. Alamanseer, Thomas Beck, Michael Gonzales, Stuart Levine, Dr. Malek, Dr. Massuda, Danalynn Rice and Annamarie York.

**Members absent**

Thomas Balanoff

**PROJECT****VOTE****Permit renewal requests**

Marion Healthcare (01-076)	Approved 7-0 (Rice declared a conflict)
St. Mary Medical Center (03-015)	Approved 8-0
Condell Medical Center (00-002)	Approved 6-2
Austin Comm. Kidney Center (01-004)	Approved 8-0

**Exemption requests**

Neomedica - Evergreen Park (E-045-03)	Approved 8-0
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**Extension requests**

West Frankfort Comm Hospital (02-021)	Approved 6-2
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**Alterations**

Condell Medical Center (00-002)	Approved 6-2
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**Compliance issues/Settlement agreements**

None

**Declaratory Rulings**

None

**Health Worker Self-Referral Act**

None

**Completion Reports on Conditional Permits**

None

**Applications subsequent to initial review**

St. James Hospital (03-008)	Approved 8-0
RCG-Merrionette Park (03-045)	Board voted 4-4 and issued an Intent-to-Deny
Hillsboro Area Hospital (03-051)	Approved 7-0 (Rice declared a conflict)
Oakview (03-052)	Approved 8-0
Iroquois Memorial Hospital (03-057)	Approved 8-0
CGH Medical Center (03-062)	Approved 8-0
Lake Villa Dialysis (03-067)	Approved 8-0
Rockford Dialysis (03-068)	Approved 8-0
DeKalb Dialysis (03-069)	Approved 8-0
Tri-Cities Dialysis (03-070)	Approved 8-0
Dixon Kidney Center (03-071)	Approved 8-0
Freeport Dialysis (03-072)	Approved 8-0
Highland Ambulatory Surgery Center (03-013)	Applicant deferred
Carle Foundation Hospital (03-041)	Approved 6-2
Provena St. Joseph Med. Center (03-042)	Approved 7-0 (Malek declared a conflict)
Edward Healthcare Center (03-043)	Board voted 2-6 and issued an Intent-to-Deny
Eye Surgery Center-Hinsdale (03-048)	Approved 6-2
Mercy Crystal Lake Hospital (03-049)	Board voted 0-8 and issued an Intent-to-Deny
Surgency Center of Joliet (03-053)	Board voted 1-6 and issued an Intent-to-Deny (Malek declared a conflict)
St. Joseph Village (03-066)	Approved 8-0

**Applications subsequent to intent-to-deny**

None

**Other Business**

None



Illinois Department of Public Health  
 535 West Jefferson Street  
 Springfield, Illinois 62761  
 Phone 217-782-4977  
 Fax 217-782-3987  
 TTY 800-547-0466  
[Questions or Comments](#)

**Construction Contract**

**For**

**Mercy Alliance, Inc.**

**Crystal Lake, Illinois**

JK 00605

EH0239\_00493

**CONSTRUCTION CONTRACT**

For

**MERCY ALLIANCE, INC.**

Crystal Lake, Illinois

THIS AGREEMENT (the "Agreement"), made this 23<sup>rd</sup> day of January, 2004, by and between KIFERBAUM CONSTRUCTION CORPORATION, hereinafter called "Contractor", with its principal place of business at 790 Estate Drive, Deerfield, IL 60015 and MERCY ALLIANCE, INC., hereinafter called "Owner", with its principal place of business 1000 Mineral Point Avenue, Janesville, Wi, 53547-5003.

**WITNESSETH:**

Owner is the owner of the real estate legally described in Exhibit "A" attached hereto (the "Site").

Contractor and Owner, in consideration of the mutual covenants and agreements contained herein, hereby agree as follows:

**Article 1. Scope of the Work**

Contractor shall furnish, or cause to be furnished, all of the material and perform, or cause to be performed, all of the work necessary for construction work and at Owner's option, for certain design work at the site as set forth below (the "Work"). The Work includes the design and completion of certain site improvement work (the "Site Work") and an approximate seventy (70) bed hospital and multi-specialty physician clinic (the "Building Work", and collectively with the Site Work referred to as the "Work" and the project is referred to herein as the "Project"). Contractor's Work shall consist of the following:

**A. Contractor's Design Services.** At Owner's option, and to the extent determined by Owner, Contractor shall cause to be prepared the civil engineering drawings necessary for the Site Work and all of the mechanical, electrical, plumbing, and fire protection drawings and specifications for the design of the systems identified below necessary for the construction of the Building Work (collectively referred to as the "Contractor's Design Services"):

1. **Mechanical System.** Mechanical drawings consisting of plans showing single line layouts with approximate sizing of major duct and piping systems, plans showing sizes and outline of central heating, cooling and ventilation equipment and riser diagrams showing distribution system.

2. **Electrical System.** Electrical drawings consisting of plans showing sizes and outline of fixed equipment; riser diagrams for construction, showing arrangements of feeders, sub-feeders, bus ducts, load centers, and branch circuit panels, typical lighting layout, and typical electrical plan layout showing switches, and outlets.

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3. Plumbing System. Plumbing drawings showing the completed plumbing system.
4. Fire Protection System. Fire protection drawings showing the completed fire protection system.
5. Such Work within the same general scope as may be designated by Owner.

The above referenced design documents (the "Contractor's Design Documents") shall be prepared in accordance with the preliminary architectural plans (the "Preliminary Plans") attached hereto as part of Exhibit "B" and made a part hereof, the "Owner's Design Documents" (defined below) and Applicable Laws. The Contractor shall not be responsible for any design services except those outlined above.

B. Construction Services. Contractor shall furnish, or cause to be furnished, all of the material and labor necessary for the Work in accordance with the Contract Documents and all Work shall be performed in accordance with all Applicable Laws.

C. Other Design Work. The Owner has entered into a separate contract with Hammel, Green and Abrahamson, Inc. (the "Architect") for the design of the hospital and clinic and other separate contracts for all other design work, including but not limited to structural engineering and landscape design work (the "Owner's Design Work"). All architectural services shall be rendered by the Architect. The Architect will have direct supervision of the architectural work and the Contractor shall have no liability relating to the errors and omissions of the Architect or Owner's other design professionals and Contractor shall be entitled to rely upon all such design work as having been prepared in accordance with all applicable building and zoning codes and all other laws and regulations in effect as of the date hereof ("Applicable Laws"). The design documents caused to be prepared by Owner (the "Owner's Design Documents") shall be prepared in accordance with the Preliminary Plans. If anything contained in the Contract Documents is inconsistent with this Agreement, the document with the most specific provision or information shall govern.

Upon completion of the Preliminary (Scope) Design Documents, Contractor and Owner shall establish a target guaranteed maximum price ("GMP") for each of the following: (i) the Site Work (the "Site Work Target GMP") and (ii) the Building Work (the "Building Target GMP"), which target maximum prices shall be set forth on Exhibit D attached hereto. The Owner and Contractor agree to cause their respective design work (i.e. the Owner's Design Documents and the Contractor's Design Documents) to be prepared with scope and budget controls that are consistent with and in reasonable conformance with the Site Work Target GMP and Building Target GMP and each will advise the other when either party becomes aware that either target GMP may be exceeded. Contractor and Owner shall each submit to the other its design documents for approval. Both parties agree that they will promptly review and approve, or disapprove (with specifically stated reasons therefor) the applicable design documents, and that they will not withhold their approval except for matters which in their reasonable opinion are warranted. Each party shall reasonably address the other's reasonable objections and make requested changes. When Contractor's Design Documents and Owner's Design

Documents have been approved by Contractor and Owner by affixing thereon the signature or initials of an authorized officer or employee of each of said respective parties, the Contractor's Design Documents and Owner's Design Documents shall be deemed to be made a part hereof. Upon Owner's reasonable request, Contractor shall make minor modifications to any documents delivered by Contractor and identify areas of possible cost savings or time savings in order to reduce the Site Work Target GMP or the Building Target GMP. Upon Owner's approval of the Contractor's Design Documents and finalization of the Owner's Design Documents for the particular phase, Contractor shall, within thirty (30) days of each separate approval date, guarantee and establish a lump sum price for the relevant phase of the Work (such price being hereinafter referred to as the "Site Work Price" and "Building Price", as the case may be, or in general as a "Phase Price") and Exhibit D attached hereto shall be amended accordingly. In addition, Exhibit D will be amended to set forth the date for substantial completion of the particular phase of the Work (i.e. the Site Work or the Building Work) and to identify all appropriate "Contract Documents". This Agreement and all Change Orders issued after the execution of this Agreement and all exhibits attached hereto from time to time are referred to herein as the Contract Documents. In the event the Site Work Price or Building Price exceeds the Site Work Target GMP or Building Target GMP, and Owner requests that the Project be redesigned for value engineering purposes, then the Contractor and Owner agree to work in good faith to redesign the particular phase until the Work for that phase can be completed for an amount equal to or less than the relevant Target GMP. Neither Contractor nor Owner will not act in an unreasonable, arbitrary or capricious manner with respect to withholding its approval of any documents delivered to the other. Upon the relevant Phase Price being determined and Contractor obtaining all necessary permits for each phase of the Work, Contractor shall commence the applicable phase of the Work.

#### Article 2. Time of Completion

The Work shall be substantially completed, in conformance with the Contract Documents (as such shall be amended from time to time in accordance with the terms of Article 1 hereof) and a detailed schedule for each phase shall be approved by Owner and Contractor as Exhibit "E" (individually or collectively, as the context dictates, referred to as the "Contract Time"). If Contractor is delayed at any time in the progress of the Work by any act or neglect of Owner, or by any employee of Owner, or by any separate contractor employed by Owner, or by changes ordered in the Work, or by labor disputes, weather, fire, unusual delay in transportation, fuel, material, or labor shortages or unavailability, unavoidable casualties or any causes beyond Contractor's control, then the Contract Time shall be extended by a period equal to such delay. Such delay shall hereinafter be referred to as "excused delay". All claims for extension of time shall be made, in writing, to Owner no more than twenty (20) days after the occurrence of the delay; otherwise they shall be waived. In the case of a continuing cause of delay, only one (1) claim is necessary.

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Article 3. Contract Sum

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The Site Work Price and Building Work Price referred to above shall be the aggregate of (i) the sum of the cost of all work to be performed under all Subcontracts entered into by the Contractor for the Site Work and Building Work and the costs associated with the Contractor's insurance and general conditions, (as per Exhibit "G" attached) (ii) a payment to Contractor equal to four and eight tenths percent (4.8%) of the sum of the amounts specified at subsection (i) above for Contractor's overhead; and (iii) a fee to Contractor equal to three and two tenths percent (3.2%) of the aggregate of the amounts described in (i) and (ii) above (collectively referred to as the "Contract Sum", which amounts will be set forth in Exhibit "D", as revised from time to time in accordance with the terms of Article 1. Owner shall pay the Contract Sum in current funds. The Contract Sum shall become a guaranteed lump sum price for the Work as provided for at Article 1 subject to further modification only for Change Orders as provided for in Article 6, for additional costs arising out of excused delays and for such other reasons as may be expressly set forth herein. All other costs of the Project in excess of the Contract Sum shall be borne by the Contractor.

Article 4. Payment for Design Services and Construction Services and the Contract Sum

A. Payments for Contractor's Design Services. Owner shall pay Contractor for Contractor's Design Services within twenty-one (21) days of Contractor's invoice on a monthly progress payment basis. The total cost for the Contractor's Design Services shall be \$\_\_\_\_\_ and such amount shall not be included in the Contract Sum.

B. Construction Services - Progress Payments of the Contract Sum. Owner shall make monthly payments on account of this Agreement within fifteen (15) business days after receipt of Application for Payment, as set forth in Exhibit "F", by Contractor, as follows:

1. Until fifty percent (50%) of each of the three phases of the Work is completed, Owner shall make payments on account to the Contractor equal to ninety percent (90%) of the aggregate value of the respective phase of Work completed, based upon the value of labor, services and materials incorporated in that phase of the Work and of materials stored at the site up to the last day of the preceding month, less the aggregate amount of previous payments made by Owner to Contractor.
2. After fifty percent (50%) of the Work for the applicable phase is completed, Owner shall make payments on account to Contractor equal to ninety-five percent (95%) of the aggregate value of labor, services and materials incorporated in that portion of the Work and of materials stored at the site up to the last day of the preceding month, less the aggregate amount of previous payments made by Owner to Contractor.

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3. Along with each Application for Payment to Owner or contemporaneous with payment, Contractor shall deliver its general lien waiver and further lien waivers from all "major" Subcontractors on the project waiving liens for Work for which payment was requested by Contractor and paid for by Owner on the preceding Application for Payment. Major Subcontractors shall mean those Subcontractors and material suppliers having contracts with Contractor in respect to the project contemplated hereby in excess of \$25,000.00.

C. Final Payment. Full payment of the Site Work Price and the Building Price ("Final Payment(s)") shall be due and payable separately at such times as each of the phases of the Work are substantially complete and this Agreement substantially performed. Issuance of a temporary certificate of occupancy (with respect to the Building Work only), I.D.P.H approval (with respect to the Building Work only), and the issuance by Architect of its Certificate of Substantial Completion shall be deemed to be conclusive evidence that the Work is substantially complete in the event of a dispute. If there should remain minor items to be completed, Contractor and Owner shall list such items and Contractor shall deliver, in writing, its unconditional promise to complete said items within a reasonable time thereafter. Owner may retain a sum equal to one hundred fifty percent (150%) of the estimated cost of completing any unfinished item, provided that said unfinished items are listed separately and the estimated cost of completing each item is likewise listed separately. Thereafter, Owner shall pay to Contractor monthly, on the 10th day of each month, the amount retained for incomplete items as each of said items is completed.

In the event any payment by Owner to Contractor is due, and is not paid by Owner to Contractor on such due date, Owner shall pay interest on said unpaid amount (upon receipt of invoice) from and after its due date, to and including the date of payment, at the rate of four percent (4%) per annum over the prime rate of interest charged to its largest commercial corporate borrowers by Harris Bank of Chicago (or similar institutions if said Bank shall cease to exist or to publish such a prime rate) from the date when the same is due hereunder until the same shall be paid, but if such rate shall exceed the highest rate allowed by law, such rate shall be reduced to the highest rate allowed by law.

Contractor's request for Final Payment for a particular phase (less sums withheld for incomplete items) shall be accompanied by the following instruments:

1. Contractor's affidavit that all payrolls and bills for materials and equipment, and other indebtedness connected with the Work for which Owner has paid Contractor prior to the time of application have been paid or otherwise satisfied, and
2. Consent of surety, if any, to final payment.
3. Final lien waivers.

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Article 5. (For Future Use)

Article 6. Changes in the Work

Owner, without invalidating this Agreement, may order changes in the Work within the general scope of this Agreement, consisting of additions, deletions or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by a Change Order and shall be executed under the applicable conditions of the Contract Documents.

A Change Order is a written order to Contractor signed by Owner issued after the execution of the Agreement authorizing a change in the Work or an adjustment in the Contract Sum or Contract Time. A Change Order shall be signed by Contractor and Owner if there is an adjustment in the Contract Sum or Contract Time. The Contract Sum and Contract Time may be changed only by a Change Order.

The cost or credit to Owner resulting from a change in the Work shall be determined in one or more of the following ways:

- A. By mutual acceptance of a lump sum properly itemized;
- B. By unit prices stated in the Contract Documents or subsequently agreed upon; or
- C. By cost and a mutually acceptable fixed or percentage fee.

If none of the methods set forth above is agreed upon, Contractor, provided it received a Change Order, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of Contractor's reasonable expenditures and savings, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, Contractor shall keep and present an itemized accounting, together with appropriate supporting data. The amount of credit to be allowed by Contractor to Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease in the cost of the Work. When both additions and credits are involved in any one change, the allowance for Contractor's general conditions/insurance and overhead/fee shall be figured on the basis of net increase, if any.

If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will create a hardship on Contractor or Owner, the applicable unit prices shall be equitably adjusted to prevent such hardship.

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Article 7. Correction of Work

If during the period of construction the Work is found to be defective or not in accordance with the Contract Documents, Contractor shall correct it with reasonable promptness after receipt of written notice from Owner to do so unless Owner has previously given Contractor written acceptance of such condition. Owner shall give such notice promptly after discovery of the condition.

All such defective or nonconforming Work shall be corrected or removed from the site, if necessary, and the Work shall be corrected to comply with the Contract Documents without cost to Owner. Contractor shall bear the cost of making good all Work of separate contractors destroyed or damaged by such removal or correction.

If Contractor does not remove such defective or nonconforming Work within a reasonable time, Owner may remove it and store the materials or equipment at the expense of Contractor. If Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, Owner may, upon ten (10) additional days written notice, sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all costs that should have been borne by Contractor. If such proceeds of sale do not cover all costs which Contractor should have borne, the difference shall be charged to Contractor and an appropriate Change Order shall be issued. If payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to Owner.

Contractor guarantees the Work for a period of one (1) year only after the date the Work is substantially complete or for such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents. Any guarantee Work shall be done in accordance with the requirements above as to correction, repair or replacement of Work during the construction period. Owner shall be required to perform routine and appropriate regular maintenance during the guarantee period. To the extent products, equipment, systems or materials incorporated in the Work are specified and purchased by the Owner, they shall be covered exclusively by the warranty of the manufacturer.

Article 8. Insurance

A. Contractor's Liability Insurance. Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from Contractor's operations under this Agreement, whether such operations be by Contractor, by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

1. Claims under workmen's compensation, disability benefits, and other similar employee benefit acts;

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2. Claims for damages arising out of bodily injury, occupational sickness or disease, or death of its employees;
3. Claims for damages arising out of bodily injury, sickness or disease, or death of any person other than its employees;
4. Claims for damages insured by usual personal injury liability coverage which are sustained by (i) any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (ii) any other person;
5. Claims for damages arising out of injury to or destruction of tangible property, and
6. Claims for damages because of bodily injury or property damage arising out of the ownership, maintenance or use of motor vehicles.

The insurance required by Subparagraphs (A) (3), (A) (4), (A) (5) and (A) (6) of this Article 8 shall be written for limits of liability of not less than One Million & NO/100 Dollars (\$1,000,000.00) each occurrence with a general aggregate limit of Two Million & NO/100 Dollars (\$2,000,000.00). The insurance required by Subparagraphs (A) (1) and (A) (2) of this Article 8 shall be written for limits required by law. Said insurance shall include contractual liability insurance as applicable to Contractor's obligations to indemnify Owner as required by Subparagraph (P) of Article 9. In addition to the foregoing, Contractor shall maintain a general liability umbrella of Ten Million & NO/100 Dollars (\$10,000,000.00).

**B. Owner's Liability Insurance.** Owner shall be responsible for purchasing and maintaining such other insurance as will protect it against claims which may arise from operations under this Agreement.

**C. Property Insurance.** Contractor shall purchase and maintain until the date the Work is substantially complete All Risk Builder's Risk insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of Contractor, Owner, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils normally insured against in an All Risk Builder's Risk policy.

Contractor shall purchase and maintain such steam boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of Contractor, Owner, Subcontractors and Sub-subcontractors in the Work.

Any insured loss is to be adjusted with Contractor and made payable to Contractor, as trustee for the insureds as their interests may appear.

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If Owner requests, in writing, that insurance for special hazards be included in the property insurance policy, Contractor shall, if possible include such insurance and the cost thereof shall be charged to Owner by appropriate Change Order.

Contractor and Owner waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under Paragraphs (C) and (D) of Article 8, except such rights as they may have to the proceeds of such insurance.

If required, in writing, by any party in interest, Contractor, as trustee, shall, upon the occurrence of an insured loss, give bond for the proper performance of its duties. Contractor shall deposit in a separate account any money so received and it shall distribute it in accordance with such agreement as the parties in interest may reach. If, after such loss, no other special agreement is made, replacement of damaged Work shall be covered by an appropriate Change Order.

Contractor, as trustee, shall have power to adjust and settle any loss with the insurers. Priority in distribution shall be given so as to reimburse Contractor for Work for which payment had not been made by Owner as of the date of loss.

D. **Loss of Use Insurance.** Owner, at its option, may purchase and maintain such insurance as will insure it against loss of use of its property due to fire or other hazards, however caused, and shall look only to such insurance in respect to such loss. Owner hereby releases Contractor from all claims for loss or damage to its business or property, lost profits, and indirect or consequential damages.

E. **Owner-Contractor Protective Liability Insurance.** In lieu of providing Owner with the insurance specified at Section 8.A., Contractor may purchase Owner-Contractor Protective insurance from the Contractor's usual sources as primary coverage for the Owner's vicarious liability for construction operations under the Agreement. In such case the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate limits required for Contractor's Liability Insurance under Section 8.A.

F. **Professional Liability.** [to be discussed].

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#### Article 9. Miscellaneous Provisions

A. **Supervision and Construction Procedure.** Contractor shall supervise and direct the Work and shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Agreement.

B. **Labor and Materials.** Unless otherwise specifically noted, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, transportation, and other facilities and services necessary for the proper execution and completion of the Work. All materials shall be new unless otherwise specified. Owner shall not



hire any non-union contractors or subcontractors to perform work at the Site until Contractor has completed the Work.

C. **Discipline of Employees.** Contractor shall, at all times, enforce strict discipline and good order among its employees, and shall not knowingly employ on the Work any unfit person or anyone not skilled in the task assigned to him.

D. **Surveys and Easements.** Owner shall furnish all boundary and topographical surveys (showing the location of all existing improvements, building, set back lines and easements), unless otherwise specified, and shall furnish all easements necessary for access to the site, including easements for installation and maintenance of utilities.

E. **Taxes.** Contractor shall pay all sales, consumer, use and other similar taxes required by law. If the Project is exempt from state sales tax, Owner shall provide Contractor with reasonably satisfactory evidence of such prior to the commencement of the Work.

F. **Permits and Fees.** Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all building permits, and all governmental building fees and licenses (except environmental permits, impact fees, annexation fees, tap-on fees, recapture charges or municipal donations) necessary for the proper execution and completion of the Work which are applicable at the date of this Agreement.

G. **Concealed Conditions.** If in the performance of the Work the Contractor finds latent or concealed conditions or soil conditions which materially differ from the conditions the Contractor reasonably anticipated, or normally encountered, then the Contract Sum and/or the Contract Time shall be equitably adjusted by Change Order within a reasonable time after the conditions are first observed.

Contractor represents that it has no knowledge whether the site of the Work is located in an area that has been or may be designated as a flood plain, flood way and/or wetlands. Owner acknowledges and agrees that in the event that the Work is delayed, disrupted or suspended as a result of any action of any public authority because the site of the Work is found to be in or on a flood plain, flood way or wetlands, then the Contract Time shall be extended for the period of disruption, delay or suspension. Contractor shall be reimbursed by Owner for any costs, damages or losses, including loss of anticipated profit which arise as a result of any delay, disruption or suspension mentioned above.

Owner represents and warrants that to the best of its knowledge the Owner, is not in violation of any Federal, state or local environmental law, statute or ordinance, and that the Site is free from any hazardous materials that would trigger response or remedial action under any existing environmental laws, or any existing common law theory based on a nuisance or strict liability.

H. **Notices.** Contractor shall comply with all Applicable Laws. If Contractor observes that any of the Contract Documents are at variance any Applicable Laws, it shall promptly notify Owner, in writing, and any necessary changes shall be made by appropriate modification. If

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Contractor performs any Work actually knowing it to be contrary to such Applicable Laws, and without such notice to Owner, it shall assume full responsibility therefore and shall bear all costs attributable thereto, provided however, to the extent of any changes in, or adoption of new laws, ordinances or regulations, after the date of this Agreement, Owner shall be responsible for all costs attributable thereto.

I. **Cash Allowance.** Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. These allowances, unless otherwise stated, shall cover the cost of the materials and equipment delivered and unloaded at the site and all applicable taxes, Contractor's handling costs on the site, labor and installation costs. Contractor's general conditions/insurance and overhead/fee and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance. If the cost, when determined, is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order which will include additional handling costs on the site, labor, installation costs, general conditions, insurance, overhead, fee and other expenses.

J. **Superintendent.** Contractor shall employ a competent superintendent who shall be in attendance at the Site at all reasonable times during the progress of the Work.

K. **Responsibility of Contractor.** Contractor shall be responsible to Owner for the acts and omissions of all of its employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work under a contract with Contractor.

L. **Progress Schedule.** Contractor, after being awarded the Agreement, shall prepare and submit to Owner an estimated progress schedule for the Work. This schedule shall indicate the dates for starting and completion of various stages of construction and shall be revised as required by the conditions of the Work.

M. **Drawings and Specifications at Site.** Contractor shall maintain at the Site for Owner one (1) copy of all drawings, specifications, addenda, approved shop drawings, Change Orders and other modifications in good order and marked to record all changes made during construction. These materials shall be available to Owner. The drawings marked to record all changes made during construction shall be delivered to Owner upon completion of the Work and receipt of Payment.

N. **Use of Site.** Contractor shall confine operations at the Site to areas permitted by all Applicable Laws, permits and the Contract Documents and shall not unreasonably encumber the Site with any materials or equipment.

O. **Cutting and Patching.** Contractor shall do all cutting, fitting or patching of its Work that may be required to make the several parts of the Work fit together properly and shall not endanger any Work by cutting, excavating or otherwise altering the Work or any part of it.

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P. **Cleaning Up.** Contractor, at all times, shall keep the Site reasonably free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work, Contractor shall remove all its waste materials and rubbish from and about the project as well as all of its tools, construction equipment; machinery and surplus materials, and shall clean all glass surfaces and leave the building "broom clean", or its equivalent, except as otherwise specified. If Contractor fails to clean up, Owner may do so and the cost thereof shall be charged to Contractor.

Q. **Indemnification.** Contractor shall indemnify and hold harmless Owner and its employees, from and against all claims, damages, losses and reasonable expenses, including reasonable attorneys' fees (unless caused in whole or in part by a party indemnified hereunder or any of its contractors or agents), arising out of or resulting from the performance of the Work, provided that such claim, damage, loss or expense is (i) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself); and (ii) caused by any negligent act or omission of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The indemnification obligations under this Subparagraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts. Owner shall notify Contractor of any claim under this indemnity in such time as to avoid prejudice to Contractor and Contractor shall have the right to defend with its own counsel, provided such is reasonably acceptable to Owner. Such indemnification shall not include, nor shall the Contractor be liable for, indirect, special or consequential costs, expenses or damages.

R. **Written Notice.** Written notice shall be deemed to have been deemed duly served on the first business day following receipt if delivered in person, by messenger or by nationally recognized overnight courier for next business day delivery or by facsimile transmission to the individual or member of the firm or to an officer of the corporation for whom it was intended, or, if delivered at or sent by registered or certified mail three (3) business days after being deposited in the United States mail, postage prepaid, to the last business address known to the party who gives the notice,

If to Owner: David E. Kurtz  
Mercy Alliance  
1000 Mineral Point Avenue  
Janesville, WI 54547-5003  
608-756-6173

If to Contractor: Mr. Jacob Kiferbaum  
Kiferbaum Construction Corporation  
790 Estate Drive  
Deerfield, IL 60015  
Fax: (847) 914-9650

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or at such other address as the parties may hereafter designate by written notice to the other.

S. Claims for Damages. Should either party to this Agreement suffer injury or damage to persons or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, claim shall be made, in writing, to such other party within a reasonable time after the first observance of such injury or damage.

T. Royalties and Patents. Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights relating to equipment or materials incorporated in the Work and shall save Owner harmless from loss on account thereof, except that Owner shall be responsible for all such loss when a particular design process or the product of a particular manufacturer or manufacturers is specified by Owner, but if Contractor has actual knowledge that the design, process or product specified is an infringement of a patent, it shall be responsible for such loss unless it promptly gives such information to Owner.

U. Termination of Agreement by Contractor. In the event (i) the Work is stopped by any public authority, or through the act, omission, or inaction of Owner, without the fault of Contractor, (ii) Owner fails to pay Contractor any payment after it is due, (iii) Owner breaches any of its other obligations under the Agreement, (iv) a voluntary or involuntary petition shall be filed by Owner under any law having for its purpose the adjudication of Owner as bankrupt, (v) a receiver is appointed for the property of Owner by reason of the insolvency of Owner, (vi) any department of the State or Federal government, or any officer thereof, duly authorized, shall take possession of the business or property of Owner by reason of the insolvency of Owner, (vii) Owner makes an assignment for the benefit of its creditors, such shall be deemed to be a default by Owner. In the event of a default by Owner, Contractor may cease all or any portion of the Work and Owner shall be responsible for all increased costs arising out of such delay and such delay shall extend the Contract Time. Further, in any such event and irrespective of whether or not Contractor ceases all or any portion of the Work, after thirty (30) days written notice to Owner and failure of Owner to remove the default or cure such default, Contractor may terminate this Agreement, remove any materials, equipment, and tools from the Site, and recover from Owner payment for all Work executed, any loss sustained by Contractor, Contractor's reasonable profit and such other damages as Contractor may sustain by reason of Owner's default and the termination of the Agreement and all amounts set forth in Section 9.2 below.

V. Termination of Agreement by Owner. If Contractor is adjudged a bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if it fails to make uncontested payment to Subcontractors or for materials or labor, or persistently disregards Applicable Laws or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then Owner may, without prejudice to any right or remedy

and after giving Contractor and its surety, if any, thirty (30) days written notice (and failure of Contractor to cure or commence to cure with all due diligence such matter within such thirty (30) day period), terminate the employment of Contractor and take possession of the Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor and may finish the Work by whatever method it may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, such excess shall be paid to Contractor. If such cost exceeds such unpaid balance of the Contract Sum, Contractor shall pay the difference to Owner.

W. **Inspection.** Owner and its representative shall, at their sole risk, and at reasonable times, have access to the Work whenever it is in preparation or progress, and Contractor shall permit and facilitate inspection of the Work by Owner, its agents, and public authorities concerned with such Work. Owner shall hold Contractor harmless from any injury sustained by Owner or any of its employers or agents during such inspections.

X. **Financing.** Contractor shall comply with all reasonable compliance requests from Owner's lender, however, consent or approval must not require Contractor to subordinate its lien rights; must not materially increase the scope of Contractor's obligations under this Agreement; must not decrease the scope of Contractor's rights under this Agreement and must be consistent with lending practices typical of institutional lenders for commercial real estate development in the metropolitan Chicago area.

Y. **Consequential Damages.** Except as expressly provided for in Section 9, the Owner and Contractor agree to waive all claims against the other for all consequential damages that may arise out of or relate to this Agreement. The Owner agrees to waive damages including, but not limited to the Owner's loss of use of the Property, all rental expenses incurred, loss of services of employees, or loss of reputation. Except as expressly provided for in Section 9, the Contractor agrees to waive damages including but not limited to the loss of business, loss of financing, principal office overhead and profits, loss of profits not related to this Project, or loss of reputation. The provisions of this Paragraph shall govern the termination of this Agreement and shall survive such termination.

JK 00619

Z. **Payment in the Event of Termination.**

1. At any time, Owner may terminate this Agreement for its convenience. If Owner terminates this Agreement for its convenience and neither it, nor any of its affiliates proceeds with the Project for any reason and the Project is abandoned, Owner shall pay the following termination fee to Contractor: (i) all of Contractor's actual out-of-pocket expenses through the date of termination, including, but not limited to, amounts expended by Contractor for general conditions, insurance and overhead; and (ii) a termination fee as liquidated damages, and not as a penalty, as the parties acknowledge that the Contractor's damages will be difficult or impossible to ascertain, equal to one percent (1%) of the estimated cost of the Work as set forth in the Owner's application for a certificate of need

("CON") (as designated in the Owner's Illinois Health Facilities Planning Board CON application, Section N, Project Costs and Sources of Funds, line items for site preparation, off-site work and new construction contracts). It will be deemed that Owner has terminated this Agreement for convenience if Owner obtains a CON and prior to Contractor commencing the Work, Owner allows it to expire. Notwithstanding anything contained above, Owner will not owe any amounts to Contractor under either this Subsection Z.1 or Subsection Z.2 below if Owner does not obtain a CON.

2: If Owner terminates this Agreement for convenience or any other reason, except for Contractor's material breach and failure to cure pursuant to Section 9.V hereof, and Owner, or its affiliate, proceeds with the Project at any time thereafter, Owner shall pay the following termination fee to Contractor: (i) all of Contractor's actual out-of-pocket expenses through the date of termination, including, but not limited to, amounts expended by Contractor for general conditions, insurance and overhead; and (ii) a termination fee as liquidated damages, and not as a penalty, as the parties acknowledge that the Contractor's damages will be difficult or impossible to ascertain, equal to five percent (5%) of the estimated cost of the Work as set forth in the Owner's application for a CON (as designated in the Owner's Illinois Health Facilities Planning Board CON application, Section N, Project Costs and Sources of Funds, line items for site preparation, off-site work and new construction contracts). The above amounts are intended to be the parties' good faith estimate of the value of Contractor's consulting services rendered through the date of termination and Contractor's estimated damages, including, but not limited to, lost profits and lost opportunity costs.

**Article 10. Titles**

Titles of articles are used in this Agreement solely for the convenience of those examining it and are not to be resorted to as aids in its construction or interpretation.

**Article 11. Successors**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**Article 12. Law Governing**

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. The parties hereto irrevocably agree that all actions or proceedings in any way, manner or respect arising out of or from or related to this Agreement shall be litigated only in courts having situs in Illinois. All costs and reasonable attorneys' fees incurred by the prevailing party in enforcing this Agreement shall be paid to the prevailing party by the other party to this Agreement.

**Article 13. Financing Contingency**

JK 00620

Prior to [Date], and prior to Contractor being required to commence the Work, Owner shall provide to Contractor reasonably satisfactory evidence indicating that firm financing is available to pay for all costs of the project of which the improvements contemplated hereunder are a part (with all pre-construction and pre-disbursement contingencies satisfied), said financing to provide payment to Contractor under and according to the terms of this Agreement. Further, Owner agrees to refrain from taking any action which might directly or indirectly void or constitute a default under any loan agreements in connection with the project and agrees that all agreements made in connection with such financing are deemed made for the benefit of Contractor. Owner shall be responsible for all costs arising out of delays in securing financing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

KIFERBAUM CONSTRUCTION CORPORATION (Contractor)

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

*J. Kiferbaum*  
PRESIDENT

MERCY HEALTH SYSTEM

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

*James R. Ba*  
President

JK 00621

EH0239\_00509

Construction Contract  
Mercy Alliance, Inc.  
Page 17

EXHIBIT "A"

LEGAL DESCRIPTION

The North 1464.54 feet of the West 580.14 feet of the Southeast Quarter of Section 10  
(exception therefrom that part taken for State Route 31 and Three Oaks Road), all in  
Township 43 North, Range 8 East of the Third Principal Meridian in McHenry County, Illinois.

The Parcel contains approximately 16.71 acres.

JK 00622

EH0239\_00510



EXHIBIT "B"

The Contract Documents for this project are as follows:

Drawings A200, A200A thru A200D, A201A thur A201D,  
A202A thru A202D, A203C, A203D, A204C, A204D,  
A205C, A205D, A210, A220, A230, A250, A400, C300,  
C400, C500, and Site Plan by Hammel, Green,  
and Abrahamson, Inc. (Dated 5/22/03)

JK 00623

EH0239\_00511

EXHIBIT "D"

This \_\_\_\_\_ day of \_\_\_\_\_, 2003, Mercy Alliance, Inc. and Kiferbaum Construction Corporation in accordance with Article 1 of the Construction Contract hereby amend the Agreement as follows:

1. Building Target GMP is \$ [To be Determined].
2. The Site Work GMP is \$ [To Be Determined].
3. The Building Price is \$ [To Be Determined]
4. The Site Work Price is \$ [ To Be Determined]
5. The Contract Sum is \$ [ To Be Determined]
6. The Construction Documents which form the basis for the Building Price are:  
\_\_\_\_\_
7. The Construction Documents which form the basis for the Site Work Price are: [To Be Determined].

Mercy Alliance, Inc.

Kiferbaum Construction Corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

JK 00624

EH0239\_00512

Construction Contract  
Mercy Alliance, Inc.  
Page 20

EXHIBIT "E"  
MILESTONE SCHEDULE

JK 00625

EH0239\_00513

Construction Contract  
Mercy Alliance, Inc.  
Page 21

EXHIBIT "F"

APPLICATION FOR PAYMENT FORM  
(CONTRACTOR'S SWORN STATEMENT)

Proposals/mercy crystal lake/contract/mercy contract.1.23.04

JK 00626

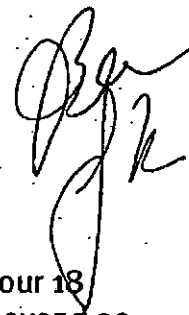
EH0239\_00514

EXHIBIT "G"

MERCY CRYSTAL LAKE - SUMMARY OF FIXED LINE ITEMS.

January 28, 2004

		FIXED
1. General Conditions	2.70	2.70%
<del>2. Insurance</del>	<del>0.65</del>	<del>0.65%</del>
3. Overhead	4.80	4.80%
4. Fee	2.50	3.20%
Total	<u>10.00</u>	<u>11.35%</u>



Note: Items 1, 2, & 3 are time sensitive and are calculated based upon our 18 month construction projection. In the event that this project extends beyond 20 months, due to circumstances beyond Kiferbaum's control, additional general conditions, insurance and overhead will be assessed on a pro-rata basis.

JK 00627

EH0239\_00515

THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
MCHENRY COUNTY, ILLINOIS

NORTHERN ILLINOIS MEDICAL CENTER, )  
MEMORIAL MEDICAL CENTER, and )  
CENTEGRA HEALTH SYSTEM, )

Plaintiffs, )

v. )

No. 04-MR-106

ILLINOIS HEALTH FACILITIES PLANNING )  
BOARD, ILLINOIS DEPARTMENT OF )  
PUBLIC HEALTH, MERCY CRYSTAL )  
LAKE HOSPITAL AND MEDICAL CENTER, )  
INC., MERCY HEALTH SYSTEM )  
CORPORATION, ELI L. BEEDING JR., and )  
THE BEEDING GROUP, )

Defendants. )

DEFENDANT MERCY CRYSTAL LAKE HOSPITAL AND  
MEDICAL CENTER, INC.'S RESPONSE TO PLAINTIFFS'  
FIRST SET OF INTERROGATORIES

Defendant Mercy Crystal Lake Hospital and Medical Center, Inc. states as its responses  
to the Plaintiffs' First Set of Interrogatories as follows:

Interrogatories

1. State whether any director, officer, employee, attorney or agent of Mercy Crystal  
Lake Hospital and Medical Center Inc., Mercy Health System Corporation or Mercy Alliance  
Inc. had any communication with Stuart Levine relating in any way to: a proposed hospital in  
Crystal Lake, Illinois; Jacob Kiferbaum; Kiferbaum Construction; Nicholas Hurtgen; or Bear  
Stearns & Co. during the period January, 1, 2003 to the present. If so, state as to each such  
communication the date, the name and address of each person who was a participant to the  
communication or present during any such communication, and the substance of what was said.

ANSWER: Other than communications to the Illinois Health Facilities Planning  
Board, defendant knows of only one communication involving Stuart Levine and an employee of  
defendant. In or about February 2004, Mercy employee Rich Gruber had a brief conversation  
with Stuart Levine and Jacob Kiferbaum. Kiferbaum introduced Levine and Gruber to each

other, and Levine told Gruber that Kiferbaum was a man of integrity and that Gruber could trust him, or words to that effect. Gruber replied that he was impressed with Kiferbaum's construction company, or words to that effect. Gruber, Levine, and Kiferbaum were present during this conversation.

2. State whether any director, officer, employee, attorney or agent of Mercy Crystal Lake Hospital and Medical Center Inc. Mercy Health System Corporation or Mercy Alliance Inc. had any communication with Thomas Beck, Michael Malek, Fortune Massuda, Annmarie Carrie-York, Danalyn Rice, Imad Almanuseer, or Pamela Orr relating in any way to: a proposed hospital in Crystal Lake, Illinois; Jacob Kiferbaum; Kiferbaum Construction; Nicholas Hurtgen; or Bear Stearns & Co. during the period January 1, 2003 through April 21, 2004. If so, state as to each such communication the date, the name and address of each person who was a participant to the communication or present during any such communication, and the substance of what was said.

ANSWER: Other than communications to the Illinois Health Facilities Planning Board, defendant knows of no such communication.

3. State whether Herbert Franks or Mike Noonan had any communication with Pamela Meyer Davis or William Kottman or any other officer, employee or agent of Edward Hospital between January 1, 2004 and April 21, 2004 in which any of the following was mentioned: a proposed hospital in Crystal Lake, Illinois; a proposed hospital in Plainfield, Illinois; Jacob Kiferbaum or Kiferbaum Construction; Stuart Levine; or the Illinois Health Facilities Planning Board. If so, state as to each such communication the date, the name and

address of each person who was a participant to the communication or present during any such communication, and the substance of what was said.

ANSWER: Defendants object to this interrogatory because it seeks information covered by the attorney work product doctrine and attorney-client privilege. Subject to these objections, defendant knows of no such communication.

Dated: March 9, 2005

Respectfully submitted,

Mercy Crystal Lake Hospital and Medical  
Center, Inc.

By: Brett Johnson  
One of its attorneys

Steven H. Hoefft  
Brett R. Johnson  
McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago IL 60606  
(312)-372-2000



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies under penalty of perjury under the laws of the State of Illinois that, on March 9, 2005, he caused to be served on the person(s) listed below in the manner shown Defendant Mercy Crystal Lake Hospital And Medical Center, Inc.'s Response To Plaintiffs' First Set Of Interrogatories:

Mr. Jeffrey R. Ladd  
Daniel J. Lawler  
Lawrence M. Gavin  
Bell Boyd & Lloyd  
Three First National Plaza  
70 W. Madison - Suite 3100  
Chicago, IL 60602

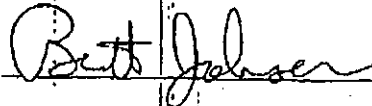
David G. Phoenix  
Thomas C. Zanck  
Militello Zanck & Coen PC  
40 Brink Street  
Crystal Lake, IL 60014

Katherine H. Laurent  
Assistant Attorney General  
Office of the Attorney General  
General Law Bureau  
James R. Thompson Center  
100 W. Randolph - 13th Floor  
Chicago, IL 60601  
(312) 814-3327

Mr. Eli L. Beeding, Jr.  
The Beeding Group  
7488 County Road 3  
Marble, CO 81623

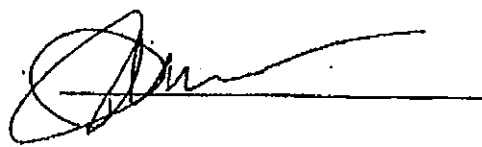
- United States Mail, First Class
- By Messenger
- By Overnight Delivery
- By Facsimile

Dated at Chicago, Illinois, this 9th day of March, 2005.

  
\_\_\_\_\_

VERIFICATION

I, Richard Gruber, being first duly sworn on oath, state the I am a Vice President of Mercy Health System Corporation, authorized for the purpose of executing this document on behalf of Mercy Health System Corporation, that I do not have personal knowledge of all the facts recited in the foregoing document, and that certain statements and information made herein have been collected and made available to me by counsel and employees of Mercy Health System Corporation and others; and based on this information, in addition to my personal knowledge, I certify on behalf of Mercy Health System Corporation that the answers made herein are true and correct.

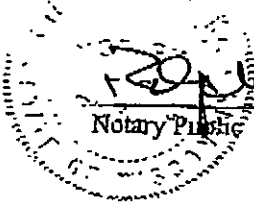
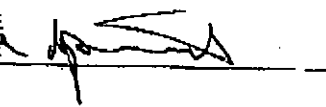


STATE OF WISCONSIN  
ROCK COUNTY

)  
) ss.  
)

On March 9, 2005 before me, Ralph Turpinke, Notary Public, personally appeared Richard Gruber, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

May 5, 2009

**Pam Davis' Testimony to Illinois General Assembly  
Joint Committee on Government Reform**

Good morning, I'm Pam Davis, President & CEO of Edward Hospital & Health Services. Thank you for inviting me to testify this morning to the Joint Committee on Government Reform. I am testifying today in support of House Amendment number four of Senate Bill 1905.

There are two compelling reasons to take strong action and support this amendment.

First and foremost is accountability to the public. In order to restore what shred of public trust still remains in the process of health care expansion review and approvals, also known as Certificate of Need, the General Assembly needs to hit the reset button. The state officials who hold the two positions specifically mentioned in Amendment Four were directly connected to the Planning Board as the corruption played out more than five years ago. When the scandal broke in 2004, every Planning Board member, regardless of any alleged involvement, was excused. However, two key players in the process mentioned in Amendment Four, for some reason, were kept on. I agree with the criteria that Speaker Madigan put forth in the case of the Teacher's Retirement Fund. Speaker Madigan is quoted in the State Journal Register on April 4 of this year talking about TRS's Jon Bauman...and I quote... "Mr. Bauman was on deck before, during and after the scandal at TRS." While I am certainly not accusing either the Executive Secretary or Deputy Director of illegal behavior, I submit that this General Assembly must act as they did in the TRS case, and remove all remnants from the former Planning Board or risk tainting all of their C-O-N reform efforts.

The second reason to support Amendment Four is to improve the competency of health care planning in Illinois. New rules were supposed to have been completed by December 31, 2004 – that's more than four years ago. Under the leadership of these two

public officials, the rules process has been fraught with delays, uncertainty and lack of transparency.

Let's start with accountability.

I have been president at Edward Hospital in Naperville for more than 20 years. We have grown from a small community provider into our region's most preferred hospital. Over the years we have carefully planned and built a medical center with more than 20 locations to keep up with the demand of one of the fastest growing areas in the state, if not the nation.

Back in 2003 we were planning to expand into Plainfield by building an outpatient center and a new hospital. At the time, we were very crowded on our Naperville campus—in fact, we were running at 106% occupancy—mostly because of the growing number of patients coming from south of Naperville including Plainfield. It just made sense to bring services closer to this growing region in Plainfield.

In December 2003 we appeared before the Planning Board with the Edward Plainfield Outpatient Center – not the hospital just yet, but the outpatient center application. To our knowledge, an outpatient center like this had never been turned down by the Planning Board. However, the Planning Board including Chair Tom Beck and Vice Chair Stuart Levine, among others, attacked the project and voted an intent-to-deny. I was stunned. Something was terribly wrong.

I had been approached separately a few days prior to, and immediately after the hearing by Nick Hurtgen of Bear Stearns and Jacob Kiferbaum of Kiferbaum Construction who said they had the clout to get the votes I needed. After how badly the hearing had gone, I felt certain that I, and Edward, were in the process of being extorted.

I went to the FBI with my suspicions.

As you can imagine, the FBI agents had suspicions of their own about my story. They don't get many cold calls like this.

But to their credit, the FBI agreed to take action.

On January 6, 2004, the FBI recorded a meeting I held with Hurtgen who reiterated that he was politically connected to the Illinois state government and could get things done, and that our projects would not be approved unless I went along.

On March 17, 2004, I met with Herbert Franks and Mike Noonan who were assisting Mercy Hospital in seeking to obtain approval of Mercy's Crystal Lakes CON. They told me that I should hire Kiferbaum to construct our hospital in Plainfield because Kiferbaum wielded influence with two or three Planning Board members. They said that for the Mercy project, Board member Levine personally met with Kiferbaum and Mercy's CEO to reassure the Mercy's CEO that Kiferbaum could get things done.

In April of 2004 I met with Jacob Kiferbaum at the Egg Shell Café in Deerfield and he told me point blank that Mercy was going to be approved because it was using his company for construction...and that I had to use Kiferbaum Construction or my project would not be approved. Levine and Hurtgen were seated at another table. Mr. Levine walked over and said that I could trust Kiferbaum and that Kiferbaum's word was good. Of course, the FBI had surveillance of this meeting.

For eight months, I worked undercover with the FBI and wore a recording device for hours at a time including many phone calls and other meetings with the schemers.

This was one of the most stressful times of my life. I couldn't eat properly, my blood pressure shot up, and my finger nails were actually cracking under the stress. In the end, as you know, the investigation led to the conviction of Planning Board Vice Chair Stu Levine, Nick Hurtgen, Jacob Kiferbaum among others. I'm proud of what I did along with Bill Kottmann, a colleague and Vice President at Edward. I'm also proud, and

saddened, that these tapes opened the door into the pay-to-play world of our former Governor.

When all of this was happening in December 2003 and into 2004, where was the executive secretary of the Planning Board along with the deputy director of the Department of Public Health? Sitting right there at the Planning Board meetings watching the corruption play out publicly while doing little if anything to stop it.

The most compelling example of the corruption playing out publicly happened in April 2004 in connection to the Mercy Hospital decision. During the hearing, which played out publicly in front of hundreds of onlookers, the Mercy Hospital project was approved.

Here's how Alice Hohl, the reporter from the Daily Southtown reported the vote on the Mercy Hospital application which won approval 4-3 on April 21, 2004...and I quote from her 2004 story... "Board members spoke of the Board's power to ignore state criteria. They whispered in conferences during the vote, and one member changed his mind after seeing the vote of his peers...In the middle of the vote, the roll call was halted as Beck and Levine whispered to each other. Levine then approached Dr. Imad Alamanseer, who had voted 'pass' instead of 'yes' or 'no'. After another whispered conversation between Levine and Alamanseer, Alamanseer changed his 'pass' to 'yes', providing the vote needed to pass the project." Unquote.

Members of this Joint Committee, I was there. I watched this happening. There was an audible gasp in the room when Alamanseer changed his vote and Mercy was approved. It was apparent to me and many others in the room that the fix was in. If ever there was a smoking gun, this was it. Yet, as the reporter writes in her story, and I quote... "Stunned by what unfolded, hospital executives did not want to comment on the 'irregularities' because many of them have projects pending before the board" endquote.

With Illinois hospitals basically held hostage by the audacity of the corrupt Board members, the Executive Secretary and Deputy Director watched along with the rest of us.

Yet, to the best of my knowledge, they did little or nothing to report the irregularities or to stop the corruption. And there are plenty of other hospital officials who feel as I do about the leadership of the Planning Board, yet they are too afraid to testify.

Even Stu Levine found the whole situation amusing. During a taped conversation on April 21, 2004, which was revealed during the Tony Rezko trial, Mr. Levine refers to the Mercy vote and says, and I quote, "Looked liked there was a shoe hitting somebody over the head. Could you, did, did you ever in your life see a vote stop in the middle?" endquote.

During 2003 and 2004, the Executive Secretary and Deputy Director were also part of closed-door sessions with Levine, Beck and the other Planning Board members – sessions that were not open to the public. We have no idea what exactly was said, or what was concocted during these private sessions. Again, while not pointing to any illegalities by either public official, I can only imagine that the corrupt Board members were emboldened by this lack of transparency.

What we do know is that the tip of the iceberg was clearly on display at the April 20, 2004, hearing regarding Mercy Hospital.

The Mercy Hospital approval was later set aside because of the corruption.

In fact the only new hospital built in the past 20 plus years is Adventist Bolingbrook Hospital. Adventist Bolingbrook was favored by Tony Rezko. We know this from another transcript from the Rezko trial where former Planning Board Chair Tom Beck says of Rezko, and I quote... "he wants Edwards down and Bolingbrook up...he wants them yes...he wants Edwards to have nothing." End-quote.

Throughout the past five or six years, the Executive Secretary and Deputy Director have also treated Edward disrespectfully during our many appearances before them seeking a hospital in Plainfield. I'd be happy to send this Committee a list of our grievances about

past applications. However, I'd like to focus my support for Amendment Four on the big picture – on accountability and competence.

During the many months of testimony connected to the Illinois Task Force on Health Planning Reform which some of you served on, one thing became abundantly clear: the need for a proactive statewide health plan.

The Executive Secretary and Deputy Director are two of the key public health officials responsible for overseeing the proper execution of the Illinois Health Facilities Planning Act. Section 1100.30 currently states that, and I quote... "This State Plan is...specifically designed to develop a procedure which establishes an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public" and "which promotes through the process of comprehensive health planning the orderly and economic development of health care facilities in the State of Illinois to avoid unnecessary duplication of facilities or services." End quote.

This section provides a clear direction for public health that has not been followed. The fact that the Task Force recommendations spell out a new structure and process for achieving the stated goals of the Health Facilities Planning Act is evidence that the job has been seriously botched.

Plus, health planning in Illinois will only have integrity if it's supported by rules that make sense, rules that are transparent, and rules that are easy to understand and are applied consistently and in a way that supports such a plan. We are nowhere close to that in Illinois under the current leadership in public health. If the CON process is to continue, it needs to be supported by good rulemaking. Further, someone needs to look at how these rules are implemented.

For instance, Public Act 05-005, which was passed nearly unanimously and intended to ensure high growth areas of the state had adequate access to hospital services, was not



implemented as intended—and it has not had the desired effect. Why? Because, under the Deputy Director's supervision, inputs into the bed need formula remain outdated, flawed and extremely difficult to understand. And staunch defense of this flawed formula has stymied effective health planning, rational allocation of services, and access to health care.

The IDPH Bed Inventory, which provides information on the supply and future demand for various hospital services across the state, provides clear evidence of the mess that has developed. There are thousands of excess beds in the City of Chicago, and huge excesses in other areas of the State. But then you have some areas where there aren't enough beds. There is large variation in bed supply and bed need across Planning Areas. There is a strange imbalance of bed supply and bed need within Planning Areas. Obviously, things have not been working as they should.

What we are missing in Illinois is a participative and interactive planning process where we look at this as a whole and say, 'something's not right,' and 'what are we going to do to fix this?' Instead, we have a process where we hear 'this is the way it is,' and 'the rules are the rules.'

In conclusion, House Amendment Four of Senate Bill 1905 deserves your support.

All holdovers in a leadership position of public health should not be connected to any reformed planning board or certificate of need process. State officials – especially those appointed by the Governor and/or holding high level state positions – should be held accountable for their actions, and in-action.

One of the primary reasons that health care planning in Illinois needs to be reformed is because leadership has been clearly ineffective in dealing with these issues. We need new blood and new ideas to get what you want done enacted properly.

Ladies and gentlemen, approximately \$5 billion dollars worth of hospital expansion projects were reviewed by the Health Facilities Planning Board last year. That's \$5 billion dollars with a "B". No wonder pay-to-play schemes have been targeted at hospitals. The temptation for corruption is huge. This system needs a complete overhaul including new leadership and ex-officio members. The system is broken. In a joint statement to the Illinois Task Force on Health Planning Reform, the U.S. Department of Justice and Federal Trade Commission said, and I quote, "C-O-N laws can be subject to various types of abuse, creating additional barriers to entry, as well as opportunities for anticompetitive behavior by private parties." End-quote. The report went on to say that, and I quote, "The CON process itself may sometimes be susceptible to corruption." End-quote.

We know that all too well in Illinois.

Please step to your responsibilities and help overhaul this system...or send it to the scrap heap.

-end-

CERTIFIED DECLARATION OF PAMELA DAVIS

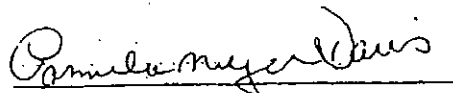
I, PAMELA DAVIS, declare under penalty of perjury under the laws of the United States of America that the following statements of fact are true and correct:

1. I am over eighteen years of age. I have personal knowledge of the facts stated in this declaration and I could testify competently to such facts.
2. Since 1988, I have been the President and Chief Executive Officer of the Edward Health Services Corporation (EHSC), the parent of Edward Hospital (EH).
3. In November 2003, Edward Hospital filed a permit application, Certificate of Need (CON), with the Illinois Health Facilities Planning Board to establish a medical office building (MOB) in Plainfield, Illinois.
4. On January 6, 2004, I met with Mr. Hurtgen of Bear Stearns. He said he was politically connected to the Illinois state government and can "get things done." Hurtgen further told us that Stuart Levine and the Illinois State Facilities Planning Board Chairman Thomas Beck would decide the fate of both Edward's application for a permit to construct a new hospital in Plainfield and Mercy's in Crystal Lake. He told us to use Kiferbaum's construction company or the Edward CON would not be approved.
5. I met with Herbert Franks and Mike Noonan on or about March 17, 2004. They were assisting Mercy Hospital in seeking to obtain approval of Mercy's Crystal Lakes hospital construction permit. They told me that I should hire Kiferbaum to construct the new Edward facility, because Kieferbaum wielded influence with 2-3

members of the State Board. They said that for the Mercy project, Board member Levine had personally met with Kiferbaum and Mercy's CEO to reassure the Mercy's CEO that Kiferbaum could "get things done."

6. On or about April 19, 2004, I met with Jacob Kieferbaum at the Egg Shell Café in Deerfield, Illinois. Kieferbaum said that he was good friends with Levine and with five of the existing Board members; that the Mercy construction would be approved at the Board meeting of April 21, 2004; and that if we did not use Kieferbaum's company, the Certificate of Need to build the new Edward Hospital in Plainfield would not be approved by the Board. Stuart Levine and Nicholas Hurtgen were also at the Egg Shell Café although they were seated at another table. Mr. Levine walked over to our table. He said that I could trust Kieferbaum and that Kieferbaum's word was good.

FURTHER THE DECLARANT SAYETH NOT.



Executed on March 4, 2005

DATE: 4/20/04  
TIME: 4:52 p.m.  
ACTIVITY: Home Telephone 1 incoming from (847) 833-7300  
CALL#: 303

SPEAKERS:  
LEVINE: Stuart Levine  
KIFERBAUM: Jacob Kiferbaum

\* \* \* \*

1 LEVINE Hello.  
2 KIFERBAUM Stuart, Jacob.  
3 LEVINE Hi Jacob.  
4 KIFERBAUM Am I disturbing you?  
5 LEVINE No, not at all.  
6 KIFERBAUM Javon Bea is panicking now. ;  
7 LEVINE Alright now, now, now I want you to  
8 listen to me real good. He's got a  
9 lawyer. His lawyer's with him as a  
10 matter of fact and everything is just  
11 fine and just, and, and, and that, that,  
12 that's that. You can not respond. His  
13 lawyer is with him and uh, his lawyer's  
14 been communicating. He knows exactly  
15 what's what and things are fine.  
16 KIFERBAUM Okay. So that, that's who I'm gonna  
17 call. He asked me about the fifth vote  
18 (UI) I said...  
19 LEVINE He asked you about what?  
20 KIFERBAUM A fifth vote.  
21 LEVINE You know what, you know what. You, you  
22 just uh, ...  
23 KIFERBAUM Okay, I know what to say.  
24 LEVINE I, I, I'm, I am telling you that a,  
25 that, that uh, uh, uh, uh his lawyer's

1 been with him all afternoon. I mean you  
2 know Steve. And, and, and, and, and I'm  
3 telling you that things are uh, things  
4 are fine. And, and but having him, you  
5 know it's just uh, uh, uh if he, if he  
6 wants to panic let him panic. But he's  
7 got a lawyer. And uh, and uh, I don't  
8 want him uh, you know think that you  
9 can, you call and (UI) get you know uh,  
10 uh, it's, it's, it's gonna be...what he  
11 wants you to do? Or what does he, what  
12 does he...

13 KIFERBAUM I hear you.

14 LEVINE Yeah what, what, what did, what he  
15 called and says uh, what is he panicking  
16 about?

17 KIFERBAUM Well he said that he heard, he spent  
18 some time with Steve and Steve was  
19 telling him, telling him, telling him  
20 that it's not, he's not sure that it's  
21 going to go through tomorrow because uh,  
22 they...

23 LEVINE Well there, there, there was just, just,  
24 you just, uh yeah you know what uh, uh,  
25 uh, uh, uh, there uh, uh, uh, everything  
26 is fine.

27 KIFERBAUM Okay.

28 LEVINE And, and there was, there was a  
29 possibility that uh, that the  
30 presentation will be made and it would  
31 have been put off uh, uh, to uh, to  
32 June, and Steve was right to uh, to say  
33 that he's not sure that it's going to  
34 uh, uh, uh, to go which would not have  
35 been adverse to his client's uh, uh,  
36 position. This is, you know it's  
37 complicated, this and that, but uh, uh,  
38 uh, uh, you know, you don't want to give  
39 him any, any, any special uh,  
40 information. And uh, if you want to uh,  
41 ca-, what are you gonna do?

1 KIFERBAUM Apparently he knows the special...He  
2 went on and on with names, and this  
3 name, and that name, and you know I  
4 said, "listen, you know, I, I let me  
5 find out". I didn't tell him where.

6 LEVINE Well, yeah but will he know (UI). But,  
7 uh, but, you just, you, you just tell  
8 him that, that um, uh, he's, that he  
9 couldn't have a better team (UI)...

10 KIFERBAUM Good hands.

11 LEVINE Uh, huh?

12 KIFERBAUM That he is in good hands.

13 LEVINE He's in good hands. And, and, and, and  
14 uh, and that's that. If he wants to  
15 sweat all night uh, let him sweat all  
16 night. The fact of the matter is he'll  
17 find out tomorrow. You can't, you know  
18 they're all fucking nuts.

19 KIFERBAUM (laughs)

20 LEVINE Ah, but I'll tell you who's going to go  
21 nuts tomorrow is, is, is that other  
22 bitch. But let's forget (laughs) not  
23 worry about that.

24 KIFERBAUM Huh?

25 LEVINE Huh?

26 KIFERBAUM I love to hear that. (laughs)

27 LEVINE Yea, now you're not gonna be there.

28 KIFERBAUM I'm not?

29 LEVINE Yeah, right.

30 KIFERBAUM Okay. I, I will uh,...

31 LEVINE No. I think it's good because, because  
32 uh, uh, she'll say it's not...it serves  
33 no purpose uh, at all.

1 KIFERBAUM Okay.

2 LEVINE Uh, to the contrary. Uh, because uh,  
3 she'll uh, you know.

4 KIFERBAUM I, I hear you.

5 LEVINE Yeah.

6 KIFERBAUM I know, I know what to do now. I'm  
7 going to tell him you're in good hands.

8 LEVINE Yeah abs, uh, uh, uh, uh, uh, uh, abs,  
9 absolutely. I've been on, but you know  
10 this is uh, uh, uh, we're fine.

11 KIFERBAUM Thank you.

12 LEVINE And, and I'll be there. And, and, then,  
13 and circumstances being what they are,  
14 I'm participating fully.

15 KIFERBAUM Okay.

16 LEVINE Okay.

17 KIFERBAUM I'll talk to you.

18 LEVINE Okay. Bye-bye.



STATE OF ILLINOIS  
DEPARTMENT OF PUBLIC HEALTH

HEALTH FACILITIES PLANNING BOARD  
BOARD MEETING

B-4 Mercy Crystal Lake Hosp. and Med. Cntr.  
Construct and establish a 70-bed  
hsopital with a 45-physician clinic  
attached which consists of offices,  
treatment rooms & support space.

REPORT OF PROCEEDINGS held at  
the Holiday Inn Mart Plaza, 350 North  
Orleans, Chicago, Illinois on the 21st day  
of April, 2004 at 9:10 o'clock a.m, before  
Thomas Beck, Chairman.

PRESENT:

THOMAS BECK, CHAIRMAN  
STUART LEVINE, VICE CHAIRMAN  
ANNE MURPHY, LEGAL COUNSEL  
DAVID CARVALLO  
DR. IMAD ALMANSEER  
ANNAMARIE CARRIE YORK  
DANALYN RICE  
FRANK URSO, LEGAL COUNSEL  
PAMELA ORR  
DR. MICHAEL MALEK  
JEFFREY MARK  
DONALD JONES  
DR. FORUNEE MASSUDA

1 CHAIRMAN BECK: Would the applicant  
2 be sworn in, please?

3 (Witnesses sworn.)

4 COURT REPORTER: Thank you. Please  
5 state your names for the record?

6 MR. BEA: Javon Bea, J-a-v-o-n, last  
7 name B-e-a.

8 MR. GRUBER: Richard Gruber,  
9 R-i-c-h-a-r-d G-r-u-b-e-r.

10 MR. GLASER: Lou Glaser,  
11 G-l-a-s-e-r.

12 MR. COLBY: Sam Colby, S-a-m  
13 C-o-l-b-y.

14 MS. RIPSCH: Sue Ripsch,  
15 R-i-p-s-c-h.

16 MR. NEMEPH: Joe Nemeph,  
17 N-e-m-e-p-h.

18 MR. LOREN: Steven Loren, L-o-r-e-n.

19 MR. STRICKLIN: David Stricklin,  
20 S-t-r-i-c-k-l-i-n.

21 MR. FRANKS: Herb Franks,  
22 F-r-a-n-k-s.

23 CHAIRMAN BECK: Is that all? Mr.  
24 Jones.

1 motion? Mr. Levine moves. Is there a  
2 second? Dr. Massuda seconds.

3 Call the roll, please.

4 MR. MARK: Mr. Levine.

5 MR. LEVINE: Yes.

6 MR. MARK: Dr. Almanseer.

7 DR. ALMANSEER: Can I pass?

8 MR. MARK: Dr. Malek.

9 DR. MALEK: Yes.

10 MR. MARK: Dr. Massuda.

11 DR. MASSUDA: Yes.

12 MR. MARK: Ms. Orr.

13 MS. ORR: Pass.

14 MR. MARK: Ms. Rice?

15 MS. RICE: No.

16 MR. MARK: Ms. Carrie York.

17 MS. YORK: No.

18 MR. MARK: Mr. Beck?

19 CHAIRMAN BECK: Where are we at?

20 MR. MARK: Mr. Beck.

21 CHAIRMAN BECK: Yes.

22 MR. LEVINE: I change my vote.

23 MR. MARK: Anyone else wish to

24 multiply their votes? Okay.

1                   The motion is currently passed.

2                   CHAIRMAN BECK: The motion is  
3 approved.

4                   MR. GRABER: Thank you very much.

5

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## SOUTH

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### Hospitals left scratching their heads

#### Unknown what vote means for Orland plans

Thursday, April 22, 2004

By Alice Hohl  
Staff writer

A strange turn of events at the Illinois Health Facilities Planning Board on Wednesday has stoked fears the board — which will decide the fate of two Orland Park hospital plans in June — is being politicized.

On Wednesday, the board narrowly approved Illinois' first new hospital in almost 25 years — a 70-bed hospital to open in 2006 as Mercy Crystal Lake Hospital and Health Center.

The board turned down two hospitals proposed for Plainfield and Bolingbrook, saying they did not meet state criteria.

The Crystal Lake plan, put forth by Mercy Health System, was unanimously rejected in December.

It won approval on a 4-to-3 vote Wednesday, with one pass, after several speeches and developments that left health care professionals in the audience puzzled.

Board members spoke of the board's power to ignore state criteria. They whispered in conferences during the vote, and one board member changed his mind after seeing the votes of his peers.

Those for and against the two proposed hospitals in the Orland Park/Tinley Park

Interstate 80 corridor came to the hearing and watched closely for signs of what to expect in June, when their proposals come before the board.

Stunned by what unfolded, hospital executives did not want to comment on the "irregularities" because many of them have projects pending before the board.

In December, the board denied Mercy's Crystal Lake proposal. Hospital planners had a chance to modify their plans to meet state standards. Those guidelines are intended to keep health care costs down by regulating the number and cost of new facilities.

On Wednesday, some of the board's eight members expressed concern about Mercy's system of hospitals. Mercy Alliance Inc. is the parent company of Mercy Health System, which operates 49 facilities in 21 Illinois communities. Mercy directly employs all the physicians and specialists who practice there.

Others were concerned the hospital didn't propose at least 100 medical-surgical beds — the minimum by state standards for establishing a new full-service hospital in the area. Mercy also proposed a hospital in an area, fast-growing McHenry County, that has too many licensed beds already, according to state calculations.

It appeared the proposal would be turned down again until board chairman Thomas Beck signaled his support.

Also supporting the proposal was Stuart Levine.

Levine and Beck are the only two members who have served on the board before the election of Democratic Gov. Rod Blagojevich.

In the middle of the vote, the roll call was halted as Beck and Levine whispered to each other. Levine then approached Dr. Imad Alamanseer, who had voted "pass" instead of "yes" or "no." After another whispered conversation between Levine and Alamanseer, Alamanseer changed his "pass" to "yes," providing the vote needed to pass the project.

Asked after the meeting about what happened, Alamanseer said, "I was convinced that there was merit to the project; I just wanted to see how the others would view the project."

Another board member, Pamela Orr, who's new to her post, left the meeting during discussion of the Crystal Lake project. When she returned, she decided to pass on the Crystal Lake vote.

The overall vote crystallized competing philosophies on the board.

The board's assistant legal counsel, David Carvalho, has tried to push the new board members toward a strict reading of state regulations, asking the board members to adhere to existing standards and avoid approving projects that do not meet those standards.

Carvalho said approving new facilities in areas where too many licensed beds already exist is unfair to those health care facilities who "sit on the sidelines" waiting to propose

projects until existing beds are filled.

"It makes it difficult for the board going forward," Carvalho said.

Beck and Levine said they disagree and value the board's freedom.

During the meeting, the two joked about "the old days" when they approved projects bearing all negative staff recommendations and turned down projects that met each and every criterion.

"You never know what we're going to do," Beck said.

Sources said parties with projects that come before the board are concerned Beck and Levine — a politically connected member who formerly served on the Illinois Gaming Board — will take control and leave board decisions vulnerable to lobbyists.

Political powerbrokers including Jeff Ladd and David Wilhelm are representing some of the major players with desires to build hospitals in affluent, high-growth areas.

Also Wednesday, Beck announced the board's newest member will be Bernard Weiner, who has previously served on the Health Facilities Planning Board with Beck and Levine. He's been a contributor to the campaigns of Republicans Lee Daniels and George Ryan.

The power balance on the board is particularly crucial because four more hospital proposals are pending and the board is in the midst of rewriting its rules and standards.

Naperville-based Edward Hospital's plan for Plainfield, denied on a 7-to-1 vote, and Adventist Health System's plan for Bolingbrook, denied by unanimous vote, can be brought back to the board for reconsideration.

The proposals by St. Francis Hospital to build a new hospital at LaGrange Road and 171st Street and by Advocate to build a new hospital at LaGrange Road and 179th Street will be considered at the board's June 16 meeting in Chicago.

*Southtown health writer*

*Alice Hohl may be reached at [ahohl@dailysouthtown.com](mailto:ahohl@dailysouthtown.com) or (708) 633-5993.*

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DATE: 4/21/04  
TIME: 8:33 p.m.  
ACTIVITY: Home Telephone 1 incoming from (847) 833-7300  
CALL#: 332

SPEAKERS:

LEVINE: Stuart Levine  
KIFERBAUM: Jacob Kiferbaum

\* \* \* \*

1 LEVINE Hello.  
2  
3 KIFERBAUM Stuart.  
4 LEVINE Jacob, how are you?  
5 KIFERBAUM I'm fine. How are you doing?  
6 LEVINE You have no, I'm gonna tell you  
7 something. Nobody, nobody could have  
8 gotten this done but me and I'll tell  
9 you what I mean by that.  
10 KIFERBAUM They told me.  
11 LEVINE It real-, it real-, it real-,...  
12 KIFERBAUM They told me.  
13 LEVINE (UI) it required there was a mutiny  
14 first thing this morning um one of the  
15 Board members that didn't wanna do it.  
16 But for reasons that uh, that uh, have  
17 nothin' to do with specifically with  
18 this, but because other people have been  
19 promised this wouldn't happen. You know  
20 uh, and, and, and, and, and, and of course  
21 nobody really knows that I'm...they,  
22 they know that I'm handling it, but they  
23 don't know that I'm really orchestrating  
24 it. And, and I just stay calm and you  
25 know this and that. I mean the chairman  
26 was gonna resign. You cannot imagine.  
27 But it was all fine by the end of the  
28 day. I mean all fine. They actually,  
29 we, we, uh, the vote had to be stopped  
30 and I had to go and sraighten people out

1 right there in front of the entire  
2 audience. (laughs)

3 KIFERBAUM I heard and I couldn't believe. I  
4 couldn't believe it. You know and then  
5 I heard the story about the bitch.

6 LEVINE Oh, she wa-, you know what, she is so  
7 fuckin' arrogant. She could not believe  
8 that she didn't get her CON. She  
9 actually walked out on the chairman.

10 KIFERBAUM I heard it. (laughs) She is, you know  
11 what, if she even calls tomorrow...

12 LEVINE Yeah.

13 KIFERBAUM (UI) said you know I don't want even to  
14 get close...

15 LEVINE No, no don't, don't even return her  
16 calls.

17 KIFERBAUM No I'm not returning calls. I have  
18 nothing. You know she sent me a letter.

19 LEVINE What'd she say?

20 KIFERBAUM The letter said you know after  
21 deliberation we've decided not (UI)  
22 services.

23 LEVINE (laughs)

24 KIFERBAUM I, you know okay.

25 LEVINE Well she got a letter today too.

26 KIFERBAUM Okay.

27 LEVINE (laughs)

28 KIFERBAUM But, you know but listen, I, I'm telling  
29 you I can't thank you enough.

30 LEVINE Well, no we're, we're in this together.

31 KIFERBAUM (UI) I could tell you the people that I

1 spend, I had dinner with all are in awe  
2 and know that they would have never...

3 LEVINE Never.

4 KIFERBAUM (UI) anything close to it.

5 LEVINE Um, they, they still have a struggle you  
6 know because you know they go, the other  
7 hospital systems wanna sue 'em and all  
8 this and that, but Steve told me that  
9 Javon is a very cool guy and...

10 KIFERBAUM Yeah.

11 LEVINE He said to the chairman of Centegra or  
12 somebody said that, that, that, the uh,  
13 Centegra Board is thinkin' of suing try  
14 to stop 'em from happening and, and he's  
15 sitting down with them because you know  
16 he knows that it's not in his interest  
17 so I hope he works somethin' out.

18 KIFERBAUM He worked something out he's already  
19 told...come to the side and say you know  
20 what it's not gonna be to your benefit,  
21 to my benefit you're gonna waste money  
22 on lawyers. We're gonna waste money on  
23 lawyers. Let's figure it out. We're  
24 building only a 70 bed hospital. We're  
25 gonna work on, let's divide the turf to  
26 make sure that we don't hurt you. The  
27 guy listened to him and he said you know  
28 you think that you're gonna get anywhere  
29 with it. You're not gonna get anywhere.  
30 Apparently they've done it before in  
31 some other spot which it came to bite  
32 them in the ass. So...

33 LEVINE Well be that it may, but Steve told me  
34 he said something I thought was very  
35 clever, he said, why would you wanna  
36 piss off this Board.

37 KIFERBAUM (UI).

38 LEVINE Meaning, meaning that he's got the Board  
39 at the moment Javon.

1 KIFERBAUM Yeah.

2 LEVINE At the moment he does.

3 KIFERBAUM Yeah. So I mean he's a very...

4 LEVINE Gotta make sure the thing gets built.

5 KIFERBAUM Yeah. Well...(laughs)

6 LEVINE (laughs)

7 KIFERBAUM But I, I felt so bad, when I heard what  
8 was goin' on over there and I, I got a  
9 report afterwards I was just...

10 LEVINE Well I mean you know listen this is,  
11 this is...but, but uh, Ja-, nobody could  
12 have kept this together because, bec-...

13 KIFERBAUM No doubt in my mind. No doubt in their  
14 mind.

15 LEVINE (laughs)

16 KIFERBAUM (UI) Those idiots. I'll tell you  
17 something. They paid money to this guy  
18 uh, Cruz or whatever his name I forgot.

19 LEVINE Reyes. You know what, it's...

20 KIFERBAUM Reyes.

21 LEVINE It's, but you see everybody thinks  
22 that's why it was done. If it, it's,  
23 you have no idea what a wonderful cover  
24 it is for me. They think that the  
25 governor told Tony to do this for Victor  
26 Reyes.

27 KIFERBAUM Yeah, for Victor (laughs) Reyes.

28 LEVINE That, that's what they think. I mean  
29 they would, I mean uh, Tony promised  
30 other people this wouldn't happen. He  
31 don't want them to think it's him. The  
32 world we live in.

1 KIFERBAUM (laughs) Listen, I heard one word,  
2 people, you know Javon came to me and  
3 said, Stuart was masterful.

4 LEVINE (laughs)

5 KIFERBAUM All he said is one word he was, no he  
6 said Jacob I wanna let you know, we  
7 would never ever would of gotten' this.

8 LEVINE So I take it he's not nervous anymore.  
9 (laughs)

10 KIFERBAUM Oh you know but it, it's nice that he  
11 recognized (UI).

12 LEVINE No ab-, a-, a-, a-, absolutely I mean  
13 he's gonna be doing business here.  
14 We'll all be doing business here.

15 KIFERBAUM Yeah he, he knows how to, how to play  
16 the game. He's not stupid.

17 LEVINE Steve Loren told me that Javon told him  
18 that Jacob Kiferbaum is the smoothest  
19 guy he's ever done business with. How  
20 do you like that? Huh.

21 KIFERBAUM (laughs)

22 LEVINE So not too bad.

23 KIFERBAUM Well I, I hope, I hope this is gonna be  
24 uh, a good thing for both of us, you  
25 know we'll move on. And uh, I'm just  
26 now, try to figure out how uh, you know  
27 I heard that Bolingbrook also was there.

28 LEVINE Well Bolingbrook. No because they were  
29 both, they both had their, their, their,  
30 we, Javon was there on, because he  
31 already had it denied and you get one  
32 more shot.

33 KIFERBAUM Yeah.

34 LEVINE These people were up for the first time,  
35 Pam and Bolingbrook and they each got

1 uh, uh, uh, turned down and they'll come  
2 back for the second try. But only one  
3 of 'em could get it.

4 KIFERBAUM Interesting.

5 LEVINE And it ain't gonna be Pam.

6 KIFERBAUM Good.

7 LEVINE Because Jeff Ladd represents the uh, uh,  
8 Ad uh, the Ad, the, the Adventist at  
9 uh,...

10 KIFERBAUM You know the mayor.

11 LEVINE And he rep-, and, and Jeff Ladd  
12 represents Centegra.

13 KIFERBAUM Yeah.

14 LEVINE And Jeff Ladd got fucked today, but  
15 we'll make it up for him over there.

16 KIFERBAUM Huh. Interesting.

17 LEVINE And there's no room for Pam.

18 KIFERBAUM Well I'll go and figure this whole  
19 thing. You know my head is spinning by  
20 trying to figure out (laughs) who, who  
21 got fucked and who uh, but you know the  
22 mayor of Bolingbrook is a very good  
23 friend of mine. He's a Republican. I  
24 don't know if you know him Roger Claar.

25 LEVINE Hm mm.

26 KIFERBAUM I, he's uh, he's a nice man I've built  
27 in Bolingbrook like 10 million square  
28 feet.

29 LEVINE Mm hm.

30 KIFERBAUM So, I have very, very, very close  
31 relationship with him. I contribute to  
32 his campaign and all the time if I ever  
33 need anything he's always, any ground

1 breaking that I do over there and so on.

2 LEVINE Mm hm.

3 KIFERBAUM Very good relationship with him. I  
4 haven't approached him on this thing.

5 LEVINE You know what, you know you gotta be  
6 very careful 'cause Pam thinks, if she  
7 sees...

8 KIFERBAUM Absolutely. No I don't want, I agree  
9 with you. If she sees that I've joined  
10 the other side that'll be...

11 LEVINE No uh, well then, then, then and how,  
12 you know (UI) but, but b-, believe me  
13 uh, uh, um, uh, uh, uh Tony sees an  
14 avenue of doing business uh, with uh,  
15 with uh, um, uh, I'm doing business with  
16 him. And, and he's got the power boy.

17 KIFERBAUM Good.

18 LEVINE And, and, and it's only,...

19 KIFERBAUM I can't, I can't thank you enough...

20 LEVINE it's only guaranteed for...

21 KIFERBAUM I know that you had to step up to the  
22 plate more than you anticipated or I  
23 anticipated.

24 LEVINE but, eh, listen, y-, eh, y-, you don't  
25 like the heat, stay out of the fire,  
26 fire, you don't like the heat, stay out  
27 of, what the fuck is this, you know what  
28 I'm talkin' about. You gotta do,  
29 listen, we, we wanna get things done,  
30 you do what you gotta do to get it done.  
31 (talking in background)

32 KIFERBAUM I hear you. I appreciate it.

33 LEVINE Alright.

34 KIFERBAUM We'll talk.

1 LEVINE

Okay Jacob.

2 KIFERBAUM

Take care. Thank you.

3 LEVINE

Bye-bye. Yeah. Bye.

4 KIFERBAUM

Bye.



# Hospital president alleges

**Whistleblower lawsuit may taint Wall Street, Springfield**

BY CHRIS FUSCO, LORI RACKL,  
DAVE MCKINNEY, STEVE WARKNER  
AND TIM NOVAK  
Staff Reporters

A top Chicago financial power broker allegedly tried to shake down a Naperville hospital seeking to expand, a lawsuit says.

Either give the \$200 million project to a contractor friendly with a state official who must approve the expansion or the project dies.

The hospital balked.

And the state all but killed the expansion two months ago.

That deal was just one of a host of shake-down schemes involving financial powerbroker Nicholas Hurtgen, who runs the Chicago office of Bear, Stearns & Co. Inc., according to a federal whistleblower lawsuit. The civil suit was filed under seal in May by administrators at Edward Hospital in Naperville. The Chicago Sun-Times obtained it Thursday.

While the alleged schemes vary in detail, Hurtgen is described as one of the key players.

Also named was Jacob Kiferbaum, who runs a Deerfield construction company.

Kiferbaum is friends with Stuart Levine, a millionaire political powerbroker. Until he resigned this month, Levine was vice chairman of the state board that decides whether hospitals can open or expand.

None of the men returned messages for comment. Bear, Stearns declined to comment, as did the lawyer for the two plaintiffs, Edward executives Pamela Moyer Davis and William G. Kottmann.

The lawsuit describes an earlier scheme involving Edward Hospital.

The hospital wound up getting \$189 million in state funding in 2001 after agreeing to work with Bear, Stearns, the lawsuit alleges.

Another scheme was just this year. It involves a proposed hospital in Crystal Lake.

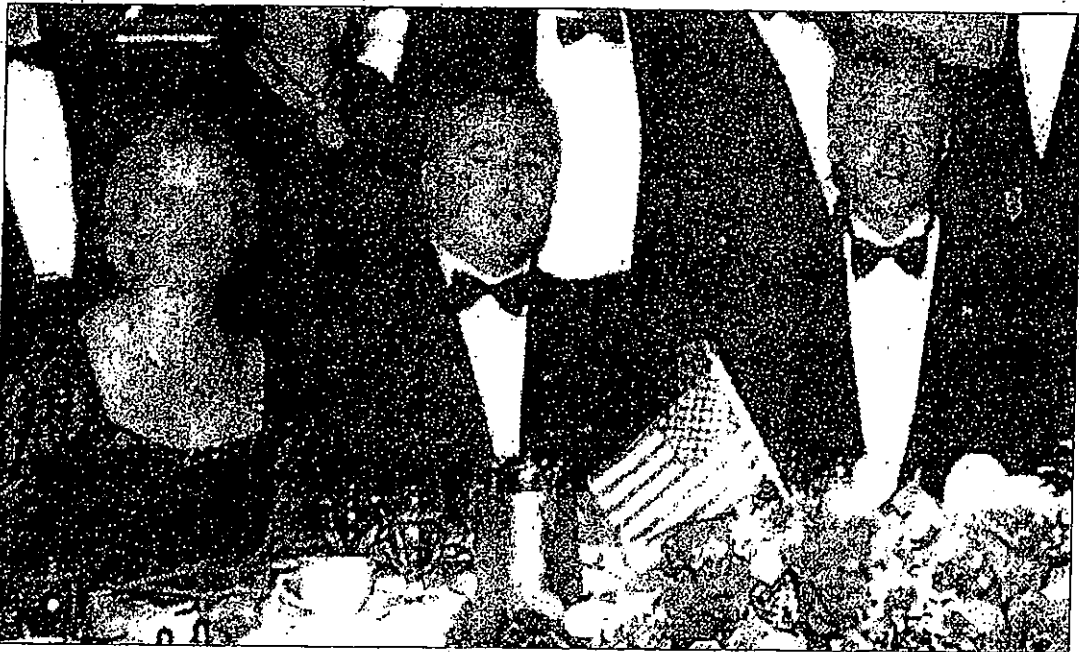
Levine and the board approved the project — that Kiferbaum is building, according to the lawsuit. Bear, Stearns did the work to finance the deal, with \$69 million in state money.

The final deal is the biggest.

The lawsuit, with no details, contends there was a "kickback" scheme involving the \$10 billion deal that Gov. Blagojevich pushed through last year to bail out the state pension plans. Bear, Stearns played a major role in that deal too. No details were given concerning the alleged kickback.

Sometimes after the lawsuit was filed on May 24 federal subpoenas were issued to members of the Illinois Health Facilities Planning Board. A criminal investigation is under way into the approval of the Mercy Crystal Lake Hospital and Medical Center, the governor's office confirmed Thursday.

"We asked the inspector general's office to step in and investi-



Jacob Kiferbaum, with Sandy Kiferbaum and Bill Clinton in 2001, is accused in a suit filed by Edward Hospital of being part of a shakedown scheme. The hospital says it was pressed to give business to certain firms in return for favorable state treatment. —COURTESY OF MIDWEST CONSTRUCTION

## KEY PLAYERS

### JACOB KIFERBAUM

Kiferbaum, 52, is president and founder of Kiferbaum Construction Corp. in Deerfield. He's one of the top contractors in Illinois and has been involved in the design and construction of more than 220 projects. He's vice president of the American Chamber of Commerce and, along with Stuart Levine — is on the board of trustees of the Rosalind Franklin University of Medicine and Science, formerly known as Finch University of Health Sciences/The Chicago Medical School in North Chicago. Kiferbaum's company has built some multimillion-dollar buildings at the medical school.

gates," the governor's spokeswoman, Cheryl Jackson, said late Thursday. "Subsequently, the U.S. attorney's office asked that the inspector general's office pull back and stop its investigation until the U.S. attorney can complete its investigation."

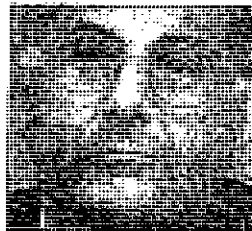
Subpoenas recently were sent to Thomas P. Beck, chairman of the Illinois Health Facilities Planning Board, and all the other board members.

