

**Before The  
HEALTH FACILITIES AND SERVICES REVIEW BOARD  
State of Illinois**

HEALTH FACILITIES AND SERVICES	)	
REVIEW BOARD,	)	
	)	
Complainant,	)	<b>Docket No. HFSRB #11-11</b>
	)	
v.	)	
	)	
CENTEGRA HEALTH SYSTEM and	)	
CENTEGRA HOSPITAL-HUNTLEY,	)	
<b>Project No. 10-090</b>	)	
	)	
Respondents.	)	

**APPENDIX 1**

**To**

**Centegra's Brief In Support Of Exceptions  
To ALJ's Proposal For Decision**

# Index of Exhibits

- A** State Board's Denial Letter dated December 9, 2011
- B** ALJ Hart's Order of February 29, 2012
- C** Proposed Decision of Administrative Law Judge issued March 19, 2012
- D** Centegra's Verified Objections to *Ex Parte* Communications by the State Board's Counsel and Demand that the State Board's Counsel Disclose and Document All Known *Ex Parte* Communications
- E** IHFSRB's Response to Centegra's Objections to State Board's Inconsistence [sic], Misleading and False Misrepresentations to the ALJ [etc.]
- F** Centegra's Response to State Board's Recent Filing Regarding Remand and *Ex Parte* Communications
- G** E-mails between Daniel Lawler and Frank Urso dated March 15, 2012
- H** Centegra's Response to Advocate's Memorandum Concerning the Record in Centegra Hospital-Huntley, IHFSRB #11-11
- I** Centegra's Emergency Motion and Notice of Emergency Motion
- J** Centegra Counsel's Letter to ALJ Hart dated March 23, 2012
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- L** Alice Hohl, *Hospitals Left Scratching Their Heads*, Daily Southtown, April 22, 2004
- M** Governor's Moratorium On All Business of the Health Facilities Planning Board, dated July 7, 2004
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- O** Press Release, United States Attorney for the Northern District of Illinois, "Levine, Kiferbaum and Hurtgen Indicted on Fraud Charges Alleging Kickbacks, Influence-Peddling and Insider-Dealing," May 9, 2005
- P** Excerpts of the Final Report of the Illinois Task Force on Health Planning Reform

## **Index of Exhibits (cont.)**

- Q** Copy of envelope sent by ALJ certified mail that enclosed ALJ's Report and ALJ's Proposal for Decision dated March 30, 2012
- R** ALJ's Report dated March 30, 2012
- S** ALJ's Proposal for Decision dated March 30, 2012

# **Exhibit A**



STATE OF ILLINOIS  
**HEALTH FACILITIES AND SERVICES REVIEW BOARD**

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 • FAX: (217) 785-4111

December 9, 2011

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ms. Hadley Streng, Director  
Planning and Business Development  
Centegra Health System  
385 Millennium Drive  
Crystal Lake, IL 60012

RE: **DENIAL OF APPLICATION**  
**Notice of an Opportunity for an Administrative Hearing**  
Illinois Health Facilities Planning Act  
**PROJECT**: #10-090 - Centegra Hospital-Huntley  
**APPLICANT(S)**: Centegra Health System  
Centegra Hospital-Huntley

Dear Ms. Streng:

On December 7, 2011 the Illinois Health Facilities Planning Board issued its denial of the application for permit for the above-referenced project. The State Board rendered its decision following consideration of the CON application, supplemental information, public hearing materials, the State Board Staff Agency Report and the testimony of the applicant. The State Board's decision is based upon the applicant's failure to document that Project #10-089 as that proposed is in compliance with State Board's review criteria. The following are the allegations of non-compliance the State Board observed in the application:

**Allegations of Non-Compliance**

The applicants did not document conformance with the following review criteria:

- Criterion 1110.1430(b) - Planning Area Need
- Criterion 1110.1430(c) - Unnecessary Duplication/Maldistribution
- Criterion 1110.3030(a) - Clinical Services Other Than Categories of Service

Section 10 of the Illinois Health Facilities Planning Act (the "Act"), P.A. 78-1156 as amended, [20 ILCS 3960/10] affords you the opportunity for a hearing before a hearing officer appointed by the Director of the Illinois Department of Public Health. Such hearing shall be conducted in accordance with the provisions specified in Section 10 of the Act and the implementing rules, 77 IAC Part 1130. If you decide to exercise your right to an administrative hearing, you must submit a written notice of a request for such hearing to the Administrator of the State Board, postmarked within 30 days of

DENIAL LETTER

Page 2 of 2

receipt of this notice.

Notice to the Administrator may be made by forwarding the written request to my attention at the following address:

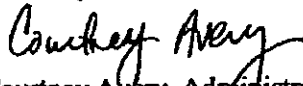
Courtney Avery, Administrator  
Illinois Health Facilities and Services Review Board  
525 West Jefferson Street, 2<sup>nd</sup> Floor  
Springfield, Illinois 62761

Notice to the Administrator constitutes notice to the State Board (77 IAC 1130.1020(b)). Failure to submit your request within this period constitutes a waiver of your right to an administrative hearing.

If you decide to exercise your right to an administrative hearing, the Illinois Health Facilities and Services Review Board, shall, within 30 days after the receipt of your request, appoint a hearing officer. The administrative hearing will afford you the opportunity to demonstrate that the application is consistent with the criteria upon which the action of the State Board was based. The State Board shall make a final determination following its consideration of the report of the administrative hearing, or upon default of the party to the hearing.

Should you have any questions, please contact Mike Constantino at 217 782 3516.

Sincerely,



Courtney Avery, Administrator  
Illinois Health Facilities and Services Review Board

Cc: Dale Galassie, Chairman  
Frank Urso, General Counsel

# **Exhibit B**

Hart, Southworth & Witsman  
Attorneys at Law

Suite 501  
One North Old State Capitol Plaza  
Springfield, Illinois 62701-1323  
(217) 753-0055  
(217) 753-1056 - Fax

Richard E. Hart  
Mike Southworth  
Samuel J. Witsman  
Timothy J. Rigby  
Kristina B. Mucinskas

rhart1213@aol.com

February 29, 2012

Mr. Frank Urso  
Mr. Juan Morado  
Illinois Department of Public Health  
122 South Michigan Avenue, Floor 7  
Chicago, Illinois 60603

Mr. Daniel Lawler  
K&L Gates LLP  
70 West Madison Street, Suite 3100  
Chicago, Illinois 60602

Mr. Joe Ourth  
Arnstein & Lehr LLP  
120 South Riverside Plaza, Suite 1200  
Chicago, Illinois 60606

Re: Illinois Facilities and Services Review Board, Docket # 11-11  
Centegra Hospital Huntley Project #10-090 (the "Respondent")

Gentlemen:

This letter will confirm those matters discussed at the initial hearing held by telephone on February 23, 2012 at 10:50 a.m.

The following appeared by telephone:

1. Mr. Frank Urso and Mr. Juan Morado, attorneys representing the State of Illinois Health Facilities and Services Review Board (the "Board");
2. Mr. Daniel Lawler, attorney representing the Respondent, and Aaron Shepley, general counsel and senior vice president for Respondent; and
3. Mr. Joe Ourth, attorney representing the potential intervenor, Advocate Health and Hospitals Corporation ("Advocate").

The parties agreed to conduct the initial hearing by telephone and that proper procedures had been followed regarding all notices. Advocate filed a Petition to Intervene on February 22, 2012. The Respondent is given until Wednesday, February 29, 2012 to file a response to Advocate's petition. Advocate then will have one week to respond, and shall file any response on or before March 7, 2012 indicating whether oral arguments will be needed.



The parties have until March 8, 2012 to (a) exchange witness lists and (b) produce the Board's record on this matter. There will be an in-person hearing in Chicago, Illinois on Thursday, March 22, 2012 and Friday, March 23, 2012 beginning at 9:00 a.m. The Board will make arrangements for a conference room and a court reporter.

Yours truly,

HART, SOUTHWORTH & WITSMAN

By: Richard E. Hart/ss  
Richard E. Hart

REH:ss

# **Exhibit C**

HEALTH FACILITIES AND SERVICES REVIEW BOARD  
STATE OF ILLINOIS

HEALTH FACILITIES AND SERVICES REVIEW BOARD, )  
)  
)  
Complainant, )  
)  
vs. ) No. HFSRB 11-11  
)  
CENTEGRA HOSPITAL HUNTLEY PROJECT #10-090 )  
)  
Respondent. )

**Decision of Administrative Law Judge**

Last Wednesday afternoon, counsel for the Health Facilities and Services Review Board (hereafter the "State Board") advised me that they had discovered that the record in this case contained materials that should have been a part of the record in another case and that the record in the other case contained materials that should have been a part of the record in this case. In short, documents meant for the record in one case were filed in another case and *vice versa*. Apparently, the switch was made at the time of their original filings and existed at the time the State Board made its decision in this matter.

Since last Wednesday, two hearings have been held regarding this revelation. Those hearings have raised a number of issues and Centegra and intervenor Advocate have filed written pleadings.

This case is scheduled for hearing on March 22 and 23, 2012.

**Issues**

*Is the record "flawed"?*

The State Board believes that the record is flawed. Centegra believes that it is not. Intervenor Mercy appears to believe that it is and intervenor Advocate appears to believe that it is or might be.

*If so, can the flaw be corrected in this administrative hearing?*

No, I have no authority to supplement the record *nunc pro tunc*, thus artificially correcting the record now even though it was flawed at the time the State Board made its decision. If I did have such authority, I would not so execute it unless it was specifically mandated.

*There has been much discussion about the responsibility for the misfiling. Who was responsible? Is there any importance to the issue of fault or responsibility for the "misfiling?"*

Fault is irrelevant unless it was intentional, which it does not appear to be.

*What is the presumption about the record and those in state government who have prepared the record?*

Even if I presume that the State Board was not responsible for the misfiling, that does not cure the flaw. Again, fault is irrelevant.

*What precedent is set if the record is considered flawed and the matter is sent back to the State Board without a hearing and with a statement that the record is flawed as described?*

The facts in this case are unique and peculiar and the action taken here should not constitute a precedent upon which future decisions can be based.

*What is the consequence of such a failure to hold a hearing within the required time?*

Nothing, as applicant will have another opportunity to request a hearing after the State Board makes a further determination in this case. There is no denial of due process, but rather a strong respect for due process on the part of counsel for the State Board in their bringing the misfiling to the attention of the hearing officer at the earliest possible time after discovery and requesting that the matter be reconsidered by the State Board in light of the misfiled documents.

## **Proposals**

Based upon the revelations, the issues raised and the oral and written arguments thereon, what is to be done?

1. It has been suggested that we go forward on the scheduled hearing and that, thereafter, I send my report, including the information on the misfiling, back to the State Board for its consideration.
2. It has also been proposed that we allow the record to be supplemented by including the omitted documents and going forward.
3. Finally, it has been proposed that I send this matter back to the State Board advising of the misfiling issue and the state of the record. The State Board would then determine how it would proceed on this case.

The parties and intervenors have been unable to reach a common agreement on which of the proposals I should follow.

All of the proposals have some merit. Each has potential flaws or issues that might be raised by one or more parties or intervenors.

## **Decision**

After due consideration and based upon the foregoing, I have decided to cancel the hearing scheduled for March 22 and 23, 2012, and send this case back to the State Board for its consideration.

# **Exhibit D**

**Before The  
HEALTH FACILITIES AND SERVICES REVIEW BOARD  
State of Illinois**

HEALTH FACILITIES AND SERVICES )	)	
REVIEW BOARD,	)	
	)	
Complainant,	)	
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v.	)	<b>Docket No. HFSRB #11-11</b>
	)	
CENTEGRA HEALTH SYSTEM and )	)	
CENTEGRA HOSPITAL-HUNTLEY,	)	
Project No. 10-090	)	
	)	
Respondents.	)	

**CENTEGRA’S VERIFIED OBJECTIONS  
TO *EX PARTE* COMMUNICATIONS BY THE STATE BOARD’S COUNSEL  
AND  
DEMAND THAT THE STATE BOARD’S COUNSEL DISCLOSE  
AND DOCUMENT ALL KNOWN *EX PARTE* COMMUNICATIONS**

The Applicants/Respondents, Centegra Health System and Centegra Hospital-Huntley (collectively “Centegra”) respectfully submit this Objection to *ex parte* communications made by counsel for the Complainant, Illinois Health Facilities and Services Review Board (“State Board”) and Demand that the State Board’s attorneys disclose and document all known *ex parte* communications in this matter.

