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September 10, 2013

Via Email and Personal Delivery

Mr. Frank Urso
General Counsel
Illinois Department of Public Health
122 South Michigan Avenue
7th Floor
Chicago, IL 60603

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

Dear Mr. Urso:

Enclosed please find the responses of Centegra Health System and Centegra Hospital-Huntley ("Centegra") to the letters sent to Board Chair Kathryn Olson by attorneys for Mercy Crystal Lake Hospital, Advocate Health and Hospital Corporation and Advocate Sherman Hospital in the Will County litigation pending before Judge Bobbi Petrungaro relating to Judge Petrungaro's remand order regarding the permit issued to Centegra in Project No. 10-090, Centegra Hospital-Huntley.

Please forward Centegra's enclosed response to your client for inclusion into the project file for Project No. 10-090. Also please note that I am overnighting duplicate copies of the enclosed to the Review Board's Springfield office, also in your care.

Thank you for your attention to this matter.

Very truly yours,

BARNES & THORNBURG LLP

Daniel J. Lawler
Attorney for Centegra

DJL:dp
Enclosure
cc: Mr. Joe Ourth
Mr. Steven Hoeft
Ms. Diane Moshman
Mr. Linas Grikis

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September 10, 2013

Via Overnight Mail

Ms. Kathryn Olson
c/o Mr. Frank Urso
Illinois Health Facilities and Services Review Board
525 West Jefferson Street
2nd Floor
Springfield, IL 62761

Via Personal Delivery

Ms. Courtney Avery
c/o Mr. Frank Urso
Illinois Health Facilities and Services Review Board
122 South Michigan Avenue
Suite 700
Chicago, IL 60603

Re: Project No. 10-090, Centegra Hospital-Huntley
Remand from the Circuit Court of Will County

Dear Ms. Olson and Ms. Avery:

I represent the permit holders Centegra Health System and Centegra Hospital-Huntley ("Centegra") on Project No. 10-090, Centegra Hospital-Huntley. I submit this letter in response to letters dated September 3, 2013 and September 4, 2013 addressed to Board Chair Kathryn Olson from Mr. Steven Hoeft and Mr. Joe Ourth, respectively, purporting to advise the Illinois Health Facilities and Services Review Board ("Review Board") on how it should proceed in connection with the order of the Circuit Court of Will County of remand for the purpose of providing an explanation for the Review Board's conclusions on page 10 of its Final Written Decision dated September 11, 1012 approving Project No. 10-090.

I. Judge Petrungaro Did *Not* Remand For Reconsideration Of Centegra's Application

Contrary to the advice of Messrs. Hoeft and Ourth that the Review Board reconsider and vote again on Centegra's permit application, Circuit Court Judge Petrungaro specifically stated that she was *not* remanding for a reconsideration and was *only* remanding for purposes of obtaining a fuller explanation from the Review Board of its final decision to approve Centegra's application. During the hearing on Centegra's Motion for Clarification of the Remand Order, Judge Petrungaro clarified that she was remanding for an explanation of the

reasons for the Review Board's approval of Centegra's application and not for reconsideration:

> "**MR. LAWLER**: ... Now, your Honor's order is saying - - for purposes of administrative review, I'd like to see more reason for [the Board's decision], but its not a revote on the project. ... It didn't reopen the whole project for reconsideration. This is not a reconsideration of our project...
>
> **THE COURT**: ... ***I have not requested a reconsideration***. I have asked for a clarification for the reasons that they voted as they did."

Emphasis added; Transcript of court hearing on July 23, 2013 ("Court Transcript") at pages 13-14. A copy of the Court Transcript is attached hereto as Exhibit A.

Judge Petrungaro's statement above is diametrically opposed to the reconsideration proposed by Messrs. Hoeft and Ourth. Their proposed reconsideration is an invitation to error as it would directly contravene Judge Petrungaro's remand order. In addition, Centegra holds a valid permit duly issued by the Review Board and, under the Planning Act and the Board's rules, that permit can only become invalid if Centegra fails to comply with the Board's post-permit requirements as specified under Section 1130.710 of the Board's rules. 77 Ill. Adm. Code 1130.710. No such grounds for revocation exist here.

The only vote contemplated by Judge Petrungaro's remand order was a vote to approve the additional explanation provided in support of the decision to approve Centegra's application and the Board's conclusions on page 10 of its Final Written Decision. The judge stated: "*I just want a clarification for the reasonings and for what's on page 10 of that order. If they choose to revote and if they have to vote to approve whatever it is that they are giving me, that's their procedure. I do not control how they operate.*" Emphasis added; Court Transcript at 14. The context of the judge's comments show that the only "vote" or "revote" was in reference to a vote to approve the additional explanation for the approval of Centegra's permit.

The reconsideration sought in the Hoeft and Ourth letters is contrary to the Circuit Court's remand order and contrary to the Planning Act and Review Board's rules. The request for reconsideration should therefore be rejected.[1]

---

[1] Mr. Hoeft's letter urges the Board to reconsider Centegra's project in light of the Inventory of August 14, 2013. As addressed above, Judge Petrungaro specifically stated that she was not remanding for a reconsideration. Moreover, there is no statutory or regulatory basis for the Review Board to reconsider previously issued permits based on subsequent changes in the inventory. Such action would be inconsistent with the Board's rules that a valid permit only becomes invalid for specified reasons, and a subsequent change in the inventory is not a basis for revoking a permit.

II. The Hoeft And Ourth Letters Assert Legal Issues That Were Fully Briefed, Heard, And Taken Under Advisement By Judge Petrungaro; They Are Not Properly Before The Review Board

Messrs. Hoeft and Ourth raise a host of legal arguments that the parties, including Centegra and the Review Board, have fully briefed before Judge Petrungaro and which issues remain pending before Judge Petrungaro. Such issues include whether there is a need for Centegra's project; whether physician referral letters were required; whether the administrative record provided grounds for approving Centegra's application; and, whether the Review Board properly followed its procedures.

The clients of Mr. Hoeft and Mr. Ourth (Mercy Crystal Lake Hospital, Advocate Health and Hospital Corporation, and Advocate Sherman Hospital) filed six separate briefs with Judge Petrungaro totaling nearly 100 pages on these issues. Centegra and the Review Board filed three separate briefs totaling 66 pages responding to the issues. Judge Petrungaro heard lengthy oral argument on the issues on March 8, 2013, and took the matter under advisement. Messrs. Hoeft and Ourth are attempting to circumvent Judge Petrungaro's jurisdiction by presenting these issues to the Review Board for decision. Judge Petrungaro did not remand this matter to the Review Board to decide these issues, but rather, to clarify the decision the Board has already made in approving the permit.

Centegra's Reply Brief filed with Judge Petrungaro is attached hereto as Exhibit B for purposes of demonstrating that the issues Mr. Hoeft and Mr. Ourth raise in their letters were the subject matter of the briefs and arguments presented to Judge Petrungaro and which remain pending before her. For example, the issue of the adequacy of the record to support the Review Board's decision is addressed at pages 4 through 14 of Centegra's Reply Brief. The arguments regarding physician referral letters, Review Board procedures, and written comment are addressed at pages 13-14, 15-18, and 19-20, respectively, of the Reply Brief.

The attempts of Mr. Hoeft and Mr. Ourth to have the Review Board decide issues that are pending before Judge Petrungaro and presented in over 160 pages of briefs on an 11,000 page administrative record is an affront to both Judge Petrungaro and the Board. It is far beyond the scope of the Circuit Court's remand order and should be rejected.

III. Centegra's Position Regarding Remand

In issuing the remand order on Centegra's permit, Judge Petrungaro relied on a recently issued appellate opinion *Medina Nursing Center, Inc. v. Health Facilities Services Review Board*, 2013 Ill. App. (4th), No. 4-12-0554, slip op. (4th Dist. July 12, 2013). There, the appellate court departed from established judicial precedent[2] and remanded a matter to

[2] *See, e.g., Provena Health v. Illinois Health Facilities Planning Board*, 382 Ill. App. 3d 34, 44 (1st Dist. 2008); *Access Center for Health, Ltd. v. Ill. Health Facilities Planning Bd.*, 283 Ill. App.3d 227, 237 (2d Dist. 1996); *Charter Medical of Cook Cty. v. HCA Health Services*, 185 Ill. App. 3d 983, 991 (1st Dist. 1989).

the Review Board for findings and conclusions beyond those set forth in the Board's permit letter. Centegra subsequently filed a motion for clarification with Judge Petrungaro and noted that on Centegra's project the Review Board issued a ten page Written Final Decision dated September 11, 2012 that contained the Board's specific findings and conclusions. In consideration of Centegra's motion, Judge Petrungaro clarified her prior order and remanded with direction that the Review Board "provide further explanation for page 10 of its Written Final Decision dated September 11, 2012." *See* order dated July 23, 2013 attached as Exhibit C, hereto.

While Centegra's position is that the Review Board has more than adequately explained its decision, we respect the fact that the Review Board has been ordered by the Circuit Court to provide additional explanation. In that regard, Centegra notes the following:

a. The Written Final Decision dated September 11, 2012 identified 17 criteria as to which the Review Board's staff found compliance in the Supplemental Staff Report ("SSR"). However, the staff had found compliance with three additional criteria that were not mentioned in the Written Final Decision, namely:

   (i) Criterion 1110.530(b)(1): Planning Area Need: formula calculation (*See* SSR at 22);

   (ii) Criterion 1110.530(b)(2): Planning Area Need: service to planning area residents (*See* SSR at 22);

   (iii) Criterion 1110.530(b)(3): Project Service Demand: rapid population growth (*See* SSR at 22).

   These additional criteria for which positive findings were made should be referenced and included in the Review Board's additional explanation for its decision.

b. The Final Written Decision contains a negative finding on page 4 that is based on the staff's report and finding, and is cited as "Criterion 1110.530(b) – Planning Area Need." However, the staff noted on page 4 of the SSR that this negative finding was in connection with the "Service Accessibility" provision which is Criterion 1110.530(b)(5), and the SSR further found Centegra in compliance with all other applicable provisions of 1110.530(b) including 1110.530(b)(1); 1110.530(b)(2); and 1110.530(b)(3). The SSR further shows that Centegra submitted documentation compliant with 1110.530(b)(5)(A)(iv) relating to the presence of Medically Underserved Populations and Health Manpower Shortage Areas to be served by the project.