Levine, fund-raising chief for Republican Jim Ryan's failed 2002 campaign for governor, resigned from the board June 7.

Another board member, Dr. Imad Almansoor, asked not to be resuspended. He cast a controversial deciding vote on the new hospital in Crystal Lake. At first, Almansoor passed on the vote but after Levine got up and whispered in his ear, Almansoor cast the crucial fifth vote needed to pass the project.

### STUART P. LEVINE

Levine, a Chicago attorney who made a fortune through HMOs, is a major political power player in Illinois, contributing more than \$1.5 million to politicians since 1994. More than half that money went to former Illinois Attorney General James Ryan, who unsuccessfully ran for governor in 2002. More than \$340,000 went to Lee Daniels, who stepped down as House Minority leader in 2002 and is under federal investigation because his staffers allegedly did political work on the taxpayers' dime. Levine, 58, of Highland Park, received his law degree from Chicago-Kent College of Law and is chairman of the board of trustees of Rosalind Franklin



Stuart P. Levine

University of Medicine and Science. He was also knighted by the King of Sweden in 1994 for promoting economic ties between the United States and that country.

### Wall Street to Springfield

The various allegations in the lawsuit, if proven, could touch Wall Street, Springfield and even President Bush's campaign.

The campaign is headed in the Midwest by a Bear, Stearns consultant whose firm received an \$809,133 commission on the \$10 billion bond deal. That consultant is Robert Kjellander, the Illinois National Republican Committeeman. He is not named anywhere in the suit.

Whistleblower lawsuits such as the one in the Bear, Stearns case are filed under seal and given to the U.S. Attorney's office but the defendants do not immediately receive a copy. Such cases are assigned to the chief judge of the U.S. District Court.

The U.S. attorney's office has 60 days by law to investigate the claims in the lawsuit and decide whether or not it wants to intervene in the law-

suit. But the U.S. attorney's office can ask the chief judge for extensions to that deadline and often receives them for further investigation. A U.S. attorney's spokesman declined to comment on the whistleblower lawsuit.

The scheme outlined in that lawsuit begins in 2001. That's when Hurtgen was introduced to Edward Hospital officials by Donald Udstuen. Udstuen was a former close advisor to Gov. Ryan. Udstuen has pleaded guilty to corruption charges. Udstuen, a former chief operating officer of the Illinois State Medical Society, has since cooperated with the feds. Ryan has also been charged and is awaiting trial.

Initially, Edward Hospital wanted to use Morgan Stanley for financing their 2001 project, but Udstuen insisted that it was "important" for the hospital to give the deal to Hurtgen at Bear, Stearns.

### BEAR, STEARNS & CO.

Bear, Stearns has a long history of helping Illinois governments raise money by issuing bonds. The firm helped sell bonds for McCormick Place's latest expansion and Gov. Blagojevich's \$10 billion deal to bail out the state pension systems. The company's Chicago office is run by P. Nicholas Hurtgen, 41, of Glenview, once a top aide to former Wisconsin Gov. Tommy Thompson.

The hospital did, and the state approved the deal.

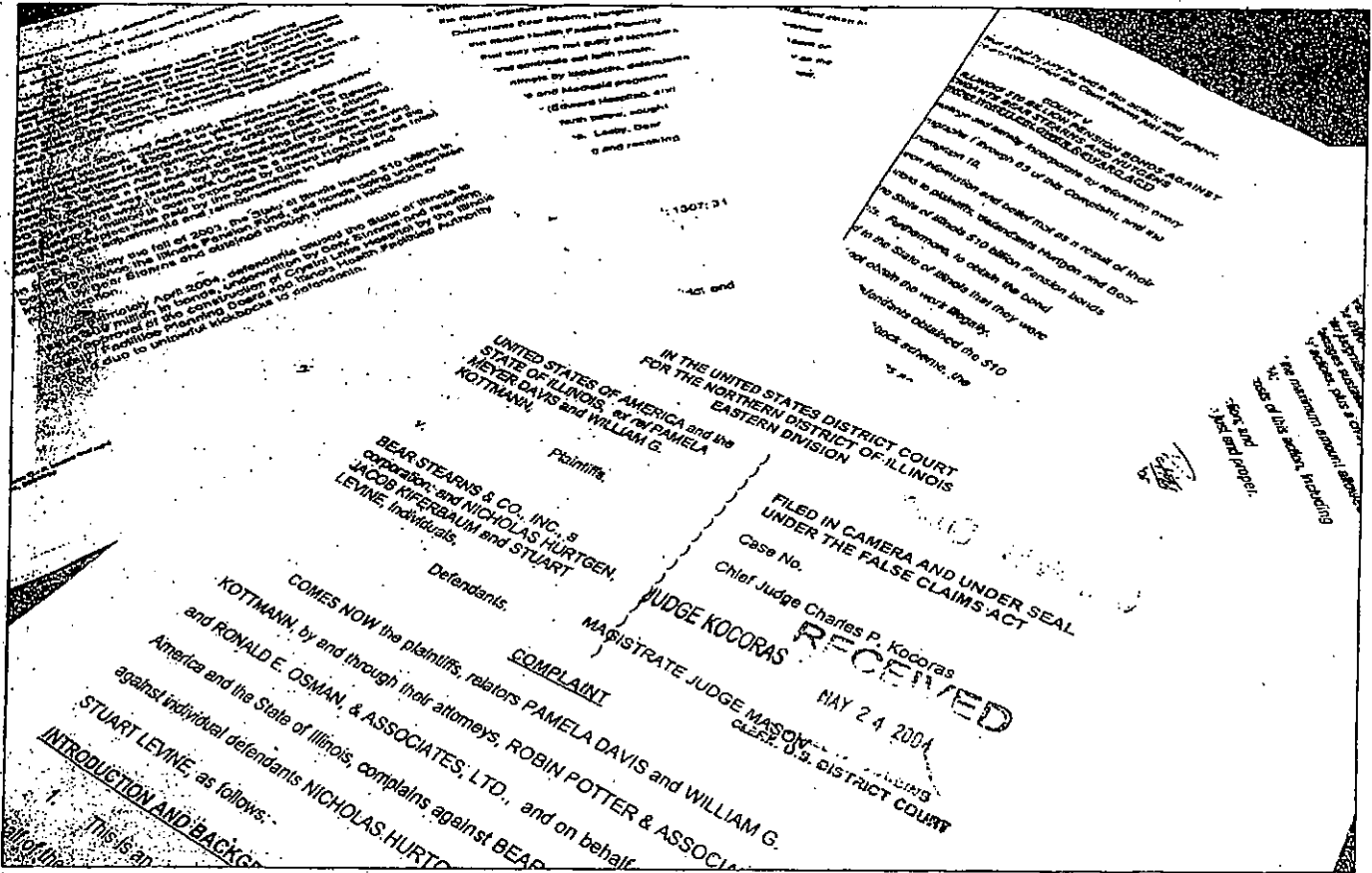
But in another deal, Edward Hospital didn't go along with the program, the lawsuit says.

When Edward approached the board to build a new hospital in nearby Plainfield, Edward wouldn't cave into pressure to hire Kiferbaum Construction Corp.

Kiferbaum and Levine are friends. Both serve on the board of the Rosalind Franklin University of Medicine and Science, formerly known as Finch University of Health Sciences/The Chicago Medical School in North Chicago. Kiferbaum's company has received tens of millions of dollars to build several projects at the school.

In a Jan. 6, 2004, meeting with Edward officials, Bear Stearns' Hurtgen told them "he was politically connected to the Illinois state government administration and can 'get things done.'" the suit reads.

# shakedown by power broker



The U.S. attorney is investigating the allegations made in the whistleblower lawsuit filed by Naperville's Edward Hospital. —TOM CRUZZ/SUN-TIMES

Hurtgen told the Edward officials that Levine and Beck would decide the fate of Edward's plans.

Edward officials pressed Kiferbaum to prove that he had influence with state regulators.

They got their proof during a meeting at the Egg Shell Cafe in Deerfield, the lawsuit alleges.

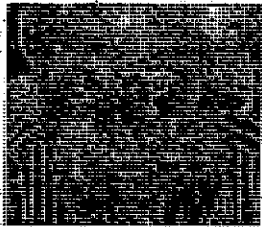
Kiferbaum met the Edward Hospital officials there, telling them he was "good friends" with Levine and a majority of the nine-member state board. Kiferbaum told them if his company wasn't used, Edward's plans would not be approved.

Also at the restaurant, at the same time, was Levine and Hurtgen, but they were sitting somewhere else.

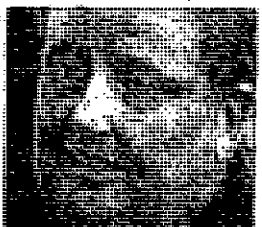
Levine walked over to the table and told the Edward officials that they could "trust" Kiferbaum and "that his word was good," the lawsuit says.

Shortly before the board meeting, Edward officials told Kiferbaum that he wouldn't be getting the contract because his fees were too high, and he lacked experience in building hospitals.

On April 21, the state board indicated its intentions to deny Edward's plans for a new hospital in nearby Plainfield and a delayed a final vote on Edward's medical office building, also in Plainfield.



Bob Kjellander  
National Republican Committeeman



Donald Udstuen  
Ryan pal admitted corruption

### Pension questions

Another alleged kickback scheme doesn't involve hospitals but pensions. The lawsuit contends that a \$10 billion deal to bail out state pension plans was "underwritten in part by Bear Stearns and obtained through unlawful kickbacks or remuneration."

"Had the State of Illinois known that defendants obtained the \$10 billion Pension Bond underwriting as part of a criminal kickback scheme, the State of Illinois would not have issued or approved Bear Stearns as an underwriter," the suit claims. As a result, the state is entitled to at least \$8 million to \$10 million in damages, the amount paid to

Bear Stearns, the suit alleges. The lawsuit, however, does not provide specifics nor does it say who paid or received the "kickbacks."

### Budget plugged

Bear Stearns was handpicked by Blagojevich's budget office as the lead underwriter for the administration's \$10 billion pension borrowing program last year, a deal designed to shore up the state's poorly funded employee pension systems.

The largest borrowing deal in state history was put on a legislative fast-track last year. It sprinted out of the General Assembly in April 2003, only six weeks after the governor proposed the plan as a

**"Had the State of Illinois known that defendants obtained the \$10 billion Pension Bond underwriting as part of a criminal kickback scheme, the State of Illinois would not have issued or approved Bear Stearns as an underwriter,"**

### THE LAWSUIT CLAIMS

key to helping bail Illinois out of a \$5 billion budget hole.

Republicans largely opposed the plan, describing it as fraught with risk. But one of the GOP's most prominent players wound up reaping an unexpected financial bonanza as a result of the deal.

Kjellander, a well-known Republican lobbyist who is the Midwest coordinator for President Bush's re-election campaign, was hired by Bear Stearns as a consultant to secure "state-level business."

In a company filing, Bear Stearns disclosed it had paid Kjellander's firm \$809,133 in fees in 2003 — an amount that stunned Democrats because of its size.

The state GOP's national committeeman and a personal friend of White House senior adviser Karl

Rove, Kjellander's involvement in the bond deal became an issue last May in his successful bid to retain the party post.

Conservative critics accused Kjellander of putting personal gain above party loyalty but could not block him from winning re-election to a four-year term as Republican national committeeman, a post he has held since 1995.

Kjellander said his consulting firm did not represent Bear Stearns before the Health Facilities Planning Board in any capacity. As for the questions about the pension bond deal he said, "I'm not a lawyer so I can't begin to respond to that. All I know is the bond deal was scrutinized every which way possible, and there was nothing wrong with it."

# Lawsuit spurs questions on how hospitals get OK'd

## Whistleblowers allege shakedown by state health planning board

BY LORI RACKI AND CHRIS FUSCO  
Staff Reporters

When a state board recently approved a new hospital for Crystal Lake, some members of the audience reportedly gasped in disbelief.

After all, the hospital plan appeared doomed. Staff had clearly recommended against it. The board itself had initially panned it. The only thing that saved it was a last-minute vote switch by a board member.

Mysterious? You bet. Now, answers to the mystery may be surfacing in a federal whistleblower lawsuit alleging kickbacks and shakedowns in the way new hospitals get approved in Illinois.

The lawsuit alleges that the Illinois Health Facilities Planning Board approved Mercy Health System's plans for the McHenry County hospital because it would be built by politically connected contractor Jacob Kiferbaum.

The civil suit, which is under seal but was obtained last week by

the Chicago Sun-Times, got the feds' attention. The governor's office has confirmed that a criminal investigation is under way.

Mercy officials released a written statement Friday saying it intends "to cooperate with the inquiry" but believes "we have acted properly."

Shortly after the whistleblower suit was filed, the U.S. attorney's office issued subpoenas to members of the planning board, a little-known panel that decides whether new hospitals and other major health-related projects get the go-ahead.

At the heart of both the lawsuit and the criminal investigation is whether the board's decisions are being made for the public good or to line the pockets of a few politically plugged-in power brokers.

The suit was filed last month by administrators of Naperville's Edward Hospital who wanted the board to approve a new hospital and medical office building in Plainfield.

Edward officials claim they were told they'd get board approval if they hired Kiferbaum Construction Corp. of Deerfield to build it.

The Edward administrators describe a March meeting with two lobbyists who had represented



Jacob Kiferbaum  
Contractor



Stuart P. Levine  
QUIT board

Mercy's Crystal Lake hospital project. Mike Noonan, with the firm Greenberg Traurig, which includes Chicago power broker Victor Reyes, and Herb Franks, a McHenry County lawyer and father of state Rep. Jack Franks (D-Woodstock).

State records show that Kiferbaum contributed \$1,500 to Jack Franks' campaign. Both Noonan and Herb Franks declined to comment for this story.

Edward officials claim the lobbyists told them they should hire Kiferbaum because the firm wielded influence on the state board. To back up their claims, they noted that board Vice Chairman Stuart Levine had personally assured Mercy's CEO that Kiferbaum could "get things done."

Levine and Kiferbaum serve on

the board of trustees of a North Chicago medical school, where Kiferbaum's firm has done tens of millions of dollars worth of construction work. Levine has pumped well over \$1 million into candidates' coffers.

The lawsuit alleges that Kiferbaum and Levine were joined by financial heavyweight Nicholas Hurtgen in pressuring Edward officials to give their business to Kiferbaum or see their plans shot down. Hurtgen heads the Chicago office of Bear, Stearns & Co. Inc., which stood to benefit by providing the financing for the projects, the suit claims.

Edward officials refused to hire Kiferbaum. The state board in April indicated it planned to deny Edward's Plainfield hospital request.

At that same April meeting, the board went against staff recommendation and narrowly approved Mercy Crystal Lake Hospital and Medical Center. The 70-bed, \$81 million hospital is to be built by Kiferbaum, according to the lawsuit. And it's being financed through \$69 million in state-issued bonds, which the suit says are being underwritten by Bear, Stearns.

When it appeared Mercy might not muster the five votes needed for approval, Levine whispered in the ear of fellow board member Dr.

Imad Almansaeer, who then changed his vote from a "pass" to a "yes," giving Mercy the go-ahead.

Shortly afterward, two McHenry County hospitals owned by Centegra Health System filed a lawsuit seeking to overturn the board's ruling, calling the decision "arbitrary and capricious."

State Sen. Pamela Althoff (R-Crystal Lake) called for the state to investigate the board's action.

Levine abruptly resigned from the board earlier this month. Almansaeer was a no-show for the board's June meeting. His term expires July 1.

Four new hospital proposals — including Edward's — still stand before the beleaguered board, which meets again in August. Officials at each of the hospitals except Edward said they were not being pressured to go with Kiferbaum for their construction or Bear, Stearns for their financing.

Adventist Health System executive Ernie Sadau said in a written statement that his company was "shocked" by the Sun-Times' report of the controversy swirling around the planning board.

"We sincerely hope that our application to build a hospital in Bolingbrook will not be unjustly affected by this news."

Contributing: Dave McKinney

## Feds investigate Mercy hospital permit

Publication Northwest Herald  
Date June 26, 2004  
Section(s) Main  
Page

By JEFF KOLKEY

[jkolkey@nwherald.com](mailto:jkolkey@nwherald.com)

and ERIC R. OLSON

[eolson@nwherald.com](mailto:eolson@nwherald.com)

The U.S. attorney general's office is conducting a criminal investigation into a decision to approve a permit to build Mercy Crystal Lake Hospital and Medical Center, officials confirmed Friday.

Federal prosecutors have subpoenaed documents from the Illinois Health Facilities Planning Board, said Jeffrey Mark, executive secretary for the board.

Mercy officials said they are cooperating.

"We can tell you that we believe that we have acted properly," Mercy spokeswoman Barb Bortner said in a written statement. "In addition, we have been cooperative and intend to continue to cooperate with the inquiry."

Mercy's proposal to build the \$81 million hospital was approved April 21 in a controversial vote in which one planning board member changed his vote after a whispered conversation with a colleague.

The proposal was approved despite failing to meet most state criteria for building a hospital.

Since the vote, the board members involved in the whispered exchange, Stuart Levine and Imad Almanaseer, have quit. Levine resigned June 7, and Almanaseer asked not to be reappointed when his term expires July 1.

Levine, a wealthy lawyer who has donated more than \$1 million to political candidates since 1994, may be the focus of the investigation. A sealed lawsuit filed by Edward Hospital in Naperville claims that Levine used his influence with the planning board to win contracts for friends in the construction and finance industries, according to a report in the Chicago Sun-Times.

The U.S. attorney general's office declined to comment on the case.

But Cheryl Jackson, spokeswoman for Gov. Rod Blagojevich,

said an independent state inquiry started several weeks ago was halted at the request of federal prosecutors.

"We asked for the inspector general to investigate," Jackson said. "Soon after the inspector general began their investigation, the U.S. attorney's office asked for the inspector general to hold off on their investigation until they had completed their own investigation."

Health facilities planning board members are appointed by Blagojevich, but Jackson said the governor will take no action until the investigation concludes.

Centegra Health System, the largest health-care provider in McHenry County, is suing to invalidate the planning board's decision to allow the 70-bed hospital at Route 31 and Three Oaks Road in Crystal Lake. The lawsuit claims that the board disregarded its own rules when it approved the hospital.

"We raised our concern after the board's approval by filing the appeal with the McHenry County Circuit Court," Centegra spokesman Geoff Huys said. "Others are now having some concerns about the actions of the planning board."

Planning board member Danalynn Rice of Marion voted against the Mercy proposal. She said she was unaware of any wrongdoing by her colleagues on the board.

"It's unfortunate if those people have done anything they shouldn't have done," Rice said. "I'm sorry for that if that's happened. They made their choice."



OFFICE OF THE GOVERNOR  
207 STATE CAPITOL, SPRINGFIELD, ILLINOIS 62706

ROD BLAGOJEVICH  
GOVERNOR

ADMINISTRATIVE ORDER

Number 1 (2004)  
July 7, 2004

**MORATORIUM ON ALL BUSINESS OF THE  
HEALTH FACILITIES PLANNING BOARD**

Pursuant to its authorizing legislation, "[t]he State [Health Facilities Planning] Board shall meet at least once each quarter, or as often as the Chairman of the State Board deems necessary, or upon the request of a majority of the members." 20 ILCS 3960/4 (West 2004). The Board most recently met on June 15 and June 16, 2004. In light of recent allegations concerning the propriety of certain Board actions, the Governor hereby imposes a moratorium on all meetings and actions of the Board until the Board is reconstituted by law.

Any questions regarding the implementation of this Order should be directed to the Governor's Office.

Public Act 093-0889

HB7307 Enrolled

LRB093 22682 AMC 52334 b

AN ACT concerning executive agencies.

Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:

Section 5. The Illinois Health Facilities Planning Act is amended by changing Sections 4, 4.2, and 19.6 as follows:

(20 ILCS 3960/4) (from Ch. 111 1/2, par. 1154)  
(Section scheduled to be repealed on July 1, 2008)

Sec. 4. Health Facilities Planning Board; membership; appointment; term; compensation; quorum. There is created the Health Facilities Planning Board, which shall perform the functions described in this Act.

The State Board shall consist of 5 voting members. Each member shall have a reasonable knowledge of health planning, health finance, or health care at the time of his or her appointment. No person shall be appointed or continue to serve as a member of the State Board who is, or whose spouse, parent, or child is, a member of the Board of Directors of, has a financial interest in, or has a business relationship with a health care facility.

Notwithstanding any provision of this Section to the contrary, the term of office of each member of the State Board is abolished on the effective date of this amendatory Act of the 93rd General Assembly and those members no longer hold office.

~~Notwithstanding any provision of this Section to the contrary, the term of office of each member of the State Board is abolished on the effective date of this amendatory Act of the 93rd General Assembly, but all incumbent members shall continue to exercise all of the powers and be subject to all of the duties of members of the State Board until all new members of the 9-member State Board authorized under this amendatory Act of the 93rd General Assembly are appointed and take office. Beginning on the effective date of this amendatory Act of the 93rd General Assembly, the State Board shall consist of 9 voting members.~~

The State Board shall be appointed by the Governor, with the advice and consent of the Senate. Not more than 3 5 of the appointments shall be of the same political party at the time of the appointment. No person shall be appointed as a State Board member if that person has served, after the effective date of Public Act 93-41 this amendatory Act of the 93rd General Assembly, 2 3-year terms as a State Board member, except for ex officio non-voting members.

The Secretary of Human Services, the Director of Public Aid, and the Director of Public Health, or their designated representatives, shall serve as ex-officio, non-voting members of the State Board.

Of those members initially appointed by the Governor under this amendatory Act of the 93rd General Assembly, 2 shall serve

for terms expiring July 1, 2005, 2 shall serve for terms expiring July 1, 2006, and 1 shall serve for a term expiring July 1, 2007. Of those members initially appointed by the Governor under this amendatory Act of the 93rd General Assembly, 3 shall serve for terms expiring July 1, 2004, 3 shall serve for terms expiring July 1, 2005, and 3 shall serve for terms expiring July 1, 2006. Thereafter, each appointed member shall hold office for a term of 3 years, provided that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term and the term of office of each successor shall commence on July 1 of the year in which his predecessor's term expires. Each member appointed after the effective date of this amendatory Act of the 93rd General Assembly shall hold office until his or her successor is appointed and qualified.

State Board members, while serving on business of the State Board, shall receive actual and necessary travel and subsistence expenses while so serving away from their places of residence. A member of the State Board who experiences a significant financial hardship due to the loss of income on days of attendance at meetings or while otherwise engaged in the business of the State Board may be paid a hardship allowance, as determined by and subject to the approval of the Governor's Travel Control Board.

The Governor shall designate one of the members to serve as Chairman and shall name as full-time Executive Secretary of the State Board, a person qualified in health care facility planning and in administration. The Agency shall provide administrative and staff support for the State Board. The State Board shall advise the Director of its budgetary and staff needs and consult with the Director on annual budget preparation.

The State Board shall meet at least once each quarter, or as often as the Chairman of the State Board deems necessary, or upon the request of a majority of the members.

Three ~~Five~~ members of the State Board shall constitute a quorum. The affirmative vote of 3 ~~5~~ of the members of the State Board shall be necessary for any action requiring a vote to be taken by the State Board. A vacancy in the membership of the State Board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the State Board as provided by this Act.

A State Board member shall disqualify himself or herself from the consideration of any application for a permit or exemption in which the State Board member or the State Board member's spouse, parent, or child: (i) has an economic interest in the matter; or (ii) is employed by, serves as a consultant for, or is a member of the governing board of the applicant or a party opposing the application.

(Source: P.A. 93-41; eff. 6-27-03.)

(20 ILCS 3960/4.2)

(Section scheduled to be repealed on July 1, 2008)

Sec. 4.2. Ex parte communications.

(a) Except in the disposition of matters that agencies are authorized by law to entertain or dispose of on an ex parte basis including, but not limited to rule making, the State Board, any State Board member, employee, or a hearing officer shall not engage in ex parte communication, ~~after an~~



~~application for a permit is received~~, in connection with the substance of any pending or impending application for a permit with any person or party or the representative of any party. This subsection (a) applies when the Board, member, employee, or hearing officer knows, or should know upon reasonable inquiry, that the application is pending or impending.

(b) A State Board member or employee may communicate with other members or employees and any State Board member or hearing officer may have the aid and advice of one or more personal assistants.

(c) An ex parte communication received by the State Board, any State Board member, employee, or a hearing officer shall be made a part of the record of the ~~pending~~ matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.

(d) "Ex parte communication" means a communication between a person who is not a State Board member or employee and a State Board member or employee that reflects on the substance of a pending or impending State Board proceeding and that takes place outside the record of the proceeding. Communications regarding matters of procedure and practice, such as the format of pleading, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications. Technical assistance with respect to an application, not intended to influence any decision on the application, may be provided by employees to the applicant. Any assistance shall be documented in writing by the applicant and employees within 10 business days after the assistance is provided.

(e) For purposes of this Section, "employee" means a person the State Board or the Agency employs on a full-time, part-time, contract, or intern basis.

(f) The State Board, State Board member, or hearing examiner presiding over the proceeding, in the event of a violation of this Section, must take whatever action is necessary to ensure that the violation does not prejudice any party or adversely affect the fairness of the proceedings.

(g) Nothing in this Section shall be construed to prevent the State Board or any member of the State Board from consulting with the attorney for the State Board.

(Source: P.A. 91-782, eff. 6-9-00; revised 1-28-04.)

(20 ILCS 3960/19.6)

(Section scheduled to be repealed on July 1, 2008)

Sec. 19.6. Repeal. This Act is repealed on July 1, 2006  
2008.

(Source: P.A. 93-41, eff. 6-27-03.)

Section 10. The Lobbyist Registration Act is amended by changing Section 8 as follows:

(25 ILCS 170/8) (from Ch. 63, par. 178)

Sec. 8. Contingent fees prohibited.

No person shall retain or employ another to lobby with respect to any legislative, executive, or administrative action promote or oppose legislation for compensation contingent in whole or in part upon the outcome of the action passage or defeat of any legislation, or the approval or vote

~~of any legislation by the Governor, and no person shall accept any such employment or render any such service for compensation contingent upon the outcome of the legislative, executive, or administrative action passage or defeat of any legislation or the approval or veto of any legislation by the Governor.~~  
(Source: P.A. 76-1848.)

Section 99. Effective date. This Act takes effect upon becoming law.

Effective Date: 8/9/2004

Floor Actions

Date	Action
8/9/2004	Public Act.....093-0889

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

NORTHERN ILLINOIS MEDICAL )  
CENTER, MEMORIAL MEDICAL )  
CENTER, AND CENTEGRÀ HEALTH )  
SYSTEM, )

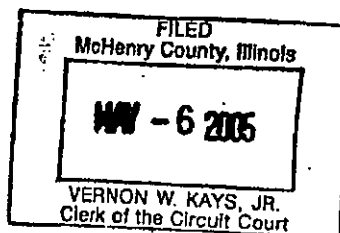
Plaintiff )

vs. )

ILLINOIS HEALTH FACILITIES )  
PLANNING BOARD, ILLINOIS )  
DEPARTMENT OF PUBLIC HEALTH, )  
MERCY CRYSTAL LAKE HOSPITAL )  
AND MEDICAL CENTER, INC. )  
MERCY HEALTH SYSTEM )  
CORPORATION, BLI L. BEEDING JR. )  
AND THE BEEDING GROUP, )

Defendants )

CASE NO: 04 MR 106



COPY

MEMORANDUM OPINION AND ORDER

This cause came before the Court on Count I of the Complaint filed by the Plaintiffs' Northern Illinois Medical Center, Memorial Medical Center and Centegra Health System for Administrative Review of the Decision of Illinois Health Facilities Planning Board ("State Board") pursuant to 735 ILCS 5/3-110, 5/3-111 20 ILCS 3960/11. Plaintiffs seek reversal of the Administrative Decision of the State Board which granted a permit to the Mercy Crystal Lake Hospital and Medical Center, Inc. ("Mercy Hospital") to construct a new hospital in Crystal Lake. Plaintiffs contend that the State Board's actions in approving the issuance of the permit were against the manifest weight of the evidence and arbitrary and capricious, particularly in light of the negative reports of the Illinois Department of Public Health ("State Agency").

The Court has reviewed all the relevant pleadings, including Count I of the Complaint for Administrative Review, Plaintiffs' Motion to Reverse Administrative Decision, the Memorandum in support of said Motion, the Response of Mercy Hospital and Mercy Health System Corporation and Reply of Plaintiffs thereto. The Court has further reviewed the entire certified record of administrative proceedings which includes the Application for Permit, documents in support of the application, the State Agency reports, the Record of Public Hearing on September 29, 2003 and the transcripts of hearings before the State Board on December 17, 2003 and April 21, 2004, with corrections made at the June 15, 2004 State Board meeting. The Court has reviewed the case law cited by the parties in their written submissions and has had the benefit of the oral arguments of the attorneys for the Plaintiffs and Defendants.

### **BACKGROUND**

The Illinois Health Facilities Planning Act was instituted "to establish a procedure designed to reverse the trends of increasing in costs of health care resulting from unnecessary construction or modification of health care facilities ... and to improve the financial ability of the public to obtain necessary health services and to establish an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public". 20 ILCS 3960/2 To that end, the Planning Act provided for the creation of a Board and defined its duties and functions. The powers and duties of the State Board include the prescribing of rules, regulations, standards, criteria and procedures to carry out the provisions of the Act. 20 ILCS 3960/12 The regulations and criteria are contained in Sections 1110 through 1260 of Title 77 of the Illinois Administrative Code. A health care facility cannot be modified or constructed unless the Board issues a permit. 20 ILCS 3060/5.1 In evaluating an application for

permit or Certificate of Need, the Board is assisted by Illinois Department of Public Health which serves as administrative and staff support for the Board. 20 ILCS 3960/4

On July 11, 2003, Mercy Hospital filed an Application for Certificate of Need (CON) with the Illinois Health Facilities Planning Board. The application requests a permit for establishment and construction of a new 70 bed hospital with adjacent office facilities for 45 physicians in Crystal Lake, Illinois. The proposed hospital would have 56 medical/surgical beds; 10 obstetrics beds and 4 intensive care beds. The hospital site is located within a MSA, known as area A-10. The initial application was deemed incomplete on July 24, 2003 and by letter of that date, additional information was requested. That information was provided on July 30, 2003, which included a listing of all hospitals within 45 minutes of the proposed facility.

A public hearing was conducted on September 29, 2003 in Crystal Lake, Illinois. In addition to persons associated with Mercy Hospital and its parent corporation, Mercy Health System, hundreds of interested persons testified or offered written submissions both in favor of and in opposition of the proposed project.

The Illinois Department of Public Health issued its initial report evaluating Mercy Hospital's application. The report found that overall, Mercy Hospital did not meet the review criteria of Illinois Administrative Code, Sections 1110 and 1120. The State Agency submitted its report to the Board on December 17, 2003 and the Board conducted a hearing on that same date. At the meeting the Board denied the application.

Thereafter, Mercy Hospital submitted additional information for the project to the State Agency and requested another hearing date before the State Board. A Supplemental Agency Report was prepared based on the new materials and submitted to the State Board at its April 21, 2004 meeting. The report did change some of its findings in the supplemental report dealing

with financial and economic considerations under Section 1120 of the Illinois Administrative Code. The evaluations pertaining to Section 1110 remained unchanged. At the Board meeting on April 21, 2004, the Board approved Mercy Hospital's application. The State Agency issued a letter on May 15, 2004 informing the applicant of the State Board's approval of the project.

On May 26, 2004, the Plaintiffs filed its Complaint for Administrative Review of the State Board's decision to grant the CON to Mercy Hospital. The Plaintiffs assert that the decision of the State Board should be reversed because (a) it is against the manifest weight of the evidence; (b) the issuance of the permit was arbitrary and capricious; (c) the vote of the Board on April 21<sup>st</sup> did not specify the action proposed and the Board did not make any findings; and, (d) the voting process was improper and evidence of arbitrary conduct.

## REVIEW OF THE BOARD'S DECISION

### A. MANIFEST WEIGHT OF THE EVIDENCE:

The Plaintiffs contend that the Decision of the Board to issue the permit to Mercy Hospital for the establishment and construction of a new hospital in Crystal Lake, Illinois was against the manifest weight of the evidence.

If factual findings are made by an administrative agency, they are viewed as prima facie correct and a reviewing court will not disturb those findings, unless they are contrary to the manifest weight of the evidence. BRIDGESTONE/FIRESTONE, INC. vs. DOHERTY, 305 Ill. App. 3d 141 (1999).

At the administrative hearing on April 21, 2004, no factual findings were made by the State Board. On May 14, 2004, the executive secretary of the Board issued a letter notifying Mercy Hospital that the State Board had approved the Application for Permit. That letter

indicated that Board based its approval upon the project's substantial conformance with the applicable standards and criteria of Part 1110 and 1120. It further stated that, "In arriving at a decision, the State Board considered the findings contained in the State Agency Report, the application material, the State Agency's Report of Public Hearing held on September 29, 2003 and any testimony made before the State Board".

The aforesaid letter does not set forth specific findings of fact. It does state the Board's conclusions and the basis therefore. Section 10 of the Planning Act does not require the Board to specify its findings of facts and conclusions unless negative action on an Application is taken. 20 ILCS 3960/10 In addition, Section 1130.680 of the Administrative Code requires the Board to specify its "finding of fact and conclusions of law" only when the Board denies an application.

ACCESS CENTER FOR HEALTH, LTD. Vs. HEALTH FACILITIES PLANNING BOARD,  
283 Ill App 3d 227 (1996).

In the case at bar, the State Board did not deny Mercy Hospital's Application for Permit or CON. Even if findings were necessary, that may not be enough for the trial court to reverse the Board's decision. If the record contains competent and sufficient evidence that supports the agency's decision, the decision should be affirmed. CATHEDRAL ROCK OF GRANITE CITY, INC. vs. ILLINOIS HEALTH FACILITIES PLANNING BOARD. 308 Ill App 3d 529 (1999).

An administrative agency's decision is against the weight of the evidence only if the opposite conclusion is clearly evident. The mere fact that the opposite conclusion is reasonable or that the reviewing court may have ruled differently does not justify reversal of an administrative decision. A trial court may not reweigh the evidence or make an independent

determination of the facts. ABRAHAMSON vs. ILLINOIS DEPARTMENT OF PROFESSIONAL REGULATION, 153 Ill. App 2d 76 (1992)

In order to approve and authorize the issuance of a permit if it finds the State Board must find that the proposed project is consistent with the orderly and economic development of such facilities and is in accord with standards, criteria or plans of need adopted and approved pursuant to provisions of Section 12 of 20 ILCS 3960.

Section 12 of the Illinois Health Facilities Planning Act authorizes the State Board to prescribe rules, regulations, criteria and procedures to carry out the purposes of the Act. That section further enumerates certain factors the Board shall consider in developing health care facility plans. Those factors include the number of existing and planned facilities offering similar programs, the extent of utilization of existing facilities, the availability of facilities which may serve as alternatives or substitutes and the availability of personnel necessary to operate the facility. 20 ILCS 3960/12(1) and (4).

Acting as an administrative and support arm of the State Board, the State Agency prepared two reports for the Board's review and consideration. Those reports consider the application and supporting documentation submitted. The State Agency evaluated Mercy Hospital's application with respect to financial and economic criteria set forth in Section 1120 of Title 77 of the Illinois Administrative Code and the general review criteria and needed related criteria set forth in Section 1110 of the Illinois Administrative Code 77 Illinois Adm. Code. The Administrative Code has the force and effect of law. MEDCAT LEASING CO. vs. WHITLEY, 253 Ill App 3<sup>rd</sup> 801 (1993).

The Agency report completed for submission to the State Board Hearing on December 17, 2003 found that the Mercy Hospital Application, was in conformity with three of the four



applicable economic feasibility criteria and that the financial feasibility criteria were not applicable. The Agency report found that aside from meeting the background of applicant criterion (1110.230), that Mercy Hospital met none of the other criteria under Section 1110, the general or need related criteria, including the criteria for a variance to bed need.

At the December 17, 2003 State Board Hearing, Mercy Hospital had various representatives present who presented testimony regarding the application and in response to questioning by Board members. Those present for Mercy were Javon Bea, President of Mercy Hospital; Richard Gruber, Vice President of Mercy Hospital; Dan Colby, President of mercy Harvard Hospital and three attorneys representing Mercy. The Board addressed concerns regarding the bed variance, the shortage of obstetrical beds in the M.S.A., the additional physicians that Mercy would bring to staff its proposed hospital and the impact of the hospital on staffing in other area hospitals. At the conclusion of the hearing, the State Board denied Mercy Hospital's application. No findings were made. However, before the Notice of Intent to Deny was sent on January 27, 2004, Mercy Hospital on January 15, 2004 sent a letter with supplemental information requesting leave to reappear before the Board at the February meeting.

After receipt of the supplemental information from Mercy Hospital, the State Agency issued another report for submission to the Board at its April 21, 2004 meeting. No hearing was held regarding Mercy's application between December 17 and the April 21<sup>st</sup> meeting. The report of the State Agency for the April hearing contained the same findings regarding the general criteria and needed related criteria; that being that except for applicant meeting the background criteria, Mercy Hospital did not meet the other 1110 criteria. The State Agency found that with the change in cost submitted by Mercy in the supplemental materials, Mercy now met all of the economic feasibility factors.

At the hearing on April 21, 2004 before the Board representatives of Mercy appeared as well as its legal counsel. With respect to bed need, Mercy Hospital had submitted data from the Center for Disease Control which indicated that 76% of the hospitals in the United States have less than 100 beds. Upon questioning, hospital personnel acknowledged that this study was not Illinois or McHenry County based but rather reflected nationwide statistics. Documentation regarding the decrease in average patient stays was discussed using 980 figures versus today. Testimony was received regarding the 45 new physicians Mercy would bring to the proposed hospital, which physicians would be in their employ. Mercy representatives opined that with these new doctors in place, patients who resided in the M.S.A. who sought treatment outside of the M.S.A. would return for care. There was discussion concerning the findings by the State Agency on the general criteria and need criteria not being met. Board member Levine believed that the rules were outdated and needed to be revised to reflect current data. He was particularly impressed with the 45 physicians who would be moving to McHenry County to staff the proposed hospital. At the conclusion of the hearing, the Board voted to approve the application and the motion passed. On May 14, 2003, a letter advising of the approval of the application for permit was sent to Mercy Hospital.

Plaintiffs assert that the decision of the State Board is against the manifest weight of the evidence because the proposed project was not in accordance with the standards, criteria or plans of need adopted and approved pursuant to the provisions of the Illinois Health Facilities Planning Act. In particular, the Plaintiffs direct the Court to the State Agency reports wherein it was noted that Mercy Hospital's proposed project was not in conformity with the general review criteria and need related criteria under Sections 1110 of the Illinois Administrative Code.

The Defendants counter Plaintiffs assertions by directing the Court to the standard of review and the discretionary authority the State Board has under 1130.660 of the Illinois Administrative Code. That provision states in pertinent part the follows:

"The State Board shall consider the application and any supplemental information or modification submitted by the applicant, IDPH report(s), the public hearing testimony, if any and other information coming before it in making its determination whether to approve the project. The applications are reviewed to determine compliance with review criteria enumerated in 77 Ill. Adm. Code 1110 and 1120. The failure of a project to meet one or more review criteria, as set forth in 77 Ill. Adm. Code 1110 and 1120 shall not prohibit the issuance of a permit."

The applicability of Section 1130.660 has been addressed in a number of cases, which cases have been cited by the parties herein. With the exception of the Court in SPRINGBOARD, the Courts have recognized that the State Board does have the authority to approve an application where one or more of the review criteria were not met. DIMENSIONS MEDICAL CENTER, LTD. Vs. SUBURBAN ENDOSCOPY CENTER, 298 Ill App 3d 93 (1998). ACCESS CENTER FOR HEALTH LTD. vs. HEALTH FACILITIES PLANNING BOARD, 283 Ill App 3d 227 (1996), CATHEDRAL ROCK OF GRANITE CITY vs. ILLINOIS HEALTH FACILITIES PLANNING BOARD, 308 Ill. App 3d 529 (1999) and MARION HOSPITAL CORPORATION vs. ILLINOIS HEALTH PLANNING BOARD, FACILITIES SPRINGWOOD is distinguishable from the aforementioned cases because the Court did not consider the applicability of 1130.660 in that case. SPRINGWOOD ASSOCIATES vs. HEALTH FACILITIES PLANNING BOARD, 269 Ill App 3d 944 (1995).

However, in each of the cases where the Courts upheld the Board's decision to exercise its discretionary authority, the courts looked to the record to determine if there was adequate evidence to support the Board's decision. None of the cases cited by the Defendants have State

Agency Reports that found lack of conformity with essentially all of the need related and general criteria as in the case at bar.

The letter of May 14, 2004, issued on behalf of the State Board found substantial conformance with the applicable standards and criteria of part 1110 and 1120 based on its consideration of the findings contained in the State Agency reports, the application material, the report of public hearing on September 29, 2003 and any testimony made before the State Board.

At the public hearing the majority of those who testified were in opposition to the proposed project. Almost 2000 letters were submitted both in support of and in opposition to Mercy Hospital. More letters were in opposition. Many of the letters submitted were form letters used by supporters of Plaintiffs' and Defendants' respective positions. Some of the letters were from Mercy's website, which did not allow negative input.

The State Agency Reports submitted to the State Board for hearings on December 17, 2003 and April 21, 2004 found that the proposed project was not in conformity with the following general review and need related criteria: 110.320(a): Establishment of Additional Hospitals, 110.320(b); Allocation of Additional Beds, 1110.520(a); Unit Size; 1110.520(b); Variances to Bed Needs, 110.520(b)(2); Medically Underserved Variance, 1110.230(a); Location, 1110.230(c); Alternatives, 1110.230(d); Need for the Project, 1110.230(e); and Size of the Project. The project was in conformity with 1110.230(b), Background of Applicant, which provided that the applicants complied with the necessary licensure and certification information required and are fit, willing, able and have the necessary background to provide a proper standard of healthcare service for the community.

In response to the adverse reports of the State Agency, Mercy Hospital addressed the growing population trends in McHenry County, the shortage of physicians in McHenry County

and the changes in the practice of medicine that have reduced the average length of patient stays in hospitals. Mercy Hospital asserts that as a result of the decline in the patient length of stays, there is no longer a need for the requirement of 100 medical/surgical beds as established in 1980 and that only 67 beds are needed to serve the same number of patients.

Section 1110.320(2) of the Illinois Administrative Code requires that hospitals within a M.S.A. must have a minimum of 100 medical/surgical beds. Hospitals situated outside a M.S.A. do not have such a limitation. Mercy Hospital proposes 56 med/surg. beds with initially 32 of the entire 70 beds being built out and the remaining 38 being shells for later construction. The Defendant hospital did not identify how the 32 beds would be allocated. At the Board hearing of April 21, 2004, Mr. Glaser, on behalf of Mercy Hospital stated that all 70 beds would immediately be built out, contrary to the data in the application and earlier testimony. (R3541) (R.14) Section 1110.230.530(a)(1)(A) provides that a new obstetric unit with a M.S.A. must have 20 beds. Mercy proposal is for 10 obstetric beds.

Mercy Hospital submitted material based on average length of patient stays in 1980 to the present, claiming that 67 beds would now provide care for the same number of patients in a 100 bed facility in 1980. The documentation presented gives nationwide figures with no specific data for Illinois.

The 100 bed standard was established in 1992 and not 1980 and is applicable only to hospitals within a Metropolitan Statistical Area, such as the proposed location. Furthermore, according to the bed inventory data, the A-10 planning area (M.S.A.), where the proposed facility would be located, has 35 excess medical surgical beds and 7 excess ICU beds. Assuming that the present average length of patient stays reduces the need for beds, then the proposed additional beds at Mercy Hospital would only increase the surplus but also affect the target

utilization rates at neighboring hospitals, which is also taken into account under the need related criteria. Presently the hospitals in proximity to the proposed project are generally not operating at the State's target utilization rates.

The only shortage of beds in the M.S.A. is obstetrical beds, which shortage is 20 beds. Mercy's application proposes 10 obstetrical beds. Mercy Health System Corporation operates Mercy Harvard Hospital, which is within M.S.A. 10. Mercy Harvard Hospital closed its obstetrical unit approximately three years ago and has not reopened since Mercy acquired the hospital approximately two years ago.

There are located within planning Area 10 three hospitals which offer the same services as the proposed project. Two of these three hospitals are within 30 minutes of the proposed facility. These are Northern Illinois Medical Center in McHenry and Memorial Medical Center in Woodstock. The third hospital, Mercy Harvard is within 45 minutes of the proposed facility. Additionally, there are four other hospitals not within the planning area, but within 30 minutes of the site of Mercy Hospital. They are Advocate Good Shepherd, Barrington, St. Alexius Medical Center, Hoffman Estates, Sherman Hospital, Elgin and Provena St. Joseph Hospital in Elgin. Each of these health facilities offer the same services as the proposed hospital.

Defendant acknowledges the presence of these other hospitals and that Mercy will offer no services not already provided by these facilities. However, Mercy contends that with the growth of population within the county, the travel times will increase in the future and thereby increasing the travel times in excess of 30 minutes to those hospitals. The estimates of future travel times do not take in account road expansion projects which might be undertaken. The evidence on the travel times and future projections offered by the Defendant are in some instances inaccurate and other instances speculative.

Mercy opines that a significant percentage of patients are leaving the planning area for health care and that with the establishment of a new hospital, a good percentage of those patients will return to the area for treatment. Competent evidence is lacking to support this opinion. Evidence at the public hearing and elsewhere in the record shows that approximately 75% of the residents within zip code targeted area received care at existing hospitals and that other patients leaving the target area are doing so for specialized or tertiary care. It is also unclear if Mercy's opinion takes into account the services received at the hospitals located within 30 minutes but outside of area A-10.

The review criteria does provide for variance for bed need. 77 Ill. Adm. Code 1110.530(b)(2). In order to satisfy the variance to bed need requirements, Mercy Hospital had to document that access to the proposed service is restricted in the planning area by documenting at least one of the following: (i) the absence of service within the planning area; (ii) limitations on government funded or charity patients; (iii) restrictive admissions policies of existing providers; (iv) the area population and existing care system exhibits indicators of median care problems such as an average family income level below the state poverty level, high infant mortality or designation as a "Health Manpower Shortage Area; or (v) the project will provide for a portion of the population who must currently travel over 45 minutes to receive service. Mercy Hospital was found to have documented none of the aforesaid criteria in order to receive a variance. Evidence presented showed that seven hospitals are within 45 minutes and all offer the same services Mercy will offer, if not more. Travel studies submitted by mercy were in some ways misleading as they included round trip travel times which is not the standard for review or were based on future projections. No evidence whatsoever was submitted to document items (i) through (iv).

Much was made by the Board at the April 21, 2003 hearing about the 45 physicians Mercy Hospital would bring to staff its hospital and adjacent offices. It is unclear from the evidence where these physicians will come from. However, Mercy did indicate that with the opening a new hospital, it would close three of its physician staffed facilities now located in and Cary and Crystal Lake. Board member, Mr. Levine, commented at the April 21<sup>st</sup> meeting how impressed he was that these new physicians would help make a dent in the shortage of physicians in the area. There was a chart provided showing a physician shortage in McHenry County. The underlying data for the information in the chart is unknown. While the Board addressed the shortage of physicians in the area, it appears not to have adequately considered the shortage of healthcare support staff. The evidence in the record reflects that there is a shortage of health care personnel needed to staff hospitals. There are not enough nurses, medical technicians and laboratory technicians to staff hospitals nationwide and in McHenry County. Testimony at the public hearing expressed a concern that the new hospital would not be able to adequately staff its facility and would have to recruit medical personnel from other area hospitals, thereby causing shortages of necessary and required staff in those facilities. Area hospitals have experienced staffing problems which have resulted in their not being able to maximize the use of their facilities.

The record further documents that the proposed hospital would adversely impact the utilization rates at hospitals within the M.S.A. and nearby. Mr. Ryder, of Advocate Health Care in Barrington testified at the public hearing that more than 25% of its patients are from the towns targeted by Mercy Hospital. A study submitted at the public hearing by Plaintiffs and prepared by Deloitte and Touche, at Plaintiff's instance concluded that Northern Illinois Medical Center and Memorial Medical Center, both in A-10 would lose approximately 9,500 cases annually.



Upon a review of the record, there is not sufficient and competent evidence supporting the State Board's decision to grant the issuance of the permit to Mercy Hospital. While the Board has the authority to issue a permit when all of the criteria under 1110 are not met, there needs to be some rationale basis to excuse compliance with the criteria. The record does not reflect that Mercy Hospital presented sufficient evidence showing that the proposed hospital facility was needed, was the most effective or least costly alternative and was in a medically underserved planning area. Sufficient evidence did not establish that the project warranted a variance to bed need.

Mercy Hospital's application did not meet the necessary general review and need related criteria and the factors set forth in 20 ILCS 3960/12. The written submissions and oral testimony did not rebut the Agency's findings that Mercy Hospital's application was not in conformity with the criteria set forth in 77 Ill. Adm. Code 1110. This Court finds that the State Board's decision is against the manifest weight of the evidence.

#### B. ARBITRARY AND CAPRICIOUS

The Plaintiffs also contend that the Board's decision was arbitrary and capricious. The Illinois Supreme Court in GREER vs. ILLINOIS HOUSING DEVELOPMENT AUTHORITY, 122 Ill 2d 462 (1988) set forth guidelines to be applied by the Court in determining whether the decision of an Agency is arbitrary and capricious. Those guidelines direct the Court to consider: 1. Did the Agency rely on factors the legislature did not intend the agency to consider; 2. Did the Agency fail to consider an important aspect of the problem, or 3. Did the Agency offer an explanation for its decision which runs counter to the evidence before the agency or which is so

implausible that it could not be ascribed to a difference in view or the product of agency expertise.

The State Board in the case at bar excused the mercy Hospital's failure to comply with essentially all of the general and need related criteria. The only rationale for the Board's actions capable of being gleaned from the hearing on April 21<sup>st</sup> was that the rules and review criteria are outdated and that this new facility will help fill the shortage of physicians in the service area.

At that April Board meeting, Board members expressed concern about the Board's decision being termed "arbitrary and capricious" if it approved the Mercy Hospital Application for Permit in light of the State Agency's two reports showing non conformity with the 1110 criteria. In response thereto, Board member Stuart Levine stated that the rules and criteria are "woefully out of date". He further stated that he has participated in "a lot of applications that were granted that had complete negative findings. And those occurred in instances where there were valid reasons and justifications given in each of the areas that, of course, are in the Board's discretion to do". R 3264. Yet, Mr. Levine did not offer any explanation or justification for the Board's approval in the instant case, other than he was impressed with the 45 new physicians who would be coming to McHenry County and who would make a dent in the physician shortage.

The Board hearing on April 21 focused in large part on the new physicians who would be employed by Mercy Hospital. However, the rules governing the Board's decisions do not provide for criteria which address physician shortages. The documentation provided by Mercy regarding physician shortages was done by Solucient and is in the record at page 2913. The chart shows that Crystal Lake, the location of the proposed hospital, has no physician shortage. Lake in the Hills, Cary and Algonquin are the other target service areas. No data is provided for

physicians in Lake in the Hills. On Solucient's documentation, Cary and Algonquin do show physician shortages. The source for the data is not disclosed. Even with these claimed shortages, Mercy System Corporation is going to close its two physician offices in Crystal Lake and one in Cary.

Furthermore, while there may be a shortage of physicians in the area, the Board did not discuss and apparently did not consider the evidence in the record of the shortages of registered nurses, laboratory technicians and medical technologists in the area. The public hearing record is replete with testimony of medical personal on the shortage of such personnel. These personnel are needed to staff a hospital. Mercy Hospital offered no evidence where this staff would come from other than stating they would recruit medical personnel who worked outside of the area. Nothing in the record indicates a surplus of such personnel in other areas of the state. No evidence was presented on the number of resident medical personnel who worked outside of the M.S.A. or beyond the 30 minute travel time. Testimony at the public hearing showed a concern among McHenry County health care workers that Mercy would recruit staff from area facilities thereby affecting the viability of those hospitals.

Upon a review of the record, the Court finds that State Board relied on factors not intended by the legislature and that they failed to consider important aspects of the problem concerning the shortage of medical support staff and the impact the proposed hospital would have on the hospitals within the M.S.A. and within 30 minutes travel time. When the Board first denied the Mercy Hospital's application, it had information on the 45 new employee-physicians who would be at the physician offices adjacent to the hospital. Yet, at the April 21<sup>st</sup> meeting, the new physicians appeared to be the primary basis for the affirmative vote.

The Court finds that the actions of the State Board, in approving the application for permit for the Mercy Hospital project, was arbitrary and capricious.

### C. NECESSARY PARTIES

Plaintiffs contend that the decision should be reversed because the proper party was not joined as a party to the application. Particularly, Plaintiffs claim that Section 1130.220(b) of the Illinois Administrative Code requires that Mercy Health Systems Corporation be a co-applicant.

Section 1130.220 provides in pertinent part as follows:

“The following person(s) must be the applicant(s) for permit or exemption, as applicable:

(b)(3) any related person who is or will be financially responsible for guaranteeing or making payments on any debt related to the project.”

It is undisputed that Mercy Health System falls within that classification and that they were not parties to the application. The State Agency Report, however, reflects that is considered that entity to be a co-applicant even though it wasn't. Documentation was submitted verifying the bond rating of Mercy Health System Corporation and other data was provided regarding its corporate structure and related entities.

The non inclusion of Mercy Health System as an applicant may have affected the economic review criteria under 1120.310(a). The State Agency found that Criterion 1120.310(a) was “not applicable as the applicant's document proof of an “A “bond rating”. Mercy Health System should have been a party to the application for permit. However, the failure to include Mercy Health System Corporation as a co-applicant, standing alone, would not be a basis for a finding of the State Board's decision being against the manifest weight of the evidence.

D. THE VOTING PROCESS

The Plaintiffs claim that the voting process was improper by the Board not specifying the nature of the motion voted on and Board members engaging in off the record discussions. It is apparent from the record that the Board on motion knew that it was voting to approve the permit. While formality is lacking, the record reflects that in the other proceedings that day, which are part of the record the Board used the same methodology in voting.

While the off record comments by Board members may be irregular, they do not constitute ex parte communications. The Court can not attribute any significance to the off record comments in this review.

Based on a review of the record and for the foregoing reasons, the Court hereby finds that the Decision of the Illinois Health Planning Board to grant the issuance of the permit to Mercy Hospital and Mercy Health Systems was against the manifest weight of the evidence and arbitrary and capricious.

IT IS HEREBY ORDERED that the Decision of the Illinois Health Planning Board to issue a permit in Project No. 03-049 is reversed.

DATED: May 6, 2005

ENTERED Maureen P. McIntyre

MAUREEN P. McINTYRE  
CIRCUIT JUDGE



U. S. Department of Justice

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FOR IMMEDIATE RELEASE  
MONDAY MAY 9, 2005

PRESS CONTACT:  
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**LEVINE, KIFERBAUM AND HURTGEN INDICTED ON FRAUD CHARGES  
ALLEGING KICKBACKS, INFLUENCE-PEDDLING AND INSIDER-DEALING**

**Hospital projects in McHenry and Will counties subjected to pay-to-play scheme**

CHICAGO – Three Chicago area executives – one of them a former member of the Illinois Health Facilities Planning Board, which controls medical facility construction projects in Illinois, and one a managing director of Bear Stearns & Co., an investment firm that arranges financing for public works projects in Illinois – were indicted on federal charges for allegedly engaging in insider-dealing, influence-peddling, kickbacks and corruption involving their private interests and public duties, federal officials announced today. One defendant, **Stuart Levine**, a lawyer and businessman, allegedly engaged in a fraud scheme to obtain a total of at least \$9.5 million for himself and certain associates, while the other two defendants, **Jacob Kiferbaum**, an architect and construction firm executive, and **P. Nicholas Hurtgen**, a lawyer and investment banker, allegedly participated in the same fraud scheme to obtain multi-million dollar contracts for their businesses through construction kickbacks or other fraudulent deals. Levine and Hurtgen were arrested this morning by federal agents. Kiferbaum is cooperating with the investigation and was not arrested. All three were charged with various counts of fraud and extortion in a 28-count indictment that was returned by a

federal grand jury last Wednesday and unsealed today, announced Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois.

Levine, 59, of Highland Park, and Hurtgen, 42, of Glencoe, were expected to be arraigned later today in U.S. District Court in Chicago. Kiferbaum, 52, also of Glencoe, will be arraigned at a later date. Through his attorney, Kiferbaum has authorized the government to disclose that he is cooperating in the investigation.

The indictment identifies the defendants, with the charges against each, as follows:

**Stuart Levine** – 19 counts of mail fraud, 4 counts of wire fraud, 2 counts of misapplication of funds, 2 counts of money laundering and one count of extortion – a businessman whose interests included S.L. Investment Enterprises, L.P., and a former member of the Illinois Health Facilities Planning Board (Planning Board), a state commission appointed by the Governor that grants or denies a permit, known as a “Certificate of Need” (CON), to build hospitals, physician offices or other medical facilities statewide. Levine was also a member of the board of trustees of Rosalind Franklin University of Medicine and Science, formerly known as Finch University of Health Sciences/Chicago Medical School (Chicago Medical School or CMS) in North Chicago, and he was chairman of its real estate committee. He was also a trustee of the Northshore Supporting Organization (NSO), a charitable trust that supported Chicago Medical School;

**Jacob Kiferbaum** – 16 counts of mail fraud, 3 counts of wire fraud, 2 counts of misapplication of funds and one count of extortion – chief executive officer of KCC Group Design + Build, Inc., formerly known as Kiferbaum Construction Corp., of Deerfield. Kiferbaum was also a trustee of Chicago Medical School; and

**P. Nicholas Hurtgen** – 3 counts of mail fraud, 3 counts of wire fraud and 1 count of extortion – formerly senior managing director in the Chicago office of Bear Stearns & Co., an investment bank that did business and sought to do business with the State of Illinois, Edward Hospital in Naperville, part of Edward Health Services Corp., and Mercy Health System Corp., of Janesville, Wis.

The indictment also seeks forfeiture from Levine alone of approximately \$9.5 million as proceeds of the alleged fraud, and approximately \$1 million in alleged money laundering proceeds, as well as his residence at 57 South Deere Park Dr., Highland Park, and a residence in Weston, Fla.

The indictment alleges that Levine, Hurtgen and Kiferbaum engaged in a fraud scheme between early 2001 through at least June 2004 to defraud Chicago Medical School, NSO, the Planning Board and the State of Illinois of money and the honest services of Levine and Kiferbaum in connection with four construction projects and a fraudulent transaction involving \$6 million belonging to the charity.

According to the indictment, the fraud scheme included the following fraudulent transactions:

**Edward Hospital:** Levine, Kiferbaum and Hurtgen agreed that they would use Levine's position on the Planning Board to attempt to force Edward Hospital to hire Kiferbaum's company to build a \$90 million hospital and \$23 million medical office building in Plainfield, by threatening Edward Hospital representatives that the Planning Board would not approve those projects unless Kiferbaum was hired to build them. Hurtgen assisted in the scheme because he wanted his employer, Bear Stearns, to receive the financing work from the new Edward hospital.

Hurtgen agreed to introduce Kiferbaum to the CEO of Edward Hospital. As a result of Kiferbaum's recent prior dealings with Levine, Kiferbaum understood that Levine would direct him to provide a kickback. According to the indictment, in mid-December 2003, Hurtgen called Edward's CEO and said that the hospital should postpone its application before the Planning Board on Dec. 17 to allow time to hire Kiferbaum if it wanted to have its CON approved; otherwise, it would be denied – which, in fact, is what occurred at the Dec. 17 meeting. Although Levine was barred from *ex parte* communications with Edward representatives about its pending application, on Dec. 23, 2003, Hurtgen and Kiferbaum met with Edward's CEO to attempt to force the hiring of Kiferbaum's company. On Jan. 8, 2004, Hurtgen met again with the CEO and also Edward's project administrator. The defendants were unaware that the hospital officials were cooperating with the FBI at the time of those meetings. In explaining his role in persuading Edward officials to hire Kiferbaum's company, Hurtgen said that Bear Stearns would finance the hospital if it was approved, the indictment alleges. During the January meeting, Hurtgen said he might be able to arrange a situation in which Levine would inadvertently bump into the CEO and Hurtgen in response to the CEO's request for proof that the threats and promises were real. After further discussions among various parties related to proving that Levine and Hurtgen knew each other and were talking, Levine and Hurtgen went to a restaurant in Deerfield on April 18, 2004, to prove to the CEO that Levine, Hurtgen and Kiferbaum were working together and that their threats and promises were real. Levine and Hurtgen walked over to the table where Kiferbaum and the CEO were sitting. Levine said that he was the board chairman of CMS and



that Kiferbaum had done a project for them, adding that Kiferbaum is a person who could be relied upon and whose word could be depended on, according to the indictment. At the April 21 Planning Board meeting, Edward had not hired Kiferbaum and, with Levine voting against the project, its Plainfield hospital application was denied;

**CMS addition – \$1 million kickback from Kiferbaum at direction of Levine:** In connection with an \$18 million contract in the summer of 2001 for Kiferbaum's company to build an addition to CMS, Levine and Kiferbaum agreed that Kiferbaum would include an extra \$1 million for Levine in the cost of the project. Kiferbaum then paid approximately \$700,000, at Levine's direction, to a business operated by Individual 2, an attorney and CEO of a consulting company in Chicago. Levine and Kiferbaum later agreed that the remaining amount would be paid to a company operated by Individual 1, a medical doctor and businessman who shared a business suite with Levine, and who was also a trustee of CMS and NSO. Levine and Kiferbaum did not disclose to CMS the nature or purpose of the additional costs to CMS, nor did they disclose that Levine was directing the payment of CMS funds, or that Individuals 1 and 2 had agreed to receive them. Levine, Kiferbaum and Individuals 1 and 2, used sham marketing and consulting contracts to conceal the fraudulent nature of the diversion, and the planned diversion, of CMS funds to Individuals 1 and 2;

**CMS student housing – \$1 million kickback from Kiferbaum at direction of Levine:** In connection with a \$22 million contract in the summer of 2002 for Kiferbaum's company to build a student dormitory for CMS, Levine and Kiferbaum agreed that Kiferbaum would include an extra \$1 million for Levine in the cost of the project. Kiferbaum then paid the money, at Levine's direction, in the form of a \$628,000 check on Dec. 12, 2002, and a \$372,000 check on March 13, 2003, to Individual 3, a European businessman who maintained financial accounts in Chicago. Levine and Kiferbaum did not disclose to CMS the nature or purpose of the additional costs to CMS, nor did they disclose that Levine was directing the payment of CMS funds. Levine and Kiferbaum concealed the fraudulent nature of the diversion of CMS funds to Individual 3 through the use of a sham marketing contract;

**Diversion of \$6 million by Levine from NSO:** On July 19, 2002, Levine caused NSO to lend \$3 million to his company, S.L. Investment Enterprises, and \$3 million to a company controlled by Individual 1, and then arranged to have both loans forgiven without repayment. Each company executed promissory notes requiring them to repay NSO after 20 years, with an annual interest rate of 7.5 percent, resulting in each company owing NSO approximately \$12.5 million at that time. On Dec. 1, 2002, Levine and Individual 1 signed promissory notes substituting themselves as the borrowers. Levine then used his position as an NSO trustee to

arrange for NSO to "donate" the notes to CMS in a sealed envelope and with the condition that CMS would immediately sell the notes to Individual 3 for \$1 million, which was the amount of the kickback that Levine and Kiferbaum fraudulently obtained from CMS in building the student dormitory and diverted to Individual 3. After purchasing the notes from CMS for \$1 million, Individual 3 transferred them to Levine and Individual 1 as "gifts," thus freeing Levine and Individual 1 from any obligation to repay the \$6 million that they had purportedly borrowed from NSO. As a result, Levine fraudulently obtained \$3 million for himself, and \$3 million for Individual 1, through the use of the \$1 million that was fraudulently obtained from CMS by Levine and Kiferbaum; and

**Mercy Hospital - \$1.5 million kickback from Kiferbaum to Levine:** Levine solicited a kickback of approximately \$1.5 million from Kiferbaum relating to the construction of Mercy Hospital's \$49 million Crystal Lake facility. Kiferbaum agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date. Levine used his influence with the Planning Board to ensure that Mercy Hospital received approval of its application to build the Crystal Lake hospital after hiring Kiferbaum's company. In voting for, and influencing other Planning Board members to vote for, Mercy's application, Levine concealed from the Planning Board his financial arrangement or contacts with Kiferbaum. After the Planning Board voted to approve Mercy's application on April 21, 2004, Levine reported to Individual 1 that hiring Kiferbaum did it for Mercy. When Levine told Kiferbaum that no one really knew that Levine was orchestrating the approval, Kiferbaum said he could not thank Levine enough, and Levine said they were in this together. Levine directed that Kiferbaum pay the kickback proceeds to Individual 1 pursuant to a sham consulting contract for \$1,728,000, which included the \$1.5 million kickback that Levine had solicited and \$228,000 that Kiferbaum still owed from the CMS addition kickback. On May 1, 2004, Levine told Individual 1 that other people knew that Mercy received its CON because of the combination of Kiferbaum, Hurtgen and a law firm and that this information would spread like wildfire.

Mr. Fitzgerald announced the charges with Robert D. Grant, Special Agent-in-Charge of the Chicago Office of the Federal Bureau of Investigation; Kenneth T. Laag, Inspector-in-Charge of the U.S. Postal Inspection Service; James Vanderberg, Special Agent-in-Charge of the U.S. Department of Labor Office of Inspector General in Chicago; and Byram Tichenor, Special Agent-in-Charge of the Internal Revenue Service Criminal Investigation Division in Chicago. The U.S. Attorney's

Office in Milwaukee also cooperated with the investigation, and the investigation is continuing, the officials said.

"Individuals who serve on public boards or boards of private institutions and charities must serve the interests of the public or the institution and not steal for themselves," Mr. Fitzgerald said. "Beyond owing basic duties of honesty and integrity, hospital Planning Board members play an important role in providing access to health care while containing costs. The indictment charges that Levine instead sold out his duties and gave out state approvals and hospital contracts on the basis of 'who you know' and worse, 'who you pay,'" he added.

The government is being represented by Assistant U.S. Attorneys Jacqueline Stern, Christopher Niewoehner, Kaarina Salovaara and James Barz.

Upon conviction, the charges alleged in the indictment carry the following maximum penalties on each count: mail fraud, wire fraud and extortion – 20 years in prison and a \$250,000 fine; and misapplication of government funds – 10 years and a \$250,000 fine. One of the money laundering counts carries a maximum prison term of 20 years and the other count a maximum of 10 years, and both carry a maximum fine of \$500,000 or twice the amount of the money involved in the transaction. As an alternative maximum fine, the Court could impose a fine of twice the gross profit to any defendant or twice the loss to any victim. The Court, however, would determine the appropriate sentence to be imposed.

The public is reminded that an indictment contains only charges and is not evidence of guilt. The defendants are presumed innocent and are entitled to a fair trial at which the government has the burden of proving guilt beyond a reasonable doubt.

###

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

NORTHERN ILLINOIS MEDICAL CENTER, )  
MEMORIAL MEDICAL CENTER, and )  
CENTEGRA HEALTH SYSTEM, )

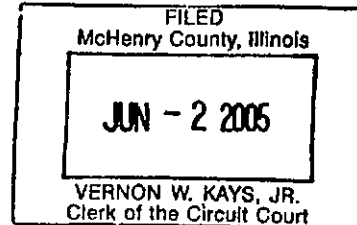
Plaintiffs, )

v. )

No. 04-MR-106

ILLINOIS HEALTH FACILITIES PLANNING )  
BOARD, ILLINOIS DEPARTMENT OF )  
PUBLIC HEALTH, MERCY CRYSTAL )  
LAKE HOSPITAL AND MEDICAL CENTER, )  
INC., MERCY HEALTH SYSTEM )  
CORPORATION, ELI L. BEEDING JR., and )  
THE BEEDING GROUP, )

Defendants. )



STIPULATION

The parties, through their respective counsel, stipulate and agree as follows:

1. On May 6, 2005, the Court in the above captioned case entered a Memorandum Opinion and Order with respect to Count I of the Complaint, in which the Court ordered that the decision of the Illinois Health Facilities Planning Board to issue a permit in Project No. 03-049 is reversed.
2. There remains pending before the Court: (a) Plaintiffs' Motion For Leave To Add Additional Grounds To Reverse Administrative Decision And For Other Relief, which seeks to add additional grounds to reverse the permit under Count I; and (b) Second Amendment To Complaint, which contains Counts II, III and IV and which seeks to reverse the permit on independent grounds.
3. Defendants Illinois Health Facilities Planning Board, Illinois Department of Public Health, Mercy Crystal Lake Hospital and Medical Center Inc., Mercy Health System

Corporation, Eli L. Beeding, Jr. and The Beeding Group, hereby stipulate and agree to waive all rights to appeal the Order entered on May 6, 2005 which ordered that the decision of the Illinois Health Facilities Planning Board to issue a permit in Project No. 03-049 is reversed, and to waive all rights to appeal the Final Judgment Order entered on this Stipulation.


4. In reliance on defendants' waiver of any rights to appeal, Plaintiffs stipulate and agree that Plaintiffs' Motion For Leave To Add Additional Grounds To Reverse Administrative Decision And For Other Relief may be denied as moot and that the Second Amendment to Complaint may be dismissed as moot.

5. Then parties agree that this Stipulation may be signed in counterparts.

Stipulated and Agreed:

NORTHERN ILLINOIS MEDICAL CENTER,  
MEMORIAL MEDICAL CENTER, and  
CENTEGRA HEALTH SYSTEM, Plaintiffs,


Dated: May 27, 2005

By:   
Jeffrey R. Ladd, Reg. No. 1157289  
Lawrence M. Gavin, Reg. No. 0926108  
Daniel J. Lawler, Reg. No. 6180981  
BELL, BOYD & LLOYD LLC  
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Thomas C. Zanck, Reg. No. 3102122  
Militello, Zanck & Coen PC  
40 Brink Street  
Crystal Lake, Illinois 60014  
Phone: (815) 459-8800  
Fax: (815) 459-8429

MERCY CRYSTAL LAKE HOSPITAL  
AND MEDICAL CENTER INC. and  
MERCY HEALTH SYSTEM  
CORPORATION, Defendants

Dated: May 26, 2005

By:   
Steven H. Hoeft, Esq.  
McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago, Illinois 60606-5096

ILLINOIS HEALTH FACILITIES  
PLANNING BOARD and ILLINOIS  
DEPARTMENT OF PUBLIC HEALTH,  
Defendants

Dated: May \_\_\_\_, 2005

By: \_\_\_\_\_  
Deborah L. Simpson, Esq.  
Katherine H. Laurent, Esq.  
Office of the Attorney General  
General Law Bureau  
James R. Thompson Center  
100 West Randolph - 13<sup>th</sup> Floor  
Chicago, Illinois 60601

ELI L. BEEDING, JR. and THE BEEDING  
GROUP, Defendants

Dated: May 25, 2005

By:   
Eli L. Beeding, Jr.

MERCY CRYSTAL LAKE HOSPITAL  
AND MEDICAL CENTER INC. and  
MERCY HEALTH SYSTEM  
CORPORATION, Defendants

Dated: May \_\_\_, 2005

By: \_\_\_\_\_  
Steven H. Hoeft, Esq.  
McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago, Illinois 60606-5096

ILLINOIS HEALTH FACILITIES  
PLANNING BOARD and ILLINOIS  
DEPARTMENT OF PUBLIC HEALTH,  
Defendants

Dated: May 25, 2005

By: Katherine Laurent  
Deborah L. Simpson, Esq.  
Katherine H. Laurent, Esq.  
Office of the Attorney General  
General Law Bureau  
James R. Thompson Center  
100 West Randolph - 13<sup>th</sup> Floor  
Chicago, Illinois 60601

ELI L. BEEDING, JR. and THE BEEDING  
GROUP, Defendants

Dated: May \_\_\_, 2005

By: \_\_\_\_\_  
Eli L. Beeding

# The Illinois Task Force on Health Planning Reform

Pursuant to  
Public Act 095-0005

**Co-chairs:**

Senator Susan Garrett, *Co-Chair*

Representative Lisa Dugan, *Co-Chair*



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## Illinois Task Force on Health Planning Reform Members

### Committee Members

Member	Affiliation
Sen. Susan Garrett, Co-Chair	State Senate (D)
Rep. Lisa Dugan, Co-Chair	State House of Representatives (D)
Gary Barnett	Sara Bush Lincoln Health Center
Kenneth Robbins	Illinois Hospital Association
Jay Doherty	City Club of Chicago
Sister Sheila Lyne	Mercy Hospital and Medical Center
Hal Ruddick	SEIU Local #4
Donna Thompson	Access Community Health Network
Sen. Pamela Althoff	State Senate (R)
Sen. Bill Brady	State Senate (R)
Rep. Louis Lang	State House of Representatives (D)
Rep. Brent Hassert	State House of Representatives (R)
Rep. Renée Kosel	State House of Representatives (R)
Claudia Lenhoff	Champaign County Health Care Consumers
William McNary	Citizen Action Illinois
Heather O'Donnell	Center for Tax and Budget Accountability
Margie Schaps	Health and Medicine Policy Research Group
Lisa Madigan represented by Paul Gaynor	Office of the Attorney General
Vacancy	State Senate (D)

### Ex-Officio Members

Member	Affiliation
Secretary Carol Adams represented by Dr. Myrtis Sullivan	Illinois Department of Human Services
Director Damon T. Arnold represented by David Carvalho	Illinois Department of Public Health
Director Barry Maram, and designee Mike Jones	Illinois Department of Healthcare and Family Services
Executive Secretary Jeffrey S. Mark	Illinois Health Facilities Planning Board
Ginger Ostro	Governor's Office of Management and Budget

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# Memorandum

December 31, 2008

to: Members, Illinois House of Representative  
Members, Illinois Senate

from: Senator Susan Garrett, *Co-Chair*  
Representative Lisa Dugan, *Co-Chair*

re: **Illinois Task Force on Health Planning Reform**

---

This document is the final report of the **Task Force on Health Planning Reform** ("Task Force") required by Senate Bill 244 (PA 95-0005) of the 95<sup>th</sup> General Assembly. Senate Bill 244 amended the Illinois Health Facilities Planning Act to create a 19-member Task Force to evaluate the current "Certificate of Need" (CON) program and recommend changes to the structure and function of both the Illinois Health Facilities Planning Board and the Illinois Department of Public Health (IDPH) in the review of applications to establish, expand, or modify health facilities and related capital expenditures.

The Task Force met 14 times to meet our goals, with the final 3 meetings focused on developing a consensus on the recommendations. On December 19, 2008, the Task Force voted 12 to 1 to approve the attached final recommendations. With one dissenting opinion, a minority report has been provided to the Task Force (see Appendix A).

The Task Force determined its main reform goal as follows:

The State of Illinois will promote the distribution of health care services and improve the healthcare delivery system in Illinois by establishing a statewide comprehensive plan and ensuring a predictable, transparent and efficient CON process.

In order to meet this goal, the Task Force recommends the establishment of a Statewide Comprehensive Health Plan, as well as reforms to the Illinois Health Facilities Planning Board, in order to increase the efficiency and effectiveness of both overall health planning and the CON process. The Comprehensive Health Plan will comprehensively address health and mental health services, to specifically focus on identifying health disparities, identifying state-level and regional needs, and determining the impact of market forces on access to high quality services for uninsured and underinsured residents. Cost containment and support for safety net services will continue to be tenets of the CON process. The process will lead to evidence-based assessments, projections and decisions applied to capacity, quality, value and equity in health care delivery. Further, the CON Process will result in written and consistent decisions based on the Comprehensive Health Plan, as well as other plans recommended by the Center for Comprehensive Health Planning, a new unit to be established under IDPH. In addition, the integrity of the CON Process will be insured through revised structure and policies, including the introduction of a Special Nomination Panel for the CON Board membership, along with improved ethics and communications procedures.

The **Illinois Health Facilities Planning Act** (20 ILCS 3960, et seq.) became effective in 1974. It created a 13-member **Illinois Health Facilities Planning Board** ("CON Board") to review the

necessity of capital expenditures for the establishment or modification of health facilities and the procurement of medical equipment. Both the 93<sup>rd</sup> and 94<sup>th</sup> General Assemblies restructured the Board, after extensive debates about the history and performance of the Board, and in response to proposals for its complete elimination. Additionally, illegal activity in 2004, involving conflicts of interest and criminal indictments of a board member for influence peddling, kickbacks, and other corrupt actions by parties involved in applications subject to review, prompted the Governor and General Assembly to reduce the size and makeup of the board, and to impose more strict membership requirements.

In response, the 95<sup>th</sup> General Assembly enacted House Resolution 1497, which required the Legislative Commission on Government Forecasting & Accountability to conduct a comprehensive evaluation of the Illinois Health Facilities Planning Act, including a review of the performance of the Illinois Health Facilities Planning Board. The Commission contracted with the Lewin Group to conduct the evaluation. Their subsequent report, entitled "An Evaluation of Illinois' 'Certificate of Need' Program" was submitted in February 2007 and had 6 main recommendations, including "the Illinois legislature continue the 'Certificate-of-Need' program with an abundance of caution."

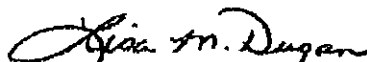
The Lewin Group recommendations were the catalyst for the creation of this Task Force, which began a long and deliberative process on January 31, 2008. The Task Force engaged in a course of action to review the health planning process in an open and impartial fashion. As testimony was received and discussed, it became evident that Illinois needed the safeguards in place which are afforded by the regulated health facility planning process, and an initial decision was made to maintain the CON process. From then on, the Task Force focused on how to restructure the process. The principle findings outlined in this report stem from the intent of the Task Force to streamline the CON process, take significant steps toward transparency, and unite comprehensive health planning and health facility efforts for statewide gains.

The Task Force urges the General Assembly to implement its recommendations to establish and implement a Statewide Comprehensive Health Plan, as well as to reform the Certificate of Needs process. We believe that the overall changes included in the recommendations will have the effect of rejuvenating and insulating the Illinois Health Facilities Planning Board. Our work concluded on December 31, 2008 and any proposed reforms are due to be implemented by July 1, 2009, which corresponds to the sunset date for the CON program in House Bill 5017. The Task Force expects to be available to the 96<sup>th</sup> General Assembly for the legislative implementation of these recommendations. A complete record of the Task Force activities is available on the Illinois Department of Public Health website.

Signers,



Susan Garrett  
Illinois State Senator



Lisa Dugan  
Illinois State Representative

## Introduction

This document is the final report of the **Task Force on Health Planning Reform** ("Task Force") required by Senate Bill 244 (PA 95-0005) of the 95<sup>th</sup> General Assembly. Senate Bill 244 amended the Illinois Health Facilities Planning Act to create a 19-member Task Force to evaluate the current "Certificate of Need" (CON) program and recommend changes to the structure and function of both the Illinois Health Facilities Planning Board and the Illinois Department of Public Health (IDPH) in the review of applications to establish, expand, or modify health facilities and related capital expenditures. The Task Force concluded its work on December 31, 2008 and any proposed reforms are due to be implemented by July 1, 2009. A complete record of the Task Force activities is available on the Illinois Department of Public Health website (see Appendix C for further information).

## Background

The **Illinois Health Facilities Planning Act** (20 ILCS 3960, et seq.) became effective in 1974. It created a 13-member **Illinois Health Facilities Planning Board** ("CON Board") to review the necessity of capital expenditures for the establishment or modification of health facilities and the procurement of medical equipment. Entities subject to the Act include licensed and state-operated: hospitals; long-term care facilities; dialysis centers; ambulatory surgery centers; and alternative health care delivery models. Facilities operated by the federal government are exempt. Transactions requiring a permit now include any: construction or modification by or on behalf of a health care facility exceeding the expenditure minimum (\$8,850,717); substantial increase in a facility's bed capacity; substantial change in the scope or functional operation of a facility; and, proposed establishment or discontinuation of a facility or category of service. In addition, the acquisition of major medical equipment (valued at more than \$8,850,717) or health and fitness centers (valued at more than \$4,231,660) must obtain a permit or exemption. These thresholds are updated annually for inflation<sup>1</sup>.

Proposals to repeal the Illinois Health Facilities Planning Act have not been enacted, but there has been a substantial reorganization of the CON Board. Proponents have successfully argued that although the CON Board has not historically denied many projects, the review process requires applicants to more carefully develop and scale their projects to established criteria and standards of need. Many existing hospitals and the communities they serve have generally supported the "Certificate of Need" law, because elimination could jeopardize their economic vitality by a radical proliferation or expansion of unnecessary facilities.

Both the 93<sup>rd</sup> and 94<sup>th</sup> General Assemblies restructured the CON Board after extensive debates about the history and performance of the Board, and in response to proposals for its complete elimination. Additionally, illegal activity in 2004, involving conflicts of interest and criminal indictments of a board member for influence peddling, kickbacks, and other corrupt actions by parties involved in applications subject to review, prompted the Governor and General Assembly to reduce the size and makeup of the board, and to impose more strict membership requirements.

The 94<sup>th</sup> General Assembly subsequently enacted Senate Bill 2436 (P.A. 94-0983) that extended the "Sunset" date to April 1, 2007, so that the status of the Board and the "Certificate of Need" program would be subject to further and more intensive evaluation, given the acceleration of health facility capital expenditures, the national trends of such health care regulation, continuing concerns about increasing health care costs, the need for more effective cost containment, and the controversial history of Illinois' current system.

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<sup>1</sup> Figures from the Illinois Health Facilities Planning Board, Memo dated June 18, 2008

House Resolution 1497, enacted by the 95<sup>th</sup> General Assembly, required the Legislative Commission on Government Forecasting & Accountability to conduct a comprehensive evaluation of the Illinois Health Facilities Planning Act. This included a review of the performance of the Illinois Health Facilities Planning Board to determine if it was meeting the goals and objectives that were originally intended, as well as meeting the goals of subsequent amendments and revised Board policies.

The Commission contracted with the Lewin Group to conduct the evaluation. Their subsequent report, entitled "An Evaluation of Illinois' 'Certificate of Need' Program" was submitted in February 2007, and recommended "the Illinois legislature continue the 'Certificate-of-Need' program with an abundance of caution." Specifically, six main recommendations of the Lewin Group report were as follows: 1) the CON program be extended for 3 years; 2) other policies which support safety-net hospitals be evaluated; 3) a more proactive Charter for the Health Facilities Planning Board be considered; 4) CON Board size and composition be modified; 5) CON Board member compensation be considered; and 6) the workload of the CON Board be focused on reviewing new facilities, as well as monitoring the viability of safety net hospitals. The Lewin Group also found that given the potential for harm to specific critical elements of the health care system, non-traditional rationales for maintaining "Certificate-of-Need" laws deserve consideration, until further study is conducted on the impact that specialty providers and ambulatory surgery centers may have on safety-net providers. Explicit transfers of funds to safety-net hospitals may also be more direct policy tools for their protection.

In response to the Lewin Group analysis and additional concerns regarding health planning in Illinois, the 95th General Assembly enacted Senate Bill 611 (Public Act 95-0001) that extended the "sunset" date of the Illinois Health Facilities Planning Act from April 1, 2007 to May 31, 2007 so that interested parties could agree on a strategy to further extend the "sunset" date, and develop a more comprehensive reform agenda.

Subsequently, the 95<sup>th</sup> General Assembly enacted Senate Bill 244 (PA 95-0005) which created the Task Force on Health Planning Reform. House Bill 5017 extended the conclusion of the Task Force to December 31, 2008 and the sunset for the CON program to July 1, 2009.

### **Task Force Activities**

The Task Force on Health Planning Reform began a long and deliberative process on January 31, 2008 and engaged in a review of the health planning process in an open and impartial fashion.

The 19 member Task Force was co-chaired by Senator Susan Garrett and Representative Lisa Dugan (for further detail on members see page 3). The Task Force was designed to include:

- 6 persons appointed by the Director of IDPH;
- 2 appointed by the President of the Senate (1 as co-chair);
- 2 appointed by the Senate Minority Leader;
- 2 appointed by the Speaker of the House of Representatives (1 as co-chair);
- 2 appointed by the House Minority Leader;
- 1 The Attorney General, or designee; and
- 4 appointed by the Attorney General representing health care consumers.

A vote of 12 appointed Task Force members is required to adopt recommendations for the Governor and General Assembly, as well as for the final report.



In accordance with Senate Bill 244 (PA 95-0005), the Task Force gathered information and heard testimony concerning:

1. The impact of health planning on the provision of essential and accessible health care services, including; prevention of duplication of facilities and services; improved efficiency of the health care system; maintenance of an environment in the health care system that supports quality care; economic use of resources; and the effect of repealing the Act.
2. Reform of the Illinois Health Facilities Planning Board, including identifying and recommending initiatives to meet special needs.
3. Reforms to ensure that health planning under the Illinois Health Facilities Planning Act is coordinated with other health planning laws and activities of the State.
4. Reforms to enable the Planning Board to focus its review efforts on CON applications involving new facilities, discontinuation of services, major expansions, and volume-sensitive services, and to expedite review of other projects to the maximum extent possible.
5. Reforms to enable the Planning Board to determine how procedures should be amended to give special attention to the impact of those projects on traditional community hospitals.
6. Implementation of policies and procedures which give special consideration to the impact of the projects it reviews on access to "safety net" services.
7. Changes to make the planning policies and procedures predictable, transparent, and as efficient as possible.
8. Reforms which ensure that patient access to new and modernized services are not delayed during a transition period.
9. Identification of necessary resources to support the work of the Agency and the Board.

The legislation also directed the Task Force to recommend reforms regarding:

1. Size and membership of the Illinois Health Facilities Planning Board.
2. Changes in the state's long-range health facilities plan (10-year scope, to be updated every year).
3. Changes in regulations that establish separate criteria, standards and procedures when necessary to adjust for structural, functional, and operational differences between long-term care facilities and acute care facilities.
4. Changes in policies and procedures which ensure that the planning board updates standards and criteria on a regular basis and proposes standards to keep pace with the health care system.
5. Expediting the review and approval of projects and determining their impact on "safety net" services.
6. Revisions of enforcement processes and compliance standards to ensure fairness and consistency with the severity of the violations.
7. Conflict-of-interest standards and increases in penalties for violations.
8. Other changes determined necessary to improve the administration of this Act.