***Ex Parte* Communications are Prohibited by the Illinois APA**

The Illinois Administrative Procedure Act (“APA”) prohibits *ex parte* communications by any party with the Administrative Law Judge (“ALJ”) in a contested case proceeding:

“(a) Except in the disposition of matters that agencies are authorized by law to entertain or dispose of on an *ex parte* basis, agency heads, agency employees, and administrative law judges shall not, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or the representative of any party, except upon notice and opportunity for all parties to participate.”

5 ILCS 100/10-60(a).

This administrative hearing is a contested case proceeding within the meaning of the APA, and the State Board is a party to this proceeding. The State Board is the Complainant and is directly adverse to Centegra, which is the Respondent. The State Board and its attorneys are therefore subject to the prohibition against *ex parte* communications with the ALJ under Section 10-60(a) of the APA.

In the event an *ex parte* communication to an ALJ is made, Section 10-60(c) of the APA requires that the communication “shall be made a part of the record of the pending matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the *ex parte* communication was received.” 5 ILCS 100/10-60(c). Consequently, any and all *ex parte* communications by the State Board’s attorneys with the ALJ must be documented and made a part of the record of this proceeding in accordance with the terms of the APA.

**The *Ex Parte* Communication Relating to Alleged “Incurable Error” in the Record**

The record in this administrative proceeding documents that the State Board’s attorneys have made an *ex parte* communication to the ALJ presiding over this matter, which communications related to substantive matters that later become the sole basis upon which the State Board’s attorneys urged the ALJ to cancel Centegra’s requested administrative hearing and remand this matter to the State Board without a hearing. This action has caused and will continue to cause substantial prejudice and irreparable harm to Centegra by depriving it of its statutory right to hearing and by exposing Centegra to tremendous costs and further delay, in addition the literally impossible burden it would place on Centegra based upon the circumstances



upon which the State Board's attorneys purport to justify the remand, as more fully addressed below.

~~To date, the State Board's attorneys have not disclosed or documented their *ex parte*~~  
communications with the ALJ. Centegra became aware of the communications because the ALJ and the ALJ's office provided notification to the parties.

The ALJ's proposed "Decision of Administrative Law Judge", which the ALJ caused to be served upon the parties on the afternoon of Monday, March 19, 2012, reported that:

"Last Wednesday afternoon [March 14, 2012], Counsel for the Health Facilities and Services Review Board (hereafter the "State Board") advised me that they had discovered that the record in this case contained materials that should have been a part of the record in another case and that the record in the other case contained materials that should have been a part of the record in this case."

(See proposed Decision of Administrative Law Judge served upon the parties on the afternoon of Monday, March 19, 2012, included as **Attachment A**, hereto.) The attorneys for the State Board failed to provide prior notice to Centegra or to the other parties of their above contact with the ALJ and, to date, have not themselves disclosed or documented this contact.

#### **The *Ex Parte* Communication Relating to the "Emergency" Hearing**

On information and belief, as part of the above contact, or in a separate contact with the ALJ's, the State Board's attorneys, without prior notice to Centegra or to the other parties, contacted the ALJ's office to request an emergency hearing to be scheduled for Friday morning, March 16, 2012. The ALJ's office contacted counsel Centegra on the afternoon of March 15, 2012, to inquire of availability for a hearing the next morning that State Board attorney Mr. Frank Urso had previously requested. When Centegra's counsel inquired of the purpose of the emergency hearing, the ALJ's office advised that it did not know. Centegra's counsel then telephoned Mr. Urso to ask the purpose of the emergency hearing. Mr. Urso refused to disclose the purpose of the hearing.

Following Mr. Urso's refusal to disclose the purpose of his emergency hearing for March 16, Centegra's counsel sent an email to the ALJ and Mr. Urso on March 15, 2012 (and copying counsel for all parties of record) stating:

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"Mr. Hart and Mr. Urso,

[Your office] called me this afternoon to inquire of my availability for an emergency hearing tomorrow morning at 10:00 am regarding the Centegra Hospital-Huntley hearing requested by Mr. Urso. [Your office] indicated that she was not aware of the purpose of the hearing. I telephoned Mr. Urso and requested notice of the purpose of the hearing and Mr. Urso would not say. After advising my client of the request for emergency hearing and discussion, we will be available for the hearing, however, *I am requesting on behalf of the applicants Centegra Health System and Centegra Hospital-Huntley that notice of the subject matter of the hearing and the relief, if any, sought by the Review Board or any other party from ALJ Hart be provided to all parties immediately.*"

Emphasis added; A true and correct copy of the above email from Centegra's counsel, Daniel Lawler, to the ALJ and Mr. Urso of March 15, 2012, and Mr. Urso's response of the same day, are included as **Attachment B**, hereto.

Mr. Urso responded to the above email in a return email stating:

"Board Counsel have requested to have a status meeting tomorrow, not a hearing. The subject matter will be the project file."

*See, Attachment B.*

On information and belief, at the time Mr. Urso received the above telephone call and email from Centegra's counsel, he knew that the purpose of the emergency hearing that he called was to argue that there was "incurable error" in the record and that he would be urging the ALJ to cancel Centegra's requested administrative hearing and to remand this matter back to the State Board without hearing. The State Board's counsel had *already* made an *ex parte* contact with the ALJ to discuss the facts upon which State Board's counsel would later rely in asking for cancellation of the administrative hearing and remand. Nevertheless, when Centegra's counsel directly questioned Mr. Urso as to the purpose of his request for an emergency hearing, he

refused to disclose the purpose; and when Centegra's counsel directly requested that Mr. Urso provide the required notice of the subject matter of the hearing and the relief sought, Mr. Urso simply replied that he had only asked for a "status meeting tomorrow, not a hearing status" and that that the "subject matter will be the project file." (**Attachment B.**) Mr. Urso said nothing about the prior *ex parte* contacts with the ALJ's office, his intention to argue that the record contained incurable error, his intention to request cancellation of Centegra's administrative hearing or to seek remand to the State Board.

**Communications Relating to the  
the State Board's Attorney and the Office of the Illinois Attorney General**

A face to face meeting was held on March 22, 2012, at the offices of the State Board at 122 South Michigan Avenue, Chicago, Illinois involving attorneys for the State Board and attorneys for all parties of record in this proceeding. The attendees in person at that meeting were Mr. Frank Urso and Mr. Juan Morado, Jr. for the Complainant State Board; Mr. Daniel Lawler and Ms. Claire Reed for the Applicant/Respondent Centegra; Mr. Joe Ourth and Mr. Hal Morris for the Intervenor Advocate Health Care and Hospital Corporation ("Advocate"); and Mr. Steven Hoeft, Ms. Monica Halloran and Mr. Linas Grikis for the various Mercy Alliance, Inc. entities. The State Board's Administrator, Ms. Courtney Avery participated in the meeting by telephone

The meeting was primarily for the purpose of presenting to Mr. Urso Centegra's and Advocate's proposed agreed stipulations according to which Centegra and Advocate sought to have the administrative hearing proceed before the ALJ and to avoid remand to the State Board.

During the meeting, Mr. Urso stated to all parties present that he had discussed the issue of the record in this matter with the Office of the Illinois Attorney General which Mr. Urso said

was “my attorney”, and that the person Mr. Urso talked to in that Office said that this matter should go back to the State Board “with proper information.”<sup>1</sup>

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In light of this statement by Mr. Urso, Centegra includes in its demand that the State

Board’s attorneys disclose and document all *ex parte* communications they have had with the ALJ, that the State Board’s attorneys also disclose whether or not they, or any one acting on their behalf, have communicated to the ALJ that the Office of the Illinois Attorney General, or anyone associated with that office, either stated, suggested, recommended or implied that the State Board’s attorneys should seek, or the ALJ should order, a remand of this proceeding to the State Board or a cancellation of the administrative hearing requested by Centegra.

Because Mr. Urso has advised the parties that he is acting in accordance with the advice of his attorney, i.e., the Office of the Illinois Attorney General, Centegra is providing a copy of this document and notice of its presentation to that Office.

**The Documented *Ex Parte* Communications Made by the  
State Board’s Counsel were Highly Prejudicial to Centegra,  
and Have Caused and Will Continue Cause Irreparable Harm to Centegra**

The conduct of the State Board’s counsel has already caused irreparable harm to Centegra because the subject matter of the documented *ex parte* conducts provided the sole basis upon which the State Board’s counsel successfully persuaded the ALJ to cancel Centegra’s requested administrative hearing scheduled for March 22 and 23, 2012. In addition, the remand to the State Board’s attorneys continue to seek would impose tremendous financial costs and

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<sup>1</sup> Neither Mr. Urso nor anyone else attending the face-to-face meeting at the State Board’s offices on Thursday requested that the discussions remain confidential, nor would such a request have been appropriate especially given that a non-attorney representative of the State Board, Administrator Avery, participated in the meeting by telephone. In addition, Advocate’s counsel, Mr. Morris, specifically advised Mr. Urso that he intended to memorialize various proposals discussed at the meeting and present them in writing to the ALJ, and Mr. Urso did not object to that announced disclosure.

further delay on Centegra. Even Advocate, which is a much larger system than Centegra, desired to proceed with the administrative hearing rather than have this matter remanded to the State Board. In the words of Advocate's counsel, Mr. Ourth, Advocate sought to proceed to hearing, and avoid delay and expense of remand, because people desire "finality at the lowest cost." Centegra and its counsel share that desire.

In addition, the remand sought by the State Board's counsel will impose a literally impossible burden on client Centegra, especially given the precedent it would establish. The basis of the State Board's counsel request for remand is that *one* document in Centegra's 11,100 page project file was subjectively intended by its submitter to be filed in another project file before the State Board, and that *one* document filed in the other project file was subjectively intended by its submitter to be filed into the Centegra project file.

In response to an inquiry by Mr. Ourth at the meeting at the State Board's offices on March 22, 2012, Mr. Urso indicated that the relative importance of the misfiled documents had no bearing on the necessity to remand, and that the misfiling of even one single form letter of support or opposition to a project, that was identical to thousands of other form letters, could create incurable error in the record that could compel Mr. Urso to seek a remand of the administrative hearing. Given this precedent, the *only* way Centegra could ever be assured that its record was not, in Mr. Urso's words "incurably tainted", would be to confirm that every single document filed in Centegra's record, and every single document in every other project file before the State Board (which includes tens of thousands of form letters from tens of thousands of submitters), was properly filed in accordance with the subjective intent of the submitter of each and every document. Mr. Urso was completely indifferent to my point of Centegra's counsel that the precedent he was establishing on behalf of the State Board imposed a literally

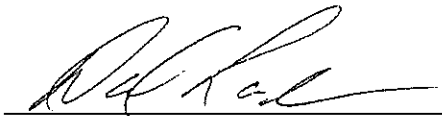
impossible burden on Centegra and upon all applicants to come before the Board, and would further create uncertainty as to the validity of every action of the State Board since no one could ever be able to know for sure whether or not the Board's decision was based on an incurably tainted record.

### Conclusion

For all of the above reasons, the Applicants/Respondents Centegra Health System and Centegra Hospital-Huntley object to any and all *ex parte* communications by or on behalf of any of the State Board's attorneys, and demand that the State Board's attorneys disclose and document any and all *ex parte* communications with the ALJ.

