

Constantino, Mike

From: Avery, Courtney
Sent: Friday, June 03, 2011 4:05 PM
To: Constantino, Mike
Subject: Fw: Mercy Crystal Lake Hospital and Medical Center, Inc., Project #10-089
Attachments: Letter.pdf

FYI

From: Stein, Sanford M. [mailto:sanford.stein@quarles.com]
Sent: Friday, June 03, 2011 03:48 PM
To: Avery, Courtney
Subject: Mercy Crystal Lake Hospital and Medical Center, Inc., Project #10-089

Dear Ms. Avery, please see the attached letter to be submitted into the record of the above referenced matter. The original will be sent to you by overnight delivery service for receipt in your office on Monday June 6, 2011.

Thank you

Sanford M. Stein
Attorney, Partner
Quarles & Brady LLP
300 North LaSalle Street
Suite 4000
Chicago, Illinois 60654
www.quarles.com
P: (312) 715-5162
F: (312) 715-5155
C: (312) 972-2701
sanford.stein@quarles.com

This electronic mail transmission and any attachments are confidential and may be privileged. They should be read or retained only by the intended recipient. If you have received this transmission in error, please notify the sender immediately and delete the transmission from your system. In addition, in order to comply with Treasury Circular 230, we are required to inform you that unless we have specifically stated to the contrary in writing, any advice we provide in this email or any attachment concerning federal tax issues or submissions is not intended or written to be used, and cannot be used, to avoid federal tax penalties.



300 North LaSalle Street
Suite 4000
Chicago, Illinois 60654-3422
Tel 312.715.5000
Fax 312.715.5155
www.quarles.com

*Attorneys at Law in:
Phoenix and Tucson, Arizona
Naples and Tampa, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin*

Writer's Direct Dial: 312.715.5162
E-Mail: sanford.stein@quarles.com

June 3, 2011

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

RE: Mercy Crystal Lake Hospital and Medical Center, Inc., Project #10-089

Dear Ms. Avery:

I am writing on behalf of my client, Mercy Crystal Lake Hospital and Medical Center, Inc. and Mercy Alliance, Inc. (collectively, "**Mercy**"), to respond to the testimony submitted by Mr. Daniel Lawler on behalf of Centegra Health System, Centegra Hospital/McHenry, Centegra Hospital/Woodstock, and Centegra/Huntley (collectively, "**Centegra**") at the public hearing held by Mercy on March 18, 2011. Mr. Lawler, legal counsel to Centegra, also submitted a written copy of his testimony to Board staff on March 22, 2011.

As you are aware, Mercy and Centegra each have submitted a Certificate of Need ("**CON**") application seeking approval from the Illinois Health Facilities and Services Review Board (the "**Board**") for the establishment of a hospital facility in southern McHenry County. As I am sure you are also aware, Mercy previously filed a CON application in 2003 (eight years ago) to develop a hospital facility in Crystal Lake. Back then, Mercy was keenly aware of the need for a hospital facility in Crystal Lake. Mercy's 2003 application for the Crystal Lake facility was approved in 2004 by the then-constituted Board, but a court later overturned that approval. What do the events of 2003-2004 have to do with Mercy's current hospital project? Absolutely nothing. However, and rather predictably, that did not stop Mr. Lawler and his client Centegra from using half-truths and innuendo from seven and eight years ago in an attempt to taint Mercy's current project. One such half-truth was Mr. Lawler's assertion (a correct one I might add) that the statute governing the Board's review of Mercy's CON application is expressly intended to assure the persons establishing a new health care facility in Illinois "have the

background and character necessary to provide a proper service for the community.”¹ What Mr. Lawler failed to include in his testimony, however, is that the Board rules also provide that “[i]n evaluating the qualifications, background and character of the applicant, [the Board] shall consider whether adverse action has been taken against the applicant, or against any health care facility owned or operated by the applicant, directly or indirectly, within three years preceding the filing of the application.”²

The following facts regarding Mercy’s 2003 application are clear and incontrovertible: *Neither Mercy nor any of its employees were accused by any governmental authority of any wrongdoing. Neither Mercy nor any of its employees were charged by any governmental authority with any wrongdoing. Mercy cooperated fully with the government’s investigation of the events surrounding its 2003 application. The government was satisfied with Mercy’s cooperation.* Not only was no adverse action taken, the government didn’t even suggest that Mercy acted inappropriately. In fact, Mercy and its employees were so far removed from the wrongdoing alleged by the government that the government did not even bother to call any Mercy employees as witnesses in the numerous court proceedings that resulted. In short, the events surrounding Mercy’s 2003 CON application did not result in any adverse action being taken against either Mercy or any health care facility owned or operated by Mercy.

Mercy is proud of its pending hospital project and, frankly, the organization has been humbled by the overwhelming support it has received from the residents of McHenry County. Given that, we would prefer that extraneous innuendo, misdirection or other tactics inappropriate to a fair hearing, would not come into the record. However, Mr. Lawler has chosen a different course for his client. When you put aside the personal attacks and diversionary tactics and focus on the merits, 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, if approved by the Board and 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. If approved, Mercy is prepared to commence construction before the end of the year and not wait, like Centegra, until 2014 to begin construction. In short, the Mercy project is the right project, in the right location, at the right time.

Mr. Lawler states that an applicant for a CON “puts its background and character at issue.”³ Indeed they do, but putting its character and background out there for scrutiny and review is not new to Mercy. In 2008, the President of the United States awarded Mercy the nation’s highest honor for quality, the Malcolm Baldrige National Quality Award. As part of the Baldrige

¹ See Daniel Lawler Testimony dated March 17, 2011, p. 1.

² 77 Il. Adm. Code § 1110.230.

³ See Daniel Lawler Testimony dated March 17, 2011, p. 1.

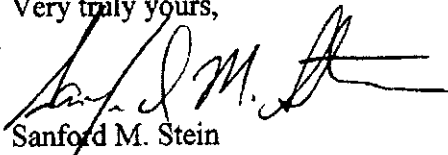
Ms. Courtney R. Avery
June 3, 2011
Page 3

review process, Baldrige examiners spent hundreds of hours reviewing (including on-site inspections) all facets of Mercy's operation. Following this review, a separate panel of judges (appointed by the United States' Secretary of Commerce) recommended Mercy be approved for the award by the Secretary of Commerce. A principal focus of the Baldrige review process is on the leadership and management team of a given organization, including how well an organization promotes legal and ethical behavior. Specifically, applicants like Mercy must demonstrate how their Senior Leadership is committed to legal and ethical behavior as well as how they promote an organizational environment that requires it.

Mercy certified in its CON application that in the last three years, no adverse actions have been taken against it or any health care facility owned or operated by it. Further, the events surrounding Mercy's 2003 application did not result in any adverse actions being taken against Mercy. In awarding Mercy the Baldrige Award, the background and character of Mercy and its leadership team were viewed favorably by the President, the Secretary of Commerce, the Baldrige panel of judges and the Baldrige reviewers. Make no mistake about it, Mercy has the background and character necessary to provide a proper service for the McHenry County community.

Mercy appreciates your consideration and attention to this matter.

Very truly yours,



Sanford M. Stein