The Illinois Department of Public Health was required to provide staff support services. The Department, as directed by the Task Force, was authorized to hire staff or consultants and incur other expenditures from appropriated funds. The Department received assistance from the Illinois Public Health Institute and contracted for technical assistance from Laura McAlpine (McAlpine Consulting for Growth).

The Task Force conducted public hearings from January to December 2008 in Chicago and Springfield with video conferencing. The initial meeting focused on review of the statutory requirements and determination of future meetings dates. In the February meetings, the Task Force agreed on changes to the timeline, organized the work plan, reviewed the current

structure of the CON process and evaluated the Lewin Group study. Although the Act originally abolished the Task Force on March 1, 2008, the Task Force requested an extension to their deadline to December 31, 2008 during their February 8<sup>th</sup> meeting. During subsequent public hearings, the Task Force heard from fifty expert witnesses and interested parties, including representatives of unions, health facilities, the Justice Department, the Federal Trade Commission, health professionals, as well as previous and current representatives of the CON Board (for a detailed list of presenters and website information on their testimony see Appendix B and Appendix C). Presentations varied from clarification and analysis of the current CON process to specific recommendations on Safety Net Hospitals. One of the initial decisions of the Task Force members was to maintain the CON process. Moving forward, the Task Force focused on recommendations to improve and re-structure the CON process.

### **Final Recommendations:**

#### **Overview**

The Task Force began extensive deliberations on September 15, 2008 with the assistance of a facilitator in order to allow all Task Force members to participate in the discussion. These deliberations, using a draft Blueprint document of recommendations and a draft organizational chart, continued on October 8<sup>th</sup>, October 30<sup>th</sup>, and December 8<sup>th</sup>, concluding on December 19<sup>th</sup> with a vote of 12 to 1 on the final Blueprint recommendations<sup>2</sup>. A minority report is attached in Appendix A.

As testimony was received and discussed, it became evident that Illinois should continue with the safeguards in place, which are afforded by the regulated health facility planning process. The principle findings outlined in this report stem from the intent of the Task Force to streamline the process, take significant steps toward transparency, and to unite comprehensive health planning and health facility efforts for statewide gains.

The Task Force determined its main reform goal as follows:

The State of Illinois will promote the distribution of health care services and improve the healthcare delivery system in Illinois by establishing a statewide comprehensive plan and ensuring a predictable, transparent and efficient CON process.

In order to meet this goal, the Task Force recommends the establishment of a comprehensive health planning agency charged with creating a plan, which will allow for a stronger CON process. At present, the statewide health planning efforts have been fragmented at best, with no single source for health planning in a global sense. The inability of the current CON Board to conduct sufficient planning was determined by the Task Force as a major deficit in its functioning. Significant reforms are also being recommended for the CON process. Implementation of these recommendations will increase the efficiency and effectiveness of both overall health planning and the CON process.

The objectives of the Comprehensive Health Plan are to assess existing community resources and determine health care needs, to support safety net services for the uninsured and underinsured residents, to promote adequate financing for health care services, and to recognize and respond to changes in community health care needs. To this end, strategies include conducting a biennial comprehensive assessment of health resources and service needs, conducting needs assessments, collecting and analyzing relevant, objective and

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<sup>2</sup> Aye: Chicago - Garrett, Dugan, Althoff, Gaynor, Lyne, McNary, Robbins, Ruddick, Schaps; Phone - Barnett, Kosel, Lenhoff  
Nay: Chicago - Brady

accurate data, identifying issues related to health care financing, evaluating the findings of the inventory/needs assessment and annually reporting to the General Assembly and the public. The Comprehensive Health Plan will comprehensively address health and mental health services, specifically focus on identifying health disparities, identify state-level and regional needs, and determine the impact of market forces on access to high quality services for uninsured and underinsured residents.

The existing objectives of the current Certificate of Need Process include improving the financial ability of the public to obtain necessary health services, establishing an orderly and comprehensive health care delivery system, maintaining and improving the provision of essential health care services, increasing the accessibility of these services, assuring the reduction and closure of health care services and/or facilities is performed in an orderly and timely manner while considering the public interest, and assessing the financial burden patients experience as a result of unnecessary health care construction and modification.

In order to reform the CON process and better meet the existing objectives, the Task Force recommends applying the findings from the Comprehensive Health Plan and the establishment of mechanisms to support adequate financing of the health care delivery system. Cost containment and support for safety net services will continue to be tenets of the CON process. The process will lead to evidence-based assessments, projections and decisions applied to capacity, quality, value and equity in health care delivery. Further, the CON Process will result in written and consistent decisions based on the Comprehensive Health Plan, as well as other plans recommended by the Center for Comprehensive Health Planning, a new unit to be established under IDPH.

Restructuring the Illinois Health Facilities Planning Board is a principal element of the recommendations, based upon consideration of the Lewin Report and testimony gathered by the Task Force. We recommend the CON Board be made up of 9 paid members, with a Chairman as the principal officer of the Board, and the elimination of the Executive Secretary position. The duties of the Executive Secretary, to the greatest extent possible, will be assumed by the Chairman. This board will continue to be located at IDPH with operational support. The Task Force suggests reviewing the compensation levels paid to the members of the Election Board for comparable salaries.

Recommendations to streamline the application process include the elimination of the letter of intent. Additional recommendations to refocus and streamline the CON process include a separate cost threshold for hospital and non-hospital applications, as well as the removal of the application of common financing as a test for whether projects are inter-related. In order to increase support for safety net services, recommendations drafted jointly by the Attorney General's Office and the Illinois Hospital Association were accepted. Charity care and safety net service recommendations include, but are not limited to, the following: 1) reasonable conditions or stipulations agreed to by the applicant that address health resource needs; 2) special consideration to the impact of the project on access to safety net services; 3) definitions of safety net services and charity care; and, 4) establishment of a review standard requiring a 'Safety Net Impact Statement' with CON applications, including a mechanism for public comment on such statements.

The Task Force is also making recommendations to ensure the integrity of the CON Board and its activities. These include the use of a Special Nomination Panel to provide some independence in the appointment of Board members, clarifying limits on ex parte communication, and a renewed emphasis on ethics for CON Board and staff. The composition

and qualifications of this new Nomination Panel may be revised to ensure its timely formation and effectiveness. This, and oversight of the Panel, will be addressed during the drafting of legislation.

Given the important nature of the work coming before the CON Board, we are recommending an orderly, acceptable and timely transition process that preserves the existing authority of the CON Board while adjustments are made to comply with new rules formulated from legislation. Further, the Task Force also recommends that the "sunset" of the existing law be extended for at least 10 years, in order to provide stability and continuity to the process.

The following sections provide the following: a) Organizational Chart of the proposed reorganization of the CON Board and the implementation of the Center for Comprehensive Health Planning; b) Blueprint of the Task Force recommendations; and c) Financial estimates on the cost of establishing the Center for Comprehensive Health Planning, as well as the reorganization of the CON Board.



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Springfield, IL 62756  
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Registration Type: Annual

Registration Date: 01-20-2011

**Entity Information**

Entity ID: 1564

Reg Year: 2011

Name: QUARLES & BRADY

Address: 300 N. LASALLE STREET SUITE 4000

City: CHICAGO State: IL Zip Code: 60654-3422

Phone: (312) 715-5000 Extension: \_\_\_\_\_ Fax: \_\_\_\_\_

**Authorized Agent Information**

Name: SANFORD M. STEIN

Address: QUARLES & BRADY 300 N. LASALLE STREET, SUITE 4000

City: CHICAGO State: IL Zip Code: 60654

Phone: (312) 715-6162 Extension: \_\_\_\_\_ Fax: \_\_\_\_\_



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Entity Name: QUARLES & BRADY

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**Clients**

DEUTSCHE BANK NATIONAL TRUST COMPANY

ONE HOPE UNITED

SUNOVION PHARMACEUTICALS, INC.

VILLAGE OF LYNWOOD

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Registration Type: Annual

Entity Name: QUARLES & BRADY

The registrant intends to lobby the following Executive and/or Legislative Branch Agencies during the registration period:

- CENTRAL MANAGEMENT SERVICES, DEPT. OF
- CHILDREN AND FAMILY SERVICES, DEPT. OF
- COMMERCE COMMISSION
- FINANCIAL AND PROFESSIONAL REGULATION, DEPT. OF
- GAMING BOARD
- GENERAL ASSEMBLY MEMBERS
- GOVERNOR'S OFFICE
- HEALTHCARE AND FAMILY SERVICES
- HUMAN SERVICES, DEPT. OF
- ILLINOIS STATE TOLL HIGHWAY AUTHORITY
- TRANSPORTATION, DEPT. OF

The registrant intends to lobby the following subject matter:

- BANKING AND FINANCIAL SERVICES
- ECONOMIC DEVELOPMENT
- EDUCATION
- HEALTH CARE
- PUBLIC HEALTH
- SOCIAL SERVICES
- TRAVEL OR TOURISM



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Registration Type: Annual

Entity Name: QUARLES & BRADY

The registrant's intended activity description involves the following actions:

Executive

Legislative

Administrative

**Brief description of the lobbying activity which the registrant intends to perform:**

Quarles & Brady intends to monitor developments and advocate on behalf of firm client in the areas of funding opportunities for child and family welfare service programs; public health; banking and financial services; issues related to gaming expansion, expansion of medical and hospital services; procurement and public finance.





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Index Department  
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Registration Type: Amended

Registration Date: 02-09-2011

**Entity Information**

Entity ID: 1564

Reg Year: 2011

Name: QUARLES & BRADY

Address: 300 N. LASALLE STREET SUITE 4000

City: CHICAGO State: IL Zip Code: 60654-3422

Phone: (312) 715-5000 Extension: \_\_\_\_\_ Fax: \_\_\_\_\_

**Authorized Agent Information**

Name: SANFORD M. STEIN

Address: QUARLES & BRADY 300 N. LASALLE STREET, SUITE 4000

City: CHICAGO State: IL Zip Code: 60654

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Entity Name: QUARLES & BRADY

**Contractual Lobbying Firms**

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**Clients**

DEUTSCHE BANK NATIONAL TRUST COMPANY

MERCY HEALTH SYSTEM CORPORATION, INC.

ONE HOPE UNITED

SUNOVION PHARMACEUTICALS, INC.

VILLAGE OF LYNWOOD

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Entity Name: QUARLES & BRADY

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- CHILDREN AND FAMILY SERVICES, DEPT. OF
- COMMERCE COMMISSION
- FINANCIAL AND PROFESSIONAL REGULATION, DEPT. OF
- GAMING BOARD
- GENERAL ASSEMBLY MEMBERS
- GOVERNOR'S OFFICE
- HEALTH FACILITIES AND SERVICES REVIEW BOARD
- HEALTHCARE AND FAMILY SERVICES
- HUMAN SERVICES, DEPT. OF
- ILLINOIS STATE TOLL HIGHWAY AUTHORITY
- TRANSPORTATION, DEPT. OF

The registrant intends to lobby the following subject matter:

- BANKING AND FINANCIAL SERVICES
- ECONOMIC DEVELOPMENT
- EDUCATION
- HEALTH CARE
- PUBLIC HEALTH
- SOCIAL SERVICES
- TRAVEL OR TOURISM



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Administrative

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Quarles & Brady intends to monitor developments and advocate on behalf of firm clients in the areas of funding opportunities for child and family welfare service programs; public health; banking and financial services; issues related to gaming expansion, expansion of medical and hospital services; procurement and public finance; siting of new hospital in Crystal Lake.



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Registration Type: Amended

Entity Name: QUARLES & BRADY

**Exclusive Lobbyist Information**

FALBE, LAWRENCE W.

300 N. LASALLE STREET CHICAGO, IL 60645

STEIN, SANFORD M.

300 N. LASALLE STREET CHICAGO, IL 60654

450 West Highway 22  
Barrington, Illinois 60010-1901  
Telephone 847.381.9600



Yusk, Tim

A handwritten signature in black ink, appearing to read "Tim Yusk", written over the printed name.

Director, Ambulatory Services, Advocate Healthcare

I am Tim Yusk, Director of Ambulatory Services at Advocate Good Shepherd Hospital in Barrington, located less than one mile east of McHenry County. I oppose this project because there are more cost effective means of providing additional access to health care than building new, expensive inpatient facilities. Many health care services continue to shift to the outpatient arena, where they can be provided at lower cost to patients. More complex services, such as open heart surgery and neurosurgery, will continue to be delivered in Acute Care settings, but the applicant is not proposing such services.

It is incorrect to state that a new hospital is needed to provide greater access to healthcare in this community. Numerous local Healthcare providers have recognized this and opened ambulatory centers in McHenry County, including Mercy, Centegra, Provena, Sherman and Advocate. Currently, Good Shepherd Hospital alone operates three provider based Outpatient Centers within McHenry County. These Centers provide a combination of over 55,000 visits, treatments and diagnostic tests annually.

Our Rehabilitation department has been providing a comprehensive offering of both adult and pediatric therapies in crystal lake since 1990. At our other facilities in Crystal Lake and Algonquin, patients have access to both primary and specialty care physician services, and comprehensive imaging services. In addition, our Crystal Lake Center at 525 Congress Parkway offers immediate care 365 days per year staffed by Good Shepherd board-certified emergency medicine physicians. This center is located less than two miles from the proposed Mercy hospital site, and many Crystal Lake residents receive health care at this facility. We believe that these outpatient centers are a less costly, more efficient way to bring high quality health care services to the residents of McHenry County.

Mercy has also recognized the shift to outpatient services and has responded by providing residents access to care through new imaging services in Crystal Lake. Three other area hospitals offer a range of ambulatory services including immediate care to residents of McHenry County.

I also want to address Mercy's claims that there is a physician shortage in McHenry County. A physician shortage can be addressed through ambulatory sites and a new hospital won't necessarily solve the physician shortage issue. Good Shepherd and Sherman are just outside of the

McHenry County border and both have plenty of physicians on their campus who see McHenry County residents everyday. Mercy indicates they will have an employed physician model to staff the hospital, and has letters from Mercy employed physicians stating they will send patients to this new hospital, but there is no documentation of physician support or referrals in over a dozen key specialties, necessary to provide a full range of services. Notable voids are in specialties such emergency medicine, cardiology, neurosurgery, anesthesiology, neurology, general surgery, thoracic surgery, pediatric specialists, neonatology, rheumatology, endocrinology, pathology, hematology, oncology, nephrology, and pulmonology. The cost of building the hospital that Mercy quotes does not include the tens of millions of dollars that it will cost Mercy to recruit and employ these physicians.

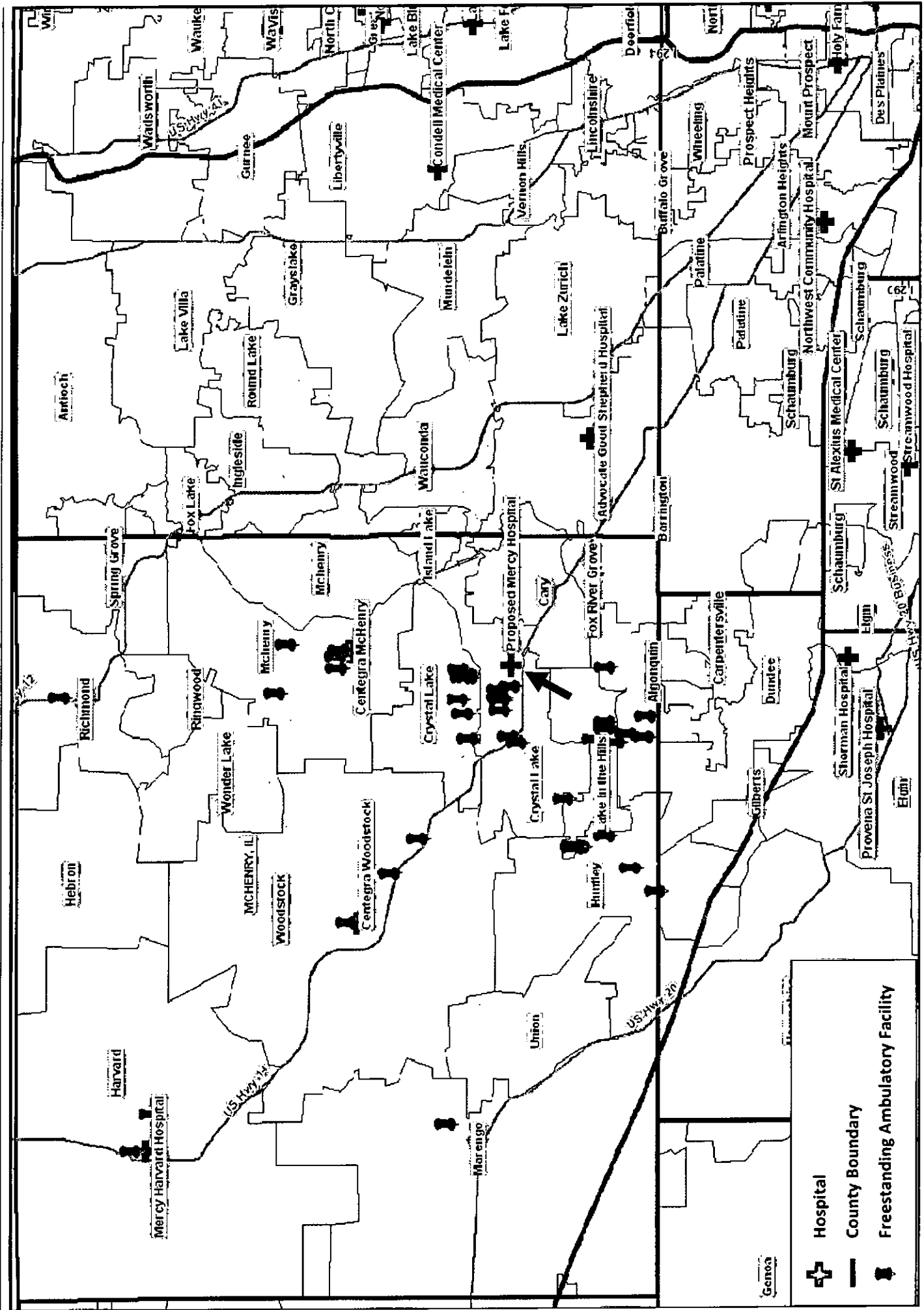
In summary, I urge the Board to deny this application because there are better ways to serve the residents of McHenry County than building a brand new hospital.

Thank you.



Tim Clark

# Freestanding Ambulatory Facilities in McHenry County



Genoa

## TESTIMONY THOMAS ZANCK

My name is Tom Zanck and I have been a business owner in downtown Crystal Lake since 1974. I am here to oppose Mercy Health System's proposed project:

### **Property Size:**

- Ignoring the circumstances of the last application by Mercy which was submitted by the same executive officers for Mercy as are now in place for this application, I wanted to discuss some basic facts from a historical perspective:
- A review of documents from the City of Crystal Lake shows that Mercy proposed a 70 bed hospital on a 16.38 acre site in 2004. The comments of the Crystal Lake Zoning Board of Appeals on 12/1/04 reveal that Board Members expressed concerns about building a hospital of that magnitude on only 16.38 acres because there would be no room to expand.
- Notwithstanding the concerns expressed in 2004 about building a 70 bed hospital on the property in question, Mercy is now back seven years later asking to build a hospital nearly twice that size ON THE SAME SIXTEEN ACRE PARCEL! This is true, notwithstanding that Mercy apparently owns additional adjoining land. How are Mercy's actions to be interpreted?
- The Zoning Board expressed concerns to the very Mercy Executives that are presenting the current application yet the only thing different about the so-called new proposal is that it is for a hospital almost twice the size of the last one. This sends a very clear message that either Mercy does not listen very well to the concerns of the community, or they simply do not care. Neither scenario bodes well for Crystal Lake.

- By the way, in 2004 two zoning Board members questioned this location and the Chairman of the ZBA suggested a new hospital close to Del Webb -- a Huntley location.

### Construction Timing:

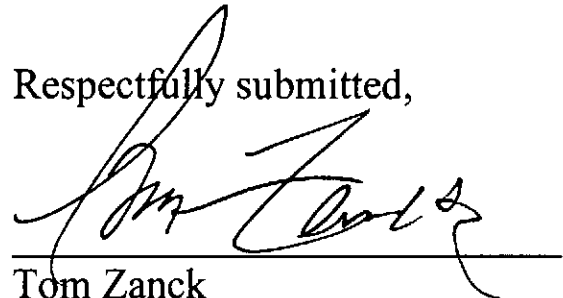
- Representatives of Mercy have stated that their project should be approved or supported because, they claim, they are ready right now and in fact "hope" to turn dirt before the end of this year.
- Let's look at the facts: First, according to the City of Crystal Lake no zoning application has been filed with respect to this project.
- Second, in order to obtain zoning permission to build this hospital, Mercy would have to obtain a preliminary planned unit development (PUD) approval and thereafter a final planned unit development approval. *FOR THEIR SMALLER PROJECT IN 2004 IT TOOK 4 MONTHS FOR PRELIMINARY ~~PUD~~ PUD APPROVAL ALONE*
- Final planned unit development approval will require final engineering which will have to be reviewed by staff and perhaps the City's consulting engineers.
- The magnitude of this project clearly demonstrates that under the process and procedures of the City of Crystal Lake, that process cannot be completed before the end of the year and especially if Mercy determines that it will not initiate the application process with the City of Crystal Lake until after it has a decision from this body (which only makes sense).
- What does this all mean?
  - The application was flawed and the process was tainted last time.
  - The Mercy application being promoted this time by the same officials who were in charge last time is flawed and not responsive to the concerns of the community, and
  - Mercy representatives are apparently committed to saying whatever they believe the community wants to hear in order to gain their support.

**Personal Reflections:**

Lastly, spending 10 hours a day in downtown Crystal Lake during a business weekday, I have had the comfort in knowing that there are and have been immediate care facilities available throughout Crystal Lake. I am grateful that there is a Centegra hospital 5½ miles north of my office in McHenry and a Centegra hospital approximately 5½ miles northwest of my office in Woodstock which on a number of occasions I have had the need to use.

I thank Centegra for its facilities and feel more than comfortable with the hospital care presently available to me and my Crystal Lake employees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tom Zanck", written over a horizontal line.

Tom Zanck  
40 Brink Street  
Crystal Lake, IL 60014

## Michael Chubirka Reading Points

To the Health Facility Planning Board:

As a board-certified Pediatrician, I began my practice in the Crystal Lake and Woodstock areas as an employed physician for Centegra Health System from 1997 to 2002 & have been an employed physician at Mercy Health System since October 2002.

During my first winter here in **1997**, my patients with RSV, in other words infants and toddlers, would often have to be held in the emergency room at either Centegra Hospital McHenry or Centegra Hospital Woodstock **for up to 6-8 hours waiting for an open pediatric bed** for them to be admitted to.

As a past member of the Credentials Committee at Centegra Hospital Woodstock, I sat next to one of the Centegra Vice Presidents on the committee at the time when we were interviewing a prospective new emergency room physician to work at the Centegra hospitals. The particular interview I'm thinking about occurred approximately 1 year or less after Mercy Health System's 2002 attempt at building a Hospital in Crystal Lake. I recall the timing because this Centegra VP was telling this prospective ER physician that, working mostly at the Woodstock Hospital, she wouldn't have as long a time to wait for a bed to open up for her ER admissions there as she would have if she was working at the McHenry Hospital. This was just months after Centegra Administrators proclaimed to the local newspaper, as well as to your Board, that there was an excess supply of vacant beds in their local hospitals at that time.

I encourage this current Planning Board to listen to the physicians & inhabitants of this area & **not** the Centegra administration for the real facts concerning access to Health Care in the area.

I for one can give personal testimony based on my practice here since 1997, in both Health Systems by the way, that the proposed Mercy Crystal Lake Hospital & Medical Clinic was of vital need in 2002, & the population has obviously not declined since then. The only things that **have** declined between then & now have been household incomes & Insurance coverage.

I urge approval of Mercy Health System's application.

Sincerely,

Douglas Henning, MD, FAAP  
390 Congress Pkwy, Ste M  
Crystal Lake, IL 60039-0619  
Office Ph: 815-455-0850

Dated: 3/14/11

**PUBLIC HEARING TESTIMONY OF Don Calcagno**  
**Project # 10-089 (Mercy Crystal Lake Hospital and Medical Center)**  
**March 18, 2011**

pg 1/082

My name is Don Calcagno, and I live in Kane County. I serve as the vice president responsible for quality, professional services and support operations at Advocate Good Shepherd Hospital in Barrington.

Access to Quality health care is one of the reasons families settle in McHenry County. And to maintain that quality, I encourage the Review Board to reject the Mercy Health System application to build a new facility in Crystal Lake.

Another hospital in this region would dilute the quality of services that local residents deserve and receive today from a group of existing excellent medical centers in the region. Dilution of services occurs when too few patients are spread among too many hospitals providing the same services. When that happens, none of the hospitals has enough volume to become truly "expert" at those services.

This project will dilute volumes among hospitals - negatively impacting patient quality and patient safety. There are numerous studies by the Agency for Health Care Research and Quality and the Institute of Medicine demonstrating that hospitals with higher volumes of particular cases tend to have better outcomes than

those hospitals with lower volumes. This proposed hospital will add nearly 50% more beds to McHenry County.

*Don Callaghan  
1/7 2012*

As you know, our hospital is located less than one mile away from McHenry County. There is little doubt that adding another hospital in the region will negatively impact the volumes of area hospitals and may impact quality of care as clinical staff need adequate patient care experience to maintain competencies.

I'm sure that when Sherman forecasted their volumes for their new hospital, when St. Joseph forecasted their volumes for their new bed tower and when St. Alexius forecasted their volumes for their new children's hospital, they foresaw certain volumes not only for financial reasons but also to ensure adequate staffing and training of staff. This proposed hospital would jeopardize those financial and staffing projections. It is important for McHenry County residents to feel they have adequate access to health care resources, but it's more important that residents feel they have access to quality health care resources. There is bed capacity at both Centegra hospitals and the Mercy hospital in Harvard. A more prudent approach would be to add beds to those facilities.

To summarize, one purpose for the Review Board looking at utilization and the appropriate allocation of resources is to ensure quality care. Approval of this project may jeopardize that care because it will significantly dilute volumes across a number of hospitals. I urge the Board to deny this proposal.

17.303

Thank you.

Don Calceano



Hello – my name is Linda Coughlin and I will be reading some statements from local residents who were not able to make it to the hearing today. Thank you

"Most of my Drs. are from Mercy, which has Immediate Care Clinics in Woodstock and McHenry. However, the closest Mercy hospital to my home is in WI. I think you can never have too many hospitals, and I like the care that the Mercy Doctors give me. I also like the idea of a brand new facility to provide my care."

"Carol Lawrence, Wonder Lake, IL"

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My husband and I do a lot of shopping in that area. I feel it would better to have access to good care there instead of having to make it to Harvard or Woodstock.

"Barbara Sergeant  
Harvard, IL"

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**The Dahl Household  
CARY**

The hospital I would normally visit is Good Shepherd.

The biggest benefit I see to having a hospital in Crystal Lake is proximity and more options for health care. Options for health care are somewhat limited - I had to travel to Rush to have surgery.

A new hospital in Crystal Lake would also be beneficial because it would stimulate job growth.

---

**Elwart Household  
City: CRYSTAL LAKE**

**Testmonial:**

The hospital I would normally visit is Good Shepherd - Excellent service and patient care was great.

The biggest benefit I see to having a hospital in Crystal Lake is proximity - It would be much closer especially in the case of emergency. It is good to have a sense of security knowing a hospital is nearby.

### Ilene Steiner Testimony 3/18/11

My name is Ilene Steiner; I work at Good Shepherd. I have twenty-three years experience as a health planner and a master's degree in health planning from Johns Hopkins University.

I would like to address the applicant's rationale on the need for project.

The application cites forecast increases in demand. I agree that demand will grow, but not enough to support a 128 bed hospital without adversely affecting other area hospitals' ability to meet the needs of their patients and communities. The addition of 128 beds increases the McHenry County bed supply by almost 50%. In contrast, The Illinois Health Facilities and Services Planning Board forecasts only a 3% annual growth in patient days for McHenry County which translates into 20% growth over the next five years. The 50% growth in supply of beds far exceeds the 20% growth in demand, resulting underutilized resources.

The application also cites a physician shortage. Construction of a \$200 M hospital is not needed to locate more physicians in the community. Mercy has a large physician group and could add more office space and physicians at significantly lower cost than building a \$200 M hospital. Similarly, Mercy can address the application's stated need for a geriatric clinic, through additional physicians and office space rather than construction of an additional hospital.

Lack of available emergency services due to bypass conditions is used by the applicant as a justification for this project. As you heard earlier, the applicant's conclusion of a need for more emergency capacity is based on old information. This is no longer a community need.

The applicant cites the excessive traffic congestion and travel times. ~~The applicant's own study shows the average travel time from the proposed site to Centegra-McHenry is only 13 minutes.~~ Most importantly, all of the proposed Mercy service area is within the Board's 30 minute travel time guideline of an existing hospital and 80% of the population is within a much lower, 15 minute travel time to a nearby hospital. EMS lights and siren travel time for emergency patients is, of course, much shorter. For those who do have a travel time of more than 15 minutes, none will have a reduced travel time with the construction of the Crystal Lake hospital, because an existing hospital is already closer than the proposed hospital in Crystal Lake. This project does not materially address a need to reduce traffic times.

The application indicates that the project will address a maldistribution of beds and outmigration. The applicant states that access is limited due to the high occupancy at area hospitals and the patients migrate across the county line. I disagree, according to the IDPH annual hospital survey, several area hospitals operate below the State's target utilization rates, including Mercy's own hospital in Harvard, located McHenry county. Mercy- Harvard operates below 30% on med/surg and icu beds. Patients are traveling out of area, due to patient choice, not due to lack of hospital bed capacity. Over 10% of the patient days are attributed to patients leaving the county for advanced subspecialty care not offered in the county or proposed by the applicant, travelling to university and specialty hospitals, such as RIC and U of I.

pg. 102

I am Kim Albright, MD. I support Mercy Hospital – Crystal Lake.

I spoke before you 8 years ago in support of Mercy Hospital Crystal Lake.

I gave you several reasons back then for my support for this facility and I can report to you today that things have changed since then – they are worse!

As a family practice physician based in Richmond, Illinois for over 25 years, I speak only from my experience at Centegra – McHenry.

Last week my cancer patient in acute renal failure was held in an outpatient procedure/overflow area because there were no inpatient beds available for 24 hours. Our offices were called last week by administration at Centegra asking if we had made rounds yet and to discharge our patients if at all possible because their beds were desperately needed for overflow.

Also during the past month general floor patients were placed on the maternity floor.

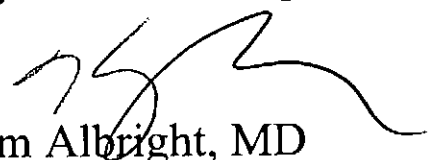
These patients crowding into Centegra-McHenry are not from Huntley. They are from Crystal Lake, McHenry, McCullom Lake, Spring Grove and Richmond.

Any current building activities at Centegra-McHenry are to continue the “stacking” of patients in holding areas while they wait for actual beds.

14 2011

Crystal Lake and the surrounding communities need their own hospital to meet their needs and not to constantly be placed "on hold".

I respectfully ask you once again, 8 years later, to support Mercy Crystal Lake Hospital.



Kim Albright, MD

3-18-11

Hello – my name is Andy Church and I will be reading some statements from local residents who were not able to make it to the hearing today.  
Thank you

A hospital in Crystal Lake would be so convenient for me and the added jobs to the area would benefit the whole community. I support your efforts.

"Cynthia Clarke  
Cary, IL"

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I agree that the hospital would be a good thing. Let's get it done!

Nancy Bohbrink – Crystal Lake

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**The Riley Household**  
**CRYSTAL LAKE**

The hospital I would normally visit is Northern Illinois Medical Center.

The biggest benefit I see to having a hospital in Crystal Lake is proximity.

---

**Parise Household**  
**CARY**

The hospital I would normally visit is Good Shepherd - good hospital but a bit too far out of the way.

The biggest benefit I see to having a hospital in Crystal Lake is proximity - it would be convenient.

**3/17/2011**

**Colette Fraterrigo**

My name is Colette Fraterrigo. I am the director finance of Advocate Good Shepherd Hospital, located less than a mile from McHenry County. I have been in health care finance for over 25 years.

I have many concerns about this project, including project financing, impact on area hospitals, and unnecessary costs.

Mercy proposes to borrow \$176 million to fund this project, which will double its debt. This is a large increase in debt for a small system the size of Mercy. Mercy may face challenges in obtaining financing and meeting the high debt obligation.

Last month, Moody's Investor's Service published an article, "Negative Outlook for U. S. Not-For-Profit Healthcare Sector Continues for 2011" The article highlights that the "continuation of negative outlook driven by slow economic recovery and ongoing revenue pressures.

Less than three months ago Centegra formally "abandoned" the \$50 million major modernization of its Woodstock hospital, citing, in part, "that the hospital community as a whole was finding construction loans difficult to obtain." I wonder about the ability of a system the size of Mercy with such high debt to be able to acquire the capital to fund the project.

As you likely know, there is a proposal for a second new hospital in the area. Should both CONs be approved, the demand forecasts for each would be invalid, and their ability to obtain financing would be even more questionable.

The proposed hospital will adversely impact GSH ability to serve its patients and community. Over ninety percent of the patients using GSH live within the Mercy-Crystal Lake hospital service area. To reach an appropriate occupancy, the new 128 bed facility will need to attract existing patients, not just the additional patients resulting from growth. GSH will need to adjust, as volumes decline at Good Shepherd. As good stewards of our resources, GSH regularly adjusts staffing to volume levels, not on an annual basis, not on a monthly or even weekly basis, but on a daily basis. As the new hospital takes volume from GSH and other nearby hospitals, hospital employees will move to the new hospital. Very few additional jobs

will be created due to the additional hospital. In fact, to the extent that additional jobs are created, they are simply a duplication of resources, adding to the already high cost of health care.

I am also concerned about the cost to construct another hospital, just six miles and 13 minutes from an existing hospital. While in an ideal world, it might be nice to have a hospital in every community. This is not the world in which we live. Proliferation of hospitals to provide immediate access must be balanced with limiting expenditures which drive up health care costs to tax payers, individual premium payers and employers.

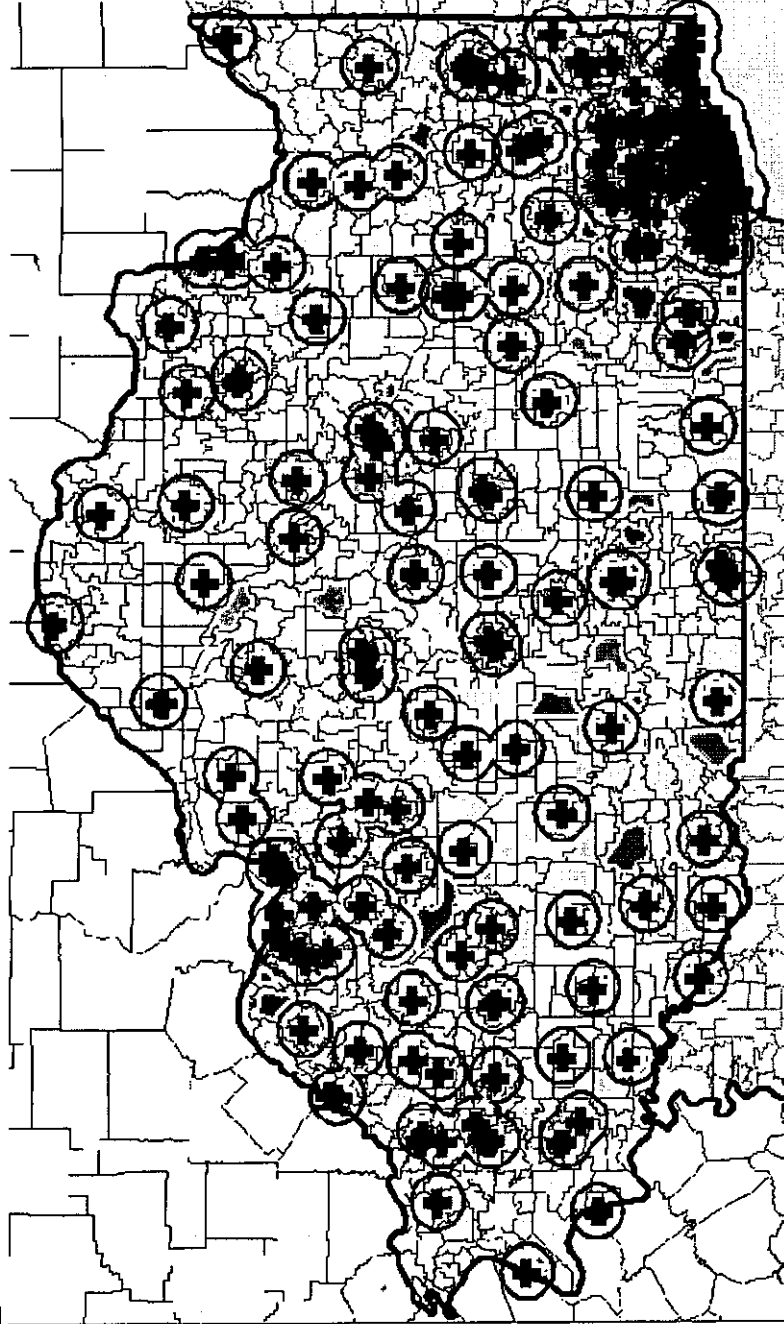
Many communities in Illinois are further than 13 minutes or the six mile distance between Crystal Lake and Good Shepherd Hospital. I would like to direct your attention to this map which shows the hospitals in Illinois and an eight mile radius around each hospital. While GSH is only six miles from the proposed site in Crystal Lake, the map shows a more generous eight mile distance around each hospital in Illinois. The map shows almost 100 areas that do not have a hospital within eight miles, farther than Crystal Lake is now from Good Shepherd Hospital. At \$200 million per hospital, the cost to provide the same access that Crystal Lake already has to nearby hospitals would be 20 billion dollars.

Twenty billion dollars is an overwhelming cost to provide the same hospital proximity that Crystal Lake already has. Even if hospitals are only located in communities with significant population, the cost would be overwhelming. Think of the precedent that approval of this project would set.

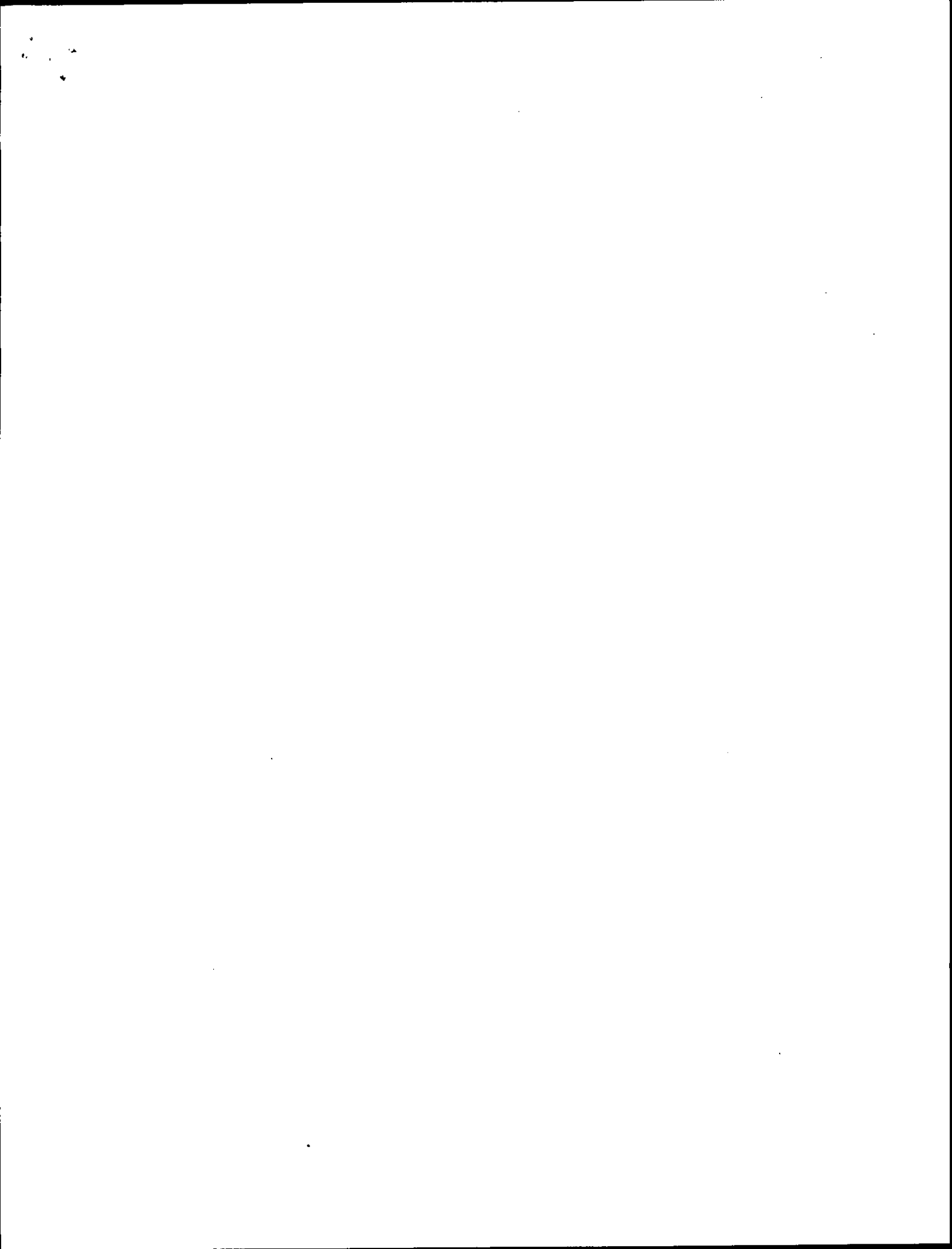
Construction of a new hospital in a community with access to a full range of outpatient services and nearby inpatient facilities flies in the face of health care reform, prudent use of resources, and health care trends.

Thank you for your consideration of my perspective.

Illinois Hospitals and Eight Mile Radius around Illinois Hospitals

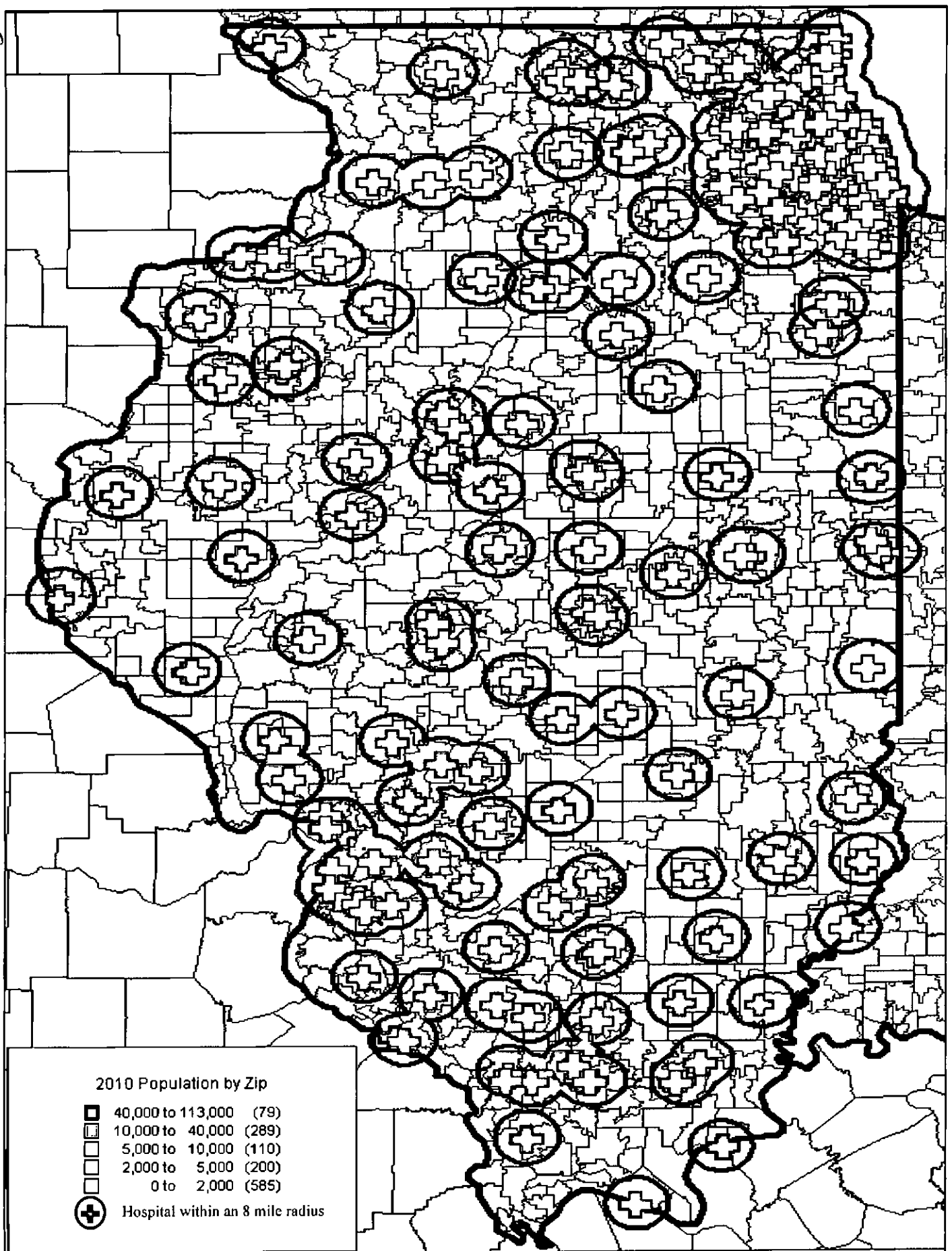






Areas Within Illinois More Than 8 Miles from a Hospital  
 Proposed Mercy Crystal Lake is 6 Miles from Advocate Good Shepherd

*Colle HZ Pra Jan 1 90*



Hi , My name is Casie Baran employee at Mercy McHenry, also a past employee of Centegra and I am here today to speak in favor of the newly proposed Mercy Crystal Lake Hospital.

I recently as a patient had a visit to McHenry Centegra and was very upset at the quality of care that I received. The emergency room physician, Dr. Pacani, was very cold, short and uncaring and informed me that I had lung nodules, cancer, and I needed to be admitted. No rooms were available for me to be admitted to, EKG's and work-ups were done without concern to my privacy; done in the hallway. None of my family members could find me by phone; I was moved to 3 different rooms. As it turned out, CT showed negative results; however, I was so upset because my sister died of lung cancer 3 years ago. Needless to say, I was appalled at the care I received as well as the staff that provided the care.

As an employee of both facilities, I feel I can say my employment at Mercy has been far superior than my employment at Centegra. As an ultrasound tech at Mercy McHenry, I frequently am told by patients that Mercy's quality of care is much higher. As a patient I would prefer to receive future care at a Mercy Crystal Lake Hospital.

Jean Marie Sadler stated, a new Mercy facility would provide less community jobs and would be pulling people from other hospitals. I totally disagree with that statement as the nursing shortage she spoke of in my opinion, doesn't exist; new grads in this area as well as radiology and physical therapy currently have trouble finding employment in their chosen fields.

Thank you for you time,  
Casie Baran, RDMS

# BARRINGTON SURGEONS, LTD.

Robert C. Witkowski, M.D., F.A.C.S.  
Daniel T. Hoeltgen, M.D., F.A.C.S.  
Daniel B. Wool, M.D., F.A.C.S.  
Robert M. Flanigan, M.D., F.A.C.S.  
Emeritus

27750 W. Highway 22, Suite 130  
Barrington, IL 60010  
(847) 381-6051  
Fax: (847) 381-6084

General Surgery  
Oncologic Surgery  
Laparoscopic Surgery  
Bariatric Surgery  
Colorectal Surgery

*Daniel Wool*  
*1/5/02*

Dear Illinois Health Facilities and Service Review Board:

I am a board certified general surgeon who practices in Barrington, IL. I completed a fellowship in minimally invasive surgery at Stanford University. I am unable to attend today's meeting but wanted to make sure that my opinion is heard in this important matter. Thank you for the opportunity to express my concerns.

This proposed hospital is simply not needed. The intended market area for the proposed hospital is already well-served by several area hospitals. This includes Good Shepherd Hospital, which is located only six miles from the proposed site. Much of the population intended to be served by the new hospital is closer to an existing hospital than to the proposed hospital.

Construction of an additional hospital when there is capacity at other area hospitals, including Mercy's hospital in Harvard, is simply not needed. This unnecessary expenditure comes at a time when our federal and state governments have increasing budget deficits. It is the government, taxpayers, employers and individual premium payers who will be providing the funds for this unwarranted project.

The Mercy facility would hurt existing hospitals and impede their capacity to continue to serve their patients and community with high quality, cost efficient care as well as provide a safety net for the medically indigent.

The new facility, if built, will draw away a significant number of patients from existing hospitals. For many services a solid patient base is needed to provide the ancillary support services and frequency of experience among the clinical team.

I specialize in providing laparoscopic surgery as well as robotic-assisted surgery. These tools help us to provide the best patient outcomes with the least pain and shortest hospital stays. Robotic-assisted surgery requires a high degree of specialization. Medical research supports the theory that surgeons and facilities that perform the highest numbers of the same types of surgeries have the best success rates. It comes down to the adage of "practice makes perfect". The addition of

another hospital will reduce the number of specialty surgeries performed by the nursing and clinical team. This could reduce clinical competencies. If you or your family were the person needing this surgical procedure, would you want it performed by a surgical team that did it only a few times per year?

2/20/2

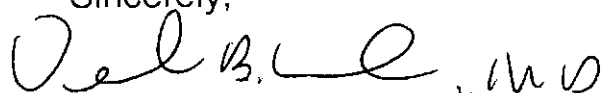
One of Mercy's arguments for building the new hospital is that it will provide an integrated hospital-physician system which will improve quality.

I want you to be aware that an integrated physician-hospital organization is not a novel concept in our area. Advocate Health Care, including Good Shepherd Hospital, has a physician member physician hospital organization. Advocate Physician Partners has 3,400 members, including myself.

Advocate Physician Partners is very proud to be nationally recognized as a leader in developing measures which focus on quality outcomes, cost efficiencies, and value. In our unique Clinical Integration Program, physicians work together to address the quality and costs associated with an entire episode of care, not just one visit. Physicians also work directly with patients to reduce the physical and financial effect of disease and illness by designing treatment plans that include medical intervention and lifestyle changes. Mercy's integrated approach will not bring anything new to the area.

I urge the Board to meet its mission and deny the project on the basis that it is an unnecessary duplication of resources and it will adversely affect the quality of care to the area.

Sincerely,



Daniel Wool, MD

My name is Karen Weideman and I support the Mercy Crystal Lake Hospital proposal. I live in McHenry and feel that the need for another hospital in the area is great. For the past few years I have had multiple contacts at Centegra-McHenry where the obvious need for an additional hospital were felt. My father was scheduled for an elective surgical procedure that would require hospitalization after the procedure. He waited overnight in the recovery room until a bed opened up. My mother had an emergency admission, where she had to wait overnight in the ER on a gurney before she could get a bed. She was in her seventies, had had prior back surgery, and was admitted for a cardiac condition. She was extremely uncomfortable and in pain. She was unable to sleep due to the noise in the emergency room. She was unable to be admitted due to the need for a bed to open up. My most recent incident involved my husband. He underwent elective arterial bypass surgery and obviously was going to need to be admitted after surgery. He had to wait in the recovery room for over four hours before a bed opened up in the Intensive Care Unit. I realize that might not sound that long, but to the wife who sat and waited for surgery to be done and then was unable to see him until he was transferred to the Intensive Care bed, it seemed like an eternity. He then had improved and could be transferred out of Intensive Care, but he had to wait over a day to get a telemetry bed because there was no open bed.

I feel there is definitely a need in the area, but I also feel that the Crystal Lake location will help alleviate some of the overcrowding that has been going on at Centegra-McHenry for years. A hospital in Huntley will not alleviate much at the McHenry site. The Crystal Lake area has a large population and at this point, many come to McHenry to be treated. A Crystal Lake hospital would benefit the people in Crystal Lake and surrounding areas by having someplace close for emergencies and a facility in their area. It would benefit we who live in McHenry by taking some of the strain and overcrowding out of Centegra-McHenry and hopefully allow patients to be admitted timely both after elective procedures and with emergency admissions.

I also would like to comment on the fact that Centegra spent time and money promoting the Women's Hospital need in Woodstock. They now have dropped the Certificate of need that they were able to obtain in 2007. Now suddenly there is no need in Woodstock for this plan, but it can be moved to Huntley. I am very leery of a corporation that pleads for a need and then within a few years changes their plans and forgets those who worked to get the certificate of need through for a Womens Specialty Hospital in Woodstock. It makes me wonder if indeed there was a need or this was their ploy to make a hospital in Crystal Lake not needed by getting additional beds in Woodstock. Centegra also fought vehemently to oppose the original Mercy Crystal Lake hospital citing no need for additional beds, but now we suddenly have a need for 128 beds that they are proposing in Huntley. It is amazing that in a few short years the need is present. I feel that a monopoly by Centegra in the area would be detrimental to working conditions and salaries. Competition is the best method for keeping down costs and improving work conditions and salaries.

I feel that Mercy's proposal for a Crystal Lake hospital meets the need in the area and offers an alternative to Centegra in the immediate area, allowing choice, competition, and jobs.

Thank you for your consideration..

Karen Weideman-3012 N Riverside Drive McHenry, IL 60051

Mercy Crystal Lake Hospital  
10-089

Thank you for the opportunity to speak,

N. Kakish

My name is Nathan Kakish, I have been a local community physician and a resident of Crystal Lake for almost five years.

10/4

I am here to voice my support for the proposed hospital in Crystal Lake.

As a community physician I have seen firsthand and heard from numerous patients firsthand of the difficulties at the local hospitals. The distance and the wait times to get through the ER, delays to get testing complete and high census warnings. To get a good pulse on the local problem, the best ones to ask are those of us in the trenches, not those sitting in neat little offices with sterile furniture far removed from patient care.

I recently had a patient admitted for a heart condition, but during her several hour wait in the ER, she was made to sit in a chair for a couple of hours, without even a functional heart monitor. This patient luckily survived, but sitting in a chair without a heart monitor awaiting evaluation is unacceptable for my patients. And these stories are not isolated incidents occurring at the expense of overcrowding to avoid the word "bypass".

I also have noticed a frequent pattern of "bypass" or high census at our local hospitals. Once again, this is unacceptable for my patients. Sending my patient to the third nearest hospital has detrimental effects on my patients, this also includes good shephard hospital in Barrington. The continuity of care is interrupted, and in my opinion may receive inferior care, they are removed from loved ones close by, and are more likely to develop confusion about their care and the elderly are more likely to become confused in unfamiliar surroundings. Having a close hospital nearby would help provide better continuity of care for my patients and provide better access. Many of the people in the room

N. Kakish  
2024

voicing objections to the hospital have never had to stare in a patient's eyes and say, I'm sorry, we have no beds, you'll have to go to hospital X. They also don't know the worry I face as I entrust the care of MY patients to strangers.

I also believe that any physician who is able to stand here and state that more services in the area are NOT needed, is placing politics ahead of patient care.

I would also like to point out that McHenry, and by association, Crystal Lake, has a large burden of uninsured or underinsured patients that are receiving inadequate care. The larger systems in the area, including the currently available immediate cares and walk in clinic routinely refuse care to patients with Illinois Medicaid which is the lowest paying insurance in the area, and they tend to be the highest users of our medical resources.

Recent calls to these highly touted immediate care centers in Crystal Lake has produced rejection to patient with state aid.

Mercy has been able to bridge the gap in continuing to provide acute care to these patients and continue to provide care to patients if they lost their private insurance and "fell" into state insurance. Having a Mercy hospital would help alleviate the burden of care for the uninsured and underinsured in the County, who have no other access to acute care. As physicians with Mercy, we don't "fire" patients for losing their insurance or opting for lower paying insurance.

As a resident of crystal lake, a local consumer of health care in Crystal Lake, and as a physician in McHenry county, I find that a Hospital is needed for my patients so they can continue to get high quality health care. As a resident of Crystal Lake, I find it difficult to understand why I have to travel such distance to get to a hospital for acute care, for myself or any of my three children. I also wonder why my town's Mayor is not supporting this plan.



N. R. Akash  
3074

I urge you to approve this hospital to provide some much needed relief and access to healthcare in the area.

N. Kakish  
4/4

# High Census

Please

Round

Early

Thank You!

POSTED 2/16/2011 -

Center for Woodstock.

Thank you for the opportunity to address the board. I'm Elyse Forkosh Cutler, Vice President of Strategic Planning and Physician Network Development for Advocate Health Care. Advocate is Illinois' largest healthcare system and a Thomson-Reuters Top Ten US health system.

We strongly oppose this project based on the duplication of services and the unnecessary additional costs that it represents to the area communities' healthcare system. At the heart of the issue, community hospitals represent an investment of the community's resources – its time, talents and financial resources.

The communities we serve also invest their trust in us as not-for-profit institutions. For that reason, we must be good stewards of our limited health care resources. Those that work in the health care system every day know that we are moving away from a hospital-based acute care model to one that is more cost-effective

Mercy suggests that its project will improve quality, as Mercy has an employed physician model that more closely aligns its quality initiatives to the hospital. This implies that other providers are not doing the same. Advocate is national leader in physician alignment but, unlike the applicant, we recognize that should be a focus on developing a value-based medicine approach rather than a volume-based medicine approach. Through Advocate's physician-hospital organization, Advocate Physician Partners, we closely align both employed and non-employed physicians to help

Advocate achieve its quality initiatives. We've been able to demonstrate tremendous cost savings throughout Chicagoland. For example, our depression screening rates are much higher than the national average. Advocate Physician Partners' cardiac initiative resulted in improvements exceeding state and national benchmarks in all three areas of inpatient medication treatment. Improvements ranged from seven to ten percentage points above the averages. Calculating savings from just a single measure of prescribing ACE inhibitors to outpatients with heart failure resulted in additional savings of more than \$688,000. This is the value-based medicine approach that we commit to all of the communities that we serve.

In our experience, as the largest provider of health care in the state, we have also found that the most cost-effective way to serve the growing needs of a community is to reconfigure or expand on an existing hospital campus. This allows us to spread the very high fixed costs of running a hospital over a greater base of patients, thereby lowering costs per patient served overall. By taking this approach, in combination with a community-based ambulatory service model, providers create an acute-care hub, with outpatient services acting as spokes that reach into communities where they demonstrate the greatest need.

Advocate Health Care's approach to meeting the needs of the communities we serve is a reflection of these realities. Advocate Good Shepherd Hospital serves as our hub in this region, while the spokes of outpatient services reach into Lake Zurich, Wauconda, Crystal Lake and Algonquin.

The lessons we've learned over the course of the past decade relative to these principles can be instructive to other care providers with similar missions as ours. In 2007, we recognized that the existing services in Lake County could not sustain the projected population growth.

Conventional wisdom at the time led us to initially propose the construction of an entirely new acute care hospital in Round Lake at about the same cost of as that of the applicant's Crystal Lake project. In the end, our strategic analysis concluded that it would be a far better use of our system's resources and those of the community's if we sought to invest in then-Condell Medical Center. Through that merger, Advocate was able to deliver the first Level I trauma center to Lake County, and Advocate Condell's new inpatient expansion is set to open on April 7<sup>th</sup>.

The applicant's proposal clearly does NOT represent the industry's strategic best practices. Its quarter-billion dollar bricks-and-mortar price tag isn't part of the solution to today's healthcare challenges, but part of the problem.

We respectfully oppose this new community hospital construction project because of the costs it represents to the very communities it seeks to serve. There exist today solutions in and for our industry that demonstrate a better, more cost-effective way forward than saturating the geography with additional acute-care hospitals.

Hello – my name is Brett Grady and I will be reading some statements from local residents who were not able to make it to the hearing today. Thank you

"Having a Mercy Hospital close by would greatly help our community. We do not have a Hospital in Crystal Lake, and with the growing population, this would help serve the needs in emergency type situations. Ultimately, it would save lives, because of proximity to the large population. "

"Mike Cilano  
Crystal Lake, Il.

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Having the Mercy Crystal Lake Hospital will be closer and more convenient for a lot of people. I am in support of this hospital mainly because of the distance.

Cecilia Barns – Cary

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**The Palbicke Household**

**Address: 1021 PLUM TREE DR**

**City: CRYSTAL LAKE**

**Testmonial:**

The hospital I would normally visit is Sherman in Elgin.

The biggest benefit I see to having a hospital in Crystal Lake is less travel time. Growing population is definitely in need of a new hospital.

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**Schardt Household**

**City: CARY**

**Testmonial:**

The hospital I would normally visit is Centegra and Good Shepherd which are both 30 min away. The services are fine but the distance scares me in the case of an emergency I don't know if I will have 30 minutes.

The biggest benefit I see to having a hospital in Crystal Lake is proximity - would be great, as a nine year resident of Cary, a new hospital here would be a Blessing! It Would give residents of the area peace of mind knowing that a hospital is close.

Hello – my name is DuWayne Severson and I will be reading some statements from local residents who were not able to make it to the hearing today. Thank you

"I feel it is important to have a variety of hospitals to go to. It is a comfort to know that, if you need it, you will not be stuck going to just one hospital. "

"Rita Fugiel  
Lake in the Hills, IL"

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"I have been a patient in the Mercy Health System for the last couple of years. I really like it, and would like to see it grow."

"Kim Rauhut  
McHenry, IL"

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**The Palubicki Household  
CARY**

The hospital I would normally visit are Good Shepherd, Sherman, St Joes, and Northern Medical.

The biggest benefit I see to having a hospital in Crystal Lake is proximity, convenience and job creation. A new hospital would greatly benefit the Crystal Lake area..

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**Petersen Household  
City: CRYSTAL LAKE**

**Testimonial:**

The hospital I would normally visit is Centegra in Woodstock - The service is not very good, we believe they cut to much staff.

The biggest benefit I see to having a hospital in Crystal Lake is location - Crystal Lake is largest city in McHenry County and never had a hospital and have been continually passed over by other areas for a new hospital.

Good Afternoon

My name is Jean Marie Saidler, and I have been a resident of McHenry County for over 25 years.

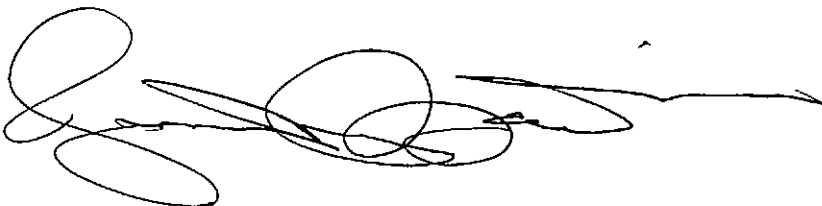
I'd like to express my opinions about why allowing Mercy Health System to build a new hospital in the area would be a mistake.

Because so many families in our community and across the country have been affected by the high unemployment rate, the potential for a new facility to create jobs is certainly welcome. But since this proposed hospital would not be serving a new base of patients (or customers in the business sense), the hospital would not be creating jobs. It would be just relocating jobs from one health care facility to another. This hospital would be adding nearly 50% more beds to the County in one fell swoop.

Building a new hospital now would be comparable to building new schools so that the children don't have to travel so far to get an education. Imagine if we built 50% more schools in McHenry County. That would provide a lot of construction jobs, wouldn't it? But would be a good thing in the long run? No, it wouldn't. In a school situation, if the same number of students were spread among more schools, the new school would not generate new teaching jobs. It just means that taxpayers bear the burden of new construction and operation of another school. And, because some of the students transferred to the new school, the existing schools would most likely have to eliminate some teaching positions.

Back to the issue of a proposed new hospital: Spreading the required number of healthcare jobs among more hospitals may even make it harder for all hospitals to attract and retain a quality staff. Hospitals would have to compete for staff – say, for example, nurses. And since we are already facing a nursing shortage, the inevitable economic forces of supply and demand would drive up salaries. This would in turn mean higher insurance premiums and out-of-pocket costs for everyone. This is not good for the local economy.

I hope you will take these points into consideration and consider the long range negative impact of this project on the future of our county. Thank you.

A handwritten signature in black ink, appearing to read "Jean Marie Saidler". The signature is fluid and cursive, with several loops and a long horizontal stroke extending to the right.



Hello – my name is Pam Smekrud and I will be reading some statements from local residents who were not able to make it to the hearing today. Thank you

The Mercy Crystal Lake Hospital and Medical Center is a well needed facility.

"Gary and Janice Hummel  
Wonder Lake, IL "

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The Mercy Crystal Lake Hospital will offer more job opportunities and is a better convince for emergencies.

"Debbie G.  
Wonder Lake, IL"

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**The Dose Household**  
**CRYSTAL LAKE**

The hospital I would normally visit is Centegra and Harvard.

The biggest benefit I see to having a hospital in Crystal Lake is proximity. I wouldn't have to travel far. It will provide area citizens with health care options. I feel as though Sentegra is extremely overrated.

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**Kakish Household**  
**City: CRYSTAL LAKE**

**Testmonial:**

The hospital I would normally visit is Centegra in Woodstock - it is a bit overcrowded.

The biggest benefit I see to having a hospital in Crystal Lake is proximity - I would like to have another hospital close to home, in case of emergency would be nice to know a hospital is in Crystal Lake.

A new hospital in Crystal Lake would be beneficial. People would be more encouraged to live in Crystal Lake. It would help the business in the are and stop the stores from closing

Dr. Amir Heydari  
690 E. Terra Cotta Ave. Ste. A  
Crystal Lake, IL 60014

Hi, my name is Dr. Amir Heydari, and I am a board certified bariatric surgeon and general surgeon. I am active with three other outstanding surgeons at Surgical Associates of Fox Valley. We have offices in Crystal Lake, Woodstock, McHenry and Huntley. I have hospital privileges at Centegra Hospital McHenry, Centegra Hospital Woodstock and Advocate Good Shepherd Hospital in Barrington.

I am here today to request that the Illinois Health Facilities and Services Review Board deny Mercy Health Systems application for a certificate of need to build a new hospital in Crystal Lake. I am opposing the proposed hospital as both a 16 year resident of Crystal Lake and as an active surgeon in the community.

When I came to this area 16 years ago, I knew that I would have privileges at three (3) hospitals. As a surgeon who takes lots of emergency call and trauma call, it was very important for me to be in a centralized location close to all the hospitals. Crystal Lake has been a great place for my family and me to live. We have great schools here and wonderful opportunities, but most importantly for me, we are close to all three (3) hospitals in the area. The fact is, I have to be to the hospital within 30 minutes after I get called in many instances. Crystal Lake is 10 minutes from Centegra Hospital Woodstock, 8 minutes from Centegra Hospital McHenry and 19 minutes from Good Shepherd Advocate Hospital. Therefore, the idea that Crystal Lake needs another hospital because of the vicinity for the residents just doesn't make any sense and is absurd!

Over the years many of my friends, family and neighbors have needed medical care, and there have been absolutely no problems getting to any of the hospitals mentioned above with any degree of difficulty.

As a physician and a surgeon, I am against having another hospital from another system in our area. I don't believe that they will offer anything new. In fact, they will likely duplicate some of the excellent services that already exist in our area, and that troubles me. Between the three (3) facilities very close to Crystal Lake and the multiple emergency and urgent care facilities that exist, I do not see the need for another hospital, which will not offer any new services to what we already have. Extra unnecessary duplication of services may force other systems to get rid of some of the necessary services that they currently provide to our community, specifically mental health. If Mercy is really worried about our community, they would open a mental health facility. Centegra has a mental health care facility for adults. With additional competition, the other hospitals may have to cut their budgets for mental health, which is greatly needed in our community.

In addition, the three hospitals that I go to, offer top-of-the-line services to their patients. They are routinely named as top hospitals in the nation for different services. I have no reservations in sending any of my family members or friends to any of the institutions in the vicinity for medical and surgical care.

The last thing is a field that I am obviously biased toward. I am a bariatric surgeon at the Centegra Center of Excellence Weight Loss Surgery Center. Even though I am an

independent physician, I have been extremely proud of Centegra for supporting this cause which is a great medical issue in our community. Centegra has provided our community with an extremely comprehensive program that assures that the patients are successful. As a result, Centegra is one of the few centers in the state of Illinois to have been designated as a Blue Distinction Center for Bariatric Surgery from Blue Cross Blue Shield and it is also a designated Bariatric Center of Excellence by the American Society of Metabolic and Bariatric Surgery.

We feel that we give excellent care to our patients, and we also spend some of our time doing revisional surgeries on patients who have had this surgery done elsewhere and are having problems. Therefore, another bariatric surgery program is not advisable and is not needed in our community. As a matter of fact, even though I had the choice of doing these surgeries at all three area hospitals, I decided to concentrate the service at one hospital because it would be beneficial for the patients.

Over the years I have had a lot of colleagues and friends from Mercy Hospital. The current hospitals where I practice have allowed privileges to Mercy physicians without any problems. I am concerned that if Mercy is allowed to build a new hospital they will limit the privileges to only Mercy physicians. I am concerned because even currently, there are community members that need specific types of surgery that Mercy does not provide, such as pediatric patients. Many times my group as independent physicians has asked Mercy Hospital to become a member of their insurance group so we can give care to the patients as needed, and we have been refused. Therefore, the patients have to travel elsewhere to get care. I am afraid that if the new hospital is allowed to open, physician privileges will not be based on qualification, but rather what their affiliation is, and this is not right. As I stated, currently the other area hospitals allow physicians from different affiliations to practice. With the history of Mercy, I am concerned about this.

We are blessed with high quality surgeons and physicians in this community, and I would like to be able to have my community members continue to have access to the high quality, which already exist here. Because I am absolutely opposed to having a new hospital built in Crystal Lake by Mercy Health System, I ask you to deny their request.

Thank you,

Amir Heydari, M.D., F.A.C.S.

Hello – my name is Mike Bier and I will be reading some statements from local residents who were not able to make it to the hearing today. Thank you

"My husband has heart trouble, so having Mercy Crystal Lake Hospital would be so much closer to home. Also I know Mercy works with people without insurance, which is a kindness I appreciate."

"Marvin and Denise Hosp  
Algonquin, IL"

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"The advanced technology would greatly benefit the communities surrounding the proposed medical center. The construction of the medical center would also create many temporary jobs in the building phase, and many more permanent jobs in the hospital and medical center itself."

"Jacob Wellbank  
Twin Lakes, WI"

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**The Smith Household  
CRYSTAL LAKE**

The hospital I would normally visit is Centegra in Woodstock.

The biggest benefit I see to having a hospital in Crystal Lake is proximity - travel time is extremely important. It would provide citizens with multiple options for quality care which are currently limited.

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**Miele Household  
City: CRYSTAL LAKE**

**Testimonial:**

The hospital I would normally visit is Centegra in Woodstock - just okay, it was very crowded, I was moved 3 times in 5 days there.

The biggest benefit I see to having a hospital in Crystal Lake is proximity - It would be easier to get into. Our Daughter had a baby in Centegra and they had no rooms so they put her in a storage closet (1.5 yrs ago). It would provide much easier access for health care - every hospital is overcrowded. A friend was in the hospital waiting for a bed at Centegra for over 9 hours, which infuriates me.

A new hospital in Crystal Lake would be helpful - more job creation. Whenever a service like this is available it is a very good thing for the community. Competition is good for all hospitals.

Good afternoon. My name is Julie Mayer and I am the Director of Community Relations at Advocate Good Shepherd Hospital. I understand that one of the reasons Mercy wants to build a hospital is to better serve the senior citizens of McHenry County. I want to tell you how Good Shepherd already fulfills this need and the unique services that we offer that other area hospitals don't offer. I also want to make mention of some preliminary results from a new survey of McHenry County residents and what they think about their access to high quality health care services.

Good Shepherd Hospital, which is located only 6 miles and less than 13 minutes from the proposed site, has a long tradition of outreach to the citizens of McHenry County Hospital. About half of Good Shepherd's patients are from McHenry County – to be honest, even though we're located in Lake County, we're just as much as McHenry County hospital as we are a Lake County hospital. We offer a unique comprehensive program designed specifically for seniors called Senior Advocate. Through Senior Advocate we offer free health screenings, flu shots clinics, transportation and a larger number of free educational seminars. To my knowledge Mercy does not currently offer these services to McHenry County residents. We also offer a very unique service that no other hospital in the area provides. We employ an onsite Medicare Counselor at the hospital who educates and helps seniors understand Medicare and enroll for Medicare Part D. They also help them sort through their bills and discuss what services are covered under Medicare. In addition, they provide ongoing education on prevention and disease management to seniors. This service is free of charge and provides them some comfort during a time of transition. We also partner closely with area retirement communities to better the health of their residents. For example, we're working with the Fountains right here in Crystal Lake to reduce the readmissions for congestive heart failure. In addition to working with local extended care facilities on readmissions, we also provide their healthcare workers free education on how to prevent falls. Preventing falls in the senior community has been a focus of ours for awhile and we're proud of the progress we've made. Again, to my knowledge, Mercy is not partnering with extended care facilities in McHenry County.

A handwritten signature in black ink, appearing to read "Julie Mayer". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Hello – my name is Jan Botts and I will be reading a letter from a local resident who was not able to make it to the hearing today.  
Thank you

The need for a new hospital in McHenry County is in my opinion very obvious. There isn't a choice available; you just have to go to Woodstock, Harvard, or McHenry. No other choices are within driving distance.

In my family just last Thursday my daughter in law had a reaction to something. So she went to the immediate care and after going into the room with the doctor, he felt she needed more than what immediate care could service. She had no choice as where to go. My son took her to the Centegra Emergency Room, where they stayed for a total of four hours. Had there been another choice of hospital they could have weighed the time difference of the two sometimes a little drive is so worth the distance. Just to avoid waiting to be treated in a timely manner. But as we all know there isn't much choice. It's Centegra McHenry, Centegra Woodstock or Harvard.

So building a new hospital would be a HUGE asset to McHenry County. It is my personal choice to go to the Mercy Health System Facilities, simply because they treat you better. When you go to a Mercy Clinic, you walk away feeling as if you are not just a number on their list.

In closing I am asking that the powers that be approve a new hospital being built in McHenry County. Think of all the people that are unemployed in our county. The building of a new hospital would generate 840 full time positions and a total of 1,000 people just for employment at the hospital. Not to mention the construction workers and the revenue that will be generated into the county.

Sincerely;  
Shirley Chavez  
Harvard, IL

py 193

**Public Hearing Testimony – Dr. Andrew Ward**

**OPPOSITION OF PROJECT: #10-089 (Mercy Hospital, Crystal Lake)**

**March 18, 2011**

Hello. I'm Dr. Andrew Ward. I am Chief of Anesthesiology and Director of the Algonquin Road Surgery Center in Lake in the Hills. I'm here today to urge the Illinois Health Facilities and Services Review Board to REJECT Mercy's certificate of need application for a hospital in Crystal Lake. In fact, many of the arguments you will hear or have heard today in opposition to Mercy's proposal are the very same arguments used to oppose Centegra's hospital project.

The duplication of operating rooms that Mercy proposes is just one of my objections to the Mercy proposal. If significant capital outlays are going to be invested in facilities, those health care dollars should be invested in improving quality and the functionality and value of the electronic medical record, covering more lives and improving efficiencies and technology. This proposal does none of those things and severely impairs the ability of existing providers to work toward those goals.

The Algonquin Road Surgery Center has provided surgery services since 2002 and is a joint venture between Centegra Health System, Sherman Health and surgeons who use the ASC as an extension of the medical practice. There is also a small number of Mercy physicians that also use the facility.

Our facility is licensed for three operating rooms and one procedure room. After eight years of operation, we have NEVER reached capacity and are still dramatically underutilized. In 2010, we served 2,644 patients. Each of the four rooms has capacity for about 1,800 cases per year, for a total of 7,200 cases. The result is that our operating rooms were only at one-third capacity.

Andrew  
Wood 2/23

The proposed Mercy Hospital includes eight operating rooms. It strikes me as curious that this is considered a need when our operation can't sustain four suites. While we are the only multi-specialty surgery center in the area, the area's hospitals also show similar capacity to do more surgical cases.

Another thing to keep in mind about Mercy's hospital would be the fixed costs for their facility. Creating a new hospital WILL NOT CREATE NEW PATIENTS. Fewer patients will visit each facility, but equipment must still be maintained and upgraded. The buildings need to be kept up. Everyone needs to pay their large staff of nurses, other clinicians, maintenance and security personnel, managers, and executives. Adding another facility to an area that already has plenty of health care services will not improve health care delivery to patients. In fact, it will do just the opposite by decreasing efficiency and decreasing available funds for the community.

I recently had the opportunity to visit with congressmen and senators in Washington D.C. to discuss health care issues. It is largely agreed that building a new hospital and adding new beds is at odds with decreasing health care costs and bringing the Sustainable Growth Rate under control. Rising health care costs are threatening our nation's financial health. The Medicare program is faced with not only rising costs but also with increased demands associated with the baby boomers entering their senior years coupled with the aging population. The politicians and the stakeholders at the national level are in a political debate which focuses on a health care budget with sustainable growth, but the truth is that the federal government spending on health care is unsustainable. This CON Board cannot approve new hospitals that duplicate the capacity of the existing providers we have. It will put the bankruptcy of the Medicare Trust Fund on the fast track. We need a tighter, more efficient health care system to survive in this new financial reality.



Andrew  
Ward  
3/13

We already have SIX hospitals in the region which can serve our patients to 2018 and beyond. By the time Mercy's hospital would open, demand for beds will be even lower because of changes required by federal health care reform.

This lack of demand for operations at our top-notch facility is a strong illustration that we need to take a deep breath and be thoughtful about how we deliver quality care to patients. Duplicating resources does not promote better health care. It means higher costs for everyone.

I ask the Illinois Health Facilities and Services Review Board to reject the CON permit application of Mercy Health System to build a hospital in Crystal Lake, just like I asked you to reject the application for Centegra to build a hospital in Huntley. No new hospitals are needed. Thank you for your consideration.

Sincerely,

Andrew Ward, MD

Hello – my name is Tamera Dennis and I will be reading a statement from a local resident who was not able to make it to the hearing today. Thank you

I'm happy to write this letter in support of Mercy's proposed hospital in Crystal Lake. I've lived in unincorporated Cary in the Southeast area of McHenry County for 20 years. Prior to that, my family lived in the central part of Crystal Lake since 1973. What used to be a 15 minute drive to McHenry is now a 30 minute drive. What used to be a 10 minute drive from Cary to Fox River Grove can now take 30 minutes at certain times of the day. For those of us who live in the Southeast part of McHenry County having a hospital at the corner of Three Oaks Road and Route 31 would definitely be a plus.

My doctors are Mercy doctors and I've been impressed with the level of care and treatment I have received for regular appointments and procedures. The staff members at the Woodstock Medical Center and Crystal Lake Medical Center are professional and courteous. For Mercy doctors to have a Mercy Health Systems Hospital in Crystal Lake would be a benefit for them and their patients. If the quality of the Crystal Lake and Woodstock clinics is any indication, the hospital would be another top level facility for health care.

An assisted living facility is being built in Cary. It will provide services for senior citizens who need support services and/or care for memory or Alzheimer's. To have a hospital so close by could be life saving for the residents. Oakbrook Estates is a senior living community at the corner of Route 14 and Sands Road. For these residents Mercy Hospital would be 5 minutes away and would provide easy accessibility.

For 25 years I worked at McHenry County College, the last 10 years as an administrator. During my time as an Executive Dean, the Registered Nursing Program was developed. That program and the Basic Nurse Assisting Program were among the programs that reported to me. Clinical space for nursing students is very important and to have a hospital in Crystal Lake to provide additional opportunities would be an advantage. From the beginning of the process for developing the Nursing Program, Mercy was supportive and cooperative.

Mercy Health Systems Hospital would bring additional professional jobs to Crystal Lake. Many Mercy employees would live, shop and enjoy recreational activities in Crystal Lake and Cary, enhancing the community in the process. I'm a member of the Cary-Grove Rotary Club (an International Service Organization) and can think of numerous ways Mercy and the Rotary could support each other.

In the end, Mercy Health Systems Hospital would be positive for Crystal Lake, Cary and McHenry County.

Sincerely,

Susan Maifield

McHenry County College Administrator Emeritus

Rotary Club of Cary-Grove President Elect

**Rex C. Nzeribe, MD  
3707 Doty Rd, Suite E  
Woodstock, IL 60098**

**OPPOSED TO PROJECT 10-089**

My name is Dr. Rex Nzeribe and I am a physician with Centegra Primary Care, Woodstock. I am here to oppose Mercy Health System's application for a Certificate of Need to build a new hospital in Crystal Lake.

As a Fellowship-trained Geriatrician, I provide care for older adults across various phases of the spectrum as well as transitions from home through primary care, acute, sub-acute and long term care facilities.

I am dedicated to helping my patients maintain functional independence in their daily lives. Access to high-quality wellness and preventative care that is coordinated and comprehensive is essential to attain this goal.

My observation so far in this geographical area, from an acute care provision perspective, is that the Crystal Lake population is well served. My patients from the Crystal Lake area receive outstanding medical care at Centegra Hospital McHenry, Centegra Hospital Woodstock and Centegra Specialty Hospital (Sub-Acute rehabilitation unit), Woodstock. These patients also take advantage of more than a dozen fitness classes designed specifically for seniors at the Centegra Health Bridge Fitness Centers.

On the contrary, the southern portion of our county, particularly the Huntley area, seems to have a dearth of acute care facilities particularly suited for the growing population of adults over 65 years of age. This is supported by concerns voiced by my patients. Also, I am aware that Centegra is committed to providing care for residents of Sun City Huntley by staffing a Wellness center catering to more than 8,000 residents of that community.

In the interest of the growing population of residents 65 years and older in south McHenry county, I believe that a Certificate of Need for a new hospital in Crystal Lake should be denied as this would not be to the greater good.



*written  
only*

**Opposition to Project #10-089**

My name is Charie Zanck and I am the chief executive officer of American Community Bank & Trust and chairman of the Board of Governors of Centegra Health System. I would like to voice my opposition to Mercy Health System's proposal to build a new hospital in Crystal Lake.

Community education and wellness are critically important activities for a health system and Mercy is virtually unknown in this region for either. Other health systems commit time and financial resources to preventative care and screenings, but once again Mercy is not active in this area. A claim was made by Mercy in their CON application that they are dedicated to the future of our county and they referenced the 2006 Healthy Community Study. You should be aware that Mercy has not participated in any of the partnership initiatives over the past four years to improve the areas identified in this 2006 study.

Despite the fact that they have been invited a number of times, Mercy has chosen not to respond and is not participating in the 2010 McHenry County Healthy Community Study. This study includes Centegra Health System, Advocate Good Shepherd, Sherman Health System, community organizations, schools and the McHenry County Department of Health. Mercy is not partnering with these other organizations in identifying and addressing the true needs of our community.

For my healthcare, I choose Centegra Health System. In stark contrast to Mercy Health System, Centegra has a long-standing reputation for providing healthcare to the residents of the Crystal Lake area. Our multiple facilities in Crystal Lake, and our wide array of services combined with free wellness classes and screenings demonstrate our deep commitment to the families who live in the Crystal Lake area. Last year Centegra provided more than \$53 million in community benefits to the people of greater McHenry County and participated in over 490 community events. In addition, our associates and physicians served on the boards and committees of over 68 community organizations, volunteering over 14,000 hours in just one year because we understand the importance of being involved, giving back, and making a difference in McHenry County.

Centegra Health System, more than any other health system in the area, is the leader in both commitment and investment to the health and well being of McHenry county families. I urge the Illinois Health Facilities and Services Review Board to decline Mercy Health System's application.

Sincerely,

A handwritten signature in cursive script that reads "Charie A. Zanck".

Charie A. Zanck  
Chief Executive Officer

Hello – my name is Hilario DelPeral and I will be reading some statements from local residents who were not able to make it to the hearing today.  
Thank you

"I like to see competition. Centegra has two facilities in the area, why not have a Mercy one. I have been very happy with Mercy services. "

"Fred Dozier  
Wonderlake "

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I think that it is a good idea to have another hospital in the area. I have three kids and it would be great to have a hospital closer to where we live.

"Keri N.  
Lake In the Hills, IL"

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**The Traub Household**  
**CRYSTAL LAKE**

The hospital I would normally visit is Centegra Hospitals.

A new hospital in Crystal Lake would be helpful. The area is in need of a new hospital - location would be great.

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**Duray Household**

**City: CARY**

**Testmonial:**

The hospital I would normally visit is Centegra in McHenry and Good Shepherd.

The biggest benefit I see to having a hospital in Crystal Lake is proximity - commute would be easier. I am an older person and I cant take the train to the hospital anymore. It is real problem and nuisance for my husband and I to find rides to and from the hospital every time we have an appointment.

**Public Hearing Testimony  
of Syl Boeder  
Project # 10-089 (Mercy Crystal Lake Hospital and Medical Center)  
March 18, 2011**

Hello. I am here to ask the Review Board to reject the Mercy Health System application to build a community hospital in Crystal Lake.

I am a resident of northern Kane County and my name is Syl Boeder. I am a former health care executive – and a senior citizen.

Many of you have probably heard of the “four corners” area out West, where the corners of Utah, Colorado, Arizona and New Mexico all meet. Well, for those of us who live in Northeastern Kane County, Southeastern McHenry County, Northwestern Cook and Southwestern Lake County, we almost have our own “four corners” when it comes to county lines. Check it out on a map sometime.

It is very common – all day, every day – for most people who live around here to cross county lines – to go to work, to go shopping and carry out every other aspect of our lives. It is no big deal. It’s a county line; it’s not an international border, for goodness sake.

So, when health care decisions are being made for the region, the health care market needs to be assessed with an eye on regional issues and regional travel patterns. The facts show that many McHenry County residents may go outside their home county to use hospital services. That is called “outmigration” in health care terms.

But this is not a problem that needs to be remedied by spending hundreds of millions of dollars. It is the way we live our lives here. If you live in southeastern McHenry County, the hospitals just outside the county are convenient because they are so close, geographically. There is no shortage of health care services in this area.