Respectfully submitted,

Centegra Health System and Centegra Hospital-Huntley, the Applicants/Respondents

By:   
One of their Attorneys

Daniel J. Lawler  
K&L GATES LLP  
70 West Madison Street  
Suite 3100  
Chicago, IL 60602  
Phone: (312) 372-1121  
Fax: (312) 827-8114  
Email: [daniel.lawler@klgates.com](mailto:daniel.lawler@klgates.com)

HEALTH FACILITIES AND SERVICES REVIEW BOARD  
STATE OF ILLINOIS

HEALTH FACILITIES AND SERVICES REVIEW BOARD, )

Complainant, )

vs. )

CENTEGRA HOSPITAL HUNTLEY PROJECT #10-090 )

Respondent. )

No. HFSRB 11-11

**Decision of Administrative Law Judge**

Last Wednesday afternoon, counsel for the Health Facilities and Services Review Board (hereafter the "State Board") advised me that they had discovered that the record in this case contained materials that should have been a part of the record in another case and that the record in the other case contained materials that should have been a part of the record in this case. In short, documents meant for the record in one case were filed in another case and *vice versa*. Apparently, the switch was made at the time of their original filings and existed at the time the State Board made its decision in this matter.

Since last Wednesday, two hearings have been held regarding this revelation. Those hearings have raised a number of issues and Centegra and intervenor Advocate have filed written pleadings.

This case is scheduled for hearing on March 22 and 23, 2012.

**Issues**

*Is the record "flawed"?*

The State Board believes that the record is flawed. Centegra believes that it is not. Intervenor Mercy appears to believe that it is and intervenor Advocate appears to believe that it is or might be.

*If so, can the flaw be corrected in this administrative hearing?*

No, I have no authority to supplement the record *nunc pro tunc*, thus artificially correcting the record now even though it was flawed at the time the State Board made its decision. If I did have such authority, I would not so execute it unless it was specifically mandated.

*There has been much discussion about the responsibility for the misfiling. Who was responsible? Is there any importance to the issue of fault or responsibility for the "misfiling?"*

Fault is irrelevant unless it was intentional, which it does not appear to be.

*What is the presumption about the record and those in state government who have prepared the record?*

Even if I presume that the State Board was not responsible for the misfiling, that does not cure the flaw. Again, fault is irrelevant.

ATTACHMENT A

*What precedent is set if the record is considered flawed and the matter is sent back to the State Board without a hearing and with a statement that the record is flawed as described?*

The facts in this case are unique and peculiar and the action taken here should not constitute a precedent upon which future decisions can be based.

*What is the consequence of such a failure to hold a hearing within the required time?*

Nothing, as applicant will have another opportunity to request a hearing after the State Board makes a further determination in this case. There is no denial of due process, but rather a strong respect for due process on the part of counsel for the State Board in their bringing the misfiling to the attention of the hearing officer at the earliest possible time after discovery and requesting that the matter be reconsidered by the State Board in light of the misfiled documents.



### **Proposals**

Based upon the revelations, the issues raised and the oral and written arguments thereon, what is to be done?

1. It has been suggested that we go forward on the scheduled hearing and that, thereafter, I send my report, including the information on the misfiling, back to the State Board for its consideration.
2. It has also been proposed that we allow the record to be supplemented by including the omitted documents and going forward.
3. Finally, it has been proposed that I send this matter back to the State Board advising of the misfiling issue and the state of the record. The State Board would then determine how it would proceed on this case.

The parties and intervenors have been unable to reach a common agreement on which of the proposals I should follow.

All of the proposals have some merit. Each has potential flaws or issues that might be raised by one or more parties or intervenors.

### **Decision**

After due consideration and based upon the foregoing, I have decided to cancel the hearing scheduled for March 22 and 23, 2012, and send this case back to the State Board for its consideration.

**Lawler, Daniel**

---

**From:** Urso, Frank [Frank.Urso@Illinois.gov]  
**Sent:** Thursday, March 15, 2012 3:57 PM  
**To:** Lawler, Daniel; Richard E. Hart (rhart1213@aol.com)  
**Cc:** Joe Ourth (jourth@arnstein.com); Linas J. Grikis (lgrikis@mwe.com); Morado, Juan; Sheila Sullivan (ssullivan@hswnet.com)  
**Subject:** RE: IHFSRB Docket No. 11-11: Emergency Hearing  
Mr. Hart, Mr. Lawler, Mr. Ourth, and Mr. Grikis;

Board Counsel have requested to have a status meeting tomorrow, not a hearing. The subject matter will be the project file. Thank you for being available.

Thanks, Frank

Frank W. Urso  
Illinois Health Facilities and Services Review Board  
General Counsel  
Ethics Officer  
122 S. Michigan  
Chicago, Illinois 60603  
frank.urso@illinois.gov  
312-814-5418

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**From:** Lawler, Daniel [mailto:daniel.lawler@kigates.com]  
**Sent:** Thursday, March 15, 2012 3:30 PM  
**To:** Richard E. Hart (rhart1213@aol.com); Urso, Frank  
**Cc:** Joe Ourth (jourth@arnstein.com); Linas J. Grikis (lgrikis@mwe.com); Morado, Juan; Sheila Sullivan (ssullivan@hswnet.com); Aaron Shepley (ATShepley@Centegra.com)  
**Subject:** IHFSRB Docket No. 11-11: Emergency Hearing  
**Importance:** High

Mr. Hart and Mr. Urso,

Sheila called me this afternoon to inquire of my availability for an emergency hearing tomorrow morning at 10:00 am regarding the Centegra Hospital-Huntley hearing requested by Mr. Urso. Sheila indicated that she was not aware of the purpose of the hearing. I telephoned Mr. Urso and requested notice of the purpose of the hearing and Mr. Urso would not say. After advising my client of the request for emergency hearing and discussion, we will be available for the hearing, however, I am requesting on behalf of the applicants Centegra Health System and Centegra Hospital-Huntley that notice of the subject matter of the hearing and the relief, if any, sought by the Review Board or any other party from ALJ Hart be provided to all parties immediately.

Dan Lawler,

3/23/2012

*ATTACHMENT B*

Attorney for the Applicants


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---

**Verification by Certification**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: March 23, 2012

By:   
\_\_\_\_\_ Daniel J. Lawler

# **Exhibit E**

HEALTH FACILITIES and SERVICES REVIEW BOARD

STATE OF ILLINOIS

Health Facilities and Services Review Board,

Complainant,

vs.

Centegra Hospital Huntley

Project# 10-090

Respondent.

Docket No. HFSRB # 11-11

**PROOF OF SERVICE**

The undersigned certifies that true and correct copies of the attached **Board Response to Centegra's Objections to State Board Counsel's Inconsistence, Misleading and False Representations to the ALJ regarding Remand and Motion in Support of the ALJ's proposed decision to send the Centegra case (Project #10-090) back to the Board for its consideration** were sent via Electronic mail and First Class Mail to the following persons:

Joe Ourth  
Jenifer H. Caracciolo  
Tracey A. Salinski  
Hal Morris  
Arnstein & Lehr LLP  
120 South Riverside Plaza Suite 1200  
Chicago, IL 60606  
Email: jourth@arnstein.com

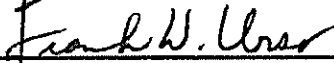
Linas J. Grikas  
Polsinelli, Shughart PC  
161 North Clark Street Suite 4200  
Chicago, IL 60601  
Email: lgrikis@polsinelli.com

Daniel Lawler  
K&L Gates LLP  
70 West Madison Street Suite 3100  
Chicago, Illinois 60602  
Email: Daniel.lawler@klgates.com

Steve H. Hoeft  
McDermott Will & Emery LLP  
70 West Madison Street Suite  
Chicago, Illinois 60606  
shoeft@mwe.com

Richard E. Hart  
Administrative Law Judge  
Hart, Southworth & Witsman  
One North Old State Capitol Plaza  
Suite 501  
Springfield, Illinois 62701-1323  
Email: rhart1213@aol.com

The said documents were delivered to the above individuals in Chicago, Illinois  
on the 28 day of MARCH 2012.



---

Frank W. Urso  
General Counsel  
Illinois Health Facilities and Services Review Board

HEALTH FACILITIES and SERVICES REVIEW BOARD

STATE OF ILLINOIS

Health Facilities and Services Review Board,

Complainant,

vs.

Centegra Hospital Huntley

Project# 10-090

Respondent.

Docket No. HFSRB # 11-11

Illinois Health Facilities and Services Review Board's Response to Centegra's Objections to State Board Counsel's Inconsistence, Misleading and False Representations to the ALJ regarding Remand  
and  
Motion in Support of the Administrative Law Judge's proposed decision to send the Centegra case (Project #10-090) back to the Board for its consideration.

The Complainant, Illinois Health Facilities and Services Review Board, ("Board"), through its Attorneys, respectfully submits the Board's Response to Centegra's Objections to State Board Counsel's Inconsistence, Misleading and False Representations to the ALJ regarding Remand, and Motion in Support of the Administrative Law Judge's proposed decision to send the Centegra case (Project #10-090) back to the Board for its consideration, states as follows:

**Introduction**

On March 16, 2012 the Board, through their Attorneys, informed all parties involved in this matter, including Administrative Law Judge (ALJ) Hart, of an error in the official record of the proposed Centegra-Huntley Hospital, Project #10-090, ("Centegra"). A 31 page report submitted by the intervenor in this matter, Advocate Health and Hospital Corporation ("Advocate"), for Project #10-089 was a part of the record the Board received from Board staff prior to making their vote at the Board open meeting on December 7, 2011. This report should have been filed in the Mercy Crystal Lake Medical Center and Hospital ("Project #10-089") record.



Counsel for Centegra has alleged that State Board Counsel have engaged in ex-parte communications with ALJ Hart during the course of the past two weeks. Furthermore, Counsel for Centegra has alleged that the State Board Attorneys have been “inconsistent, misleading, and made false representations” to the ALJ and all other parties during telephonic conference calls on this matter.

The Board strenuously denies that they have engaged in any ex-parte communications as defined by the Illinois Administrative Procedure Act 5 ILCS 100 or the Board procedural rules found in 77 Ill. Admin. Code section 1130. The Board also refutes the unsubstantiated and reckless accusations made by Centegra’s Counsel stating that the State Board Attorneys made inconsistent, misleading, and false representations. At no time did Board Attorneys engage in ex-parte communications with the ALJ Hart regarding this matter. At no time did Board Attorneys engage in any inconsistent, misleading, and false representations during the discussions regarding this matter.

### **Background and Responsive Argument**

1. On Thursday morning, March 15, 2012, Board Attorneys discovered a discrepancy in the record distributed to all parties for the evidentiary hearing on Project #10-090 Centegra- Huntley Hospital.
2. The discrepancy revealed that a 31 page document submitted as written, opposition comments by intervernor Advocate for Project #10-089, was filed in the record of Project #10-090. This document is entitled “Market Assessment and Impact Study, Proposed Mercy Crystal Lake Hospital (Project #10-089)”. This document was authored by Krentz Consulting (“Krentz”) on behalf of Advocate and two other Hospitals represented by Counsel for Advocate.
3. Upon discovery of the discrepancy in the record, Board Attorneys contacted Board staff to attempt to determine the origin of the error. After reviewing its’ records, Board Attorneys determined that there was no definite evidence to confirm whether Advocate, through their Counsel, erred in submitting the information incorrectly to the Board, or if Board staff erred in scanning and filing the documents in the inappropriate project record.
4. Board Attorneys further determined that prior to the Board’s consideration of Project #10-090 during their December 7, 2011 open meeting, the Board received a copy of the record for Project #10-090 that contained the 31 page document for Project #10-089.