The additional explanation should specify that the negative finding was based on Criterion 1110.530(b)(5); that Centegra was found in compliance with all other applicable provisions of 1110.530(b) including 1110.530(b)(1); 1110.530(b)(2); and 1110.530(b)(3); and that Centegra submitted documentation compliant with 1110.530(b)(5)(A)(iv) relating to the presence of Medically Underserved Populations and Health Manpower Shortage Areas to be served by the project.

c. In the SSR the staff noted documentation and responses submitted by Centegra in connection with the criteria for which the staff did not make positive findings. (*See, e.g.*, SSR at 22-23 and 24.) The Final Written Decision also references Centegra's documentation and responses at pages 4 and 5.

Centegra respectfully requests that the additional explanation specify that the Review Board considered the documentation and responses of Centegra in connection with the three criteria as to which the staff had made negative findings.

d. Judge Petrungaro's order dated July 15, 2013 contains a statement that the Review Board provided "no indication as to why the Board must have disagreed with the SAR…"

Centegra notes, and respectfully requests that the additional explanation specify, that:

(i) The Review Board's approval of Centegra's project does not reflect a disagreement with the Board's staff given that the staff does not recommend approval or denial of permits and, in any event, the Review Board is not bound by the findings of its staff as numerous courts have held; and

(ii) The Review Board has authority to approve projects that do not meet all review criteria under Section 1130.660 of the Board's rules and numerous appellate court opinions.

e. The Final Written Decision contains a minor typo in a citation. On page 2, the Alternatives Criterion is cited as Criterion 1110.234(c). The correct citation is Criterion 1110.230(c).

f. Paragraph 4 of the *Medina Nursing Center* opinion states that the appellate court remanded to the Review Board with directions for "a reasoned explanation for its decision, complete with 'findings and conclusions'" and cited Section 3-110 of the Administrative Review Law which states: "The

findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct." 735 ILCS 3-110.

While the Final Written Decision on Centegra's project identifies the Review Board's findings and conclusions regarding the project's compliance with the review criteria, Centegra respectfully suggests for purposes of clarification that the additional explanation include the specific language that the Board has made findings and conclusions regarding **[the?]** Centegra project's compliance with the review criteria.

g. Paragraph 12 of the *Medina Nursing Center* opinion states that "the Department concluded, in its state agency report, that the project was not in substantial conformance with parts 1110 and 1120 of the Board's regulations."

Centegra respectfully requests that the additional explanation reflect that:

(i) On Centegra's project, the Board's staff and the SSR did not conclude that the project was not in substantial conformance with Board's regulations and that the staff and SSR merely contains the staff's findings as to whether specific review criteria were met or not met, in the staff's determination;

(ii) Under the Planning Act, it is for the Review Board, not its staff, to determine whether a project is in accord with or substantial conformance to the Board's criteria;

(iii) The Review Board has discretion to approve projects that do not meet all review criteria; and

(iv) The Review Board is not bound by the findings of the staff.

h. Paragraph 21 of the *Medina Nursing Center* opinion indicates that the plaintiffs in that litigation did not request a written decision from the Review Board under Section 12(11) of the Planning Act which allows the Board to issue written decisions requested by adversely affected parties.

Centegra respectfully requests that the additional explanation state that the Review Board issued a Final Written Decision upon the requests of Advocate Good Shepherd Hospital and Sherman Health that the Board provide in the decision "the applicable criteria and factors listed in the Act and the Board's regulations that were taken into consideration when coming to the Board's final decision" and that the Final Written Decision dated September 11, 2012 was issued in response to those requests under the authority of Section 12(11) of the Planning Act.

i. The administrative record filed on behalf of the Review Board in the Will County cases challenging Centegra's permit contains a draft of the Final Written Decision. Centegra respectfully requests that the additional explanation include the signed Final Written Decision dated September 11, 2012 which is posted on the Review Board's website in Applications Acted Upon by the Board under Centegra's project file. A copy of the signed Final Written Decision is attached hereto as Exhibit D.

Thank you for your consideration of these matters.

Very truly yours,

BARNES & THORNBURG LLP

Daniel J. Lawler

DJL:dp
Enclosures

cc: Mr. Frank Urso
Mr. Joe Ourth
Mr. Steven Hoeft
Ms. Diane Moshman
Mr. Linas Grikis

Exhibit A

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

MERCY CRYSTAL LAKE HOSPITAL, et al., Plaintiffs,	)	
-vs-	)	NO. 2012 MR 1824
ILLINOIS HEALTH FACILITIES REVIEW BOARD, Defendants.	)	
SHERMAN HOSPITAL, et al., Plaintiffs,	)	
-vs-	)	NO. 2012 MR 1840
ILLINOIS HEALTH FACILITIES REVIEW BOARD, Defendants.	)	

REPORT OF PROCEEDINGS had at the hearing of the above-entitled cause before the Honorable BOBBI N. PETRUNGARO, on the 23rd day of July, A.D., 2013.

APPEARANCES:

MR. STEVEN HOEFT, Attorney At Law
Appeared on behalf of the Plaintiffs;

MR. MICHAEL MARTIN, MR. DANIEL LAWLER and MR. AARON SHEPLEY, Attorneys At Law
Appeared on behalf of the Centegra defendants;

STEVE VITHOULKAS, CSR, RPR, RMR
Will County Courthouse
Joliet, IL 60432

APPEARANCES: (Continued)

MR. HAL MORRIS, Attorney At Law
Appeared on behalf of Advocate Health and Hospitals Corporation;

HON. LISA MADIGAN, Illinois Attorney General
BY: MR. THOR INONYE, Assistant Attorney General
Appeared on behalf of defendants Illinois Health Facilities Review Board, Illinois Department of Public Health, Dale Galassie and Dr. Lemar Hasbrouck.

THE COURT: All right. Mercy Crystal Lake and Illinois Health Facilities Review Board, 12 MR 1824. And this is also 12 MR 1840. Good morning, everyone.

MR. LAWLER: Good morning, your Honor.

MR. MARTIN: Good morning, your Honor.

MR. LAWLER: Dan Lawler for the defendants Centegra Health System.

MR. MARTIN: And Mike Martin for the same defendants.

MR. SHEPLEY: Aaron Shepley from Centegra Health Systems.

MR. HOEFT: Good morning, your Honor. Steven Hoeft for the plaintiff, Mercy.

MR. MORRIS: Good morning, your Honor. Hal Morris for Advocate Health and Hospitals Corporation.

MR. INONYE: Good morning, your Honor. Thor Inonye from the Attorney General's Office.

THE COURT: Thank you. And I received the emergency motion. Thank you for pointing that out to me that I cited the wrong -- I am going to tell you that, frankly, I still think that the same problem exists on page ten. So what I would like to do is issue an order that clarifies and I will ask them to clarify the findings on page ten. I appreciate that there is a written report that lays out exactly what the staff report says and would like them to clarify their

findings relative to page ten. Thank you for that order. If you could give me that, I would appreciate it.

MR. LAWLER: Thank you, your Honor.

THE COURT: Thank you for your time today.

(Matter later recalled.)

THE COURT: Recalling Mercy and Illinois Health Facilities and Review Board, 12 MR 1824 and 12 MR 1840. Good morning again.

MR. LAWLER: Good morning, your Honor. Dan Lawler. Counsel are in agreement with the proposed order.

THE COURT: Okay.

MR. LAWLER: We just want to make sure that the Court is agreeable to it.

MR. HOEFT: Your Honor, I have an objection to that --

THE COURT: Oh.

MR. HOEFT: -- which I told Mr. Lawler.

THE COURT: Okay.

MR. HOEFT: I don't think -- I would ask --

THE COURT: Can I ask you to say your name again?

MR. HOEFT: Steven Hoeft for Mercy.

THE COURT: Thank you.

MR. HOEFT: I apologize. I foresee that someone will argue this order saying the only thing the board can do is stick with the vote it already had and give a reason for

it. We believe that it should be remanded to the board for the board to do whatever the board decides to do consistent with the Court's order, but the Court should not preclude the board from reconsidering what it did before, revoting, whatever the board decides to do in light of the record before it. But we don't want this order to be read as saying the only thing the board can do is stick with the decision it's got and give an explanation for the decision made before.

The board composition has changed. I don't know what the board is going to do, but they should have the freedom to do what they think is appropriate.

THE COURT: Well, that's interesting because, frankly, all I sent it back for was to get clarification as to the findings. And either way, it's the same boilerplate -- I don't care whether they stuck it on the end of the findings from the board staff or whether it was at the beginning of the letter, like the other ones I've seen, and like the one that was in the case and another one that was pending before me, the same thing had happened. I tend to agree. I looked at it and thought if there is 11 -- well, they put 11,500. I counted 9,500.

I think there was a supplemental filing as well. So I was concerned as to how I was going to ascertain what

their reasoning was for whatever they did. But I guess I'm concerned. I don't know that I -- okay. Let me ask the question. Are they allowed to vote again if I'm just seeking clarification?

MR. HOEFT: I don't know the answer to that, your Honor. The board has to decide that.

THE COURT: I mean, I haven't made a decision yet whether they were correct or not correct. I just want them to clarify what was done. That's all I'm seeking.

MR. HOEFT: I understand that, your Honor. But with the dismissal of the complaint, it's back before the board, and I'm simply saying whatever the board thinks it should do.

THE COURT: I didn't dismiss a complaint.

MR. HOEFT: I thought it was dismissed without prejudice.

MR. MORRIS: The electronic docket, I believe, shows that it was dismissed without prejudice.

THE COURT: My order did not say that. That may be a coding error, unfortunately. I can't address that, to be honest with you. But I just felt that I needed clarification.

MR. HOEFT: I apologize. We saw the dismissal without prejudice.

THE COURT: We'll check that. I can't speak to that.

MR. HOEFT: I understand.

THE COURT: I'm sure it was inadvertent.

MR. HOEFT: Okay.

THE COURT: If it happened that way, I think it's probably closing it out was probably what happened.

MR. HOEFT: Okay.

MR. MARTIN: Could we maybe then reflect that in this order?