The proposed site for Mercy’s facility in Crystal Lake is only six miles from Advocate Good Shepherd in Barrington. So while Good Shepherd may be located in another county, it is extremely accessible to residents who live within Mercy’s identified target market. Meanwhile, Sherman and Provena hospitals in Elgin – which is in Kane County –also are convenient to the McHenry County towns of Algonquin, Lake in the Hills and Huntley, among others.

The hospitals in this area gets high marks from senior citizens because of its full range of senior services.. We need to keep our existing hospitals strong, rather than worrying about arbitrary “official” county lines. Those county lines don’t affect in any way the very good access to health care that we have here.

I'd also like to share the following  
Thank you.

9483605.1



### **The safety net impact**

The term safety net refers to health care services provided to "persons with barriers to mainstream health care due to lack of insurance, inability to pay, special needs, ethnic or cultural characteristics or geographical isolation," according to Illinois statute.

A way hospitals, which in this area are all nonprofits, generate revenues to provide safety net services is through populations that have insurance, hospital officials said.

Hospitals get paid 30 cents per dollar from insured patients for inpatient care but get only 21 cents per dollar for Medicare and Medicaid patients for the same care, said Sherman Hospital CEO Rick Floyd, who recently spoke at a Kane County board meeting.

According to a recent Moody's Investors report, Medicare makes up about 43 percent of a given hospital's gross revenues but that source "is highly vulnerable to changes in Medicare reimbursements." For example, this year Medicare payment rates to hospitals were decreased from 3.5 percent to 2.1 percent and are expected to decrease next year, the company said.

"There are many residents in Kane County who don't have access to health care," Floyd said.

But Huntley and surrounding towns are more "affluent communities that makes it very attractive for health care" because there are more people who are likely to have insurance, Floyd told county board members. So, hospitals would generate more funds to help provide for charitable care.

Sherman and Provena currently provide 18 to 20 percent in public aid charity for inpatient services compared to Centegra's 9 to 12 percent, Floyd said. Sherman officials said the Elgin hospital provided \$3 million in charity care and \$41 million in unreimbursed Medicare and Medicaid care.

### **Finding funds for charitable services**

What is being argued is that a new hospital in southern McHenry County would affect neighboring hospitals' ability to provide services to this population and thus affect the "safety net."

"If you have more competition for few paying customers, that may reduce the capability of Provena and Sherman to offer charity cases," Kane County Public Health Executive Director Paul Kuehnert said. Providing charitable assistance is the "heart of the health care system," he said.

Good Afternoon,

My name is Paul DeRaedt. I am the Deputy Chief of the City of Crystal Lake Fire Rescue Department. I am here today speaking on behalf of our Fire Chief, James Moore, who could not be here today due to medical reasons.

Chief Moore wanted the Illinois Health Facilities and Services Review Board to know that the Fire Rescue Department of the City of Crystal Lake wholeheartedly supports the Mercy Crystal Lake application to build a hospital in our city.

We support the Mercy project because it will help us to provide the very best care to our citizens.

With a hospital in Crystal Lake, our ambulance run times will be cut in half. That saves us time so that our crews can get back into the field and continue to serve our citizens.

By reducing our run distances we also are able to save on costs and money for the City.

And most importantly, reducing our run time saves our patients precious time when seconds count.



Our department answers over 3,000 EMS calls a year and our 61 field trained and excellent staff need a local hospital's support to help them give our citizens the very best care possible. This is why we support the Mercy Crystal Lake Hospital.



**ALEXIAN  
BROTHERS**

St. Alexius Medical Center

1555 Barrington Road  
Hoffman Estates, Illinois 60194-1099  
Telephone 847/843-2000

**Mercy Crystal Lake Hospital & Medical Center Project #10-089  
Opposition Testimony of Mike Waschevski  
Director of Facilities at St. Alexius Medical Center**

Good morning. My name is Mike Waschevski. I am here to oppose Mercy's plan for a Crystal Lake hospital.

As you may know, Alexian Brothers Hospital Network is about to break ground on the new Children's Hospital at St. Alexius Medical Center in Hoffman Estates, which is just about 30 minutes away from here. It will be a state-of-the-art, kid-friendly environment that will deliver multi-disciplinary, collaborative care. I am the director of facilities for St. Alexius, and am very involved in managing our construction project.

Let's take a look at Mercy's promise of creating 650 to 800 jobs. The numbers either don't add up or, they are easily misunderstood.

Allow me to briefly walk you through the work schedule for the life of our project as a way to begin to understand how Mercy might have derived its 650 to 800 job estimate. As most people probably know, on any construction project, not all construction workers are there every day, all day throughout the life of the project. One crew does the foundation. Another crew does sheet metal. Another group does the electrical work, and so on.

This chart shows the number of workers needed – per month – for the duration of our three-year construction project. You'll see by this chart that during our peak, which will last about eight months from November of this year to June of next year, we only expect to have about 100 to 150 workers on site at one time. That's our peak number of jobs. Now, if you look here

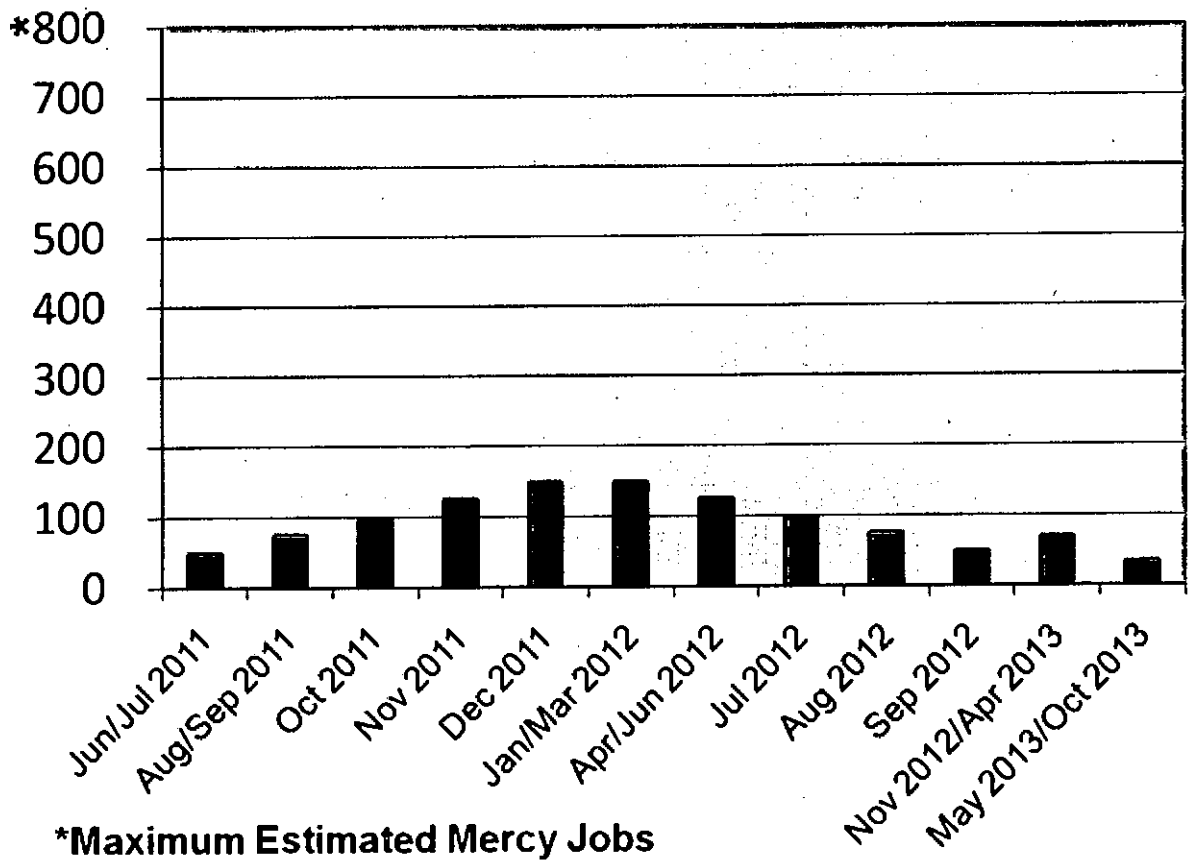


# ALEXIAN BROTHERS

St. Alexius Medical Center

1555 Barrington Road  
Hoffman Estates, Illinois 60194-1099  
Telephone 847/843-2000

## Estimated Workers On-Site Each Day to Construct The Children's Hospital at St. Alexius Medical Center



\*Maximum Estimated Mercy Jobs

Hello – my name is Chris Lippert and I will be reading some statements from local residents who were not able to make it to the hearing today. Thank you

I agree that a hospital is needed. Crystal Lake is growing and needs the facility.

"Larry Williams  
Antioch, IL"

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"I am very satisfied with Dr. Fojtik and his staff. I feel that the Mercy Crystal Lake Hospital is needed, especially with the number of people in the area. "

"Patricia G.  
East Dundee, IL"

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**The Fenske Household**  
**CARY**

The hospital I would normally visit is Advocate Good Shepherd in Barrington.

The biggest benefits I see to having a hospital in Crystal Lake are proximity to outpatient and emergency care.

A new hospital in Crystal Lake would be great. The area is in definite need of a new hospital with the growing population. The hospitals currently available (Good Shepherd) are outdated.

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**Murdock Household**  
**City: CARY**

**Testmonial:**

The hospital I would normally visit is Good Shepherd - Good experience.

The biggest benefit I see to having a hospital in Crystal Lake is location - closer and more options.

A new hospital in Crystal Lake would create jobs - could also attract people to Crystal Lake area. Not having a nearby hospital sheds a negative light on the area for potential home buyers.

Dr. Dudley Brown  
Testimony re: Project 10-089  
Opposition to Mercy – Crystal Lake

My name is Dr. Dudley Brown, Jr., and I am Medical Director of Obstetrics for Centegra Primary Care. I am opposed to Mercy's new hospital proposal.

I took a look at the OB components of Mercy's plan, and I was struck by the lack of thoughtfulness that went into this section of the application. This OB unit was not well-conceived.

First of all, there is no justification for the proposed 20 OB beds at this facility. Given the two labor and delivery rooms and 900 annual births that Mercy has accounted for, each patient would have to stay 5.5 days in the hospital in order for Mercy to reach its target utilization. It has been many years since post partum patients needed to stay in the hospital for that long after giving birth. To give you some perspective, Centegra's OB facilities are designed so our units reach their target utilization with an average patient stay of 2.5 days. That is a more reasonable scenario for current obstetrical practice.

Additionally, Mercy's plan does not include any dedicated C-section beds in the OB unit. While it may be true that all hospitals do not have C-section beds in their OB units, most newer hospitals do. Health systems that are starting a new hospital facility should plan ahead and ensure that C-section rooms are located right in the OB unit. Performing a C-section in the main OR which requires moving the patient to another floor is not the optimal scenario for patients and providers.

Personally, I would not want to work in this proposed OB unit. Mercy's plan is not well thought-out. It's not the best way to serve patients in this community. I ask the Review Board to consider the lack of thought that was put into this application and to deny Mercy's proposal.

**PUBLIC HEARING TESTIMONY**  
**of Dr. Matt Stilson, Emergency Department Director**  
**PROJECT # 10-089 (MERCY CRYSTAL LAKE HOSPITAL & MEDICAL CENTER)**  
**MARCH 18, 2011**

**My name is Dr. Matt Stilson, and I am a board-certified emergency physician. I serve as the Director of Sherman Hospital's Emergency Department in its new state-of-the-art facility. In that role, I oversee the care in the Emergency Department at the hospital, as well as in Sherman's Immediate Care Centers in Algonquin, Elgin and South Elgin.**

**I am here today to voice my opposition to Mercy's plans to develop a hospital in Crystal Lake. Building a new facility would merely duplicate the health care services that are already available to this region. Plus, the smaller the community and the more duplication of services, the less likely it becomes for a hospital to be able to deliver tertiary care, such as that provided at Sherman - state-of-the-art cardiac care, comprehensive cancer care, advanced liver and pancreatic care and lifesaving stroke care.**

**If this proposed hospital were approved, it would make all six other area hospitals which have more than adequate capacity weaker as it would draw patients from the hospitals that currently serve the area. This undermines the health care delivery system including the financing plans of hospitals like Sherman which has invested significant capital to ensure they meet the long term plans of the community. Sherman, specifically, spent \$325 million and designed its replacement facility to provide comprehensive care to the entire region. Sherman true to its promise moved its hospital closer to the center of**

**PUBLIC HEARING TESTIMONY**  
**of Dr. Matt Stilson, Emergency Department Director**  
**PROJECT # 10-089 (MERCY CRYSTAL LAKE HOSPITAL & MEDICAL CENTER)**  
**MARCH 18, 2011**

its service area and is delivering convenient state-of-the-art care to residents of McHenry County

People at hearings such as these like to focus on what happens to trauma patients and other critical emergency cases. I would like to put trauma care into perspective. Of all the cases we see in the emergency room, approximately 1% or one in 100 is a trauma case. Additionally, the most important factor for people in life-threatening situations is not how close their home is to a hospital, but how long it takes EMS and paramedics to reach them and stabilize them.

The real factor in giving critical emergency care is assembling the right team of specialists at the hospital to receive the patient. It often takes longer to get a surgical team together and the operating room prepped than it does for a patient to arrive at a hospital via ambulance. At a state-of-the-art regional medical center, we can do this most efficiently and effectively. Plus, our 24-hour communication network with paramedics and emergency transports allows us to begin treating emergency patients before they even arrive at the hospital. In addition, our physicians are specially trained in emergency medicine and we have certified trauma nurse specialists.

With our location near the Kane and McHenry County line, we are perfectly positioned to serve McHenry County residents. And, given Sherman's size, capabilities and level of care, I assert that building an additional hospital in the

**PUBLIC HEARING TESTIMONY**  
**of Dr. Matt Stilson, Emergency Department Director**  
**PROJECT # 10-089 (MERCY CRYSTAL LAKE HOSPITAL & MEDICAL CENTER)**  
**MARCH 18, 2011**

area is an unnecessary expenditure of money that would only detract from –  
rather than enhance – medical service for our residents throughout the region.

**Thank you.**



## Timothy E. McDonnell

7200 Mallard Way  
Cary, Illinois 60013

### **Public Hearing March 18, 2011 - Opposing Mercy Hospital**

Hello, my name is Tim McDonnell, and I am a resident of Cary and I oppose the proposed new hospital in Crystal Lake.

I believe that building another hospital in southeastern McHenry County is not needed or wanted by the community. While I may look young and healthy, I'm deeply concerned because I have a family history of heart disease and I'm worried what might happen should I have a heart attack. Should this new hospital get built and I have a heart attack, I'll be taken to this hospital's emergency room. This new hospital could take me away from the physicians that I trust. If I need surgery I would have to be transferred elsewhere. This is unacceptable and unnecessary. Let me be clear, I don't want this hospital built. It's an extra burden on me, the patient, and my family. I want to be taken to a hospital where all options are open to me, including open heart surgery. Having to go to another hospital first could put my life at risk.

Our area is already well-served by several fine hospitals. Advocate Good Shepherd is located just five miles from my house and six miles away from the site of the proposed Mercy community hospital. Good Shepherd – along with Sherman and Provena hospitals in Elgin – have all of the services I need, excellent medical professionals, and state-of-the-art facilities to serve the people in southeastern McHenry County.

Of course everyone would like to see job creation in our area. But building a new Mercy facility would not necessarily create new jobs. If another hospital were built, jobs would merely be moved around among more facilities, leaving the community without a net increase in jobs.

It would be like a game of musical chairs – the same number of patients would move among a greater number of hospitals, in efficient and unnecessary. If the hospital is built, the medical staff will have to decide if they want to go to more places and be less efficient and possibly delaying care. Just because there is another hospital, doesn't mean more patients suddenly appear. In fact, Cary has been closing schools due to lower enrollment-the population is not growing as fast. The bottom line – the population doesn't warrant a whole new hospital and won't result in the creation of more jobs.

I would like to make one last point. I am concerned about Mercy's ability to staff a new hospital. The Mercy hospital in Harvard no longer offers obstetrics services because it was unable to find physicians and other hospital professionals to staff the service. I am not encouraged by Mercy's track record in Illinois.

Let me say this again, a new hospital as proposed by Mercy is not needed or wanted. Thank you for taking my remarks into consideration.

  
Timothy E. McDonnell

Dr. Yvonne Yao  
Testimony re: Project 10-089  
Opposition to Mercy – Crystal Lake

I am Dr. Yvonne Yao, an obstetrician and I am opposed to Mercy's proposal. I started my Woodstock/Crystal Lake practice in 2000 with Mercy Health System, and I noted a change in Mercy over the years.

Instead of patient care, they appeared to be more focused on the "bottom line." I felt pressured to take patients from Centegra Woodstock Hospital, where my patients had been receiving their hospital care, to Mercy's facility in Harvard. When I expressed concerns about the quality of certain services within Mercy, I was ignored.

I pointed out that traveling 20-30 minutes from Woodstock to Harvard could compromise patient care. I pointed out that services that were available at Centegra Woodstock would not be available to my patients if they went to Mercy Harvard Hospital. I was told that I was not being a team player. This type of behavior made me lose confidence in Mercy.

I moved my outpatient practice to Centegra Primary Care in 2008. After experiencing Mercy's care philosophy from within the organization, I strongly oppose any hospital proposed by Mercy. I heard that Mercy physicians indicated that they would bring all of their patients to a new Crystal Lake hospital. That is further proof to me that Mercy's interest is in making more money for themselves and not providing the highest quality medical care to the people of McHenry County.

I ask that the Illinois Health Facilities and Services Review Board deny Mercy's application for a hospital in Crystal Lake. It was clear to me that Mercy Health System does not put the needs of its patients first.

## Advanced Cardiology Consultants, Ltd.

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SOLOMON I. SECEMSKY, M.D., F.A.C.C.  
RAMINDER P. SINGH, M.D., F.A.C.C.

MACIEJ K. MALINSKI, M.D.  
AZMEY A. MATARIEH, M.D.

March 15, 2011

My name is Dr. Solomon Secemsky, I am a cardiologist at Sherman Hospital in Elgin. I am also a member of the Sherman Health board of directors. I am here today, to express my opposition to the proposed Mercy hospital in Crystal Lake.

I have been a board certified cardiologist for over 30 years and I am speaking today, based on that experience and perspective. I have seen heart care evolve tremendously in the past 30 years in many positive ways. Based on this evolution in health care delivery, I can tell you, firsthand, that adding another hospital to the area will have a material and adverse impact on the care of cardiac patients, in the Crystal Lake area. The concept of a new hospital in McHenry County is simply irresponsible.

Let me explain, by giving you a glimpse into the life of a cardiologist, who treats patients from all over this region. In any given hospital system with advanced heart care, a cardiologist's care to patients involves treating them in four locations; in the operating room, in the recovery room, in the ICU step-down units of the hospital, and in the office. Efficient access to patients among those locations is essential to high quality care. It is very important to me to maintain my practice, almost exclusively at a single location, in my case, Sherman hospital. If I have to travel to various communities to deliver care, I will be less available for direct patient encounters with my post-operative patients with their, often, urgent needs.

Also, based on the often sudden and emergent nature of coronary incidents, it is often necessary for me to rearrange my schedule, to be in the cath lab on extremely short notice. In fact, the protocol for emergent care that I provide, requires me to live within minutes of the hospitals, where I am on call, as we strive to initiate our emergency coronary procedures within 30 minutes of the determination of the presence of an acute heart attack.

Cardiology programs in the area have proliferated, which means that heart patients are already being diluted among numerous providers. In contrast, in earlier years, there were far fewer programs and those programs were more robust. The proliferation of cardiology services make for a lower level of staff specialization and dilutes the clinical benefits that a center of excellence in specialized care offers. This discourages O.R. and nursing staff specialization and cardiologists from being able to devote more time to providing care to patients. Based on the cost of specialized care, we can no longer shrug our shoulders about the facts that physicians must drive from one distant location to the next to deliver care. Care efficiency must be made a priority.

The capital commitments for developing a strong heart program go way beyond building and equipping operating rooms. Staff specialization and post-surgical care facilities are equally important.

On the flip side, if a new hospital is built and such a program is not developed, patients with immediate cardiac care needs, seeking treatment at the new Crystal Lake hospital would undoubtedly need to be immediately transported by ambulance to a more advanced medical center, which can handle the complete range of cardiac procedures. Since time is muscle, this stop along the way would have a significant negative impact on these patient outcomes.

As a cardiologist, I feel strongly that Mercy is not looking out for patient's best interests, as they are trying to draw patients away from nearby, established and very capable hospital which offer high-quality, critical care.

Sherman hospital prides itself on offering the best cardiovascular care to our patients, including McHenry County residents, most of whom are nearly as close to an existing hospital, as they are to Crystal Lake.

As a physician, I urge the review board to think about what is best for the health and well-being of area residents and reject Mercy's proposal to build a hospital in Crystal Lake.

RESPECTIVELY  
SUBMITTED,

*J. Arumsky MD*



**ALEXIAN**  
**BROTHERS**

St. Alexius Medical Center

**Public Hearing Testimony of  
Edward M. Goldberg, President and CEO, St. Alexius Medical Center**

Project #10-089 – Mercy Crystal Lake Hospital & Medical Center  
March 18, 2011

My Name is Edward M. Goldberg, and I am the President and CEO of St. Alexius Medical Center in Hoffman Estates. I am here today to voice my opposition ... the opposition of St. Alexius Medical Center ... and the opposition of Alexian Brothers Health System... to the proposal by Mercy Health System of Janesville, Wisconsin to build a new – and we believe unneeded – hospital in Crystal Lake, Illinois.

I would like to take this opportunity to point out that Alexian Brothers Health System typically does not oppose hospital building projects. For example, we supported Centegra-Woodstock's 2004 proposal to expand their Woodstock campus. We also supported Sherman's proposal for their new hospital in Elgin.

We also did not oppose:

- St. Joseph's expansion and request for open heart;
- Centegra's Northern Illinois Medical Center expansion and request for open heart;
- Good Shepherd's request for expansion and open heart; or
- Glen Oaks' request for a Cath Lab.

So, this opposition is not a knee jerk reaction. It is a reluctant – but absolutely crucial and well-thought-out – response to a completely inappropriate duplication of extremely expensive healthcare services.

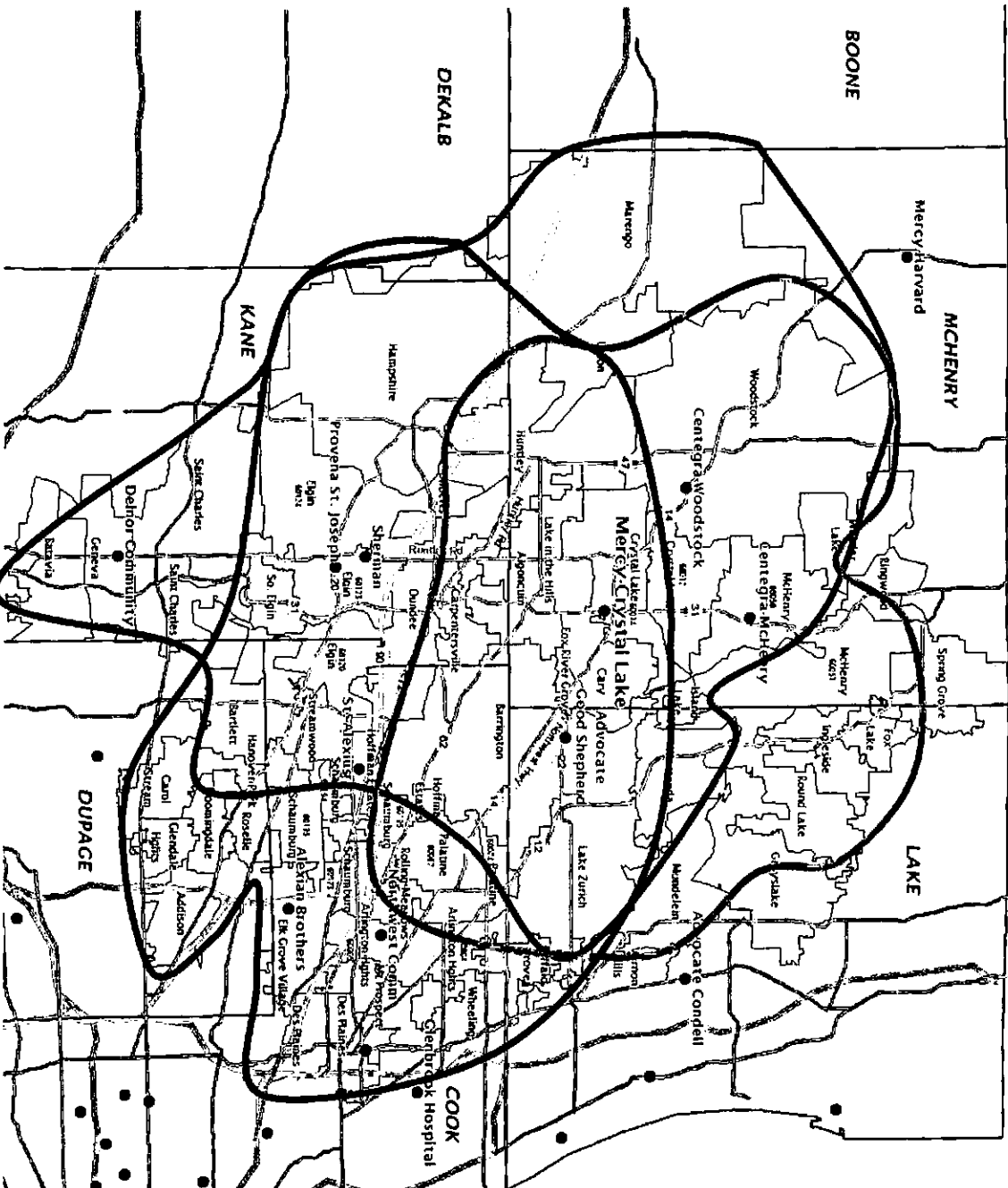
This region is very well served by the Alexian Brothers Health System and several other fine hospitals. In fact, the proposed hospital is located just 35 minutes from St. Alexius Medical Center – and several other hospitals are even closer to the Crystal Lake site than we are.

I'd like to use this map to illustrate that point. (*Point to the service area map.*)

It almost appears that Mercy has drawn a circle around the combined, existing service areas of Good Shepherd, Sherman and St. Alexius hospitals to define its service area for the proposed new hospital. This shaded blue area is the area that Mercy defined as its service area in its application to the state.

**Proposed Mercy-Crystal Lake Service Area  
Overlaid with Existing Hospital Service Areas**

*ed workberry*



- Service Areas of Selected Existing Hospitals
- Advocate Good Shepherd
- Sherman Health
- St. Alexius

- Proposed Mercy-Crystal Lake Service Area
- Area Hospitals

Note: The service areas of other hospitals located within the region would also overlap with Mercy's proposed service area, but service area definitions were not available for these other hospitals.

Virtually the entire proposed service area of the Mercy Crystal Lake hospital is within the service areas of existing hospitals, thus adversely impacting the volumes and capacity of those existing hospitals.

Mercy Crystal Lake Hospital Public Hearing 3-18-11

Comments by Fredrick W. Wickham

I preface my comments with 2 notes:

1. The issue here is not about Centegra or Northern Illinois Medical Center. My family and I have received positive medical treatment and services from Centegra and NIMC. The issue here is about meeting the primary and emergency care needs of the people of Crystal Lake.

2. I have significant interest in and some standing in the matter of a new hospital for Crystal Lake as a result of the following:

I have lived in Crystal Lake for more than 40 years.

I have been active in politics in the community for nearly 40 years.

I am a co-owner of a business in downtown Crystal Lake for more than 20 years.

I have served on the Crystal Lake City Council for 8 years. (1974-1982).

I served on the C.L. Zoning Board for one year in 2004.

My Comments consist of three points;

1. Many in Crystal Lake want a Crystal Lake Hospital.

2. Crystal Lake needs a hospital.

3. Crystal Lake will receive significant benefits from Mercy Hospital.

The people of C.L. have long expressed a desire and a need for a hospital in Crystal Lake. The need was identified more than 50 years ago. A group was formed in the early 60's to find a way to build a hospital in Crystal Lake. At that time the population in C.L. was less than 20,000 and even then they saw the need for a hospital. A hospital study was conducted in 1971 and 1972 and it was determined that the (Ambutal) site (Rt. 31 & 176) was the preferred site for a hospital in Crystal Lake. In November 1980 the Crystal Lake Hospital Association requested that the City Council adopt a resolution endorsing a hospital for the Crystal Lake area. The resolution was adopted. For years we have tried to get a hospital for Crystal Lake.

The Ambutal was annexed to Crystal Lake on October 2, 1979. It subsequently opened in 1981. The primary purpose, the sole purpose for the annexation and the building of the Ambutal was to grow the Ambutal into a hospital. The City's purpose for support of the Ambutal was to have Sherman Hospital develop a Crystal Lake hospital on the Ambutal site. How do I know this? I was on the City Council at the time and there are ample notes about its purpose in the minutes of the C.L. City Council meetings.

The need for a hospital in Crystal Lake: The City of Crystal Lake, the largest city in McHenry County, with a current population of approximately 43,000 has need for better primary and emergency care options.

We need faster transportation to emergency room services and vital hospital care.

We need better access to local physicians.

We need greater convenience for patients, family, and friends.

We need lower costs for transportation and, because of competition, lower medical service costs.

We need an increase in beds available for immediate care.



# Advocate Good Shepherd Hospital

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Dear Board members and participants,

My name is Dr. Joseph Giangrosso and I am the Medical Director of Emergency Medicine at Advocate Good Shepherd Hospital in Barrington, less one mile from McHenry County and less than 7 miles from this proposed hospital. Due to another commitment I am not able to attend this hearing but wanted to make my views heard. There are already sufficient Emergency Department services in McHenry to well serve the current and future population and we do not need additional Emergency Departments in McHenry County. Building expensive new inpatient facilities with emergency departments is an expensive proposition. My department is proud to serve McHenry County patients every day, both through the hospital's emergency room and Good Shepherd's immediate care center in Crystal Lake.

Mercy says that one of the reasons they want to build a hospital is because of the excessive bypass time experienced by area hospitals. They are using old data and their claims are inaccurate. They reference a Northwest



Herald article from 2007 that talks about ED bypass times from 2004 to 2007. Since then Good Shepherd has expanded our ED capacity and the bypass times in 2010 were nearly nonexistent. Existing hospitals in the area have more than enough capacity to serve the emergency needs of McHenry County residents. I would like to direct you to the board which shows hours on ED bypass for 2010 for the region nine hospitals. The data are from the hospital and health alert network, IDPH safety, accessed through [www.idphnet.com](http://www.idphnet.com). You can see that Good Shepherd was only on bypass for two hours and was able to serve additional emergency patients 99.9% of the time. Four hospitals in the region, including Centegra-McHenry, Centegra-Woodstock, Northwest Community, and Provena-St. Joseph, are not shown in the report, indicating that they had no bypass hours in 2010. The seven area hospitals (Good Shepherd, McHenry, Woodstock, Northwest Community, Provena, Sherman and St. Alexius) averaged only 2 hours on bypass for all of 2010. It is important to note that when a hospital is on bypass, patients with life-threatening conditions and walk-in patients are not required to bypass and are accommodated at the hospital. Mercy indicates that drive time is excessive. I do not believe this is the case. EMS, lights-and-siren time from the east side of Crystal Lake is 7-10 driving minutes and 6 miles to Good Shepherd.

## Crystal Lake CON Public Hearing Mercy Health System Human Resources

My name is Kathy Adams and I am the Director of Education and Organizational Development for Mercy Health System. I currently live in Illinois at 8528 Creek Court in Machesney Park and am happy to be here speaking in support of the Mercy Health System CON application. I will be speaking about our employment process and the impact that would have if Mercy Health System would have a hospital and clinic in this area.

Mercy has been an employer in Illinois for many years. Our first partnership was in 1996 with Illinois Mercy Harvard Center clinic. Here at Mercy we have a strong reputation for being a "Best Place to Work" as evidenced by the following:

- When Mercy was awarded the Malcolm Baldrige National Quality Award in 2007 the Baldrige examiners recognized Mercy, through their in-depth examination (which included a week long site visit) as being a "Best Place to Work" a key strength and driver.
- We have been recognized for the past five years as being a best place to work by AARP for people over 50 with the distinction of being number 1 in the nation in 2006.
- Mercy has been recognized by *Working Mothers Magazine* for over five years as a best place to work for working mothers.

We take pride in our employee partners and creating an engaging work environment. Our last partner satisfaction showed results that were in the top 10 percent of the national healthcare benchmarks.

Currently we employ approximately 725 employee partners in Illinois at 17 locations. We have had great success in staffing our Illinois locations. Our vacancy rates are well below the national norms. Our current vacancy rate is 3% compared to national vacancy rates of approximately 9.5%. In addition our RN vacancy rate is approximately 3.5% compared to national benchmarks of over 10% (American Society for Healthcare Human Resources Administration (ASHHRA) benchmarks).

Mercy has very low turnover, our most recent turnover rates are 7.7%, compared to national turnover rates of 12.3%. For physician turnover, Mercy was below 3% during the first half of 2011 and Mercy's RN turnover rate is 5.2%, performing much better than the ASHHRA top 25% benchmark of 8.9%.

Mercy's approach to recruitment has been to work very closely with our local schools such as McHenry Community college and Elgin Community college. We have developed relationships with area health care professional training programs and colleges, regularly participating in Illinois Colleges' health care recruitment fairs. Over the last several years we have actively participated in over 20 different health care job fairs across Northern Illinois. In addition we serve as clinical teaching sites for five different healthcare programs for nursing and ancillary programs. We maintain contact with many area nursing schools and this May there will be approximately 550 nursing graduates within the Northern Illinois area to draw from. These schools include DePaul University, Elmhurst College, and Northern Illinois University among others. In addition we offer scholarships for people pursuing a healthcare degree including BSNs for both High school students and current Mercy partners. Over the last 5 years we have awarded 7 scholarships to Illinois High School students including Crystal Lake Central and Prairie Ridge High School in Crystal lake; and four scholarships to Mercy Illinois employee partners.

In closing as an Illinois resident I want to express my excitement about the possibility of Mercy Health System expanding in Illinois. I have truly had first hand experience of Mercy *being a best place to work* and hope we have an opportunity for others to experience this as well.

## SUPPORTING DATA

### Illinois Nursing Schools

Name of College	Number of Grads expected this May	Number of times per year they hold graduations
Aurora College	50	Once per year
Benedictine College	46	Three times per year
Black Hawk College	45	Once per year
DePaul University	50	Two times per year
Elmhurst	63	Once per year
Loyola University	101	Once per year
Northern Illinois University	66	Twice per year
St. Anthony's School of Nursing	27	Twice per year
St Xavier	60 - 70	Twice per year
Wabauensee Community College	43	4 times per year

### **Job Fairs/Career Days**

Nurse Expo – Rockford, IL – 3-30-06 & 3-31-06  
Concordia College OT/PT Career Fair – 3-30-06  
Nursing Spectrum Job Fair – Drury, IL – 9-29-06  
St Anthony's School of Nursing Career Fair – 11-06-06  
Nurse Expo – Rockford, IL – 3-29-07 & 3-30-07  
McHenry County Health Career Fair – McHenry, IL – 4-25-07  
McHenry County College Job Fair – Crystal Lake, IL – 10-24-07  
St Anthony's School of Nursing Career Fair – Rockford, IL  
Kishwaukee College – Malta, IL – 11-29-07  
Bradley Univ PT/OT Career Fair – Peoria, IL – 11-29-07  
McHenry County College Job Fair – Crystal Lake, IL – 10-24-07  
Nurse Expo – Rockford, IL – 3-27-08 & 3-28-08  
Career in the County – McHenry, IL – 4-25-08  
Rockford Register Star Career Fair – Rockford, IL – 9-24-08  
PT/PTA Career Day – Naperville, IL – 11-15-08  
St Anthony School of Nursing – 3-23-09  
Nurse Expo – Rockford, IL – 3-26-09 & 3-27-09  
Career in the County – McHenry, IL – 4-23-09  
St Anthony's School of Nursing – Rockford, IL – 11-30-09  
Nurse Expo – Rockford, IL – 3-25-10 & 3-26-10  
St Anthony's School of Nursing – Rockford, IL – 11-15-10  
Rasmussen College – Rockford, IL – 8-19-10  
Rasmussen College – Rockford, IL 2-17-11

### **Clinicals**

COTA – McHenry Community College  
PT – Bradley University  
MA – First Institute  
C.N.A.s – McHenry Community College  
Radiology – Elgin Community College

**Scholarships given in IL 2006 - 2010 (All of them where the Sister Michael Berry)**

2006 - 2  
2007 - 2  
2008 - 2  
2009 - 0  
2010 - 1  
Total = 7

**Scholarships**

2006 - 2  
Jaime Ostrom - Crystal Lake Cental High School, \$1000  
Anil Alimond - Woodstock High School, \$1000  
2007 - 2  
Jacquelyn Ortgiesen - Belvidere High School \$1000  
Kelly Hanrahan - Marian Catholic High School \$1000  
2008 - 2  
Tyler Bartz - Honoegah High School, \$1000  
David Gardner - Honoegah High School, \$1000  
2009 - 0  
2010 - 1  
Kathryn Marwitz - Prairie Ridge High School Crystal Lake, \$1000

**Mercy Partners**

2008  
Elizabeth Rios - Woodstock, \$1000  
Sandra Conrad - McHenry, \$1000

2009  
Elizabeth Rios - Woodstock, \$ 500  
Suzanne Eck - Woodstock, \$ 1000

Construction jobs created: 650-800  
Full-time equivalent jobs created: 840



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**Rick Jakle**

**Chairman, Sherman Health System Board of Directors  
Opposition to Project No. 10-098 – Mercy Crystal Lake Hospital & Medical  
Center, Crystal Lake**

Good morning. My name is Rick Jakle. I am the Chairman of the Sherman Health System Board of Directors. I am here to delve farther into why Sherman Hospital opposes Mercy's proposed hospital in Crystal Lake.

## **Health Care Reform**

The United States health care system is undergoing its greatest transformation since the creation of the Medicare and Medicaid programs in the early 60s. Payors are moving towards more outcomes-based payment models and health care reform legislation is aimed at reducing costs.



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Moreover, patient centered medical homes, bundled payments, clinical integration, and accountable care organizations, are driving the delivery of health care away from the traditional inpatient, acute care hospital-driven delivery system to one that is more clinically integrated, coordinated, and ambulatory-based.

In fact, based upon data from the American Hospital Association, over the last 20 years hospital utilization has been steadily decreasing despite growing population. From 1989 to 2009, inpatient days in the U.S. decreased 14.5% nationally<sup>1</sup> . . . that was despite an almost 25% increase in the population. Illinois has seen similar decreases in utilization.

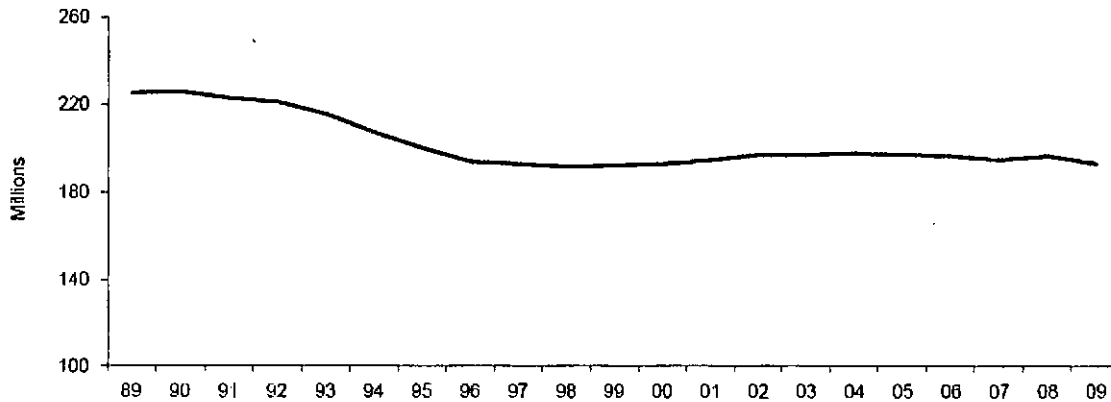
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<sup>1</sup> American Hospital Association, Trendwatch Chartbook 2011 Table 3.1



From 2005 to 2009, inpatient days decreased 3.7% from approximately 7.6 million inpatient days to about 7.3 million inpatient days.

Chart 3.2: Total Inpatient Days in Community Hospitals, 1989 – 2009



Source: Avalere Health analysis of American Hospital Association Annual Survey data, 2009, for community hospitals.

What this means is that fewer hospital beds will be required in the future to treat greater numbers of people. Given duplication of services, current downward utilization trends and the movement from a volume-based to a value-based payment model, now is not the right time to add beds to the service area.



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In fact, it is at direct odds with health care reform initiatives aimed at reducing costs.

As previous speakers have already testified, there is surplus capacity in the region. Another hospital will duplicate services, it will draw patients away from existing hospitals, and . . . another hospital will create many inefficiencies. Additionally, staffing costs will increase with more competition for the limited number of health care workers.

As a result, hospitals will be forced to increase charges to off-set lost revenue and increased operating expenses and to cover fixed costs, such as physical plant maintenance and equipment upgrades. These increases will be passed along to consumers through higher premiums, copayments and deductibles, and higher taxes. Make no mistake about it, this hospital will not be “free” to consumers and taxpayers. We will all pay for it.





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While it is anticipated that health insurance reform will expand access to nearly 30 million individuals, this is not a panacea that will reverse a twenty year trend of decreasing utilization.

Health care reform legislation is aimed at reducing costs of episodic care for chronic conditions that should be proactively managed outside of the acute care setting. An example of this would be medical homes, which are designed, in part, to reduce hospitalizations by providing cost effective treatment to ameliorate chronic conditions before they become life threatening and require hospitalization. As a case in point, hospital utilization decreased in Massachusetts following that states health care reform.<sup>2</sup>

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<sup>2</sup> Treatment intensity, which is measured by length of hospital stay, decreased by one percent; hospital admissions from the emergency department decreased by two percent; and hospital inpatient admission for treating preventable conditions fell almost three percent.



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If you adjust the current bed need calculations to account for the lower use rates experienced from 2007 to 2009 and the lower than projected population growth in 2010, there is only a technical need for 54 medical/surgical/pediatric beds. While there is a technical bed need, it does not justify establishing a 100-bed med/surg program in the hopes that one day all 100 beds might someday be needed.

This is not a judicious use of scarce health care dollars or resources . . . nor is it responsible health planning.

## **Shifting Health Care Costs to Patients**

Healthcare reform also seems to be having the effect of bringing the economics of health care closer to home. Patients are becoming more informed health care consumers as they become responsible



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for a larger share of their health care bills and premiums.

That is because in an attempt to control rising health care costs, payors and employers are beginning to shift more and more costs to the consumer. This is being accomplished through higher premiums, deductibles and copayments. As a result, health care consumers are more judicious about the services they receive as evidenced by a softening in the demand for diagnostic testing and procedures.

Additionally, Medicare, which accounts for approximately 14% of the entire federal budget, is growing at an absolutely unsustainable rate. In an effort to control costs, Medicare has instituted various pay for performance measures. These measures promote reimbursement for quality, access efficiency, and successful outcomes. For example, Medicare will no longer pay for hospital-acquired infections and will



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reduce payments for hospital readmissions for certain conditions.

Emerging payment and care delivery models will have significant implications on current and projected capacity for inpatient, acute care market providers.

Closer alignment, collaboration, and clinical integration with physicians will be critical as new incentive models will directly impact physician practice patterns and utilization.

Market forces will drive decreased inpatient utilization, creating more capacity at existing facilities and a restructuring of existing capacity to meet reduced inpatient demand.

A traditional volume-based need formula simply does not account for new delivery and payment model innovations nor recent downward use trends. Health planning based upon the outdated volume-based



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model will result in overestimation of future inpatient needs. And this will result in unnecessary capital investment and excess capacity.

Given this new payment reality, investment in a new hospital that is destined to under perform financially and to under perform clinically is just not a judicious use of scarce health care resources.

Thank you for the opportunity to express Sherman's opposition to Mercy's proposed hospital in Crystal Lake. We respectfully request the CON Board deny Mercy's application for a CON permit.

My name is Richard Guy and I am a resident of Woodstock, IL.

While I am not a resident of Crystal Lake, Cary, Algonquin or Lake in the Hills, I'd like to share with the Board, why I feel the need for a person to have a Hospital Facility close to where they live.

In 2002 I experienced severe abdominal pain. Due to the closeness of the Centegra Woodstock Facility, my wife was able to drive me to the Emergency Room in less then 10 Minutes. It was a Saturday and we arrived at approximately 6:00 PM. Unfortunately the Emergency Room was packed and I had to wait 45 minutes before an Exam Room was available. During that time I laid on the floor in a fetal position for all to see. I was diagnosed with Diverticulosis, and was admitted to the hospital for treatment 12 hours after I arrived at the Emergency Room. I did not respond to treatment long-term and surgery had to eventually be performed.

The closeness of a Hospital gives me great comfort, but if that facility is so overwhelmed by the number of persons that live within close proximity that seek treatment at that facility, I have concerns. The population growth in Southern McHenry County, in my opinion, has mandated the need for a hospital located in Crystal Lake.

To be candid, I want to see the Mercy Crystal Lake Hospital approved, so I and anyone else will never have to suffer the embarrassment of having to lay on an Emergency Room floor for 45 minutes until an Exam Room became available; or for that matter to wait an additional 12 hours before a Patient Room became available.

A final comment if I may. The addition of the Mercy Facility will foster competition, which is good. It will ultimately provide the residents of Southern McHenry County with better medical care at a lower cost.

I thank this Board for its courtesy.

Richard L. Guy



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***R. Lee Piekarz Testimony  
Opposition to Project 10-089***

Good morning. My name is Lee Piekarz, and I am a senior manager in the firm of Deloitte Financial Advisory Services LLP, an international professional services firm which provides accounting, tax, and business consulting services.

I am here to present summary findings with respect to an independent study we prepared at the request of Centegra Health System. This study relates to the potential financial impact of the proposed Mercy Crystal Lake Hospital on Centegra's existing McHenry County hospitals, Centegra Hospital – McHenry and Centegra Hospital - Woodstock.

Our findings with respect to this study are outlined in a report submitted to Centegra Health System.

***Financial Impact to Centegra Health System***

Our estimate of the financial impact of Mercy's project on Centegra Health System is based on the inpatient cases and related revenues and profits that Mercy would redirect from existing Centegra hospitals to the proposed Mercy Crystal Lake Hospital. The purpose of estimating the impact as if it were to open today, even though it could not reasonably be completed by November 30, 2013, is to reduce the number of variables such as inflation factors, reimbursement rates, and payor mix changes.

In Mercy's CON application on pages 181 and 182, Mercy states that it is confident that its project will not lower the utilization of other area providers below the State's occupancy standards or lower the utilization of other area hospitals that are currently operating below the standards but then contrary to that statement they include in their CON application 42 physician referrals letters totaling 3,809 cases of which 88% or 3,368 cases will be redirected from Centegra's two existing facilities with the other 12% coming from non Mercy facilities. Again to state it clearly, zero cases are reported coming from any Mercy facility.

In order to calculate the financial impact attributed to lost cases to Centegra Hospital-McHenry and Centegra Hospital- Woodstock's patient volume, we analyzed internal Centegra financial and cost accounting data to determine the "contribution margin" with respect to each Hospital's inpatient services. Contribution margin, which is defined as

revenues minus variable costs, represents the incremental profit from the provision of inpatient and outpatient services available to cover the fixed operating costs.

Multiplying the lost cases for each Centegra hospital by the contribution margin for each Hospital, we estimated the potential financial impact to Centegra Health System, if the proposed Mercy facility is approved, to be an annual reduction in net income of approximately \$11.7 million.

In our analysis of Mercy's CON application we sought to validate the physician FY10 cases using COMPdata® via Intellimed® and discovered a variance from the submitted physician referrals included in Mercy's CON to the data we pulled from COMPdata® via Intellimed® for the same time period.

The total number of cases reported in Mercy's CON is 3,976 compared to COMPdata® via Intellimed®'s cases of 3,259, or an overstatement of 22%. Per COMPdata® via Intellimed®, 2,872 cases have been referred to Centegra Hospital - Woodstock and Centegra Hospital - McHenry by the physicians surveyed and included in the CON application.

The financial impact based on the adjusted inpatient volume of 2,872 cases from the COMPdata® via Intellimed® information is \$10.0 million.

It is important to note that in both scenarios Mercy could also be expected to derive additional revenue from outpatient services not specifically identified in Mercy's CON. Accordingly, Centegra could also be expected to lose revenue and profit attributable to these services to Mercy. The financial impact related to any lost outpatient services has not been quantified since we only quantified the financial impact based on Mercy's number of inpatient cases from its CON application.

In conclusion, based on our analysis, and assuming Mercy's new facility were to open today, we estimate the potential financial impact to Centegra Health System to be an annual reduction in net income of approximately \$10.0 to \$11.7 million.

Thank You.





py. 1072

**RESOLUTION NO. #R11-03-01**

**WHEREAS**, on December 29, 2010, Mercy Health System filed a Certificate of Need Application with the Illinois Health Facilities and Services Review Board (HFSRB) for a \$200 million project in Crystal Lake, Illinois (hereinafter, "the Project"); and

**WHEREAS**, an approved Certificate of Need from the HFSRB will allow Mercy Health System to initiate further steps to seek approval for and begin plans to build a 128-bed acute care, large multi-specialty physician clinic and hospital in Crystal Lake at Route 31 and Three Oaks Road; and

**WHEREAS**, Mercy Health System has revised its earlier plans to better serve the current and future needs of Cary and other southeast McHenry County communities by increasing the number of hospital beds and high-priority services provided in the area; and

**WHEREAS**, Mercy Health System has chosen to locate its hospital and medical center in the most densely populated area of McHenry County; and

**WHEREAS**, the proposed location will also provide easy access for Emergency Medical Service providers; and

**WHEREAS**, it is anticipated that the Project will generate an estimated 650 to 800 construction related jobs during the two-year construction project. Within the first year of opening the facility, Mercy Hospital is expected to employ more than a thousand individuals, filling 840 FTE positions, of which approximately 600 will be new jobs; and

**WHEREAS**, Mercy Health System had represented that the total industry sales impact of the proposed Mercy Hospital and Medical Center ranges from an estimated \$102.78 Million in the first year of operation to an estimated \$257.5 Million five years later; and

**WHEREAS**, in addition to generating jobs and income, the economic activity associated with the proposed Mercy Hospital and Medical Center will also generate increased tax revenue for County municipalities; and

**WHEREAS**, there is a great likelihood that said economic activity will help to result in additional economic development in Cary, especially development on open land on Three Oaks Road, within ¼ mile of the proposed Mercy Hospital and Medical Center site.

Village of Cary  
pg 2082

**NOW, THEREFORE, BE IT RESOLVED** that the Village Board of the Village of Cary does hereby endorse and support the approval of Mercy Health System's application for certificate of need for the proposed Mercy Hospital and Medical Center project contingent upon Mercy Health System obtaining certain zoning approvals in accordance with the Unified Development Ordinance of the City of Crystal Lake.

PASSED THIS 1<sup>ST</sup> DAY OF MARCH, 2011

AYES: Kownick, Hill, McNamee, Chisholm, Dudek

NAYS: None

ABSTAIN: None

ABSENT: Pilli

NOT VOTING: None

APPROVED THIS 1<sup>ST</sup> DAY OF MARCH, 2011

Tom Kene  
MAYOR

ATTEST:

Julie Noak  
DEPUTY VILLAGE CLERK

Hello. My name is William Moll, and I live in Lakewood.

I am here to oppose Mercy Health System's request to build a hospital in Crystal Lake.

As you can tell, I wasn't born yesterday; in fact I do remember the seemingly endless Great Depression. So, I have watched a lot of boom and bust periods over the years. We did enjoy a huge boom in McHenry County, especially in real estate, not so long ago, but that is all past now, and judging from my experience, will not come back for a very long time.

Even so, Mercy Health System wants to build a hospital in Crystal Lake. That doesn't make sense to me. One of my concerns is this – the new hospital they propose will only duplicate facilities we already have. The proposed hospital will be just another community hospital, not one that brings specialized health care. This new facility certainly would be expensive, maybe very expensive, to build. As we all know, the costs of medical care are a hot topic today. So, what sense does it make to incur all these costs just to duplicate what we already have? A better solution in my opinion would be to expand existing facilities

Currently I'm very pleased with the access I have to a full range of care at Advocate Good Shepherd Hospital, which I can drive to in little more than 20 minutes. I haven't had any difficulty finding doctors to treat me or getting appointments to see those doctors. As I can attest, senior citizens often are under the care of many doctors. I can tell you that it really helps to know that all of my doctors will be available and can coordinate my medical care.

So, what is the purpose of spending a lot of money and diluting existing medical care to build and operate just another run-of-the-mill medical facility that duplicates what we already have.

Thank you for coming out to Crystal Lake, a truly pleasant place, and thank you for your time hearing me out.



William F. Moll

**Brett Turner's Public Hearing Testimony**  
**Mercy Crystal Lake Hospital and Medical Center , Inc.**  
**Project Number 10-089**  
**March 18, 2011**

My name is Brett Turner. I'm the Managing Principal of Legacy Healthcare Consultants, a health care strategy and financial consulting firm based in the Chicago area. I am also a local resident, as I live in Hawthorn Woods. I have been a health care consultant for more than 24 years, working with leading hospitals and health systems throughout the U.S. I am proud to say that our firm has recently worked with three of the eleven Malcolm Baldrige National Quality Award winners for health care, including Mercy Health System. I'm speaking on behalf of Mercy Crystal Lake Hospital and Medical Center. My testimony is intended to explain to residents of this area the overwhelming benefit of approving Mercy Health System's hospital project in Crystal Lake. In doing so, I will speak to several key issues which I believe are vital to this dialogue. These issues are:

**First, is this project needed?** The answer, quite simply, is yes and here's why. In today's environment, the majority of hospital care is provided on an outpatient basis, typically 60-70 percent of a hospital's total revenue. To provide a continuum of services and reduce fragmentation, hospitals must have inpatient hospital beds. The Illinois Department of Public Health ("IDPH") has determined for Planning Area A-10 (McHenry County), where Mercy's proposed hospital is to be located, that there is bed need for 83 Medical-Surgical-Pediatric beds, 8 Intensive Care beds, and 27 Obstetric beds, for a total bed need of 118 beds.

In addition to there being a demonstrated need for hospital beds in the Planning Area, the development of Mercy Crystal Lake Hospital and Medical Center will serve to correct a mal-distribution of hospital beds within McHenry County. As represented by the attached exhibit, If McHenry County is divided into four sub-areas, South East, South West, Central and North, there currently exists a significant mal-distribution of beds in the county. Nearly 93% of the inpatient beds in McHenry County are located in the Central sub-area, with a population of 113,196 or 32.2% of the total county population (see Exhibit A). Mercy's Crystal Lake hospital's proposed location is in the center of the six southeast McHenry County communities representing over 46% of the county's population; a dense but rapidly growing sub-area of close to 164,000 people

(depicted on Page 103 of Mercy's CON application, a copy of which is attached as Exhibit B) which has no full-service emergency room, no hospital-based outpatient services, and no hospital beds. The proposed Mercy Crystal Lake Hospital and Medical Center will address this obvious mal-distribution head-on and provide the largest portion of residents in South East McHenry County with convenient access to much needed hospital care.

IDPH also calculates that McHenry County has the highest net out-migration of patient days for Medical-Surgical and Pediatrics patients of any county in Illinois by a wide margin. Of the total days (or nights) residents spend in hospital beds, nearly 45% of them are outside the county. Out-migration for these and other services are especially burdensome to the elderly and low income residents of the area, who disproportionately struggle with access to physician and emergency services, transportation problems and the growing traffic congestion in the area. Mercy Crystal Lake plans to significantly reduce this out-migration by adding 45 physicians and hospital services in the largest and most densely populated area of the county.

Finally, the demographic information available for McHenry county supports the need for Mercy Crystal Lake Hospital and Medical Center and more importantly supports the choice of location for the facility. Simply put (as is further reflected in the Exhibits), when completed, Mercy Crystal Lake Hospital and Medical Center will be located in the area in McHenry county (i) that is the most densely populated; (ii) which will, over the next five years, experience the largest population increase; (iii) that contains the greatest number of individuals that may need safety net services; and (iv) that contains the largest number of ethnic minorities.

**Second, will this project increase health care costs for residents of the area?** The answer is no, and it will likely lower costs with the increased presence of Mercy Health System in the Crystal Lake community. Over the past ten years, Mercy Health System – a model for integrated delivery systems – has consistently been rated among the top 20 Integrated Healthcare Systems (“IDSs”) in the United States by SDI and Modern Healthcare magazine. Irrefutable evidence has been established that IDSs improve healthcare quality, patient outcomes, and reduce costs – especially for patients

with complex needs. The Stanford University economist Alain Enthoven, who has been studying the nation's health care system for more than 30 years, said integrated systems "are the disruptive innovation we need to turn loose on the rest of America." A 2007 study by Chicago-based Hewitt Associates found that integrated systems like Mercy and Kaiser Permanente provide 22 percent greater cost efficiency than competing systems. While other area providers are working to become fully integrated delivery systems, Mercy Health System is already there.

We don't need to look far to observe the effects of this efficiency. The Dartmouth Atlas of Health Care publishes differences in health care spending by Hospital Referral Regions ("HRRs"). Directly to the northwest of McHenry County is the Madison, WI HRR, where Mercy operates the largest of its three hospitals in Janesville. In 2007, Medicare paid \$6,813 per enrollee for medical care. Conversely, in the Elgin HRR, which includes Centegra Hospital – McHenry, Advocate Good Shepherd Hospital, Sherman Hospital, Provena St. Joseph Hospital and St. Alexius Medical Center, Medicare paid \$9,518 per enrollee, nearly 40 percent more. Medicare pays higher rates to Illinois hospitals than Wisconsin hospitals, but nowhere close to 40% more. The Dartmouth Atlas states "studies comparing similar patients have found that those in higher-spending regions are more likely to be admitted to the hospital, spend more time in the hospital, receive more discretionary tests, see more medical specialists, and have many more different physicians involved in their care. The extra care does not produce better outcomes overall or result in better quality of care."

Mercy, through its fully integrated delivery system, has learned to operate highly efficiently in an environment where they are paid significantly less by Medicare than the primary hospitals serving McHenry County. Mercy Crystal Lake will feature a fully integrated multispecialty physician clinic of 45 doctors and a hospital designed to eliminate costly duplication of tests and therapies and competing medications prescribed by different doctors; structured to avoid the expensive duplication from less integrated physicians and hospitals.

Earlier, David Eisenstadt, Ph.D., discussed the importance of increased hospital competition in McHenry County. As I speak, Advocate Health Care, the largest hospital

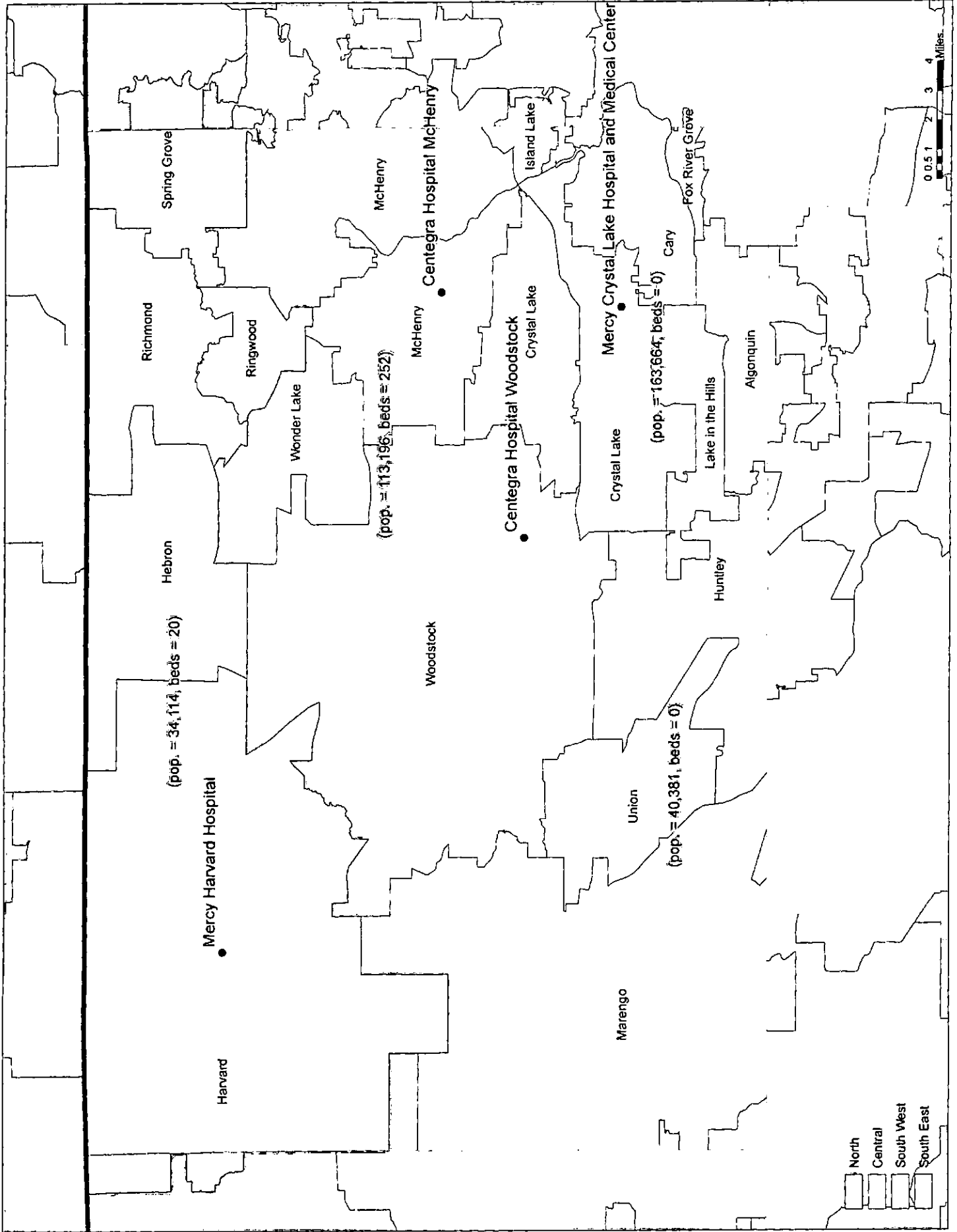
system in the Chicago area (especially in the suburbs) and the State of Illinois, is currently in discussions with Sherman Hospital about a proposed merger which would add to Advocate's size and strength. As a planner, I would expect that in the next ten years, Advocate will make a new attempt to build a hospital in Round Lake, a short distance from McHenry County. Advocate, due to its size and geographic coverage, has tremendous clout with health insurance companies and as a result, negotiates the region's best payment rates. Will this clout result in more competition and lower rates to insurance companies and therefore, lower health insurance premiums in the area?

**Finally, Mercy Health System has superior financial ability to handle the debt load associated with developing a new hospital.** As a firm that routinely advises hospitals and health systems throughout the U.S. on large capital projects, including replacement hospitals and new hospitals, it is vital that an organization have the financial wherewithal to absorb projects of this magnitude without jeopardizing the financial stability of the organization and maintain future access to capital from the municipal bond markets. Mercy Health System is rated A2 stable by Moody's Investor's Service, considered a very strong rating that is higher than any other owner of a hospital that is located in McHenry County. Mercy has significant cash reserves available for a project of this magnitude. The total cost for the Mercy project, at \$200 million, is \$33 million less than costs associated with the other hospital being proposed in Huntley. To fund its project, Mercy plans to use \$30 million of its own cash and fund the balance with \$170 million in bonds (as compared to \$48 million in cash and \$185 million in debt for the proposed facility in Huntley). We believe Mercy clearly represents the organization with superior ability to fund a new hospital in McHenry County and not put itself at considerable financial risk due to overly high debt-to-equity levels.

**EXHIBIT A**



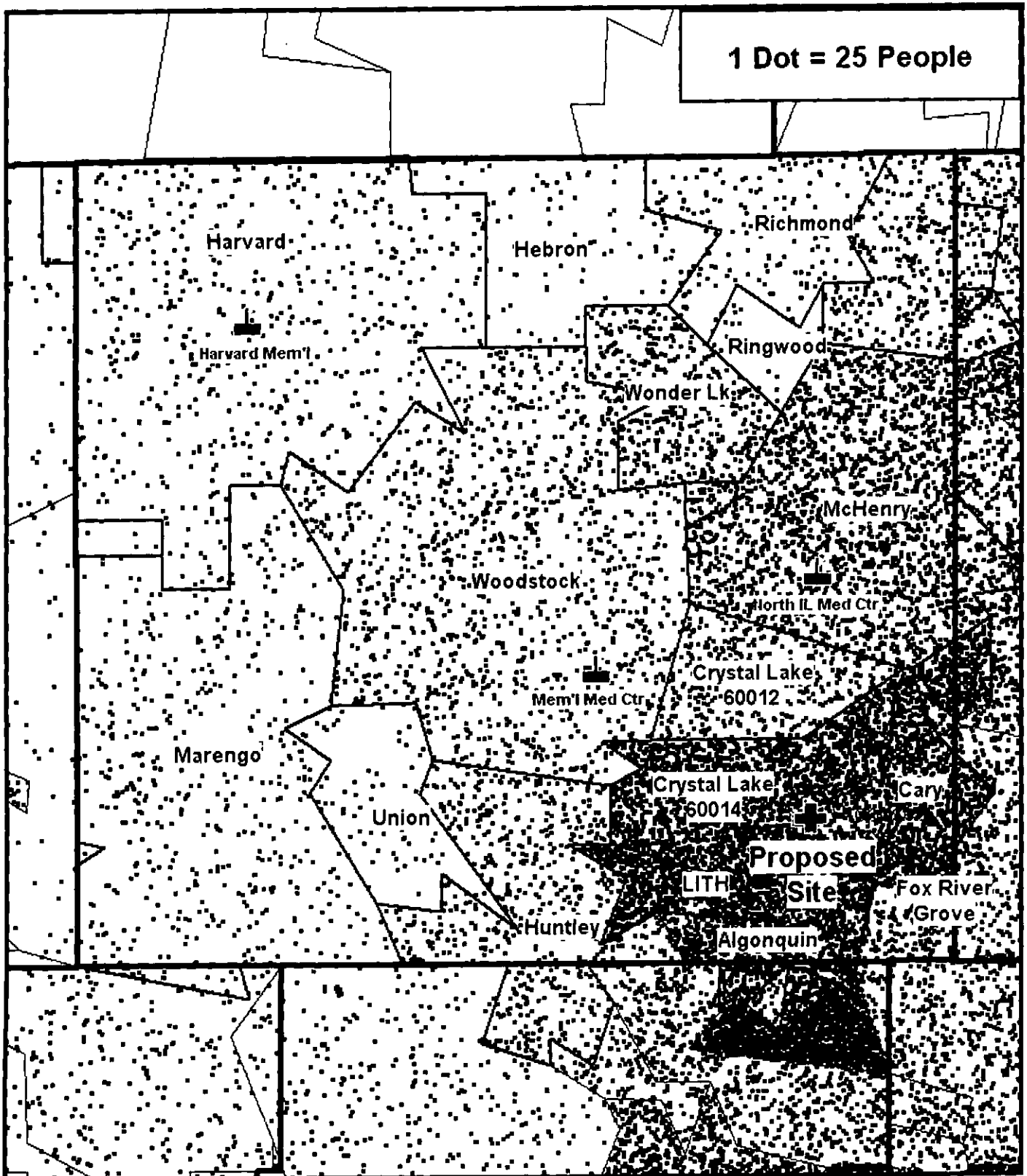
# Residents and Hospital Beds in McHenry County



Sources: 2010 population figures from Claritas, Nielsen, 2010 hospital bed counts from Inventory of Healthcare Facilities and Services posted February 18, 2011

**EXHIBIT B**

# Population Density in McHenry County 2010 Population Estimate



Source: Nielsen Claritas, Inc., New York, NY; U.S. Census 2000



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**Terry Dunning**  
**Chairman, Sherman Hospital Board of Directors**  
**Opposition to Project No. 10-098 – Mercy Crystal Lake Hospital & Medical**  
**Center, Crystal Lake**

Good morning. My name is Terry Dunning and I am the Chairman of the Sherman Hospital Board of Directors. I am here to discuss why Sherman opposes Mercy's proposed hospital in Crystal Lake. Since its founding well over a century ago, Sherman has been an integral part of this region, providing care to residents regardless of ability to pay. Mercy believes the proposed hospital in Crystal Lake is needed to improve the health and well-being of residents of McHenry County, particularly those living in the communities of Crystal Lake, Algonquin, Lake in the Hills, and Carey. However, these areas are already well-served by Sherman Hospital. As a member of the Sherman Hospital Board for over 20 years and a life-long resident of this community, I know Sherman Hospital is a resource for the entire region. Sherman serves all residents of the Upper Fox Valley. It just happens to be located in Elgin. In fact, in choosing our replacement site, we situated our hospital closer to McHenry County and in the middle of our service area to better serve patients throughout the entire region. Residents of the Upper Fox Valley have convenient access to quality health care provided by Sherman as well as the other hospitals in the area, like Provena St. Joseph, Advocate Good Shepherd, St. Alexius and Northwest Community. A new hospital will



not improve the health and well-being of the residents in McHenry County.

### **Safety Net**

Rather than improving health care, a new hospital will actually weaken the region's health care system. Throughout its history, Sherman has been a vital part of the region's safety net, providing health services to the most vulnerable populations. Sherman along with Provena St. Joseph was integral in establishing the Greater Elgin Family Care Center in 1996. Since its founding, Greater Elgin has grown from a small clinic with four physicians to a federally qualified health center providing comprehensive health care to residents of the area. Due, in large part, to the financial support and other contributions of the Elgin hospitals, Greater Elgin has been an unqualified success. This has led to the organization's development of a new health center in McHenry County which is projected to open in October of this year.

A new hospital will adversely impact the ability of safety net providers, like Sherman, to care for the underserved populations of the region. Sherman is located closer to both Carpentersville and Elgin, two of the most medically underserved areas in the Upper Fox Valley.<sup>1</sup>

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<sup>1</sup> Carpentersville is medically underserved area and Elgin is a low income health professional shortage area as designated by the U.S. Department of Health and Human Services, Health Resources and Services Administration.



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Through initiatives of the existing hospitals in the region, like Greater Elgin, residents of these communities have access to primary care services, such as routine, wellness and urgent primary and pediatric care. Successful primary care programs result in fewer hospitalizations and lower costs to the health care delivery system. A new hospital will draw patients away from existing hospitals, decreasing revenues and operating margins and making it more difficult for Sherman to serve nearby low income communities and to fund vital safety net services.

### **Innovative Health Care**

Additionally, a new hospital will impact Sherman's ability to provide innovative, state-of-the-art health care to the region. The proposed hospital will not provide any new or innovative services; rather, it will merely offer the same services that are presently provided at existing hospitals. As a leading provider of health care to residents of the Upper Fox Valley, Sherman made a large investment in its facility to better serve the residents of the region. A little over a year ago, we opened our brand new \$235 million replacement hospital. We are aligning with some of the best academic medical centers in the State and we have been able expand our specialized services in stroke care, cancer care, heart and vascular care, pediatric services, and women's health; and are now planning a Center for Advanced Liver and Pancreatic Care. The proposed Crystal Lake hospital is a critical



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threat to Sherman's ability to continue with these innovations and to set the quality bar higher for the communities we serve.

### **Economic Climate**

In addition to lack of need, now is not the right time to build a \$200 million hospital. The provider community is facing a negative economic climate and many challenges with health care insurance reform. In this environment, a smaller, more conservative project, like an outpatient clinic, which was considered but ultimately rejected in Mercy's 2003 application, would be more appropriate and a much more judicious use of financial resources than the establishment of a new hospital; particularly when there is convenient access to hospitals with beds available to accommodate the health care needs of the community.

We appreciate the opportunity to express our opposition to Mercy's proposed hospital in Crystal Lake and respectfully request the CON Board to deny Mercy's application for a CON permit for this project.

Hello – my name is Kathy Kus and I will be reading some statements from local residents who were not able to make it to the hearing today. Thank you

It would be nice to have medical help close by. Good Luck our city really needs this great hospital!

"Thomas J. Nester  
Crystal Lake"

---

It would be nice. A closer facility would help everyone.

"Angie Pietrini  
Cary, IL"

---

**When I moved to Marengo, 2 years ago, I asked several people what doctors and hospital they recommended. They told me that there are 2 hospitals: Mercy Harvard and Centegra. Mercy was excellent. I have been seeing doctors from Mercy Health System who are excellent!! Being a retired RN, I am very satisfied with Mercy. Mercy does need a larger hospital to handle the growth around the area.**

**Margo from Marengo**

**Foresman Household  
City: CRYSTAL LAKE  
Testmonial:**

The hospital I would normally visit is Woodstock and McHenry - both decent.

The biggest benefit I see to having a hospital in Crystal Lake is proximity - being a senior it's hard for me to go anywhere..

A new hospital in Crystal Lake would create jobs - it seems like every business in Crystal Lake is closing down and moving out of the area. The hospital would draw more people to Crystal Lake and make a more attractive city for people to live in.



## TESTIMONY FOR SUSAN MILFORD IN OPPOSITION TO MERCY

Good morning, my name is Susan Milford. I am Senior Vice President, Strategic Planning, Marketing and Wellness at Centegra Health System. Thank you for the opportunity to point out to the Illinois Health Facilities and Review Services Board the major issues with Mercy's CON application to establish a hospital in Crystal Lake. This CON has got to be one of the shoddiest ever filed with the State Board. In many ways, it's even worse than the application they filed in 2003, which was described by one State Board member at the time as a "terrible job."

In Mercy's rush to file this second application before the end of December, there were so many mistakes that they had to submit over twenty corrected pages. Even with those corrections, the application remains riddled with errors.

### **I. Contradictory Statements in Mercy's Application**

They can't even get the basics right. For example:

How many ICU beds are they proposing: 4 or 8? They say 4 on pages 124 and 126 of the application, but 8 pages 4 and 18.

How many OB beds: 20?, 24?, 30?: They say 20 beds on page 4; 24 beds on pages 124 and 126; and 30 beds on page 182.

How many Operating Rooms will there be? They say 8 ORs and 2 procedure rooms on page 119; but 10 ORs and 2 procedure rooms on page 138.

How many applicants are there, and who are they?: Page 4 identifies only two applicants: Mercy Alliance and Mercy Crystal Lake Hospital. But in Attachment 1 which requires the Certificates of Good Standing for all applicants a third is added: Mercy Health System Corporation.

Who will be the licensed entity? Page 2 identifies Mercy Crystal Lake Hospital; but Attachment 3, which requires the licensee's Certificate of Good Standing, contains Certificates for three different corporations.

Mercy officials certified that the data and information contained in the application are "complete and correct." They're wrong.

And they couldn't even get the certification page right. Page 9 of the application form clearly states that the application must be signed and certified by two officers or Board members of each corporate applicant. Mercy provided only one signature for Mercy Alliance and one for Mercy Crystal Lake Hospital.

This application was in no condition to be filed with the State Board in December; and it's in no condition to be reviewed by the State Board now.

## **II. Misrepresentations in Mercy's Application**

Among the more egregious misrepresentations in Mercy's CON application is the following:

On page 114, Mercy claims that it "approached Centegra health System about a joint venture to provide a hospital and multi-specialty physicians clinic in Crystal Lake. To [sic] date, Centegra Health System has not responded to any of our requests."

Let's set the record straight. Prior to the filing of this application, the last time Mercy contacted Centegra about Crystal Lake was over 3 ½ years ago in 2007. Contrary to Mercy's statement that we never responded, our CEO Mike Eesley agreed in writing to meet with Mercy, and did in fact meet with them to hear Mercy's proposal. We have the correspondence, including letters from Javon Bea himself, to prove this, and I am submitting them with my written testimony. They include Mike Eesley's letters to Javon Bea dated July 12 and August 22, 2007, and Mr. Bea's letters to Mr. Eesley dated June 19 and August 30, 2007.

While we were not persuaded then, and are not now, that a new hospital in Crystal Lake was appropriate or could satisfy the State Board's criteria, Mr. Eesley did offer to continue discussions with Mercy on other possible joint efforts to improve access to health care for area residents. Mercy was not interested. While Mr. Bea said in his August 30<sup>th</sup> letter that he would have Dan Colby or Rich Gruber contact us to continue discussions, they never got back us.

## **III. Inaccurate Referral Data in Mercy's Application**

Mercy's application includes referral letters from 42 physicians representing that they had a total of 3,977 historical referrals to existing facilities in FY 2010, 3809 of which they would redirect to Mercy Crystal Lake hospital. We checked this information and found that the data submitted by only 22 physicians coincided with what has been reported to IHA's COMPdata. All the other physicians overstated their referrals in comparison to the data reported to COMPdata.

The total of referrals in Mercy's application is 22% higher or 718 referrals higher than COMPdata. Included with my written testimony is a comparison of what the physicians reported in Mercy's application and what COMPdata reports for these same physicians during the same time period.

It is also worth noting that six of the referral letters were not signed by the Physician or notarized as required under the CON rules.

## **IV. Unwarranted Assertions in Mercy's Application**

Mercy makes many of the same substantive arguments in this application that it did in its 2003 CON application for a new hospital in Crystal Lake. It's now a matter of public

record that the permit issued for the 2003 project was obtained by a rigged vote and the promise of a \$1.5 million kick-back from Mercy's contractor to a corrupt State Board member. Mercy's contractor, the State Board member and Mercy's CON attorney were all indicted on federal corruption charges and all have pleaded guilty. But I won't belabor that point.

The point I want to make is that when we challenged Mercy's permit in the Circuit Court of McHenry County, the judge rejected the same substantive arguments that Mercy is reasserting now. For example, Mercy claimed there was a shortage of 45 physicians in McHenry County. The judge noted that the State Board had no established criteria for addressing physician shortages. In addition, the judge noted that Mercy's own data source showed that there was no physician shortage in Crystal Lake. A copy of the Court's decision is included with my written testimony.

As in the past, Mercy claims today that there is a 49 physician shortage in McHenry County based on Thomson Reuters data. This is still not a factor that would justify a new hospital under the State Board's criteria. While the Board does have a criterion addressing federally designated Health Professional Shortage Areas, there are no such areas in McHenry County. In addition, Thomson Reuters data shows Crystal Lake has an excess of 24 physicians; so Mercy's claim that a \$200 million hospital is needed in Crystal Lake to address a physician shortage is wholly unwarranted.

The Health Facilities and Services Review Board should deny this CON application. The application fails to meet the State's requirements, is riddled with errors and does not document that the proposed facility is needed.

Thank you for your attention to our concerns.

III. Inaccurate Referral Data in Mercy's Application - ATTACHMENT to Susan Milford's Testimony

Physician Attending	From COMPdata	From Mercy CON Application	Projected Annual	FY 10 Discharges Overstated in CON By	
	FY10 Discharges	FY10 Discharges	Discharges to CL Hospital	Cases	Percent
Albright, Klm	51	51	51	-	-
Asbury, Jeffrey B	10	21	16	11	110%
Bistriceanu, Graziella I	55	55	55	-	-
Campau, Steven A	63	63	63	-	-
Chatterji, Manju	67	67	67	-	-
Chitwood, Rick A	72	72	72	-	-
Cook, Richard O	217	259	259	42	19%
Crawley, Terri L	141	141	141	-	-
Cundiff, Jason	16	69	68	53	331%
Dehaan, Paul H	80	110	102	30	38%
Dillon, Paul C *	24	57	50	33	138%
Favia, Julie	101	116	116	15	15%
Fojtik, Joseph E	188	188	188	-	-
Gavran, Monlca E	85	85	85	-	-
Goodman, David A	7	58	58	51	729%
Gulati, Roshí	33	33	33	-	-
Gupta, Lata *	64	75	75	11	17%
Henning, Douglas A	17	17	17	-	-
Howey, Susan M *	94	120	120	26	28%
Hussain, Yasmin	2	38	23	36	1800%
Kakish, Nathan	171	171	171	-	-
Kang, Hiejín *	26	26	26	-	-
Karna, Sandhya R	56	56	56	-	-
Karney, Michelle Y	99	105	70	6	6%
Krpan, Marko F	44	59	54	15	34%
Livingston, Gary L	11	67	67	56	509%
Loqman, Mabria	15	158	158	143	953%
Macdonald, Robert J	89	89	89	-	-
Marian, Camella E *	77	77	77	-	-
Mirza, Aisha A	132	132	132	-	-
Mitra, Deepak	134	134	134	-	-
Nath, Ranjana *	70	70	70	-	-
Persino, Richard L	127	148	148	21	17%
Phelan, Patrick E	156	156	156	-	-
Riggs, Mary	109	163	80	54	50%
Ronquillo III, Bibiano C	108	108	108	-	-
Shen, Emily	32	32	32	-	-
Soorya, Ranjana P	15	15	15	-	-
Srinivas, Ratna R	8	10	10	2	25%
Tarandy, Dana T	56	95	86	39	70%
Wittman, Randy S	147	172	172	25	17%
Zaino, Ricca Y	190	239	239	49	26%
<b>Grand Total</b>	<b>3,259</b>	<b>3,977</b>	<b>3,809</b>	<b>718</b>	<b>22%</b>

Total Physicians	42
Number Overstated in CON Application	20
Number Accurately Reported	22
Number Reported More than 2x Actual	7
*Not signed or Notarized	6

Sources: IHA's COMPdata via Intellimed, Mercy CON Application

# MERCY HEALTH SYSTEM

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8•756•6168  
mercyhealthsystem.org

Office of the President

*System for Life*

June 19, 2007

Mike Easley, President/CEO  
Centegra Health System  
385 Millennium Dr.  
Crystal Lake, Ill 60040

Dear Mike,

Congratulations on receiving CON approval for your Huntley medical clinic. I see from the newspaper article that you also plan to build a fitness center at that site and someday perhaps even a hospital.

As you know we have submitted our Letter of Intent to build a 128-bed hospital in Crystal Lake. Our efforts to build in Crystal Lake are based on the unmet healthcare needs of the over 100,000 people in the Crystal Lake area, the tremendous additional population growth that continues unabated, the long travel times to a hospital, and the increasing wait times for care once there. As you also know Mercy employs almost 80 physicians who practice at your two hospitals; and, who are increasingly frustrated by the lack of available hospital beds to accept their patients. The lack of a hospital in Crystal Lake has even been the subject of news stories in Crystal Lake.

Since we both understand the need for more hospital services i.e., your proposed Women's Center in McHenry County, I would like to suggest that Centegra and Mercy co-sponsor and joint venture the development of the Crystal Lake hospital. This cooperative venture would provide the communities the needed healthcare services to include inpatient and trauma care; provide a hospital referral point of service for your Huntley, Crystal Lake, Cary, Algonquin Physician clinics as well as Mercy's clinics in those same communities, plus our Barrington and Lake in the Hills clinics; and of course eliminate the wasteful effort and costs of opposing each other's facility development.

With this cooperative effort in mind, I suggest a meeting. I would like to bring Joe Nemeth, our CFO and Dan Colby, Corporate VP of Planning. I would suggest that this meeting would also be an opportunity for us to meet your Chief Operating Officer, Jason Sciarro, and your new Chief Financial Officer.

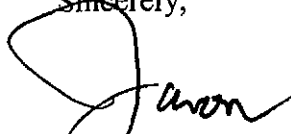
I look forward to your positive response and the chance to set this meeting preferably for sometime in July. I offer any of our facility locations as a meeting place or we will

Page 2

gladly meet at one of your sites. I would appreciate it if you could let me know by July 27 if you would like to meet. Please feel free to call me at 608-756-6625.

Mike, I truly believe that a cooperative approach to this proposal would benefit all parties and especially the people of McHenry County.

Sincerely,



Javon R. Bea  
President and CEO

July 12, 2007

Mr. Javon Bea  
President & CEO  
Mercy Health System  
1000 Mineral Point Avenue  
Janesville, Wisconsin 53548

Dear Javon:

Thank you for your congratulatory letter of June 19, 2007. We are indeed very excited about serving the community with our new Huntley campus.

In regards to your invitation to meet with you and representatives of Mercy, we would welcome the opportunity. Since Memorial Medical Center opened its doors in 1914 and McHenry Hospital in 1956, the hospitals, which now comprise Centegra Health System have been dedicated to the principle of providing high quality care through the efficient use of precious community resources. We continue to question how a hospital in Crystal Lake can possibly meet applicable state standards, but are hopeful that you can help explain this to us. Although we may disagree on many subjects, including some outlined in your letter, we are apparently in agreement that in today's healthcare environment, efficiency and conservation of resources is of paramount importance to our patients.

It is our hope that the agenda for our meeting will focus on the global question of how we may collaborate to better serve the community. Collaboration between our organizations is not unprecedented. In fact, as you are likely aware, Mercy physicians have been providing ongoing support for the development of our plans for a new women's center, which will add 19 OB beds to Memorial Medical Center, and we have also submitted a Letter of Intent for 35 additional medical-surgical beds at Northern Illinois Medical Center. The basis for this collaboration is the recognition that the women's center and the additional beds at Northern will greatly benefit the patients of Mercy physicians as well as others. As you are also aware, the proposal you have to construct a new hospital in Crystal Lake has been the subject of much debate, particularly considering that there is limited unmet need. Ultimately, however, the question of need is one answered by state regulations and the Illinois Health Facilities Planning Board. While we are eager to meet to discuss all avenues of collaboration which will appropriately benefit the community, we should nonetheless be mindful of the standards which may impact our efforts whether collective or otherwise.

My team is willing to meet with your group. I have asked my assistant, Madonna DiPalma to contact your office during the week of July 16<sup>th</sup> to make the necessary meeting arrangements.