5. Because the Centegra record was submitted to the Board members prior to the December 7, 2011 meeting and they used this erroneous record to base their decision on that date, this is an incurable error in the Centegra record.
6. Board Attorneys proceeded to contact the offices of ALJ Hart in the afternoon on March 15, 2012 to request a meeting with all the parties to discuss an error in the Centegra record for Project #10-090. During the conversation with ALJ Hart, Board Attorneys relayed the following information:
  - a. The Board Attorneys requested a status meeting with all the parties to disclose an error in the record for Project #10-090 that could have a major impact on the evidentiary hearing scheduled for March 22-23, 2012. The Board Attorneys purpose in calling ALJ Hart was to ensure that such status could be accommodated by his schedule.
  - b. ALJ Hart at that time inquired as to the nature of the discovery. The State Board Attorneys then informed ALJ Hart of the discovery of documents in the official record for Project #10-090 that were in fact for Project #10-089. Board Attorneys also informed ALJ Hart that the record as presented to the parties was the same record given to the Board prior to their consideration of Project #10-090.
7. ALJ Hart informed the Board Attorneys that he would be available for a telephonic conference with all the parties in order for the Board Attorneys to disclose the error in the Centegra records to all the parties.
8. That March 15, 2012 conversation with ALJ Hart about scheduling a status meeting with all the parties was the only conversation regarding this erroneous record matter that Board Attorneys had with ALJ Hart without all the parties being present.
9. This March 15, 2012 conversation with ALJ Hart did not constitute an ex-parte communication. This was a procedure-related communication regarding the scheduling of a status call with all the parties. Pursuant to section 10-60d of the Illinois Administrative Procedure Act (APA) that is not ex-parte. As stated in that section: "Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and **status of proceedings**, are not considered ex parte communications under this Section (5 ILCS 100/10-60) (emphasis added). The March 15, 2012 conversation with ALJ Hart dealt specifically with matters relating to the status of the proceeding.

10. Board Attorney Frank Urso sent an email to ALJ Hart, Mr. Lawler, Mr. Ourth, and Mr. Grikis, who were all the parties involved in this matter, at 3:57pm on March 15, 2012, which stated: "Board Counsel have requested to have a status meeting tomorrow, not a hearing. The subject matter will be the project file. Thank you for being available."
11. At 10 am on March 16, 2012 during a telephonic conference with ALJ Hart and all the parties to this matter, Board Attorneys disclosed the discovery of an incurable error in the record of Project #10-090.
12. The entire, consistent focus of the Board 's position during the March 16, 19, 20, and 26, 2012 teleconferences with ALJ Hart and the parties, as well as, the in- person March 22, 2012 meeting with all the parties without ALJ Hart, can best be stated by the following statements by Board Attorney Frank Urso:

"Judge, in consultation with the Chair of the Board, we are requesting that both of these hospital applications come back before the Board to be reviewed and considered with all the proper documents within those files. The Board feels that this is the proper and the correct disposition of these matters at this point in time." (Page 5, line 7-13 in the transcript of the March 19, 2012 status telephone conference between all the parties and ALJ Hart.)

**Motion in Support of the Administrative Law Judge's proposed decision to send the Centegra case (Project #10-090) back to the Board for its consideration.**

The following statutory and code provisions clearly state that the ALJ has the authority and responsibility to recommend an order to the Board when circumstances merit such a recommendation. In this case, a Board decision based upon a now, known error in the record that was before the Board when they made their decision, is certainly a circumstance that warrants a recommendation by the ALJ.

The Administrative Law Judge, pursuant to section 1-15 of the Illinois Administrative Procedure Act, means that the ALJ "is the presiding officer or officers at the initial hearing before each agency and each continuation of that hearing." (5 ILCS 100/1-15)

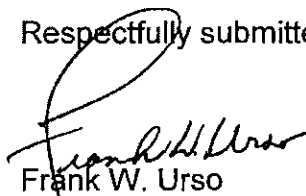
In addition, section 1130.1130 of the Board's code states, "The administrative law judge shall not have the authority to dismiss, postpone, vacate, or overturn an order or notice issued by HFPB, but may make a recommendation to HFPB any time that circumstances merit such a recommendation." (77 IAC 1130.1130) ALJ Hart has the legal authority to recommend to the Board that they reconsider the Centegra project.

### Summary

Centegra Counsel's assertions toward the Board's Attorneys alleging inconsistencies, false representations and ex- parte communications are unsubstantiated. Centegra's Counsel has provided no evidence for these arguments and the Board has provided evidence that Centegra's claims are without merit.

There should be no question that the correct course of action to take in this matter, now that the incurable error in the record has been uncovered, is for the Board to reconsider this matter with all the correct documents in their possession. As stated previously, the ALJ has the authority to make a recommendation to the Board that the Board reconsider the Centegra project.

Respectfully submitted,



Frank W. Urso

General Counsel

Illinois Health Facilities and Services Review Board

# **Exhibit F**

**Before The  
HEALTH FACILITIES AND SERVICES REVIEW BOARD  
State of Illinois**

HEALTH FACILITIES AND SERVICES )	
REVIEW BOARD, )	
)	
Complainant, )	
)	
v. )	Docket No. HFSRB #11-11
)	
CENTEGRA HEALTH SYSTEM and )	
CENTEGRA HOSPITAL-HUNTLEY, )	
Project No. 10-090, )	
)	
Respondents. )	

**CENTEGRA'S RESPONSE TO  
STATE BOARD'S RECENT FILING REGARDING REMAND  
AND *EX PARTE* COMMUNICATIONS**

The Applicants/Respondents, Centegra Health System and Centegra Hospital-Huntley (collectively "Centegra"), respectfully submit this Response to the submission of counsel for the Illinois Health Facilities and Services Review Board ("State Board") served at 5:23 p.m. on Wednesday, March 28, 2012 entitled "Illinois Health Facilities and Services Review Board's Response to Centegra's Objections to State Board Counsel's Inconsistent, Misleading and False Representations to the ALJ Regarding Remand and Motion in Support of Administrative Law Judge's Proposed Decision to Send the Centegra Case (Project No. 10-090) Back to the Board for its Consideration" ("Response").

**A. The State Board's Counsel Admits *Ex Parte* Communication With The ALJ In Which The Substance Of Counsel's Argument To Cancel Centegra's Hearing And Remand This Matter Was Presented To The ALJ Without Notice To Centegra Or Other Parties And Without Providing Opportunity To Participate**

The State Board's attorney, General Counsel Mr. Frank Urso, now admits that he made a contact with the ALJ without notice to Centegra or the other parties on Thursday, March 15, 2012 during which he presented the substance of his claim on which he would later seek to

cancel Centegra's requested administrative hearing and remand this matter back to the State Board. Mr. Urso admits that he "relayed" to the ALJ in an *ex parte* contact: "An error in the record for Project 10-090 that could have a major impact on the evidentiary hearing scheduled for March 22-23, 2012." State Board's Response at 3.<sup>1</sup>

The above communication was a prohibited *ex parte* communication under Section 10-60 of the Illinois Administrative Procedure Act which prohibits all communications to the ALJ "directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or the representative of any party, except upon notice and opportunity for all parties to participate." 5 ILCS 100/10-60(a). The above communication involved both an "issue of fact" as well as an "other issue" with a party.

The State Board's attorneys astonishingly argue that this was not an *ex parte* communication under paragraph (d) of Section 10-60 which allows communications regarding "the format of pleadings, number of copies required, manner of service, and status of proceedings...." 5 ILCS 10/1060(d). This is an incredible excuse for their *ex parte* contact, especially coming from the State Board's Ethics Officer. The *ex parte* contact was not about the "status of proceedings." The State Board's attorneys were raising, *and arguing*, a substantive issue that has since involved *four* telephonic hearings and multiple briefs, motions and other submissions by the parties.

At the time that the State Board's attorneys made their *ex parte* communication to the ALJ they knew exactly what the status of the proceeding was: a final prehearing conference was scheduled for Wednesday, March 21 and the case was proceeding to hearing on March 22 and

---

<sup>1</sup> Mr. Urso has yet to provide a reasonable explanation as to why the misfiling of one document in the 11,100 page record constitutes "incurable error," especially given that the State Board's staff posted notice of this filing in June 2011, and Mr. Urso took no action at all in response to this notice.

23. The State Board's attorneys were *not* contacting the ALJ to inquire of the status of the proceedings, they were contacting the ALJ to advocate for an "incurable error" in the record for the purpose of cancelling the hearing and obtaining a remand based upon an alleged error in the record. That was highly improper, in violation of the *ex parte* provisions of the Administrative Procedure Act, and resulted in the denial and impairment of Centegra's statutory right to hearing.

**B. The Transcripts Of Hearings In This Matter Document The Inconsistent, Misleading And False Representations Of The State Board's Attorneys**

The State Board's attorneys claim that "assertions toward the Board's attorneys alleging inconsistencies, false representations and *ex parte* communications *are unsubstantiated.*"

(Emphasis added; State Board's Response at 5.) Centegra's counsel has documented in the transcripts of hearings in this proceedings the inconsistent, misleading and false representations made by the State Board's attorneys to the ALJ and to Centegra's counsel. The State Board's Response simply ignores their own documented statements.

At page 4 of the Response, Mr. Urso acknowledges, as he must, that on March 19, 2012 in direct response to the question by the ALJ as to what the State Board was requesting as relief from the ALJ, Mr. Urso said, "We are requesting that both of these hospital applications come back before the Board to be reviewed and considered with all the proper documents within those files." (Transcript of the March 19, 2012 hearing at page 5.) Mr. Urso completely ignores the directly contradictory statement made by the State Board's Deputy General Counsel, Juan Morado Jr., just one week later in which Mr. Morado accused Centegra's counsel of "continuing to misconstrue the facts" and then stating to the ALJ: "The Board, at no point, sought the remand. This is an order from Your Honor." Transcript of March 26, 2012 hearing at page 11.

The State Board's Response further ignores the false representations made by the State Board's Deputy General Counsel regarding the correction of the State Board's December 7, 2012



denial letter to Centegra. At the telephonic hearing on March 14, 2012, Mr. Morado represented to the ALJ that the State Board would be correcting the denial letter with regard to “two incorrect citations.” (Transcript of March 14, 2012 at 20.) Centegra’s counsel expressly stated that “Centegra does not object to a correction of the denial letter to correct citations.” *Id.* When Mr. Morado finally submitted the revised denial letter, it contained numerous material and substantive changes that went far beyond the correction of citations. (*See* attached red-lined version of the “Revised” Denial Letter compared to the original Denial Letter.)

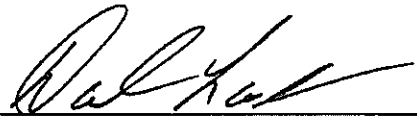
It appears from the record in this proceeding, as well as the purported changes to the denial letter, that the State Board’s attorneys are attempting to not only supplement and change the record before the State Board upon which its decision was based, but change even the grounds upon which the State Board’s decision was made. This is highly improper and highly prejudicial to Centegra. The State Board’s attempts to make a new record in this proceeding should be rejected.

### **Conclusion**

The record in this proceeding documents that the State Board’s attorneys have made prohibited *ex parte* communications to the ALJ and have made inconsistent, misleading and false statements to the ALJ. For these reasons, and those additional reasons previously stated in Centegra’s prior filings and objections to remand, this matter should not be remanded to the State Board, the State Board should be denied any relief based upon the *ex parte* communications, and, except for purposes of sanctions against the State Board’s attorneys or other relief granted to Centegra, no findings of fact of the ALJ should be based on the *ex parte* communications. *See* 5 ILCS 100/10-30(a)(8).