MR. LAWLER: Your Honor, I think that the Court retains jurisdiction for this remand and then it comes back to your Honor without them having to file new complaints.

THE COURT: I would agree. I would think that once it comes back, you have -- I don't think you need a new complaint.

MR. MORRIS: If the dismissal without prejudice is taken away, I think that's probably true.

THE COURT: Can I -- you know what, can I pass you folks for a few minutes? I would like to pull up the docket so I can see what it says.

MR. HOEFT: Okay. Thank you, your Honor.

THE COURT: My guess, and I shouldn't guess without looking, is that when they saw remand, that a code entered that they did that. I don't believe my order reflected I

dismissed it.

MR. MORRIS: No, it doesn't.

THE COURT: I think it just reflects -- so I just would like to double-check that, and let's get this all taken care of. Give me just a few minutes.

MR. HOEFT: Thank you, your Honor.

(Matter passed and recalled.)

THE COURT: All right. Recalling Mercy Crystal Lake, 12 MR 1824, 12 MR 1840. Is everyone -- okay. Let me pull up the docket sheet while we're here. And I'll show you what I see. 4,500 bucks is really cheap for a car with 47,000 miles on it. I'm amazed by that. All right. Let's see. I do show that it was closed. It should not have been closed. We'll take care of that. I think it's probably just an error in terms of a coding error. I do show that it was dismissed without prejudice. And that, again, should not have occurred based upon what was in the order and what my intention was, so I apologize for that. We will figure it out on our end.

MR. HOEFT: All right.

THE COURT: Again, it should not. I think that they saw remanded and --

MR. HOEFT: Oh, I can understand what happened there, your Honor.

THE COURT: Okay. Not a problem on that issue.

MR. HOEFT: But we still, your Honor, believe that it should go back to the board because the board is different now, and they are going to have to look at your decision and the prior decision, come up with reasons, and whether they come up with the same reason or different reasons or they want to vote again, again, I think it would be like an Appellate Court remanding to a trial court with directions to say your decision was inadequate, you have it back again. So that's our position.

I really do think it should be dismissed here because you said the order they issued was deficient. And unless it's corrected, it's not going to be stayed. It's now going back to them, the ball is in their court.

THE COURT: I am going to go through and let -- I apologize, can you again just say your name for the record?

MR. HOEFT: Oh, I'm sorry, I keep forgetting. It's Steven Hoeft for Mercy, your Honor.

THE COURT: Thank you.

MR. HOEFT: I apologize.

THE COURT: Can I get your name?

MR. INONYE: Thor Inonye. I am on behalf of the board.

THE COURT: What's your position?

MR. INONYE: Your Honor, we don't really take a

position other than the fact that we don't want an order that directs us to do anything specifically. If the board wants to, you know, revote, they can, but they shouldn't be ordered to do so. But basically what typically happens in something like this is that they are going to go through and figure out what their justification was and send it back and they will write it out and send it back. They are not going to revote typically, so we don't want an order saying they have to revote except as there is a new composition or anything like that. They just, pursuant to your order, is come up with the justification or the reasons for -- on the previous.

THE COURT: Thank you. Can I get your name for the record?

MR. MORRIS: Hal Morris on behalf of Advocate. I think that really underscores the issue here with just a remand is that the board is going to have to vote on something, even if it's the reasons, and because it's a new board, we don't know whether they can agree with what the old board did, we don't know what their reasons are. Much less do we even know if they can agree on reasons. So with your order, I believe you've indicated that it's a deficient order without reasons and it's appropriate that it goes back to the board and they then get to do whatever they want in terms of

having to vote on something because they are going to have to vote on the reasons since they operate in open session according to the Open Meetings Act.

MR. HOEFT: Your Honor, Steven Hoeft. In case -- I wasn't asking the order say they have to revote, if that was how it came out.

THE COURT: Okay.

MR. HOEFT: I'm simply saying it should be remanded for further proceedings up to the board, but I am not asking that they be directed to do anything.

THE COURT: Are you objecting to the order that was provided?

MR. HOEFT: Yes.

THE COURT: In what format?

MR. HOEFT: Because the final sentencing to say that what they must do is they must follow that and they must conform with the reasons, and nothing else. And, again, I don't know what the board is going to do, but because it's a new board, they may decide as they have done before, they changed their mind before in this application. So not knowing what they are going to do or how they are going to do it, I think they've got to decide what to do. They issued a deficient order, now they have to figure out how to correct it. You have given them a road map with your

decision.

THE COURT: Can I ask you this, though? What would you suggest the proper language should be in terms of the order that's provided?

MR. HOEFT: I actually think that the order should be that the case is dismissed without prejudice and it's remanded to the board for further deliberations consistent with your opinion, and then they've got -- they should decide what they are going to do.

THE COURT: And what would you believe -- again, give me your name for the record.

MR. MORRIS: I'm sorry. Hal Morris on behalf of Advocate. I agree with Mr. Hoeft because I think ultimately it comes down to what is the status of this permit. And as your Honor's order has suggested, the permit without the reasons articulated in it is not really valid because it doesn't have a sufficient articulation that would be subject to administrative review. So I agree with Mr. Hoeft that it would be appropriate to send it back to the board, and then the board does whatever the board does with it when it goes back.

MR. LAWLER: Your Honor, Dan Lawler for the --

THE COURT: Thank you.

MR. LAWLER: -- defendant Centegra. Your Honor, your

jurisdiction is to review final decisions of the agency.

THE COURT: That's true.

MR. LAWLER: You have a final decision. Now, the effect of your remand is not unlike the procedure that Advocate, Mr. Morris' client, and Sherman took advantage of. There is a statutory provision in the Planning Act that says if an adversely affected party wants the board to provide a specification for its decision, it can ask the board to do that, and then the board -- that's why they issued the ten-page written decision in September. It wasn't a revote on our application, it was a specification of the reasons for its final decision.

Now, your Honor's order is saying that that decision -- for purposes of administrative review, I'd like to see more reason for it, but it's not a revote on the project. You weren't saying that voting on the merits or substance of the permits, you were just saying this decision I'd like to see more explanation for. So it's similar to the process in which when Mr. Morris' client asked for further specification of the board's decision, the board did that. But that's all it did. It didn't reopen the whole project for reconsideration. This is not a reconsideration of our project. It's --

THE COURT: Not what I -- I have not requested a

reconsideration. I have asked a clarification for the reasons that they voted as they did. And I appreciate that the ten-page was -- I appreciate the provision. I don't think it clarifies the reasons for the decision. I would like that clarified. What they decide to do with that, I don't think I control that aspect of it, nor is it my intention to control how they achieve what I have asked. I just want clarification for the reasonings and for what's on page ten of that order.

If they choose to revote and if they have to vote to approve whatever it is that they are giving me, that's their procedure. I do not control how they operate. So it's a whole lot of talk about nothing, isn't it?

MR. MARTIN: See order signed.

MR. HOEFT: I think, your Honor, given that is what we hope, what you've just explained, and so as long as we don't get caught with that order taken out of context, I'm fine.

THE COURT: I'm not telling them that they can or can't revote again. That certainly is not before me at all. I'm not saying it's proper or improper. That's not an issue that even -- I would even think would address -- would be addressed. All I'm asking is that they clarify, give me further explanation for the reasons that they have set forth what the factors were that they considered relative to page

ten of that decision. However they choose to do that, and whatever else they choose to do I don't believe is something -- I think everyone can agree that I don't have jurisdiction to address that.

MR. HOEFT: Thank you, your Honor.

THE COURT: Thank you. Have a good day. And we will correct our -- I apologize again. Again, I do believe it's just a coding error. We'll make sure it's taken care of.

MR. HOEFT: We just saw that.

THE COURT: No, no, no, I appreciate you bringing that to my attention.

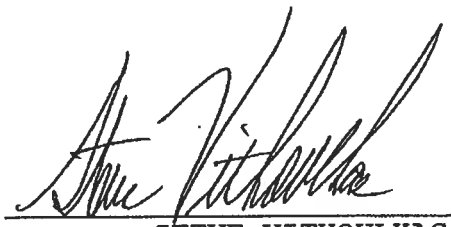
MR. MORRIS: I think it's actually on both cases.

THE COURT: Is it? Thank you for telling me that. I appreciate that. Have a good day.

(AND THOSE WERE ALL THE PROCEEDINGS HAD.)

STATE OF ILLINOIS)
) SS.
COUNTY OF W I L L)

I, STEVE VITHOULKAS, Official Court Reporter for the 12th Judicial Circuit, Will County, Illinois, do hereby certify the foregoing to be a true and accurate transcript of the electronic recording of the proceedings of the above-entitled cause, which recording contained a certification in accordance with rule or administrative order.



STEVE VITHOULKAS
Official Court Reporter.

Exhibit B

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

MERCY CRYSTAL LAKE HOSPITAL AND MEDICAL CENTER, et al.,	)	
Plaintiffs,	)	**No. 12 MR 1824** Consolidated with **No. 12 MR 1840**
v.	)	Judge Bobbi N. Petrungaro
ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD, et al.,	)	Administrative Review
Defendants.	)	

CENTEGRA'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR JUDGMENT TO AFFIRM THE STATE BOARD'S DECISION AND RESPONSE TO PLAINTIFFS' BRIEFS AND MOTION

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Defendants Centegra Health System and Centegra Hospital-Huntley (collectively "Centegra") respectfully submit this Reply Brief in support of their Motion for Judgment to affirm the decision of the Defendant Illinois Health Facilities and Services Review Board ("State Board") and Response to:

(a) the Motion for Judgment to Reverse the State Board's Decision of the Plaintiffs in Case No. 12-MR-1824 Mercy Crystal Lake Hospital and Medical Center, Mercy Harvard Hospital, and Mercy Alliance, Inc. (collectively "Mercy");

(b) the Brief in Support of Complaint of the Plaintiffs in Case No. 12-MR-1840: Sherman Hospital and Sherman Health System (collectively "Sherman"); and

(c) the Brief in Support of Reversing the State Board's Decision by the Counter-Plaintiff in Case No. 12-MR-1824: Advocate Health and Hospitals Corporation d/b/a Advocate Good Shepherd Hospital ("Advocate").[1]

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[1] The Plaintiffs and Counter-plaintiffs in the consolidated cases are collectively referred to herein as "Plaintiffs."