Sincerely,

Michael S. Eesley  
President & CEO

August 22, 2007

Mr. Javon Bea  
President/CEO  
Mercy Health System  
1000 Mineral Point Avenue  
Janesville, Wisconsin 53548

Dear Javon:

Thank you for taking the time to meet with us to discuss possible opportunities for collaboration between Mercy and Centegra Health System. I believe—as I hope you do—that the meeting was very productive. While we understand the information you presented in regards to the proposal to build a hospital in Crystal Lake, as Dan Colby acknowledged, the proposal simply does not meet State criteria. This is now and always has been a concern for Centegra. If we proceed with a project which we know at the outset does not meet State criteria, at risk is more than a denial from the Illinois Health Facilities Board; we would also jeopardize the credibility of both Centegra Health System and Mercy Health System.

Rather than placing either of our organizations at risk by submitting an inherently flawed proposal, we would like to explore the suggestion made by Rich Gruber that we consider collaboration on other fronts. Specifically, we would like to invite your Health System to engage in a dialogue with Centegra Health System in regards to possible joint venture opportunities on two separate initiatives that would enhance the delivery of healthcare to our local community.

The first initiative relates to our under-insured/uninsured population who receive a majority of their clinical care from the Family Health Partnership Clinic (FHPC) in Woodstock, Illinois. This clinic provides support to approximately 6,000 individuals on an annualized basis with a minimal amount of financial support. Currently, Centegra is discussing opportunities to expand the clinic's operations into the City of McHenry through the establishment of another clinic. While I am in no position to speak for FHPC, I would anticipate that their reaction to a joint venture between the two health systems would be very positive because it would clearly help them in their delivery of services.

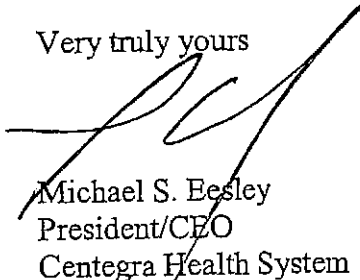
The second initiative involves the development of our Women's Health Pavilion on the campus of Centegra Memorial Medical Center. As you are aware we are currently in the process of finalizing the development of this project. We would like the opportunity to team with your Health System in this venture.



Mr. Javon Bea  
President/CEO  
Mercy Health System  
Page 2 of 2

Thank you again for meeting with the Leadership Team of Centegra Health System and myself. If you and your team would like to further advance these discussions, please contact me so that we can schedule another meeting. I am certain that such a meeting would serve to benefit the community of patients we collectively serve.

Very truly yours



Michael S. Eesley  
President/CEO  
Centegra Health System

cc: Charles Ruth, Chairman, Board of Governors  
Robert M. Rosenberger, Chief Financial Officer  
Jason Sciarro, Chief Operating Officer  
Aaron T. Shepley, Chief Quality Officer/General Counsel



# MERCY HEALTH SYSTEM

1000 MINERAL POINT AVE.  
P.O. BOX 5003  
JANESVILLE, WI 53547-5003  
Tele: 608•756•6625  
Fax: 608•756•6168  
www.mercyhealthsystem.org

Office of the President

*A System for Life*

August 30, 2007

Michael S. Eesley  
President/CEO  
Centegra Health System  
385 Millennium Dr.  
Crystal Lake, IL 60012

Dear Mike,

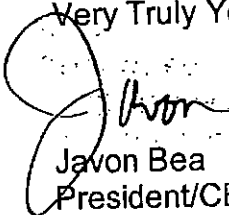
Thank you for your letter of August 22, 2007. We had hoped that you and your staff would see the merit of a joint hospital effort in Crystal Lake to serve the over 13,000 people from that area who left McHenry County for hospital services elsewhere in 2006 alone.

I truly believe that a joint effort in Crystal Lake would be successful because it would demonstrate that all partners recognize the community need for these services and that competitors are willing to cooperate to provide the needed care.

While I am disappointed in your initial negative response, I would like to continue the dialogue that we have begun. The idea of exploring together your Family Health Partnership Clinic and Women's Health Pavilion initiatives is intriguing. We are well aware of your commitment of facilities to the Partnership Clinic in Woodstock. You should know that Mercy physicians and other health professionals provide a substantial amount of the volunteer effort to support the Partnership Clinic. We are not aware however, of the scope of your Women's Health Pavilion project.

I have asked Dan Colby and Rich Gruber to follow up with your staff to continue our discussions.

Very Truly Yours,

  
Javon Bea  
President/CEO  
Mercy Health System

cc: Dan Colby, Vice President, MHS  
Rich Gruber, Vice President, MHS

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

COPY

NORTHERN ILLINOIS MEDICAL )  
CENTER, MEMORIAL MEDICAL )  
CENTER, AND CENTEGRÁ HEALTH )  
SYSTEM, )

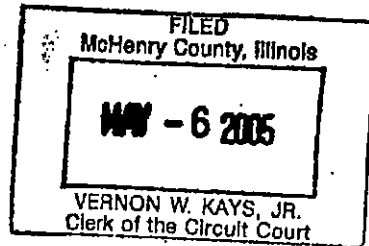
Plaintiff )

vs. )

CASE NO: 04 MR 106

ILLINOIS HEALTH FACILITIES )  
PLANNING BOARD, ILLINOIS )  
DEPARTMENT OF PUBLIC HEALTH, )  
MERCY CRYSTAL LAKE HOSPITAL )  
AND MEDICAL CENTER, INC. )  
MERCY HEALTH SYSTEM )  
CORPORATION, BLI L. BEEDING JR. )  
AND THE BEEDING GROUP, )

Defendants )



**MEMORANDUM OPINION AND ORDER**

This cause came before the Court on Count I of the Complaint filed by the Plaintiffs' Northern Illinois Medical Center, Memorial Medical Center and Centegra Health System for Administrative Review of the Decision of Illinois Health Facilities Planning Board ("State Board") pursuant to 735 ILCS 5/3-110, 5/3-111 20 ILCS 3960/11. Plaintiffs seek reversal of the Administrative Decision of the State Board which granted a permit to the Mercy Crystal Lake Hospital and Medical Center, Inc. ("Mercy Hospital") to construct a new hospital in Crystal Lake. Plaintiffs contend that the State Board's actions in approving the issuance of the permit were against the manifest weight of the evidence and arbitrary and capricious, particularly in light of the negative reports of the Illinois Department of Public Health ("State Agency").

The Court has reviewed all the relevant pleadings, including Count I of the Complaint for Administrative Review, Plaintiffs' Motion to Reverse Administrative Decision, the Memorandum in support of said Motion, the Response of Mercy Hospital and Mercy Health System Corporation and Reply of Plaintiffs thereto. The Court has further reviewed the entire certified record of administrative proceedings which includes the Application for Permit, documents in support of the application, the State Agency reports, the Record of Public Hearing on September 29, 2003 and the transcripts of hearings before the State Board on December 17, 2003 and April 21, 2004, with corrections made at the June 15, 2004 State Board meeting. The Court has reviewed the case law cited by the parties in their written submissions and has had the benefit of the oral arguments of the attorneys for the Plaintiffs and Defendants.

## **BACKGROUND**

The Illinois Health Facilities Planning Act was instituted "to establish a procedure designed to reverse the trends of increasing in costs of health care resulting from unnecessary construction or modification of health care facilities ... and to improve the financial ability of the public to obtain necessary health services and to establish an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public". 20 ILCS 3960/2 To that end, the Planning Act provided for the creation of a Board and defined its duties and functions. The powers and duties of the State Board include the prescribing of rules, regulations, standards, criteria and procedures to carry out the provisions of the Act. 20 ILCS 3960/12 The regulations and criteria are contained in Sections 1110 through 1260 of Title 77 of the Illinois Administrative Code. A health care facility cannot be modified or constructed unless the Board issues a permit. 20 ILCS 3060/5.1 In evaluating an application for

permit or Certificate of Need, the Board is assisted by Illinois Department of Public Health which serves as administrative and staff support for the Board. 20 ILCS 3960/4

On July 11, 2003, Mercy Hospital filed an Application for Certificate of Need (CON) with the Illinois Health Facilities Planning Board. The application requests a permit for establishment and construction of a new 70 bed hospital with adjacent office facilities for 45 physicians in Crystal Lake, Illinois. The proposed hospital would have 56 medical/surgical beds; 10 obstetrics beds and 4 intensive care beds. The hospital site is located within a MSA, known as area A-10. The initial application was deemed incomplete on July 24, 2003 and by letter of that date, additional information was requested. That information was provided on July 30, 2003, which included a listing of all hospitals within 45 minutes of the proposed facility.

A public hearing was conducted on September 29, 2003 in Crystal Lake, Illinois. In addition to persons associated with Mercy Hospital and its parent corporation, Mercy Health System, hundreds of interested persons testified or offered written submissions both in favor of and in opposition of the proposed project.

The Illinois Department of Public Health issued its initial report evaluating Mercy Hospital's application. The report found that overall, Mercy Hospital did not meet the review criteria of Illinois Administrative Code, Sections 1110 and 1120. The State Agency submitted its report to the Board on December 17, 2003 and the Board conducted a hearing on that same date. At the meeting the Board denied the application.

Thereafter, Mercy Hospital submitted additional information for the project to the State Agency and requested another hearing date before the State Board. A Supplemental Agency Report was prepared based on the new materials and submitted to the State Board at its April 21, 2004 meeting. The report did change some of its findings in the supplemental report dealing

with financial and economic considerations under Section 1120 of the Illinois Administrative Code. The evaluations pertaining to Section 1110 remained unchanged. At the Board meeting on April 21, 2004, the Board approved Mercy Hospital's application. The State Agency issued a letter on May 15, 2004 informing the applicant of the State Board's approval of the project.

On May 26, 2004, the Plaintiffs filed its Complaint for Administrative Review of the State Board's decision to grant the CON to Mercy Hospital. The Plaintiffs assert that the decision of the State Board should be reversed because (a) it is against the manifest weight of the evidence; (b) the issuance of the permit was arbitrary and capricious; (c) the vote of the Board on April 21<sup>st</sup> did not specify the action proposed and the Board did not make any findings; and, (d) the voting process was improper and evidence of arbitrary conduct.

## **REVIEW OF THE BOARD'S DECISION**

### **A. MANIFEST WEIGHT OF THE EVIDENCE:**

The Plaintiffs contend that the Decision of the Board to issue the permit to Mercy Hospital for the establishment and construction of a new hospital in Crystal Lake, Illinois was against the manifest weight of the evidence.

If factual findings are made by an administrative agency, they are viewed as prima facie correct and a reviewing court will not disturb those findings, unless they are contrary to the manifest weight of the evidence. BRIDGESTONE/FIRESTONE, INC. vs. DOHERTY, 305 Ill. App. 3d 141 (1999).

At the administrative hearing on April 21, 2004, no factual findings were made by the State Board. On May 14, 2004, the executive secretary of the Board issued a letter notifying Mercy Hospital that the State Board had approved the Application for Permit. That letter

indicated that Board based its approval upon the project's substantial conformance with the applicable standards and criteria of Part 1110 and 1120. It further stated that, "In arriving at a decision, the State Board considered the findings contained in the State Agency Report, the application material, the State Agency's Report of Public Hearing held on September 29, 2003 and any testimony made before the State Board".

The aforesaid letter does not set forth specific findings of fact. It does state the Board's conclusions and the basis therefore. Section 10 of the Planning Act does not require the Board to specify its findings of facts and conclusions unless negative action on an Application is taken. 20 ILCS 3960/10 In addition, Section 1130.680 of the Administrative Code requires the Board to specify its "finding of fact and conclusions of law" only when the Board denies an application.

ACCESS CENTER FOR HEALTH LTD. Vs. HEALTH FACILITIES PLANNING BOARD,  
283 Ill App 3d 227 (1996).

In the case at bar, the State Board did not deny Mercy Hospital's Application for Permit or CON. Even if findings were necessary, that may not be enough for the trial court to reverse the Board's decision. If the record contains competent and sufficient evidence that supports the agency's decision, the decision should be affirmed. CATHEDRAL ROCK OF GRANITE CITY, INC. vs. ILLINOIS HEALTH FACILITIES PLANNING BOARD. 308 Ill App 3d 529 (1999).

An administrative agency's decision is against the weight of the evidence only if the opposite conclusion is clearly evident. The mere fact that the opposite conclusion is reasonable or that the reviewing court may have ruled differently does not justify reversal of an administrative decision. A trial court may not reweigh the evidence or make an independent

determination of the facts. ABRAHAMSON vs. ILLINOIS DEPARTMENT OF PROFESSIONAL REGULATION, 153 Ill. App 2d 76 (1992)

In order to approve and authorize the issuance of a permit if it finds the State Board must find that the proposed project is consistent with the orderly and economic development of such facilities and is in accord with standards, criteria or plans of need adopted and approved pursuant to provisions of Section 12 of 20 ILCS 3960.

Section 12 of the Illinois Health Facilities Planning Act authorizes the State Board to prescribe rules, regulations, criteria and procedures to carry out the purposes of the Act. That section further enumerates certain factors the Board shall consider in developing health care facility plans. Those factors include the number of existing and planned facilities offering similar programs, the extent of utilization of existing facilities, the availability of facilities which may serve as alternatives or substitutes and the availability of personnel necessary to operate the facility. 20 ILCS 3960/12(1) and (4).

Acting as an administrative and support arm of the State Board, the State Agency prepared two reports for the Board's review and consideration. Those reports consider the application and supporting documentation submitted. The State Agency evaluated Mercy Hospital's application with respect to financial and economic criteria set forth in Section 1120 of Title 77 of the Illinois Administrative Code and the general review criteria and needed related criteria set forth in Section 1110 of the Illinois Administrative Code 77 Illinois Adm. Code. The Administrative Code has the force and effect of law. MEDCAT LEASING CO. vs. WHITLEY, 253 Ill App 3<sup>rd</sup> 801 (1993).

The Agency report completed for submission to the State Board Hearing on December 17, 2003 found that the Mercy Hospital Application, was in conformity with three of the four



applicable economic feasibility criteria and that the financial feasibility criteria were not applicable. The Agency report found that aside from meeting the background of applicant criterion (1110.230), that Mercy Hospital met none of the other criteria under Section 1110, the general or need related criteria, including the criteria for a variance to bed need.

At the December 17, 2003 State Board Hearing, Mercy Hospital had various representatives present who presented testimony regarding the application and in response to questioning by Board members. Those present for Mercy were Javon Bea, President of Mercy Hospital; Richard Gruber, Vice President of Mercy Hospital; Dan Colby, President of mercy Harvard Hospital and three attorneys representing Mercy. The Board addressed concerns regarding the bed variance, the shortage of obstetrical beds in the M.S.A., the additional physicians that Mercy would bring to staff its proposed hospital and the impact of the hospital on staffing in other area hospitals. At the conclusion of the hearing, the State Board denied Mercy Hospital's application. No findings were made. However, before the Notice of Intent to Deny was sent on January 27, 2004, Mercy Hospital on January 15, 2004 sent a letter with supplemental information requesting leave to reappear before the Board at the February meeting.

After receipt of the supplemental information from Mercy Hospital, the State Agency issued another report for submission to the Board at its April 21, 2004 meeting. No hearing was held regarding Mercy's application between December 17 and the April 21<sup>st</sup> meeting. The report of the State Agency for the April hearing contained the same findings regarding the general criteria and needed related criteria; that being that except for applicant meeting the background criteria, Mercy Hospital did not meet the other 1110 criteria. The State Agency found that with the change in cost submitted by Mercy in the supplemental materials, Mercy now met all of the economic feasibility factors.

At the hearing on April 21, 2004 before the Board representatives of Mercy appeared as well as its legal counsel. With respect to bed need, Mercy Hospital had submitted data from the Center for Disease Control which indicated that 76% of the hospitals in the United States have less than 100 beds. Upon questioning, hospital personnel acknowledged that this study was not Illinois or McHenry County based but rather reflected nationwide statistics. Documentation regarding the decrease in average patient stays was discussed using 980 figures versus today. Testimony was received regarding the 45 new physicians Mercy would bring to the proposed hospital, which physicians would be in their employ. Mercy representatives opined that with these new doctors in place, patients who resided in the M.S.A. who sought treatment outside of the M.S.A. would return for care. There was discussion concerning the findings by the State Agency on the general criteria and need criteria not being met. Board member Levine believed that the rules were outdated and needed to be revised to reflect current data. He was particularly impressed with the 45 physicians who would be moving to McHenry County to staff the proposed hospital. At the conclusion of the hearing, the Board voted to approve the application and the motion passed. On May 14, 2003, a letter advising of the approval of the application for permit was sent to Mercy Hospital.

Plaintiffs assert that the decision of the State Board is against the manifest weight of the evidence because the proposed project was not in accordance with the standards, criteria or plans of need adopted and approved pursuant to the provisions of the Illinois Health Facilities Planning Act. In particular, the Plaintiffs direct the Court to the State Agency reports wherein it was noted that Mercy Hospital's proposed project was not in conformity with the general review criteria and need related criteria under Sections 1110 of the Illinois Administrative Code.

The Defendants counter Plaintiffs assertions by directing the Court to the standard of review and the discretionary authority the State Board has under 1130.660 of the Illinois Administrative Code. That provision states in pertinent part the follows:

“The State Board shall consider the application and any supplemental information or modification submitted by the applicant, IDPH report(s), the public hearing testimony, if any and other information coming before it in making its determination whether to approve the project. The applications are reviewed to determine compliance with review criteria enumerated in 77 Ill. Adm. Code 1110 and 1120. The failure of a project to meet one or more review criteria, as set forth in 77 Ill. Adm. Code 1110 and 1120 shall not prohibit the issuance of a permit.”

The applicability of Section 1130.660 has been addressed in a number of cases, which cases have been cited by the parties herein. With the exception of the Court in SPRINGBOARD, the Courts have recognized that the State Board does have the authority to approve an application where one or more of the review criteria were not met. DIMENSIONS MEDICAL CENTER, LTD. Vs. SUBURBAN ENDOSCOPY CENTER, 298 Ill App 3d 93 (1998). ACCESS CENTER FOR HEALTH LTD. vs. HEALTH FACILITIES PLANNING BOARD, 283 Ill App 3d 227 (1996), CATHEDRAL ROCK OF GRANITE CITY vs. ILLINOIS HEALTH FACILITIES PLANNING BOARD, 308 Ill. App 3d 529 (1999) and MARION HOSPITAL CORPORATION vs. ILLINOIS HEALTH PLANNING BOARD, FACILITIES SPRINGWOOD is distinguishable from the aforementioned cases because the Court did not consider the applicability of 1130.660 in that case. SPRINGWOOD ASSOCIATES vs. HEALTH FACILITIES PLANNING BOARD, 269 Ill App 3d 944 (1995).

However, in each of the cases where the Courts upheld the Board's decision to exercise its discretionary authority, the courts looked to the record to determine if there was adequate evidence to support the Board's decision. None of the cases cited by the Defendants have State

Agency Reports that found lack of conformity with essentially all of the need related and general criteria as in the case at bar.

The letter of May 14, 2004, issued on behalf of the State Board found substantial conformance with the applicable standards and criteria of part 1110 and 1120 based on its consideration of the findings contained in the State Agency reports, the application material, the report of public hearing on September 29, 2003 and any testimony made before the State Board.

At the public hearing the majority of those who testified were in opposition to the proposed project. Almost 2000 letters were submitted both in support of and in opposition to Mercy Hospital. More letters were in opposition. Many of the letters submitted were form letters used by supporters of Plaintiffs' and Defendants' respective positions. Some of the letters were from Mercy's website, which did not allow negative input.

The State Agency Reports submitted to the State Board for hearings on December 17, 2003 and April 21, 2004 found that the proposed project was not in conformity with the following general review and need related criteria: 110.320(a): Establishment of Additional Hospitals, 110.320(b); Allocation of Additional Beds, 1110.520(a); Unit Size; 1110.520(b); Variances to Bed Needs, 110.520(b)(2); Medically Underserved Variance, 1110.230(a); Location, 1110.230(c); Alternatives, 1110.230(d); Need for the Project, 1110.230(e); and Size of the Project. The project was in conformity with 1110.230(b), Background of Applicant, which provided that the applicants complied with the necessary licensure and certification information required and are fit, willing, able and have the necessary background to provide a proper standard of healthcare service for the community.

In response to the adverse reports of the State Agency, Mercy Hospital addressed the growing population trends in McHenry County, the shortage of physicians in McHenry County

and the changes in the practice of medicine that have reduced the average length of patient stays in hospitals. Mercy Hospital asserts that as a result of the decline in the patient length of stays, there is no longer a need for the requirement of 100 medical/surgical beds as established in 1980 and that only 67 beds are needed to serve the same number of patients.

Section 1110.320(2) of the Illinois Administrative Code requires that hospitals within a M.S.A. must have a minimum of 100 medical/surgical beds. Hospitals situated outside a M.S.A. do not have such a limitation. Mercy Hospital proposes 56 med/surg. beds with initially 32 of the entire 70 beds being built out and the remaining 38 being shells for later construction. The Defendant hospital did not identify how the 32 beds would be allocated. At the Board hearing of April 21, 2004, Mr. Glaser, on behalf of Mercy Hospital stated that all 70 beds would immediately be built out, contrary to the data in the application and earlier testimony. (R3541) (R.14) Section 1110.230.530(a)(1)(A) provides that a new obstetric unit with a M.S.A. must have 20 beds. Mercy proposal is for 10 obstetric beds.

Mercy Hospital submitted material based on average length of patient stays in 1980 to the present, claiming that 67 beds would now provide care for the same number of patients in a 100 bed facility in 1980. The documentation presented gives nationwide figures with no specific data for Illinois.

The 100 bed standard was established in 1992 and not 1980 and is applicable only to hospitals within a Metropolitan Statistical Area, such as the proposed location. Furthermore, according to the bed inventory data, the A-10 planning area (M.S.A.), where the proposed facility would be located, has 35 excess medical surgical beds and 7 excess ICU beds. Assuming that the present average length of patient stays reduces the need for beds, then the proposed additional beds at Mercy Hospital would only increase the surplus but also affect the target

utilization rates at neighboring hospitals, which is also taken into account under the need related criteria. Presently the hospitals in proximity to the proposed project are generally not operating at the State's target utilization rates.

The only shortage of beds in the M.S.A. is obstetrical beds, which shortage is 20 beds. Mercy's application proposes 10 obstetrical beds. Mercy Health System Corporation operates Mercy Harvard Hospital, which is within M.S.A. 10. Mercy Harvard Hospital closed its obstetrical unit approximately three years ago and has not reopened since Mercy acquired the hospital approximately two years ago.

There are located within planning Area 10 three hospitals which offer the same services as the proposed project. Two of these three hospitals are within 30 minutes of the proposed facility. These are Northern Illinois Medical Center in McHenry and Memorial Medical Center in Woodstock. The third hospital, Mercy Harvard is within 45 minutes of the proposed facility. Additionally, there are four other hospitals not within the planning area, but within 30 minutes of the site of Mercy Hospital. They are Advocate Good Shepherd, Barrington, St. Alexius Medical Center, Hoffman Estates, Sherman Hospital, Elgin and Provena St. Joseph Hospital in Elgin. Each of these health facilities offer the same services as the proposed hospital.

Defendant acknowledges the presence of these other hospitals and that Mercy will offer no services not already provided by these facilities. However, Mercy contends that with the growth of population within the county, the travel times will increase in the future and thereby increasing the travel times in excess of 30 minutes to those hospitals. The estimates of future travel times do not take in account road expansion projects which might be undertaken. The evidence on the travel times and future projections offered by the Defendant are in some instances inaccurate and other instances speculative.

Mercy opines that a significant percentage of patients are leaving the planning area for health care and that with the establishment of a new hospital, a good percentage of those patients will return to the area for treatment. Competent evidence is lacking to support this opinion. Evidence at the public hearing and elsewhere in the record shows that approximately 75% of the residents within zip code targeted area received care at existing hospitals and that other patients leaving the target area are doing so for specialized or tertiary care. It is also unclear if Mercy's opinion takes into account the services received at the hospitals located within 30 minutes but outside of area A-10.

The review criteria does provide for variance for bed need. 77 Ill. Adm. Code 1110.530(b)(2). In order to satisfy the variance to bed need requirements, Mercy Hospital had to document that access to the proposed service is restricted in the planning area by documenting at least one of the following: (i) the absence of service within the planning area; (ii) limitations on government funded or charity patients; (iii) restrictive admissions policies of existing providers; (iv) the area population and existing care system exhibits indicators of median care problems such as an average family income level below the state poverty level, high infant mortality or designation as a "Health Manpower Shortage Area; or (v) the project will provide for a portion of the population who must currently travel over 45 minutes to receive service. Mercy Hospital was found to have documented none of the aforesaid criteria in order to receive a variance. Evidence presented showed that seven hospitals are within 45 minutes and all offer the same services Mercy will offer, if not more. Travel studies submitted by mercy were in some ways misleading as they included round trip travel times which is not the standard for review or were based on future projections. No evidence whatsoever was submitted to document items (i) through (iv).

Much was made by the Board at the April 21, 2003 hearing about the 45 physicians Mercy Hospital would bring to staff its hospital and adjacent offices. It is unclear from the evidence where these physicians will come from. However, Mercy did indicate that with the opening a new hospital, it would close three of its physician staffed facilities now located in and Cary and Crystal Lake. Board member, Mr. Levine, commented at the April 21<sup>st</sup> meeting how impressed he was that these new physicians would help make a dent in the shortage of physicians in the area. There was a chart provided showing a physician shortage in McHenry County. The underlying data for the information in the chart is unknown. While the Board addressed the shortage of physicians in the area, it appears not to have adequately considered the shortage of healthcare support staff. The evidence in the record reflects that there is a shortage of health care personnel needed to staff hospitals. There are not enough nurses, medical technicians and laboratory technicians to staff hospitals nationwide and in McHenry County. Testimony at the public hearing expressed a concern that the new hospital would not be able to adequately staff its facility and would have to recruit medical personnel from other area hospitals, thereby causing shortages of necessary and required staff in those facilities. Area hospitals have experienced staffing problems which have resulted in their not being able to maximize the use of their facilities.

The record further documents that the proposed hospital would adversely impact the utilization rates at hospitals within the M.S.A. and nearby. Mr. Ryder, of Advocate Health Care in Barrington testified at the public hearing that more than 25% of its patients are from the towns targeted by Mercy Hospital. A study submitted at the public hearing by Plaintiffs and prepared by Deloitte and Touche, at Plaintiff's instance concluded that Northern Illinois Medical Center and Memorial Medical Center, both in A-10 would lose approximately 9,500 cases annually.



Upon a review of the record, there is not sufficient and competent evidence supporting the State Board's decision to grant the issuance of the permit to Mercy Hospital. While the Board has the authority to issue a permit when all of the criteria under 1110 are not met, there needs to be some rationale basis to excuse compliance with the criteria. The record does not reflect that Mercy Hospital presented sufficient evidence showing that the proposed hospital facility was needed, was the most effective or least costly alternative and was in a medically underserved planning area. Sufficient evidence did not establish that the project warranted a variance to bed need.

Mercy Hospital's application did not meet the necessary general review and need related criteria and the factors set forth in 20 ILCS 3960/12. The written submissions and oral testimony did not rebut the Agency's findings that Mercy Hospital's application was not in conformity with the criteria set forth in 77 Ill. Adm. Code 1110. This Court finds that the State Board's decision is against the manifest weight of the evidence.

## B. ARBITRARY AND CAPRICIOUS

The Plaintiffs also contend that the Board's decision was arbitrary and capricious. The Illinois Supreme Court in GREER vs. ILLINOIS HOUSING DEVELOPMENT AUTHORITY, 122 Ill 2d 462 (1988) set forth guidelines to be applied by the Court in determining whether the decision of an Agency is arbitrary and capricious. Those guidelines direct the Court to consider: 1. Did the Agency rely on factors the legislature did not intend the agency to consider; 2. Did the Agency fail to consider an important aspect of the problem, or 3. Did the Agency offer an explanation for its decision which runs counter to the evidence before the agency or which is so

implausible that it could not be ascribed to a difference in view or the product of agency expertise.

The State Board in the case at bar excused the mercy Hospital's failure to comply with essentially all of the general and need related criteria. The only rationale for the Board's actions capable of being gleaned from the hearing on April 21<sup>st</sup> was that the rules and review criteria are outdated and that this new facility will help fill the shortage of physicians in the service area.

At that April Board meeting, Board members expressed concern about the Board's decision being termed "arbitrary and capricious" if it approved the Mercy Hospital Application for Permit in light of the State Agency's two reports showing non conformity with the 1110 criteria. In response thereto, Board member Stuart Levine stated that the rules and criteria are "woefully out of date". He further stated that he has participated in "a lot of applications that were granted that had complete negative findings. And those occurred in instances where there were valid reasons and justifications given in each of the areas that, of course, are in the Board's discretion to do". R 3264. Yet, Mr. Levine did not offer any explanation or justification for the Board's approval in the instant case, other than he was impressed with the 45 new physicians who would be coming to McHenry County and who would make a dent in the physician shortage.

The Board hearing on April 21 focused in large part on the new physicians who would be employed by Mercy Hospital. However, the rules governing the Board's decisions do not provide for criteria which address physician shortages. The documentation provided by Mercy regarding physician shortages was done by Solucient and is in the record at page 2913. The chart shows that Crystal Lake, the location of the proposed hospital, has no physician shortage. Lake in the Hills, Cary and Algonquin are the other target service areas. No data is provided for

physicians in Lake in the Hills. On Solucient's documentation, Cary and Algonquin do show physician shortages. The source for the data is not disclosed. Even with these claimed shortages, Mercy System Corporation is going to close its two physician offices in Crystal Lake and one in Cary.

Furthermore, while there may be a shortage of physicians in the area, the Board did not discuss and apparently did not consider the evidence in the record of the shortages of registered nurses, laboratory technicians and medical technologists in the area. The public hearing record is replete with testimony of medical personal on the shortage of such personnel. These personnel are needed to staff a hospital. Mercy Hospital offered no evidence where this staff would come from other than stating they would recruit medical personnel who worked outside of the area. Nothing in the record indicates a surplus of such personnel in other areas of the state. No evidence was presented on the number of resident medical personnel who worked outside of the M.S.A. or beyond the 30 minute travel time. Testimony at the public hearing showed a concern among McHenry County health care workers that Mercy would recruit staff from area facilities thereby affecting the viability of those hospitals.

Upon a review of the record, the Court finds that State Board relied on factors not intended by the legislature and that they failed to consider important aspects of the problem concerning the shortage of medical support staff and the impact the proposed hospital would have on the hospitals within the M.S.A. and within 30 minutes travel time. When the Board first denied the Mercy Hospital's application, it had information on the 45 new employee-physicians who would be at the physician offices adjacent to the hospital. Yet, at the April 21<sup>st</sup> meeting, the new physicians appeared to be the primary basis for the affirmative vote.

The Court finds that the actions of the State Board, in approving the application for permit for the Mercy Hospital project, was arbitrary and capricious.

### C. NECESSARY PARTIES

Plaintiffs contend that the decision should be reversed because the proper party was not joined as a party to the application. Particularly, Plaintiffs claim that Section 1130.220(b) of the Illinois Administrative Code requires that Mercy Health Systems Corporation be a co-applicant.

Section 1130.220 provides in pertinent part as follows:

“The following person(s) must be the applicant(s) for permit or exemption, as applicable:

(b)(3) any related person who is or will be financially responsible for guaranteeing or making payments on any debt related to the project.”

It is undisputed that Mercy Health System falls within that classification and that they were not parties to the application. The State Agency Report, however, reflects that is considered that entity to be a co-applicant even though it wasn't. Documentation was submitted verifying the bond rating of Mercy Health System Corporation and other data was provided regarding its corporate structure and related entities.

The non inclusion of Mercy Health System as an applicant may have affected the economic review criteria under 1120.310(a). The State Agency found that Criterion 1120.310(a) was “not applicable as the applicant's document proof of an “A “bond rating”. Mercy Health System should have been a party to the application for permit. However, the failure to include Mercy Health System Corporation as a co-applicant, standing alone, would not be a basis for a finding of the State Board's decision being against the manifest weight of the evidence.

D. THE VOTING PROCESS

The Plaintiffs claim that the voting process was improper by the Board not specifying the nature of the motion voted on and Board members engaging in off the record discussions. It is apparent from the record that the Board on motion knew that it was voting to approve the permit. While formality is lacking, the record reflects that in the other proceedings that day, which are part of the record the Board used the same methodology in voting.

While the off record comments by Board members may be irregular, they do not constitute ex parte communications. The Court can not attribute any significance to the off record comments in this review.

Based on a review of the record and for the foregoing reasons, the Court hereby finds that the Decision of the Illinois Health Planning Board to grant the issuance of the permit to Mercy Hospital and Mercy Health Systems was against the manifest weight of the evidence and arbitrary and capricious.

IT IS HEREBY ORDERED that the Decision of the Illinois Health Planning Board to issue a permit in Project No. 03-049 is reversed.

DATED: May 6, 2005

ENTERED Maureen P. McIntyre

MAUREEN P. McINTYRE  
CIRCUIT JUDGE

My name is Richard Gruber. I am a Vice President with Mercy Health System Corporation as well as being Secretary and an Officer of Mercy Crystal Lake Hospital and Medical Center Inc., an Illinois not for Profit Corporation in good standing in the State. My business address is 2000 Lake Avenue, Woodstock Illinois.

- Today you have heard starkly contrasting views on the need for the Mercy Crystal Lake Hospital and Medical Center. Opponents have argued everything from it being a duplication of existing operations, it will negatively impact their ability to provide safety net services, will deplete those institutions of health professionals such as nurses and other professionals, and increase the cost of health care in the region.
- On the other hand, you have heard recognized experts such as David Eisenstadt, Ph.D., an antitrust economist and co-owner of Microeconomic Consulting and Research Associates located in Washington D.C. talk about the importance of increased hospital competition in McHenry County. Among the benefits will be greater consumer choice, better quality, most importantly lower cost and prices.

Persino, MD whose office is located at 750 E. Terra Cotta Avenue,  
Suite B in Crystal Lake.

- The letter which is addressed to Ms. Courtney R. Avery in Springfield, reads as follows:

Dear Ms. Avery:

I am a board certified Ob/Gyn physician who has practiced in the Crystal Lake area continuously since 1988. It has been my privilege to work with the fine professional staff of NIMC, Centegra, McHenry where I am on active staff. It is an excellent institution. I have served as Section Chair of Ob/Gyn for three terms during my tenure and have exclusively only been on staff at this hospital. I have been employed by Mercy Health System for five years and have seen the tremendous population growth that has occurred in our practice location over that time period. There have been multiple occasions that we have been at overflow conditions at NIMC. I have seen problems with not having beds available for patients, and holding patients in the Emergency Department while waiting for a bed to become available. This seems to be happening more often. I firmly believe that we have a distinct need in Crystal Lake for another hospital. I also have the utmost respect for Mercy Health System and its genuine commitment to patient care. I believe that having a hospital in Crystal Lake not only helps to alleviate the periodic overload situation at NIMC, but will also be in the best interest of the people of Crystal Lake and the surrounding area in terms of Mercy being a competing health care

(do not delete)

facility. It would be this competition that would raise the standards for all nearby health care facilities thereby benefitting both patients as well as employees of the hospitals. I sincerely hope that positive consideration will be given to allow Mercy Health System to build a hospital in Crystal Lake. Thank you.

Respectfully,

Richard L Persino, MD

Dated: 3/15/11

- Seven years ago we believed there was a need for greater access to healthcare in the area and since then, we have seen that need grow substantially.
- More importantly, the residents and health care professionals like Dr. Persino have spoken passionately once again to the need and their desire to have a hospital in Crystal Lake.
- This is the right project at the right location and at the right time. We believe there is a need for healthcare service access. The plan meets that need in the community in the most appropriate way... more acute care hospital beds, and integrated, coordinated health care services assuring the highest levels of quality for our patients.
- Mercy has chosen to locate its hospital and medical center in the



*McHenry County*  
most densely populated area of ~~Crystal Lake~~ that suffers from excessive traffic congestion.

- Crystal Lake is also the home of the most diverse population in McHenry County and has a growing geriatric population in need of additional services.
- The location will also provide easier access for Emergency Medical Service providers who presently face uncertainty about hospital bed availability because of Centegra hospitals' emergency department bypass rates.
- In most respects, we are here to complement existing hospital services, not compete.
- Mercy Crystal Lake will help alleviate the overcrowding and bypass rates of area hospitals.
- It will also provide an additional safety net option for those most in need of services but unable to pay the cost for health care.
- We will provide new services such as a Geriatric Center of Excellence that serves a population with highly specialized services that are not available at other hospitals.

- Ultimately it is all about ready access and quality care to the patients we service.
- This is the only application that improves access to care and reduces the cost of providing that care. Those are the stated principles of the Certificate of Need process. These are also significant benefits that accrue to all consumers
- That is why we respectfully request your favorable consideration of Mercy's application for a Certificate of Need for Mercy Crystal Lake Hospital and Medical Center.
- Thank you.

**Mr. Mike Ploszek**  
**Advocate Good Shepherd Hospital**  
**Closing Testimony**

Project No. 10-089

Today has been a long day. We have spent almost an entire day discussing whether an additional hospital should be built in our area. Ms. Avery, we thank you for spending this day listening to debate, some of which was spirited, on this issue. How high quality health care is to be provided in a efficient, cost-effective manner is clearly important to all us, and whether you are for our against this project, I thank everyone attending.

I am Mike Ploszek, Vice President of Ambulatory Services and Community Strategy at Advocate Good Shepherd Hospital.

There are a few points that I would address today in summary:

1. There is no need to solve a by-pass problem that doesn't exist. Hospitals in this area were on by-pass a total of 16 hours in the last year. We don't need a \$200 million hospital for 16 hours of by-pass.
2. You cannot take 4,000 cases from existing hospitals without hurting existing hospitals.
3. Proximity is not a justification for this hospital. Virtually every affected zip code is within 30 minutes of a hospital.
4. Although there could be many other points we could address, I do want to make sure that one important fact is clarified. A Mercy physician had reference the two immediate care facilities in Crystal Lake and alleged that both were turning away Medicaid patients. I cannot speak for the other facility, but as the Vice President for

Ambulatory Services, I can emphatically tell you that Advocate Good Shepherd Immediate Care center accepts Medicaid patients and I would not want anyone here to think otherwise.

Rather than inundating you with more facts, I want to acknowledge the difficulty of this process. Weighing the relative merits and costs of a new hospital is complex. While an additional hospital might be convenient for some residents, that convenience comes at a considerable cost to the health care system.

Many of us choose convenience over quality when it comes to our lunch. Fortunately, we do not choose our hospital as if it were a Taco Bell. Often I am rushed for lunch or need to work late and regrettably eat another meal in the car. Is the food good or nutritious? No, but it is convenient. If, however you have a parent needing cardiac care, or a spouse with cancer or child with any type of serious illness, would anyone here select a hospital because it was 2 miles closer and more "convenient"? No, we would want our loved ones to have the best care possible.

As a long time health professional, I can tell you that there is a trade-off between quantity and quality. How so? Take for example a hospital that desires to bring on a new cancer specialist, but determines that they cannot do so because there would not be enough volume. Similarly, a hospital wishes to offer greater charity care, but cannot because insufficient volumes do not allow the hospital to operate on even a break even basis. Or a hospital that want to make a DaVinci robot available for its surgical patients but cannot because there is insufficient volume

because of too many facilities. I believe residents in our area want better care, not marginally closer care.

I am not here to just oppose a competing hospital but rather to advocate for the best quality care in the area. I ask the Review Board to follow their rules and to not diminish the care in this area with a new hospital.

Thank you.

**Robert M. Rosenberger in opposition to Project # 10-089**

My name is Bob Rosenberger. As Centegra's Chief Financial Officer, I oppose Mercy's proposal for a hospital in Crystal Lake. Data shows that Mercy Crystal Lake Hospital is only viable at the expense of Centegra's existing hospitals. Let me explain.

Mercy's physician referral letters document that almost 90% of the patient volume for the proposed facility will come from Centegra's existing hospitals. 53% of the patient volume would come from Centegra Hospital-Woodstock and 36% would come from Centegra Hospital-McHenry.

To meet the required utilization targets identified on page 178 of Mercy's application, the proposed facility will require 32,960 med/surg patient days; 5,482 OB patient days; and 1,752 ICU patient days. If 53% of this patient volume comes from our Woodstock hospital and 36% comes from our McHenry hospital, as Mercy's CON application indicates, Mercy's project would have a major impact on Centegra.

Based on our 2009 Hospital Profiles and the referral numbers provided by Mercy, the occupancy of medical/surgical and OB beds at Centegra Hospital-Woodstock would plunge to 10% and 5%, respectively. ICU occupancy would be reduced to 58%. The occupancy of medical/surgical and OB beds at Centegra Hospital-McHenry would be reduced to 53% and 14%, respectively, far below the State's target occupancy levels.

These high impacts on Centegra's patient volumes would be necessary for Mercy Crystal Lake to attain the utilization rates required of its new hospital.

It makes no sense to sacrifice two existing, thriving hospitals for the sake of a new one, especially when the owner of that new hospital has the abysmal track record in the State that Mercy has. Mercy has owned and operated Mercy Harvard Hospital since 2003 and has been singularly unable to improve the poor utilization of that facility. According to its 2009 Hospital Profile, its latest medical/surgical utilization was 27% and its ICU utilization was 10.5%.

The 2009 Hospital Profiles for Centegra Hospital-McHenry, Centegra Hospital-Woodstock, and Mercy Harvard Hospital are included with my written testimony.

It is also important to note that the financial impact study prepared by Deloitte was based only on the actual patient referrals documented in Mercy's CON application. Yet, those patients represent only 40% of the patient admissions required for Mercy Crystal Lake to meet the required utilization levels. Consequently, Deloitte's calculated financial impact to Centegra of \$10 million to \$11.7 million annually would more than *double* if Mercy is to attain its target utilization by taking 88% of its patient volume from Centegra.

These great losses could have far-reaching ramifications in the community. Right now, Centegra supports a wide range of health services that are vital to the community, yet result in large financial losses to Centegra each year. In FY10, Centegra lost \$5.6 million on mental health services, \$5.5 million on a skilled rehab nursing facility, \$1.1 million on free community health

screenings and \$650 thousand on a neuro-day trauma treatment center. All of that is in addition to our contributions to area social service agencies that are currently seeing cuts in Medicaid payments from the state. If we experience major losses at the hand of Mercy Crystal Lake Hospital, we may not be able to continue supporting these kinds of services.

I urge this board to consider the impact a new hospital in Crystal Lake would have on Centegra Health System and the community at large. Do not sacrifice two existing hospitals for one new hospital. Please reject Mercy Crystal Lake Hospital.

**Mercy Impact to CH-M and CH-W Occupancy**

	CH-M			CH-W		
	M/S	OB	ICU	M/S	OB	ICU
Mercy's Patient Days to Meet Target Occupancy	32,960	5,482	1,752	32,960	5,482	1,752
% From CHS - Based on Mercy Referral Letter %	36%	36%	36%	53%	53%	53%
Patient Days Mercy will take from CHS	11,866	1,974	631	17,469	2,905	929
CHS 2009 Patient Days (Annual Hospital Questionnaire)	37,006	2,964	6,247	19,679	3,168	3,474
CHS 2009 CON Authorized Beds *	129	19	18	60	14	12
CHS 2009 Occupancy *	78.6%	42.7%	95.1%	89.9%	62.0%	79.3%
CHS Adjusted Patient Days (w/Mercy Impact)	25,140	990	5,616	2,210	263	2,545
<b>CHS Adjusted Occupancy (w/Mercy Impact)</b>	<b>53.4%</b>	<b>14.3%</b>	<b>85.5%</b>	<b>10.1%</b>	<b>5.1%</b>	<b>58.1%</b>
Mercy Impact to CHS Occupancy (in % points)	25.2%	28.5%	9.6%	79.8%	56.9%	21.2%

\*Adjusted for Abandonment of Project #08-002



Ownership, Management and General Information		Patients by Race		Patients by Ethnicity	
ADMINISTRATOR NAME:	Michael S. Eesley	White:	93.9%	Hispanic or Latino:	0.4%
ADMINSTRATOR PHONE	815.788.5825	Black	0.7%	Not Hispanic or Latino:	94.9%
OWNERSHIP:	Centegra Northern Illinois Medical Center d/b/a Ce	American Indian	0.3%	Unknown:	4.6%
OPERATOR:	Centegra Northern Illinois Medical Center d/b/a Ce	Asian	0.5%	IDPH Number:	3889
MANAGEMENT:	Not for Profit Corporation	Hawaiian/ Pacific	0.0%	HPA	A-10
CERTIFICATION:	None	Unknown:	4.6%	HSA	8
FACILITY DESIGNATION:	General Hospital				
ADDRESS	4201 Medical Center Drive	CITY:	McHenry	COUNTY:	McHenry County

Facility Utilization Data by Category of Service										
Clinical Service	Authorized CON Beds 12/31/2009	Peak Beds Setup and Staffed	Peak Census	Admissions	Inpatient Days	Observation Days	Average Length of Stay	Average Daily Census	CON Occupancy 12/31/2009	Staff Bed Occupancy Rate %
Medical/Surgical	129	127	127	8,893	33,290	3,716	4.2	101.4	78.6	79.8
0-14 Years				188	313					
15-44 Years				1,568	4,053					
45-64 Years				2,880	10,300					
65-74 Years				1,571	6,644					
75 Years +				2,686	11,980					
Pediatric	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Intensive Care	18	18	18	1,378	6,233	14	4.5	17.1	95.1	95.1
Direct Admission				956	3,310					
Transfers				422	2,923					
Obstetric/Gynecology	19	18	18	1,106	2,750	214	2.7	8.1	42.7	45.1
Maternity				1,012	2,521					
Clean Gynecology				94	229					
Neonatal	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Long Term Care	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Swing Beds				0	0		0.0	0.0		
Acute Mental Illness	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Rehabilitation	15	15	15	270	3,262	0	12.1	8.9	59.6	59.6
Long-Term Acute Care	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Dedicated Observation	0					0				
Facility Utilization	181			11,225	45,535	3,944	4.4	135.6	74.9	

(Includes ICU Direct Admissions Only)

Inpatients and Outpatients Served by Payor Source							
	Medicare	Medicaid	Other Public	Private Insurance	Private Pay	Charity Care	Totals
Inpatients	45.3%	9.9%	0.6%	38.7%	3.6%	2.0%	11,225
Outpatients	26.5%	11.7%	0.7%	55.9%	4.7%	0.6%	140,750
	5081	1109	70	4339	407	219	
	37231	16435	979	78617	6625	863	

Financial Year Reported:	7/1/2008 to 6/30/2009		Inpatient and Outpatient Net Revenue by Payor Source					Charity Care Expense	Total Charity Care Expense
	Medicare	Medicaid	Other Public	Private Insurance	Private Pay	Totals			
Inpatient Revenue ( \$ )	35.1%	9.7%	0.4%	43.4%	11.4%	100.0%	1,399,187	2,200,332	
	35,992,379	9,974,978	431,686	44,540,696	11,698,782	102,638,521		Totals: Charity Care as % of Net Revenue	
Outpatient Revenue ( \$ )	17.0%	3.5%	0.2%	70.1%	9.1%	100.0%	801,145	0.9%	
	23,608,223	4,882,998	341,994	97,577,611	12,717,903	139,128,729			

Birthing Data		Newborn Nursery Utilization		Organ Transplantation	
Number of Total Births:	922	Level 1 Patient Days	1,723	Kidney:	0
Number of Live Births:	920	Level 2 Patient Days	150	Heart:	0
Birthing Rooms:	0	Level 2+ Patient Days	484	Lung:	0
Labor Rooms:	0	Total Nursery Patientdays	2,357	Heart/Lung:	0
Delivery Rooms:	0			Pancreas:	0
Labor-Delivery-Recovery Rooms:	0			Liver:	0
Labor-Delivery-Recovery-Postpartum Rooms:	6			Total:	0
C-Section Rooms:	1				
CSections Performed:	250				
		Inpatient Studies	339,943		
		Outpatient Studies	241,273		
		Studies Performed Under Contract	0		

\* Note: Has only 1 piece of Linear acceleator and is capable of performing IGRT and IMRT procedures. Number of procedures listed under Linear accelerator are inclusive of IGRT and IMRT procedures as well.

**Surgery and Operating Room Utilization**

Surgical Specialty	Operating Rooms				Surgical Cases		Surgical Hours			Hours per Case	
	Inpatient	Outpatient	Combined	Total	Inpatient	Outpatient	Inpatient	Outpatient	Total Hours	Inpatient	Outpatient
Cardiovascular	1	0	0	1	339	47	1392	71	1463	4.1	1.5
Dermatology	0	0	0	0	0	0	0	0	0	0.0	0.0
General	0	0	8	8	232	874	503	1237	1740	2.2	1.4
Gastroenterology	0	0	0	0	508	568	1071	843	1914	2.1	1.5
Neurology	0	0	0	0	59	261	154	398	552	2.6	1.5
OB/Gynecology	0	0	0	0	216	477	525	598	1123	2.4	1.3
Oral/Maxillofacial	0	0	0	0	5	25	10	43	53	2.0	1.7
Ophthalmology	0	0	0	0	0	748	0	707	707	0.0	0.9
Orthopedic	0	0	0	0	663	1922	1734	3451	5185	2.6	1.8
Otolaryngology	0	0	0	0	10	543	18	678	696	1.8	1.2
Plastic Surgery	0	0	0	0	0	0	0	0	0	0.0	0.0
Podiatry	0	0	0	0	17	158	49	303	352	2.9	1.9
Thoracic	0	0	0	0	74	27	152	37	189	2.1	1.4
Urology	0	0	1	1	7	26	45	77	122	6.4	3.0
<b>Totals</b>	<b>1</b>	<b>0</b>	<b>9</b>	<b>10</b>	<b>2130</b>	<b>5676</b>	<b>5653</b>	<b>8443</b>	<b>14096</b>	<b>2.7</b>	<b>1.5</b>

**SURGICAL RECOVERY STATIONS**      Stage 1 Recovery Stations      10      Stage 2 Recovery Stations      25

**Dedicated and Non-Dedicated Procedure Room Utilization**

Procedure Type	Procedure Rooms				Surgical Cases		Surgical Hours			Hours per Case	
	Inpatient	Outpatient	Combined	Total	Inpatient	Outpatient	Inpatient	Outpatient	Total Hours	Inpatient	Outpatient
<i>Gastrointestinal</i>	0	0	4	4	1275	3773	1144	3186	4330	0.9	0.8
<i>Laser Eye Procedures</i>	0	0	0	0	0	0	0	0	0	0.0	0.0
<i>Pain Management</i>	0	0	2	2	31	362	48	907	955	1.5	2.5
<i>Cystoscopy</i>	0	0	0	0	0	0	0	0	0	0.0	0.0
<b>Multipurpose Non-Dedicated Rooms</b>											
Cysto/Urology	0	0	1	1	127	346	215	376	591	1.7	1.1
	0	0	0	0	0	0	0	0	0	0.0	0.0
	0	0	0	0	0	0	0	0	0	0.0	0.0

**Cardiac Catheterization Labs**

Total Cath Labs (Dedicated+Nondedicated):	3
Cath Labs used for Angiography procedures	1
Dedicated Diagnostic Catheterization Labs	0
Dedicated Interventional Catheterization Labs	0
Dedicated EP Catheterization Labs	0

**Cardiac Catheterization Utilization**

Total Cardiac Cath Procedures:	2,317
Diagnostic Catheterizations (0-14)	0
Diagnostic Catheterizations (15+)	1,609
Interventional Catheterizations (0-14):	0
Interventional Catheterization (15+)	613
EP Catheterizations (15+)	78

**Emergency/Trauma Care**

Certified Trauma Center by EMS	<input checked="" type="checkbox"/>
Level of Trauma Service	Level 1      Level 2 Adult
Operating Rooms Dedicated for Trauma Care	0
Number of Trauma Visits:	10,568
Patients Admitted from Trauma	733
Emergency Service Type:	Comprehensive
Number of Emergency Room Stations	22
Persons Treated by Emergency Services:	29,130
Patients Admitted from Emergency:	6,609
Total ED Visits (Emergency+Trauma):	39,698

**Cardiac Surgery Data**

Total Cardiac Surgery Cases:	166
Pediatric (0 - 14 Years):	0
Adult (15 Years and Older):	166
Coronary Artery Bypass Grafts (CABGs) performed of total Cardiac Cases :	125

**Outpatient Service Data**

Total Outpatient Visits	292,107
Outpatient Visits at the Hospital/ Campus:	251,079
Outpatient Visits Offsite/off campus	41,028

**Diagnostic/Interventional Equipment**

	Examinations				Radiation Equipment			Therapies/ Treatments
	Owned	Contract	Inpatient	Outpatient	Owned	Contract		
<i>General Radiography/Fluoroscopy</i>	20	0	18,347	32,304	<i>Lithotripsy</i>	0	0	0
<i>Nuclear Medicine</i>	4	0	2,466	4,683	<i>Linear Accelerator</i>	1	0	6,537
<i>Mammography</i>	4	0	40	23,670	<i>Image Guided Rad Therapy</i>	0	0	2682
<i>Ultrasound</i>	9	0	5,136	12,890	<i>Intensity Modulated Rad Therap</i>	0	0	1047
<i>Diagnostic Angiography</i>	0	0	0	0	<i>High Dose Brachytherapy</i>	0	0	145
<i>Interventional Angiography</i>	0	0	0	0	<i>Proton Beam Therapy</i>	0	0	0
<i>Positron Emission Tomography (PET)</i>	1	0	8	584	<i>Gamma Knife</i>	0	0	0
<i>Computerized Axial Tomography (CAT)</i>	5	0	8,849	19,277	<i>Cyber knife</i>	0	0	0
<i>Magnetic Resonance Imaging</i>	3	0	1,442	5,584				

**Ownership, Management and General Information**

ADMINISTRATOR NAME: Michael S. Eesley  
 ADMINSTRATOR PHONE: 815.788.5825  
 OWNERSHIP: Centegra Memorial Medical Center d/b/a Centegra Ho  
 OPERATOR: Centegra Memorial Medical Center d/b/a Centegra Ho  
 MANAGEMENT: Not for Profit Corporation  
 CERTIFICATION: None  
 FACILITY DESIGNATION: General Hospital  
 ADDRESS: 3701 Doty Road

**Patients by Race**

White 86.1%  
 Black 1.5%  
 American Indian 0.2%  
 Asian 1.4%  
 Hawaiian/ Pacific 0.1%  
 Unknown: 10.8%

**Patients by Ethnicity**

Hispanic or Latino: 0.2%  
 Not Hispanic or Latino: 89.0%  
 Unknown: 10.8%  
 IDPH Number: 4606  
 HPA A-10  
 HSA 8

CITY: Woodstock

COUNTY: McHenry County

**Facility Utilization Data by Category of Service**

Clinical Service	Authorized CON Beds 12/31/2009	Peak Beds Setup and Staffed	Peak Census	Admissions	Inpatient Days	Observation Days	Average Length of Stay	Average Daily Census	CON Occupancy 12/31/2009	Staff Bed Occupancy Rate %
Medical/Surgical	74	60	60	5,220	18,422	1,257	3.8	53.9	72.9	89.9
0-14 Years				170	308					
15-44 Years				1,018	2,597					
45-64 Years				1,677	6,187					
65-74 Years				878	3,326					
75 Years +				1,477	6,004					
Pediatric	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Intensive Care	12	12	12	970	3,432	42	3.6	9.5	79.3	79.3
Direct Admission				721	2,223					
Transfers				249	1,209					
Obstetric/Gynecology	20	14	14	1,228	2,926	206	2.6	8.6	42.9	61.3
Maternity				1,185	2,807					
Clean Gynecology				43	119					
Neonatal	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Long Term Care	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Swing Beds				0	0		0.0	0.0		
Acute Mental Illness	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Rehabilitation	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Long-Term Acute Care	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Dedicated Observation	13					1259				
Facility Utilization	106			7,169	24,780	2,764	3.8	75.5	71.2	

(Includes ICU Direct Admissions Only)

**Inpatients and Outpatients Served by Payor Source**

	Medicare	Medicaid	Other Public	Private Insurance	Private Pay	Charity Care	Totals
Inpatients	39.4%	15.8%	1.0%	38.5%	3.0%	2.2%	7,169
Outpatients	25.6%	14.0%	1.2%	53.8%	4.6%	0.9%	107,184
	2826	1136	73	2758	216	160	
	27416	14995	1289	57661	4885	938	

**Financial Year Reported:**

7/1/2008 to

6/30/2009

**Inpatient and Outpatient Net Revenue by Payor Source**

	Medicare	Medicaid	Other Public	Private Insurance	Private Pay	Totals	Charity Care Expense	Total Charity Care Expense
Inpatient Revenue ( \$ )	23.7%	12.0%	0.5%	53.4%	10.3%	100.0%	1,067,446	1,683,720
Outpatient Revenue ( \$ )	13.8%	2.9%	0.4%	73.1%	9.8%	100.0%	616,274	1.3%
	12,170,999	6,182,041	269,970	27,424,767	5,278,890	51,326,667		
	10,676,821	2,232,819	284,066	56,435,259	7,566,106	77,195,071		

**Birthing Data**

Number of Total Births: 1,105  
 Number of Live Births: 1,099  
 Birthing Rooms: 0  
 Labor Rooms: 0  
 Delivery Rooms: 0  
 Labor-Delivery-Recovery Rooms: 4  
 Labor-Delivery-Recovery-Postpartum Rooms: 0  
 C-Section Rooms: 1  
 CSections Performed: 375

**Newborn Nursery Utilization**

Level 1 Patient Days: 2,115  
 Level 2 Patient Days: 63  
 Level 2+ Patient Days: 430  
 Total Nursery Patientdays: 2,608  
 Inpatient Studies: 172,829  
 Outpatient Studies: 211,753  
 Studies Performed Under Contract: 0

**Organ Transplantation**

Kidney: 0  
 Heart: 0  
 Lung: 0  
 Heart/Lung: 0  
 Pancreas: 0  
 Liver: 0  
 Total: 0

\* Note: Project #08-002 approved on 7/1/2008, MMC-New Woodstock, received permit for modernization of existing hospital, including the addition of 14 M/S and 6 OB beds. Facility now has 74 M/S and 20 OB beds. Project completion date is 5/31/2012.

**Surgery and Operating Room Utilization**

Surgical Specialty	Operating Rooms				Surgical Cases		Surgical Hours			Hours per Case	
	Inpatient	Outpatient	Combined	Total	Inpatient	Outpatient	Inpatient	Outpatient	Total Hours	Inpatient	Outpatient
Cardiovascular	0	0	0	0	86	29	156	38	194	1.8	1.3
Dermatology	0	0	0	0	0	0	0	0	0	0.0	0.0
General	0	0	5	5	137	476	262	630	892	1.9	1.3
Gastroenterology	0	0	0	0	498	467	949	614	1563	1.9	1.3
Neurology	0	0	0	0	22	110	54	146	200	2.5	1.3
OB/Gynecology	0	0	0	0	162	455	353	526	879	2.2	1.2
Oral/Maxillofacial	0	0	0	0	7	22	15	37	52	2.1	1.7
Ophthalmology	0	0	0	0	4	417	9	408	417	2.3	1.0
Orthopedic	0	0	0	0	606	749	1405	1354	2759	2.3	1.8
Otolaryngology	0	0	0	0	11	532	19	755	774	1.7	1.4
Plastic Surgery	0	0	0	0	0	0	0	0	0	0.0	0.0
Podiatry	0	0	0	0	10	72	17	140	157	1.7	1.9
Thoracic	0	0	0	0	29	19	53	23	76	1.8	1.2
Urology	0	0	0	0	68	300	117	334	451	1.7	1.1
<b>Totals</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>5</b>	<b>1640</b>	<b>3648</b>	<b>3409</b>	<b>5005</b>	<b>8414</b>	<b>2.1</b>	<b>1.4</b>

**SURGICAL RECOVERY STATIONS**      Stage 1 Recovery Stations      8      Stage 2 Recovery Stations      10

**Dedicated and Non-Dedicated Procedure Room Utilization**

Procedure Type	Procedure Rooms				Surgical Cases		Surgical Hours			Hours per Case	
	Inpatient	Outpatient	Combined	Total	Inpatient	Outpatient	Inpatient	Outpatient	Total Hours	Inpatient	Outpatient
Gastrointestinal	0	0	3	3	644	3119	517	2041	2558	0.8	0.7
Laser Eye Procedures	0	0	0	0	0	0	0	0	0	0.0	0.0
Pain Management	0	0	1	1	37	292	58	731	789	1.6	2.5
Cystoscopy	0	0	0	0	0	0	0	0	0	0.0	0.0
<b>Multipurpose Non-Dedicated Rooms</b>											
	0	0	0	0	0	0	0	0	0	0.0	0.0
	0	0	0	0	0	0	0	0	0	0.0	0.0
	0	0	0	0	0	0	0	0	0	0.0	0.0

**Cardiac Catheterization Labs**

Total Cath Labs (Dedicated+Nondedicated labs):	0
Cath Labs used for Angiography procedures	0
Dedicated Diagnostic Catheterization Labs	0
Dedicated Interventional Catheterization Labs	0
Dedicated EP Catheterization Labs	0

**Cardiac Catheterization Utilization**

Total Cardiac Cath Procedures:	0
Diagnostic Catheterizations (0-14)	0
Diagnostic Catheterizations (15+)	0
Interventional Catheterizations (0-14):	0
Interventional Catheterization (15+)	0
EP Catheterizations (15+)	0

**Emergency/Trauma Care**

Certified Trauma Center by EMS	<input checked="" type="checkbox"/>
Level of Trauma Service	Level 1 --- Level 2 Adult
Operating Rooms Dedicated for Trauma Care	0
Number of Trauma Visits:	7,424
Patients Admitted from Trauma	497
Emergency Service Type:	Comprehensive
Number of Emergency Room Stations	18
Persons Treated by Emergency Services:	21,397
Patients Admitted from Emergency:	4,073
Total ED Visits (Emergency+Trauma):	28,821

**Cardiac Surgery Data**

Total Cardiac Surgery Cases:	0
Pediatric (0 - 14 Years):	0
Adult (15 Years and Older):	0
Coronary Artery Bypass Grafts (CABGs) performed of total Cardiac Cases :	0

**Outpatient Service Data**

Total Outpatient Visits	200,751
Outpatient Visits at the Hospital/ Campus:	184,317
Outpatient Visits Offsite/off campus	16,434

**Diagnostic/Interventional Equipment**

	Examinations				Radiation Equipment			Therapies/ Treatments
	Owned	Contract	Inpatient	Outpatient	Owned	Contract		
General Radiography/Fluoroscopy	15	0	9,286	21,489	Lithotripsy	0	0	0
Nuclear Medicine	2	0	1,727	3,924	Linear Accelerator	0	0	0
Mammography	3	0	26	13,818	Image Guided Rad Therapy	0	0	0
Ultrasound	7	0	2,590	9,033	Intensity Modulated Rad Therap	0	0	0
Diagnostic Angiography	0	0	0	0	High Dose Brachytherapy	0	0	0
Interventional Angiography	0	0	0	0	Proton Beam Therapy	0	0	0
Positron Emission Tomography (PET)	0	0	0	0	Gamma Knife	0	0	0
Computerized Axial Tomography (CAT)	3	0	4,970	12,325	Cyber knife	0	0	0
Magnetic Resonance Imaging	2	0	899	3,921				

**Ownership, Management and General Information**

ADMINISTRATOR NAME: Sue Ripsch  
 ADMINSTRATOR PHONE: (815)943-8671  
 OWNERSHIP: Mercy Alliance  
 OPERATOR: Mercy Harvard Hospital, Inc.  
 MANAGEMENT: Not for Profit Corporation  
 CERTIFICATION: Critical Access Hospital  
 FACILITY DESIGNATION: General Hospital  
 ADDRESS: 901 South Grant Street

**Patients by Race**

White 90.1%  
 Black 1.5%  
 American Indian 0.0%  
 Asian 7.6%  
 Hawaiian/ Pacific 0.0%  
 Unknown: 0.8%

**Patients by Ethnicity**

Hispanic or Latino: 7.5%  
 Not Hispanic or Latino: 91.9%  
 Unknown: 0.7%  
 IDPH Number: 4911  
 HPA A-10  
 HSA 8

CITY: Harvard COUNTY: McHenry County

**Facility Utilization Data by Category of Service**

Clinical Service	Authorized CON Beds 12/31/2009	Peak Beds Setup and Staffed	Peak Census	Admissions	Inpatient Days	Observation Days	Average Length of Stay	Average Daily Census	CON Occupancy 12/31/2009	Staff Bed Occupancy Rate %
Medical/Surgical	17	22	12	573	1,502	163	2.9	4.6	26.8	20.7
0-14 Years				11	12					
15-44 Years				123	281					
45-64 Years				180	421					
65-74 Years				81	226					
75 Years +				178	562					
Pediatric	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Intensive Care	3	3	3	42	115	0	2.7	0.3	10.5	10.5
Direct Admission				1	3					
Transfers				41	112					
Obstetric/Gynecology	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Maternity				0	0					
Clean Gynecology				0	0					
Neonatal	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Long Term Care	45	45	32	177	9,990	0	56.4	27.4	60.8	60.8
Swing Beds				0	0		0.0	0.0		
Acute Mental Illness	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Rehabilitation	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Long-Term Acute Care	0	0	0	0	0	0	0.0	0.0	0.0	0.0
Dedicated Observation	0					0				
Facility Utilization	65			751	11,607	163	15.7	32.2	49.6	

(Includes ICU Direct Admissions Only)

**Inpatients and Outpatients Served by Payor Source**

	Medicare	Medicaid	Other Public	Private Insurance	Private Pay	Charity Care	Totals
Inpatients	37.4%	5.5%	0.9%	24.1%	28.6%	3.5%	751
Outpatients	29.1%	20.8%	3.6%	40.3%	5.5%	0.7%	18,034

Financial Year Reported:	7/1/2008 to 6/30/2009		Inpatient and Outpatient Net Revenue by Payor Source					Charity Care Expense	Total Charity Care Expense 330,050
	Medicare	Medicaid	Other Public	Private Insurance	Private Pay	Totals			
Inpatient Revenue ( \$ )	39.9%	5.6%	0.0%	42.9%	11.6%	100.0%	100,275	Totals: Charity Care as % of Net Revenue 1.5%	
Outpatient Revenue ( \$ )	20.8%	6.0%	0.0%	68.5%	4.8%	100.0%	229,775		

**Birthing Data**

Number of Total Births: 0  
 Number of Live Births: 0  
 Birthing Rooms: 0  
 Labor Rooms: 0  
 Delivery Rooms: 0  
 Labor-Delivery-Recovery Rooms: 0  
 Labor-Delivery-Recovery-Postpartum Rooms: 0  
 C-Section Rooms: 0  
 CSections Performed: 0

**Newborn Nursery Utilization**

Level 1 Patient Days: 0  
 Level 2 Patient Days: 0  
 Level 2+ Patient Days: 0  
 Total Nursery Patientdays: 0  
 Inpatient Studies: 9,728  
 Outpatient Studies: 31,359  
 Studies Performed Under Contract: 4,500

**Organ Transplantation**

Kidney: 0  
 Heart: 0  
 Lung: 0  
 Heart/Lung: 0  
 Pancreas: 0  
 Liver: 0  
 Total: 0

\* Note: According to Board action on 4/22/09, Board reduced 12 M/S beds. Current CON= 65 beds which includes 45 LTC beds.

**Surgery and Operating Room Utilization**

Surgical Specialty	Operating Rooms				Surgical Cases		Surgical Hours			Hours per Case	
	Inpatient	Outpatient	Combined	Total	Inpatient	Outpatient	Inpatient	Outpatient	Total Hours	Inpatient	Outpatient
Cardiovascular	0	0	0	0	35	66	71	66	137	2.0	1.0
Dermatology	0	0	0	0	0	0	0	0	0	0.0	0.0
General	0	0	2	2	104	274	190	355	545	1.8	1.3
Gastroenterology	0	0	0	0	52	23	185	48	233	3.6	2.1
Neurology	0	0	0	0	0	0	0	0	0	0.0	0.0
OB/Gynecology	0	0	0	0	6	10	12	6	18	2.0	0.6
Oral/Maxillofacial	0	0	0	0	0	0	0	0	0	0.0	0.0
Ophthalmology	0	0	0	0	1	284	3	176	179	3.0	0.6
Orthopedic	0	0	0	0	21	45	40	49	89	1.9	1.1
Otolaryngology	0	0	0	0	0	5	0	6	6	0.0	1.2
Plastic Surgery	0	0	0	0	13	36	45	60	105	3.5	1.7
Podiatry	0	0	0	0	5	73	4	98	102	0.8	1.3
Thoracic	0	0	0	0	0	0	0	0	0	0.0	0.0
Urology	0	0	0	0	7	133	13	126	139	1.9	0.9
<b>Totals</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>244</b>	<b>949</b>	<b>563</b>	<b>990</b>	<b>1553</b>	<b>2.3</b>	<b>1.0</b>

**SURGICAL RECOVERY STATIONS**      Stage 1 Recovery Stations      2      Stage 2 Recovery Stations      4

**Dedicated and Non-Dedicated Procedure Room Utilization**

Procedure Type	Procedure Rooms				Surgical Cases		Surgical Hours			Hours per Case	
	Inpatient	Outpatient	Combined	Total	Inpatient	Outpatient	Inpatient	Outpatient	Total Hours	Inpatient	Outpatient
Gastrointestinal	0	0	1	1	24	553	18	265	283	0.8	0.5
Laser Eye Procedures	0	0	0	0	0	0	0	0	0	0.0	0.0
Pain Management	0	0	1	1	1	175	1	70	71	1.0	0.4
Cystoscopy	0	0	0	0	0	0	0	0	0	0.0	0.0
<b>Multipurpose Non-Dedicated Rooms</b>											
	0	0	0	0	0	0	0	0	0	0.0	0.0
	0	0	0	0	0	0	0	0	0	0.0	0.0
	0	0	0	0	0	0	0	0	0	0.0	0.0

**Cardiac Catheterization Labs**

Total Cath Labs (Dedicated+Nondedicated labs):	0
Cath Labs used for Angiography procedures	0
Dedicated Diagnostic Catheterization Labs	0
Dedicated Interventional Catheterization Labs	0
Dedicated EP Catheterization Labs	0

**Cardiac Catheterization Utilization**

Total Cardiac Cath Procedures:	0
Diagnostic Catheterizations (0-14)	0
Diagnostic Catheterizations (15+)	0
Interventional Catheterizations (0-14):	0
Interventional Catheterization (15+)	0
EP Catheterizations (15+)	0

**Emergency/Trauma Care**

Certified Trauma Center by EMS	<input type="checkbox"/>
Level of Trauma Service	Level 1      Level 2
	---      ---
Operating Rooms Dedicated for Trauma Care	2
Number of Trauma Visits:	0
Patients Admitted from Trauma	0
Emergency Service Type:	Basic
Number of Emergency Room Stations	1
Persons Treated by Emergency Services:	5,639
Patients Admitted from Emergency:	150
Total ED Visits (Emergency+Trauma):	5,639

**Cardiac Surgery Data**

Total Cardiac Surgery Cases:	0
Pediatric (0 - 14 Years):	0
Adult (15 Years and Older):	0
Coronary Artery Bypass Grafts (CABGs) performed of total Cardiac Cases :	0

**Outpatient Service Data**

Total Outpatient Visits	69,057
Outpatient Visits at the Hospital/ Campus:	69,057
Outpatient Visits Offsite/off campus	0

Diagnostic/Interventional Equipment	Examinations				Radiation Equipment			Therapies/ Treatments
	Owned	Contract	Inpatient	Outpatient	Owned	Contract		
General Radiography/Fluoroscopy	1	0	478	4,490	Lithotripsy	0	1	45
Nuclear Medicine	1	0	18	465	Linear Accelerator	0	0	0
Mammography	1	0	0	617	Image Guided Rad Therapy	0	0	0
Ultrasound	1	0	109	1,391	Intensity Modulated Rad Therap	0	0	0
Diagnostic Angiography	0	0	0	0	High Dose Brachytherapy	0	0	0
Interventional Angiography	0	0	0	0	Proton Beam Therapy	0	0	0
Positron Emission Tomography (PET)	0	0	0	0	Gamma Knife	0	0	0
Computerized Axial Tomography (CAT)	1	0	151	1,671	Cyber knife	0	0	0
Magnetic Resonance Imaging	1	0	19	332				

Hello – my name is Kevin Potter and I will be reading a statement from a local resident who was not able to make it to the hearing today. Thank you

Here is a story why I feel we need another hospital in McHenry County but NOT one that is run by Centegra Health System. The following is an incident that my family (father) was involved with just in the past week (March 7, 2011 to March 11, 2011) involving Centegra NIMC and sadly my father, which had been there twice before in the past 12 months, all 3 of our visits/stories would be similar.

My Father (Larry Sorg) was brought to the Emergency Room by ambulance on Monday March 7th, 2011 at 5:40pm. He was found unresponsive at his home by his wife (Barbra). They had no room for any of the patients that were at Centegra NIMC. They were lined up head to toe on their beds and wheelchairs, down hallways and around the nurses station. It wasn't until Tuesday morning when they found a place in Radiology with very little privacy, that's where he and 2 others waited for a room. As we waited for the doctor to come talk to us about labs and x-rays that had been done the night before (and were ready to be read), we were passed off to 3 different doctors.

Doctor number 1 was to come down and see us at 10:00am but he couldn't because he had office hours that day, so doctor number 2 would come talk to us at 11:00am. Doctor number 2 came down (we knew it was him) talked to the patient next to my father and starts to leave. We stopped him and asked about our dad, he said doctor number 3 will come talk to us but he didn't know what time. It's now 2:00pm we are still waiting for doctor number 3 to talk to us. We get tired of waiting and called his office to see if he could order another doctor to talk to us (we had to call because the nurse wouldn't and all the 3 doctors are from the same office). We were informed that doctor number 3 has been doing procedures but he is at NIMC. (Why would Centegra Health System have doctors do hospital hours while their doing procedures or their own office hours?) It's now about 3:30pm Doctor number 3 comes down and talks to us. He didn't listen to a word we said. We kept telling doctor number 3 that our father has Alztimers and he would have to ask us any questions but he would ask dad instead and write down what he said (dad doesn't know what season it is or the year). It's now 6:00pm Tuesday night and they finally have a room for dad where he stayed for further testing and observation. EVERY doctor that came to see him, WE had to tell them that dad has Alztimers and would have to talk to us and all their replies were the same "they were not aware of that". He was finally discharged to his wife's care on Friday March 11th, 2011 in fair condition. We vowed never to go to NIMC again for an emergency and I'm sure we are not the only family with a story like this.

The lack of communication, the lack of care and unable to handle the work flow is why we NEED a Mercy Hospital in Crystal Lake not a poorly run Centegra Hospital in Huntley. A Huntley Hospital would do very little for McHenry. The Huntley, Gilberts and the other towns people go to Sherman in Elgin or Advocate in Barrington or even Alexian Brother in Hoffman Est. (that's straight down rout 72 for them). A Mercy Hospital in Crystal Lake is a much wiser choice. Centegra NIMC is over crowded and poorly ran. A Mercy Hospital in Crystal lake will lighten the "load" at NIMC and service McHenry, McHenry County and the other surrounding counties more efficiently.

Thank you for listening.

**Thomas C. Sorg**  
*Woodstock*

My name is Trent Gordon, and I am the Director of Business Development and Strategic Planning at Advocate Good Shepherd Hospital. Good Shepherd is located 6 miles and less than 15 minutes from the proposed site.

I oppose the construction of another hospital, particularly one so close to existing hospitals. Mercy is proposing to build a new hospital less than 8 miles from three existing hospitals, in Barrington, Woodstock, and the City of McHenry.

In an ideal world, we might consider building more hospitals so that each community could have its own hospital. However, we must be rational and understand that this is not the world in which we live. Our resources are not unlimited. In fact, being rationale about health care resources is the very purpose of the Illinois Health Facilities and Services Review Board. In our world, a proliferation of hospitals to provide immediate access must be balanced with limiting expenditures which drive up health care costs to tax payers, individual premium payers and employers.

In its application, Mercy cites a physician shortage in McHenry County as a rationale for the construction of a new hospital. The application includes letters from physicians indicating support and expected referrals to the new facility. However, there are no such letters from physicians in many important specialties such as cardiology, anesthesiology and neurosurgery. Does the application include the cost to hire these specialists and provide the specialty equipment and facilities in their offices and the hospital?

If McHenry County does have a physician shortage then Mercy, which operates a large physician group, should simply locate more physician offices in McHenry County rather than building a \$200 million dollar hospital. This is clearly a less expensive option and merits serious consideration, particularly with a full service hospital located only six miles from the proposed site Mercy physicians admit their inpatients to area hospitals now and they can continue to do so.



If Mercy seeks to improve access, then why would Mercy physicians not be permitted to allow their patient to choose to continue to use their "home" hospital which they have chosen in the past, where they are comfortable, and which for most patients, is closest to their homes? What will happen to patient choice?

Why would Mercy physicians only allow their patients who have used Mercy-Harvard in the past to continue to use their "home" hospital?

The letters show the clear intent that the Mercy organization will redirect all of the patients of the Mercy employed physicians away from non Mercy hospitals to the new Mercy hospital. Given this redirection of 4000 patients, how can Mercy state that the new hospital will have no impact on other area hospitals?

I urge the Board to take a very close look at this application and realize that this area's health care needs are more than well served. We do not need a hospital in Crystal Lake. Good Shepherd looks forward to continuing to serve the needs of McHenry County.

Thank you.

Linda Serafin  
1611 Carlemont Dr. Unit E  
Crystal Lake, Illinois 60014

March 2, 2011  
Ms. Courtney Avery  
Administrator  
Illinois Health Facilities and Services Review Board  
525 W. Jefferson Street, Second Floor  
Springfield, Illinois 62761

*Read by  
Nest Gordon*

Dear Ms. Avery,

I have worked in the Healthcare Industry for over 30 years in Illinois. I am a resident of Crystal Lake, Illinois and I'm writing to **OPPOSE** Mercy Healthcare's application to build a new hospital in Crystal Lake, Illinois. We already have three hospitals in the area. This project would duplicate services in McHenry County that already exist.

The only services lacking in McHenry County are Pediatric Specialists. There was no mention in their application by Mercy regarding the possible expansion of this much needed service to our community. We have built new schools to accommodate the growth spurt of our younger generations, but when these children become extremely ill or are victims of serious traumatic events they are transferred to hospitals that are far from their homes. Most of the children are sent to Loyola in Maywood or Lutheran General in Park Ridge, Illinois. Many times they are transported via helicopter because of the long distances.

McHenry County does not need another hospital; we need to expand our horizons and develop what we already have. McHenry County does not need to watch another corporation extend their debt to build another hospital. This project represents unnecessary expense to our already overburdened health care system.

I urge the Illinois Health Facilities and Review Board to **DENY** the Mercy Healthcare proposal to build a new hospital in Crystal lake, Illinois.

Sincerely,



Linda Serafin RN

David Tomlinson  
Centegra VP Operations  
Opposition to Project #10-089

I'm David Tomlinson. I'm Vice President of Operations for Centegra and I'm here to oppose Mercy's hospital project.

Before I begin, I want to address a comment made by one of Mercy's witnesses about Centegra's decision to delay moving forward with our Woodstock Women's Center. First, the original decision to delay the construction of the Women's Center was the direct result of the worst economic crisis since the Great Depression. Thereafter, Centegra engaged in a thorough planning analysis that revealed a greater need for services in southern McHenry County. Centegra's Huntley Health Campus is centrally located to this area of need and our proposed new hospital will be used by the residents of Huntley, Lake in the Hills, Algonquin, Lakewood and southern Crystal Lake.

Centegra has not abandoned its focus on women's services, we have simply made the decision to provide the services in a different way. We have opened the Centegra Gavers Breast Center in Crystal Lake and the Centegra Breastfeeding Resource Center in Woodstock. As our Certificate of Need application reflects, the proposed Centegra Hospital-Huntley will include the Women's Center. Consistent with our mission, vision and values, Centegra continues to responsibly develop services that best meet the needs of our community's residents.

Mercy claims in their application that wait times at emergency departments in McHenry County are lengthy, and that those same emergency departments are bypassed to accommodate urgent patient care. Those claims are not based on current, relevant data. Let me explain.

Centegra has responsibly added beds and created efficiencies and patient throughput initiatives so that no bypass has occurred recently. We also opened two immediate care centers to take pressure off our busy Emergency Departments; Mercy did not update the data from its application, thereby misleading you. Neither Centegra Hospital-McHenry nor Centegra Hospital-Woodstock has been on bypass due to capacity issues for more than a year a half.

Our EMS providers have special training and equipment to help them evaluate each patient's physical condition. They provide quality pre-hospital care and timely transport to the closest hospital ED to provide patients access to definitive medical care. The key to successful outcomes in patient conditions rests with prompt assessment, timely transport and arrival to the nearest comprehensive ED.

To further prove how things have changed since Mercy's last Crystal Lake application, the Chest Pain Centers at Centegra Hospital – McHenry and Centegra Hospital –

Woodstock have been accredited by the Society of Chest Pain Centers, an international organization dedicated to eliminating heart disease as the No. 1 cause of death worldwide. This advanced accreditation makes Centegra hospitals two of only 11 in Illinois to earn this level of distinction. Mercy Harvard is not one of those accredited.

Centegra Health System has made a commitment to the community throughout McHenry County to provide access to quality emergency care, by providing 2 hospitals with comprehensive Emergency Department services, 2- Level II Trauma Centers, access to critical care emergency air transport through our Flight for Life program, and maintaining the commitment to EMS as a Resource Hospital with the Illinois Department of Public Health. As the region's EMS Resource Hospital, Centegra Hospital-McHenry works with all of the area's EMS providers to ensure every person in the region receives prompt emergency care from well trained, compassionate personnel.

Mercy has provided limited emergency medical services to our community. For nearly 100 years, Centegra hospitals have provided access to outstanding emergency care that is close to home. I ask the Illinois Health Facilities and Services Review Board to say "no" to Mercy Health System. Thank you.

## Noelle Dina Reading Points

Thank you for listening to a very concerned citizen who has first-hand knowledge of the current situation. I am a Mercy physician who works across the street from Centegra's Northern Illinois Medical Center (NIMC) on Route 31 in McHenry. I have been a board certified Emergency Physician since being one of the fortunate few to pass the first Emergency Medicine Board Exam in 1980. I was director of Elgin St. Joseph Hospital's Emergency Room for 22 years. St. Joe's paid out millions in emergency room malpractice before I got there and millions after I left. They paid out zero dollars while I was in charge.

I've had the good fortune of knowing George Gallant, MD., the long-time director of NIMC's Emergency Room, for many years. He and the other physicians and nurses who work there are excellent, caring health care workers. They are not the reason that NIMC's Emergency Room has such a poor reputation.

NIMC has neither the facilities, nor the personnel to take care of the massive numbers of patients that they receive. Just yesterday, (March 15, 2011) a three-month-old with a 101 degree fever was sent away from NIMC's Emergency Room and came to our facility. We had to send the poor child back where he could receive the proper workup and treatment that was only available in an ER. A three hour wait is standard at NIMC Emergency Room and this puts a tremendous and unnecessary amount of pressure on the Emergency Physicians and nurses. Without mentioning names, it is common knowledge that if an Emergency Room physician working at NIMC's ER states the truth about his situation, he is fired by the administration that, unfortunately, appears to worry more about the bottom line than the care of their patients. I give Dr. Gallant and all the rest of the ER personnel that I've worked with over the past five to six years massive credit for surviving an impossible situation. I know they all secretly hope that Mercy can build its new hospital with its new ER.

Right now, Centegra has absolute power in the area. I know the majority of citizens would like to see some competition. We understand that this competition would force both administrations into worrying more about the care of our patients than the bottom line.

I sincerely thank you for listening.

Robert Schwaner, MD  
3922 Mercy Drive  
McHenry, IL 60050

## Members of the CON Board

My name is Dr. Dean Wolanyk and I live at 6839 Flower Hill Road in Rockford, IL

My credentials include:

- Board Certified in Internal Medicine
- Board Certified in Emergency Medicine
- Added Qualifications in Geriatrics, "Board Certified"
- Fellow, American College of Physicians
- Fellow, American College of Emergency Medicine
- Clinical Associate Professor of Medicine, University of Illinois College of Medicine, Rockford
- Clinical Associate Professor of Surgery, UICOM, Rockford

I am the Associate Medical Director of the Mercy Health System and the Associate Medical Director for the Mercy Physicians Association in McHenry County, ILL, an HMO shared risk product with Blue Cross/Blue Shield of Illinois.

I serve on the McHenry County Board of Health, the McHenry County Medical Society as Vice President and State Delegate, and Delegate to the American Medical Association National Advocacy Group in Washington DC. I also volunteer my time at the Free Clinic in Woodstock Illinois.

I have been a practicing Emergency Department physician and Medical Director for over 20 years in the states of New York, Illinois and Wisconsin, I bring to this discussion a wealth of direct Emergency Medicine field experience in various settings in multiple states. Most importantly, I intimately understand this particular application and the issues involved because I have worked in McHenry County for the last 15 years.

It is my considered opinion that the Mercy Crystal Lake Hospital application should be granted.

The McHenry County Planning area suffers from a lack of Emergency Room capacity and throughput.

There is a lack of inpatient medical/surgical beds to serve the volumes of patients stuck in long waits in the Centegra ED's.

There have been years of neglect by the existing Centegra facilities to resolve these problems. In fact, Centegra has publicly and legally opposed any new beds for Mc Henry County since 2003.

I have received almost weekly, verbal patient complaints of the hours and hours of waiting for care in the ED.


I receive patient complaints of the hours and hours and sometimes days spent on gurney's in hallways waiting for a room.

I know of the red light process at Centegra facilities for admissions to occur. Patients suffer when they have to wait and wait, patients suffer when they can't get a hospital room.

Unbelievably, Centegra's opposing application calls for waiting two more years before even beginning to build.

Mercy should be given permission to build a hospital in Crystal Lake now and then start building it this year so that primary care and ED patients don't have to wait and suffer needlessly anymore.

Thank you!!

  
Dean Wolanyk, MD



Ellen Beier

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Lake, but also Cary, parts of Algonquin and Lake in the Hills. It is very accessible, yet far enough away from subdivisions reducing the noise of ambulances, which I do not think will be the case in Huntley. I have some friends living in this area and they were not thrilled with the building of Health Bridge Fitness Center and are even less happy with the increased traffic from a hospital.