Respectfully submitted,

Centegra Health System and Centegra Hospital-  
Huntley, the Applicants/Respondents

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

One of their Attorneys

Daniel J. Lawler  
Claire M. Reed  
K&L GATES LLP  
70 West Madison Street  
Suite 3100  
Chicago, IL 60602  
Phone: (312) 372-1121  
Fax: (312) 827-8114  
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**STATE OF ILLINOIS  
HEALTH FACILITIES AND SERVICES REVIEW BOARD**

525 WEST JEFFERSON ST. SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 FAX: (217) 785-4111

~~December 9~~ March 19, 2011 ~~2011~~ 2012

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ms. Hadley Streng, Director  
Planning and Business Development Centegra Health System  
385 Millennium Drive  
Crystal Lake, IL 60012

**RE: REVISED DENIAL OF APPLICATION**  
**Notice of an Opportunity for an Administrative Hearing**  
Illinois Health Facilities Planning Act  
**PROJECT:** #10-090 - Centegra Hospital-Huntley  
**APPLICANT(S):** Centegra Health System  
Centegra Hospital-Huntley

Dear Ms. Streng:

On December 7, 2011 the Illinois Health Facilities Planning Board issued its denial of the application for permit for the above-referenced project. Pursuant to 77 IAC Part 1130.655, the State Board rendered its decision following consideration of the ~~CON~~-application, supplemental information, public hearing materials, the State Board Staff Agency Report, requested or supplemental information, public comment, public hearing testimony, Illinois Department of Public Health findings, other information coming before it, and the testimony of the applicant. The State Board's decision is based upon Board reported that the applicant's failure to document that a project #10-089 of the nature and scope as that proposed is in compliance with State Board's review criteria appropriate for the reasons stated in the following are the allegations of non-compliance the State Board observed in the application:

**Allegations of Non-Compliance**

The applicants did not document conformance with the following review criteria:

- Criterion ~~110.430~~ 110.530(b) - Planning Area Need
- Criterion ~~110.1430~~ 110.530(c) - Unnecessary Duplication/Maldistribution
- Criterion 110.3030(a) = Clinical Services Other Than Categories of Service

Section 10 of the Illinois Health Facilities Planning Act (the "Act"), P.A. 78-1156 as amended, [20 ILCS 3960/10] affords you the opportunity for a hearing before a hearing

Review Board denial letter Dec 9 2011-9284238V1 and Review Bd. letter March 19, 2012-9284242V1

officer appointed by the Director of the Illinois Department of Public Health. Such hearing shall be conducted in accordance with the provisions specified in Section 10 of

PAGE 2339 of 2340

DENIAL LETTER

Page 2 of 2

~~the Act and the implementing rules, 77 IAC Part 1130. If you decide to exercise your right to an administrative hearing, you must submit a written notice of a request for such hearing to the Administrator of the State Board, postmarked within 30 days of~~

~~DENIAL LETTER Page 2  
of 2~~

receipt or delivery of this notice.

Notice to ~~the~~ Administrator may be made by forwarding the written request to my attention at the following address:

~~Courtney Avery, Administrator~~

Illinois Health Facilities and Services Review Board, Attention: Courtney R. Avery,  
Administrator, Division of Health Systems Development, 525 West Jefferson Street, (2nd  
Floor), Springfield, Illinois 62761

<sup>a</sup> Notice to the Administrator constitutes notice to the State Board (77 IAC 1130.1020(b)). Failure to submit your request within this period constitutes a waiver of your right to an administrative hearing.

If you decide to exercise your right to an administrative hearing, the Illinois Health Facilities and Services Review Board, shall, within 30 days after the receipt of your request, appoint a hearing officer. The administrative hearing will afford you the opportunity to demonstrate that the application is consistent with the criteria upon which the action of the State Board was based. ~~The State Board shall make a final determination.~~ Following its consideration of the report of the administrative hearing, or upon default of the party to the hearing, the State Board shall make its final determination.

~~Should you have any questions, please contact Mike Constantino at 217-782-3516.~~

Sincerely,

Courtney R. Avery, Administrator  
Illinois Health Facilities and Services Review  
Board

Cc: ~~Dale Galassie, Chairman~~

Review Board denial letter Dec 9 2011-9284238V1 and Review Bd. letter March 19, 2012-9284242V1

~~Frank Urso, General Counsel~~

Review Board denial letter Dec 9 2011-9284238V1 and Review Bd. letter March 19, 2012-9284242V1

# **Exhibit G**

**Lawler, Daniel**

---

**From:** Urso, Frank [Frank.Urso@Illinois.gov]  
**Sent:** Thursday, March 15, 2012 3:57 PM  
**To:** Lawler, Daniel; Richard E. Hart (rhart1213@aol.com)  
**Cc:** Joe Ourth (jourth@arnstein.com); Linas J. Grikis (lgrikis@mwe.com); Morado, Juan; Sheila Sullivan (ssullivan@hswnet.com)  
**Subject:** RE: IHFSRB Docket No. 11-11: Emergency Hearing  
Mr. Hart, Mr. Lawler, Mr. Ourth, and Mr. Grikis;

Board Counsel have requested to have a status meeting tomorrow, not a hearing. The subject matter will be the project file. Thank you for being available.

Thanks, Frank

Frank W. Urso  
Illinois Health Facilities and Services Review Board  
General Counsel  
Ethics Officer  
122 S. Michigan  
Chicago, Illinois 60603  
frank.urso@illinois.gov  
312-814-5418

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**From:** Lawler, Daniel [mailto:daniel.lawler@klgates.com]  
**Sent:** Thursday, March 15, 2012 3:30 PM  
**To:** Richard E. Hart (rhart1213@aol.com); Urso, Frank  
**Cc:** Joe Ourth (jourth@arnstein.com); Linas J. Grikis (lgrikis@mwe.com); Morado, Juan; Sheila Sullivan (ssullivan@hswnet.com); Aaron Shepley (ATShepley@Centegra.com)  
**Subject:** IHFSRB Docket No. 11-11: Emergency Hearing  
**Importance:** High

Mr. Hart and Mr. Urso,

Sheila called me this afternoon to inquire of my availability for an emergency hearing tomorrow morning at 10:00 am regarding the Centegra Hospital-Huntley hearing requested by Mr. Urso. Sheila indicated that she was not aware of the purpose of the hearing. I telephoned Mr. Urso and requested notice of the purpose of the hearing and Mr. Urso would not say. After advising my client of the request for emergency hearing and discussion, we will be available for the hearing, however, I am requesting on behalf of the applicants Centegra Health System and Centegra Hospital-Huntley that notice of the subject matter of the hearing and the relief, if any, sought by the Review Board or any other party from ALJ Hart be provided to all parties immediately.

Dan Lawler,

3/23/2012

Attorney for the Applicants

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# **Exhibit H**

**Before The  
HEALTH FACILITIES AND SERVICES REVIEW BOARD  
State of Illinois**

HEALTH FACILITIES AND SERVICES	)	
REVIEW BOARD,	)	
	)	
Complainant,	)	Docket No. HFSRB #11-11
	)	
v.	)	
	)	
CENTEGRA HEALTH SYSTEM and	)	
CENTEGRA HOSPITAL-HUNTLEY,	)	
Project No. 10-090	)	
	)	
Respondents.	)	

**CENTEGRA'S RESPONSE TO ADVOCATE'S MEMORANDUM  
CONCERNING THE CONTENT OF THE RECORD**

The Applicants/Respondents Centegra Health System and Centegra Hospital-Huntley (collectively "Centegra") respectfully submit this Response to the Memorandum Concerning the Content of the Record of the Intervenor Advocate Health and Hospitals Corporation ("Advocate").

**Background**

Advocate makes an untimely and utterly baseless attempt to "unring the bell" and fabricate a new administrative record by inserting a document that was not in the project file before the Illinois Health Facilities and Services Review Board ("State Board") when it voted on Centegra's project. No party to this proceeding claims that the document was in the project file before the State Board, and the sole claim for including it now is the assertion of Advocate's attorney, Joe Ourth, that he intended it to be in Centegra's file.

To aggravate matters, the State Board's General Counsel and Deputy General Counsel made *in terrorem* claims during the hearing on March 16, 2012, that the absence of this document from the record was "important" and "error" and might even be "incurable" error and

require that this matter be remanded to the State Board for the sole purpose of allowing Advocate to insert the document into the record and have the Board reconsider the entire project in light or it. At no time during the hearing did the Review Board's counsel ever explain *why* the absence of the document was important, or error, or incurable or required remand, but these comments must have been sweet music to Advocate's ears.

There is nothing of importance here, there is no error, much less incurable error, and there is absolutely no basis whatsoever for a remand to the State Board. Moreover, there are no grounds at all to allow Mr. Ourth to do now what he could, and should, have done when the matter was before the State Board. As addressed below, Mr. Ourth had a legal responsibility to assure that any document he intended to submit into a project file was actually in the file. Mr. Ourth utterly failed in that responsibility.

For the above reasons and those set forth below, Advocate's untimely and improper attempt to insert new documents into the record should be quashed.

#### **Statement of Facts**

The document at issue is 31-pages long, is entitled "Market Assessment and Impact Study, Proposed Centegra-Huntley Hospital (Project 10-090)", and appears to have been prepared by Krentz Consulting ("Krentz"). The document will hereafter be referred to as the "Krentz Centegra Document." This document is not in the project file for Centegra-Huntley Hospital, Project No. 10-090.

The Krentz Centegra Document is not to be confused with the many other reports authored by Krentz that were submitted into Centegra's project file by Advocate and its allies.

The record shows that the other Krentz reports, all of which are in Centegra's project file, include the following:

1. "Financial Impact Study, Proposed Centegra Hospital-Huntley (Project 10-090)", submitted via email by Joe Ourth on June 2, 2011 (Administrative Record "R." at 238 of 497 and R. 222 of 497);
2. "Market Assessment and Impact Study, Proposed Mercy-Crystal Lake Hospital (Project 10-089)", submitted via Federal Express delivery by Joe Ourth on June 2, 2011 (R. 190 of 497 and R. 189 of 497);
3. "Assessment of Utilization, Population Growth, and Applicant Arguments of Impact on Existing Providers, Proposed Centegra Hospital-Huntley (Project No. 10-090)," submitted by Joe Ourth via email on November 14, 2011. (R. 42 of 497 and R. 41 of 497);
4. "Assessment of Likely Impact on Centegra-Hospital-Woodstock, In response to Proposed Centegra Hospital-Huntley (Project 10-090)," submitted on behalf of Sherman Hospital on November 16, 2011. (R. 463 of 497 and R. 461 of 497).

#### **Argument**

**I. IT IS UNDISPUTED THAT THE KRENTZ CENTEGRA DOCUMENT WAS NOT IN THE RECORD AT THE TIME THE REVIEW BOARD VOTED ON THE CENTEGRA PROJECT**

At the telephonic hearing on March 16, 2012, the ALJ requested the parties to specifically address the question of whether the Krentz Centegra Document was in the Centegra project file at the time the State Board acted on the Centegra project. Advocate's memorandum and supporting affidavits concede that the document was *not* in the Centegra project file and presents no evidence or argument to the contrary.

The gist of the Advocate's memorandum is that the Krentz Centegra Document is in another project file, namely, Project No. 10-089, Mercy Crystal Lake Hospital and Medical Center, and that when Mr. Ourth had the document sent to the State Board's office on June 2, 2011, he had intended it to be submitted into the Centegra project file. Advocate presents no evidence and makes no claim that the document was in any way mishandled or misfiled by the

State Board's Staff. Even if such a claim were made, it would be totally irrelevant to the matter at hand. The undisputed fact that the document was not in the Centegra project file when the State Board voted is dispositive. The document cannot be submitted into the record now.

The sole issue presented in this administrative hearing is whether the State Board properly concluded that Centegra had not documented compliance with the three Review Criteria upon which the State Board made its decision and, under the State Board's rules, "only such testimony and evidence as is relevant shall be offered or accepted," while irrelevant material "shall be excluded." 77 Ill. Adm. Code 1130.1110(e); 77 Ill. Adm. Code 1130.1110(j). Material that was not in the Centegra project file before the State Board, such as the Krentz Centegra Document, is not relevant to the issue before the ALJ in this administrative hearing and must be excluded.

**II. ADVOCATE'S ARGUMENTS THAT THE KRENTZ DOCUMENT SHOULD HAVE BEEN IN THE RECORD ARE IRRELEVANT AND WITHOUT MERIT**

After conceding that the Krentz Centegra Document was not in the Centegra project file at the time the State Board voted on the Centegra project, Advocate has no legitimate argument for its inclusion now. Instead, Advocate attempts to justify its failure to assure that the document was in the proper project file by implying that the document *should* have been in the Centegra project file. These arguments are irrelevant and without merit for the reasons addressed below.

