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Via E-Mail and U.S. Mail

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

Re: Centegra Hospital-Huntley, Project No. 10-090

Dear Ms. Avery:

I represent the applicants, Centegra Health System and Centegra Hospital-Huntley, in Project No. 10-090 and am responding to the two letters posted this week on the website of the Illinois Health Facilities and Services Review Board ("State Board") that were sent to you by Trent Gordon of Advocate Good Shepherd Hospital ("Advocate") and Mary Martini of Sherman Health ("Sherman"). Sherman's letter is dated August 17, 2012 but Advocate's is undated. Both letters were received by the State Board on August 23, 2012. The nearly identical letters request "a written decision of the Board's approval of the Centegra project" and cite Section 12(11) of the Illinois Health Facilities Planning Act (20 ILCS 3960/12(11) ("Planning Act").

Neither letter complies with the requirements of Section 12(11) of the Planning Act and should be disregarded by the State Board for this reason. In addition, the permit letter issued by the State Board to the Centegra applicants on Project No. 10-090 dated July 30, 2012 ("Permit Letter") fully conforms to the requirements of Section 12(11) and, therefore, no additional written decision is required under the Planning Act. Finally, the Advocate and Sherman letters rely on a provision of the Planning Act that does not even apply to Centegra's project, and the letters should be disregarded for this additional reason.

I. The Advocate and Sherman Requests Fail to Comply with Section 12(11) of the Planning Act and Should be Disregarded

While Section 12(11) of the Planning Act allows requests for written decisions, such requests are *only* permitted from "the applicant or an adversely affected party." 12 ILCS 3960/12(11). Advocate and Sherman are not the applicants on Project No. 10-090 and neither Advocate's letter nor Sherman's letter demonstrate or even claim that they are "an adversely affected party" as required by Section 12(11). The letters from Advocate and Sherman do not even identify their interest in the matter much less demonstrate how any

interest they might have was adversely affected as required by the Planning Act. For this reason alone, the letter requests should be disregarded.

In addition, the letter requests from Advocate and Sherman are untimely. The State Board approved Project No. 10-090 at its meeting on July 24, 2012. Representatives of Advocate and Sherman were not only present at that meeting but testified during the public comment on Centegra's project. Consequently, both Advocate and Sherman knew on July 24, 2012 that the State Board approved the project. Nevertheless, Advocate and Sherman waited over three and a half weeks before even deciding to make their requests. Indeed, the letters posted on the State Board's website show that both letters were not received by the State Board until August 23, 2012 which was a full 30 days after the State Board's decision. Section 12(11) of the Planning Act indicates that requested written decisions are to be issued "within 30 days of the meeting in which a final decision has been made." 20 ILCS 3960/12(11). A request that is not received by the State Board until the last day on which the decision is required to be issued is clearly untimely. Even if the Board had received the letters on the day that Sherman's letter is dated (August 17, 2012) that still would have provided the Board with only five business days to prepare and issue a written decision within the statutory time period and would also be untimely.

II. The Permit Letter Issued by the State Board on July 30, 2012 Conforms With All the Requirements of Section 12(11) of the Planning Act

The State Board has already issued a written decision that fully conforms to the requirements of the Planning Act. Consequently, the letter requests of Advocate and Sherman are moot.

Section 12(11) of the Planning Act, as applied to Centegra's project, requires that (a) the decision be in writing, (b) the decision be issued within 30 days of the meeting at which the decision was made, (c) the decision be prepared by the State Board's staff, and (d) the State Board approve a final copy of the written decision for inclusion in the formal record. Centegra's Permit Letter dated July 30, 2012 conforms to these requirements in that it was in writing, it was prepared by the State Board's staff, and it was issued within 30 days of the July 24, 2012 State Board meeting. With regard to the requirement that "the State Board shall approve a final copy for inclusion in the formal record," this is purely an administrative and ministerial task that the State Board's Administrator is authorized to carry out by regulation. Section 1925.240(d) of the State Board's administrative rules empowers the State Board's Executive Secretary (which was the predecessor position to the Administrator) to "represent the State Board whenever necessary; write and issue letters and other communications on its behalf" and to "perform other duties as directed by the State