My husband will be retiring at the end of this year and we will be on a fixed income. With the rising cost of health care and more and more out of pocket expenses, we are concerned that with the lack of healthy competition, our healthcare costs could rise even more. I am not an economist, but it does not sound right to me that you have three hospitals owned by the same company in one county. I am a healthcare professional and still have a few more years to work, as possible employee; I also have to wonder about respect and compensation you might receive under such a monopoly. It would be nice to have more options available.

As far as I understand Centegra will not start building the new hospital for another 2 years and then it will not open until at least 2016. We could have had a running hospital by now serving our needs had Mercy been allowed to built seven years ago. Crystal Lake is one of the largest towns in the county, does it not make sense to build a hospital there, with the highest population. Most importantly so, I feel we deserve to have a hospital in Crystal Lake, which will truly help with the over flowing demand that Centegra McHenry experiences.

As for the impact of health care spending on seniors. The future is bleak for senior coverage under government insurance as well as pension programs. The increased costs that these benefits programs are facing is unsustainable especially because of health care reform's broader coverage mandates. That means that as the boomers enter retirement, benefits will be reduced and even eliminated.

As for people covered under employer-based health plans, employers are struggling to find ways to stay profitable while offering quality health coverage to their work force. One way employers are reducing the cost of health care premiums is to increase premium sharing, co-pays and deductibles and increase the number of out-of-pocket expenses for which employees are responsible. As the CFO of a hospital, I see how this cost shifting is affecting the average health care consumer. They are more judicious about the services they receive because most employees have a bigger contribution to their medical expenses than they had just five years ago.

The cost of health care insurance is such a significant expense to employers these days that employers are looking to have fewer full-time employees on the payroll to keep their health care benefits costs down. In some cases, employers are combating increases in health premiums by reducing full-time employees to part-time, taking on independent contractors rather than full-time employees or outsourcing desk jobs overseas where labor costs are a fraction of what they are here and health insurance is not offered.

Ensuring affordable health insurance coverage into the future is what the community needs to focus on not having a backyard hospital when other hospitals are easily and safely accessible.

Thank you.

**DAVID M. EISENSTADT, Ph.D.**

**CURRICULUM VITAE**

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**DAVID M. EISENSTADT, Ph.D.****PRINCIPAL**

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**CURRICULUM VITAE****Education**

1979 Ph.D., Economics, University of Illinois (Urbana-Champaign) 1975  
M.S., Economics, University of Illinois (Urbana-Champaign) 1973 B.S.,  
Economics, University of Maryland

**Experience**

Dr. Eisenstadt joined Microeconomic Consulting and Research Associates, Inc. as a founder and Principal in 1991. His experience includes antitrust work in the health care, real estate, cigarette, telecommunications, soft drink, toy, and energy industries, as well as the computation of damages in private antitrust and other litigation.

Prior to joining MiCRA, Dr. Eisenstadt was a Senior Vice President of ICF Consulting Associates. From 1984-1986, Dr. Eisenstadt was a Senior Economist at the consulting firm of Cornell, Pelcovits & Brenner Economists Inc., and prior to that was a Senior Economist at the U.S. Department of Justice, Antitrust Division in Washington, D.C.

Dr. Eisenstadt has been retained to provide economic advice and competitive analysis to hospitals or law firms in numerous proposed transactions among hospitals or other health care providers. In addition, he has been retained as an economic expert in many matters involving denial of staff privileges to physicians, and/or alleged monopolization or other alleged instances of unfair methods of competition among health care providers. A partial listing (excludes current or confidential matters in which Dr. Eisenstadt's name has not yet been disclosed) of Dr. Eisenstadt's experience as a private consultant includes:

- Economic expert in Home Quarters v. MiRealSource and Realcomp II Ltd.
- Economic expert in Grand River Enterprises Six Nations, Ltd. v. Pryor, et al.
- Economic expert in Grand River Six Nations Ltd, Claimants v. United States of America.
- Economic expert in Wood v. Archbold Medical Center et al.
- Consulting economist to Meridian Health System and Southern Ocean County Hospital
- Consulting economist to Meridian Health System and Bayshore Community Hospital
- Economic expert in Wuesthoff Health System v. Health First Inc., et al., Case No. 05-2007-CA-029391, Eighteenth Judicial Circuit, Brevard County, Florida
- Consulting economist to Maine Health in its proposed merger with Penobscot Bay Medical Center
- Consulting economist to Maine Health in its merger with Southern Maine Medical Center.
- Consulting economist to Froedtert and Community Memorial Hospital (F&CH) and Synergy Health in the merger of F&CH and Synergy Health – West Bend Clinic.
- Consulting economist to Rush North Shore Medical Center and Evanston Northwestern Healthcare.
- Consulting economist to St. Mary's Medical Center and Baptist Health System, Knoxville, TN.
- Consulting economist to Robert Wood Johnson, New Brunswick, N.J.
- Economic expert in In the Matter of Realcomp II Ltd.
- Economic expert in JBS Technologies v. Matsushita Electric Corporation of America.
- Economic expert in Wuesthoff Memorial Hospital vs. Agency for Health Care Administration, DOAH Case No. 06-0571 CON, CON No. 9881.
- Economic expert in Four Corners Nephrology Associates et al. v. Mercy Medical Center of Durango.
- Economic expert in Wuesthoff Health System v. Health First Inc. et al.
- Economic and consulting expert for Highmark Blue Cross Blue Shield of Western Pennsylvania.
- Consulting expert for Froedtert and Community Memorial Hospital and Columbia and St. Mary's Health System, Milwaukee, WI.
- Deposition testimony in HCBCG v. Hawaii Pacific Health, et al.
- Consulting economist to HealthNow New York, Inc. (Blue Cross-Blue Shield of Western New York).
- Consulting economist to Coventry Health Care.

- Economic expert on behalf of Madison Hospital in Alabama CON hearing, Huntsville, Alabama.
- Consulting economist to McLaren Health System.
- Consulting economist to New York State Attorney General in GHI-HIP.
- Consulting economist to Northeast Medical Center and Carolinas Health System.
- Economic expert and Med-Alert v. Atlantic Health System, et al.
- Deposition and hearing testimony in Holmes Regional Medical Center (HRMC) v. State of Florida.
- Economic expert in Federal Trade Commission v. Piedmont Health Alliance.
- Economic expert in Baptist Health System v. Covenant Health Inc. (Arbitration).
- Economic expert in Quanex Corporation and Affiliated Subsidiaries v. Commissioner of Internal Revenue.
- Economic expert in Kochert v. Greater Lafayette Health Services.
- Economic expert in Abraham v. Intermountain Health Care.
- Economic expert on behalf of Vista Health.
- Economic expert in Rome Ambulatory Surgery Center v. Rome Memorial Hospital.
- Economic expert in Goodstein v. Queens Physician Associates (American Arbitration Association).
- Economic expert in American Health Lawyers Association Alternative Dispute Resolution Service In the Matter of Healthnow New York, Inc. and Catholic IPA, LLC.
- Economic expert in Adventist Health System/Sunbelt, Inc., d/b/a/ Florida Hospital vs. Florida Agency For Health Care Administration.
- Economic expert in Gateway Contracting Services v. Sagamore Health Network, Inc. et al.
- Economic expert in Highmark et al. v. UPMC Health System
- Economic expert in Coventry Health Care of Kansas Inc. v. Via Christi Health System, Inc. et al.
- Economic expert in West Penn Allegheny Health System et al. v. UPMC Health System.
- Economic expert in Welborn Clinic v. St. Mary's Medical Center of Evansville, Indiana.
- Economic expert in Health America v. Susquehanna Health System.
- Economic expert in Cardiac Institute General Partnership v. Banner Health System, et. al.

- Economic expert in the Application of Wellmont Washington County Hospital, CON Number CN0007-59, Before the Tennessee Health Facilities Commission.
- Economic expert in Snyder v. Microchip Technology United States District Court for the Southern District of Ohio Eastern Division, Civil Action No. C2-98-416.
- Economic expert in Holmes Regional Medical Center v. Agency For Health Care Administration and Wuesthoff Memorial Hospital.
- Economic expert in Babb vs. Penn State Geisinger Health System.
- Economic expert in State of New York et al. v. Toys "R" Us.
- Economic expert in the matter of New York Telephone Company's Proposal to Discontinue Offering Information Services.
- Economic Expert in Temple University, Inc., v. Mercy Health Plan, et al.
- Economic Expert in Wuesthoff Health Systems v. Health First, Inc., et al.
- Economic expert in Marshall v. Planz et al.
- Economic expert in Hylton v. St. Vincent Hospital, et al.
- Economic expert in HTI Health Services, Inc. v. Quorum Health Group Inc., et al.
- Economic expert in Federal Trade Commission v. Butterworth Health Corporation et al., Grand Rapids, MI.
- Economic expert in Albani, et al. v. Southern Arizona Anesthesia Services, Tucson, AZ.
- Economic expert in The Care Group v. Creef, et al., Baltimore, MD.
- Economic expert in Sokol v. Akron General Hospital.
- Consulting economist to Harrowston, Inc.
- Consulting economist to Health America and Coventry Health Care.
- Consulting economist to Vanderbilt University Hospital.
- Consulting economist to Coventry Health System and Health America.
- Consulting economist to St. Mary's Medical Center, Evansville, IN.
- Consulting economist in the matter of Anthony D. Viazis, D.D.S., v. American Association of Orthodontists, Southwestern Society of Orthodontists, and Greater Dallas Association of Orthodontists.
- Consulting economist to Chesapeake Hospital, Chesapeake, VA.

- Consulting economist to Sisters of Mercy, Northwest IN.
- Consulting economist to Woman's Clinic Inc., Springfield, MO.
- Consulting economist to Educators Mutual Life Insurance Company and Central Penn Healthcare.
- Consulting economist to Methodist-Jackson Hospital and Methodist Healthcare Systems, Memphis, TN, and Jackson, TN.
- Consulting economist to Sisters of St. Francis, Mishawaka, Indiana.
- Consulting economist to Cape Fear Valley Health System and Columbia Highsmith-Rainey Hospital, Fayetteville, NC.
- Consulting economist to Grace Hospital and the Charlotte-Mecklenburg Hospital Authority.
- Consulting economist to Long Island Health Network.
- Consulting economist to Merced Community Medical Center, Merced, CA.
- Consulting economist to North Oakland Medical Center, Pontiac, MI.
- Consulting economist to Michigan Affiliated Health System and McLaren Regional Medical Center, Lansing and Flint, MI.
- Consulting economist to Adventist HealthCare, Inc.
- Consulting economist to Fallon Health System, Worcester, MA.
- Consulting economist to Allentown Osteopathic Hospital and Sacred Heart Hospital, Allentown, PA.
- Consulting economist to Hallmark Health.
- Consulting economist to the University of Maryland Medical System.
- Consulting economist to Highmark Blue Cross and Blue Shield.
- Consulting economist to Baptist Hospital in Montgomery, AL.
- Consulting economist to Alliant Health System, Louisville, KY.
- Consulting economist to Duke University Medical System.
- Consulting economist to St. Vincent Hospital, Indianapolis, IN.
- Consulting economist to Winthrop-South Nassau and Catholic Hospitals of Long Island.
- Consulting economist to St. Elizabeth's and Lafayette Home Hospitals, Lafayette, IN.



- Consulting economist to the Connecticut Attorney General in its review of University of Connecticut Hospital System's consolidation with Hartford Hospital.
- Consulting economist to Respiroics and Healthydyne Technologies.
- Consulting economist to Kingston, Northern Dutchess and Benedictine Hospitals, Kingston, NY.
- Consulting economist to Suffolk Healthcare Coalition, Long Island, NY.
- Consulting economist to Kent General and Milford Memorial Hospital, Dover, DE.
- Consulting economist to New York Hospital.
- Consulting economist to Duke University Medical Center and Durham Regional Hospitals, Durham, NC.
- Consulting economist to Mainline-Jefferson Health System, Philadelphia, PA.
- Consulting economist to South Jersey Health System and Newcomb Medical Center, Vineland, NJ.
- Consulting economist to the Cleveland Clinic, Cleveland, OH.
- Consulting economist to Capital Health Network, Albany, NY.
- Consulting economist to Chester County and Brandywine Hospitals, W. Chester, PA.
- Consulting economist to Wesley Long and Moses Cone Hospitals in Greensboro, NC.
- Consulting economist to Kenosha Memorial and St. Catherine's Hospitals, Kenosha, WI.
- Consulting economist to Berkshire Health System, Pittsfield, MA.
- Consulting economist to Mary Black and St. Francis Hospitals, Greenville, SC.
- Consulting economist to St. Vincent's, St. Francis, and Community Hospitals, Indianapolis, IN.
- Consulting economist to St. Vincent-Community Health Network, Indianapolis, IN.
- Consulting economist to Woman's Hospital, Baton Rouge, LA.
- Consulting economist to St. Luke's and Quakertown Hospitals, Bethlehem, PA.
- Consulting economist to Floyd Medical Center, Gordon Hospital and Hamilton Medical Center, N.W. GA.
- Consulting economist to Hudson Health Network, Jersey City, NJ.
- Consulting economist to Providence Memorial and Sierra Medical Center, El Paso, TX.
- Consulting economist to HSI-Qualmed Plans of Pennsylvania.

- Consulting economist to the Missouri Department of Insurance.
- Consulting economist to Shands-U. of FL. Hospital and Alachua General Hospital, Gainesville, FL.
- Economic expert in Howerton, et al. v. Grace Hospital, et al., Morganton, NC.
- Economic expert in Healow v. St. Vincent's Hospital, Billings, MT.
- Economic expert in Hylton v. St. Vincent's Hospital, Billings, MT.
- Economic expert in Ertag, et al. v. Naples Community Hospital, Naples, FL.
- Economic expert in J. Michael Becker, D.C., et al. v. Blue Shield of Southwestern Virginia, et al.
- Economic expert in Major v. U.S.
- Consulting economist to Promina Healthcare Systems, Atlanta, GA.
- Consulting economist to Northwest Georgia Health Systems, Piedmont and Gwinnett Hospitals, Atlanta, GA.
- Consulting economist to Maine Medical Center and Brighton Medical Center, Portland, ME.
- Consulting economist to Freeman and Oak Hill Hospitals, Joplin, MO.
- Consulting economist to Rochester General and the Genessee Hospital, Rochester, NY.
- Consulting economist to St. Joseph's and Memorial Mission Hospitals, Asheville, NC.
- Consulting economist to Multicare Health Systems, Tacoma, WA, and Swedish Medical Center, Seattle, WA.
- Consulting economist to Winchester Medical Center, Winchester, VA.
- Consulting economist to INOVA Health System, Springfield, VA.
- Consulting economist to St. Joseph Medical Center and Lutheran Hospital of Indiana, Fort Wayne, IN.
- Consulting economist to Waukesha Memorial Hospital, Waukesha, WI.
- Consulting economist to Medical Center at Bowling Green, KY.
- Consulting economist to Asbury-Salina Regional Medical Center and St. John's Regional Health Center, Salina, KS.
- Consulting economist to Medical Center of Central Massachusetts and Saint Vincent Hospital, Worcester, MA.

- Consulting economist to Morristown Memorial Hospital, Overlook Hospital and Mountainside Hospital, Northern NJ.
- Consulting economist to Multicare Health System and Tacoma General Hospital, Tacoma, WA.
- Consulting economist to St. Mary's Hospital and Howard Young Medical Center, Rhinelander, WI.
- Consulting economist to Mercy and St. Luke's Hospitals in Davenport, IA.
- Consulting economist to St. Elizabeth's Hospital and Mercy Medical Center, Fox River Valley, WI.
- Consulting economist to Ingham Medical Center and Lansing General Hospital, Lansing, MI.
- Consulting economist to Mercy and Holyoke Hospitals, Springfield, MA.
- Consulting economist to University of Wisconsin Clinical Practice Plan, University of Wisconsin Medical Foundation, and Physicians Plus Medical Group.
- Consulting economist to St. Joseph's and St. Francis Medical Centers, Wichita, KS.
- Consulting economist to St. Clare's Hospital and Dover General Hospital, Dover, NJ.
- Consulting economist to Main Line Health, Inc., Radnor, PA.
- Consulting economist to Iowa Lutheran and Methodist Hospitals, Des Moines, IA.
- Consulting economist to Lahey Clinic, Boston, MA.
- Consulting economist to Women and Infants and Kent County Hospitals, Providence, RI.
- Economic expert in EGH, Inc., doing business as Eastmoreland Hospital v. Blue Cross and Blue Shield of Oregon, et al., Portland, OR.
- Economic expert in Advanced Health-Care Services, Inc. v. Giles Memorial Hospital, et al., Giles County, VA.
- Consulting economist to Jefferson Health System, Philadelphia, PA.
- Economic expert in Stiteler, et al. v. Lutheran Hospitals and Homes Society of America, Spearfish, ND.
- Consulting economist to Defendants in American Health Systems v. Liberty Health Systems, et al., Delaware County, PA.
- Consulting economist to Visiting Nurse Association of Philadelphia in the matter of AHS v. VNA, et al., Philadelphia, PA.
- Consulting economist to Mercy Health Corporation in Philadelphia, PA.
- Consulting economist to McLaren and LaPeer Regional Medical Centers, Flint-LaPeer, MI.

- Consulting economist to Radiation Medicine Associates of Scranton, PA.
- Consulting economist to Washington Managed Imaging, Seattle, WA.
- Economic expert in Rourke v. Lowell General Hospital, Lowell, MA.
- Consulting economist to St. Joseph Hospital and University Hospital, Augusta, GA.
- Consulting economist to Franciscan and United Medical Centers, Moline-Rock Island, IL.
- Consulting economist to Baptist and Memorial Hospitals, Jacksonville, FL.
- Consulting economist to Abbott Labs and Fresenius.
- Economic expert in U.S. Healthcare, Inc., et al. v. Healthsource, Inc., et al., Concord, NH.
- Economic expert in Bellavia, et al. v. Hackensack Medical Center, et al., Hackensack, NJ.
- Economic expert in Wei v. Bodner, et al., Hackettstown, NJ.
- Economic expert in Williamson, et al. v. Sacred Heart Hospital, et al., Pensacola, FL.
- Consulting economist in the matter of Sentara Health Systems' acquisition of Humana Bayside Hospital, Virginia Beach, VA.
- Consulting economist to Dominican Hospital, Santa Cruz, CA.
- Consulting economist to Pennsylvania Blue Shield and Independence Blue Cross in the joint venture of Keystone and Delaware Valley HMOs, Philadelphia, PA.
- Consulting economist to CIGNA and Equicor in CIGNA's acquisition of Equicor.
- Consulting economist in the matter of Sentara Health Systems proposed acquisition of Chesapeake Hospital.
- Consulting economist to Swedish Medical Center and Ballard Hospital in Seattle, WA.
- Economic expert in M&M v. Pleasant Valley Hospital, Point Pleasant, WV.
- Consulting economist in Fort Sanders Regional Medical Center's acquisition of HCA Park West Hospital in Knoxville, TN.
- Consulting economist to St. Mary's and St. Luke's Hospitals in Racine, WI.
- Economic expert in Shah v. Danville Memorial Hospital, Danville, VA.
- Consulting economist to St. Ansgar Hospital, Moorhead, MN.
- Economic expert in Cypress Recreation Center Ltd. v. Pepsi-Cola Bottling Company, et al.

- Economic expert in U.S. v. Carilion Health System, Roanoke, VA.
- Consulting economist to St. Elizabeth's and Lakeview Hospitals, Danville, IL.
- Consulting economist to Community General Hospital and The Reading Hospital and Medical Center, Reading, PA.
- Consulting economist to Community Medical Insurance Company in CMIC v. Blue Cross Association, Cincinnati, OH.
- Economic expert in NBA v. BCBS of Alabama.
- Economic expert in Snyder Distributing v. Ohio Bell.
- Plaintiff's damage study in Gressman v. People's Service Drug Stores.
- Assisted in the preparation of a report that analyzed the effect of a Federal Home Loan Bank Board Rule governing direct investments of FSLIC insured Savings and Loans.
- Assisted in the preparation of an analysis that explained the relationship between concentration and profitability in the elevator industry.
- Assisted in the preparation of a report to DOT regarding the competitive effects of airline ownership of computerized reservation systems.
- Assisted in the preparation of a defendant's damage study in a major class action suit against a large pharmaceutical company.
- Economic expert in White v. Rockingham Memorial Hospital.
- Economic expert in Driscoll v. Medical Center Hospital.
- Oral and written presentation of a report to U.S. Department of Justice and Virginia Attorney General regarding the competitive effects of a merger between two Blue Cross plans.
- Coauthored a report assessing the competitive benefits of continued regulation of a petroleum products pipeline.
- Assisted in the analysis of a merger between General Electric and CGR, computerized tomography manufacturers.

From 1979-1984, Dr. Eisenstadt was employed by the Department of Justice, Antitrust Division, as an Economist in the Economic Policy Office. Some of his experience in the Antitrust Division included:

- Affidavit testimony in U.S. v. Beverly Enterprises.
- Competitive analysis of several other nursing home acquisitions or hospital mergers.
- Competitive analysis of possible physician domination of third parties in several Departmental investigations of Blue Shield plans, physician-sponsored IPAs, and PPOs.

- Member of a Department of Justice Task Force assessing relief options in U.S. v. IBM.
- Competitive analysis of matters involving vertical restraints including resale price maintenance, tying arrangements, and exclusive dealing.

### Testimony

- Deposition testimony in Home Quarters Real Estate Group, LLC v. MiRealSource and Realcomp II, Ltd., Case No. 07-12090. United States District Court, Eastern district of Michigan
- Expert Report in Wuesthoff Health System v. Health First, Inc., Case 05-2007-CA-019391, Circuit Court in and for the Eighteenth Judicial Circuit, Brevard County Florida
- Deposition testimony and expert reports in Grand River Enterprises Six Nations, Ltd., et al. v. Pryor et al., Case No. 02 CV 5068
- Expert reports in Grand River Six Nations Ltd, Claimants v. United States of America, Respondent, Under the Arbitration Rules of the United Nations Commission on International Law and the North American Free Trade Agreement
- Deposition testimony and expert reports in Wood v. Archbold Medical Center et al., Case, No. 7:07-CV-109
- Hearing and deposition testimony and expert report(s) in In the matter of Realcomp II Ltd., Docket 9320.
- Expert report in Wuesthoff Health System v. Health First Inc.
- Expert report in Four Corners Nephrology Associates et al. v. Mercy Medical Center of Durango.
- Expert Report and deposition testimony in HCBCG v. HPH, et al., Civil No., 02-1-0090-01.
- Deposition testimony and expert report in Med Alert Ambulance, Inc. v. Atlantic Health System, Inc., et al., United States District Court, District of New Jersey, CA 04-1615.
- Hearing testimony, deposition testimony, and expert report in Wuesthoff Memorial Hospital vs. Agency for Health Care Administration, DOAH Case No. 06-057 1, CON No. 9881.
- Expert Report and deposition testimony in JBS Technologies v. Matsushita Electric Corporation of America, Case No. 03-CV524, Court of Common Pleas, Jefferson County Ohio.
- CON hearing testimony on behalf of Madison Hospital, Alabama State Health Planning and Development Agency, Project No. AL 2005-035A
- Expert report, deposition, and hearing testimony in Holmes Regional Medical Center v. State of Florida, Agency for Health Care Administration, DOAH Case No. 04-2810CON.
- Expert report in Federal Trade Commission v. Piedmont Health Alliance.

- Expert report and trial testimony in Quanex Corporation and Affiliated Subsidiaries v. Commissioner of Internal Revenue, Docket Number 12642-01.
- Expert reports in Rome Ambulatory Surgery Center v. Rome Memorial Hospital.
- Hearing testimony, deposition testimony, and expert report in Abraham v. Intermountain Health Care.
- Deposition and expert report in Kochert v. Greater Lafayette Health Services.
- Arbitration testimony in Goodstein v. Queens Physician Associates (American Arbitration Association).
- Expert reports in Health America, et al. v. Susquehanna Health Services, et al.
- Expert report in American Health Lawyers Association Alternative Dispute Resolution Service In the Matter of Healthnow New York, Inc. and Catholic IPA, L.L.C.
- Hearing, deposition testimony and expert report in Adventist Health System/Sunbelt, Inc. d/b/a Florida Hospital (petitioner) vs. Florida Agency For Health Care Administration.
- Deposition testimony and expert report in Gateway Contracting Services v. Sagamore Health Network, Inc. et al.
- Expert report in Welborn Health Plan v. St. Mary's Medical Center (Arbitration).
- Expert report in Coventry Health Care of Kansas, Inc. vs. Via Christi Health System.
- Deposition testimony and expert report in Highmark et al. v. UPMC Health System.
- Expert reports in Babb vs. Penn State Geisinger Health System.
- Expert report in Anthony D. Viazis, et al., v. American Association of Orthodontists, et al., (co-authored with Frederick Warren-Boulton).
- Expert report in support of Wellmont Washington County Hospital Application for Certificate of Need, CON Number CN00007-59, Before the Tennessee Health Facilities Commission, October 2000.
- Deposition testimony in Snyder v. Microchip Technology. United States District Court for the Southern District of Ohio Eastern Division, Civil Action No. C2-98-416.
- Expert report and deposition testimony in Wuesthoff Health Systems v. Health First Inc., et al., In The United States District Court Middle District of Florida Orlando Division, Case No. 98-208-C IV-19(c).
- Affidavit testimony in the United States District Court For The Eastern District of New York v. Toys "R" US, 98 M.D.L. 1211 (NG) (JLC).

- Trial and hearing testimony in Holmes Regional Medical Center v. Agency for Health Care Administration and Wuesthoff Memorial Hospital, State of Florida Division Of Administrative Hearings, Case No. 97-4289.
- Affidavit testimony in the matter of New York Telephone Company's Proposal to Discontinue Offering Information Services.
- Expert report in the matter of Temple University Hospital, Inc. v. Mercy Health Plan, et al.
- Deposition testimony in Marshall v. Planz et al., In The United States District Court For The Middle District of Alabama Southern Division, Case Number 97-T-793-S.
- Trial testimony in Hylton v. St. Vincent Hospital.
- Deposition and trial testimony in HTI Health Services, Inc. v. Quorum Health Group, Inc., et al., In The United States District Court For The Southern District Of Mississippi Western Division, Civil Action No. 5:96-CV-108Br (S).
- Deposition and trial testimony in Federal Trade Commission v. Butterworth Health Corporation, et al., United States District Court Western District Of Michigan Southern Division, Case No. 1:96-CV-49.
- Deposition testimony in Parikh v. Franklin Medical Center, United States District Court For The District Of Massachusetts, Civil Action No. 95-3011 1-MAP.
- Deposition testimony in Independence Blue Cross v. Pennsylvania Insurance Department.
- Deposition testimony in Ertag, et al. v. Naples Community Hospital, In the United States District Court Middle District of Florida Southern Division. Docket No. 92-341-CIVFTM-25D.
- Deposition, trial, and affidavit testimony in Albani, et al. v. Southern Arizona Anesthesia Services, In The United States District Court for the District of Arizona, No. Civ. 91-588 TUC CRW (JMR).
- Deposition testimony in Major v. U.S.
- Deposition testimony and expert report in Howerton, et al. v. Grace Hospital, et al., In The United States District Court For The Western District Of North Carolina Shelby Division, Civil Action File No. SH-C-90-1 87.
- Deposition and affidavit testimony in Advanced Health-Care Services, Inc. v. Giles Memorial Hospital, et al., United States District Court Western District of Virginia Roanoke Division, Case No. 88-0346-R.
- Deposition and trial testimony in The Care Group v. Creef, et al., In The United States District Court For The District Of Maryland, Civil Action No. S 92-1648.
- Affidavit testimony in J. Michael Becker, D.C., et al. v. Blue Shield of Southwestern Virginia, et al., In The United States District Court For the Western District of Virginia Roanoke Division, Civil Action No. 81-0320-R.



- Deposition and affidavit testimony in EGH Inc., doing business as Eastmoreland Hospital v. Blue Cross and Blue Shield of Oregon, et al., In The United States District Court For the District of Oregon, No. CV 90-1210-FR.
- Trial and deposition testimony in the matter of U.S. Healthcare, Inc., et al. v. Healthsource, Inc., et al., United States District Court District of New Hampshire, Civil Action No. 91-113-D.
- Deposition and expert report in the matter of Bellavia v. Hackensack, et al., United States District Court For the District of New Jersey, Civ. No. 87-3698.
- Affidavit and supplemental affidavit testimony in Williamson v. Sacred Heart Hospital, et al., In The United States District Court For the Northern District of Florida, Case No. 89-30084 WS.
- Expert report in the matter of Wei v. Bodner, et al., United States District Court for the District of New Jersey. Civil Action No. 89-1137 (AET), Feb. 12, 1991.
- Trial testimony in King v. U.S.A., United States District Court Eastern District Of Michigan Southern Division, No. 87-CV-10199-BC.
- Affidavit testimony in Cypress Recreation Center Ltd. v. Pepsi-Cola Bottling Company et al., In The United States District Court For The Southern District of Florida, Civil Case No. 89-6248 CIV-ROETTGER.
- Verified statement filed with the Maryland Department of Insurance in the matter of CIGNA's acquisition of Equicor.
- Affidavit testimony in NBA v. BCBS of Alabama, In The United States District Court For The Middle District of Alabama Northern Division, Civil Action No. CV 88-H-426-N.
- Deposition testimony in Snyder v. Ohio Bell.
- Trial, deposition, and affidavit testimony in U.S. v. Carilion Health System, et al., United States District Court For The Western District of Virginia Roanoke Division, Civ. Action No. 88-0249-R.
- Affidavit testimony in U.S. v. Beverly Enterprises, Civil Action No. 84-70-1-MAC.
- Affidavit testimony in M&M v. Pleasant Valley Hospital, Civil Action No. A:88-1099.

### **Teaching Experience**

- Graduate Teaching Assistant in Microeconomics and Business Statistics at the University of Illinois, Urbana-Champaign.
- Assistant Professor, Department of Economics at the University of Missouri. Courses taught included Antitrust Economics, Industrial Organization, Intermediate Microeconomics, Medical Economics and Intermediate Econometrics.

### Selected Publications and Presentations

- Speaker Joint Department of Justice and Federal Trade Commission Hearings on Health Care and Competition Law and Policy, Spring 2003.
- Serdar Dalkir, David Eisenstadt, Ari Gerstle, and Robert T. Masson, "Complementary Goods, Monopoly vs. Monopoly Power: A Reassessment of Merger Effects," MICRA Working Paper, February 2002.
- Eisenstadt, D., "Hospital Competition and Costs: The *Carilion* Case (1989)," *The Antitrust Revolution: The Role of Economics, 2nd Edition*, John Kwoka and Lawrence J. White, Editors, 1994.
- Eisenstadt, D., "Product Market Definition in Health Antitrust Cases: Concept and Application," Speech before the National Health Lawyers Association, February 1994.
- Eisenstadt, D., "Health Care Antitrust Analysis: Thinking Through the Issues," Speech and paper presented at Trends in Antitrust Health Care Conference sponsored by the American Bar Association, October 1990.
- Eisenstadt, D. and R.T. Masson, "Price Effects from Recent Non-Profit Hospital Mergers," Paper presented at the American Public Health Association Meetings, October 23, 1989.
- Eisenstadt, D., "Type and Form of Economic Evidence Important to Analysis of Hospital Mergers: Case Studies of Roanoke and Rockford District Court Decisions," *Hospital Mergers: An Executive's Guide Through the Antitrust Thicket*, American Hospital Association, September 1989.
- Eisenstadt, D., "Economic Testimony in U.S. v. Carilion Health Systems: Some Thoughts From the Defendants' Economist," Speech before the National Health Lawyers Association, January 26, 1989.
- Eisenstadt, D., "Geographic Market Definition in the Nursing Home and Hospital Industries," Paper presented at the American Bar Association Meetings, August 1984.
- Eisenstadt, D., "An Antitrust Economist's View of Licensure," Speech before the National Clearinghouse on Licensure, Enforcement and Regulation, August 1983.
- Eisenstadt, D. and T. Kennedy, "Physician Controlled Health Insurance Plans and the Coverage of M.D. - Substitutes," Paper presented at the Eastern Economic Association Meetings, March 1983.
- Schwartz, M. and D. Eisenstadt, "Vertical Restraints," *Economic Policy Office Working Paper #82-8*, December 1982.
- Arnould, R. and D. Eisenstadt, "The Effects of Medical Society Control of Blue Shield on Fees in the Physicians' Services Market: Some Preliminary Evidence," *Quarterly Review of Economics and Business*, Spring 1982.

Arnould, R. and D. Eisenstadt, "The Effects of Provider-Controlled Blue Shield Plans: Regulatory Options," *A New Approach to the Economics of Health Care*, Mancur Olson, ed., American Enterprise Institute, 1981.

Eisenstadt, D. and T. Kennedy, "Control and Behavior of Non-Profit Firms: The Case of Blue Shield," *Southern Economic Journal*, July 1981.

**Awards and Affiliations**

Outstanding Performance Rating, U.S. Department of Justice, 1983, 1984

Special Achievement Award, U.S. Department of Justice, 1980

Member, American Hospital Association Task Force Analyzing Hospital Mergers, 1988-1989

Member, American Bar Association Task Force studying ancillary activities by hospitals



# Advocate Good Shepherd Hospital

450 West Highway 22 || Barrington, IL 60010 || T 847.381.0123 || [advocatehealth.com](http://advocatehealth.com)

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Dear Board members,

Good morning Ms. Avery, Mr. Urso and members of the audience. I am Karen Lambert, president of Advocate Good Shepherd Hospital, which is located less than 10 miles and less than 20 minutes from the proposed hospital. I apologize that I'm not able to be at this hearing in person, but I had previously scheduled a family vacation during this time. Even though I am not at the hearing in person, I appreciate the opportunity to have my voice heard.

Our hospital has the opportunity to serve many residents of this community and certainly McHenry County. We take this responsibility seriously and strive to provide our communities with the best possible health care available.

Our legacy of service is to both Lake and McHenry Counties. We provide health care services to these residents, and by those residents who today serve as caregivers and physicians. Our staff is a reflection of the patients we serve. Over half of our associates call McHenry County home. Nearly half of the patients we serve are McHenry County residents. We are just as much a McHenry County hospital as we are a Lake County hospital.

It would certainly be more exciting to be the hospital president proposing a new facility than the one opposing, but the easier position is not always the correct position. I am here today because I truly believe that the proposed hospital is inconsistent with our collective mission of stewards over the health care system. Let me explain:

1. **Hospitals Must do More, and Better, with Less**

The nation has just gone through one of the biggest changes to the health care system in my lifetime. The nation's severe financial constraints will force health care providers to do more with less. No matter which reform programs you may have favored, virtually no healthcare reform proposal has argued that the solution to the nation's health care problem is to build more suburban hospitals. This proposed new hospital runs counter to where health care is going, and to where it should go. Our health care system cannot afford this \$200 million new hospital and it should not be built.

2. **The Health Care Delivery Model is Clearly Moving Away from New Hospitals to Ambulatory Care**

The health care trend is clearly moving care toward outpatient services and reserving in-patient hospitalizations for the most complex care. This is not only more convenient for patients, it is more cost effective. In the last five years you have seen our hospitals establish an immediate care facility in Crystal Lake. More importantly for Crystal Lake, less than 2 miles from the proposed site, we established our Good Shepherd Crystal Lake Outpatient Center. As you know, Centegra has also established an Immediate Care Center and imaging center in Crystal Lake as well. All of these efforts have brought additional health care into the communities at much more reasonable costs. Please don't equate improved health care access with building a new hospital.

3. **Unnecessary Duplication of Services**

One of the primary duties of the Review Board is to prevent unnecessary duplication of services. Some would say let the hospitals compete and fight it out. There are good reasons that it is unwise. A new hospital in the near proximity to hospitals not fully utilized causes considerable harm. Existing hospitals require sufficient volume to

cover their fixed costs. Within a given area there are only so many babies to deliver or surgical procedures to perform. A new hospital does not create new demand, it only redistributes and dilutes the volume among existing providers. Without sufficient patients, hospitals do not have the resources available to invest for the future, cover the cost of the patients who cannot afford care, or increase the quality of its care. Let's be clear - this proposed hospital will significantly harm existing service providers and affect the quality of care given.

4. **Assuring Quality of Clinical Care**

Clinical studies show that increased volume relates to increased quality. Patients appropriately inquire into the volume and experience of our team. Others later in the day will address this concern.

5. **Unnecessary Hospital Construction is not Economic Development**

In today's economy I am very appreciative of the desire for new jobs. Unfortunately, this project does not create new permanent jobs. I'm sure that proponents for this hospital will argue that this project is economic development. However, there are only so many patients requiring in-patient hospital services. Moving patients from one hospital to another does not create jobs, it merely moves them around.

6. **Investment in Quality Improvements**

I'm sure that some detractors will characterize today's testimony as one hospital simply opposing another. That is not the case. Several years ago the applicant put in a Letter of Intent to build an ASC, Medical Office Building and imaging center on the location where they are now proposing a hospital. At that time we didn't oppose that project. If the Applicant's motivation was solely concern for McHenry County

healthcare, the Applicant should have followed through on their intent to expand their presence through a right-sized means for addressing healthcare needs. The Applicant already operates a hospital in Harvard and should they choose to expand that facility we would not oppose that lower-cost method of expanding coverage to the residents of McHenry County. Currently, that hospital is operating at 25% capacity and has the ability to absorb additional patients. Since Mercy has chosen not to expand this facility, I'm concerned about their long-term commitment to the residents of northern McHenry County and if they plan to abandon that hospital all together in favor of this project.

**Conclusion**

I truly believe that none of us charged with being stewards over health care resources, including the Health Facilities and Services Review Board, can conclude that this new project is a responsible use of our health care resources.

Good Morning

My name is Dan Colby. I live in Harvard, Ill. I am a Vice President of Mercy Health System and I am here today to urge the CON Board to grant approval of the Mercy Crystal Lake Hospital application.

This application should be approved for a number of reasons – mainly, it's location; it's the epicenter of Planning Area 10's population, its located where there is the greatest number of safety net patients in this County, and its located where it can serve the most diverse population in the Planning area.

In addition to those excellent reasons, this project brings to Crystal Lake and McHenry County tremendous economic impact.

This is a \$200 million project. It will generate approximately 800 construction related jobs for the 18 month construction period. These jobs will begin as early as this Christmas if the CON Board approves this project at its May hearing, and local approvals are received this fall.

This project is planned to open in 2014. It will employ over 1,000 people, filling 840 full time jobs when it opens. Six hundred



of those jobs will be new. Three hundred and thirty more jobs are planned to open by its fifth year of operation.

Additionally, another 180-240 jobs will be created through the multiplier effect.

All these jobs mean that the Mercy Crystal Lake Hospital and Medical Center will generate family income of \$55 million in its first year and that will rise to \$175 million dollars of income within five years. Another \$21 million to \$49 million in family income will be generated through the multiplier effect.

In addition to generating almost 2000 jobs by the time it opens (between construction and operating jobs) the Mercy Crystal Lake Hospital and Medical Center will generate new tax revenue for the state of Illinois and local governments.

Income tax as generated by these jobs created are estimated to produce \$1,371,000 to \$4,395,000 for the state (using just the old 3% flat state rate).

Also the clinic's portion of the project will be subject to property taxes and a portion of the sales (both indirect and induced) will be subject to sales taxes.

This project's total industry sales impact will range from \$102 million in the first year of operation to \$257 million in sales by its fifth year. Another \$9.8 million to \$74.8 million in industry sales will be created by the multiplier effect.

The Mercy Crystal Lake Hospital and Medical Center will be an economic boon for McHenry County.

This project comes at the right time, when McHenry County needs help to pull out of the recession.

This project comes with a \$200 million investment in McHenry County, and creates almost 2000 jobs when jobs are sorely needed.

And this project comes at the right time – NOW! NOT years from now!

Thank you!

Dan Colby, Vice President

Mercy Health System

**Jason Sciarro Testimony**  
**Opposition to Project 10-089**

Good morning. My name is Jason Sciarro, and I am President and COO of Centegra Health System. Centegra is proud to have been part of McHenry County for nearly 100 years. Our mission, to provide for the health and wellness of this community, is not just words. This is our passion.

Centegra currently owns and operates two hospitals in close proximity to Crystal Lake. Centegra Hospital–Woodstock is within 1.4 miles of a Crystal Lake zip code and Centegra Hospital–McHenry is within 2.6 miles of a Crystal Lake zip code. In fact, our hospitals are closer to some areas of Crystal Lake than the site of Mercy’s proposed project is.

Crystal Lake is the home to our newest Centegra facility, the Centegra Gavers Breast Center, which opened in September 2010, providing coordinated care to best treat a woman who is diagnosed with breast cancer. Centegra is committed to incremental growth and the Breast Center is just another example of how this organization makes it a priority to see the health of our community flourish.

Centegra has wellness services in Crystal Lake including the Centegra Health Bridge Fitness Center and many health services in the Crystal Lake Medical Arts building including the Centegra Immediate Care Center, advanced medical imaging services, phlebotomy services and Centegra Primary Care, along with occupational health and physician offices.

Centegra is not the only healthcare provider that serves Crystal Lake. In fact, Advocate Good Shepherd Hospital is within 5.9 miles of a Crystal Lake zip code. There is no absence of available healthcare for Crystal Lake.

Centegra has abided by a principle of responsible development. We provide our communities with the services they need where and when they are needed. Mercy’s proposed hospital in Crystal Lake is not, in our view, responsible development.

We are opposed to this project on several grounds:

- 1) Mercy’s CON application was shoddily prepared and does not meet the State Board’s rules.

- 2) The proposed project will have a substantial negative impact on Centegra's patient volumes and revenue, potentially causing Centegra to reconsider the many vital services it provides in the community.
- 3) A new hospital in Crystal Lake does not best meet the healthcare needs that exist in McHenry County.
- 4) Mercy is not a responsible community partner in McHenry County.

#### **I. Mercy's Application Does Not Meet the State Board's Requirements.**

In its rush to file by the end of December, Mercy submitted a CON application that was so filled with errors that Mercy had to subsequently submit more than 20 pages of corrections. Even with those corrections, the application remains riddled with mistakes. Our Senior Vice President, Susan Milford, will address these in more detail today.

In addition, Mercy's latest application relies on the same factors that it promoted to obtain its ill-fated Mercy Crystal Lake CON in 2004. The Circuit Court of McHenry County expressly rejected these factors, including the claim of bringing 45 new physicians to Crystal Lake, when it invalidated Mercy's CON permit. The Court observed that the State Board had no criteria to address physician shortages and that using this as a factor for approving the project was, to quote the court, "arbitrary and capricious."

#### **II. Mercy's Project would have a Substantial Negative Impact on Existing Facilities.**

Based on Mercy's own documentation, its project is dependent on large volumes of patients being transferred from Centegra's existing hospitals to Mercy's proposed facility. Mercy's application contains commitments from 40 of its employed physicians on our hospitals' medical staffs to transfer all of their patient volume from Centegra hospitals to Mercy's proposed project.

This lost patient volume would have a significant negative impact on the utilization of Centegra's hospitals and cause a substantial financial loss to our health system. Based on the physician referral letters in Mercy's application, 88 percent of Mercy Crystal Lake Hospital's inpatients would come from our existing facilities in McHenry and Woodstock. This translates to an annual loss of \$11.7 million at the two Centegra hospitals combined.

Centegra currently supports health services that lose money because they are important for the community and to our mission of improving our community's health. Examples of these services include mental health services, a skilled rehab nursing facility, a neuro-day trauma treatment center, free community health screenings and support for important area social service agencies

that are currently seeing cuts in Medicaid payments from the state. Our ability to continue supporting these vital services could be compromised with this kind of loss.

### **III. The Proposed Project Does Not Best Meet the Needs of the Planning Area.**

A new hospital is needed in McHenry County. It has the greatest need for acute care beds of any of the 40 planning areas in the state. But Crystal Lake is not the best location to meet that need.

The north and central portions of McHenry County are already well served by existing hospitals. Crystal Lake is currently served by Centegra Hospital – Woodstock, a mere 2 minutes from western Crystal Lake and Centegra Hospital–McHenry, which is only 5 minutes from northern Crystal Lake.

By contrast, there are no existing inpatient facilities in the far southern portion of McHenry County, which has large population centers in Huntley, Algonquin and Lake in the Hills, Lakewood and southern Crystal Lake. Also, a major advantage of a new hospital in southern McHenry County is that it would also serve residents of northern Kane County, which has the second greatest need for acute care services of the 40 statewide planning areas. The needs of southern McHenry and northern Kane Counties are best met by a hospital in southern McHenry County, not in Crystal Lake.

### **IV. Mercy is Not a Responsible Community Healthcare Partner.**

Centegra has a longstanding commitment to this community and region. For example, no other health system matches Centegra's substantial commitment to behavioral health in the county. In fact, many systems are abandoning behavioral health because of operating losses. Centegra itself incurs losses of \$5 million per year to operate its behavioral health program, but we continue to provide these services because the community needs them. Mercy does not provide behavioral health at its existing facility in Harvard, or anywhere else in Illinois, and its current proposal for Crystal Lake does not mention behavioral health. It appears that Mercy is more interested in a favorable payer mix rather than in truly serving the residents of McHenry County.

Mercy's lack of commitment to the community is reflected in the community's lack of commitment to Mercy. Look at Mercy Harvard Hospital. After acquiring the hospital nearly a decade ago, Mercy has invested very little in improving the facility, and it shows. According to COMPdata, only 331 of 1375 Harvard residents who received inpatient services went to Mercy Harvard in FY 2010. Most residents of Harvard choose to drive 29 minutes to Centegra Hospital-Woodstock or 47 minutes to Centegra Hospital-McHenry. We do not need another Mercy Harvard Hospital in Crystal Lake.

It is with the best interests of the community in mind that Centegra opposes Mercy's application for a new hospital in Crystal Lake. Rather than addressing the area's healthcare needs, the project would put a hospital where one isn't needed, at great impact to Centegra's two existing hospitals. This new hospital would do more harm than good for the area's healthcare needs, and I ask the Board to reject this application.



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**Opposition to Mercy's Proposed Crystal Lake Hospital**

**Good morning. My name is Rick Floyd. I serve as President & CEO of Sherman Health, which is based in Elgin, Illinois. Sherman is a regional medical center which has served Chicago's northwest suburbs, including Crystal Lake and surrounding areas, for over 120 years. We would like to continue to do so for generations to come.**

**While we can all appreciate the advantages of a hospital close to home, we must also recognize the damaging impact of building a new hospital at a time when none is needed. The proposed new hospital will not bring new services to this area, will harm all of our existing hospitals by drawing patients and revenue away from them, will thereby strain the healthcare safety net that supports our area's most vulnerable, and will cost \$200million. This project represents wasteful healthcare spending, and I urge the Review Board to reject the application. Here's why.**

**The state's bed need calculations are based on population projections from the year 2000. While we are still growing, we are growing at a much slower rate than had been anticipated back in 2000. Between 2000 and 2005, we built an average of 3,600 new homes in McHenry County every year. By 2009 and 2010, we issued just 300 new residential building permits per year. And a McHenry County population that was expected to rise to 337,000 by 2010 in fact grew to less than 310,000. This means that the calculated future bed need may be as little as 21 beds, a number way too low to justify a new hospital. And housing and population growth are not expected to regain their momentum quickly.**

**We must also recognize that all the existing hospitals surrounding the proposed site have available beds. State data reveal that utilization rates for the surrounding hospitals average between 60 and 70%. This means that there is a combined total of hundreds of beds available today at the two Centegra hospitals, Advocate Good Shepherd Hospital, St. Alexius Hospital, Provena St. Joseph Hospital, and Sherman Hospital. And as our nation struggles to reduce healthcare costs, we must remember that the largest single component of healthcare costs in America is hospital costs. Hospital utilization rates will decline as we find ways to keep people out of our essential yet expensive hospitals.**

**And what about the healthcare safety net for our area's most vulnerable? Several of our areas existing hospitals are struggling to achieve positive operating margins. In this environment, any new hospital will of course draw existing patient volumes and revenue away from existing area hospitals, weakening them, and placing at risk their ability to continue to provide free and deeply discounted services to those in need.**

**Our state's budget deficit stands at \$15 billion, and our nation's budget deficit is expected to reach a record \$1.6 trillion this year. Why, at a time of such serious budget challenges, would we unnecessarily duplicate services? Why would we waste \$200 million?**

**Finally, don't be fooled by the promise of many new jobs. Beyond the construction jobs created during the life of such a project, which are new, the healthcare jobs would not be new jobs. The durable, healthcare jobs would primarily be shifted from existing hospitals, weakening them, and bringing no new services into our community.**



**In summary, there is no unmet bed need in our area, neither today nor anytime soon. Any new hospital will harm all of our existing hospitals by drawing away patients and revenues, placing our healthcare safety net at risk, and unnecessarily duplicating services. I urge the Review Board to avoid wasting \$200M and to reject the application.**

- 1. My name is Javon Bea. I was born and raised in Rockford IL, and went to high school here in Crystal Lake and college at NIU in DeKalb. I have been the President and CEO of Mercy Health System for over 21 years and we are the proud sponsors of our application for a new \$200 million dollar hospital and medical center in Crystal Lake. My Illinois business address is 2000 Lake Ave in Woodstock.**
- 2. An approved Certificate of Need will allow Mercy to build a 128-bed hospital and large multi-specialty physician medical center in Crystal Lake at Route 31 and Three Oaks Road for 160,000 citizens who do not have easy access to hospital emergency services. We have been planning this facility at this location for seven years, since 2004.**
- 3. During these seven years, the need for increased access to healthcare services has grown tremendously.**

- 4. Mercy Health System is committed to Crystal Lake. The plan meets the needs of the community in the most appropriate way by addressing the long-standing need for more acute care hospital beds, and integrated physician services.**
- 5. Unlike another hospital's pending application, Mercy Health System has chosen to locate its hospital and medical center in the most densely populated area of McHenry County that suffers from excessive traffic congestion which delays access to care.**
- 6. Crystal Lake is also the home of the most diverse population in McHenry County and has a growing geriatric population in need of additional services and ease of access.**

- 7. Our location will also provide easier access for Emergency providers who presently face uncertainty about hospital bed availability because of other McHenry County hospital's high emergency department bypass rates as reported by the Illinois Department of Public Health.**
- 8. For those of you who don't know, what bypass means is having to send emergency patients who arrive at Centegra Hospital on to other hospitals even farther away because Centegra's beds are frequently filled to capacity.**
- 9. The economic development impact of Mercy's project will generate an estimated 650 to 800 construction related jobs.**
- 10. Within the first year of opening the facility, Mercy Crystal Lake Hospital is expected to employ more than a thousand individuals, of which approximately 600 will be new jobs. This will be occurring in 2012 as opposed to Centegra's application that states construction will not be complete until 2016- 2017.**

- 11. This is the right project at the right location at the right time to address the unmet health care needs of McHenry County residents now and in years to come.**
- 12. Opponents to Mercy's project will cite everything from a lack of available workforce, which is ridiculous because the unemployment rate for McHenry County is currently at 8.4% to a negative impact on their current operations.**
- 13. This too can not be supported. In fact there is not easy timely access to care due to traffic congestion. Hospitals are also filled to capacity on a frequent basis.**

**Here are other important points:**

- 1. We have located our Hospital in the area of McHenry County most in need of better access to comprehensive health care services.**

**2. We will be operational to meet the unmet patient needs years ahead of Centegra's application that proposes building down in the southern end of McHenry County. They're hoping that over time, population will grow in Huntley to justify their proposal. Currently, there are fewer than 26,000 people in Huntley.**

**3. At Mercy we have more than 20 years' experience creating and managing a highly successful vertically integrated health system-the first in the nation to receive the coveted Malcolm Baldrige National Quality Award in healthcare from President Bush in the Oval Office.**

- 4. We have a proven track record -- independently verified by the US Department of Commerce during the Baldrige process--of providing quality health care that aligns physicians and hospital services thus insuring the most comprehensive and coordinated quality care for our patients.**
- 5. We have been providing health care services in Illinois for almost 20 years.**
- 6. We currently have 13 facilities with over 800 employees including nearly 100 employed physicians.**
- 7. Our Mercy Harvard Hospital in the northern tip of McHenry County provides care to one of the poorest and indigent populations in the county. We have been here in this County serving all who come through our doors.**
- 14. Today you will hear from patients and other supporters of the Mercy Health System project.**

**15. These residents are a testament to the exceptional quality care Mercy Health System provides to the people of McHenry County.**

**16. We are proud of our application and humbly stand ready to provide exceptional hospital care to the residents of McHenry County and those wonderful people in Crystal Lake, Lake in the Hills, Cary and Algonquin.**

**17. We are here to serve you.**

**18. Thank you.**



*written  
only*

**3/18/11**

To whom it may concern,

I am against Mercy building a hospital in Crystal Lake. There are several hospitals within just a few miles of the proposed site, for example Mercy/ Mchenry hospital is about 6 ½ miles north, just up route 31. I do not feel Mchenry County needs another hospital in that area. With the growth over the past 10-15 years, there is definitely a bigger need for a hospital in the most southern part of the county. Also, I did notice that Mercy proposed the need for a hospital just a few days after Centegra – Huntley announced theirs. My question is why did they choose now to re-propose their petition? Thank you for hearing my thoughts.

Ellen Bakke – Huntley, IL



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March 15, 2011

Aaron T. Shepley  
General Counsel, Senior Vice President Administrative Services  
Centegra Health System  
385 Millennium Drive  
Crystal Lake, IL 60012

**Re: Financial Impact to Centegra of Proposed  
Mercy Crystal Lake Hospital and Medical Center**

Dear Mr. Shepley:

At your request, we have prepared an independent analysis with respect to the potential financial impact to Centegra Health System ("Centegra") of a proposed hospital to be built in Crystal Lake, Illinois. This letter summarizes the background, purpose, and approach and methodologies associated with our analysis and presents our key calculations and conclusions.

**BACKGROUND**

We understand that Mercy Crystal Lake Hospital and Medical Center, Inc ("MCLH") and Mercy Alliance, Inc of Janesville, Wisconsin ("Mercy") is seeking to build a 128 licensed-bed acute care, general hospital, in Crystal Lake, Illinois. In addition, Mercy is proposing to construct an adjoining multi-specialty physician clinic to the hospital. Centegra, an Illinois not-for-profit corporation, currently operates two hospitals in McHenry County, Centegra Hospital - McHenry ("CHM") and Centegra Hospital - Woodstock ("CHW"), which are within 10 miles of the proposed MCLH facility.

**PURPOSE**

The purpose of this analysis is to estimate the financial impact of the proposed Mercy facility on Centegra's operations. We understand that our analysis may be used in connection with substantiating Centegra's contention that, should the project be approved to proceed, the proposed Mercy facility would have an immediate adverse financial impact on Centegra and would impair its ability to fund current operations and adequately serve the community.

We understand our work product will be used and that we may be called to testify in connection with the Illinois Health Facilities and Services Review Board's consideration of Mercy's proposed certificate-of-need ("CON"), as well as the possible judicial review of the decision rendered by the Illinois Health Facilities and Services Review Board with respect to the Mercy Crystal Lake Hospital CON application. No other use of this analysis and related work product are intended or should be inferred.

## APPROACH AND METHODOLOGY

Our estimate of the financial impact on Centegra of the proposed MCLH facility is based on the estimated volume of cases and related revenues and profits that Centegra would lose to MCLH if MCLH were to open today and achieve the level of patient activity and related caseloads from existing facilities as reported by MCLH in its CON application.

The number of cases that CHM and CHW could expect to lose is estimated by MCLH at 3,368 inpatient cases as shown in Exhibit I. Table I, below, is the total number of inpatient cases represented by MCLH's CON as referrals from physicians to CHM and CHW that will be rerouted to the new MCLH facility.

It is important to note that MCLH could also be expected to derive additional revenue from outpatient services not specifically identified in the CON. Accordingly, Centegra could also be expected to lose revenue and profit attributable to these outpatient services to MCLH.

**Table I**  
**Centegra Cases Lost to**  
**Mercy Crystal Lake Hospital**

<u>Service Category</u>	<u>Lost Cases</u>
Inpatient <sup>1</sup>	
Centegra Hospital -Woodstock	2,005
Centegra Hospital -McHenry	1,363
<b>Total Centegra Lost Cases</b>	<b><u>3,368</u></b>

In order to calculate the profit attributable to lost Centegra patient volume and caseload, we analyzed internal Centegra financial and cost accounting data to determine its "contribution margin" related to inpatient services. Contribution margin, which is defined as revenues minus variable costs, represents the incremental profit from the provision of inpatient services that is available to cover the fixed operating costs. Fixed costs are excluded from the calculation of lost profit, since Centegra will continue to incur such fixed costs regardless of whether cases are lost to the new facility. Revenue, variable costs and contribution margin would, however, decrease in amounts proportionate to lost volume.

Table II, below, presents average revenue per case, variable cost per case, and contribution margin per case for Centegra Hospital -McHenry and Centegra Hospital -Woodstock for inpatient services based on fiscal year end June 30, 2010 financial data. Average per case revenues and variable costs include direct as well as ancillary services.

---

<sup>1</sup> Inpatient cases are the cumulative total from pages 192 through 276 of Mercy's CON application. See Exhibit I for detail listing by Physician

**Table II  
 Calculation of  
 Contribution Margin Per Case**

<u>Service Category</u>	<u>[A] Average Revenues Per Case</u>	<u>[B] Average Variable Costs Per Case</u>	<u>[C] [A] - [B] Average Contribution Margin Per Case</u>
Inpatient			
Centegra Hospital - Woodstock	\$7,508	\$4,218	\$3,290
Centegra Hospital - McHenry	\$8,644	\$4,869	\$3,775

Based on our review, Centegra's cost accounting data appears to provide a reasonable basis for determining the contribution margin for purposes of our calculations. Further, the contribution margins derived from Centegra data are consistent with both available empirical data regarding the allocation of hospital costs between variable and fixed components, as well as assumptions that we have observed in other hospital planning settings.

Multiplying the lost cases in Table I by the average contribution margin per case in Column C of Table II results in the estimated annual decrease in contribution margin of \$11.7 million that Centegra would experience if the MCLH facility were to open today and achieve levels of patient activity and related caseloads projected in Mercy's CON. This calculation is summarized in Table III below. The lost cases to MCLH would have a negative impact on Centegra's utilization at both Centegra Hospital - McHenry and Centegra Hospital - Woodstock.

**Table III  
 Calculation of Lost Contribution Margin  
 Based on Mercy's CON**

<u>Service Category</u>	<u>[A] Average Contribution Margin Per Case</u>	<u>[B] Lost Cases</u>	<u>[C] [A] X [B] Lost Contribution Margin</u>
Inpatient			
Centegra Hospital - Woodstock	\$3,290	2,005	\$6,596,735
Centegra Hospital - McHenry	\$3,775	<u>1,363</u>	<u>\$5,144,822</u>
Total Financial Impact to Centegra		3,368	<u>\$11,741,557</u>

### ***Additional Finding***

In our analysis of MCLH's CON application, we sought to validate the physician FY10 cases reported in MCLH's CON application using COMPdata® via Intellimed®. We discovered a variance from the submitted physician referrals included in MCLH's CON to the data we pulled from COMPdata® via Intellimed®<sup>2</sup> for the same physicians during the same time period. The total number of cases reported in MCLH's CON is 3,976 compared to COMPdata® via Intellimed®'s cases of 3,259, or an overstatement of 22%. See Exhibit II for a detailed comparison by physician. Per COMPdata® via Intellimed®, 1,735 and 1,137 cases have been referred to CHW and CHM by the physicians surveyed and included in the CON application.

The financial impact based on the adjusted inpatient volume of 2,872 cases from the COMPdata® via Intellimed® information is \$10.0 million. See Exhibit III for the calculation of the financial impact based on the number of cases from COMPdata® via Intellimed®.

### **CONCLUSION**

Based on the analysis presented above, and assuming it were to open today and achieve the levels of patient activity and related caseload projected in its CON application, we estimate the potential financial impact to Centegra of the proposed MCLH facility for inpatient services to be in the range of a \$10.0 to \$11.7 million annual reduction in systemwide profit. The lost cases to MCLH would have a negative impact on Centegra's utilization at both Centegra Hospital – McHenry and Centegra Hospital – Woodstock.

It is important to note that MCLH could also be expected to derive additional revenue from other "outpatient medical" categories of service not specifically identified in MCLH's CON. Accordingly, Centegra could also be expected to lose revenue and profit attributable to these categories of service to MCLH

We are independent of Centegra and our fee for this analysis is in no way influenced by the results of our work. The qualifications of the individuals who prepared this analysis are attached as Appendix A to this report.

### **LIMITATIONS**

The information contained within has been derived primarily from documents provided by Centegra, as well as from the CON and related documents. This information includes both audited and unaudited financial and operational information. We have not audited, reviewed, or compiled this information. Accordingly, we express no opinion or other form of assurance on it.

Our procedures with respect to any forecasts, projections, or forward-looking financial information included or referred to herein, do not constitute an examination of a forecast in accordance with U.S. generally accepted auditing standards, nor do they constitute an examination of a forecast in accordance with standards established by the AICPA. Therefore, we express no opinion or other form of assurance on them.

---

<sup>2</sup> COMPdata® via Intellimed® for the period 7/1/2009 to 6/30/2010. See Exhibit II

Our observations, analyses, and calculations are based on the available data, procedures and analysis set forth herein. They are subject to revision upon the performance of additional procedures or additional information we may become aware of.

We are pleased to provide this analysis to Centegra.

Very truly yours,

*Deloitte Financial Advisory Services LLP*

## APPENDIX A

### QUALIFICATIONS

The individuals responsible for performing this analysis are members of Deloitte Financial Advisory Services health care financial advisory services practice.

***Daniel Lynn*** is the engagement Principal on this assignment. Dan is a national practice leader for our health care industry financial advisory services practice. He has approximately 28 years of financial advisory experience and has performed numerous studies with respect to health care entities, including medical practices, hospitals, nursing homes, skilled nursing facilities, ambulatory surgery centers, outpatient rehabilitation centers, medical practices, HMOs and PPOs.

***Richard L. Piekarz*** is a Senior Manager in Deloitte Financial Advisory Services LLP. He has over fifteen years of extensive industry experience providing clients with consultation. He works with clients in a variety of planning, decision support, operational and financial improvement and transaction related settings. He has provided reimbursement, regulatory, due diligence, revenue and financial consulting services for complex hospitals, health systems, joint ventures, skilled nursing facilities, home health agencies and health plans.

***Daniel Mruz*** a Manager in Deloitte Financial Advisory Services LLP. He has over twenty years of extensive industry experience providing clients with consultation and as a Financial Manager in a hospital system. is a manager on this assignment. He has over 5 years of financial advisory experience and has performed numerous projects with respect to health care entities, including hospitals, ambulatory surgery centers, and long term care facilities.

**EXHIBITS**



**EXHIBIT I**  
**Physician Referrals from Mercy's CON Application**

<b>Physician Name</b>		<b>Referral Source</b>				<b>[A]+[B]+[C]+[D] Total Physician Referrals</b>
<b>Last</b>	<b>First</b>	<b>[A] Woodstock</b>	<b>[B] McHenry</b>	<b>[C] Advocate</b>	<b>[D] Condell</b>	
Albright	Kim		51			51
Asbury	Jeffrey	16				16
Bistriceanu	Graziella	54	1			55
Campau	Steven			63		63
Chatterji	Manju	16	51			67
Chitwood	Rick	8	64			72
Cook	Richard	259				259
Crawley	Terri	141				141
Cundiff	Jason	13	25	30		68
DeHaan	Paul	37	65			102
Dillon	Paul	6	12		32	50
Favia	Julie	116				116
Fojtik	Joseph			188		188
Gavran	Monica	85				85
Goodman	David	11	20	27		58
Gulati	Roshi	33				33
Gupta	Lata	75				75
Henning	Douglas	17				17
Howey	Susan		120			120
Hussain	Yasmin	23				23
Kakish	Nathan	171				171
Kang	Hiejin		26			26
Karna	Sandhya		56			56
Karney	Michelle	70				70
Krpan	Marko	12	42			54
Livingston	Gary	17	26	24		67
Loqman	Mabria	63	95			158
MacDonald	Robert		89			89
Marian	Camelia			77		77
Mizra	Aisha	132				132
Mitra	Deepak	30	104			134
Nath	Ranjana	21	49			70
Persino	Richard		148			148
Phelan	Patrick	156				156
Riggs	Mary		80			80
Ronquillo	Bibiano	108				108
Shen	Emily		32			32
Soorya	Ranjana		15			15
Srinivas	Ratna		10			10
Tarandy	Dana	76	10			86
Wittman	Randy		172			172
Zaino	Ricca	239				239
<b>Total</b>		<b>2,005</b>	<b>1,363</b>	<b>409</b>	<b>32</b>	<b>3,809</b>

**EXHIBIT II**  
**Summary of July 2009 – June 2010 Inpatient Cases by Mercy Physician**

<u>Attending Physician</u>	<u>[A] Centegra McHenry</u>	<u>[B] Centegra Woodstock</u>	<u>[C] Advocate Good Shepherd</u>	<u>[D] Mercy Harvard</u>	<u>[E] St. Alexius Medical Center</u>	<u>[F] Comp data</u>	<u>[G] CON App.</u>	<u>[H] [G]-[F] Var.</u>
Albright, Kim (FP)	51	-	-	-	-	51	51	-
Asbury, Jeffrey B UROL)	-	5	-	5	-	10	21	11
Bistriceanu, Graziella (OTHR)	1	54	-	-	-	55	55	-
Campau, Steven A (OTHR)	-	-	63	-	-	63	63	-
Chatterji, Manju (PD)	51	16	-	-	-	67	67	-
Chitwood, Rick A (PD)	64	8	-	-	-	72	72	-
Cook, Richard O (OTHR)	-	217	-	-	-	217	259	42
Crawley, Terri L (OTHR)	-	141	-	-	-	141	141	-
Cundiff, Jason (OTHR)	6	2	8	-	-	16	68	52
DeHaan, Paul H (OTHR)	53	23	-	4	-	80	110	30
Dillon, Paul C (PS)	10	1	4	7	2	24	57	33
Favia, Julie (OTHR)	-	101	-	-	-	101	116	15
Fojtik, Joseph E (IM)	-	-	188	-	-	188	188	-
Gavran, Monica E (IM)	-	85	-	-	-	85	85	-
Goodman, David A (OTHR)	1	1	5	-	-	7	58	51
Gulati, Roshi (OTHR)	-	33	-	-	-	33	33	-
Gupta, Lata (OTHR)	-	64	-	-	-	64	75	11
Henning, Douglas A (OTHR)	-	17	-	-	-	17	17	-
Howey, Susan M (OTHR)	94	-	-	-	-	94	120	26
Hussain, Yasmin (OTHR)	-	2	-	-	-	2	38	36
Kakish, Nathan (OTHR)	-	171	-	-	-	171	171	-
Kang, Hiejun (OTHR)	26	-	-	-	-	26	26	-
Karna, Sandhya R (OTHR)	56	-	-	-	-	56	56	-
Karney, Michelle Y (OTHR)	-	99	-	-	-	99	105	6
Krpan, Marko F (OTHR)	38	6	-	-	-	44	59	15
Livingston, Gary L (OTHR)	4	2	5	-	-	11	67	56
Loqman, Mabria (FP)	-	-	-	15	-	15	158	143
MacDonald, Robert J (FP)	89	-	-	-	-	89	89	-
Marian, Camelia E (OTHR)	-	-	77	-	-	77	77	-
Mizra, Aisha A (OTHR)	-	132	-	-	-	132	132	-
Mitra, Deepak (IM)	104	30	-	-	-	134	134	-
Nath, Ranjana (PD)	49	21	-	-	-	70	70	-
Persino, Richard L (OBG)	127	-	-	-	-	127	148	21
Phelan, Patrick E (OTHR)	-	156	-	-	-	156	156	-
Riggs, Mary (OTHR)	109	-	-	-	-	109	163	54
Ronquillo, Bibiana C (OTHR)	-	108	-	-	-	108	108	-
Shen, Emily (OTHR)	32	-	-	-	-	32	32	-
Soorya, Ranjana P (OTHR)	15	-	-	-	-	15	15	-
Srinivas, Ratna R (OBG)	8	-	-	-	-	8	10	2
Tarandy, Dana T (OTHR)	2	50	-	4	-	56	95	39
Wittman, Randy S (OBG)	147	-	-	-	-	147	172	25
Zaino, Ricca Y (OBG)	-	190	-	-	-	190	239	49
<b>Total</b>	<b>1,137</b>	<b>1,735</b>	<b>350</b>	<b>35</b>	<b>2</b>	<b>3,259</b>	<b>3,976</b>	<b>717</b>

**EXHIBIT III**  
**Calculation of Lost Contribution**  
**Margin to Adjusted Lost Cases Based on COMPdata® Comparison**

<u>Service Category</u>	<u>[A]</u> Average Contribution Margin Per Case	<u>[B]</u> Adjusted Lost Cases	<u>[C]</u> [A] X [B] Lost Contribution Margin
Inpatient			
Centegra Hospital – Woodstock	\$3,290	1,735	\$5,708,150
Centegra Hospital – McHenry	\$3,775	<u>1,137</u>	<u>\$4,292,175</u>
Total Centegra		2,872	<u>\$10,000,325</u>



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March 15, 2011

Aaron T. Shepley  
General Counsel, Senior Vice President Administrative Services  
Centegra Health System  
385 Millennium Drive  
Crystal Lake, IL 60012

**Re: Financial Impact to Centegra of Proposed  
Mercy Crystal Lake Hospital and Medical Center**

Dear Mr. Shepley:

At your request, we have prepared an independent analysis with respect to the potential financial impact to Centegra Health System ("Centegra") of a proposed hospital to be built in Crystal Lake, Illinois. This letter summarizes the background, purpose, and approach and methodologies associated with our analysis and presents our key calculations and conclusions.

**BACKGROUND**

We understand that Mercy Crystal Lake Hospital and Medical Center, Inc ("MCLH") and Mercy Alliance, Inc of Janesville, Wisconsin ("Mercy") is seeking to build a 128 licensed-bed acute care, general hospital, in Crystal Lake, Illinois. In addition, Mercy is proposing to construct an adjoining multi-specialty physician clinic to the hospital. Centegra, an Illinois not-for-profit corporation, currently operates two hospitals in McHenry County, Centegra Hospital -McHenry ("CHM") and Centegra Hospital - Woodstock ("CHW"), which are within 10 miles of the proposed MCLH facility.

**PURPOSE**

The purpose of this analysis is to estimate the financial impact of the proposed Mercy facility on Centegra's operations. We understand that our analysis may be used in connection with substantiating Centegra's contention that, should the project be approved to proceed, the proposed Mercy facility would have an immediate adverse financial impact on Centegra and would impair its ability to fund current operations and adequately serve the community.

We understand our work product will be used and that we may be called to testify in connection with the Illinois Health Facilities and Services Review Board's consideration of Mercy's proposed certificate-of-need ("CON"), as well as the possible judicial review of the decision rendered by the Illinois Health Facilities and Services Review Board with respect to the Mercy Crystal Lake Hospital CON application. No other use of this analysis and related work product are intended or should be inferred.

## APPROACH AND METHODOLOGY

Our estimate of the financial impact on Centegra of the proposed MCLH facility is based on the estimated volume of cases and related revenues and profits that Centegra would lose to MCLH if MCLH were to open today and achieve the level of patient activity and related caseloads from existing facilities as reported by MCLH in its CON application.

The number of cases that CHM and CHW could expect to lose is estimated by MCLH at 3,368 inpatient cases as shown in Exhibit I. Table I, below, is the total number of inpatient cases represented by MCLH's CON as referrals from physicians to CHM and CHW that will be rerouted to the new MCLH facility.

It is important to note that MCLH could also be expected to derive additional revenue from outpatient services not specifically identified in the CON. Accordingly, Centegra could also be expected to lose revenue and profit attributable to these outpatient services to MCLH.

**Table I**  
**Centegra Cases Lost to**  
**Mercy Crystal Lake Hospital**

<u>Service Category</u>	<u>Lost Cases</u>
Inpatient <sup>1</sup>	
Centegra Hospital -Woodstock	2,005
Centegra Hospital -McHenry	1,363
Total Centegra Lost Cases	<u>3,368</u>

In order to calculate the profit attributable to lost Centegra patient volume and caseload, we analyzed internal Centegra financial and cost accounting data to determine its "contribution margin" related to inpatient services. Contribution margin, which is defined as revenues minus variable costs, represents the incremental profit from the provision of inpatient services that is available to cover the fixed operating costs. Fixed costs are excluded from the calculation of lost profit, since Centegra will continue to incur such fixed costs regardless of whether cases are lost to the new facility. Revenue, variable costs and contribution margin would, however, decrease in amounts proportionate to lost volume.

Table II, below, presents average revenue per case, variable cost per case, and contribution margin per case for Centegra Hospital -McHenry and Centegra Hospital -Woodstock for inpatient services based on fiscal year end June 30, 2010 financial data. Average per case revenues and variable costs include direct as well as ancillary services.

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<sup>1</sup> Inpatient cases are the cumulative total from pages 192 through 276 of Mercy's CON application. See Exhibit I for detail listing by Physician

**Table II**  
**Calculation of**  
**Contribution Margin Per Case**

<u>Service Category</u>	<u>[A]</u> Average Revenues Per Case	<u>[B]</u> Average Variable Costs Per Case	<u>[C]</u> [A] - [B] Average Contribution Margin Per Case
Inpatient			
Centegra Hospital - Woodstock	\$7,508	\$4,218	\$3,290
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Based on our review, Centegra's cost accounting data appears to provide a reasonable basis for determining the contribution margin for purposes of our calculations. Further, the contribution margins derived from Centegra data are consistent with both available empirical data regarding the allocation of hospital costs between variable and fixed components, as well as assumptions that we have observed in other hospital planning settings.

Multiplying the lost cases in Table I by the average contribution margin per case in Column C of Table II results in the estimated annual decrease in contribution margin of \$11.7 million that Centegra would experience if the MCLH facility were to open today and achieve levels of patient activity and related caseloads projected in Mercy's CON. This calculation is summarized in Table III below. The lost cases to MCLH would have a negative impact on Centegra's utilization at both Centegra Hospital - McHenry and Centegra Hospital - Woodstock.

**Table III**  
**Calculation of Lost Contribution Margin**  
**Based on Mercy's CON**

<u>Service Category</u>	<u>[A]</u> Average Contribution Margin Per Case	<u>[B]</u> Lost Cases	<u>[C]</u> [A] X [B] Lost Contribution Margin
Inpatient			
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Total Financial Impact to Centegra		3,368	<u>\$11,741,557</u>

### ***Additional Finding***

In our analysis of MCLH's CON application, we sought to validate the physician FY10 cases reported in MCLH's CON application using COMPdata® via Intellimed®. We discovered a variance from the submitted physician referrals included in MCLH's CON to the data we pulled from COMPdata® via Intellimed®<sup>2</sup> for the same physicians during the same time period. The total number of cases reported in MCLH's CON is 3,976 compared to COMPdata® via Intellimed®'s cases of 3,259, or an overstatement of 22%. See Exhibit II for a detailed comparison by physician. Per COMPdata® via Intellimed®, 1,735 and 1,137 cases have been referred to CHW and CHM by the physicians surveyed and included in the CON application.

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### **CONCLUSION**

Based on the analysis presented above, and assuming it were to open today and achieve the levels of patient activity and related caseload projected in its CON application, we estimate the potential financial impact to Centegra of the proposed MCLH facility for inpatient services to be in the range of a \$10.0 to \$11.7 million annual reduction in systemwide profit. The lost cases to MCLH would have a negative impact on Centegra's utilization at both Centegra Hospital – McHenry and Centegra Hospital – Woodstock.

It is important to note that MCLH could also be expected to derive additional revenue from other "outpatient medical" categories of service not specifically identified in MCLH's CON. Accordingly, Centegra could also be expected to lose revenue and profit attributable to these categories of service to MCLH

We are independent of Centegra and our fee for this analysis is in no way influenced by the results of our work. The qualifications of the individuals who prepared this analysis are attached as Appendix A to this report.

### **LIMITATIONS**

The information contained within has been derived primarily from documents provided by Centegra, as well as from the CON and related documents. This information includes both audited and unaudited financial and operational information. We have not audited, reviewed, or compiled this information. Accordingly, we express no opinion or other form of assurance on it.

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<sup>2</sup> COMPdata® via Intellimed® for the period 7/1/2009 to 6/30/2010. See Exhibit II

Centegra Health System  
March 15, 2011  
Page 5

Our observations, analyses, and calculations are based on the available data, procedures and analysis set forth herein. They are subject to revision upon the performance of additional procedures or additional information we may become aware of.

We are pleased to provide this analysis to Centegra.

Very truly yours,

*Deloitte Financial Advisory Services LLP*



## APPENDIX A

### QUALIFICATIONS

The individuals responsible for performing this analysis are members of Deloitte Financial Advisory Services health care financial advisory services practice.

***Daniel Lynn*** is the engagement Principal on this assignment. Dan is a national practice leader for our health care industry financial advisory services practice. He has approximately 28 years of financial advisory experience and has performed numerous studies with respect to health care entities, including medical practices, hospitals, nursing homes, skilled nursing facilities, ambulatory surgery centers, outpatient rehabilitation centers, medical practices, HMOs and PPOs.

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**EXHIBITS**

**EXHIBIT I**  
**Physician Referrals from Mercy's CON Application**

<b>Physician Name</b>		<b>Referral Source</b>				<b>[A]+[B]+[C]+[D] Total Physician Referrals</b>
<b>Last</b>	<b>First</b>	<b>[A] Woodstock</b>	<b>[B] McHenry</b>	<b>[C] Advocate</b>	<b>[D] Condell</b>	
Albright	Kim		51			51
Asbury	Jeffrey	16				16
Bistriceanu	Graziella	54	1			55
Campau	Steven			63		63
Chatterji	Manju	16	51			67
Chitwood	Rick	8	64			72
Cook	Richard	259				259
Crawley	Terri	141				141
Cundiff	Jason	13	25	30		68
DeHaan	Paul	37	65			102
Dillon	Paul	6	12		32	50
Favia	Julie	116				116
Fojtik	Joseph			188		188
Gavran	Monica	85				85
Goodman	David	11	20	27		58
Gulati	Roshi	33				33
Gupta	Lata	75				75
Henning	Douglas	17				17
Howey	Susan		120			120
Hussain	Yasmin	23				23
Kakish	Nathan	171				171
Kang	Hiejin		26			26
Karna	Sandhya		56			56
Karney	Michelle	70				70
Krpan	Marko	12	42			54
Livingston	Gary	17	26	24		67
Loqman	Mabria	63	95			158
MacDonald	Robert		89			89
Marian	Camelia			77		77
Mizra	Aisha	132				132
Mitra	Deepak	30	104			134
Nath	Ranjana	21	49			70
Persino	Richard		148			148
Phelan	Patrick	156				156
Riggs	Mary		80			80
Ronquillo	Bibiano	108				108
Shen	Emily		32			32
Soorya	Ranjana		15			15
Srinivas	Ratna		10			10
Tarandy	Dana	76	10			86
Wittman	Randy		172			172
Zaino	Ricca	239				239
<b>Total</b>		<b>2,005</b>	<b>1,363</b>	<b>409</b>	<b>32</b>	<b>3,809</b>

**EXHIBIT II**  
**Summary of July 2009 – June 2010 Inpatient Cases by Mercy Physician**

<u>Attending Physician</u>	<u>[A] Centegra McHenry</u>	<u>[B] Centegra Woodstock</u>	<u>[C] Advocate Good Shepherd</u>	<u>[D] Mercy Harvard</u>	<u>[E] St. Alexius Medical Center</u>	<u>[F] Comp data</u>	<u>[G] CON App.</u>	<u>[H] [G]-[F] Var.</u>
Albright, Kim (FP)	51	-	-	-	-	51	51	-
Asbury, Jeffrey B UROL)	-	5	-	5	-	10	21	11
Bistriceanu, Graziella (OTHR)	1	54	-	-	-	55	55	-
Campau, Steven A (OTHR)	-	-	63	-	-	63	63	-
Chatterji, Manju (PD)	51	16	-	-	-	67	67	-
Chitwood, Rick A (PD)	64	8	-	-	-	72	72	-
Cook, Richard O (OTHR)	-	217	-	-	-	217	259	42
Crawley, Terri L (OTHR)	-	141	-	-	-	141	141	-
Cundiff, Jason (OTHR)	6	2	8	-	-	16	68	52
DeHaan, Paul H (OTHR)	53	23	-	4	-	80	110	30
Dillon, Paul C (PS)	10	1	4	7	2	24	57	33
Favia, Julie (OTHR)	-	101	-	-	-	101	116	15
Fojtik, Joseph E (IM)	-	-	188	-	-	188	188	-
Gavran, Monica E (IM)	-	85	-	-	-	85	85	-
Goodman, David A (OTHR)	1	1	5	-	-	7	58	51
Gulati, Roshi (OTHR)	-	33	-	-	-	33	33	-
Gupta, Lata (OTHR)	-	64	-	-	-	64	75	11
Henning, Douglas A (OTHR)	-	17	-	-	-	17	17	-
Howey, Susan M (OTHR)	94	-	-	-	-	94	120	26
Hussain, Yasmin (OTHR)	-	2	-	-	-	2	38	36
Kakish, Nathan (OTHR)	-	171	-	-	-	171	171	-
Kang, Hiejin (OTHR)	26	-	-	-	-	26	26	-
Karna, Sandhya R (OTHR)	56	-	-	-	-	56	56	-
Karney, Michelle Y (OTHR)	-	99	-	-	-	99	105	6
Krpan, Marko F (OTHR)	38	6	-	-	-	44	59	15
Livingston, Gary L (OTHR)	4	2	5	-	-	11	67	56
Loqman, Mabria (FP)	-	-	-	15	-	15	158	143
MacDonald, Robert J (FP)	89	-	-	-	-	89	89	-
Marian, Camelia E (OTHR)	-	-	77	-	-	77	77	-
Mizra, Aisha A (OTHR)	-	132	-	-	-	132	132	-
Mitra, Deepak (IM)	104	30	-	-	-	134	134	-
Nath, Ranjana (PD)	49	21	-	-	-	70	70	-
Persino, Richard L (OBG)	127	-	-	-	-	127	148	21
Phelan, Patrick E (OTHR)	-	156	-	-	-	156	156	-
Riggs, Mary (OTHR)	109	-	-	-	-	109	163	54
Ronquillo, Bibiana C (OTHR)	-	108	-	-	-	108	108	-
Shen, Emily (OTHR)	32	-	-	-	-	32	32	-
Soorya, Ranjana P (OTHR)	15	-	-	-	-	15	15	-
Srinivas, Ratna R (OBG)	8	-	-	-	-	8	10	2
Tarandy, Dana T (OTHR)	2	50	-	4	-	56	95	39
Wittman, Randy S (OBG)	147	-	-	-	-	147	172	25
Zaino, Ricca Y (OBG)	-	190	-	-	-	190	239	49
<b>Total</b>	<b>1,137</b>	<b>1,735</b>	<b>350</b>	<b>35</b>	<b>2</b>	<b>3,259</b>	<b>3,976</b>	<b>717</b>

**EXHIBIT III**  
**Calculation of Lost Contribution**  
**Margin to Adjusted Lost Cases Based on COMPdata® Comparison**

<u>Service Category</u>	<u>[A]</u> Average Contribution Margin Per Case	<u>[B]</u> Adjusted Lost Cases	<u>[C]</u> [A] X [B] Lost Contribution Margin
Inpatient			
Centegra Hospital – Woodstock	\$3,290	1,735	\$5,708,150
Centegra Hospital – McHenry	\$3,775	<u>1,137</u>	<u>\$4,292,175</u>
Total Centegra		2,872	<u>\$10,000,325</u>

**MEMO**

Re: Public Hearing – Mercy Crystal Lake Hospital and Medical Center

Place: Crystal Lake City Hall, Council Chambers, 100 West Woodstock Street, Crystal Lake

Date: March 18, 2011

Time: 10:00am – 4:00pm

Hearing Officer: Courtney Avery

- 
- 83 individuals were in attendance but did not provide testimony
  - 52 individuals spoke in support of the project
  - 68 individuals spoke in opposition

# ILLINOIS HEALTH FACILITIES and SERVICES REVIEW BOARD

## Public Hearing Register

Project: Mercy Crystal Lake Hospital and Medical Center, Project #10-089      Date: March 18, 2011  
 Location: Crystal Lake City Hall, Council Chambers, 100 West Woodstock Street, Crystal Lake, IL.      Time: 10AM

### ATTENDANCE/NO TESTIMONY ON PROJECT

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED OR RESIDENT (PLEASE PRINT)	CITY (Please Print)	(S) SUPPORT (O) OPPOSED (N) NEUTRAL (PLEASE PRINT)
1	LISA GASIOR	CH&FC	Crystal Lake	<input type="radio"/>
2	Lindegay Knickrehm	Mercy	Crystal Lake	<input type="radio"/>
3	Danielle McClintock	Sidley Austin	Chicago	<input type="radio"/>
4	Tobin Hagg	McHenry County Building Trades	Crystal Lake	<input type="radio"/>
5	JBina Moshery	McHenry County Building Trades	ISLAND LAKE	<input type="radio"/>
6	TALC BREYER	JPA	Woodstock	<input type="radio"/>
7	Cathy Cofresi	Resident	McHenry	<input type="radio"/>
8	Ann Maher	Resident	Planty	<input type="radio"/>
9	Jennifer Baker-Greys	Resident	Woodstock	<input type="radio"/>
10	Rebecca Paszkowski	Centegra	Woodstock	<input type="radio"/>
11	Nina Parier	Centegra	McHenry	<input type="radio"/>
12	Rachel Sebastian	Centegra	McHenry	<input type="radio"/>
13	Danette Santana	Centegra	McHenry	<input type="radio"/>
14	Amy Merselbauer	Centegra	McHenry	<input type="radio"/>

# Attendance / No Testimony on Project

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED OR RESIDENT (PLEASE PRINT)	CITY (PLEASE PRINT)	(S) SUPPORT (O) OPPOSE (N) NEUTRAL (Please Print)
15	LUKE JOHNSON	Centegra	WOODSTOCK	C
16	DENISE BRAUSEN	Centegra	Crystal Lake	Opposed
17	BRYAN AURBAK	Centegra	Crystal Lake	O
18	MATT JOHNSON	Centegra	Crystal Lake	opposed
19	LEANNE WHITNEY	Centegra	WALWORTHVILLE	O
20	MICHAEL GLASER	Centegra	Crystal Lake	OPPOSED
21	JOE DURIN	ADL	Riverside	OPPOSED
22	CHRISTIE PERNS	Centegra	Lake in Hills	opposed
23	BARBARA STAMER	Centegra	Park Ridge	opposed
24	ANGELA MCHUGH	Centegra	Woodstock	opposed
25	FRANCES COOPER	Centegra	McHenry	opposed
26	JUDY ANDRONEWITZ	Centegra	McHenry IL	opposed
27	JOY RUDOLPH	Centegra	Huntley, IL	opposed
28	ANTHONY STAMER	Centegra	Geneva, IL	opposed
29	DEANNE STAMER	Centegra	Crystal Lake	opposed
30	TRICIA SELTON	Centegra	McHenry	OPPOSED
31	LISA O'NEIL	Centegra	LITTON, IL	opposed
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Opposed



# Attendance / No Testimony on Project

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED OR RESIDENT (PLEASE PRINT)	CITY (PLEASE PRINT)	(S) SUPPORT (O) OPPOSED (N) NEUTRAL (Please Print)
38	Kim Walkup	Community Member	SPRING	Opposed
39	Sheri Kohl	Centega	Meritt	Oppose
40	Matt Toole	Centega	Geneva	Opposed!
41	Myka Buchanan	CANTAGNA	McHenry	OPPOSE
42	Kim Piremo	Centega	CL	Opposed
43	Patrick Shennan	Centega	Lakemont, IL	Opposed.
44	Joe Smichly	Centega	Woodstock	OPPOSED.
45	GREG BRAUN	CENTEGA	WONDER LAKE	OPPOSED
46	KARA FRODMAN	Polisnelli Shughart	Chicago	
47	Jim ADAMSON	CENTEGA	LAMARCO	OPPOSED
48	DIANNE McLAUREN	CENTEGA	CRYSTAL LAKE	OPPOSED
49	NANCY JOEY	RESIDENT	CRYSTAL LAKE	OPPOSED
50	David SWINNEY	Centega	Woodstock	OPPOSED
51	Loren TOYRA	CENTEGA	McHenry	OPPOSED
52	Annamarie Cooper	Centega	Crystal Lake	OPPOSED
53	Kathleen GOKAN	Centega	COUNCIL LAKE	OPPOSED
54	Roy DENBURG	Centega	McHenry	OPPOSED
55	Debbie RATLIFF	Centega	CRYSTAL LAKE	OPPOSED
56	Merilyn WABIL	Centega	Wonder Lake	OPPOSED
57	Ashley Alexander	Centega	Gilberts	OPPOSED
58	Judy Johnson	Centega	McHenry	OPPOSED
59	Susan BERTSCHER	Centega + Residents	Woodstock	OPPOSED
60	Kathy WARD	Centega	Lakemont, IL	OPPOSED

#61 M. Gales D'Hanburg      Centega      Law in the Hills      opposed.