**A. The Ourth And Aiello Affidavits Do Not Provide Competent Evidence That The Krentz Document Was In The Centegra Project File Before The State Board**

Advocate argues that the Krentz Centegra Document should now be included in the administrative record based on the affidavits of Mr. Ourth and his assistant Ms. Aiello in purportedly describing events in the offices of Arnstein & Lehr ("A&L") on June 2, 2011. Whatever happened in A&L's offices on that date is irrelevant to the issue of whether the

administrative record should be changed now. Moreover, the affidavits are not competent evidence.

Mr. Ourth states in his affidavit that on June 2, 2011 he caused to be sent to the State Board's offices the following: (1) a cover letter addressed State Board Chairman Dale Galassie referencing the Krentz Centegra Document (the "Centegra Cover Letter"); (2) a cover letter addressed Chairman Galassie referencing a Krentz report on Project No. 10-089, Mercy Crystal Lake Hospital and Medical Center (the "Krentz Mercy Study"); (3) the Krentz Centegra Document, and; (4) the Krentz Mercy Study. Both Mr. Ourth's affidavit and Ms. Aiello's are vague, ambiguous and in some parts unintelligible with regard to exactly how these four documents were actually combined, packaged and delivered to the State Board's offices.

Mr. Ourth's partner, Hal Morris, demonstrates in Advocate's memorandum (which Mr. Morris signed) that the Ourth and Aiello affidavits are wholly incompetent as reliable evidence. Mr. Morris affirmatively shows the uselessness of the two affidavits by indicating that the events of June 2, 2011 portrayed in the affidavits were *not* based upon the affiants' personal recollection, but rather, were based solely on an "examination" of A&L's files last Friday. That examination supposedly showed that the Krentz Centegra Document in the firm's file was "attached" to the Centegra Cover Letter, and the Krentz Mercy Study was "attached" to the Mercy Cover Letter. The affidavits do not state who examined the files<sup>1</sup>, who attached the documents that were in the file, when the documents were attached to each other, or when they were placed in the file. Nevertheless, based on this examination alone, Mr. Ourth and his

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<sup>1</sup> While Advocate's *memorandum* states that Mr. Ourth and Ms. Aiello conducted the examination of the files themselves, the *affidavits* of Ourth and Aiello do *not* state that they performed this task.

assistant Ms. Aiello somehow “determined” all of the matters set forth in their respective affidavits as having occurred on June 2, 2011.

That the Centegra Cover Letter may now be attached to the Krentz Centegra Document in the files of A&L proves nothing. Mr. Ourth’s affidavit states that the Krentz Centegra Document and the Krentz Mercy Study were separately bound, that is, these two documents and the two cover letters were separate from each other. A clerical person putting these loose documents in A&L’s files would have assumed the Centegra Cover Letter went with the Krentz Centegra Document and put them together. There is no reasonable basis to infer that the manner in which copies of the documents now appear in A&L’s files was the same as how the actual documents were combined and packaged for delivery to the State Board on June 2, 2011, especially given Mr. Ourth’s frequent mistakes in project names and numbers, and mis-identification of the Krentz reports, in the other documents that he sent to the State Board. (*See page 11, infra.*)

Moreover, there is a major inconsistency between the two affidavits that raises serious doubt as to whether the affidavits truly reflect what actually happened on June 2. Mr. Ourth and Ms. Aiello *each* claim to be the person that “attached” the cover letters to the Krentz documents that were sent to the State Board. The only way for both statements to be true is if one person attached the documents together, the documents then became unattached, and the other person then attached the documents together. If this is what happened then it would not be surprising at all that the documents which appeared in the State Board’s offices had the wrong cover letters on the Krentz documents. In any event, it is not even relevant what happened in the offices of A&L on June 2, 2011. A few days later Advocate and its attorneys were on notice of which documents were filed where, and they took no action to resubmit the Krentz Centegra Document prior to the final deadline for written comment in November 2011. *See page 13, infra.*

The affidavits of Mr. Ourth and Ms. Aiello are irrelevant and incompetent and should be disregarded.

**B. Mr. Ourth's Subjective Intent Is Irrelevant To The Issue Of Whether The Krentz Document Was In The Centegra Project File When The Board Voted**

Advocate argues that the Krentz Centegra Document should now be included in the project file because that is what Joe Ourth states he intended when he caused the document to be delivered to the State Board's offices in early June 2011. This is irrelevant. If project files that were actually before the State Board when it acted could later be added to or subtracted from based only on the subjective intent of an intervenor when the matter is subsequently before the ALJ, there would never be any certainty as to what constituted the "record." Moreover, such after the fact re-creations of the record would make it impossible for an ALJ to fulfill his or her obligations under the State Board's rules to determine whether the record actually before the Board supported its decision or not. Moreover, such supplementation of the record would essentially require the ALJ to conduct a *de novo* hearing of permit applications, and that is definitely not the ALJ's function under the State Board's rules governing these proceedings.

**C. The False And Misleading Statements Of Advocate's Counsel To Enhance The Apparent Significance Of The Krentz Document Do Not Establish It Was In The Centegra Project File Or That It Should Be Inserted Now**

During the hearing on March 16, 2012, Mr. Ourth represented to the ALJ that the Krentz Centegra Document was cited in the Staff's reports upon which the State Board relied when voting on Centegra's project. The statement is false and misleading, and Mr. Ourth knew it at the time.

First, the *only* reference to Krentz in either the original or supplemental State Agency Report appears in the section of the reports where the Staff merely provides excerpts from



written comments. Both the State Agency Report (“SAR”) and the Supplemental State Agency Report (“SSAR”) contain the same excerpt:

*“Joe Ourth, Legal Counsel, Arnstein & Lehr filed a Safety Net Impact Response Statement. He stated for Centegra to state that a new hospital “will not impact other hospitals” is simply incorrect. In response, Sherman, Good Shepherd, and St. Alexius hospitals commissioned Krentz Consulting to quantify the impact of new Huntley hospital and the Concerned Hospitals’ ability to provide safety net services to their communities. The result is that net revenue for existing area hospitals would decrease by \$116 million annually and combined contribution margin by \$39 million (dollars). These loses severely impact the ability of Concerned Hospitals to continue to provide Safety Net Services.”*

See SAR at 8, and SSAR at 9; R. 1750 of 2338, R. 2007 of 2338.

The SAR and SSAR were merely quoting from Mr. Ourth’s own submission. Moreover, the material quoted in the Staff’s report came *verbatim* out of the Safety Net Impact Response Statement that was authored by Mr. Ourth’s hospital clients, *not* by Krentz. (See R. 228 and 236 of 497.) Further, the quoted language does *not* reference the Krentz Centegra Document, but rather, it refers to a different Krentz report that Ourth submitted on June 2, 2011 that is in the Centegra project file. (See R. 238 of 497.)

Mr. Ourth’s statement to the ALJ was false because the Krentz Centegra Document at issue was *not* referenced in the SAR or the SSAR. Mr. Ourth’s statement was misleading because Mr. Ourth intentionally created the impression that the Staff placed some special importance on the Krentz Centegra Document and that the State Board relied on it when, in fact, this was not true.

As a final, last ditch effort to find some hook to pull the Krentz Centegra Document into this administrative record, Advocate’s counsel have scoured the record to find some secondary reference to it. They found three: R. 79 and 91 of 497, and R. 1949 of 2338. The first two references are to copies of the same letter authored by Mr. Ourth in which he has the name of the Krentz Centegra Document in a footnote. Referencing a document in a footnote is not the same

as the document itself being in the project file. If Mr. Ourth had referenced the contents of the Library of Congress in a footnote, that would not mean that those contents should be added to the administrative record before the ALJ. Mr. Ourth's reference to the Krentz Centegra Document in a footnote to one of his letters does not excuse his failure to assure that the document was in the Centegra project file and does not justify its insertion now.

Advocate's third reference is to a study prepared by Deloitte Financial Advisory Services LLP ("Deloitte Study") that was included in materials Centegra submitted in response to the State Board's request for additional information concerning population growth in McHenry County. The Deloitte Study addressed the methodology Deloitte used for its population projections included in Centegra's permit application. To demonstrate that the population growth rate that Deloitte had used (1.6% annually) was conservative, Deloitte noted that Krentz had made a market assessment using an annual growth rate of 2.3% (which is 44% higher than the growth rate Deloitte used). This is the only purpose for which the Deloitte Study referenced the Krentz's market assessment and, in doing so, the Deloitte Study specifically cited to Exhibit 3 of the Krentz Centegra Document. (R. 1949 of 2338.) However, Exhibit 3 to the Krentz Centegra Document is identical to Exhibit 3 of the Krentz Mercy Study that appears in the administrative record in this proceeding at R. 204 of 497. Nothing in the Deloitte Study warrants the untimely insertion of the Krentz Centegra Document into the record now.

**III. THE ABSENCE OF THE KRENTZ DOCUMENT IS NOT AN "ERROR" IN THE RECORD BECAUSE THE STATE STAFF FILED THE DOCUMENT AS DIRECTED BY MR. OURTH AND, IN ANY EVENT, THE RESPONSIBILITY TO TIMELY CORRECT ANY MISFILINGS WAS ON THE SUBMITTER**

Under Illinois law, public agencies are presumed to have properly performed their statutory duties and the burden to overcome that presumption is on the one asserting agency malfeasance. *Village of Hillside v. John Sexton Sand & Gravel Corp.*, 113 Ill. App. 3d 807, 447

N.E.2d 1047 (1<sup>st</sup> Dist. 1983); *Advanced Systems, Inc. v. Johnson*, 126 Ill.2d 484, 535 N.E.2d 797 (1989). The State Board's Staff has a statutory duty to post on the Board's website "notices of project-related filings, including notice of public comments related to the [permit] application." 20 ILCS 3960/12.2(1.5). The Staff is presumed to have properly performed this duty with respect to Mr. Ourth's submissions of June 2, 2012 and Advocate has presented no competent evidence to overcome this presumption. On the other hand, there is ample evidence proving that Mr. Ourth repeatedly erred in submitting documents to the State Board in both the Centegra project and the Mercy project.

Even if there was a mistake somewhere by somebody in connection with Mr. Ourth's submissions on behalf of Advocate, the burden of correcting that mistake rested entirely with Mr. Ourth and his client, both of whom had actual notice as early as June 2011 that the Krentz Centegra Document was not in the Centegra project file.

**A. Mr. Ourth Repeatedly Confused The Centegra And Mercy Projects In His Submissions To The State Board**

Even if the State Board's Staff had mistakenly placed the Centegra Krentz Document into the Mercy project file (and there is no evidence whatsoever by any party that the Staff made such a mistake), it could hardly have been blamed because the project files show that Mr. Ourth repeatedly misidentified the Centegra and Mercy projects in his submissions to the State Board.

In addition to the three different Krentz reports Mr. Ourth submitted into the Centegra project file, he also submitted three Krentz reports into the Mercy project file. As often as not, Mr. Ourth confused the project numbers and names as well as the reports:

**Centegra Project File**

1. In the Subject line of his June 2, 2011 email to Mike Constantino with the Safety Net Impact Statement Response that included the Krentz Financial Impact Study for the Centegra project, Mr. Ourth attached the Mercy project number (10-089)

to the name of the Centegra project name. (R. 222 of 497 attached hereto as Group Exhibit 1(a).)