Board, or by its Chairman." 2 Ill. Adm. Code 1925.240(d)(7)and (8). The issuance of written decisions in the form of permit letters, and the inclusion of such letters in the formal record of a project, has been a longstanding duty of the Administrator and Executive Secretary, and a longstanding practice of the State Board. Consequently, the Permit Letter issued on the Centegra Project dated July 30, 2012 complies with all requirements of the Planning Act and renders moot the letter requests of Advocate and Sherman.

III. The Advocate and Sherman Letters Rely on a Provision of the Planning Act that is Not Applicable to Centegra's Project

The Advocate and Sherman letters request a written decision that identifies "applicable criteria and factors listed in the Act and the Board's regulations that were taken into consideration when coming to a final decision." Both letters claim that this is "provided in the Planning Act." Advocate and Sherman fail to recognize that the referenced provision does *not* apply to Centegra's project.

The provision referenced by Advocate and Sherman was added to Section 12(11) by Public Act 97-1115. Section 19.5.1 of Public Act 97-1115 specifically states:

> "The changes to this Act made by this amendatory Act of the 97 General Assembly apply *only to applications or modifications to permit applications filed on or after the effective date of this amendatory Act of the 97th General Assembly.*"

Emphasis added; 20 ILCS 3960/19.5.1, effective August 27, 2012. *See* attached copies of Section 19.5.1 and Section 12(11), as amended by P.A. 97-1115.

The effective date of the Public Act was August 27, 2012 when it was signed by the Governor. Because Centegra's application was filed on December 29, 2010 the changes effected by Public Act 97-1115, including the provision relied upon by Advocate and Sherman, simply do not apply to Centegra's project.

For all the above reasons, the requests of Advocate and Sherman for a written decision on Project No. 10-090, Centegra Hospital-Huntley, should be disregarded.

Very truly yours,

K&L GATES LLP

Daniel J. Lawler

DJL:dp

cc: Frank Urso, General Counsel, IHFSRB (by email)
Juan Morado, Assistant General Counsel, IHFSRB (by email)
Aaron T. Shepley, Senior Vice President and General Counsel, Centegra Health System

(20 ILCS 3960/19.5.1 new)

Sec. 19.5.1. Applicability of changes made by this amendatory Act of the 97th General Assembly. The changes to this Act made by this amendatory Act of the 97th General Assembly apply only to applications or modifications to permit applications filed on or after the effective date of this amendatory Act of the 97th General Assembly.

Section 99. Effective date. This Act takes effect upon becoming law.

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Statutes amended in order of appearance

20 ILCS 3960/4	from Ch. 111 1/2, par. 1154
20 ILCS 3960/5	from Ch. 111 1/2, par. 1155
20 ILCS 3960/6	from Ch. 111 1/2, par. 1156
20 ILCS 3960/6.2 new	
20 ILCS 3960/10	from Ch. 111 1/2, par. 1160
20 ILCS 3960/12	from Ch. 111 1/2, par. 1162
20 ILCS 3960/12.5	
20 ILCS 3960/14.1	

Effective Date: 8/27/2012

(11) Issue written decisions upon request of the applicant or an adversely affected party to the Board within 30 days of the meeting in which a final decision has been made. A "final decision" for purposes of this Act is the decision to approve or deny an application, or take other actions permitted under this Act, at the time and date of the meeting that such action is scheduled by the Board. The staff of the State Board shall prepare a written copy of the final decision and the State Board shall approve a final copy for inclusion in the formal record. The written decision shall identify the applicable criteria and factors listed in this Act and the Board's regulations that were taken into consideration by the Board when coming to a final decision. If the State Board denies or fails to approve an application for permit or certificate, the State Board shall include in the final decision a detailed explanation as to why the application was denied and identify what specific criteria or standards the applicant did not fulfill.