Introduction

The State Board approved Centegra's $233 million new hospital project in July 2012. The administrative record contains abundant evidence in support of the State Board's decision, and that decision should be affirmed.

Plaintiffs argue that the State Board's 6 to 3 final vote in July 2012 was "irrational" because the Board's interim vote in December 2011 was 4 to 4, with one member absent. According to Plaintiffs, nothing in the record before the Board in July justified a change from the December voting. Plaintiffs' argument itself is illogical. Nothing in the record needed to change because the project received a positive vote in July from the member who was absent in December and the record overwhelmingly supported that vote and the other positive votes. Moreover, even if all the Board members who voted in December had voted the same way in July, which Plaintiffs claim was the rational thing to do, Centegra's project would *still* have been approved. The positive vote of the ninth Board member who was absent in December would have been the fifth vote needed for approval.

In addition to its conceptual flaw, Plaintiffs' argument has a fundamental factual error. It is built on the premise that there was no additional favorable evidence presented to the State Board in July 2012 to justify the 6 to 3 vote in favor of the project. This is demonstrably false. Centegra's presentation to the State Board at the July meeting included the sworn testimony of Mr. Lee Piekarz of Deloitte Advisory Services LLP ("Deloitte") who demonstrated that Plaintiffs' own consultant's report, newly added to the record, *supported* Deloitte's own projections that were used to show that Centegra's project complied with the State Board's rules relating to the utilization of existing facilities. This testimony, showing compliance with the State Board's utilization criteria, combined with findings of the Board's staff that Centegra's project complied with all other review criteria, justified the positive vote of the Board member

who was absent from the December 2011 meeting. It further justified the positive votes of two Board members who had previously voted against the project in December, especially in light of the fact that these two members had based their negative votes on the issue of utilization and the utilization criteria, and it more than justified the votes of the three Board members who had previously voted for the project in December.

Astonishingly, each of Plaintiffs' three briefs completely ignores Mr. Piekarz's sworn testimony at the July 2012 Board meeting. By ignoring this vital evidence in the record, Plaintiffs effectively concede that they have no argument against it.

Plaintiffs also argue that ALJ Hart lacked authority to recommend reconsideration, and the State Board lacked authority to reconsider Centegra's project in July 2012. None of the Plaintiffs have responded to the arguments in Centegra's opening brief that:

(a) ALJ Hart and the State Board's authority were previously litigated in the Circuit Court of McHenry County where Plaintiffs' attorneys themselves argued, and the Circuit Court adjudged, that ALJ Hart and the State Board *had* authority; therefore, Plaintiffs are precluded from relitigating the issue under the doctrines of *res judicata* and collateral estoppel;

(b) Under Section 3-111(b) of the Administrative Review Law, 735 ILCS 5/3-111(b), procedural errors "shall not constitute grounds for reversal" unless they materially affect a party's rights and result in substantial injustice, and Plaintiffs have neither alleged nor argued that their rights were materially affected or that substantial injustice occurred; and,

(c) Plaintiffs did not object to the reconsideration procedure while before the State Board and, to the contrary, *invited* the reconsideration and, therefore, Plaintiffs waived any objection to the reconsideration and are precluded from asserting objections under the invited error doctrine.

Again, Plaintiffs' failure to respond to these points constitutes a concession on the issue.

The record amply supports the State Board's decision and it should be affirmed.

Argument

I. CENTEGRA'S PROJECT IS OVERWHELMINGLY SUPPORTED BY THE RECORD, AND "ANY EVIDENCE" REQUIRES AFFIRMANCE OF THE STATE BOARD'S FINAL DECISION

Plaintiffs treat the State Board's vote in December 2011 as if it were a final decision on par with the July 2012 action. Under the Health Facilities Planning Act and the State Board's rules, the December vote was merely an interim action with the final decision to come only after the Board's receipt of the ALJ's recommendation. (*See* 20 ILCS 3960/10; 77 Ill. Adm. Code §1130.1150.) ALJ Hart found that the December vote may have been based on an erroneous record and recommended that the State Board reconsider the project on the corrected record. The Board adopted that recommendation and, upon consideration of the corrected record, approved the project. That approval constituted the State Board's final decision, and it is the only decision before this Court for review. Under the Administrative Review Law, only final agency decisions are subject to judicial review. 735 ILCS 5/3-102.

Affirmance of an agency decision is required if "the record contains any evidence supporting the Administrative Agency's decision." *Interstate Material Corp. v. Illinois Human Rights Comm'n*, 274 Ill. App. 3d 1014, 1023; 654 N.E.2d 713, 719 (1st Dist. 1995). *Accord*, *Conklin v. Ryan*, 242 Ill. App. 3d 32, 37; 610 N.E.2d 751, 755-756 (4th Dist. 1993)("[i]f the record contains any evidence which fairly supports the Agency's decision, such decision is not against the manifest weight of the evidence and must be sustained upon review").

As set forth in Centegra's opening brief, the State Board's determination that Centegra's project substantially complied with the Board's review criteria was supported by the findings that the project met 19 of 22 review criteria. These findings were more than enough to sustain the State Board's decision as Plaintiffs, especially the Sherman Plaintiffs, well know. In the most recent, most applicable court decision, the appellate court upheld a new hospital permit

issued by the State Board to the Sherman Plaintiffs even though the Board's staff had made negative findings on 7 of 21 applicable criteria under Part 1110 of the State Board's regulations. *Provena Health v. Illinois Health Facilities Planning Board*, 382 Ill. App. 34, 37, 886 N.E.2d 1054, 1058 (1st Dist. 2008).

Moreover, Centegra demonstrated in its opening brief that the three criteria for the project substantially complied with the three criteria for which negative findings were made and in fact met those criteria. Plaintiffs have made no response to Centegra's argument that those three criteria were in fact satisfied, and therefore have forfeited and conceded the issue. Failure to respond to a material argument on an issue constitutes a forfeiture and concession of the issue. *U.S. Bank, N.A. v. Brown*, No. 1-11-0832, 2012 WL 6861595, at *18 (1st Dist. 2012)(the party failed to address an argument in her reply brief, "thereby forfeiting any counter argument and conceding the issue"); *Accord, Crossroads Ford Truck Sales Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶63, 959 N.E.2d 1133, 1149-50 (finding forfeiture of argument by plaintiff for failure to respond to substance of an argument raised by the defendant in its brief). *See also, Cincinnati Ins. Co. v. E. Atl. Ins. Co.*, 260 F.3d 742, 747 (7th Cir. 2001)(a party's failure to oppose an argument permits an inference of acquiescence, and "acquiescence operates as a waiver"); *Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 466-467 (7th Cir. 2010)("Failure to respond to an argument - as the [plaintiffs] have done here - results in waiver"). Centegra addresses below the arguments that Plaintiffs have raised.

II. PROJECT APPROVAL DID NOT REQUIRE ADDITIONAL EVIDENCE AT THE JULY BOARD MEETING, BUT EVEN IF IT DID, SUCH EVIDENCE WAS PROVIDED

The record before the State Board supported project approval in December 2011 and four of eight Board members voted for approval. No new evidence was needed to sustain approval by

the full Board, but even if it were needed, Centegra presented such evidence at the July 2012 meeting.

A. Lee Piekarz's Testimony Demonstrated That The Krentz Centegra Study Supported Deloitte's Own Utilization Projections

Plaintiffs have crafted a "flip-flop" narrative in their three briefs that reads something like this:

> "The State Board denied Centegra's project in December 2011, but in July 2012, on the same record -- but for the addition of a negative consultant's report -- the Board approved the project. This flip-flop was arbitrary, capricious, implausible and irrational."

The problem with this narrative is that it completely ignores the sworn testimony of Centegra's expert Lee Piekarz that demonstrated how the newly added Krentz Centegra Study *supported* Centegra's population and utilization projections.

As noted in Centegra's opening brief, the three criteria for which the State Board's staff made negative findings had multiple sub-parts which the staff found had been satisfied. The negative findings were based on a single factor, namely, the existence of historical underutilization of some services at existing hospitals. Two State Board members who voted against the project at the December 2011 meeting, Dr. James Burden and Ms. Kathryn Olson, had focused on the underutilization issue and the finding of non-compliance with the State Board's rules. (Appl. For Permit, Vol. V at 2291 and 2293.)

At the July 24, 2012 Board meeting, Centegra presented testimony from its consultant Lee Piekarz of Deloitte that the Krentz Centegra Study *supported* Deloitte's own projections that existing facilities would meet utilization targets within two years after Centegra Hospital-Huntley became operational, as required by the State Board's rules. Specifically, Mr. Piekarz noted that the Krentz Centegra Study endorsed a population growth rate that was substantially *higher* than the conservative rate employed by Deloitte in establishing that existing facilities

would meet target utilization rates. Mr. Piekarz also noted that the Krentz Centegra Study had erroneously assessed utilization levels as if Centegra Hospital-Huntley were opened in 2010, rather than projecting utilization levels in 2018 -- two years after the new hospital opened -- as required by the Board's rules. Mr. Piekarz further noted that if the Krentz Centegra Study had used its own population growth rate and the proper 2018 time period, Krentz's own methodology would have supported Deloitte's projections.

Mr. Piekarz's testimony before the State Board in July was highly material in the following respects:

(a) It demonstrated that the newly added Krentz Centegra Study supported Centegra's project on the key issue of utilization;

(b) Utilization at existing facilities was the sole basis for the staff's three negative findings and Mr. Piekarz demonstrated how the Krentz Centegra Study supported Deloitte's projections that utilization targets would be met under the rules;

(c) The two State Board members who voted "No" in December 2011 and "Yes" in July 2012 had specifically referenced the utilization issue and compliance with the Board's rules when voting in December, and Mr. Piekarz's testimony directly addressed both issues and demonstrated how the Krentz Centegra Study justified a positive vote on Centegra's project; and

(d) The Krentz Centegra Study was submitted on behalf of Advocate, Sherman, and St. Alexius Medical Center, which were existing facilities with low historical utilization in some services. The fact that their own consultant's report was shown to support Centegra's projections on population growth and utilization rates was compelling evidence in favor of Centegra's project.