### **Mercy Project File**

2. In the Subject line of his June 2, 2011 email to Mike Constantino with the Safety Net Impact Statement Response (“Response”), Mr. Ourth identified the Response as being for Centegra Hospital-Huntley, not Mercy Crystal Lake, even though the attached Krentz report was for Mercy Crystal Lake. He also attached the Mercy project number to the Centegra project. (*See* Group Exhibit 1(b) attached hereto.)
3. In the Subject line of his November 16, 2011 email to Mike Constantino containing the Krentz “Assessment of Population Growth [etc.]” for the Centegra project, Mr. Ourth referenced “Project No. 10-0890” which was an agglomeration of the Centegra project number (10-090) and the Mercy project number (10-089). (Note that Mr. Ourth here appears to have *intentionally* submitted the Krentz Assessment for the *Centegra* project into the *Mercy* project file.) (*See* Group Exhibit 1(c) attached hereto.)
4. In the body of the above November 16, 2011 email to Mike Constantino, Mr. Ourth attached the Mercy project number (10-089) to the name of the Centegra project name. (*See* Group Exhibit 1(c) attached hereto.)

Mr. Ourth’s repeated errors and confusion in identifying the two project names and numbers, combined with his erroneous reference to the Krentz reports, together with his *intentional* submission of a Krentz Centegra study into the Mercy project file, made his submissions of multiple Krentz reports a matter of pure guess-work as to which project file he actually intended the reports to be directed. It also imposed an even greater burden on Mr. Ourth to clarify, assure and confirm with the State Board’s Staff that his submissions were directed to the project file that he intended.

**B. Under The State Board’s Rules, Advocate And Its Attorneys Were Responsible To Assure That Documents They Submitted Were Timely Received**

Advocate and its attorneys had a personal responsibility and affirmative obligation under the State Board’s rules to assure that the State Board’s Staff had received any comments they submitted within the required timeframes. Section 1130.950(b) of the Board’s rules state,

“Persons submitting comments are responsible for assuring that the Board’s Staff at IDPH receive the comments within the prescribed time frame.” 77 Ill. Adm. Code 1130.950(b).

At the time Mr. Ourth submitted the Krentz Centegra Document on June 2, 2011, the State Board had established June 8, 2011 as the deadline for written comments. Mr. Ourth apparently did nothing to fulfill his personal responsibility to assure that the Krentz Centegra Document had been received into the Centegra project file by that time. After the Centegra project received an intent-to-deny at the June 28, 2011 State Board meeting, the Board re-opened the written comment period which was eventually extended to November 16, 2011. During that entire time, the Staff’s notices of Mr. Ourth’s June 2nd submissions remained posted on the Board’s website, and every day continued to show that the Krentz Centegra Document was *not* in the Centegra project file, and *was* in the Mercy project file. Mr. Ourth did absolutely nothing to assure that the document was received into the Centegra project file by the November 16th deadline, and he failed to meet his obligation under the Section 1130.950(b) of the State Board’s rules.

**C. Mr. Ourth And Advocate Had Actual Notice In Early June 2011 That The Krentz Centegra Document Was Not In The Centegra Project File, And They Did Nothing**

Mr. Ourth and Advocate had actual notice commencing in June 2011 that the Krentz Centegra Document was not in the Centegra project file, and they did nothing to include it.

Under the Illinois Health Facilities Planning Act, the State Board’s Staff is required to post on the Board’s web site “notices of project-related filings, including notice of public comments related to the application.” 20 ILCS 3960/12.2(1.5). Mr. Ourth’s Centegra Cover Letter and the Krentz Centegra Document were “public comments related to the application” within the meaning of this provision. In accordance with its statutory duty, the State Board’s Staff provided notice of the submission of these two documents on the State Board’s website

within a week of receipt by posting links on its website to PDF files of the full documents. (*See* Declaration of Daniel J. Lawler attached hereto as Exhibit 2.) At that point, Mr. Ourth, Advocate and the public at large had actual notice that the Krentz Centegra Document was not posted under the Centegra project, and was posted under the Mercy project.

Mr. Ourth's claim during the hearing on March 16, 2012 that he just learned the night before that the Krentz Centegra Document was not in the Centegra project file betrays not only a breach of his obligation to assure that documents he intended to submit into the Centegra project file were actually submitted into the file but an astounding lack of ordinary prudence.

**D. Advocate And Its Attorneys Failed To Exercise Ordinary Prudence To Assure That The Krentz Centegra Document Was Submitted Into The Intended Project File**

Simple ordinary prudence compelled Advocate and its attorneys to insure that documents they submitted to the State Board found their way into the intended project files. *See, Villapiano v. Better Brands of Ill., Inc.*, 26 Ill. App. 3d 512, 516, 325 N.E.2d 722, 725 (1st Dist. 1975) ("If it appears a party having knowledge or information of facts sufficient to put a prudent man upon inquiry wholly neglects to make any inquiry, the inference of actual notice is necessary and absolute").

The State Board's Staff provides ample notice and opportunity to allow anyone submitting written comments to confirm they are correctly filed. The Staff allows anyone to check on the status and correct filing of submissions received into a project file. The Staff is highly responsive to these inquiries and quickly corrects any mistakes brought to its attention. For example, Centegra made a number of submissions into the Centegra project file and the Mercy project file prior to the end of the June 8, 2011 deadline for written comments. Centegra's counsel Daniel Lawler, knowing the State Board's Staff promptly posted notice of written submissions and not seeing Centegra's submissions appearing under the two projects,

requested Centegra's CON consultant to contact the Staff to assure comments had been received and properly filed. On June 8, 2011 Mr. Lawler sent an e-mail to Andrea Rozran of Diversified Health Resources:

"I was speaking with Susan [Milford, Senior Vice President, Centegra Health System] and noted that neither Centegra's Huntley nor Mercy submissions have been posted on the Board's website. Hadley [Streng, Project Manager, Centegra Health System] has confirmed that both were delivered. Please call Mike Constantino to confirm that he has both submissions (as well as Centegra's response to Ourth's request to defer consideration). Thanks much."

A copy of Mr. Lawler's e-mail to Andrea Rozran sent June 8, 2011 is attached hereto as Exhibit 3.

Ms. Rozran contacted the State Board's Staff which immediately responded to her inquiry and confirmed with her that the submissions were received and submitted into the correct project files. (See Ms. Rozran's email to Mr. Lawler's sent June 8, 2011 attached hereto as Exhibit 4.) Mr. Ourth could and should have done the same to assure that the Krentz Centegra Document was submitted into the Centegra project file, if that is what he had intended.

Ordinary prudence also requires a person submitting written comments to the State Board to monitor the project file and seek to correct any documents that may have been misfiled. For example, Centegra's counsel had noted in connection with Project No. 10-089, Mercy Crystal Lake Hospital and Medical Center, that when the record of the public hearing was posted on the State Board's website it contained a number of documents that were intended for Centegra's Project No. 10-090. Mr. Lawler telephoned the Staff and left a message with Mr. Constantino noting the misfiled documents and requesting that they be removed from the Mercy file and included in the Centegra file. That very day, Mr. Constantino responded to Mr. Lawler in an e-mail stating, "Those pages you referenced have been deleted from the Mercy file and moved to the Centegra Project file." (See e-mail of Mike Constantino to Mr. Lawler sent Tuesday, March

29, 2011 12:00 PM attached hereto as Exhibit 5. *See also* e-mail from Daniel Lawler to Mike Constantino sent Tuesday, March 29, 2011 5:00 PM attached hereto as Exhibit 6.) Mr. Ourth could and should have done the same if he had wanted the Krentz Centegra Document removed from the Mercy project file and included in the Centegra project file.

In a footnote on page 4 of its memorandum, Advocate's attorneys attempt to excuse their inaction by implying that they were not made aware that the Krentz Centegra Document was not in the Centegra project file until March 15, 2012 when "it was brought to light by the Review Board." This is an outrageous assertion. As addressed above, Advocate and its attorneys were on notice in early June 2011 that the Krentz Centegra Document had been filed with the Mercy project file, and the Krentz Mercy Study was filed in the Centegra project file.

Advocate's attorneys next argue that "documents placed on the Board's website are not the official record of a proceeding." (Advocate Memorandum at 4, fn. 1.) They are wrong. By statute, what the State Board's Staff posts on the Board's website are "project related filings" and comments related to the [permit] application." 20 ILCS 3960/12.2(1.5). Moreover, the Staff's posted notices of filed documents in early June show that the Krentz Centegra Document was filed in the Mercy project file and not the Centegra project file *and that notice was on the State Board's website every single day through the close of the final written comment period on November 16, 2011 (and remains there even to this day)*. Advocate's attorneys had over 150 consecutive days of this notice in which they could have properly included the Krentz Centegra Document into the Centegra project file but they closed their collective eyes and sat on their collective hands.

Advocate's counsel also argues that "within a day of having been granted leave to intervene and the record being made available to it, Advocate addressed the issue brought to this



tribunal by the Review Board.” (Advocate Memorandum at 4, fn. 1.) This administrative hearing and Advocate’s intervention in it have absolutely no bearing on Advocate’s obligation to submit documents into the Centegra project file within the deadline established by the State Board. According to the State Board’s regulations and its public notices, any party desiring to submit documents into the Centegra project file had to do so by November 16, 2011. Advocate did not do so then, and it cannot do so now.

**IV. EVEN IF ABSENCE OF THE KRENTZ DOCUMENT FROM THE FILE IS CONSIDERED AN “ERROR”, IT IS HARMLESS ERROR AND DOES NOT JUSTIFY A REMAND**

Advocate presents no evidence and makes no claim that it was prejudiced by that absence of the Krentz Centegra Document, nor is there any evidence that the document would have affected the State Board’s decision in any way. Consequently, any “error” associated with the document’s absence is harmless.

Further, since Mr. Ourth and Advocate are solely responsible for the document’s absence from the record, and had actual notice that the document was not in the record, and failed to take any action to assure that the document was timely included in the record, and neither Centegra nor the State Board’s Staff were responsible for the document not being included in the record, a remand to the State Board for the purpose of allowing Advocate to now correct its errors and omissions would be arbitrary, capricious, an abuse of discretion, a violation of the Planning Act and of Centegra’s due process rights. Centegra should not suffer the extreme prejudice of a remand based on an alleged “error” solely attributable to Advocate.


**Conclusion**

There is no important, incurable error in the record and there is no reason to remand this matter to the State Board. There is only a manufactured “emergency” declared by the Review Board’s attorneys, and a complete and utter failure on the part of Advocate and its attorneys to

exercise ordinary prudence or to fulfill their legal obligation under the State Board's rules to assure that their submissions were timely received and properly filed. Advocate's request to include the Krentz Centegra Document into the record should be denied and the documents attached to its memorandum stricken from the record.

Respectfully submitted,

Centegra Health System and Centegra Hospital-  
Huntley, the Applicants/Respondents

By:   
One of their Attorneys

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## List of Exhibits

- 1     (a)   Joe Ourth email to M. Constantino on June 2, 2011 with letter and first page of a Krentz document attached.
- (b)   J. Ourth email to M. Constantino on June 2, 2011 with letter and first page of a Krentz document attached.
- (c)   J. Ourth email to M. Constantino on November 16, 2011 with first page of a Krentz document attached.
- 2           Declaration of Daniel J. Lawler
- 3           E-mail of D. Lawler to Andrea Rozran on June 8, 2011
- 4           E-mail of A. Rozran to D. Lawler on June 8, 2011
- 5           E-mail of Mike Constantino to D. Lawler on March 29, 2011
- 6           E-mail of D. Lawler to M. Constantino on March 29, 2011

# **Exhibit 1**

**Constantino, Mike**

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**From:** Ourth, Joe [JOurth@arnstein.com]  
**Sent:** Thursday, June 02, 2011 10:41 AM  
**To:** Constantino, Mike  
**Subject:** Safety Net Impact Statement Response - Centegra Hospital - Huntley (Project No. 10-089)  
**Attachments:** 0641\_001.pdf

Mike,

We wish to file the attached Safety Net Impact Statement Response in connection with the above referenced hospital. Hard copy will follow.