#62 Veronica Lock      Centega      Lake Duane Hill      opposed

#63 Eric ZORRIN      CENTEGA      ALBORN      OPPOSED

CRYSTAL LAKE SEPARATE

Attendance No / Test on Project

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED OR RESIDENT (PLEASE PRINT)	CITY (PLEASE PRINT)	(S) SUPPORT (O) ORAL (N) NEUTRAL (Please Print)
61	Tam Shadel	Mercy Health System		S
62	Joanne Gustafson	Centegra Health System		OPPOSE
63	ERIC HOBBERG	CENTEGRA HEALTH SYSTEM		OPPOSE
64	LARKA WHELAN	CENTEGRA HEALTH SYSTEM		OPPOSE
65	JASON SHANKS	Centegra Health System		OPPOSE
66	JOHN HERNANDEZ	CENTEGRA HEALTH SYSTEM		OPPOSE
67	FRED TERRY	Mercy Health System		OPPOSE
68	Jennifer Hallatt	Mercy Health System		Support
69	LORI KIEKELKE	CENTEGRA HEALTH SYSTEM		Support!
70	Andrea Forite	Mercy Health System		Support
71	ELLEN BOEY	Mercy Health System		Support
72	Jane Kipack	Mercy Health System		Support
73	RODIE MOUNT	CENTEGRA HEALTH SYSTEM		OPPOSE
74	William Stepnik	CENTEGRA HEALTH SYSTEM		OPPOSE
75	Valerie Johns	Mercy Health System		Support
76	Dawn Nersis	Centegra Health System		OPPOSE
77	Michelle Green	OL Resident		OPPOSE
78	Julie Hoberg	Prairie Grove Resident		OPPOSE
79	Tyler Lindquist	Mercy Health System		Support
80	Peter Lopatin	Centegra Health System		OPPOSE
81	KARA WILSTAMS	CENTEGRA HEALTH SYSTEM		OPPOSE
82	Andrew Steye	OL Resident		OPPOSE
83	Margaret Grayling	OL Resident		OPPOSE

11

Attendance No. Torham

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED OR RESIDENT (PLEASE PRINT)	CITY (PLEASE PRINT)	(S) SUPPORT (O) ORAL (N) NEUTRAL (Please Print)
84	<i>Chris Kurland</i>			
85	<i>Gene M. Borchert</i>	<i>Centegra Health System</i>		<i>OPPO SE</i>
86	<i>Shonda Shelton</i>	<i>Meruphealth System</i>		<i>support</i>
87		<i>Meruy Health System</i>		<i>support</i>
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# ILLINOIS HEALTH FACILITIES and SERVICES REVIEW BOARD

## Public Hearing Register

Project: Mercy Crystal Lake Hospital and Medical Center, Project #10-089      Date: March 18, 2011  
 Location: Crystal Lake City Hall, Council Chambers, 100 West Woodstock Street, Crystal Lake, IL. Time: 10AM

### TESTIMONY TO SUPPORT PROJECT

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED (PLEASE PRINT)	CITY (Please Print)	(O) ORAL (W) WRITTEN (B) BOTH (PLEASE PRINT)
✓ 1	JASON BEA (BAJ)	MERCY HEALTH SYSTEM	CRYSTAL LAKE	B
✓ 2	WES JOSE	MERCY BOARD MEMBER		B
✓ 3	DAN COEBY	MERCY VICE PRESIDENT		B
✓ 4	DAVID EICENSTADT 10 <sup>39</sup>	MERCY MICRD ENV CONSL	WASHINGTON	B
✓ 5	MARSHA TAYLOR 10 <sup>14</sup>	CITIZEN		B
✓ 6	<del>JEFF THORPSON</del> JEFF THORPSON	CRYSTAL LAKE CITY COUNCIL		B
✓ 7	<del>BOB SEEGELS</del> BOB SEEGELS 0 <sup>2</sup>	MERCY HEALTH SYSTEM	CITIZEN	B
✓ 8	KATHY KUS 11 <sup>10</sup>	MERCY HEALTH SYSTEM		B
✓ 9	BRETT TYLER 11 <sup>19</sup>	MERCY LEGACY HEALTH CARE		B
✓ 10	<del>TOMAS SHAEEL</del> TOMAS SHAEEL	MERCY HEALTH SYSTEM		B
✓ 11	RICHARD GUY 5 <sup>1</sup>	CITIZEN		B
✓ 12	KATHY ADAMS 5 <sup>4</sup>	MERCY HEALTH SYSTEM		B
✓ 13	FRED WICKHAM 0 <sup>4</sup>	CITIZEN		B
✓ 14	MICHAEL TCHENDOR 2 <sup>2</sup>	CITIZEN		B

Support

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED (PLEASE PRINT)	CITY (PLEASE PRINT)	(O) ORAL (W) WRITTEN (B) BOTH (Please Print)
✓ 15	FREDERICK RANDY WAYNE	CITIZEN	CRYSTAL LAKE	B
✓ 16	KATHLEEN SEIDT <sup>100</sup>	CITIZEN		B
✓ 17	KEN MROZEK <sup>22</sup>	CITIZEN		B
✓ 18	<del>VAL JOHNS<sup>21</sup></del>	<del>MERCY HEALTH SYSTEM</del>		<del>B</del>
✓ 19	CHRIS UPPER <sup>37</sup>	MERCY HEALTH SYSTEM		B
✓ 20	<del>BRET TORADY<sup>OK</sup></del>	<del>MERCY HEALTH SYSTEM</del>		<del>W</del>
✓ 21	<del>DR. VERA</del> <del>DELBERT</del> <del>DELBERT</del>	MERCY HEALTH SYSTEM		
✓ 22	TAMERA DENNIS <sup>48</sup> <sup>substituted</sup>	MERCY HEALTH SYSTEM		
✓ 23	SAND BOTTS <sup>66</sup> - reading for S. Chavez	MERCY HEALTH SYSTEM		
✓ 24	RALPH TOPNIKA <sup>32</sup>	MERCY HEALTH SYSTEM		
✓ 25	MIKE BIER <sup>22</sup>	MERCY HEALTH SYSTEM		
✓ 26	PAM SWEKRUO	MERCY HEALTH SYSTEM		
✓ 27	DAUGRADE SEJERSON	MERCY HEALTH SYSTEM		
✓ 28	NANCY DEWURE	MERCY HEALTH SYSTEM		
✓ 29	DR. KAKISH <sup>44</sup>	MERCY HEALTH SYSTEM		
✓ 30	CRYSTAL LAKE FIRE CHIEF	CL FIRE DEPT <sup>local</sup>	De Standt	
✓ 31	<del>WILLARD</del> <del>DR. VERA</del>	<del>MERCY HEALTH SYSTEM</del>	Tom Jensen	MERCY
✓ 32	PATTHY WYNDES - <sup>At. Terhune</sup>	MERCY HEALTH SYSTEM		
✓ 33	ROBIN WICKUS	MERCY HEALTH SYSTEM		
✓ 34	ADRIELLE DINA <sup>in Robert</sup>	MERCY HEALTH SYSTEM		
✓ 35	TRISH SKRAM	MERCY HEALTH SYSTEM		
✓ 36	KAREN WEIDEMAN <sup>57</sup>	CITIZEN		
✓ 37	CASSIE BARAN <sup>46</sup>	CITIZEN		

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#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED (PLEASE PRINT)	CITY (PLEASE PRINT)	(O) ORAL (W) WRITTEN (B) BOTH (Please Print)
✓ 38	ANDY GWAY CURCIT	MERCY HEALTH SYSTEM	CRYSTAL	B
✓ 39	LINDA COUGHLIN	MERCY HEALTH SYSTEM		
✓ 40	MICHAEL CHUBIRKA - <sup>no work experience</sup>	MERCY HEALTH SYSTEM		
✓ 41	DR. ALBRIGHT IS	MERCY HEALTH SYSTEM		
✓ 42	SHAWN TRUENPORT	MERCY HEALTH SYSTEM		
✓ 43	KEVIN POTTERH	MERCY HEALTH SYSTEM		
✓ 44	PHYLLIS GAY	MERCY HEALTH SYSTEM		
✓ 45	BILL SUPERMAN	MERCY HEALTH SYSTEM		
✓ 46	TAMERA DEMONICO <sup>PO</sup>	MERCY HEALTH SYSTEM		
✓ 47	CINDY BANKERT	MERCY HEALTH SYSTEM		
✓ 48	PENNY GOAD	MERCY HEALTH SYSTEM		
✓ 49	TENNIFER WHITTWELL	MERCY HEALTH SYSTEM		
✓ 50	<del>RICH GLUBER</del>	<del>MERCY HEALTH SYSTEM</del>		
✓ 51	DR. VARMA <sup>PO</sup>	MERCY HEALTH SYSTEM		Written
✓ 52	RICH GLUBER (ind)	MERCY HEALTH SYSTEM		
✓ 53	Jeanne Butler	Rendent	Crystal Lake	oral
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#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED (PLEASE PRINT)	CITY (PLEASE PRINT)	(O) ORAL (W) WRITTEN (B) BOTH (Please Print)
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#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED (PLEASE PRINT)	CITY (PLEASE PRINT)	(O) ORAL (W) WRITTEN (B) BOTH (Please Print)
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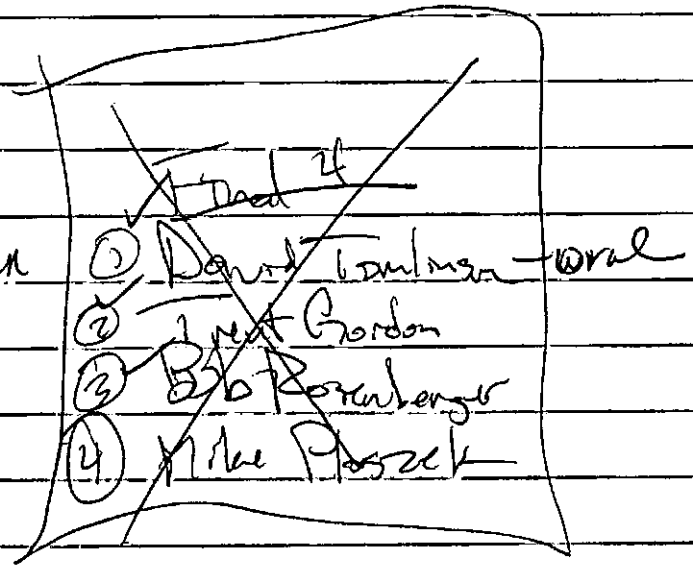
Opposition to Project # 10-089

- ✓ 1 Rick Floyd
- ✓ 2 Jason Sciarro
- ✓ 3 Karen Lambert Advocate COO 10-26
- ✓ 4 Dan Lawler
- ✓ 5 Kelly Clancy
- ✓ 6 Gene Dawson
- ✓ 7 Susan Milford 05
- ✓ 8 Terry Dunning 11<sup>12</sup>
- ✓ 9 Bill Moll, (William) Lake 24
- ✓ 10 Lee Pickarz 45
- ✓ 11 ~~Dr. Joe Giangrosso~~ Rick Takle 53
- ✓ 12 ~~Dr. Sol Secomsky~~ Dr. Joe Giangrosso 04
- ✓ 13 Aaron Shepley 16
- ✓ 14 Dr. Sol Secomsky 11
- ✓ 15 Ed Goldberg 26
- ✓ 16 Dr. Yvonne Yoo 16
- ✓ 17 Tim McDonnell 24
- ✓ 18 Dr. Matt Stilson 29
- ✓ 19 Dr. Dudley Brown 35 Skensier (for Brown)
- ✓ 20 Mike Waschowski 39
- ✓ 21 Sey Boeder 47
- ✓ 22 Charie Zuck - WRITTEN ONLY
- ✓ 23 Dr. Andrew Ward 201
- ✓ 24 Julie Mayer 08
- ✓ 25 Brett Wilrod - written only
- ✓ 26 Jean Marie Sandler 22
- ✓ 27 Elyse Forkosh - author 44

# Opposition to Project # 10-089

2013

- 10 ✓ 28. Dr. Ted Lorenc <sup>55</sup>
- ✓ 29. Dr. Wool <sup>102</sup> read by other
- ✓ 30. Kevin Richardson - writer
- ✓ 31. Dr. Amir Heydari
- ✓ 32. Ilene Steiner <sup>16</sup>
- ✓ 33. ~~Don~~ Calcagno <sup>8</sup>
- ✓ 34. Kent Schneider - WRITTEN ONLY
- ✓ 35. Tim Yusk <sup>43</sup>
- ✓ 36. Trent Gordon
- ✓ 37. Dr. Rex Nzeribe <sup>54</sup>
- 20 38. Dr. Pesavento
- ✓ 39. Collette Fraterigo <sup>04</sup>
- ✓ 40. Tom Zanck <sup>34</sup>
- ✓ 41. Mike Ploszek <sup>24</sup>
- 42. Bob Scott
- ✓ 43. Bob Rosenberger <sup>16</sup>
- 44. Reverend Fred Rajan
- 45. Jenny Elrod
- 46. Sheila Senn
- 47. Renne Norberg
- 20 48. Kari Downey
- 49. David Tomlinson
- 50. Therese Preusker
- 51. Lisa Fawkes
- 52. Rachel Sebastian
- 53. Kim Barker
- 54. Joan Grossman



# Opposition to Project # 10-089

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55. Ro Weermes
56. Loei Pinzon
57. Sharon Tanner
- v' 58. Scott Sullivan
59. Lind Serafin
60. Sabiha Uraizee
61. Hadley Streng
62. Dr. Daniel Hoetlgen
63. Dave Nelson
64. Dr. Marile Moje
65. Robert Nunamaker
66. Dr. Palmer
67. Howard Turk
- v' 68. Ellen Bakke

**MEMO**

Re: Public Hearing – Mercy Crystal Lake Hospital and Medical Center

Place: Crystal Lake City Hall, Council Chambers, 100 West Woodstock Street, Crystal Lake

Date: March 18, 2011

Time: 10:00am – 4:00pm

Hearing Officer: Courtney Avery

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- 68 individuals spoke in opposition

# ILLINOIS HEALTH FACILITIES and SERVICES REVIEW BOARD

## Public Hearing Register

Project: Mercy Crystal Lake Hospital and Medical Center, Project #10-089      Date: March 18, 2011  
 Location: Crystal Lake City Hall, Council Chambers, 100 West Woodstock Street, Crystal Lake, IL.      Time: 10AM

### ATTENDANCE/NO TESTIMONY ON PROJECT

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED OR RESIDENT (PLEASE PRINT)	CITY (Please Print)	(S) SUPPORT (O) OPPOSED (N) NEUTRAL (PLEASE PRINT)
1	LISA Gasior	CHRC	Crystal Lake	<input type="radio"/>
2	Lindsey Kuckreim	Mercy	Crystal Lake	<input type="radio"/> S
3	Danielle McCutcheon	Sidley Austin	Chicago	<input type="radio"/> N
4	Tobin Hopp	McHenry County Building Trades	Crystal Lake	<input type="radio"/> S
5	Brian Mesheray	McHenry County Building Trades	ISLAND LAKE	<input type="radio"/> S
6	TACI BRETZ	JPA	WOODSTOCK	<input type="radio"/>
7	Cathryn Cofeski	Resident	McHenry	<input type="radio"/>
8	Quinn Morley	Resident	Huntley	<input type="radio"/>
9	Jennifer Baker-Gregg	Resident	Woodstock	<input type="radio"/>
10	Rebecca Borkowski	Centegra	Woodstock	<input type="radio"/>
11	Nina Parier	Centegra	McHenry	<input type="radio"/>
12	Rachel Sebastian	Centegra	McHenry	<input type="radio"/>
13	Danette Santana	Centegra	Auntley	<input type="radio"/>
14	Amy Marshallbauer	Centegra	McHenry	<input type="radio"/>

# A-Hindrance / No Testimony on Project

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED OR RESIDENT (PLEASE PRINT)	CITY (PLEASE PRINT)	(S) SUPPORT (O) OPPOSE (N) NEUTRAL (please Print)
15	Luke Johnsons	Centegra	Woodstock	C
16	Denise Brausen	Centegra	Opeta/Lake	Opposed
17	Burn Auerbach	Centegra	Cornwall	O
18	Matt Johnson	Centegra	Cornwall	opposed
19	Leanne Whithy	Centegra	Walden	O
20	Michelle Blaster	Centegra	Walden	OPPOSED
21	Joe Durkin	Centegra	Riverside	Opposed
22	Christie Perist	Centegra	Lake in Hills	opposed
23	Barbara Ostromer	Centegra	Dank Ridge	opposed
24	Angela McAuley	Centegra	Woodstock	opposed
25	Frances Casper	Centegra	McHenry	opposed
26	Judy Andronovitz	Centegra	McHenry	opposed
27	Shirley Rudolph	Centegra	Huntley, IL	Opposed
28	Ant Bryson	Centegra	Geneva, IL	opposed
29	Denise Butler	Centegra	Geneva, IL	opposed
30	Linda Seltzer	Centegra	McHenry	OPPOSED
31	Lisa DiVail	Centegra	LITON, IL	Opposed
32				
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Opposed

# Attendance / No Testimony on Project

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED OR RESIDENT (PLEASE PRINT)	CITY (PLEASE PRINT)	(S) SUPPORT (O) OPPOSED (N) NEUTRAL, (Please Print)
38	Kim Walkup	Community Member	CAiry	Opposed
39	Sheri Kohn	Centega	McHenry	Oppose
40	Alana Tober	Centega	Geneva	Opposed
41	Mikr Buchanan	CANTAGNA	McHenry	OPPOSE
42	Kim Perano	Centega	CL	Opposed
43	Patrick Sherman	Centega	Lakemoor IL	Opposed
44	Joe Schmick	Centega	Woodstock	OPPOSE
45	GREG BRAUN	CENTEGA	MONROE LAKE	OPPOSED
46	KARA Friedman	Poliselli Shughart	Chicago	
47	Jim ADAMSON	CENTEGA	LAMARO	OPPOSED
48	DIANNE McLAUREN	CENTEGA	CRYSTAL LAKE	OPPOSED
49	NANCY DOFFEY	RESIDENT	CRYSTAL LAKE	OPPOSED
50	David SHUGART	Centega	Monroec	OPPOSED
51	Loren TORVAL	CENTEGA	McHENRY	OPPOSED
52	Annamarie Geopert	Centega	Crystal Lake	opposed
53	Rathleen Cozart	Centega	Countryside	opposed
54	Roy Lambert	Centega	McHenry	opposed
55	Debbie Rattier	Centega	Crystal Lake	opposed
56	Veronica Wabil	Centega	Windsor Lake	Opposed
57	Ashley Alexander	Centega	Gilberts	Opposed
58	Judy Johnson	Centega	McHenry	Opposed
59	Susan Brestauer	Centega + Residents	Woodstock	Opposed
60	Kathy Winkler	Centega	Lake in the Hills	opposed

#61 M. Elaine D'Harburg      Centega      Lake in the Hills      opposed

#62 Veronica Lott      Centega      Lake Park IL      opposed

#63 Eric Zolman      CENTEGA      ALBANY      OPPOSED

# Attendance No / Person OR Project

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED OR RESIDENT (PLEASE PRINT)	CITY (PLEASE PRINT)	(S) SUPPORT (O) OPAL (N) NEUTRAL (Please Print)
61	Joan Shadel	Mercy Health System		S
62	JOANNE GUSTASSON	Centegra Health System		OPPOSE
63	ERIC HOBERTG	CENTEGRA HEALTH SYSTEM		OPPOSE
64	LYNNA WYSEZAK	CENTEGRA HEALTH SYSTEM		OPPOSE
65	JANUS STANKO	Centegra Health System		OPPOSE
66	JOAN HARRIS	Centegra Health System		OPPOSE
67	FRED TERRY	Mercy Health System		OPPOSE
68	JENNIFER HALLATH	Mercy Health System		Support
69	LORI KREELKE	CENTEGRA HEALTH SYSTEM		Support!
70	ANDREA FIORITO	Mercy Health System		Support
71	ELIYAN BOISEY	Mercy Health System		Support
72	Sue Kipack	Mercy Health System		Support
73	ROBIN MOUNT	Centegra Health System		OPPOSE
74	William Stepanski	Centegra Health System		OPPOSE
75	Valerie Johns	Mercy Health System		Support
76	Ryan Nemack	Centegra Health System		OPPOSE
77	Michelle Green	CL Resident		OPPOSE
78	Julie Hoberg	Prairie Grove Resident		OPPOSE
79	Tyler Lindquist	Mercy Health System		Support
80	Peter Lopatin	Centegra Health System		OPPOSE
81	KARA WILKINS	CENTEGRA HEALTH SYSTEM		OPPOSE
82	Andrew George	CL Resident		OPPOSE
83	Margaret Gailling	Gary Resident		OPPOSE

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Attendants No Testimonies

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED OR RESIDENT (PLEASE PRINT)	CITY (PLEASE PRINT)	(S) SUPPORT (O) ORAL (N) NEUTRAL (Please Print)
84	Alan Kurland	Centegra Health System		Oppose
85	Janice M. Mischwitz	MeruHealth System		Support
86	Shonda Alkerton	Meru Health System		Support
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# ILLINOIS HEALTH FACILITIES and SERVICES REVIEW BOARD

## Public Hearing Register

Project: Mercy Crystal lake Hospital and Medical Center, Project #10-089      Date: March 18, 2011  
 Location: Crystal Lake City Hall, Council Chambers, 100 West Woodstock Street, Crystal lake, Il.      Time: 10AM

### TESTIMONY TO SUPPORT PROJECT

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED (PLEASE PRINT)	CITY (Please Print)	(O) ORAL (W) WRITTEN (B) BOTH (PLEASE PRINT)
✓ 1	JASON BEA (BAND)	MERCY HEALTH SYSTEM	CRYSTAL LAKE	B
✓ 2	WES JOST	MERCY BOARD MEMBER		B
✓ 3	DAN COBY	MERCY VICE PRESIDENT		B
✓ 4	DAVID EISENSTADT 10 <sup>39</sup>	MERCY MICRD EVAN CONSL	WASHINGTON	B
✓ 5	MARSHA TAYLOR 10 <sup>14</sup>	CITIZEN		B
✓ 6	<del>JEFF THORSON</del> JEFF THORSON	CRYSTAL LAKE CITY COUNCL		B
✓ 7	<del>BOB SEEGELS</del> BOB SEEGELS 0 <sup>7</sup>	MERCY HEALTH SYSTEM	CITIZEN	B
✓ 8	KATHY KUS 11 <sup>10</sup>	MERCY HEALTH SYSTEM		B
✓ 9	BRETT TYLER 11 <sup>19</sup>	MERCY LERANCY HEALTH CARE		B
✓ 10	<del>TOMAS SHADEL</del> CONNOR	MERCY HEALTH SYSTEM		B
✓ 11	RICHARD GAY 5 <sup>1</sup>	CITIZEN		B
✓ 12	LATHY ADAMS 5 <sup>4</sup>	MERCY HEALTH SYSTEM		B
✓ 13	FRED WYCKHAM 5 <sup>4</sup>	CITIZEN		B
✓ 14	MICHAEL TCHENDOR 2 <sup>7</sup>	CITIZEN		B

Support

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED (PLEASE PRINT)	CITY (PLEASE PRINT)	(O) ORAL (W) WRITTEN (B) BOTH (Please Print)
✓ 15	FREDERICK RANDY WAYNE	CITIZEN	CRYSTAL LAKE	B
✓ 16	KATHLEEN SEIDT <sup>100</sup>	CITIZEN		B
✓ 17	KEN MROZEK <sup>22</sup>	CITIZEN		B
✓ 18	VAL JOHNS <sup>21</sup>	MERCY HEALTH SYSTEM		B BOTH
✓ 19	CHRIS UPPER <sup>32</sup>	MERCY HEALTH SYSTEM		
✓ 20	<del>GREG TORDY OF</del>	MERCY HEALTH SYSTEM		written
✓ 21	<del>DR. VALENTIA</del> HILARIO DEBERAD	MERCY HEALTH SYSTEM		
✓ 22	TAMERA DENNIS <sup>18</sup>	MERCY HEALTH SYSTEM		
✓ 23	SAND BOTTS <sup>6</sup>	MERCY HEALTH SYSTEM		
✓ 24	RAFFT TOPNIKA <sup>32</sup>	MERCY HEALTH SYSTEM		
✓ 25	MIKE BIER <sup>22</sup>	MERCY HEALTH SYSTEM		
✓ 26	PAM SWEKRUO	MERCY HEALTH SYSTEM		
✓ 27	DAUNYADE SEJERSON	MERCY HEALTH SYSTEM		
✓ 28	NANCY DEWURE	MERCY HEALTH SYSTEM		
✓ 29	DR. KARISH <sup>14</sup>	MERCY HEALTH SYSTEM		
✓ 30	CRYSTAL LAKE FIRE CHIEF	CL FIRE DEPT	Crystal Lake	
✓ 31	<del>DR. VALENTIA</del> DR. VALENTIA	MERCY HEALTH SYSTEM	Tom Jensen	MERCY
✓ 32	WATKY WYNDES - Pt. Terhune	MERCY HEALTH SYSTEM		
✓ 33	ROBIN WOCKUS	MERCY HEALTH SYSTEM		
✓ 34	ADELLE DINA in Robot	MERCY HEALTH SYSTEM		
✓ 35	TRISH SKRAM	MERCY HEALTH SYSTEM		
✓ 36	KAREN WEIDEMAN <sup>52</sup>	CITIZEN		
✓ 37	CASSIE BARAN <sup>16</sup>	CITIZEN		

Support

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED (PLEASE PRINT)	CITY (PLEASE PRINT)	(O) ORAL (W) WRITTEN (B) BOTH (Please Print)
✓ 38	ANDY GAY CURCIT	MERCY HEALTH SYSTEM	Crystal Lake	B
✓ 39	LINDA COUGHLIN	MERCY HEALTH SYSTEM		
✓ 40	MICHAEL CHUBIRKA - <sup>Do not print name</sup>	MERCY HEALTH SYSTEM		
✓ 41	DR. ALBRIGHT IS	MERCY HEALTH SYSTEM		
✓ 42	STANLY THOMPSON	MERCY HEALTH SYSTEM		
✓ 43	KEVIN POTTER 14	MERCY HEALTH SYSTEM		
✓ 44	PHYLLIS GAY	MERCY HEALTH SYSTEM		
✓ 45	BILL SUPERBAUS	MERCY HEALTH SYSTEM		
✓ 46	TAMERA DEMONICO <sup>40</sup>	MERCY HEALTH SYSTEM		
✓ 47	CINDY BANKERT	MERCY HEALTH SYSTEM		
✓ 48	PENNY GOAD	MERCY HEALTH SYSTEM		
✓ 49	JENNIFER WHITWELL	MERCY HEALTH SYSTEM		
✓ 50	<del>RICH GRUBER</del>	MERCY HEALTH SYSTEM		
✓ 51	DR. VARMA <sup>40</sup>	MERCY HEALTH SYSTEM		Written
✓ 52	RICH GRUBER (lead)	MERCY HEALTH SYSTEM		Written
✓ 53	Johnnie Butler	Resident	Crystal Lake	oral
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Written

#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED (PLEASE PRINT)	CITY (PLEASE PRINT)	(O) ORAL (W) WRITTEN (B) BOTH (Please Print)
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#	NAME (Please Print)	AGENCY, ORGANIZATION OR INSTITUTION REPRESENTED (PLEASE PRINT)	CITY (PLEASE PRINT)	(O) ORAL (W) WRITTEN (B) BOTH (Please Print)
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Opposition to Project # 10-089

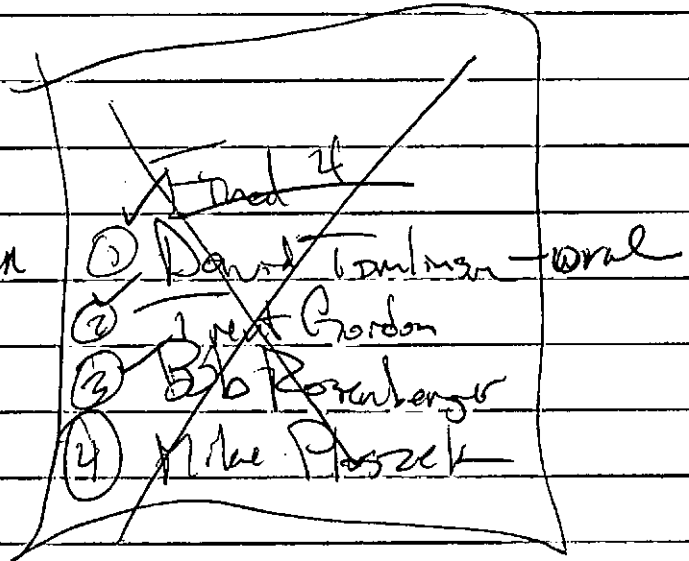
1023

- ✓ 1 Rick Floyd
- ✓ 2 Jason Sciarro
- ✓ 3 Karen Lambert Advocate COO 10-26
- ✓ 4 Dan Lawler
- ✓ 5 Kelly Clancy
- ✓ 6 Gene Dawson
- ✓ 7 Susan Milford 05
- ✓ 8 Terry Downing 11<sup>16</sup>
- ✓ 9 Bill Moll, (William) Lake 24
- ✓ 10 Lee Piekarz 45
- ✓ 11 ~~Dr. Joe Giangrosso~~ Rick Takle 53
- ✓ 12 ~~Dr. Sol Secomsky~~ Dr. Joe Giangrosso 04
- ✓ 13 Aaron Shepley 16
- ✓ 14 Dr. Sol Secomsky 11
- ✓ 15 Ed Goldberg 26
- ✓ 16 Dr. Yvonne Upso 16
- ✓ 17 Tim McDonnell 24
- ✓ 18 Dr. Matt Stilson 29
- ✓ 19 Dr. Dudley Brown 35 Skunskir (Mr Brown)
- ✓ 20 Mike Wasclowski 39
- ✓ 21 Sey Boeder 47
- ✓ 22 Charie Zurek — WRITTEN ONLY
- ✓ 23 Dr. Andrew Ward 201
- ✓ 24 Julie Mayer 08
- ✓ 25 Brett Wilrod — written only
- ✓ 26 Jean Marie Sandler 22
- ✓ 27 Elyse Forkosh — author 44

# Opposition to Project # 10-089

2013

- 10 ✓ 28. Dr. Ted Lorenc <sup>55</sup>
- ✓ 29. Dr. Wood <sup>102</sup> read by other
- ✓ 30. Kevin Richardson - writer
- ✓ 31. Dr. Amir Heydari
- ✓ 32. Ilene Steiner <sup>16</sup>
- ✓ 33. ~~Don~~ Calcagno <sup>78</sup>
- ✓ 34. Kent Schneidere - WRITTEN ONLY
- ✓ 35. Tim Yusk <sup>43</sup>
- ✓ 36. Trent Gordon
- ✓ 37. Dr. Rex Nzeribe <sup>54</sup>
- 20 38. Dr. Pesavento
- ✓ 39. Collette Fraterkigo <sup>04</sup>
- ✓ 40. Tom Zanck <sup>34</sup>
- ✓ 41. Mike Ploszek <sup>24</sup>
- 42. Bob Scott
- ✓ 43. Bob Rosenberger <sup>16</sup>
- 44. Reverend Fred Rajan
- 45. Jenny Elrod
- 46. Sheila Senn
- 47. Renne Norberg
- 20 48. Kari Downey
- 49. David Tomlinson
- 50. Therese Preusker
- 51. Lisa Fawkes
- 52. Rachel Sebastian
- 53. Kim Barker
- 54. Joan Grossman





Opposition to Project # 10-089

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55. Ro Wermes

56. Lori Pinzon

57. Sharon Tanner

58. Scott Sullivan

59. Lind Serafin

60. Sabiha Uraizee

61. Hadley Streng

62. Dr. Daniel Hoetlgen

63. Dave Nelson

64. Dr. Marile Moje

65. Robert Nunamaker

66. Dr. Palmer

67. Howard Turk

68. Ellen Bakke

## Public Hearing Opposition for Mercy Hospital Project, #10-089

Name: Sheila Senn

Address: 148 Glenbrook Trail  
McHenry, IL 60050

Title: Director of Behavioral Health Services, Centegra Health System

Good morning. My name is Sheila Senn, and I have been Director of Behavioral Health Services at Centegra Health System for the past 15 years. I am opposed to Mercy's project on a couple of grounds. Number 1 – It will not improve access to behavioral health services. Number 2 – By omitting these vital services in their plan, Mercy shows that it isn't truly committed to McHenry County, Illinois.

Behavioral health services do not bring a great profit for health systems, yet they are needed services in the community. The past few years have been some of the most economically and emotionally challenging for our country and our community. Unemployment and foreclosures have taken a toll at the same time that access and resources for mental health and substance abuse services have been seriously diminished. For example, just last fall, Advocate closed its behavioral health unit in our area.

Acute psychiatric services are not optional services; they are essential and should not be compromised. They are provided when nothing else will do to ensure the safety of the individual or others. It is for this reason that I echo great concern that Mercy's hospital project will not appropriately fill the need for behavioral health services for growing communities in Illinois – specifically southern McHenry County and northern Kane County. Mercy does not currently provide any behavioral health services in the state of Illinois, and the system does not appear to have any intention of bringing those services through their new hospital project.

On the other hand, Centegra continues to be the area's leading provider of inpatient and outpatient behavioral health services. We are partnered with other community agencies to educate the community, provide screenings and evolve to meet the changing needs of McHenry County and beyond. We do this even though we lose \$5 million on our behavioral health program every year.

When the Board looks at Mercy's application, I urge you to consider the entire scope of healthcare needs in our community. I urge you to recognize that Mercy is not committed to providing these critical services to the communities in their proposed project. Mercy is not a true community partner, and I ask you to reject this application.

## **Public Hearing Opposition for Mercy Hospital Project, #10-089**

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**Address:** 148 Glenbrook Trail  
McHenry, IL 60050

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## **Opposition to Project #10-089**

Good morning. My name is Scott Sullivan. Along with my wife and 2 daughters, I am a Crystal Lake resident. I'm here today to say that we don't need a hospital in Crystal Lake.

Let me explain.

Crystal Lake is full of shops and restaurants and is a great place to live and work. Part of what makes it so great is the accessibility to healthcare in many parts of the city. The northern and central areas of Crystal Lake are already well-served by doctor's offices, outpatient facilities and other medical services.

I, on the other hand, live in southern Crystal Lake. My neighbors and I are actually closer to other communities than to where Mercy is proposing to build.

If I had a choice between going to a new Mercy hospital or going to Huntley for care, I'd choose Huntley.

I'm not an expert in healthcare planning and I don't know much about the state's approval process. But I do know that if you look at a map of existing hospitals, you'll find a big hole – not in Crystal Lake, but in communities to the south.

I think the Board should use common sense and put a hospital in an area that really needs it.

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***Testimony of Marile Monje, MD***

360 Station Dr.  
Crystal Lake, ILLINOIS 60014

My name is Dr. Marile Monje, and I am a board certified internal medicine physician with Centegra Primary Care – Crystal Lake. I oppose Mercy Health System’s application to build a new hospital in Crystal Lake.

I am one of the many physicians who were formerly employed by Mercy Health System. I left the system in search of a better employer for myself and better care for my patients. I found both with Centegra Health System.

I became concerned as a Mercy employed physician when the system began pressuring me to take all my patients to Mercy Hospital Harvard. I found that practice questionable, and I also began to question the interests of Mercy Health System – did it care more about the best interests of its patients or about its bottom line?

Then, I believed it was important that patients receive high-quality medical care near their homes, where they can be supported by their family, friends and community. A long drive to Harvard wasn’t in the best interest of many of my patients, who lived in Woodstock, Crystal Lake or Huntley.

I respectfully ask the Illinois Health Facilities and Services Review Board to deny Mercy Health System’s application for a Certificate of Need to build a hospital in Crystal Lake. Thank you.

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***Testimony of Shiva Gupta, MD***

10350 Haligus Rd.

Huntley, IL 60142

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I respectfully ask the Illinois Health Facilities and Services Review Board to deny Mercy Health System's application for a Certificate of Need to build a hospital in Crystal Lake. Thank you.

**Opposed to Mercy Crystal Lake Hospital, Project 10-089**

Michelle Green  
6513 Coachlight Rd.  
Crystal Lake, IL 60012

My name is Michelle Green, and I am a wife and mother of two boys in Crystal Lake, Illinois. I am firmly opposed to a new Mercy Health hospital in my town.

Where many people from Mercy Health are discussing how long it takes to get to nearby hospitals, I have never heard a Crystal Lake friend, neighbor or fellow church member say they had to travel too far in too much traffic to reach a doctor's appointment or hospital. The only people who think that the people of Crystal Lake need increased access to healthcare seem to be those from Mercy.

I am more than satisfied with the healthcare choices available to me in Crystal Lake. My husband and I have received care from Provena Saint Joseph Hospital, Advocate Good Shepherd Hospital and Centegra Hospital-Woodstock. Our son has seen a Children's Memorial physician at Northwest Community Hospital and a specialist at Loyola, and, lucky for us, we've also visited the pediatric Emergency Department at St. Alexius Medical Center. We rely heavily on Centegra Hospital-McHenry to provide care to my mother-in-law, who lives at the Fountains of Crystal Lake assisted living facility and needs regular healthcare.

My north Crystal Lake home is close to both Centegra Hospital – McHenry and Centegra Hospital – Woodstock. I currently travel to Centegra's facilities in Huntley whenever I need to see one of my physicians. Dr. Yvonne Yao, who left Mercy Health System to join Centegra Primary Care's staff, is my obstetrician/gynecologist. Like many of her patients, I followed her to Centegra and have been thrilled with my decision. Because I wanted all of my physicians to be through Centegra Primary Care for both the quality of care and their electronic medical record, I began seeing Dr. Erin Davis, an internal medicine physician at Centegra Primary Care – McHenry. As a Crystal Lake resident, it takes me 15 minutes to get to Dr. Yao in Huntley and just eight minutes to see Dr. Davis in McHenry. I get to my physicians faster than I get to the grocery store. I love the easy access Centegra provides my family and me. If anything, I fear that a new hospital would create more traffic at the intersection of Highway 31 and Three Oaks Road, which would drive me crazy.

Please add my name to the long list of people who oppose a new Mercy hospital in Crystal Lake. With the abundance of high-quality healthcare providers available to my family and me, I see absolutely no reason to allow a new hospital to be built in my town. Thank you.

## **Opposed to Mercy Crystal Lake Hospital, Project 10-089**

Michelle Green  
6513 Coachlight Rd.  
Crystal Lake, IL 60012

My name is Michelle Green, and I am a wife and mother of two boys in Crystal Lake, Illinois. I am firmly opposed to a new Mercy Health hospital in my town.

Where many people from Mercy Health are discussing how long it takes to get to nearby hospitals, I have never heard a Crystal Lake friend, neighbor or fellow church member say they had to travel too far in too much traffic to reach a doctor's appointment or hospital. The only people who think that the people of Crystal Lake need increased access to healthcare seem to be those from Mercy.

I am more than satisfied with the healthcare choices available to me in Crystal Lake. My husband and I have received care from Provena Saint Joseph Hospital, Advocate Good Shepherd Hospital and Centegra Hospital-Woodstock. Our son has seen a Children's Memorial physician at Northwest Community Hospital and a specialist at Loyola, and, lucky for us, we've also visited the pediatric Emergency Department at St. Alexius Medical Center. We rely heavily on Centegra Hospital-McHenry to provide care to my mother-in-law, who lives at the Fountains of Crystal Lake assisted living facility and needs regular healthcare.

My north Crystal Lake home is close to both Centegra Hospital – McHenry and Centegra Hospital – Woodstock. I currently travel to Centegra's facilities in Huntley whenever I need to see one of my physicians. Dr. Yvonne Yao, who left Mercy Health System to join Centegra Primary Care's staff, is my obstetrician/gynecologist. Like many of her patients, I followed her to Centegra and have been thrilled with my decision. Because I wanted all of my physicians to be through Centegra Primary Care for both the quality of care and their electronic medical record, I began seeing Dr. Erin Davis, an internal medicine physician at Centegra Primary Care – McHenry. As a Crystal Lake resident, it takes me 15 minutes to get to Dr. Yao in Huntley and just eight minutes to see Dr. Davis in McHenry. I get to my physicians faster than I get to the grocery store. I love the easy access Centegra provides my family and me. If anything, I fear that a new hospital would create more traffic at the intersection of Highway 31 and Three Oaks Road, which would drive me crazy.

Please add my name to the long list of people who oppose a new Mercy hospital in Crystal Lake. With the abundance of high-quality healthcare providers available to my family and me, I see absolutely no reason to allow a new hospital to be built in my town. Thank you.

## **Opposed to Mercy Crystal Lake Hospital, Project 10-089**

Michelle Green  
6513 Coachlight Rd.  
Crystal Lake, IL 60012

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**Testimony of Rachel Sebastian  
In opposition to Project 10-089**

My name is Rachel Sebastian, and I am responsible for the overall strategic leadership of Centegra Health System's service lines.

I oppose Mercy Health System Project 10-089. Plain and simple, Crystal Lake is not abandoned when it comes to healthcare.

Crystal Lake is always included in Centegra's plans for responsible development. We have a longstanding commitment to McHenry County, and we are constantly thinking about our patients and examining the best ways to serve them. Simply put, we expand our services as our patients need them. If we thought a full-service hospital was needed in this area of the county, we would have proposed one too.

The proposed service area for Mercy Hospital Crystal Lake makes the unnecessary duplication of services very clear. If this hospital were approved, many people in its service area would have to drive past Centegra Hospital-Woodstock or Centegra Hospital-McHenry in order to get there. What's more – The central portions of Crystal Lake are just as close to one of Centegra's existing hospitals as they would be to Mercy's proposed facility at the edge of Crystal Lake and Cary.

Centegra and other healthcare providers have previously identified the need for ancillary services here, and we have appropriately brought those to the community. Centegra, in particular, recently opened an Immediate Care Center here, as well as the Centegra Gavers Breast Center.

The Gavers Breast Center is the hub of Centegra's Breast Health Services. This new, centralized location offers a multidisciplinary team approach with leading-edge technology, consolidated screening and diagnostic services, quality medical care and interactive support systems to address all breast issues. This is what it means to have an integrated delivery system right here in Illinois. We are able to provide services like this precisely where and when they are needed.

Crystal Lake is a relatively big town, but that isn't reason enough to justify an entirely new hospital here – especially when you consider the services that are already provided here and in the nearby communities. I ask the Board to reject this proposal.

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## Public Hearing Opposition for Mercy Hospital Project, #10-089

Name: Sheila Senn  
Address: 148 Glenbrook Trail  
McHenry, IL 60050  
Title: Director of Behavioral Health Services, Centegra Health System

Good morning. My name is Sheila Senn, and I am the Director of Behavioral Health Services at Centegra Health System. I am opposed to Mercy's project for 2 primary reasons: first, it will not improve access to behavioral health services; and second, by omitting these vital services in their plan, Mercy shows that it isn't truly committed to McHenry County, Illinois.

Behavioral health services do not bring a great profit for health systems, yet they are needed services in the community. The past few years have been some of the most economically and emotionally challenging for our country and our community. Unemployment and foreclosures have taken a toll at the same time that access and resources for mental health and substance abuse services have been seriously diminished. For example, just last fall, Advocate closed its behavioral health unit in our area.

Acute psychiatric services are not optional services; they are essential and should not be compromised. They are provided when nothing else will do to ensure the safety of the individual or others. It is for this reason that I am seriously concerned that Mercy's hospital project will not appropriately fulfill the need for behavioral health services and community outreach and partnerships for growing communities in Illinois – specifically southern McHenry County and northern Kane County. Mercy does not currently provide any behavioral health services in the state of Illinois, and the system does not appear to have any intention of bringing those services through their new hospital project.

At Centegra we have remained steadfast in our commitment to the health and wellbeing of our community. To that end, we are the only provider of acute inpatient and outpatient behavioral health services. Additionally, we are partnered with other community agencies to educate the community, provide screenings and evolve to meet the changing needs of McHenry County and beyond. We do this even though we lose \$5 million on our behavioral health program every year.

When the Board looks at Mercy's application, I urge you to consider the entire scope of healthcare needs in our community. I urge you to recognize that Mercy is not committed to providing these critical services to the communities in their proposed project. Mercy is not a true community partner, and I ask you to reject this application.

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**Richard M. Johns, Sr.**  
2012 Woodside Drive  
Woodstock, IL 60098  
(815) 337-1490

March 14, 2011

Ms. Courtney R. Avery  
Administrator  
Illinois Health Facilities and Services Review Board  
525 West Jefferson  
Second Floor  
Springfield, Illinois 62761

Dear Ms. Avery:

I am 77 years old and live in McHenry County approximately 7 miles from Crystal Lake. Since moving to McHenry County I have had the unfortunate experience of needing hospitalization on several occasions. Wanting to stay close to home my choice of hospitals is limited. Being the one who waits for hours in the emergency department and then in a holding area overnight I can definitely say that the lack of hospital beds in my community is significant.

Centegra officials tell us that another hospital is not needed in Crystal Lake but they want to build one in Huntley, Il even though there are two hospitals close by. Both hospitals do not have bed shortages. They want to build it when the population grows. What if the population does not grow? We need a hospital where the community needs it.

Approving Mercy's application for a new hospital will improve access for patients and the quality of care. I have had multiple opportunities to use Mercy Health System services and they have always been top notch. I strongly urge the Illinois Health Facilities Planning Board members to approve Mercy's application for a new hospital in Crystal Lake, Illinois. It is many years overdue.

Sincerely,



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03/15/2011

Dr. Varma  
415 Congress Parkway Suite C  
Crystal Lake, IL. 60014

To Whom It May Concern;

On March 4, 2011, I went to the NIMC emergency room at your request, for elevated blood pressure. You requested that I go to the ER only after exhausting all other attempts for me to be seen by my PCP or at the Immediate Care Center. Upon entering the ER, I observed that the waiting area was full (it was 4 pm). The nurse took my information and asked me to wait to be called.

I was then called into a small room and my vitals taken which indicated a significantly high blood pressure. About this time I asked is the ER normally this busy, and the nurse stated yes this is quite normal. At that time was again asked to have a seat and wait. While sitting in the waiting room I observed at least 10 times that paramedics and ambulance medical support staff bring stretchers with what appeared to be people with significant health issues.

About three hours later I was taken to an examination room in the ER. IV's were administered and EKG, pulse and blood pressure monitors were attached.

I was in this area for about 15 minutes, and the ER doctor came in and said he has looked at my chart, and there was really nothing for him to do "he has seen blood pressures much higher than this and there is nothing he would do for high blood pressure like this". He then told me the nurse would be in to remove my monitoring devices. I could see my nurse working on other patients, and after 15 minutes, I removed the EKG and pulse monitor, got dressed and went to the front desk to have the IV removed from my hand. The front desk staff sent me back to the ER and told me to wait for the nurse. I waited about another ten minutes and finally she had time to remove the IV, and I was discharged.

The entire process from the time I entered the ER to the time I left was well over three and a half hours.

It appeared to me that the facility was over whelmed and possible patient care was suffering.

I am not faulting the staff as much as the system and the over crowded hospital. I believe the patient care is in jeopardy.

Thank you for your time in reading these comments. I think there needs to be changes to the availability of healthcare in this county and feel another hospital is needed.

Thank You

Jerome Baumgart  
3618 Greenleaf Court  
Spring Grove, IL. 60081

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**Mercy Crystal Lake Hospital Project #10-089 Public Hearing  
Opposition Testimony  
March 18, 2011**

My name is Rowena Wermes and I am a Project Manager with Centegra Health System.

Whatever Mercy did to get the Malcolm Baldrige quality award, it obviously was not based on their CON applications. Mercy's latest CON application, as its predecessor, was shoddily prepared and does not meet the State Board's rules.

The current application identifies "Excessive traffic congestion that results in current and future excessive travel times to the other facilities" as an existing problem or issue that needs to be addressed. (CON Application at 92.) In support of this claim, Mercy includes a traffic study performed by Gewalt Hamilton in December 2010. Mercy also refers to an earlier study performed by Gewalt in 2003 for the prior Mercy Crystal Lake CON application, Project No. 03-049. Mercy states in its current application, "In a traffic study commissioned by the applicant in 2003, peak travel times between the applicant site and the two nearest hospitals in the region demonstrated the traffic congestion associated with these two thoroughfares. The same traffic study was updated for purposes of this application, and its findings demonstrate the continued congestion in the region." (CON Application at 92.)

So I compared the 2 traffic studies prepared by Gewalt Hamilton side by side and here's what I found:

1. Contrary to Gewalt's prediction in 2003 that travel times would have greatly increased by now, the actual studies show that from 2003 to 2010 the travel times remained fairly consistent and actually decreased in some instances. The claimed "excessive traffic congestion" has not occurred. It is worth noting that the 2003 study was completed in mid-June while the 2010 study was performed on December 22<sup>nd</sup> during the holiday shopping rush. (Mercy has appended the 2003 travel times from the prior Gewalt study on page 108 of its CON application. Note that this document is dated June 27, 2003, and is not part of the 2010 study.)
2. Seven years have passed since the 2003 study, and the travel times reported in the 2010 study are still under the projected 5 year peak travel time round trip from the 2003 study.
3. Unlike its 2003 study, Gewalt's 2010 study makes no prediction of future travel times. Yet, Mercy has appended to Gewalt's 2010 study the Future Travel Times Exhibit from the 2003 study to make it appear that Gewalt now continues to predict "excessive"



future travel times. This Exhibit, on page 109 of Mercy's CON Application, is dated (in very small print) June 27, 2003 and appears in the application as if it were part of Gewalt's 2010 study. This is either gross negligence or outright dishonesty.

The travel time study included in Mercy's current CON application fails to meet the State Board's criteria (Section 1100.510(e) in the following respects:

1. The study fails to affirm that it was conducted by an engineering firm pre-qualified by the Illinois Department of Transportation or conducted by a properly certified engineer. While the study has a cover memorandum from a professional engineer, he does not claim to have conducted the study.
2. The study has more than one-third of its round-trips during a rush hour period, in violation of the State Board's criterion. Over 60% of the trips to and from Centegra Hospital-Woodstock were conducted during rush hour periods. Over 66% of the trips to and from Centegra Hospital-McHenry were conducted during rush hour periods.
3. The study fails to provide average travel times for one-way trips.
4. The travel routes and calculations of normal travel times are not documented and sealed by the responsible professional engineer as required by the State Board's criterion.

I respectfully request the Health Facilities Services and Review Board to reject this application because it was shoddily prepared and because it does not meet the State Board's rules.

Thank you.

I'm submitting my chart that compares the two studies side by side.

2003 Traffic Study Results				2010 Traffic Study Results			
Source: Mercy CON application 2003, Project #03-049				Source: Mercy CON application 2010, Project #10-089 Green shading indicates where 2010 round trip travel times are better than 2003 study results peak round trip times			
Proposed Site to Centegra Hospital – Woodstock							
Trip	Total	Round Trip	Peak Round Trip	Trip	Total	Round Trip	Peak Round Trip
Thursday June 12, 2003 7am-9am				Wednesday December 22, 2010 7am-9am			
1 To Hospital	19 min	36	37 min	1 To Hospital	20:43	36:44	36 min
From Hospital	17 min			From Hospital	16:01		
2 To Hospital	19 min	35		2 To Hospital	17:52	33:54	
From Hospital	16 min			From Hospital	16:02		
3 To Hospital	20 min	37		3 To Hospital	16:51	32:50	
From Hospital	17 min			From Hospital	15:59		
Thursday June 12, 2003 11am-1pm				Wednesday December 22, 2010 11am-1pm			
4 To Hospital	21 min	42	42 min	4 To Hospital	20:25	37:41	44 min
From Hospital	21 min			From Hospital	17:16		
5 To Hospital	22 min	41		5 To Hospital	19:23	40:25	
From Hospital	19 min			From Hospital	21:02		
6 To Hospital	22 min	42		6 To Hospital	20:27	44:39	
From Hospital	20 min			From Hospital	24:12		
Thursday June 12, 2003 4pm-6pm				Wednesday December 22, 2010 4pm-6pm			
7 To Hospital	23 min	43	43 min	7 To Hospital	20:08	48:31	55 min
From Hospital	20 min			From Hospital	28:23		
8 To Hospital	22 min	42		8 To Hospital	21:58	54:57	
From Hospital	20 min			From Hospital	32:59		
9 To Hospital	20 min	38					
From Hospital	18 min						
Saturday June 14, 2003 11AM – 1:30pm							
1 To Hospital	22 min	43	43 min				
From Hospital	21 min						
2 To Hospital	21 min	40					
From Hospital	19 min						
3 To Hospital	21 min	42					
From Hospital	21 min						

<b>2003 Traffic Study Results</b> Source: Mercy CON application 2003, Project #03-049	<b>2010 Traffic Study Results</b> Source: Mercy CON application 2010, Project #10-089 Green shading indicates where 2010 round trip travel times are better than 2003 study results peak round trip times
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**Proposed Site to Centegra Hospital – McHenry**

Trip	Total	Round Trip	Peak Round Trip	Trip	Total	Round Trip	Peak Round Trip
Saturday June 7, 2003 11am-1:30pm							
1 To Hospital From Hospital	12 min 11 min	23	27 min				
2 To Hospital From Hospital	12 min 12 min	24					
3 To Hospital From Hospital	12 min 13 min	25					
4 To Hospital From Hospital	14 min 13 min	27					
5 To Hospital From Hospital	11 min 13 min	21					

Thursday June 12, 2003 7am-9am				Wednesday December 22, 2010 7am-9am			
1 To Hospital From Hospital	12 min 12 min	24	27 min	1 To Hospital From Hospital	14:52 13:38	28:30	28 min
2 To Hospital From Hospital	12 min 12 min	24		2 To Hospital From Hospital	13:39 13:27	27:06	
3 To Hospital From Hospital	11 min 11 min	22		3 To Hospital From Hospital	11:51 11:48	23:39	
4 To Hospital From Hospital	11 min 14 min	25		4 To Hospital From Hospital	10:23 11:00	21:23	
5 To Hospital From Hospital	9 min 12 min	21					

Thursday June 12, 2003 11am-1:30pm				Wednesday December 22, 2010 11am-1pm			
6 To Hospital From Hospital	11min 12 min	23	24 min	5 To Hospital From Hospital	12:34 12:44	25:18	27 min
7 To Hospital From Hospital	11 min 12 min	23		6 To Hospital From Hospital	13:57 13:39	27:36	
8 To Hospital From Hospital	12 min 12 min	24		7 To Hospital From Hospital	11:32 12:22	23:54	
9 To Hospital From Hospital	12 min 11 min	23		8 To Hospital From Hospital	11:46 14:24	26:10	
10 To Hospital From Hospital	11 min 13 min	24					

Thursday June 12, 2003 4pm-6pm				Wednesday December 22, 2010 4pm-6pm			
11 To Hospital From Hospital	13 min 13 min	26	28 min	9 To Hospital From Hospital	15:05 04:18	19:23	29 min
12 To Hospital From Hospital	15 min 13 min	28		10 To Hospital From Hospital	13:35 13:32	27:07	
13 To Hospital From Hospital	13 min 12 min	25		11 To Hospital From Hospital	15:07 14:34	29:41	
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future travel times. This Exhibit, on page 109 of Mercy's CON Application, is dated (in very small print) June 27, 2003 and appears in the application as if it were part of Gewalt's 2010 study. This is either gross negligence or outright dishonesty.

The travel time study included in Mercy's current CON application fails to meet the State Board's criteria (Section 1100.510(e)) in the following respects:

1. The study fails to affirm that it was conducted by an engineering firm pre-qualified by the Illinois Department of Transportation or conducted by a properly certified engineer. While the study has a cover memorandum from a professional engineer, he does not claim to have conducted the study.
2. The study has more than one-third of its round-trips during a rush hour period, in violation of the State Board's criterion. Over 60% of the trips to and from Centegra Hospital-Woodstock were conducted during rush hour periods. Over 66% of the trips to and from Centegra Hospital-McHenry were conducted during rush hour periods.
3. The study fails to provide average travel times for one-way trips.
4. The travel routes and calculations of normal travel times are not documented and sealed by the responsible professional engineer as required by the State Board's criterion.

I respectfully request the Health Facilities Services and Review Board to reject this application because it was shoddily prepared and because it does not meet the State Board's rules.

Thank you.

I'm submitting my chart that compares the two studies side by side.

2003 Traffic Study Results				2010 Traffic Study Results			
Source: Mercy CON application 2003, Project #03-049				Source: Mercy CON application 2010, Project #10-089 Green shading indicates where 2010 round trip travel times are better than 2003 study results peak round trip times			
Proposed Site to Centegra Hospital – Woodstock							
Trip	Total	Round Trip	Peak Round Trip	Trip	Total	Round Trip	Peak Round Trip
Thursday June 12, 2003 7am-9am				Wednesday December 22, 2010 7am-9am			
1 To Hospital From Hospital	19 min 17 min	36	37 min	1 To Hospital From Hospital	20:43 16:01	36:44	36 min
2 To Hospital From Hospital	19 min 16 min	35		2 To Hospital From Hospital	17:52 16:02	33:54	
3 To Hospital From Hospital	20 min 17 min	37		3 To Hospital From Hospital	16:51 15:59	32:50	
Thursday June 12, 2003 11am-1pm				Wednesday December 22, 2010 11am-1pm			
4 To Hospital From Hospital	21 min 21 min	42	42 min	4 To Hospital From Hospital	20:25 17:16	37:41	44 min
5 To Hospital From Hospital	22 min 19 min	41		5 To Hospital From Hospital	19:23 21:02	40:25	
6 To Hospital From Hospital	22 min 20 min	42		6 To Hospital From Hospital	20:27 24:12	44:39	
Thursday June 12, 2003 4pm-6pm				Wednesday December 22, 2010 4pm-6pm			
7 To Hospital From Hospital	23 min 20 min	43	43 min	7 To Hospital From Hospital	20:08 28:23	48:31	55 min
8 To Hospital From Hospital	22 min 20 min	42		8 To Hospital From Hospital	21:58 32:59	54:57	
9 To Hospital From Hospital	20 min 18 min	38					
Saturday June 14, 2003 11AM – 1:30pm							
1 To Hospital From Hospital	22 min 21 min	43	43 min				
2 To Hospital From Hospital	21 min 19 min	40					
3 To Hospital From Hospital	21 min 21 min	42					

**2003 Traffic Study Results**  
 Source: Mercy CON application 2003, Project #03-049

**2010 Traffic Study Results**  
 Source: Mercy CON application 2010, Project #10-089  
 Green shading indicates where 2010 round trip travel times are better than 2003 study results peak round trip times

**Proposed Site to Centegra Hospital – McHenry**

Trip	Total	Round Trip	Peak Round Trip	Trip	Total	Round Trip	Peak Round Trip
Saturday June 7, 2003 11am-1:30pm							
1 To Hospital From Hospital	12 min 11 min	23	27 min				
2 To Hospital From Hospital	12 min 12 min	24					
3 To Hospital From Hospital	12 min 13 min	25					
4 To Hospital From Hospital	14 min 13 min	27					
5 To Hospital From Hospital	11 min 13 min	21					
Thursday June 12, 2003 7am-9am				Wednesday December 22, 2010 7am-9am			
1 To Hospital From Hospital	12 min 12 min	24	27 min	1 To Hospital From Hospital	14:52 13:38	28:30	28 min
2 To Hospital From Hospital	12 min 12 min	24		2 To Hospital From Hospital	13:39 13:27	27:06	
3 To Hospital From Hospital	11 min 11 min	22		3 To Hospital From Hospital	11:51 11:48	23:39	
4 To Hospital From Hospital	11 min 14 min	25		4 To Hospital From Hospital	10:23 11:00	21:23	
5 To Hospital From Hospital	9 min 12 min	21					
Thursday June 12, 2003 11am-1:30pm				Wednesday December 22, 2010 11am-1pm			
6 To Hospital From Hospital	11min 12 min	23	24 min	5 To Hospital From Hospital	12:34 12:44	25:18	27 min
7 To Hospital From Hospital	11 min 12 min	23		6 To Hospital From Hospital	13:57 13:39	27:36	
8 To Hospital From Hospital	12 min 12 min	24		7 To Hospital From Hospital	11:32 12:22	23:54	
9 To Hospital From Hospital	12 min 11 min	23		8 To Hospital From Hospital	11:46 14:24	26:10	
10 To Hospital From Hospital	11 min 13 min	24					
Thursday June 12, 2003 4pm-6pm				Wednesday December 22, 2010 4pm-6pm			
11 To Hospital From Hospital	13 min 13 min	26	28 min	9 To Hospital From Hospital	15:05 04:18	19:23	29 min
12 To Hospital From Hospital	15 min 13 min	28		10 To Hospital From Hospital	13:35 13:32	27:07	
13 To Hospital From Hospital	13 min 12 min	25		11 To Hospital From Hospital	15:07 14:34	29:41	
14 To Hospital From Hospital	13 min 12 min	25		12 To Hospital From Hospital	12:39 13:05	25:44	
15 To Hospital From Hospital	13 min 12 min	25					

## **Opposed to Mercy Health System hospital in Crystal Lake**

**Project # 10-089**

Name: John Heinrich

Address: 4201 Medical Center Drive

McHenry, IL 60050

In greater McHenry County, only one healthcare system has demonstrated an ongoing commitment to bringing the best medical imaging technology to the community -- Centegra Health System. The technology that we offer in our 128-slice CT is an excellent example. Mercy Health System's lack of commitment to quality medical imaging is quite evident in the 16-slice CT scanner at their Harvard, Ill. location. In contrast, Centegra's awesome technology allows for reduced radiation exposure dosage, enhanced image quality, and offers improved speed, which equates to shorter scan times. As Centegra develops new services to meet and exceed the needs and expectations of the people of southern McHenry and northern Kane Counties, we will deliver on our promise to provide leading healthcare services to our community members.

In addition to our 128-slice CT scanner in Huntley, we also provide state-of-the-art technology in our 3.0 Tesla MRI. Our goal as a system is to provide the highest level of care to our patients and in doing so, to remain a leader in healthcare in our region. To accomplish the level of care we strive to provide, any healthcare system must invest in the tools necessary that will help physicians and Associates succeed. Mercy Health System does not make this investment in its Harvard hospital, nor do I believe it has plans to commit to such high-quality imaging at the proposed Crystal Lake hospital.

Please deny Mercy Health System a CON for its proposed Crystal Lake hospital. Thank you.



## **Opposed to Mercy Health System hospital in Crystal Lake**

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Please deny Mercy Health System a CON for its proposed Crystal Lake hospital. Thank you.

Public Hearing Testimony for Hadley Streng  
Opposition for Mercy Crystal Lake Project #10-089  
March 18, 2011

Good morning. My name is Hadley Streng and I am the Director of Planning and Business Development for Centegra Health System.

I would like to rebut Mercy's claim that there is a limitation on access to hospital services in Crystal Lake due to a maldistribution of beds. To the contrary, Crystal Lake residents have ample access to hospital services, and placing a new hospital in Crystal Lake would cause, not cure, a maldistribution of beds.

First, Mercy has failed to take into account the location of the nearby existing facilities to the Crystal Lake zip codes. There are three existing hospitals within 6 miles of Crystal Lake zip codes, two are within 2.6 miles, and Centegra Hospital-Woodstock is within 1.4 miles. Based on Mapquest, driving times to the Crystal Lake zip codes are as follows (note that travel times are adjusted by a factor of 1.15 and rounded up):

- Centegra Hospital – Woodstock is only 1.4 miles and 2 minutes to the west of the Crystal Lake zip codes
- Centegra Hospital – McHenry is just 2.6 miles and 5 minutes to the north of the Crystal Lake zip codes
- Advocate Good Shepherd is only 5.9 miles and 13 minutes to the east of the Crystal Lake zip codes

I'm submitting an attachment that shows the proximity of existing facilities to the Crystal Lake zip codes as well as the details from Mapquest. Placing a new facility so close to three existing facilities would cause a maldistribution of beds in the A-10 Planning Area. Crystal Lake is not the right location to address the Planning Area's bed need.

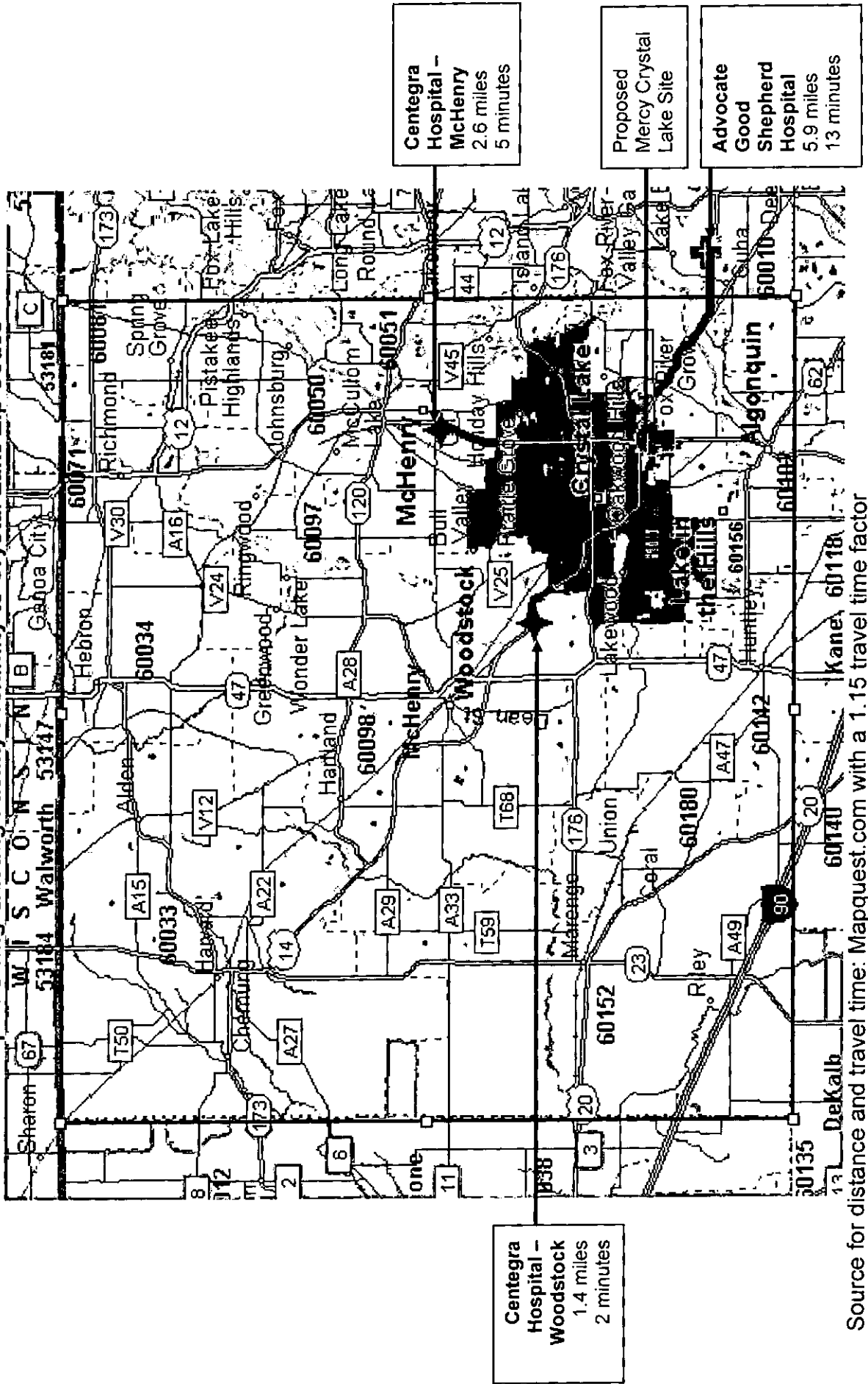
Second, Mercy submits a dot density map and claims it shows that the greatest concentration of population in McHenry County is in the Crystal Lake region. However, Mercy's dot density map assumes an equal spread of residents across the zip code. This is not an accurate depiction of where the population is located since some areas are residentially zoned while others are for business, agricultural, etc. Household data provided by Thompson Reuters show that Mercy's proposed location is not in an area of high population. In fact, the proposed site is on the southeastern border of the zip code and the majority of the households fall in the western half. Additionally, there are large unpopulated areas to the south and west of Mercy's proposed site. A plot of the Thompson Reuters data is submitted as an attachment to my written testimony. The Crystal Lake zip codes are shaded.

Combining this information with the locations of the existing facilities already serving the area, demonstrates that adding a facility on the proposed Mercy site would actually create a maldistribution of beds in the planning area and would not best serve the many residents in the southern portion of the planning area.

I respectfully ask you to deny Mercy's CON application to build a facility in Crystal Lake.

Public Hearing Testimony for Hadley Streng  
 Opposition for Mercy Crystal Lake  
 March 18, 2011

Map Showing Existing Facility Proximity to Crystal Lake Zip Codes



Source for distance and travel time: Mapquest.com with a 1.15 travel time factor

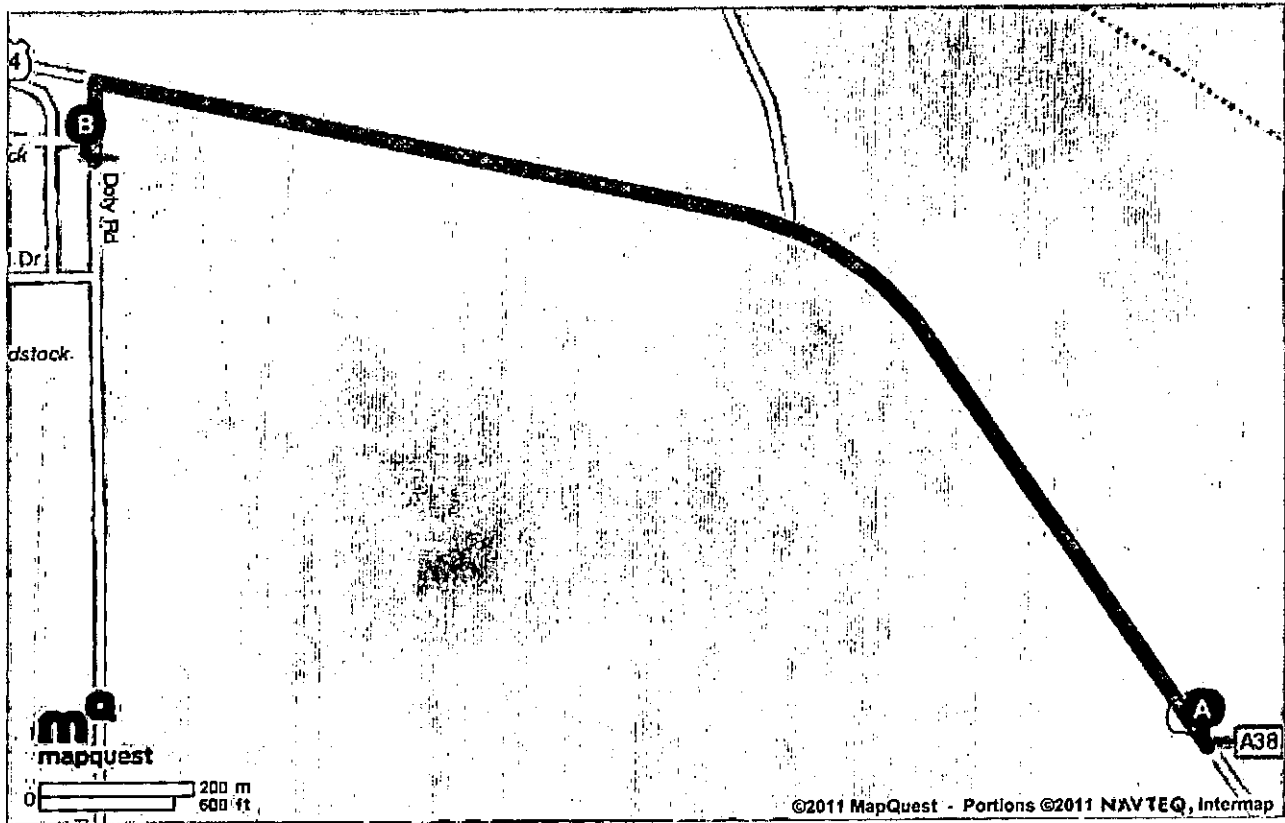


**Trip to:**  
 3701 Doty Rd  
 Woodstock, IL 60098-7509  
 1.38 miles  
 1 minute

Notes

A	Us Highway 14 & Ridgefield Rd Crystal Lake, IL 60012	Miles Per Section	Miles Driven
●	1. Start out going WEST on US-14 toward LILY POND RD.	Go 1.3 Mi	1.3 mi
↶	2. Turn LEFT onto DOTY RD. <i>DOTY RD is 0.6 miles past LILY POND RD</i>	Go 0.08 Mi	1.4 mi
■	3. 3701 DOTY RD is on the RIGHT. <i>If you reach MEMORIAL DR you've gone about 0.1 miles too far</i>		1.4 mi
B	3701 Doty Rd Woodstock, IL 60098-7509	1.4 mi	1.4 mi

Total Travel Estimate: 1.38 miles - about 1 minute



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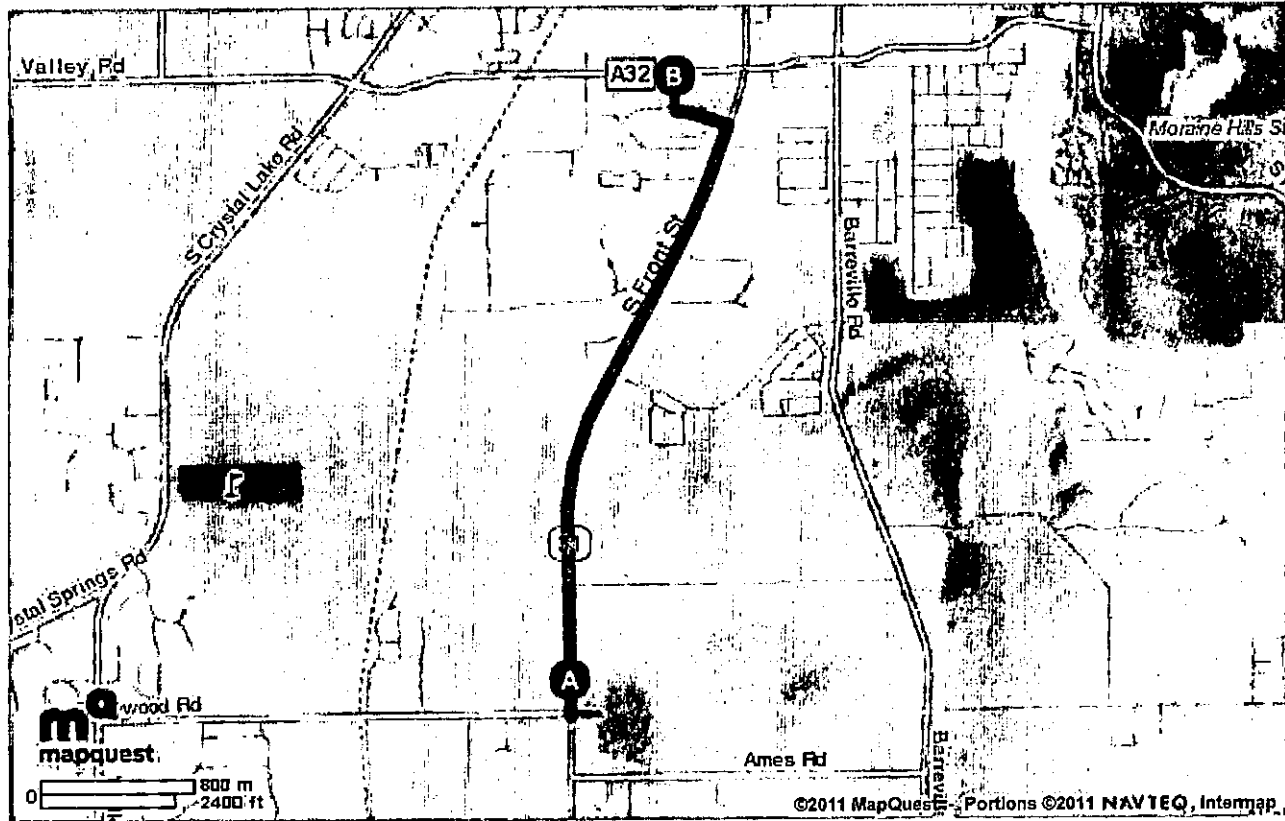


Notes

**Trip to:**  
 4201 W Medical Center Dr  
 McHenry, IL 60050-8409  
 2.64 miles  
 4 minutes

A	<b>S Il Route 31 &amp; Edgewood Rd</b> Crystal Lake, IL 60012	<b>Miles Per Section</b>	<b>Miles Driven</b>
●	1. Start out going NORTH on IL-31 toward W GRACY RD.	Go 2.4 Mi	2.4 mi
↶	2. Turn LEFT onto W MEDICAL CENTER DR. <i>W MEDICAL CENTER DR is 0.1 miles past MERCY DR</i>	Go 0.2 Mi	2.6 mi
■	3. 4201 W MEDICAL CENTER DR is on the LEFT. <i>Your destination is 0.1 miles past CENTEGRA DR If you reach CENTEGRA DR you've gone about 0.2 miles too far</i>		2.6 mi
B	<b>4201 W Medical Center Dr</b> McHenry, IL 60050-8409	2.6 mi	2.6 mi

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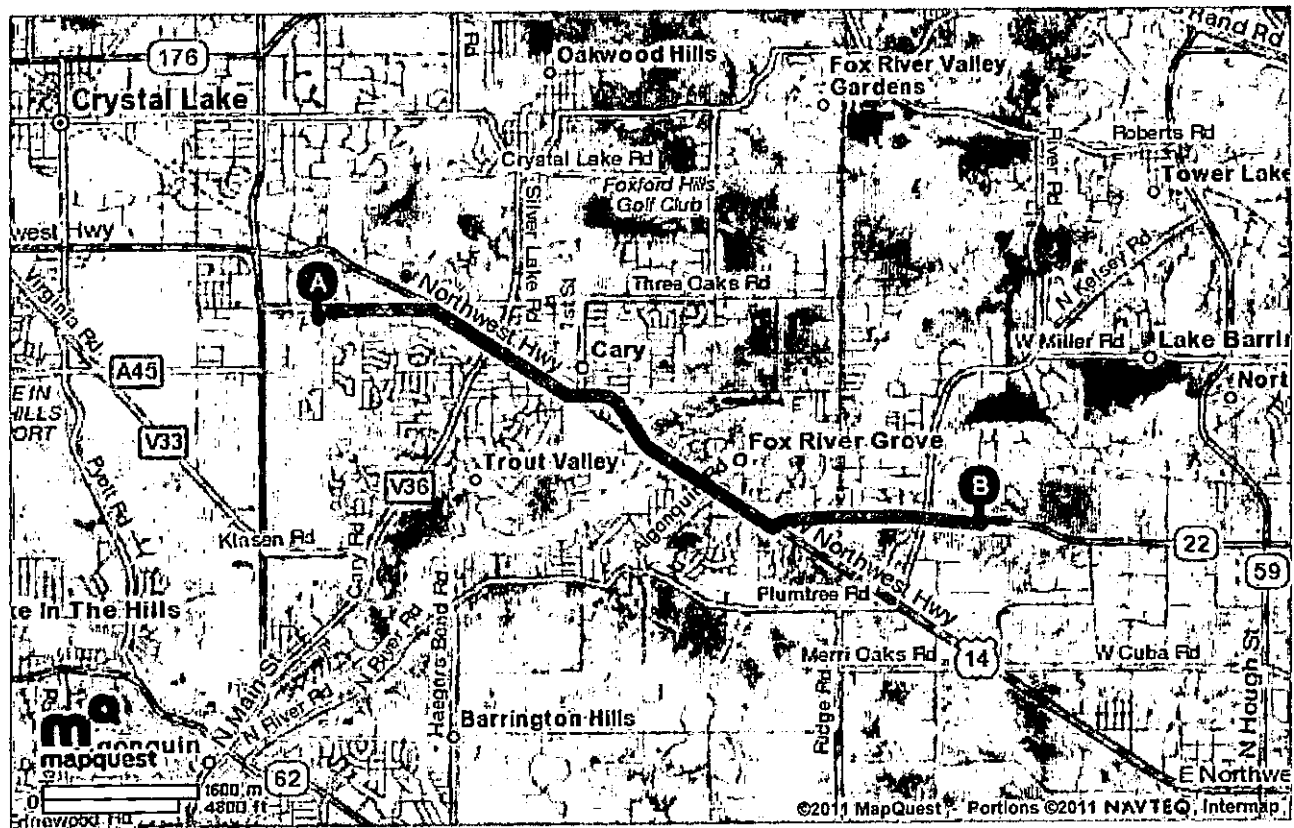
Notes

**Trip to:**  
 Advocate Good Shepherd Hospital  
 450 W Highway 22  
 Barrington, IL 60010  
 (847) 381-9600  
**5.86 miles**  
**11 minutes**

A	<b>[7600-7749] E Monticello Way</b> Crystal Lake, IL 60014	<b>Miles Per Section</b>	<b>Miles Driven</b>
●	1. Start out going NORTH on E MONTICELLO WAY toward THREE OAKS RD.	Go 0.06 Mi	0.06 mi
➔	2. Turn RIGHT onto THREE OAKS RD.	Go 0.9 Mi	1.0 mi
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➔	 4. Turn LEFT onto IL-22. <i>IL-22 is 0.2 miles past FOXMOOR RD</i>	Go 1.6 Mi	5.9 mi
■	5. 450 W HIGHWAY 22. <i>Your destination is 0.4 miles past N KELSEY RD</i> <i>If you reach N HARBOR RD you've gone about 0.8 miles too far</i>		5.9 mi
B	<b>Advocate Good Shepherd Hospital</b> 450 W Highway 22, Barrington, IL 60010 (847) 381-9600	5.9 mi	5.9 mi



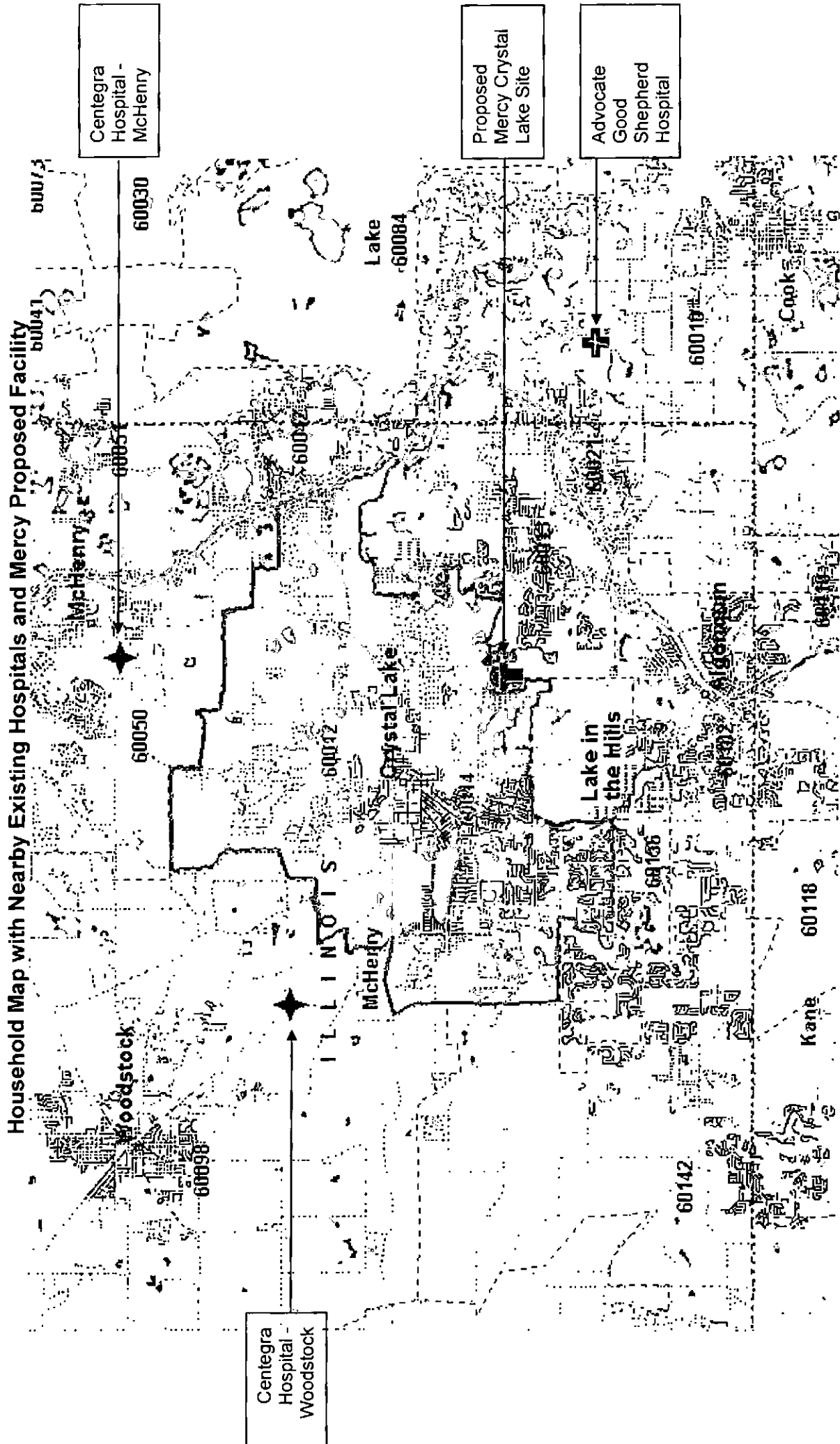
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Public Hearing Testimony for Hadley Streng  
Opposition for Mercy Crystal Lake  
March 18, 2011



Source for Household Data: Epsilon and Centegra via Thompson Reuters

Public Hearing Testimony for Hadley Streng  
Opposition for Mercy Crystal Lake Project #10-089  
March 18, 2011

Good morning. My name is Hadley Streng and I am the Director of Planning and Business Development for Centegra Health System.