Finally, Mr. Piekarz emphasized that the State Board had a "planning" function and that the relevant factor under the State Board's rules was not *historical* utilization, but *future* utilization. Deloitte's projections showed that existing facilities would be appropriately utilized in the future after Centegra Hospital-Huntley was opened.

All three of Plaintiffs' briefs simply ignore Mr. Piekarz's sworn testimony at the July 2012 meeting even though it was the focus of Centegra's presentation and even though it

was specifically referenced in Centegra's opening brief as justification for the State Board's positive vote. *See, U.S. Bank* and *Crossroads Ford Truck Sales, supra* at page 5.

B. The Krentz Centegra Study Showed *Less* Impact On The Utilization Of Existing Hospitals Than The Krentz Mercy Study

The Krentz Centegra Study, which replaced the Krentz Mercy Study in Centegra's project file, showed a significantly *lower* impact on the utilization of existing hospitals than the Mercy study. The utilization of existing facilities was the *sole* basis on which the only negative findings on Centegra's project were based. The fact that the Krentz Centegra Study, which was submitted on behalf of existing underutilized facilities, supported Centegra's projections that utilization targets would be satisfied and supplied ample justification for the six positive votes at the July 2012 Board meeting.

The Centegra study showed an impact on Advocate that was *28% lower* than the Mercy study: 1,660 discharges vs. 2,307 discharges. (Amended Answer, Vol. I, 8046, 8078.) For all area hospitals, the Centegra study showed an impact on utilization that was *17% less* than the impact shown in the Mercy study. Consequently, if there was any mistaken reliance on the Krentz Mercy Study, the replacement of that study with the Krentz Centegra Study was additional new evidence in support of Centegra's project.

C. The Comments Of Centegra's Counsel Before The ALJ Are Unavailing To Plaintiffs Before This Court

Each of the Plaintiffs' three briefs quote statements from Centegra's counsel made to ALJ Hart in connection with the Krentz Centegra Study during the administrative appeal. Plaintiffs must look to Centegra's counsel because their own attorneys took positions before ALJ Hart (and before the Circuit Court of McHenry County) that are diametrically opposed to the positions these same attorneys are now taking before this Court. The comments of Centegra's counsel, taken in context, do not make Plaintiffs' case.

At a hearing on March 20, 2012, ALJ Hart elicited comments for the parties' counsel as to what effect the Krentz Centegra Study would have had on the State Board's decision in December 2011. ALJ Hart specifically asked: "[C]an anyone state as a matter of fact that the Board's determination would have been the same had it had the materials that were not filed in this matter before it?" (Amended Answer, Vol. III, 9409.) In other words, ALJ Hart was asking whether anyone could say with certainty that the State Board would still have denied Centegra's project if it had the Krentz Centegra Study before it. Counsel for all the parties – Advocate, Mercy, the State Board *and Centegra* – all confirmed that they could not say as a matter of fact that the vote would have been the same. (Amended Answer, Vol. III, 9409-10.) Contrary to the positions they are now taking before this Court, not one of the Plaintiffs' attorneys claimed before ALJ Hart that it would have been irrational or implausible for the State Board to have approved the project.

Advocate's counsel, Mr. Ourth confirmed that he could not state as a matter of fact that the Board's decision would have been the same. He then simply noted that the Krentz Centegra Study "was beneficial to us ... and that the Board concluded to deny the project without having that." (Amended Answer, Vol. III, 9410.) Centegra's counsel, Mr. Dan Lawler, stated that he concurred with those points, and then embellished further by stating, "So I guess I would have to say that we could say as a matter of fact that certainly the document since it was not helpful to us would not have changed the Board's decision." (Amended Answer, Vol. III, 9411.) In their briefs before this Court, none of the Plaintiffs references ALJ Hart's immediate response to that comment. He dismissed it as speculative: "You have a crystal ball then that I certainly don't have..." (Amended Answer, Vol. III, 9411.) None of the Plaintiffs' attorneys defended Mr. Lawler's statement or claimed that he did in fact have a crystal ball.

Plaintiffs quote the above comment and related statements by Centegra's counsel which ALJ Hart dismissed as speculative in nature and in which Plaintiffs themselves did not join. While quoting Mr. Lawler's argumentation before ALJ Hart prior to the reconsideration, Plaintiffs do not address Mr. Piekarz's sworn testimony before the State Board during the reconsideration itself. The State Board's permit letter and written decision specifically state that it was based on testimony heard by the Board, which included Mr. Piekarz's testimony.

D. Plaintiffs Legal Authorities Do Not Support Reversal Of The State Board's Decision

Because the State Board had a rational basis for approving Centegra's project, its decision was not "against logic" or "illogical" or "arbitrary and capricious."

1. The State Board's decision had a rational basis

Plaintiffs cite *Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 180 Ill. App. 3d 899, 536 N.E.2d 724 (1st Dist. 1988) for the proposition that an agency decision is arbitrary and capricious when a prior valid order is rescinded in the absence of changed circumstances. Those cases are inapplicable for a number of reasons. First, ALJ Hart and the State Board's counsel were concerned that the Board's December 2011 decision was *not* valid because it was based on what they determined to be a "flawed" record. Second, the circumstances between the Board's December 2011 and July 2012 decisions *had* changed. The change included the discovery of the misdirected documents and the inclusion of the Krentz Centegra Study that was shown to be favorable to Centegra's project in several respects. Finally, the prior agency order in *Commonwealth Edison* related to a prior administrative proceeding and was a final decision whereas, in the present case, the Board's December 2011 decision was not final and was subject to further review by the State Board.

Plaintiffs also cite *Greer v. Ill. Housing Devel. Authority*, 122 Ill. 2d 462, 506, 524 N.E.2d 561, 581 (1988) for the proposition that "sudden and unexplained changes have often been considered arbitrary." Plaintiffs fail to reference the following language from *Greer*: "The standard is one of rationality. The scope of review is narrow and the court is not, absent a 'clear error of judgment' [citation omitted], to substitute its own reasoning for that of the agency." *Greer*, *supra*, 122 Ill. 2d at 506, 524 N.E.2d at 581.

The administrative record provides a rational basis for the State Board's decision. The project was one vote shy of being approved in December 2011 with some Board members voting "No" on the basis of underutilization at existing facilities and negative findings under the Board's utilization criteria. At the July 2012 meeting, the State Board heard sworn testimony from an expert that Centegra's utilization projections were supported by data in the report of Plaintiffs' own consultant, and that utilization targets would be met by existing facilities. This evidence, and the positive findings on all other review criteria provided a rational basis for the Board's approval of the project.

2. The State Board adequately explained its decision

The State Board's July 24, 2012 decision was not "unexplained," as Plaintiffs contend. The permit letter issued on July 30, 2012 states that the Board approved Centegra's application "based upon the project's substantial conformance with the applicable standards and criteria ..." (Appl. For Permit, Vol. V, 2531.) The permit letter explains: "In arriving at a decision, the State Board considered the findings contained in the State Agency Report, the application material, public hearing testimony and documents, any testimony made before the State Board, and the Illinois Health Facilities Planning Act (20 ILCS 3960)." (Appl. For Permit, Vol. V, 2531.) The State Board's written decision of September 11, 2012 provides further details to explain the Board's decision. The explanations provided in the permit letter and written decision were more

than enough to establish a rational basis for the decision. The State Board was *not* required to set out the thought processes of the Board members in voting on the project as Plaintiffs seem to suppose. All that is required is a "rational connection between the facts considered and the decision made." *Lewis v. Hayes*, 152 Ill. App. 3d 1020, 1024-25, 505 N.E.2d 408, 411 (3d Dist. 1987). The agency is "not required to articulate each and every facet of its deliberative process" or "spell out every step in the reasoning." *Fraternal Order of Police, Chicago Lodge No. 7 v. Ill. Labor Relation Bd.*, 2011 IL App. 1st 103215, ¶26, 961 N.E.2d 855, 864 (1st Dist. 2011); *Siddiqui v. Ill. Dept. of Prof. Regulation*, 307 Ill. App. 3d 753, 757, 718 N.E.2d 217, 223 (4th Dist. 1999).

3. Sherman's legal authorities cut against Plaintiffs

Sherman's arguments relating to the Krentz Centegra Study are particularly misplaced. First, Sherman cites *McCleary v. Bd. of Fire & Police Comm'n*, 251 Ill. App. 3d 988, 983 (2d Dist. 1993) for the proposition that agency decisions should be reversed "only if there is error which prejudiced a party in the proceeding." The proposition is correct of course and based on Section 3-111(b) of the Administrative Review Law (735 ILCS 5/3-111(b)). Section 3-111(b) states that procedural errors "shall not constitute grounds for reversal unless it appears to the court that such error or failure materially affected the rights of any party and resulted in substantial injustice..." (*Id.*) Centegra argues in its opening brief that Plaintiffs have not alleged or argued that the process of remand and reconsideration materially affected their rights or resulted in substantial injustice. Consequently, the Board's reconsideration cannot be grounds for reversal. Moreover, none of the Plaintiffs have responded to this argument in their briefs and they have therefore abandoned and waived the issue. *See* authorities cited at page 5, *supra.*

Sherman also argues that Centegra is "estopped" from denying that the Krentz Centegra Study warranted a remand and reconsideration because it had filed a motion with ALJ Hart

opposing a remand on the basis of the study. (Sherman's Brief at 25.) Sherman seems oblivious to the fact that Centegra's motion failed and the matter was remanded despite Centegra's argument. Sherman itself quotes case law for the proposition that a necessary element of estoppel is that the party against whom estoppel is sought must have *succeeded* on the prior argument. (*See* Sherman's Brief at 25.) Therefore, estoppel cannot be applied to Centegra. To the contrary, Plaintiffs themselves argued before ALJ Hart that the ALJ *had* authority to recommend remand and *they prevailed* on that argument. Plaintiffs are therefore estopped from denying that the remand and reconsideration were proper.

E. Plaintiffs' Remaining Arguments Are Without Merit

Plaintiffs argue that Centegra's project did not comply with criteria for which positive findings were made, and assert other factual arguments. On questions of fact, "[t]he findings and conclusions of the administrative agency ... shall be held to be *prima facie* true and correct." 735 ILCS 5/3-110. Evidence in the record supports all of the Board's findings and they should be upheld.

1. Centegra was not required to submit physician referral letters

Plaintiffs argue that Centegra was required to submit physician referral letters under Section 1110.530 of the State Board's rules. (77 Ill. Adm. Code 1110.530(b)(3)(B).) As noted by Centegra in its CON application (Appl. For Permit, Vol. I, 280-81), the referral letter requirement was not applicable to Centegra's project because the Board's rules provided the option of establishing demand for services through either referral letters or documentation of rapid population growth. Centegra opted for the latter. The State Board's staff, in reviewing

Centegra's application, did not interpret the criterion as requiring referral letters, and made a positive finding in its reports on Centegra's compliance with the demand criterion.[2]

2. Centegra satisfied the rapid population growth criterion

Plaintiffs next argue that Centegra did not meet the rapid population growth criterion in provision in Section 1110.530(b)(3)(C). Again, Plaintiffs' argument is contrary to the determination of the State Board's staff and the Board itself which found compliance with that criterion in its original State Agency Report and Supplemental State Agency Report.

In arguing non-compliance with Section 1110.530, Plaintiffs refer to a regulation in an entirely different section of the State Board's rules which were not made applicable to Centegra's project. Plaintiffs cite a definition in Section 1100.220 of the rules. But Section 1110.530 does not reference a growth "rate", does not reference the definition in Section 1100.220, and does not incorporate that definition by reference. Moreover, the term defined in Section 1100.220 is not consistent with the requirements of Section 1110.530. Centegra provided all the information required by Section 1110.530, and the State Board's staff made positive findings under the criterion in both of its reports to the State Board.

3. Mercy's "monopoly" argument is unfounded

Mercy argues that the State Board's decision should be reversed because it will supposedly give Centegra a "monopoly over hospital healthcare in McHenry County, Illinois." (Mercy Brief at 8.) This assertion is supposedly based on testimony of a Dr. David Eisenstadt, but none of the citations in Mercy's brief on this point identifies any such testimony. Rather, the

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[2] While physician referral letters were not required, Centegra nevertheless submitted over 80 letters from referring physicians to demonstrate their commitment to refer patients to the proposed hospital and to utilize its services. (*See*, Appl. For Permit, Vol. I, 343-424.)

citations are to a letter from Mercy's CEO Javon Bea. The letter mentions testimony from a Dr. Eisenstadt as an attachment to the letter, but the attachment is simply a page with a cryptic chart on it that contains no testimony, and certainly does not contain the statements Mr. Bea attributes to Eisenstadt. Mr. Bea's letter is wholly incompetent and irrelevant insofar as its assertions of "monopoly" are concerned. Moreover, neither the Health Facilities Planning Act nor the State Board's regulations contain any references to criteria relating to the existence of monopolies.

III. PLAINTIFFS' PROCEDURAL ARGUMENTS ARE WAIVED AND WITHOUT MERIT IN ANY EVENT

A. Plaintiffs Have Forfeited And Conceded The Issue Of The State Board's Authority

Advocate and the Sherman Plaintiffs argue that ALJ Hart lacked authority to recommend reconsideration and the State Board lacked authority to reconsider Centegra's project. None of the plaintiffs respond to Centegra's opening arguments that: (a) the issue was previously adjudicated by the Circuit Court of McHenry County and Plaintiffs are precluded from relitigating the issue in this Court under the doctrines of *res judicata* and collateral estoppel; (b) Plaintiffs failed to allege that their rights were materially affected and substantial injustice resulted from the reconsideration and, therefore, the reconsideration cannot be grounds for reversal under Section 3-111(b) of the Administrative Review Law; and, (c) Plaintiffs did not object to, but rather invited, the reconsideration so they may not now assert it as error.[3]

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[3] Under the doctrine of invited error a party "may not request to proceed in one manner and then later contend on appeal that the course of action was in error." *LaSalle Bank, N.A. v. C/HCA Development Corp.*, 384 Ill. App. 3d 806, 820, 323 N.E.2d 949 (1st Dist. 2008); *accord, Fleming v. Moswin*, 2012 IL App. (1st) 103475-B, 976 N.E.2d 447 (1st Dist. 2012).

Plaintiffs have filed three separate briefs in response to Centegra's Motion for Judgment and Supporting Memorandum. Plaintiffs had 10 weeks to prepare the responses and yet none of the briefs respond to Centegra's preclusion arguments. A party's failure to answer an argument in its opponent's brief constitutes a forfeiture and concession of the argument. *U.S. Bank, N.A, supra*, 2012 WL 6861595, at *18 (1st Dist. 2012)(the party failed to address an argument in her reply brief, "thereby forfeiting any counter argument and conceding the issue"); *Crossroads Ford Truck Sales, supra*, 2011 IL 111611, ¶63 (finding forfeiture of argument by plaintiff for failure to respond to substance of an argument raised by the defendant in its brief). *See also Cincinnati Ins. Co.* and *Bonte, supra*, 624 F.3d at 466-467.

By failing to respond to Centegra's preclusion arguments, Plaintiffs have forfeited and conceded the issue and they are precluded from challenging ALJ Hart's and the State Board's authority to act on the grounds of *res judicata,* collateral estoppel, lack of prejudice and invited error.[4]

B. The State Board Had Authority To Reconsider Centegra's Project

The issue of the State Board's authority should not be relitigated in this proceeding for the reasons addressed above. If the Court were to consider the issue, Centegra submits the following responses to the authorities cited by Plaintiffs.

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[4] The only argument on which Plaintiffs did not prevail below and in the Circuit Court of McHenry County was Advocate's argument for a limited reconsideration. However, Advocate directly and specifically made this argument before the Circuit Court of McHenry County and that Court imposed no limitation on the State Board's reconsideration. Advocate could have appealed that decision but chose not to do so. Advocate is therefore barred from relitigating the issue here.

1. The State Board effectively vacated its December decision and did not reconsider it

At its meeting on June 5, 2012, the State Board adopted ALJ Hart's factual finding that the Board "may have considered the erroneously filed [Mercy] report in making its decision to deny Respondents' application for permit." (Appl. For Permit, Vol. V, 2378.) The Board also accepted ALJ Hart's recommendation to "[r]econsider Respondents' application for permit with the corrected record." (Appl. For Permit, Vol. V, 2379.) The proposed reconsideration was a reconsideration of Centegra's project on the corrected record. It was *not* a reconsideration of the December 7, 2011 decision. The December 7th decision was effectively vacated when the State Board accepted ALJ Hart's recommendation to remand and reconsider the project on a corrected record. When Centegra's project was before the State Board on July 24, 2012, it stood in the position it would have been on December 2010 had Advocate and Sherman's attorneys heeded the notices of their misdirected filings of the Krentz studies and corrected their mistakes before the December 2011 meeting.

Illinois agencies have authority to vacate an action over which they retain jurisdiction if they determine the action is legally tainted. In *Bd. of Education of Community Consol. High School Dist. No. 230 v. Ill. Education Labor Relations Bd.*, 165 Ill. App. 3d 41, 518 N.E.2d 713 (4th Dist. 1987), the appellate court held that the Labor Relations Board could vacate a decision on a matter still pending before it after discovering that a member who voted on the decision should have recused himself. In the present case, there is no question that the State Board retained jurisdiction over Centegra's project at the time of the remand and reconsideration of Centegra's project. Moreover, the remand was initiated after the discovery of and determination by the State Board that the record before it on December 7, 2011 was "flawed" and that the vote on the project needed to be retaken on a corrected record.

2. Plaintiffs legal authorities are inapplicable

Not surprisingly, Plaintiffs briefs omit all of the legal authorities on which they relied in successfully arguing before ALJ Hart, the State Board, and the Circuit Court of McHenry County that ALJ Hart and the State Board acted within their authority.[5]

The Sherman Plaintiffs do not challenge the State Board's authority to reconsider Centegra's project. They only argue that ALJ Hart had no authority to remand the project to the State Board. Because the Sherman Plaintiffs chose not to intervene in the administrative appeal before ALJ Hart, and therefore made no objections in that proceeding, they have waived any alleged error in connection with actions taken by the ALJ. Moreover, ALJ Hart did *not* remand the project. He *recommended* to the Board that it reconsider Centegra's project. The State Board's rules granted that authority to the ALJ. The Sherman Plaintiffs acknowledge that the State Board's adoption of ALJ Hart's recommendation to reconsider the project "had the effect of vacating" the State Board's decision of December 7, 2011. (Sherman Brief at 27.) The State Board's rules expressly authorize the ALJ to "make a recommendation to the [State Board] any time circumstances merit such a recommendation" in connection with the dismissing, postponing, vacating, or overturning of an order of the State Board. (77 Ill. Adm. Code 1170.1130(d).) ALJ Hart essentially recommended that the State Board vacate its December 7th decision, and the Board adopted that recommendation.

Only Advocate argues that the State Board had no authority to reconsider. (Advocate's Brief at 8-11.) Advocate erroneously characterizes the State Board's action as a reconsideration of the December 7th decision. (Advocate Brief at 8-9.) As noted above, the Board effectively vacated the December 7th decision at its meetings on June 5, 2012 and reconsidered Centegra's

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[5] The Mercy Plaintiffs do not challenge the authority of either ALJ Hart or the State Board.

project on a corrected record at its meeting on July 24, 2012. Advocate relies on *CBS Outdoor, Inc. v. Dept. of Transportation*, 2012 IL App. (1st) 111387, 970 N.E.2d 509 (1st Dist. 2012) which it claims is "an almost identical situation" to this case. It is not. A fundamental distinction is that the decision revisited in *CBS Outdoor* was of a *final* decision on a *closed* application. Here, the State Board's December 2011 action was not final and Centegra's project was still pending before the State Board. In such circumstances, an agency has authority to vacate a prior decision.[6] *See*, *Bd. of Education*, *supra*.