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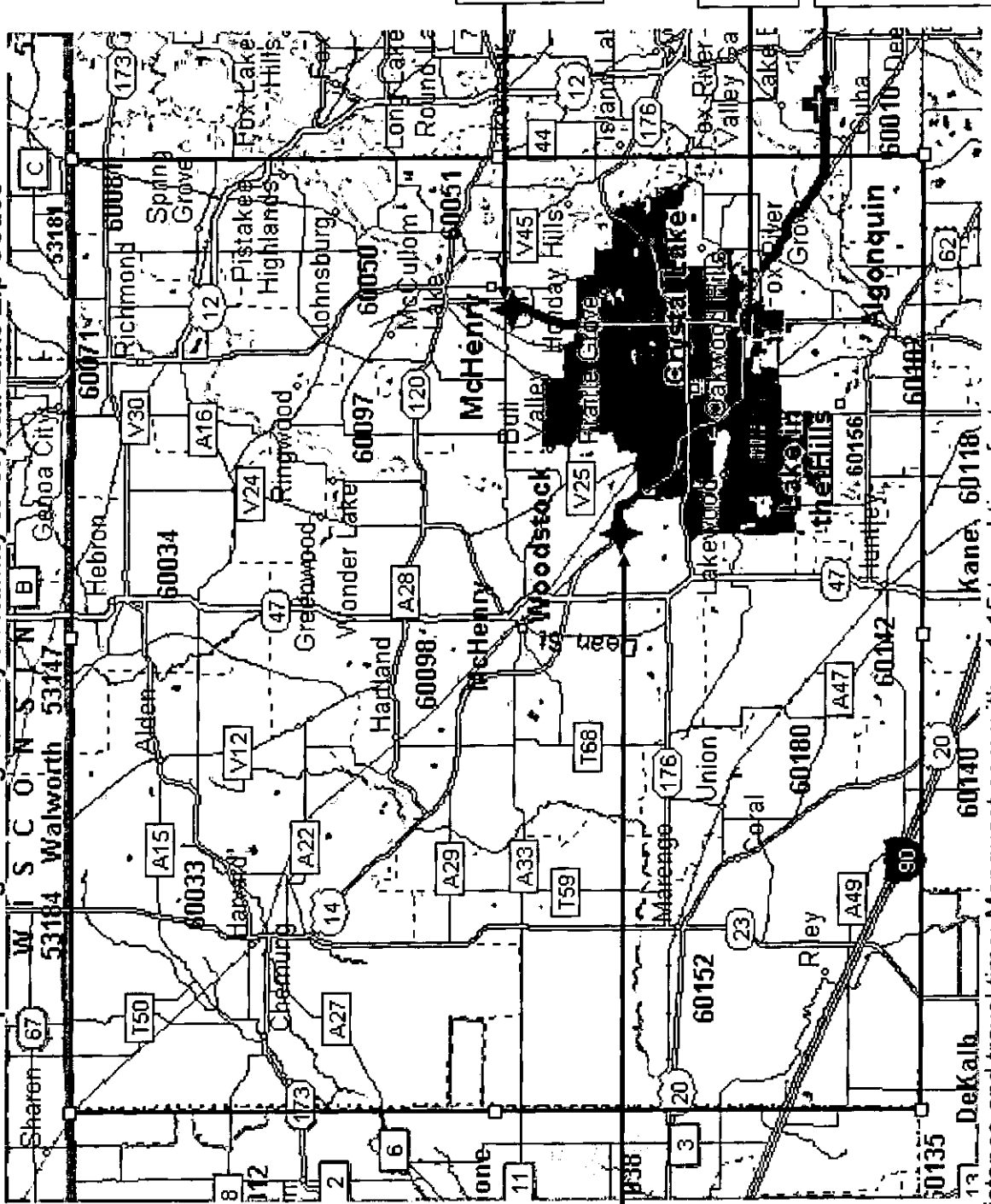
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Combining this information with the locations of the existing facilities already serving the area, demonstrates that adding a facility on the proposed Mercy site would actually create a maldistribution of beds in the planning area and would not best serve the many residents in the southern portion of the planning area.

I respectfully ask you to deny Mercy's CON application to build a facility in Crystal Lake.

Public Hearing Testimony for Hadley Streng  
 Opposition for Mercy Crystal Lake  
 March 18, 2011

Map Showing Existing Facility Proximity to Crystal Lake Zip Codes



Source for distance and travel time: Mapquest.com with a 1.15 travel time factor



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 Woodstock, IL 60098-7509  
 1.38 miles  
 1 minute

Notes

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Total Travel Estimate: 1.38 miles - about 1 minute



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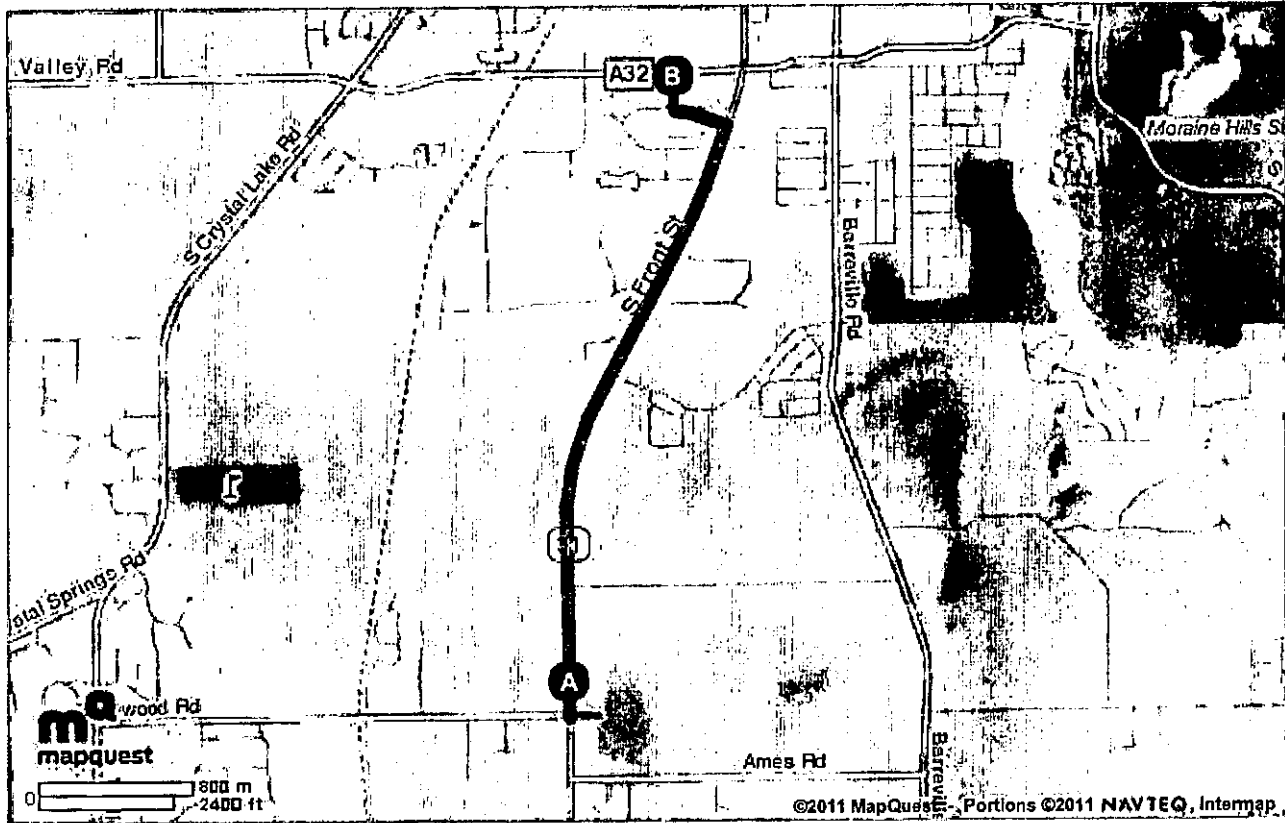


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	<b>4201 W Medical Center Dr</b> McHenry, IL 60050-8409	2.6 mi	2.6 mi

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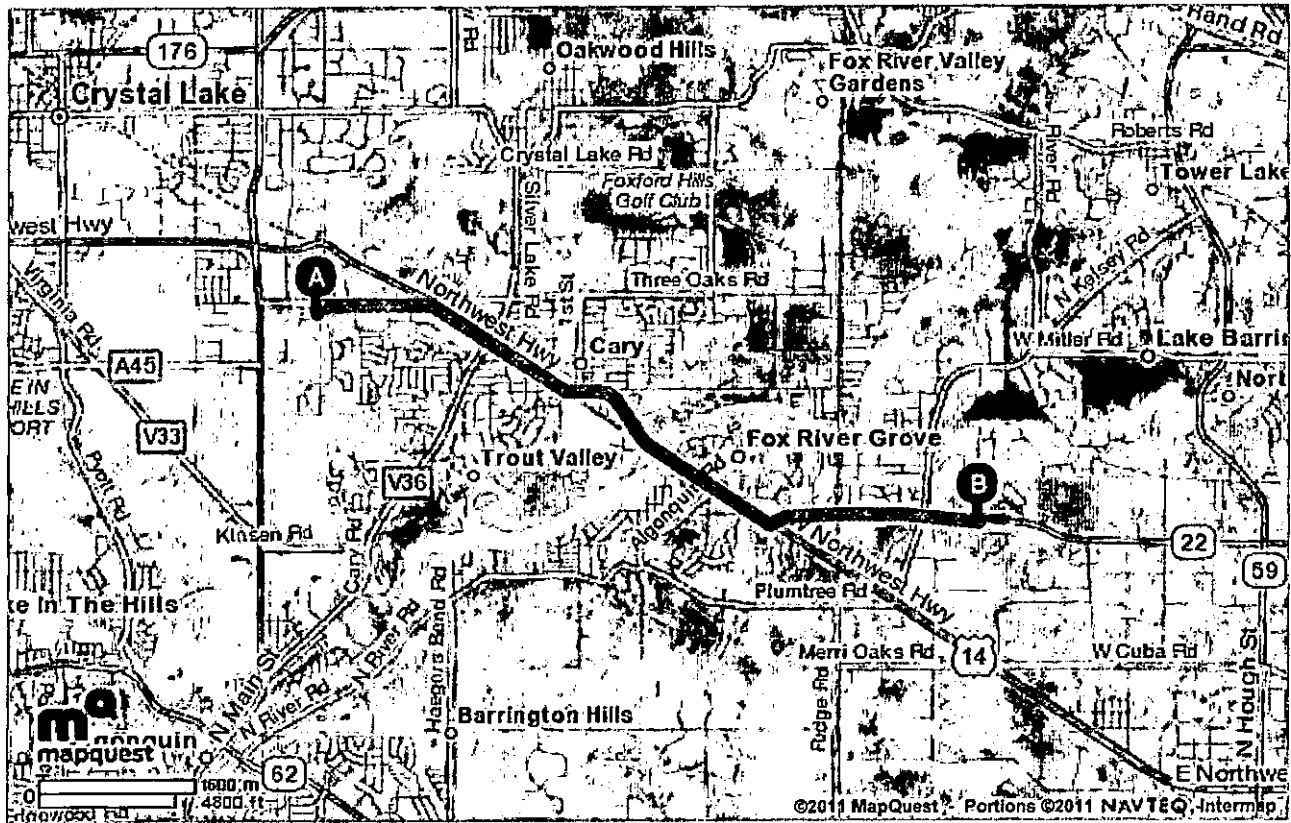


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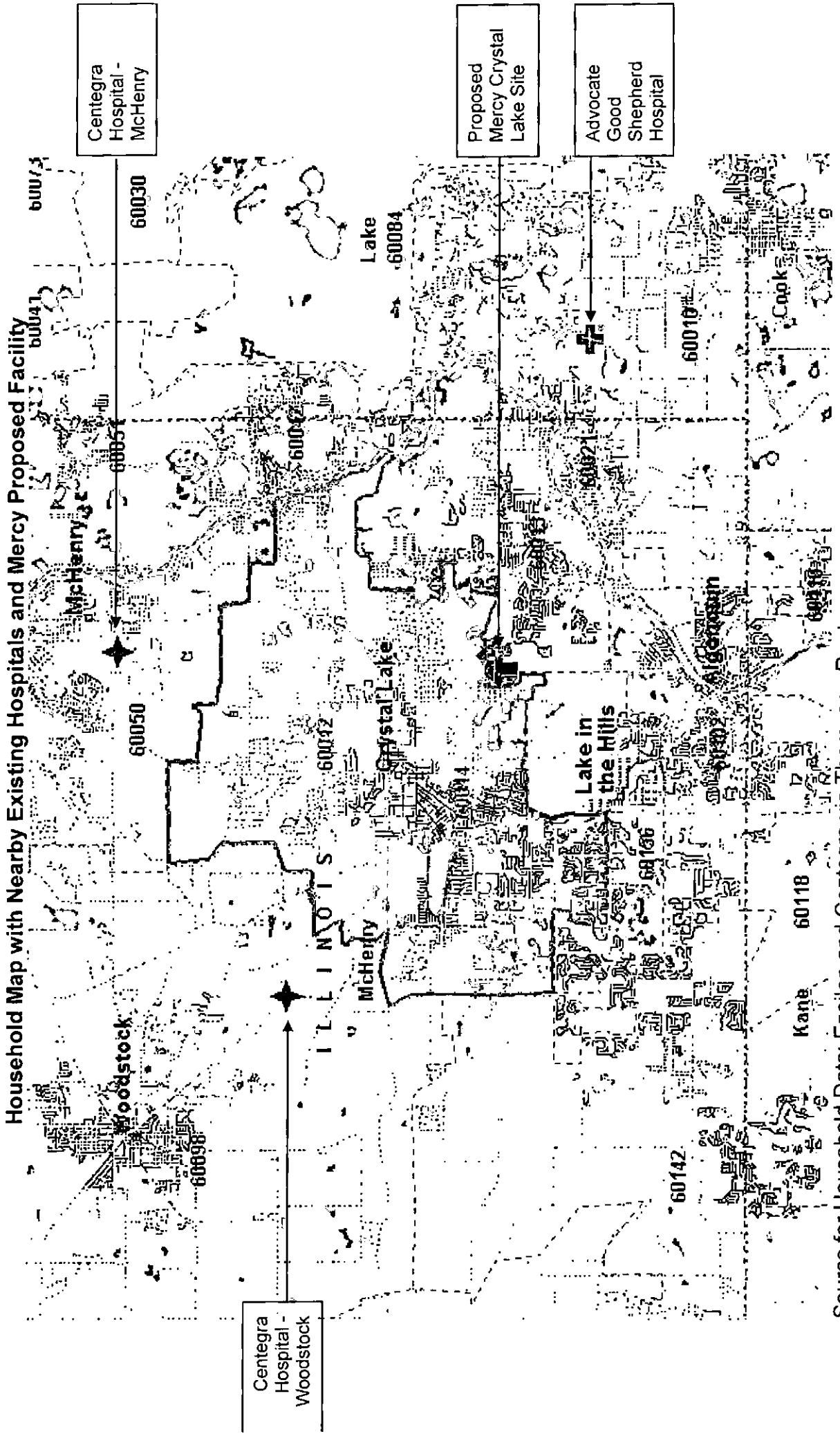
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Public Hearing Testimony for Hadley Streng  
 Opposition for Mercy Crystal Lake  
 March 18, 2011



Source for Household Data: Epsilon and Centegra via Thompson Reuters

Renee Norberg  
920 Wildrose Drive  
Cary, IL 60013

March 18, 2011

My name is Renee Norberg, and I live in Cary.

I'd like to express my opposition to Mercy Health System's plan to build a community hospital in Crystal Lake. The site is located minutes from my town.

At first glance, having a new hospital so close to home would seem to be a benefit to my community. But I – and many of my neighbors – realize that convenience does have its own costs. The Mercy facility would not have all of the special care units that Advocate Good Shepherd and Sherman Medical Centers already offer. So, while it may be a shorter drive to Crystal Lake, if we end up needing a heart specialist or another very specialized type of treatment we will end up getting transferred to a larger hospital anyway.

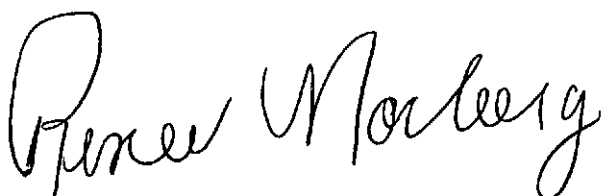
Those of us who live in McHenry County choose to live here because we want to reside near less developed areas. And, we are accustomed to driving everywhere – to work, to school, for health care, to cultural and entertainment venues, and even to shop. Statistics have shown that 50 percent of McHenry County residents travel at least 30 minutes each way to their jobs.

So, to shave off a few miles or a few minutes on the trip to the hospital seems like a pretty small benefit to me. Since we already have plenty of hospital beds in our region, I would not want to see scarce resources spent on more buildings. More construction and more facilities will add to our health care costs in the future.

As I understand it, even when the population does start to grow more quickly again in Cary, the existing hospitals have the capacity to meet needs of new residents.

I hope the review board takes these points into consideration when it votes on Mercy's request.

Thank you.

A handwritten signature in cursive script that reads "Renee Norberg". The signature is written in black ink and is positioned at the bottom of the letter.

Renee Norberg  
920 Wildrose Drive  
Cary, IL 60013

March 18, 2011

My name is Renee Norberg, and I live in Cary.

I'd like to express my opposition to Mercy Health System's plan to build a community hospital in Crystal Lake. The site is located minutes from my town.

At first glance, having a new hospital so close to home would seem to be a benefit to my community. But I – and many of my neighbors – realize that convenience does have its own costs. The Mercy facility would not have all of the special care units that Advocate Good Shepherd and Sherman Medical Centers already offer. So, while it may be a shorter drive to Crystal Lake, if we end up needing a heart specialist or another very specialized type of treatment we will end up getting transferred to a larger hospital anyway.

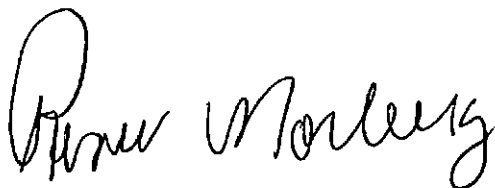
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As I understand it, even when the population does start to grow more quickly again in Cary, the existing hospitals have the capacity to meet needs of new residents.

I hope the review board takes these points into consideration when it votes on Mercy's request.

Thank you.

A handwritten signature in cursive script that reads "Renee Norberg". The signature is written in black ink and is positioned at the bottom left of the page.

Testimony to the Review Board: March 18, 2011. Opposing Mercy's application.

I'm Jenny Elrod, and I live in Cary. That's in McHenry County, not very far from where Mercy wants to build a new hospital.

My family and I have easy access to Advocate Good Shepherd Hospital in Barrington, as well as to a Good Shepherd urgent care center in nearby Crystal Lake. Because these two facilities already serve our needs for medical care, I would like to ask the board to reject Mercy Health System's request to build another hospital in Crystal Lake.

I feel fortunate to live only minutes from Good Shepherd and all of its specialty services. The distance between Good Shepherd and the site for the proposed Mercy hospital is only about six miles. My neighbors and I have developed trusting relationships with the doctors who are affiliated with Good Shepherd, and I am not interested in severing those ties. Starting all over with a new group of healthcare providers would be very stressful, especially for senior citizens who require lots of coordination among their doctors.

Mercy has indicated that they want to build a new hospital as a solution to what they say is a physician shortage. I can tell you that my family has never experienced a situation of where we have lacked access to care. Even though the new hospital would be closer for me, proximity is far less important than maintaining my relationship with my provider. Without my physicians, a nearby hospital is of no value to me.

At Good Shepherd, I know I have access to the best specialists and a state-of-the-art emergency room only a few minutes away. In contrast, the proposed hospital would be tailored as a community hospital, and would not be large enough to attract and retain a full complement of specialists. Nor would it be able to attract enough patients to support hiring all those specialists.

Opening a new hospital so close to existing medical facilities runs counter to today's economic climate and population projections. Why would the region want to have a facility that is already destined to be underutilized? My hometown of Cary and our neighboring communities are well served by the established hospitals in the area.

Thank you for your time.

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Thank you for your time.

**The Rev. Dr. Frederick Rajan  
1 Sheffield Court  
Cary, Illinois 60013**

March 18, 2011

**PUBLIC HEARING TESTIMONY  
Project # 10-089 (Mercy Crystal Lake Hospital and Medical Center)**

Honorable Board members:

I am Rev. Dr. Fred Rajan, and I live in McHenry County. I'm an ordained minister in the Evangelical Lutheran Church of America and a proud resident of Cary in McHenry County.

I am opposed to the concept of building a community hospital in southeastern McHenry County as Mercy Health System has proposed for Crystal Lake.

In my ministry, I have often witnessed the care that hospital patients receive when they are going through some of the most fragile and difficult times of their lives. Fortunately, I also have had the privilege of being present when patients and families experience the positive outcome of a successful medical procedure or the extreme joy of an unexpectedly good diagnosis.

When patients are in the hospital, it can be an extremely stressful time for the patients and their families. The most important thing to them at that time is to concentrate all of their energy on getting well as soon as possible.

That is why I see a major disadvantage in Mercy's proposal for a new community hospital at Crystal Lake. Such a facility would not offer many of the advanced care programs and surgeries that our existing medical centers in this area already provide. For example, if a patient were admitted to a Mercy community hospital, and ended up requiring open heart surgery, he or she would have to be transferred to another medical center that serves the area.

Transferring patients is extremely stressful on those who are ill and their families. Such a transfer requires an ambulance ride and definitely demands the support and coordination of family and staff at two hospitals. This is a heavy burden for all involved.

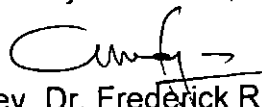
In addition to the emotional expense, a transfer involves monetary expenses that either a family will need to cover or an insurer will cover through premiums. This type of spending needlessly drives up the cost of health care and insurance premiums for everyone who is insured.



I hope you will consider the emotional and financial toll that hospital transfers exact and reject the proposal for this unnecessary community hospital.

Thank you.

Respectfully submitted,

  
The Rev. Dr. Frederick Rajan

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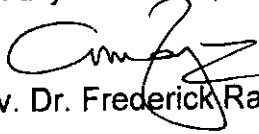
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Respectfully submitted,

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The Rev. Dr. Frederick Rajan

DANIEL J. PESAVENTO, M.D., P.C.

*Obstetrics & Gynecology*

March 18, 2011

My name is Dr. Pesavento. I am an obstetrician, practicing in Barrington.. I received my medical school and residency training at Northwestern Memorial Hospital. I live in Woodstock, Illinois.

I ask that the Review Board not approve this application, because the Mercy- Crystal Lake hospital will duplicate existing resources, negatively impact existing hospitals, and adversely affect patient safety and quality care.

As an obstetrician/gynecologist who has practiced in the community for more than 20 years, I believe that the area is well-served with nearby hospitals; most have obstetrics facilities.

Sherman located, just fifteen minutes from Crystal Lake offers obstetrics and gynecology services and has available capacity in its OB GYN unit. Good Shepherd located less the one mile from the McHenry County border also provides excellent obstetrics and gynecology services and has available capacity to serve more obstetrics patients.

As I recall, another McHenry County hospital, located in Harvard, actually discontinued obstetrics services. The hospital explained that the obstetrics unit had to be closed due to the inability to obtain sufficient nurse and physician staffing for quality care.

I am concerned that adding yet another obstetrics unit to McHenry County will again exacerbate the problem of adequate staffing to assure patient safety. The obstetrics programs and resources at existing hospitals will become diluted with the addition of an obstetrics unit at another hospital. The proposed Mercy-Crystal Lake hospital would siphon away obstetrics patients from existing hospitals. I am concerned that the resulting obstetric delivery volumes at some of the area hospitals could become so low, that quality and patient safety will become jeopardized. It is challenging to staff an obstetrics unit efficiently and provide quality care, when only performing a few deliveries each day. It is important for nurses to have enough patient care experience on a regular basis to maintain their skills and continue to provide high quality patient care

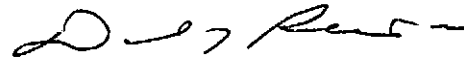
The proposed hospital would be an unnecessary and costly duplication of resources.

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Many area hospitals already serve the Crystal Lake community, and most have capacity to serve more patients. An expensive, unnecessary new hospital would burden our already overextended state and federal budgets, increase health insurance premiums, and health costs to employers.

I urge the board to deny this application.



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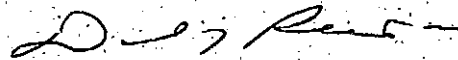
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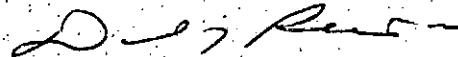


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Kari Downey  
298 New Haven Drive  
Cary, IL 60013

**Public Hearing Testimony**

**Kari Downey, Resident of McHenry County**

**Re: Project # 10-089 (Mercy Crystal Lake Hospital and Medical Center)**

Hello, I am Kari Downey, and I live in McHenry County.

I would like to address the Review Board about the proposal from Mercy Health System for a new hospital in Crystal Lake. The idea of building a community hospital in this area of McHenry County should be rejected.

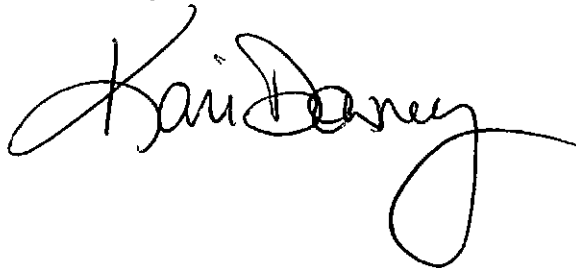
Currently, my family looks outside of McHenry County for care when we have a serious illness. And this would continue even if Mercy were allowed to build the proposed hospital. Why? Because that hospital wouldn't be able to offer the array of very specialized services that a larger, regional hospital can offer.

Although the term "community hospital" has a pleasant ring to it, many of today's health treatments are far beyond the scope of a community facility.

I would prefer to be treated by doctors and other staff who have dealt with my illness or surgery many times over. I don't want to be the "rare case." It stands to reason that a medical center that handles a large volume of a particular procedure will gain from its experience, and that all patients will benefit from that experience.

My family and I would not change our habits even if a new local hospital is built because we might still end up needing care at a regional medical center. Moving from one hospital to another – when we could have gone to the more advanced medical center first – would create added stress that I would not want to have to endure.

Thank you for taking my opinions into account.

A handwritten signature in black ink that reads "Kari Downey". The signature is written in a cursive style with a large, looping initial "K" and a long, sweeping underline.

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298 New Haven Drive  
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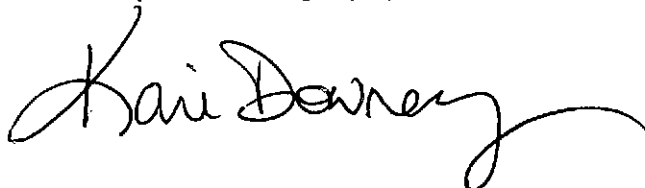
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Thank you for taking my opinions into account.

Lori Pinzon  
4012 Church Hill Ln  
Crystal Lake, IL 60014

March 18, 2011

Mike Constantino, Supervisor, Project Review Section  
IL Health Facilities & Services Review Board  
525 W. Jefferson St. (Second Floor)  
Springfield, IL 62761

Hello, my name is Lori Pinzon and I'm a resident of Crystal Lake.

I would like to persuade the board to vote against Mercy Health System's application to build a new hospital in Crystal Lake.

The application's title – Certificate of Need – says it all for me. With so many hospitals nearby there is no need for a new hospital. I've lived in Crystal Lake for many years and I've never had trouble getting good, quality healthcare when I've needed it. I work and get my healthcare outside of McHenry County and it's no big deal for me to cross the McHenry-Lake County border to get to Good Shepherd in less than 15 minutes. I'm not alone. Many of my neighbors work outside McHenry County, shop outside McHenry County and see doctors outside of McHenry County.

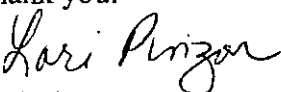
While there is traffic congestion on major highways during rush hour, there are many alternate local routes to circumvent the traffic congestion. This is particularly true for local travel such as to our area hospitals, Centegra and Good Shepherd. Some minor traffic congestion for limited times during the day is NOT a reason to build a \$200 million hospital. Plus, if you're like me, when you see an ambulance you pull off to the side and let it by. Ambulances aren't bothered by traffic like you and me.

Do we need hospitals every few miles? If so, then we need hospitals in Volo, Spring Grove, Wonder Lake and Hebron. Would the board be willing to approve a lot more hospitals for McHenry County? I would hope not and I would hope that the Board would look at just how many hospitals are nearby this location, both in and outside of McHenry County. Especially because the hospitals that serve my community and adjacent suburbs have the capacity to meet our demand for health care.

A lot of these hospitals have recently responded to our growing community. Sherman just built a brand new hospital, Good Shepherd expanded their Emergency Department and St. Alexius is building a new children's hospital. The state approved these projects based on those hospitals meeting targets for the number of patients they will serve and upon which they based their financial projections. If an unneeded hospital is built, it will hurt the existing hospitals' ability to serve our area.

Please keep this lack of demand and economic cost in mind as you weigh Mercy's application. Do we need a new hospital in Crystal Lake? The answer is no.

Thank you.

  
Lori Pinzon

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4012 Church Hill Ln  
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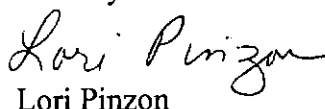
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Please keep this lack of demand and economic cost in mind as you weigh Mercy's application. Do we need a new hospital in Crystal Lake? The answer is no.

Thank you.



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**Public Hearing Testimony**  
**Robert Scott, Cary resident**  
**Project #10-089 (Mercy Crystal Lake Hospital and Medical Center)**  
**March 18, 2010**

Hello, I'm Bob Scott and I'm a resident of Cary.

I'm here today to urge this panel to deny Mercy Health System's application to build a new community hospital in Crystal Lake.

As a citizen of Cary, I have to question how well the Mercy system will serve a region so far from its headquarters. Mercy has only a small presence in Illinois, while most of its facilities are located in Wisconsin. I would not want to see a Crystal Lake hospital become a forgotten stepchild to Mercy's larger facilities across the border in Wisconsin.

Already, I wonder how well Mercy knows our area and how well it can serve our area in today's health care climate. Harvard closed its OB department, because it said it was having trouble attracting staff and physicians. How do they think they can staff a whole new hospital if they couldn't staff an OB department?

Building a new hospital would only worsen the nursing shortage in the area. The Illinois Department of Employment Security projects Kane, McHenry and Lake Counties will be short 417 registered nurses through 2016. The need to staff an entirely new facility would leave the area with an even bigger deficit.

This proposal also has been touted as a job stimulus. Yet staffing a new hospital in the current economic climate would not create *new* jobs. A new facility in our region would merely reallocate the existing health care workforce among more hospitals. This would jeopardize the ability of each facility to maintain adequate staffing. If minimal staffing for particular units were not available, patients could see some units close or have access to certain surgeries and procedures limited.

It's been proved that optimal staffing levels, especially those involving RNs, lead to better health outcomes. Studies show that patients have shorter hospital stays and fewer hospital-acquired infections as the ratio of RNs involved in their care increases.

I hope you will consider Mercy's commitment to the region and the viability of all health facilities in the region as you review this proposal.

Thank you.

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I hope you will consider Mercy's commitment to the region and the viability of all health facilities in the region as you review this proposal.

Thank you.



Theresa Preusker  
159 Montclair Drive  
Cary, Illinois 60013

I do not believe that the residence of McHenry Hospital need a new hospital and yet another hospital in the area. I am here to ask you to reject the Mercy Systems proposal for this facility.

We are fortunate to have multiple hospitals such as Advocate Good Shepherd in Barrington, Sherman and Provena St. Joseph Hospital in Elgin that already provide the services needed to this area.

Sherman Hospital opened up a state of the art facility in 2009 which includes private rooms and many specialty services. As I understand it, Sherman, Provena and Centegra all have had plenty of beds, even extra beds that can provide care to the residence of our area. We do not need another hospital when we have available beds in other facilities.

Building another hospital does not mean that you will suddenly have an increase flux of sick people suddenly flooding the community. What it does mean is a dilution of services. What it does mean is changing the routes of ambulances to a hospital that will not have the services needed to provide life sustaining measures such as cardiac intervention and stroke intervention. As a member of this community, if someone in my family were having a heart attack, my mother, father, husband...I want them to go to the hospital that has the interventional cardiac cath lab that can save their life and not to a facility where they would be held until transportation to another hospital can be provided.

If McHenry County truly needs to increase the number of beds for patients, why wouldn't we invest in making the existing hospitals stronger? Hospitals that have the capabilities, the facilities and the talent to serve the people of the community. Not draining resources, increasing taxes and increasing our insurance premiums to pay for an unneeded hospital.

Thank you,

  
Theresa Preusker

*Kim Barber  
608 Ridgewood Drive  
Cary, NC 27513*

Hello, my name is Kim Barker and I live in Cary, less than a mile from where Mercy wants to build.

I'd like to encourage the Board to reject Mercy's application to build a community hospital in Crystal Lake.

Although I live in McHenry County, I receive the majority of my health care at Advocate Good Shepherd in Lake County. I feel a real affinity to my doctors and the facilities where they care for me and my family. The medical care and support I've received at Good Shepherd has always been excellent. And, it's not very far from my house. It takes me 15 minutes to get to Good Shepherd and it's only 6 miles away. I feel grateful that this terrific hospital is so close.

I worry that this new hospital would hurt Good Shepherd.

Even if a new facility were allowed to be constructed closer to my home, I would not change hospitals I have built up relationships with health care professionals at Good Shepherd and I intend to stay there. The value of good rapport with a physician is especially important to me. And, I know that it also is important to families with young children and to senior citizens.

Speaking of young families, I also would like to point out that not too long ago the Harvard hospital decided to close its obstetrics department in Harvard because the hospital didn't have enough nurses. I would be worried that if another hospital were built in the area, all the hospitals would have trouble finding staff. I also wonder how Mercy could staff this new hospital if they can't staff the one they are already running.

Thank you for taking these points into consideration.

*Kim Barber*

*Kim Barker  
608 Ridgewood Drive  
Cary, NC 27513*

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Thank you for taking these points into consideration.

*Kim Barker*

Public Hearing: Project 10-089



**PUBLIC HEARING TESTIMONY  
of KELLEY CLANCY  
Opposition to Project #10-089 – Mercy Crystal Lake Hospital & Medical Center  
March 18, 2011**

I am Kelley Clancy, Vice President of External Affairs for Alexian Brothers Health System and I'd like to tell you why I'm against Mercy Hospital's Certificate of Need to build a hospital in Crystal Lake.

I have worked in the health care field for much of my career, and have focused on community health for the last two decades. I believe in the philosophy and intent of the state board to keep balance and integrity in the Certificate of Need process. The board traditionally will not approve a project unless there is actual need for it in the community, out of concern that a project might needlessly duplicate services.

From the point of view of Alexian Brothers Health System, which operates St. Alexius Medical Center and Alexian Brothers Medical Center, Mercy has not proven that there is an actual need for this project. Further, this new hospital would duplicate services in an area that already is served by several regional medical centers that have an overabundance of hospital beds.

To that point, we are concerned that a new hospital in Crystal Lake would violate the Review Board's rule on the impact to other health facilities. That rule states:

"The applicant shall document that, within 24 months after project completion, the proposed project:

A) Will not lower the utilization of other area providers below the occupancy standards specified in 77 Ill. Adm. Code 1100; and

B) Will not lower, to a further extent, the utilization of other area hospitals that are currently (during the latest 12-month period) operating below the occupancy standards."

Unfortunately, that is exactly what would happen in this case. If the new hospital were to be built, it would take patients away from us – as well as from all the other existing hospitals in the area – and jeopardize our ability to meet state-specified standards for occupancy.

This is a particularly serious problem today. In just the last few years, Provena St. Joseph Hospital, Sherman Hospital and St. Alexius have all finished or received approval for major

investments in their facilities. In all cases, the pledge made by these hospitals to serve residents in the entire northern Fox Valley area was instrumental in receiving state approval.

In the case of St. Alexius, we're breaking ground next month for our new children's hospital. It will provide services that few hospitals offer outside of the city of Chicago, such as several pediatric subspecialties. Expensive – yet necessary – health care projects like this are not sustainable on their own – they rely on the support from serving patients from throughout the region.

All of these major investments I have mentioned reflect an important change in health care today – because hospital care has become more complex, more expensive and patients' hospital stays are now shorter. As a result, today the model is to have fewer, but larger, more advanced, regional medical centers that offer many specialty care services and address a greater geographic area. The residents of this region are very fortunate that they already have several highly regarded regional medical centers from which to choose.

I know many people may think that having more hospitals in an area is always better, even if they are small, limited-service hospitals. But I invite you to consider your answer to these questions. Would you rather have multiple community hospitals in your county that could only provide you with basic services and refer you to another hospital for more advanced care? Or, would you rather have a select group of high-quality regional medical centers that offer comprehensive basic and specialty care to meet all your health care needs?

The area does not need another small hospital. If Mercy's hospital were to be built, it would be needlessly expensive for everyone, including taxpayers.

I urge the state board members take all of this into account when they make their decision and deny Mercy's application.

Thank you.

*wri Hen only*

Kent Schneider  
9 Shadow Creek  
Lake in the Hills, IL

### **Opposed to Mercy Health System's Proposed Crystal Lake Hospital**

My name is Kent Schneider and I am a resident of Lake in the Hills. I was born in Janesville, Wisconsin, graduated from Janesville Craig High School and I am very familiar with Mercy Health System. As a McHenry County resident, I am opposed to the proposed Mercy Health hospital in Crystal Lake.

I have lived in Lake in the Hills since 2001, and ever since Mercy first wanted to build a hospital in Crystal Lake I have been concerned about its motives.

I remember a time about 10 years ago in Janesville when Dean St. Mary's wanted to open a hospital on the north side of Janesville, which would have served my family members there. When Mercy Health System heard of these plans, it announced its own plans to build a hospital on the north side. In the end, it seemed to be a move that was simply made to protect Mercy's Janesville market share. Mercy didn't build the hospital it had promised, and the other hospital wasn't built, either. Mercy accomplished its goal. I'm happy to know that St. Mary's tried again and plans to open a new Janesville hospital this year.

My fear is that Mercy is attempting to do the same thing to the people of Crystal Lake. In an effort to stop Centegra Health System from building a hospital in Huntley, I wonder if Mercy has simply pulled out its old Certificate of Need application and made a few quick updates. I believe Mercy is just trying to keep its share of a market that pays well, and it is possible that Mercy has no real intent to build a hospital in Crystal Lake.

As a business owner, I know how important it is to be honest, to have integrity and to provide products or services that are of the highest quality. Mercy seems to think that trying to sell more of a bad product, or misleading potential customers into believing they will deliver something they either lack the capability of delivering or have no intention to deliver is the best business model. You can see how that model has worked for the people of Janesville and Harvard. Don't allow them to do the same thing to the people of Crystal Lake.

Please deny Mercy Health System's request to build a new hospital in Crystal Lake. Thank you.

Kent Schneider  
9 Shadow Creek  
Lake in the Hills, IL

*will hear only*

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Please deny Mercy Health System's request to build a new hospital in Crystal Lake. Thank you.

Statement of Linda Coughlan

Crystal Lake, Illinois

one copy

over

IN  
McHenry  
County

My husband Robert and I have been residents of Crystal Lake for 40 ~~plus~~ years we have 8 kids and 7 grandchildren with 3 of the them owning their own businesses. We have always hoped that Crystal Lake would someday have a hospital of it's own. Well, that time is now! . More people live in Crystal Lake and the nearby surrounding subdivisions and communities than any other area. Bottom line, is Crystal lake deserves a hospital and Mercy's plan calls for that hospital, and we are all in full agreement.

Thank you



Brett Walrod, Woodstock resident  
In opposition to Project #10-089

I'm Brett Walrod, and I'm a McHenry County resident.

Mercy's hospital proposal should be dismissed as a transparent and poorly conceived knee-jerk response to Centegra's long-term plan and commitment to McHenry County.

The State Board and area residents must remember Mercy's previous ill-fated attempt to construct a hospital in Crystal Lake. They sought to gain a CON illegally through bribes and whatever other means necessary. That cannot be forgotten or ignored. Stuart Levin, Jacob Keiferbaum, and <sup>even</sup> Tony Rezko and Rod Blagovich are all mentioned <sup>implicated</sup> in ~~the news articles surrounding~~ the scandal, all convicted or admitted felons pedaling their influence on behalf of Mercy. <sub>subverting Mercy</sub>

Mercy's history of unethical business practices will prohibit me from trusting my family's health care needs to this organization, as it should each and every resident of McHenry County. Mercy has demonstrated contempt for the people of McHenry County and the State Board's governing authority, embarrassed themselves and insulted the citizens of McHenry County.

Please reject this application. Thank you.

one copy

Hello;

My Name is Michael Tichenor and I have lived in Crystal Lake since 1952. In June of 2009 I lost the lower portion of my right leg from complications due to diabetes. Being married with four children and soon to be 10 grandchildren I have had extensive experiences with health care providers.

It is very scary to lose a limb. I thought all of the things I took for granted were gone. I was afraid I could never walk, drive or get around again. I felt my quality of life was totally destroyed.

As I mentioned, I have had and continue to have extensive experiences with Hospitals, Doctors and Health Care professionals. The two most important things I require is that

- A. The people that I deal with have to totally know their area of expertise. And if they don't know something, that they are not too proud or stubborn to get someone else's input.
- B. The people that I deal with have to have a deep empathy for what I'm going through. I am not a number but human being. I must be treated with respect and dignity.

In August 2009 I began my association with the Prosthesis group at Mercy Hospital. I remember being very suspicious before my first meeting. To say the least I am a very difficult patient. My wife has the impression that I am stubborn and hard headed, although I have NO idea why...

(my Primary Dr is Dr. Shaile) who ALWAYS calms me down  
In my first meeting with the group I was introduced to the first of two people who would become very important to my life, Bianca Aguilar and Patrick Flannigan.

Bianca is the receptionist for the department. It's my experience that the first and often last person a customer meets is the receptionist. They set the tone for the entire relationship. Bianca is a gem. She constantly goes out of her way to make sure that everything is going smoothly.

<sup>FLANNIGAN</sup>  
Patrick and Brian Turman handle the medical side. From the moment that I met Patrick, I knew I was going to be Okay. He carefully laid out what we were going, and how we were going to get there. I left the first meeting with a sense of confidence that I had not had before.

In the weeks to come I began to appreciate Patrick and his crew more and more. Yes, there were setbacks. But each time they were there picking me back up, assuring me that it was normal to fail sometimes, and that it was going to be all right.

They knew what I was going through, and I always felt like I was their most special Patient. The group has always gone above and beyond to help me get

better. A small example if that Patrick knows how difficult it is to get to Woodstock. He has personally made sure that items are delivered to my house to avoid my having to go to their facility.

get → I now stand before you, a person with very few limitations. I can ~~independently~~ ~~care~~ myself to my grandkids functions this is very important to me.

The only downside is that my wife knows I can do household chores, and ~~expects me to vacuum, do the dishes, the laundry etc.~~

I stand before you because to the Mercy Prosthetics group.

As you know, the closest Mercy Hospital is in Harvard. We are among the many that are very loyal to the Mercy Group. However, with our medical situation it is becoming more and more difficult to make this 45 minute trip. This not only hard for me, but my family and friends. We may have to lose our great friends at Mercy simply because of logistics.

As a resident of Crystal Lake for over 50 years, I am amazed that the biggest and best city in McHenry County doesn't have its own hospital. We deserve the same care that the other cities in the county receive. Since Mercy has provided me and my family the best care over the years, it is the logical choice for Crystal Lake. Crystal Lake deserves the best and Mercy is the best.

As my representatives, I ask that you approve the building of the Mercy Hospital here is Crystal Lake.

Hello – my name is Robin Mockus and I will be reading some statements from local residents who were not able to make it to the hearing today.  
Thank you

We need another Hospital. Why wouldn't we build one?

"Jerry Straily  
Crystal Lake, IL"

---

We need to have a hospital close by so that we don't have to run to Barrington or any of the other hospitals that are too far away.

"Melva Naami  
Cary, IL"

---

**The Prendergast Household**  
**CRYSTAL LAKE**

The hospital I would normally visit is NIMC or Woodstock.

The biggest benefit I see to having a hospital in Crystal Lake is proximity - It would provide another option for residents in the Crystal Lake area without the need to travel far distances or deal with overcrowding in other hospitals.

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Hello – my name is Kathy Wynes and I will be reading some statements from local residents who were not able to make it to the hearing today. Thank you

"It would be so much more convenient. There is nothing in the area that is available 24 hours, so a hospital would be nice. We now have to go to Barrington or Woodstock."

"Carol O'Toole  
Cary, Il"

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It's a definite need.

"Tom Johnson  
Wonder Lake, Il"

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**The Traub Household  
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The hospital I would normally visit is Centegra Hospitals.

A new hospital in Crystal Lake would be helpful. The area is in need of a new hospital - location would be great.

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Hello – my name is Nancy Delaware and I will be reading some statements from local residents who were not able to make it to the hearing today. Thank you

"The Crystal Lake location would be very close, very convenient from Algonquin, IL. "

"Corrine Marshall, Algonquin, IL 60102"

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The hospital is really needed in our area especially with all of the children.

Marsha Jensen - Woodstock

---

**The Spillane Household  
ALGONQUIN**

The hospital I would normally visit is Good Shepherd.

The biggest benefit I see to having a hospital in Crystal Lake is proximity. Sherman is too far even though it is newer. Heard very good things about Northwestern Hospital and would love to have the option of a similar facility in my area.



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**Mercy Crystal Lake Hospital Hearing  
Presented to Health Facilities Board  
March 18, 2011**

I am responding today as a Crystal lake resident for 40 years. I have watched repeated efforts to bring a hospital to the burgeoning community of Crystal Lake. We had an association of Crystal Lake, Woodstock and McHenry. Then McHenry left the group to build a new facility in McHenry. Then Woodstock left to build a hospital in Woodstock. Then Sherman said they would build an emergency care center to provide services until a full hospital could be build. Crystal lake disbanded their hospital association because now we would have a hospital. As you know, none of this effort resulted in a hospital for Crystal Lake.

I was very excited when I learned that Mercy was bringing a hospital to Crystal Lake. I joined the organization to be part of that effort. The Health Facilities Board and the city of Crystal Lake said yes, this was good for Crystal Lake. Political maneuvering took away the hospital that Crystal Lake so urgently needed.

We currently face long wait times in the emergency rooms in surrounding hospitals. People report waiting in the ER for many hours because a bed is not available. In my professional capacity, my staff faces long delays trying to get a patient admitted to the local hospitals because there are no beds available. These situations occur at both Centegra and Good Shepherd.

You have heard from the local health care organizations that they are bringing healthcare services to Crystal Lake. Those services do not provide me with emergency care or hospital beds close to home. I have tried to get care there, and the simple service of a CBC was not available. That is not about the patient needs; it is about the entities success in the community.

So here we are today. The chance to bring a hospital to the heavily populated Crystal Lake/Algonquin area is within our grasp. I hope we will not be denied access again. The greatest density of population is in the southeast of the county, and we do not have hospital services unless we drive a minimum of 20 minutes in today's traffic. I believe we the people of Crystal Lake deserve better.

Respectfully submitted,



Nancy Delaware

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Would be nice to have another choice for my healthcare.

"Carolee Block, Marengo, IL "

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**CARY**

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**The Roberts Household**

**CRYSTAL LAKE**

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**The Etzel Household**

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# BARRINGTON TOWNSHIP

## COOK COUNTY

602 SOUTH HOUGH STREET • BARRINGTON, ILLINOIS 60010-4499 • (847) 381-5632 FAX (847) 381-0623 e-mail: genedawson2003@yahoo.com

EUGENE R. "GENE" DAWSON  
Supervisor

D. ROBERT ALBERDING  
Clerk

AMY P. NYKAZA  
Assessor

LINDA POST  
Collector

### BOARD OF TRUSTEES

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ROBERT A. NYKAZA JR.

MICHAEL W. RYAN

RONALD F. SZYMANSKI

March 18, 2011

Hello, my name is Gene Dawson, and I am the Barrington Township Supervisor. Barrington Township is in the northwestern tip of Cook County. That makes us an immediate neighbor to three counties – Kane County, McHenry County and Lake County.

All government bodies are being called upon to be better stewards of taxpayer money. I would like to ask the Illinois Health Facilities Services and Review Board to do the same. I do not believe that Mercy Health System's proposal to build a new hospital is a good use of healthcare dollars. It would only add to escalating health care costs in our area. And, it would be a burden to already-overextended state and federal budgets.

The proposed hospital site is only six miles from Advocate Good Shepherd in Barrington. That fact alone should send up a red flag – more hospital beds are not needed here. Many of the residents in the proposed hospital's service area actually live closer to Good Shepherd Hospital than they do to Crystal Lake. Beyond that, most of the people that Mercy says it will serve live within a 30-minute drive of Good Shepherd. That is well within the state guidelines for accessibility.

As long as we are on the topic of driving, let's talk about traffic congestion. Mercy says it wants to build a hospital in Crystal Lake because traffic congestion causes a need. If this is true, then why did Mercy choose a site that is in a high traffic area? Wouldn't this just make the congestion worse?

The ongoing recession means that population growth trends are being recalculated – downward. Building a new hospital – which would increase the number of beds in the area by 50 percent – before there is an adequate population base to support it, would be a poor use of economic resources.

Thank you for your time and thank you for listening to my comments.



Eugene R. "Gene" Dawson

pg. 101

Good Morning, my name is Wes Jost. I am here today in support of the Certificate of Need for Mercy Health Systems new hospital in Crystal Lake.

I live at 1403 White Oak Lane in Woodstock - our county seat. I am here today because of the golden hour - the first hour of emergent medical care is vital.

The golden hour is compromised here in McHenry County because of our roadways and the high volume of traffic.

As a business owner and as a leader within the trades, this country has been founded on the premise of capitalism and competition. So why is this important in McHenry County? It is important because both capitalism and competition improve quality, which is something Mercy Health Systems knows all about! As the recipient of the Malcolm Baldrich award, Mercy understands the value of quality health care here in McHenry County.

Beyond the quality of healthcare, capitalism and competition controls pricing, a constant discussion among business owners, recipients of healthcare, as well as providers of healthcare today.

As the demographics of this county continue to change, Crystal Lake has the most diverse population in the County and Mercy understands the importance of providing quality healthcare to everyone - including those



who are less fortunate. They provide quality access through community care and medicaid.

*Wm. Jost  
Pg. 208*

Understanding that Mercy is all about quality - it is also about jobs and improving the local economy. Mercy has been in the county for fifteen years - this includes many individuals in our own neighborhoods who provide that quality of care. Mercy provides access, choice and quality through their community hospital in Harvard and their thirteen clinical facilities right here in the immediate area.

Mercy has been a stakeholder in McHenry County and we need to be a stakeholder and support Mercy. This new project will enhance healthcare employment opportunities by more than 400 jobs as a medical provider, above and beyond all of the immediate jobs within the trades. The new Mercy Hospital is about access, jobs and quality care!

I am honored and proud to serve as a board member for Mercy Harvard Hospital. I support the addition of the new hospital - this is the right decision, at the right location, at the right time and for the right reason.

Thank you...



CITY OF  
*Crystal Lake*  
ILLINOIS

February 22, 2011

Dan Colby  
Vice President  
Mercy Health System Corporation, Inc.  
1000 Mineral Point Avenue,  
Janesville, Illinois 53548

RE: City of Crystal Lake Economic Development Committee Letter of Support

Dear Mr. Colby:

On behalf of the City of Crystal Lake Economic Development Committee, I am writing to inform you that on Tuesday, February 22, 2011, the Committee passed a motion to send this letter of support to endorse the approval of Mercy Health System's application for certificate of need for the proposed Mercy Crystal Lake Hospital and Medical Center project.

The City's Economic Development Committee acknowledges that Mercy Health System has revised its earlier plans to better serve the current and future needs of Crystal Lake and surrounding communities by increasing the number of hospital beds and high-priority services provided in the area.

The Committee recognizes that an estimated 650 to 800 construction related jobs will be created during the two-year construction project that will greatly benefit the Crystal Lake and surrounding communities. Additionally, within the first year of opening the facility, Mercy Crystal Lake Hospital is expected to employ more than a thousand individuals, filling 840 FTE positions, of which approximately 600 will be new jobs. These actions will greatly improve the unemployment rate in the City (8.1% as of December, 2010) and in McHenry County (9.4% as of January, 2011).

Finally, the Committee acknowledges that the total industry sales impact of the proposed Mercy Crystal Lake Hospital and Medical Center ranges from an estimated \$102.78 Million in the first year of operation to an estimated \$257.5 Million five years later.

Please reference the attached minutes from the February 22, 2011, Economic Development Committee meeting. Please feel free to contact me with any questions that you may have regarding our unanimous recommendation.

Sincerely,

Hag Haleblian  
Chairman, Crystal Lake EDC



## RESOLUTION

WHEREAS, on December 29, 2010, Mercy Health System filed a Certificate of Need application with the Illinois Health Facilities and Services Review Board (HFSRB) for a \$200 million project in Crystal Lake, Illinois (hereinafter, "the Project"); and

WHEREAS, an approved Certificate of Need from HFSRB will allow Mercy Health System to initiate further steps to seek approval for and begin plans to build a 128-bed acute care, large multi-specialty physician clinic and hospital in Crystal Lake at Route 31 and Three Oaks Road; and

WHEREAS, Mercy Health System has revised its earlier plans to better serve the current and future needs of Crystal Lake and surrounding communities by increasing the number of hospital beds and high-priority services provided in the area; and

WHEREAS, Mercy Health System understands that this resolution vests no zoning rights nor shall it be deemed to constitute an approval for the development or construction of a future Hospital and Medical Center and that any such development and/or construction shall require certain zoning approvals in accordance with the Unified Development Ordinance of the City of Crystal Lake; and

WHEREAS, Mercy Health System has chosen to locate its hospital and medical center in the most densely populated area of McHenry County; and

WHEREAS, Crystal Lake is also the home of the most diverse population in McHenry County and has a growing geriatric population in need of additional services; and

WHEREAS, the location will also provide easy access for Emergency Medical Service providers; and

WHEREAS, it is anticipated that the Project will generate an estimated 650 to 800 construction related jobs during the two-year construction project. Within the first year of opening the facility, Mercy Crystal Lake Hospital is expected to employ more than a thousand individuals, filling 840 FTE positions, of which approximately 600 will be new jobs; and

WHEREAS, Mercy Health System had represented that the total industry sales impact of the proposed Mercy Crystal Lake Hospital and Medical Center ranges from an estimated \$102.78 Million in the first year of operation to an estimated \$257.5 Million five years later; and

WHEREAS, in addition to generating jobs and income, the economic activity associated with the proposed Mercy Crystal Lake Hospital and Medical Center will also generate tax revenue for the State of Illinois and local governments.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Crystal Lake does hereby endorse and support the approval of Mercy Health System's application for certificate of need for the proposed Mercy Crystal Lake Hospital and Medical Center project contingent upon Mercy Health System obtaining certain zoning approvals in accordance with the Unified Development Ordinance of the City of Crystal Lake.

DATED this 15th day of February, 2011.

CITY OF CRYSTAL LAKE, an  
Illinois municipal corporation,

By: 

MAYOR Pro-Tem

SEAL

ATTEST 

CITY CLERK

PASSED: 2/15/2011

APPROVED: 2/15/2011

AYES: BEADY-MUELLER, SCHOFIELD, DAWSON, THORSEN, HOPKINS

NAYS: 0

ABSTAINED: FERGUSON



CITY OF  
*Crystal Lake*  
ILLINOIS

February 22, 2011

Dan Colby  
Vice President  
Mercy Health System Corporation, Inc.  
1000 Mineral Point Avenue,  
Janesville, Illinois 53548

RE: City of Crystal Lake Economic Development Committee Letter of Support

Dear Mr. Colby:

On behalf of the City of Crystal Lake Economic Development Committee, I am writing to inform you that on Tuesday, February 22, 2011, the Committee passed a motion to send this letter of support to endorse the approval of Mercy Health System's application for certificate of need for the proposed Mercy Crystal Lake Hospital and Medical Center project.

The City's Economic Development Committee acknowledges that Mercy Health System has revised its earlier plans to better serve the current and future needs of Crystal Lake and surrounding communities by increasing the number of hospital beds and high-priority services provided in the area.

The Committee recognizes that an estimated 650 to 800 construction related jobs will be created during the two-year construction project that will greatly benefit the Crystal Lake and surrounding communities. Additionally, within the first year of opening the facility, Mercy Crystal Lake Hospital is expected to employ more than a thousand individuals, filling 840 FTE positions, of which approximately 600 will be new jobs. These actions will greatly improve the unemployment rate in the City (8.1% as of December, 2010) and in McHenry County (9.4% as of January, 2011).

Finally, the Committee acknowledges that the total industry sales impact of the proposed Mercy Crystal Lake Hospital and Medical Center ranges from an estimated \$102.78 Million in the first year of operation to an estimated \$257.5 Million five years later.

Please reference the attached minutes from the February 22, 2011, Economic Development Committee meeting. Please feel free to contact me with any questions that you may have regarding our unanimous recommendation.

Sincerely,

Haig Haleblian  
Chairman, Crystal Lake EDC

**City of Crystal Lake Economic Development Committee**  
**February 22, 2011 – 7:30 a.m.**  
**Municipal Complex – City Council Chambers Conference Room**

**Call to Order**

The meeting was called to order at 7:30 a.m.

Mr. Haleblian welcomed the new members of the EDC.

**Roll Call/Attendance**

Members Affrunti, DeHaan, Fowler, Hymes, Riley, Saidler, and Haleblian were present. Ms. Feddersen arrived later during the meeting. Mr. Dalzell was absent.

James Richter II, Assistant Director of Economic Development, was present from staff. Also in attendance were Gary Reece, President of the Crystal Lake Chamber of Commerce; and Dan Colby with Mercy Health Systems.

**Approve Minutes of the January 25, 2011 EDC Meetings**

Mr. Fowler moved to approve the January 25, 2011 EDC minutes as presented. Mr. Riley seconded the motion. On roll call, members Affrunti, Fowler, Riley, and Haleblian voted aye. Members DeHaan, Hymes, and Saidler abstained. Ms. Feddersen had not arrived yet. Motion passed.

**Public Participation and Comment**

Mr. Colby handed out information regarding the proposed hospital and showed a color rendering of the building. This will be located at Three Oaks Road and Route 31 and will consist of a hospital and medical office buildings. Mr. Colby stated that they have rental facilities scattered around Crystal Lake and with the building of the medical offices, it will bring them all together in one place. This project will bring up to 800 construction jobs to the City and will take two years to build. The hospital will employ 1000 jobs initially and up to 1800 as growth occurs. Mr. Colby said they want to consolidate their facilities and provide additional services. He added that they take Medicare, etc. patients and this location shortens the time to get to the emergency services. Crystal Lake is the center of population in McHenry County and there are projections that the population will be 67 to 68,000 in a few years. They have received a Resolution from the City Council in support of this project.

Mr. Colby explained the process for the Certificate of Need that is required by the State of Illinois. He said the public hearing will be held here at the City of Crystal Lake Council Chambers on March 18<sup>th</sup> and that a report will be forwarded to the State. The hearing will be conducted by a non-voting representative and an attorney who will determine if the testimony will be allowed. The testimony can be made in person or by letter. After the hearing the State Board of 6 members will convene on May 10<sup>th</sup> to make their decision. Mr. Colby said they can approve, deny or continue their decision. He added that they will be presenting first to the Board and then Centegra.

Mr. Affrunti asked if both proposals could be approved. Mr. Colby said it is possible but he doubts it. Ms. Feddersen asked if the area hospitals are running at capacity. Mr. Colby said they only need to be at 80% capacity. He said Good Shepherd in Barrington will be objecting to this request because it is close. There are districts within the State and McHenry County is its own district. The Board only looks at what is close by in that district and not the distance between a request and a hospital in an adjacent district like Lake County.

Mr. Richter asked how much does the State look at the location vs. the population density of the area. Mr. Colby said it's up to the Board members. He said they should be looking at the existing population, greatest EMS needs, etc. The Crystal Lake area has over 100,000 people. If they were to get the Board's approval, they would be coming to the City of Crystal Lake for their PUD approval of the plan like they did several years ago which received approval. They would be starting construction ASAP while Centegra wants to wait 2 years before going to Huntley for their approval and then start building. One of the problems for Centegra is that the population is not growing as rapidly as it has in the recent past while the population is there in Crystal Lake. Mr. Colby said they plan to open their facility in 2014 while Centegra wants to wait to build until 2015 possibly. If the population doesn't grow, it could be even longer.

Mr. Reece asked how long is the Certificate of Need good for. Mr. Colby said 2 years. Ms. Feddersen asked if there will be a rehab center with this facility. Mr. Colby said not immediately. Mr. Saidler asked all of the doctors will be moved into this facility from other leased spaces. Mr. Colby said there will be 12 doctors moving into the site and there will be new doctors moving here from all over the country.

Mr. Colby said this facility will be a Level 2 emergency room with a heliport. They can't put in everything, such as rehab center, in the beginning or they will not meet certain criteria that is necessary.

Mr. Fowler said he feels this is a plus for the area and a long time coming. He never understood why Crystal Lake did not have a hospital since we have always been the largest city in McHenry County. He said this is a great fit.

Mr. Haleblian moved that a letter or resolution be created in support of the Certificate of Need for Mercy Health Systems. Mr. Riley seconded the motion. On voice vote, members Affrunti, Feddersen, Fowler, Hymes, Riley, Saidler, and Haleblian voted aye. Mr. DeHaan abstained. Motion passed.

### **Committee Membership**

Mr. Richter welcomed the new members of the EDC. He suggested that at the next meeting they hold a strategic planning meeting to discuss the goals, objectives, and structure of the EDC. They can also appoint a new Chairperson for the Committee. Mr. Fowler suggested that they plan for a little more time for the next meeting – possibly until 9:30. The members agreed.

Mr. Riley suggested that the members be sent the information from last year's strategic planning meeting. Mr. Richter said he will send that out so members will have an opportunity to review it.

Mr. Richter said there were several other individuals who applied for these positions and were not appointed. The members had previously suggested that those people be invited to participate in subcommittees as well as give them an open invitation to attend these meetings. Mr. Richter stated there was an issue with one of the individuals who was not selected. Mr. Haleblian said he would call them.

### **Staff Updates**

#### **I Shop Crystal Lake**

Mr. Richter presented the proposed budget for the 2011-2012 fiscal year for the EDC.

Mr. Saidler said at the bottom of the I SHOP CL website says it can be mobile but it is not the best. He said that may cost a little more than what is shown. He added that there is money proposed for a new jingle. Mr. Saidler said jingles are expensive and unless there will be radio ads it doesn't pay.

**Public Hearing Statement of Dan Lawler, K&L Gates LLP,  
in Opposition to Mercy Crystal Lake Hospital & Medical Center  
Project No. 10-089  
March 18, 2011**

My name is Dan Lawler and I represent Centegra Health System.

The State Board is required by law to give "particular regard to the ... background and character of the applicant." Mercy knows this and submitted background and character documents in its CON Application, including their Malcolm Baldrige Award. I'm submitting background and character documents too. But there are no awards here.

The background of Mercy Crystal Lake Hospital is that the last time it filed a CON application, three people connected with that application were indicted including Mercy's contractor, Jacob Kiferbaum, and its attorney, Steven Loren. The third person was Stuart Levine, the State Board's Vice-Chairman.

In their Plea Agreements, Levine and Kiferbaum confessed that Levine agreed to influence the State Board to approve Mercy's application in exchange for an expected million dollar plus kick-back from Kiferbaum's construction contract with Mercy.

Mercy's men on that CON application were Javon Bea, Richard Gruber and Herbert Franks; they were, respectively, the CEO, Vice President and Registered Agent for Mercy corporations. Mercy's latest CON application has the same three men on the front page, and they all have the same titles. Nothing has changed.

In November 2003, Kiferbaum wrote to Javon Bea and Gruber saying that his services included securing their CON permit. They didn't hire him at first. But in December 2003, the State Board unanimously voted down Mercy's project: 0 to 8. Javon Bea hired Kiferbaum in January.

In February 2004, Kiferbaum introduced Gruber to Stuart Levine. According to Gruber's own sworn statement, Levine told Gruber that Kiferbaum was a man of integrity and that Gruber could trust him. Gruber replied that he was impressed with Kiferbaum's construction company. Because Mercy's CON application was pending before the State Board, ex parte communications between Gruber and Levine were prohibited.

According to a sworn statement from another hospital CEO, Herb Franks and a Mercy lobbyist told her in March 2004 that Stuart Levine personally met with Kiferbaum and Mercy's CEO to reassure Mercy's CEO that Kiferbaum could "get things done."



On April 20, 2004, the day before Mercy's application was reconsidered by the State Board, Kiferbaum called up Levine and said, "Javon Bea is panicking" because he did not know who the fifth vote would be to approve his application.

The next day, after Mercy's CON was approved, Mercy's lawyer Steven Loren told Levine that Javon was really upset that two State Board members had not voted for the project as he "had been promised up and down the wazoo that he was going to get the support of the those 2 women...."

Kiferbaum also called Levine to report that Javon Bea said "Stuart was masterful." Kiferbaum said Javon Bea knows "how to play the game."

Centegra sued Mercy in the Circuit Court of McHenry County to reverse the CON permit. Even after the commencement of a federal criminal investigation into the issuance of the permit, Mercy fought for a year to keep its ill-gotten gain.

On May 6, 2005, Judge Maureen McIntyre ruled in Centegra's favor and invalidated Mercy's CON. The next business day, Levine and Kiferbaum were indicted. Only then did Mercy throw in the towel and agree not to appeal Judge McIntyre's decision.

The integrity of the CON process was destroyed by actions surrounding the Mercy Crystal Lake application in 2004. There is now a new State Board; but the people on Mercy's side are the same. Can the Leopard change his spots? Less than a month after the latest Crystal Lake application was deemed complete, Mercy hired a professional lobbyist for the stated purpose of lobbying the State Board with regard to a hospital in Crystal Lake.

My written submission documents everything I have just said, and much more. I urge the State Board to fulfill its statutory mandate to give "particular regard to the ... background and character of the applicant" (20 ILCS 3960/6) and to deny Project No. 10-089, Mercy Crystal Lake Hospital and Medical Center.



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Dan Lawler

**TESTIMONY OF DAVID M. EISENSTADT, Ph.D**

**Illinois Department of Public Health Hearing  
Mercy Crystal Lake Hospital and Medical Center  
Project 10-089  
March 18, 2011**

**I. INTRODUCTION**

1. I am an antitrust economist and co-owner of Microeconomic Consulting and Research Associates Inc. ("MICRA"), an economics consulting firm located in Washington, D.C. My partners and I are former employees of the United States Department of Justice, Antitrust Division. MICRA specializes in applied microeconomic theory, industrial organization, and econometrics and matters involving economic issues of competition. I received my Ph.D. in Economics from the University of Illinois at Urbana-Champaign in 1979. I served as a Senior Economist at the Antitrust Division, where I was assigned to many investigations and on-going litigation. I have devoted a large portion of my professional career to the study of competition as it relates to the health care industry and have testified and consulted in numerous matters where competitive issues were relevant to health care delivery and financing. My Curriculum Vitae is attached to this testimony.

2. I have been retained by Mercy Health System and the applicant, Mercy Crystal Lake Hospital and Medical Center ("Mercy-Crystal Lake"), to offer opinions on four issues: (1) the benefits of competition in the delivery of hospital services; (2) whether a need exists for additional competition to Centegra's present two hospitals; (3) the competitive impact to Centegra's current hospitals if Mercy-Crystal Lake is awarded a Certificate of Need ("CON") to build its proposed facility; and (4) whether there is a greater need for additional competition in the service area of Centegra's proposed Huntley facility ("Centegra-Huntley") or the service area

of Mercy-Crystal Lake.<sup>1</sup> In forming opinions on these issues, I have relied on my experience as an industrial organization-antitrust economist, the economics literature on competition in the hospital services industry, portions of Centegra's and Mercy-Crystal Lake's CON applications, and my analysis of Illinois hospital inpatient discharge data.

## **II. BENEFITS OF COMPETITION**

3. Greater competition usually benefits consumers and the economy. More competition usually fosters at least three beneficial effects: greater consumer choice, the provision of higher quality goods and services, and lower costs and prices. With the exception of certain sophisticated inpatient hospital services for which there is some statistical evidence that medical outcomes are superior when those services are provided by a single entity within a locale, competition among hospitals yields benefits similar to the effects of competition in other sectors of the economy. What makes the analysis of competition in the hospital industry somewhat different is the presence of multiple customer groups that would potentially benefit from greater competition between hospitals.

4. In most hospital markets patients, health insurers, employers, and doctors are to some extent all consumers of hospital services. Patients are the end-users of hospital services. Health insurers are financial intermediaries who purchase hospital services on behalf of their enrollee-beneficiaries and employer clients. Employers, both self-insured and those who purchase insured products from health plans, pay the majority of the health care costs generated by their employees (and dependents). Except for those that direct contract, employers do not negotiate prices directly with hospitals. Instead, they rely on health plans to negotiate facility prices on their behalf. In the case of public health insurance programs like Medicare and Medicaid,

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<sup>1</sup> I assume in this testimony that only one of the two applicants, Centegra or Mercy, will be awarded a CON.

taxpayers fund the cost and the government sets payment rates. Last, physicians are agents for their hospitalized patients because they supervise, coordinate, and monitor their treatment in a hospital. Although they do not pay for services, physicians are also consumers of hospital care when they requisition hospital equipment, supplies, and staff on behalf of their admitted patients.

5. The competition authorities are most interested in the effects of hospital competition on prices paid by the customer group that most frequently negotiates prices – health insurers. To be sure, higher hospital prices resulting from less competition are ultimately passed through to employers and employees in the form of higher premiums or co-pays, and lower wages. Physicians also suffer the consequences of less hospital competition because they lose freedom to choose where they admit their patients.

6. Although the decision to award a CON to either Mercy or Centegra will not be decided in an antitrust proceeding or by a competition authority, the effect of a project on competition is relevant to Illinois CON review according to the Illinois Health Facilities and Planning Act. Among the different criteria applied to the review of a CON application in the State is the proposed project's expected impact on the total health care expenditures in the facility and community.<sup>2</sup>

### **III. THE NEED FOR COMPETITION TO CENTEGRA**

7. Laws that preserve or encourage competition are intended to protect consumers from the exercise of market power by either a single firm or multiple firms caused by the adoption of anticompetitive business practices.<sup>3</sup> Market power is the ability to raise price above competitive levels and/or exclude competition. When barriers to entry into a market are present, as is the

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<sup>2</sup> Illinois Health Facilities Planning Act, (20 ILCS 3960), Section 6d.

<sup>3</sup> Monopolization through anticompetitive practices is one example of the exercise of single firm market power. Price-fixing is an example of the exercise of market power by multiple firms.

case with prospective new hospitals seeking to locate in Illinois,<sup>4</sup> the level of a firm's market share is the conventional measure of single firm market power. When a firm holds the largest market share, an additional useful measure of its market power is the disparity between its own share and the share of its leading competitor. The firm's market power grows as that disparity increases.

8. To assess whether Centegra's existing facilities in McHenry County possess market power, I have calculated its current inpatient share in four areas: Centegra-Woodstock's primary service area ("PSA"), Centegra-Woodstock's PSA plus secondary service area ("SSA"), Centegra-McHenry's PSA, and Centegra-McHenry's PSA plus SSA.<sup>5</sup> In calculating Centegra's shares, I have included only inpatient services (DRGs) that Centegra provided in the July 2009 to June 2010 Illinois Hospital Association COMPdata.<sup>6</sup> The reason for excluding those inpatient services which it does not provide is that Centegra can possess market power only over those inpatient services that it offers.<sup>7</sup> Centegra's share in these four areas is shown Table 1 below. Column 1 of the Table shows that in each area Centegra holds the largest market share. Its shares in the Centegra-Woodstock and Centegra-McHenry PSAs equal 58 percent. In the

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<sup>4</sup> Certificate of Need laws are usually deemed a significant barrier to entry.

<sup>5</sup> Centegra CON Application, pp. 124-5. The PSAs for each Centegra hospital are based on the smallest number of zip codes that account for 75 percent of each facility's discharges. In the case of Centegra-McHenry, the zip codes that comprise the SSA account for the next 13.9 percent of the facility's discharges up to the cumulative percentage of 88.9 percent. In the case of Centegra-Woodstock, the SSA is comprised of the zip codes that account for the next 12.7 percent of discharges up to a cumulative percentage of 87.7 percent. Shares were computed based on discharge counts. For both hospitals, the patient counts used to calculate shares exclude normal newborns, and "soft" inpatient services such as alcohol rehabilitation, substance abuse, and psychiatric admissions. These service exclusions are consistent with those adopted by antitrust authorities when defining general acute care inpatient hospital product markets.

<sup>6</sup> COMPdata is a product of the Illinois Hospital Association. Illinois COMPdata contains patient-level discharge information for each inpatient discharge from an Illinois hospital.

<sup>7</sup> Centegra does not compete with other hospitals for the patients who demand these services.

Centegra-Woodstock PSA plus SSA, Centegra maintains a 49 percent share. In the combined PSA plus SSA of Centegra-McHenry, Centegra holds a 39 percent share.

**TABLE 1**

**CENTEGRA AND LEADING COMPETITOR-FACILITY SHARES IN THE SERVICE AREAS OF CENTEGRA'S EXISTING HOSPITALS<sup>8</sup>**

Area	Current Centegra System Share	Share of Second Largest Facility Competitor	Factor By Which Centegra is Larger than the Second Largest Competitor
Centegra-Woodstock PSA	58	9	6.4
Centegra-Woodstock PSA+SSA	49	15	3.3
Centegra-McHenry PSA	58	17	3.4
Centegra-McHenry PSA+SSA	39	26	1.5

9. Centegra's existing shares in these four areas may be understated for several reasons.

First, I have included all admissions of service area residents to non-McHenry County hospitals in the share calculations even though difficult cases for DRGs that Centegra offers may migrate to larger and more sophisticated hospitals located outside the County. Arguably, other hospitals do not compete with Centegra for these cases, and those admissions should be removed from the calculation of Centegra's share.<sup>9</sup> Second, some patients who migrate out of Centegra's service

<sup>8</sup> In the Centegra-McHenry PSA plus SSA, the share of the second largest facility competitor is the combined share of Advocate Good Shepherd Barrington and Advocate Condell Hospital. For the other service areas shown in the table, with the exception of Advocate Good Shepherd, the individual facility shares of other Advocate hospitals are less than 5 percent.

<sup>9</sup> For example, when inpatient discharges with total dollar charge amounts more than two standard deviations above the mean charge amount of that DRG at Centegra are excluded from the "denominator" used to in the calculation of shares, Centegra's current shares in its Woodstock PSA, Woodstock PSA plus SSA, McHenry PSA, and McHenry PSA plus SSA increase respectively to 63, 54, 62, and 43 percent.

areas may do so because they maintain historical relationships with hospitals and physicians located in other parts of the Chicago metropolitan area. For these patients, admission to Centegra is not a good alternative to admission at these other hospitals, which indicates that these facilities do not truly compete with Centegra for these cases. The removal of these cases from the denominator used to calculate shares would result in a larger Centegra share in each of these four areas.

10. As Centegra holds the largest share in each area, I measured its relative share advantage by calculating the ratio of its share and the share of its closest competitor facility. The second column in Table 1 shows the share of the second largest competitor facility, and the third column is the ratio of Centegra's share and the competitor's share. In each area, Centegra's closest facility competitor is Advocate Good Shepherd Hospital.<sup>10</sup> Table 1 shows that Centegra's share is more than six times larger than that of its leading competitor in the Centegra-Woodstock PSA. Centegra's share is more than three times larger than its closest competitor's share in the combined Centegra-Woodstock PSA and SSA. For its McHenry hospital, Centegra's share is 3.4 and 1.5 times larger than the share of its closest competitor in that facility's PSA and combined PSA and SSA, respectively.

11. Based on this analysis, I conclude there is a present need for additional (new) hospital competition in the service areas of Centegra's two existing hospitals.

#### **IV. THE LIKELY IMPACT OF MERCY-CRYSTAL LAKE**

12. The effect of Mercy-Crystal Lake on Centegra is analogous to the effect of a new entrant on an existing, relatively dominant incumbent. As shown in Table 2 below, at present, Mercy-

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<sup>10</sup> With the exception of the Centegra-McHenry's combined PSA and SSA (see note at the end of Table 1), I did not include shares of other Advocate hospitals in this column because they are individually small (less than five percent).

Harvard accounts for a minimal share in the service areas of Centegra's two existing hospitals. Put simply, Mercy-Harvard is not a significant competitor to either Centegra hospital. The relevant question then becomes whether the entry of Mercy-Crystal Lake will help de-concentrate the service areas of Centegra's current facilities. Table 2 shows the impact that Mercy-Crystal Lake is likely to have on hospital shares. To compute the share of Mercy-Crystal Lake, I have relied on information submitted by certain physicians who wrote letters of support for the new Mercy-Crystal Lake hospital. These physicians are employed by Mercy and pledged to make certain numbers of patient referrals to Mercy-Crystal Lake. Their referral estimates are organized by zip code and indicate the existing hospitals currently used by these patients. From this information it is possible to calculate both a share for Mercy-Crystal Lake in the service areas of Centegra's existing two hospitals and Centegra's share after these referrals to Mercy-Crystal Lake occur.

13. Table 2 shows the share impact of Mercy-Crystal Lake. Across the four areas, the third column of the table indicates that Mercy would earn an approximate incremental share between 10 and 15 points in these different areas, based on the support of these physicians. Because the doctors who are expected to use Mercy-Crystal Lake currently admit the vast majority of their patients to Centegra, the decline in Centegra's share approximately equals the increase in Mercy's share. Based on this information, I would expect that Mercy-Crystal Lake will emerge as Centegra's most significant competitor. Further, the actual increase in Mercy's share and the corresponding decline in Centegra's share will be larger if additional physicians that currently



admit their patients to Centegra's two hospitals shift some of their admissions to Mercy-Crystal Lake.<sup>11</sup>

**TABLE 2**  
**IMPACT OF MERCY-CRYSTAL LAKE HOSPITAL ON SHARES**

<b>Geographic Area</b>	<b>Current Centegra Inpatient Share</b>	<b>Mercy-Harvard Current Share</b>	<b>Mercy System Share With Crystal Lake Hospital</b>	<b>Centegra Share After Mercy Crystal Lake<sup>12</sup></b>
Centegra-Woodstock PSA	58	2	16	45
Centegra-Woodstock PSA+SSA	49	2	13	38
Centegra-McHenry PSA	58	0	12	47
Centegra-McHenry PSA+SSA	39	1	10	31

14. The letters of physician support for Mercy-Crystal Lake are consistent with my conclusion that Mercy-Crystal Lake will become Centegra's closest competitor. Based on this information, it is possible to estimate the expected downward effect on Centegra's prices that would result from Mercy-Crystal Lake's entry. To calculate that expected impact, I assume that Centegra's and Mercy's shares for individual commercial payers that negotiate

<sup>11</sup> Alternatively, if Mercy employs additional physicians and they attract patients from the non-employed physicians who currently admit to Centegra, Mercy's (Centegra's) share will increase (decline) further.

<sup>12</sup> The difference between Centegra's current shares in each area and its shares after Mercy-Crystal Lake enters is not the difference between the share values in columns 1 and 3 because of (1) rounding and (2) a small amount of Mercy-Crystal Lake's share is gained at the expense of non-Centegra hospitals.

inpatient hospital prices with Centegra equal their shares shown in Table 2.<sup>13</sup> To simulate Centegra's expected price decline, I apply a model of oligopoly pricing used to estimate price changes in markets where firms sell differentiated products.<sup>14</sup> Table 3 shows that the expected price declines for Centegra range from 4 to 9 percent, depending on which Centegra service area is used to compute Centegra's and Mercy's shares.<sup>15</sup>

**TABLE 3**  
**EXPECTED CENTEGRA PRICE DECLINE GIVEN**  
**MERCY-CRYSTAL LAKE'S EXPECTED SHARE**

<b>Geographic Area</b>	<b>Expected Centegra Price Decline</b>
Centegra-Woodstock PSA	9 percent
Centegra-Woodstock PSA+SSA	6 percent
Centegra-McHenry PSA	8 percent
Centegra-McHenry PSA+SSA	4 percent

15. I conclude from this analysis that in the service areas for Centegra's two existing hospitals, the additional competition created by the entry of Mercy-Crystal Lake would be beneficial to payers and employers.

<sup>13</sup> That is, Centegra's and Mercy's shares of an individual payer's inpatient volume that originates in these four different areas, for the same underlying services, is assumed to equal the all-payer shares shown in Table 2.

In performing the price simulation, I computed Mercy-Crystal Lake's share based only on those patients that Mercy-Crystal Lake would siphon from Centegra's existing hospitals.

<sup>14</sup> Inpatient hospital services are an example of a differentiated product.

<sup>15</sup> Larger price declines would be associated with larger increases (decreases) in Mercy's (Centegra's) share than those shown in Table 2.

**V. THE COMPARATIVE NEED FOR ADDITIONAL HOSPITAL COMPETITION IN THE SERVICE AREAS PROPOSED BY MERCY-CRYSTAL LAKE AND CENTEGRA-HUNTLEY**

16. The final analysis I performed is a comparison of the relative need for additional hospital competition in the service areas of each applicant's proposed facility. Table 4 below shows the current hospital shares in the PSAs for Mercy-Crystal Lake and Centegra-Huntley.<sup>16</sup> In Mercy-Crystal Lake's PSA, Centegra currently possesses the largest share, equal to 48 percent. The second leading competitor, Good Shepherd in Barrington, holds a 17 percent share, making Centegra's share nearly three times larger. Alternatively, in the Centegra-Huntley PSA, Centegra does not presently possess the largest share. Sherman Hospital in Elgin holds a 26 percent share, compared to Centegra's 23 percent share. A comparison of the two areas shows that the market share advantage for Centegra in the Mercy-Crystal Lake PSA is much larger than in the Centegra-Huntley PSA (where Centegra is not even the firm with the largest share).

**TABLE 4**

**COMPARATIVE NEED FOR COMPETITION IN THE PROPOSED PSAs OF MERCY-CRYSTAL LAKE AND CENTEGRA-HUNTLEY**

<b>Geographic Area</b>	<b>Centegra Current Share</b>	<b>Mercy-Harvard Current Share</b>	<b>Share of Leading Facility Competitor</b>	<b>Factor by Which Centegra is Larger than its Leading Competitor</b>
Proposed Mercy-Crystal Lake PSA	48	0	17	2.8
Proposed Centegra-Huntley PSA	23	0	26	0.9

<sup>16</sup> The proposed Centegra-Huntley PSA is shown on page 107 of Centegra's CON application.

17. I conclude from this analysis that, all else equal, residents of Mercy-Crystal Lake's proposed PSA are likely to benefit more from the choice of an additional hospital than the residents of the Centegra-Huntley's proposed PSA.