3. Advocates' "written comment" objection is frivolous

Advocate argues that the State Board erred by not allowing written comment prior to the reconsideration of Centegra's project on July 24, 2012. The argument must be rejected for a host of reasons. First, Advocate had the opportunity to submit written comment and, in fact, did submit written comment in its Brief and Exceptions to the ALJ's Report. Second, no other party, or non-party for that matter, has complained about not being able to submit written comment. Third, the public comment period on Centegra's project was open for almost the entire year of 2011 for persons to submit written comments. The record contains thousands of pages of written comment, including many submissions from Advocate. Third, the Board allowed public oral comment immediately before the Board's consideration of Centegra's project in July 2012. Everyone who signed up to speak was allowed to speak and none of the speakers, other than those from Advocate, complained about not being able to submit written comment. Fourth,

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[6] Advocate's counsel in this Court also represented the losing party in *CBS Outdoor*. The appellate decision in that case was filed on March 30, 2012. Even though Advocate's counsel now asserts that the case was "almost identical" to this one, he made no mention of it to Judge Meyer when Centegra's motion challenging the State Board's reconsideration was argued on May 2, 2012. Nor was it mentioned in Advocate's brief to Judge Meyer, filed April 20, 2012, in which Advocate argued that ALJ Hart had authority to recommend reconsideration. *See* Appendix B, Exhibit 6 to Centegra's Memorandum in Support of Motion for Judgment.

Advocate has demonstrated no material harm or substantial injustice as required under Section 3-111(b) of the Administrative Review Law to support its allegation of a reversible evidentiary or procedural error. Finally, Advocate has never made a proffer as to the substance of written comment that supposedly barred in error so as to allow a determination of its relevance and materiality.

Conclusion

For the above reasons, Defendants Centegra Health System and Centegra Hospital-Huntley respectfully request that the Court enter judgment in Case No. 12 MR 1824, consolidated with Case No. 12 MR 1840, affirming the decision of the defendant Illinois Health Facilities and Services Review Board to approve Centegra's application to establish and construct a 128-bed acute care hospital in Huntley, Illinois, with a project cost of $233 million, and grant Centegra any additional relief to which it is entitled upon the premises.

Dated: February 4, 2013

Respectfully submitted,

Defendants CENTEGRA HEALTH SYSTEM and CENTEGRA HOSPITAL-HUNTLEY

By: _____
One of their Attorneys

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Certificate of Service

The undersigned, an attorney, hereby certifies that he caused a copy of the foregoing **Centegra's Reply Brief in Support of its Motion for Judgment to Affirm the State Board's Decision and Response to Plaintiffs' Briefs and Motion** referred to therein to be served upon:

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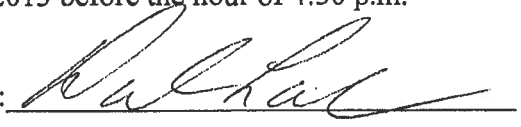
by email and First Class Mail this 4th day of February 2013 before the hour of 4:30 p.m.

By: 

Daniel Lawler

Exhibit C

#41

STATE OF ILLINOIS)
)SS
COUNTY OF WILL)

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

MERCY CRYSTAL LAKE HOSPITAL et al.
Plaintiff
vs

CASE NO: 12 MR 1824
consolidated with
12 MR 1840

ILL HEALTH FACILITIES PLANNING Board et al.
Defendant

COURT ORDER

This matter coming to be heard on Centegra's Motion for Clarification of Remand order, due notice having been given and the Court being fully advised in the premises,

IT IS HEREBY ORDERED:

The Court's remand order of July 15, 2013 is clarified in that the State Board is to provide further explanation ~~of~~ for page 10 of its Written Final Decision dated September 11, 2012.

Attorney or Party, if not represented by Attorney
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ARDC # 6180981
Firm Name BARNES & THORNBURG
Attorney for A CENTEGRA HEALTH SYS.
Address 1 N. WACKER
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Telephone 312-214-4861

Dated: 7/23, 2013

Entered: BF
Judge

PAMELA J. MCGUIRE, CLERK OF THE CIRCUIT COURT OF WILL COUNTY

White – Court Yellow – Plaintiff Pink – Defendant

17 D Revised (06/06)

Exhibit D

Illinois Health Facilities and Services Review Board

Written Final Decision regarding

Centegra Hospital-Huntley, Illinois

Centegra Health System, Project #10-090

September 2012

Introduction

The Centegra Health System (Centegra) proposed to establish a 128 bed hospital in a total of 384,135 gross square feet ("GSF") at a total estimated project cost of $233,160,352 in Huntley, Illinois. The categories of services that would be provided at the proposed hospital included medical surgical, intensive care and obstetric services. Other clinical services would be general radiology flouroscopy, X-Ray, mammography, ultrasound, CT Scan, MRI, Nuclear Medicine, 8 room surgical suite, recovery stations, and an emergency department.

On July 24, 2012, after the Board considered the Centegra hospital project at two previous meetings, the Board approved Centegra's application for permit for project #10-090 by a vote of 6 to 3 approving the project. The Board considered the findings contained in the State Agency Reports for the Centegra project. The Board also considered the 11,415 pages of documents in the Centegra project file, which included; the Centegra application material, public hearing testimony and documents, and any testimony made before the Board.

I.

The Illinois Health Facilities and Services Review Board (Board) considered the Centegra project #10-090 on June 28, 2011 and on December 7, 2011. The Board found that Centegra provided the required information that compiled with the following standards in the Board's processing, classification policies and review criteria in 77 Ill Adm. Code 1110:

1. Section 1110.230 - Project Purpose, Background and Alternatives

   A) Criterion 1110.230 (a) - Background of Applicant

   Centegra owns three hospitals in Illinois; Centegra Hospital – McHenry and Centegra Hospital-Woodstock and Centegra Specialty Hospital- Woodstock, South Street. In addition Centegra owns a number of ambulatory care facilities

and medical office buildings in Illinois. Centegra provided a list of all facilities they currently owned, and an attestation that no adverse actions (as defined by the Board) have been taken against the Centegra Health System in the past three calendar years. Therefore, Centegra demonstrated that it was fit, willing and able, and had the qualifications, background and character, to adequately provide a proper standard of health care service for the community.

B) Criterion 1110.230 (b) - Purpose of the Project

The Board considered Centegra's stated purposes for the project which were to address: the calculated bed need in the A-10 and A-11 planning areas, the outmigration of patients from the A-10 planning area, the rapid population growth in the A-10 planning area by 2018, and the areas identified by the U. S. Department of Human Services as Medically Underserved and Health Manpower Shortage Areas in the market area.

C) Criterion 1110.234 (c) - Alternatives to the Proposed Project

Centegra documented that the proposed project was the most effective or least costly alternative for meeting the health care needs of the population to be served by the project.

The Board considered the following two alternatives: Modernizing Memorial Medical Center in Woodstock with a Capital Cost of $52,201,702 and Modernizing Centegra Hospital in McHenry and Centegra Hospital in Woodstock with a Capital Cost of $206,572,661.

The modernization of Memorial Medical Center-Woodstock alternative was originally approved by the Board as Project #08-002 and subsequently abandoned by the applicant. This project proposed to construct a women's pavilion, modernize existing space in the hospital, and add 14 medical surgical beds and 6 obstetric beds.

The modernization of Centegra Hospital in McHenry and Centegra Hospital in Woodstock alternative proposed to add 100 medical surgical beds (40 beds at McHenry and 60 Beds at Woodstock), add of 8 intensive care unit beds (6 at McHenry and 2 at Woodstock) and add 20 obstetric beds (6 at McHenry and 14 at Woodstock). This alternative was rejected because it would not assure the efficient distribution of beds in the planning area, would be approximately the same cost as a new hospital, and an imprudent use of capital resources to add a high cost addition to an aging facilities.

2. <u>Section 1110.234 - Project Scope and Size, Utilization and Unfinished/Shell Space</u>

A) Criterion 1110.234(a) - Size of Project

Centegra proposed project met the State Standards for all clinical departments and services in which the Board has size standards.

B) Criterion 1110.234 (b) - Project Services Utilization

Centegra successfully addressed the projected utilization for services departments proposed by this project.

C) Criterion 1110.234 (c) - Size of the Project and Utilization:

As a basis for determining departmental gross square footage for areas in which norms are not listed in Appendix B of the Board's rules, Centegra relied upon IDPH 77 ILL Adm. Code 250.2440, General Hospital Standards and the AIA (American Institute of Architects) Guidelines for Construction and Design of Health Care Facilities-2006 Edition. The Hospital met the requirements of the Size of the Project and Utilization criterion.

D) Criterion 1110.234(e) - Assurances

Centegra attested that by the second year after project completion that they will be at target occupancy and therefore, Centegra met the requirements of the Assurances criterion.

3. Section 1110.530 - Medical/Surgical, Obstetric, Pediatric and Intensive Care – Review Criteria

A) Criterion 1110.530 (e) - Staffing Availability

Centegra provided information on the permit application that indicated that a sufficient workforce would be available once the hospital became operational by 2015.

B) Criterion 1110.530 (f) - Performance Requirements

Centegra proposed a medical surgical bed capacity of 100 beds, 20 obstetric beds and 8 intensive care beds. Centegra met the requirements of the Performance Requirements criterion.

C) Criterion 1110.530 (g) – Assurances

Centegra provided the necessary assurances that the facility would achieve and maintain the occupancy standards specified for each category of service proposed. Centegra met the requirements of the Assurances criterion.

II.

The Board also considered the standards that were not met. The unmet standards were the following:

1. Section 1110.530 - Medical/Surgical, Obstetric, Pediatric and Intensive Care – Review Criteria

A) Criterion 1110.530 (b) - Planning Area Need

Board staff concluded and reported to the Board that there was no absence of services within the A-10 planning area where the Centegra hospital was to be located, nor access limitations due to payor status, or evidence of restrictive admission policies at existing facilities in the planning area. Centegra provided evidence of three (3) census tracts within planning area A-10 that have been designated as a Medically Underserved Population, one (1) census tract in the primary service area was designated Medically Underserved Area/Population, four townships in the market area designated were Health Manpower Shortage Areas.

Planning areas A-10 and A-11 have the second and third highest bed need of all planning areas in Illinois and they are two (2) of the four (4) planning areas with a bed need. However, there are existing facilities within 45 minutes that are operating below the Board's target occupancy for medical surgical, intensive care and obstetric beds. Target occupancies for medical/surgical beds range from 80% to 90%. Target occupancy for intensive care beds is 60%. Target occupancies for obstetric beds range from 60% to 78%. Centegra did not meet the requirements of this criterion. (See Table One)

Table One

Facilities within 45 minutes of proposed hospital

NAME	CITY	Adjusted Time	MS Beds	ICU Beds	OB Beds	MS %	ICU %	OB %
Centegra Hospital - Woodstock	Woodstock	16	60	12	14	83.50%	77.30%	53.40%
Provena Saint Joseph Hospital	Elgin	20	99	15	0	71.10%	60.4%	0.00%

Sherman Hospital	Elgin	24	189	30	28	63.80%	55.80%	70.00%
Centegra Hospital - McHenry	McHenry	25	129	18	19	74.10%	91.80%	40.00%
Advocate Good Shepherd Hospital	Barrington	28	113	18	24	81.60%	84.70%	50.20%
St. Alexius Medical Center	Hoffman Estates	31	212	35	38	71.00%	57.00%	62.10%
Delnor Community Hospital	Geneva	36	121	20	18	56.50%	67.80%	69.50%
Mercy Harvard Memorial Hospital	Harvard	37	17	3	0	27.50%	9.50%	0.00%
Kishwaukee Community Hospital	DeKalb	40	70	12	12	72.70%	26.90%	61.70%
Alexian Brothers Medical Center	Elk Grove Villa	43	241	36	28	82.70%	71.50%	72.70%
Northwest Community Hospital	Arlington Hts.	44	336	60	44	61.30%	50.90%	55.00%
*Time and Distance based on MapQuest and adjusted per 77 IAC 1100.510 (d) by 1.15X Bed and Utilization information taken for IDPH 2010 Hospital Questionnaire								

B) Criterion 1110.530 (c) - Unnecessary Duplication/Maldistribution

Board staff concluded and reported to the Board that the bed to population ratio in A-10 was provided as required and all facilities within 30 minutes were identified. There were existing facilities within the planning area and within 30 minutes of the proposed site of the Hospital that are below the Board's target occupancy. Centegra reported that because of the population growth projections and the aging population the establishment of Centegra Hospital- Huntley will not impact other area providers. Existing hospitals within 30 minutes are not at target occupancy; therefore it would appear that the proposed Hospital would impact other area providers. Centegra did not meet the requirements of this criterion. (See Table Two)

Table Two

Facilities within 30 minutes of the proposed site

					2010 Number of Beds			2010 Bed Occupancy		
Facility Name	City	Minutes Adjusted	Miles	Planning Area	M/S	ICU	OB	M/S %	ICU %	OB %
Centegra Hospital - Woodstock	Woodstock	16	11.26	A-10	60	12	14	83.5%	77.3%	53.4%
Sherman Hospital	Elgin	20	15.11	A-11	189	30	28	63.8%	55.8%	70.0%
Provena Saint Joseph Hospital	Elgin	24	13.9	A-11	99	15	0	71.1%	60.4%	0.0%
Centegra Hospital McHenry	McHenry	25	17.83	A-10	129	18	19	74.1%	91.8%	40.0%
Advocate Good Shepherd	Barrington	28	16.61	A-09	113	18	24	81.6%	84.7%	50.2%

*Time and Distance based on MapQuest and adjusted per 77 IAC 1100.510 (d) by 1.15X

Bed and Utilization information taken for IDPH 2010 Hospital Questionnaire

2. Section 1110.3030 (b) – Clinical Service Areas Other Than Categories of Service – Review Criteria

Board staff concluded and reported to the Board that because this is a proposed new hospital, Centegra projected utilization information because historical utilization was not available. Generally, the projected patient volumes for clinical services other than categories of services were calculated based upon the applicants expected market share, the

projected population growth in the market area and the historical experience at existing hospitals within the Centegra Health System. However, because existing hospitals were not operating at Board occupancy targets it would appear that the additional services would lower utilization at other area providers. Centegra did not meet the requirements of this criterion.

III.

The Board found that Centegra provided the information that compiled with all of the following standards in the Board's financial and economic feasibility review rules in 77 Ill Adm. Code 1120:

1. Section 1120.120 - Availability of Funds

   Centegra provided evidence of an "A-" rating from Standard and Poor's for Centegra Health System on the Illinois Health Facilities Authority 1998 revenue bonds and it's "A-" underlying rating on the Authority's 2002 revenue bonds issued by Centegra Health System. The Board considered that the Hospital project would be funded with cash and securities of $48,010,352, a bond issue of $183,000,000 and lease of capital equipment of $2,150,000. Centegra met the requirements of the Availability of Funds criterion.

2. Section 1120.130 - Financial Viability

   Centegra provided evidence of an "A-" rating from Standard and Poor's for Centegra Health System on the Illinois Health Facilities Authority 1998 revenue bonds and it's "A-" underlying rating on the Authority's 2002 revenue bonds issued by Centegra Health System. The Board considered that the Hospital project would be funded with cash and securities of $48,010,352, a bond issue of $183,000,000 and lease of capital equipment of $2,150,000. Centegra met the requirements of the Financial Viability criterion.

3. Section 1120.140 - Economic Feasibility

   A) Criterion 1120.140 (a) - Reasonableness of Financing Arrangements

   Centegra provided evidence of an "A-" rating from Standard and Poor's for Centegra Health System on the Illinois Health Facilities Authority 1998 revenue bonds and it's "A-" underlying rating on the Authority's 2002 revenue bonds issued by Centegra Health System. The Board considered that the Centegra project would be funded with cash and securities of $48,010,352, a bond issue of $183,000,000 and lease of capital equipment of $2,150,000. Centegra met the

requirements of the Reasonableness of Financing Arrangements criterion.

B) Criterion 1110.140 (b) - Conditions of Debt Financing

Centegra attested that the selected form of debt financing for this project would be the issuance of bonds through the Illinois Health Finance Authority as well as the leasing of capital equipment. They also attested that the selected form of debt financing for the project would be at the lowest net cost available. In addition, a portion of the project would involve the leasing of capital equipment and the expenses incurred with leasing are less costly than the purchase of new equipment. Centegra met the requirements of the Conditions of Debt Financing criterion.

C) Criterion 1110.140 (c) - Reasonableness of Project and Related Costs

The following Centegra costs were provided to the Board:

Preplanning Costs – These costs total $1,729,015 and are 1.74% of new construction contingency and movable equipment. These costs appeared reasonable when compared to the State Standard of 1.8%

Site Survey and Soil Investigation Site Preparation – These costs total $1,070,937 and are 1.42% of construction and contingency costs. These costs appeared reasonable when compared to the Board Standard of 5%.

Offsite Work – These costs total $5,356,644. The Board does not have a standard for these costs.

New Construction Cost and Contingencies – These costs total $75,392,411 or $398.64 per gross square feet ("GSF"). These costs appeared reasonable when compared to the Board standard of $403.39 GSF.

Contingencies – These costs total $6,640,894 or 9.5% of construction costs. These costs appeared reasonable when compared to the Board standard of 10%.

Architectural/Engineering Fees – These costs total $4,046,356 or 5.37% of construction and contingency fees. These costs appeared reasonable when compared to the Board standard of 3.59-5.39%.

Movable and Other Equipment – These costs total $24,170,213. The Board does not have a standard for these costs.

Bond Issuance Expense -- These costs total $1,477,016. The Board does not have a standard for these costs.

Net Interest Expense During Construction -- These costs total $13,514,695. The Board does not have a standard for these costs.

FMV of Leased Equipment -- These costs total $2,150,000. The Board does not have a standard for these costs.

Other Costs to be Capitalized -- These costs total $193,030. The Board does not have for these costs.

The Hospital met the requirements of the Reasonableness of Project and Related Costs criterion.

D) Criterion 1110.140 (d) - Projected Operating Costs

These costs are $1,772 per equivalent patient day. The Board does not have a standard for these costs.

E) Criterion 1110.140 (e) - Total Effect of the Project on Capital Costs

These costs are $223 per equivalent patient day. The Board does not have a standard for these costs.

IV.

At the June 28, 2011 meeting the Board considered that there was a calculated bed need for 83 medical surgical beds, 8 ICU beds and 27 obstetric beds in the A-10 planning area, where the Hospital would be located. At the December 7, 2011 meeting the Board considered the revised calculated bed need which was 138 medical surgical beds, 18 intensive care unit beds and 22 obstetric beds in the A-10 planning area by 2018 according to the most current and updated bed inventory (October 21, 2011).

The Board also conducted a public hearing regarding the Centegra project on February 16, 2011. At the public hearing one hundred and fifty-three (153) individuals were present but did not provide testimony, one hundred and thirty-four (134) individuals spoke in support of the project, and eighty-five (85) individuals spoke in opposition. The Board also received a number of letters in support and opposition to the Centegra project. The Board considered the transcript of the public hearing and the letters in support and opposition to the Centegra project.

V.

The Centegra project was not approved by the Board at the June 28, 2011 Board meeting. The project received an "intent to deny". The Centegra project was again considered at the December 7, 2011 Board meeting and was not approved. The project received a denial. Centegra requested an administrative hearing to contest the project denial. In preparation for the hearing it was discovered that the Centegra record, that was considered by the Board, contained documents regarding the Mercy Hospital project #10-089. Administrative Law Judge Hart recommended that the Centegra record be corrected and for the Board to reconsider the Centegra hospital project with the corrected record.

The Board adopted Administrative Law Judge Hart's recommendations and reconsidered and approved the Hospital project with the corrected record at the July 24, 2012 Board meeting. The Board approved the corrected application for permit for the Centegra hospital project #10-090 based upon the project's substantial conformance with the applicable standards and criteria of 77 Ill Adm. Code 1110 and 1120. In arriving at a decision, the Board considered the findings contained in the State Agency Report, the application material, public hearing testimony and documents, any testimony made before the Board, and the Illinois Health Facilities Planning Act (20 ILCS 3960).

VI.

This is a written, final decision by the Illinois Health Facilities and Services Review Board about the Centegra Hospital-Huntley, Illinois, Centegra Health System Project #10-090. This written, final decision was approved by the Board at the September 11-12, 2012 Board Meeting.

9-11-12

Dale Galassie — Date

Chairman