**Joe Ourth**

ARNSTEIN & LEHR LLP  
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Suite 1200  
Chicago, Illinois 60606-3910  
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[JOurth@arnstein.com](mailto:JOurth@arnstein.com)



Offices in Illinois, Florida, and Wisconsin <P>

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June 2, 2011

VIA Electronic Mail  
and Federal Express

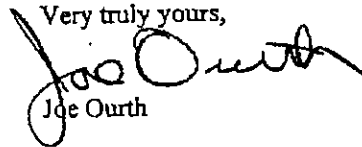
Mr. Dale Galassic  
Chair  
Illinois Health Facilities and Services  
Review Board  
525 W. Jefferson  
Springfield, IL 62761

Re: Safety Net Impact Statement Response  
Centegra Hospital - Huntley  
Project No. 10-090

Dear Chairman Galassic:

Sherman Hospital, St. Alexius Medical Center, and Advocate Good Shepherd Hospital wish to submit the enclosed Safety Net Impact Response Statement to the project referenced above. By separate cover we will also be submitting a detailed Market Assessment and Impact Study of the proposed Centegra Hospital - Huntley project. As you know, the new provisions of the Planning Act invite response to Safety Net Impact Statement submitted by an Applicant. We believe the information contained in this report shows the significant and serious impact the proposed hospital will have on existing hospitals and their ability to provide Safety Net Services.

Very truly yours,

  
Joe Ourth

JRO:eka  
Enclosures

CHICAGO HOFFMAN ESTATES SPRINGFIELD MILWAUKEE  
FORT LAUDERDALE MIAMI TAMPA WEST PALM BEACH BOCA RATON CORAL GABLES  
Arnstein & Lehr LLP is a member of the International Lawyers Network

9618942.J

Page 223 of 497



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**Financial Impact Study**

**Proposed Centegra Hospital-Huntley (Project 10-090)**

May 25, 2011

## Constantino, Mike

---

**From:** Ourth, Joe [JOurth@arnstein.com]  
**Sent:** Thursday, June 02, 2011 10:41 AM  
**To:** Constantino, Mike  
**Subject:** Safety Net Impact Statement Response - Centegra Hospital - Huntley (Project No. 10-089)  
**Attachments:** 0641\_001.pdf

Mike,

We wish to file the attached Safety Net Impact Statement Response in connection with the above referenced hospital. Hard copy will follow.

**Joe Ourth**

ARNSTEIN & LEHR LLP  
120 South Riverside Plaza  
Suite 1200  
Chicago, Illinois 60606-3910  
Phone: 312.876.7815 | Fax: 312.876.6215  
[JOurth@arnstein.com](mailto:JOurth@arnstein.com)



Offices in Illinois, Florida, and Wisconsin <P>

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**ARNSTEIN & LEHR LLP**  
ATTORNEYS AT LAW SINCE 1893

120 South Riverside Plaza · Suite 1200  
Chicago, Illinois 60606  
Phone 312.876.7100 · Fax 312.876.0288  
www.arnstein.com

Joe Ourth  
312.876.7815  
jourth@arnstein.com

June 2, 2011

VIA Electronic Mail  
and Federal Express

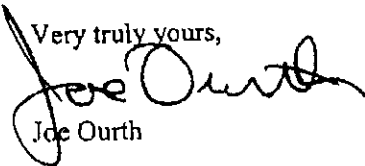
Mr. Dale Galassie  
Chair  
Illinois Health Facilities and Services  
Review Board  
525 W. Jefferson  
Springfield, IL 62761

Re: Safety Net Impact Statement Response  
Mercy Crystal Lake Hospital  
Project No. 10-089

Dear Chairman Galassie:

Sherman Hospital, St. Alexius Medical Center, and Advocate Good Shepherd Hospital wish to submit the enclosed Safety Net Impact Response Statement to the project referenced above. By separate cover we will also be submitting a detailed Market Assessment and Impact Study of the proposed Mercy Crystal Lake Hospital project. As you know, the new provisions of the Planning Act invite response to Safety Net Impact Statement submitted by an Applicant. We believe the information contained in this report shows the significant and serious impact the proposed hospital will have on existing hospitals and their ability to provide Safety Net Services.

Very truly yours,



Joe Ourth

JRO:eka  
Enclosures

CHICAGO HOFFMAN ESTATES SPRINGFIELD MILWAUKEE  
FORT LAUDERDALE MIAMI TAMPA WEST PALM BEACH BOCA RATON CORAL GABLES  
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# **Financial Impact Study**

**Proposed Mercy-Crystal Lake Hospital (Project 10-089)**

**May 25, 2011**

**Hills, Bonnie**

---

**From:** Ourth, Joe [JOurth@arnstein.com]  
**Sent:** Wednesday, November 16, 2011 4:13 PM  
**To:** Constantino, Mike  
**Cc:** Hills, Bonnie; Avery, Courtney  
**Subject:** Mercy Crystal Lake Hospital Project No. 10-0890 Public Comment- "Assessment of Population Growth and Response to Applicant Arguments of Impact on Existing Providers" Report of Krentz Consulting [IWOV-ACTIVE.FID917959]  
**Attachments:** SHE11002 Centegra Huntley Response FINAL 111111.pdf

Mr. Constantino,

Attached please find a Report entitled "Assessment of Population Growth and Response to Applicant Arguments of Impact on Existing Providers" prepared by Krentz Consulting. Although the report specifically addresses issues for the Centegra Hospital - Huntley Project (No. 10-089), a significant amount of that research relates to issues relevant to the Mercy Project. This report is also referenced in a separate letter providing a Summary of Arguments relative to the Mercy project. We ask that you include the attached report in the Mercy project file.

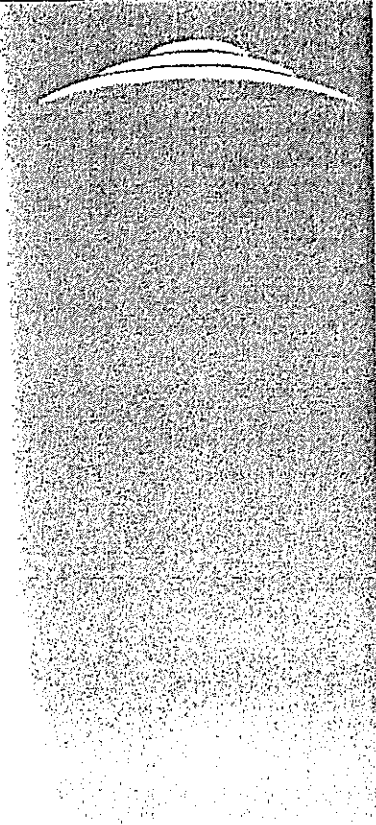
**Joe Ourth**

**ARNSTEIN & LEHR LLP**  
120 South Riverside Plaza  
Suite 1200  
Chicago, Illinois 60606-3910  
Phone: 312.876.7815 | Fax: 312.876.6215  
[JOurth@arnstein.com](mailto:JOurth@arnstein.com)

<http://legalnews.arnstein.com/>  
Offices in Illinois, Florida, and Wisconsin

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Pursuant to Internal Revenue Service guidance, be advised that any federal tax advice contained in this written or electronic communication, including any attachments or enclosures, is not intended or written to be used and it cannot be used by any person or entity for the purpose of (i) avoiding any tax penalties that may be imposed by the Internal Revenue Service or any other U.S. Federal taxing authority or agency or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.



**Assessment of  
Utilization, Population  
Growth, and Applicant  
Arguments of Impact on  
Existing Providers**

**Proposed Centegra Hospital-Huntley (Project 10-090)**

November 11, 2011

# **Exhibit 2**

**Before The  
HEALTH FACILITIES AND SERVICES REVIEW BOARD  
State of Illinois**

HEALTH FACILITIES AND SERVICES	)	
REVIEW BOARD,	)	
	)	
Complainant,	)	<b>Docket No. HFSRB #11-11</b>
	)	
v.	)	
	)	
CENTEGRA HEALTH SYSTEM and	)	
CENTEGRA HOSPITAL-HUNTLEY,	)	
Project No. 10-090	)	
	)	
Respondents.	)	

**DECLARATION OF DANIEL J. LAWLER**

I, Daniel J. Lawler, the undersigned state under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109) as follows:

1. I am over the age of eighteen. I am an attorney licensed to practice law in Illinois since 1981 and have been in good standing with the Illinois Attorney Registration and Disciplinary Commission from that time to the present. I am a partner with the law firm K&L Gates LLP.

2. I have continuously practiced before the Illinois Health Facilities and Services Review Board and its predecessor the Illinois Health Facilities Planning Board (collectively "State Board") since 1985.

3. I represent Centegra Health System and Centegra Hospital-Huntley as Certificate of Need ("CON") counsel in connection with their application for permit to establish a new hospital in Project No. 10-090, Centegra Hospital-Huntley (the "Centegra Project"). I also represent Centegra Health System and its affiliated hospitals as CON counsel in their opposition to Project No. 10-089, Mercy Crystal Lake Hospital and Medical Center (the "Mercy Project"). The foregoing Centegra entities are referred to herein as "Centegra".

4. As CON counsel, I am familiar with the regulations of the State Board and requirements of the Illinois Health Facilities Planning Act (20 ILCS 3960/1 *et seq.*) relating to the procedures and substance of matters before the State Board, including the regulations and statutes relating to public and written comment on projects pending before the State Board.

5. During the course of my representation of Centegra as its CON counsel, I knew that:

- a. The State Board had established a deadline of June 8, 2011 for written comment in both the Centegra Project and Mercy Project.

- b. Advocate Health and Hospital Corporation ("Advocate") was opposing the two projects and that it was represented by Joe Ourth of the law firm of Arnstein & Lehr. Mr. Ourth had 20 years of experience practicing before the State Board, and through my personal experiences with Mr. Ourth throughout those 20 years relating to CON projects, I knew him to be generally well-versed in the regulations and statutes governing written comments on CON projects and knew that he often employed them to the utmost advantage of his clients and the utmost disadvantage to his opponents.

6. I knew that under the Planning Act, the State Board's Staff ("Staff") was required post on the Board's website "notices of project-related filings, including notice of public comments related to the application" (20 ILCS 3960/12.2(1.5)) and that the Staff was diligently performing that task from the time that the permit applications for the Centegra Project and Mercy Project were filed in late December 2010 and thereafter. The Staff posted notice of filings and public comment by putting on the State Board's website a description of the filing or comment in link to a PDF file that contained a photocopy of the filing or comment. Throughout the year of 2011, the Staff regularly and routinely posted filings and comments in the Centegra Project and Mercy project within a week of the date that the document was dated or stamped "Received" by the Staff and often did so within a few days of receipt.

7. Throughout the year 2011, I regularly monitored the State Board's website at least two or three times a week to see what notices the Staff was posting for the Centegra Project and Mercy Project. During times within a week before and after deadlines established by the State Board, I monitored the website everyday, multiple times a day. Two of those deadlines for written comment were June 8, 2011, which was 20 days before the State Board meeting at which the Centegra Project and Mercy Project were initially considered, and November 16, 2011, which was 30 days before the State Board meeting at which the two projects were considered following the intents-to-deny.

8. Because Centegra had made written submissions into the Centegra Project file and the Mercy Project file prior to the June 8, 2011 deadline, and because I anticipated Mr. Ourth and Advocate would be making written submissions on the projects around the time of the deadline, I closely monitored the Staff's posting of notices multiple times a day on and after June 8, 2011 to assure that Centegra's submissions were received and submitted into the correct project files and to determine what Mr. Ourth and Advocate had submitted into the two project files, especially into the Centegra Project.

9. On June 8, 2011, I noticed that the Staff had not yet posted notice of recent submissions that Centegra had sent for the Centegra Project and for the Mercy Project. By email, I requested Centegra's CON consultant Andrea Rozran of Diversified Health Services to contact the Staff and assure that it had received Centegra's submissions. (A true and correct copy of my June 8, 2011 email to Ms. Rozran is attached hereto as Attachment A.) Ms. Rozran confirmed with the Staff both receipt of Centegra's submissions and assurance that the submissions had been put into the project file intended by Centegra. Ms. Rozran confirmed her telephone call with the Staff in a return email that I received on June 8, 2011. A true and correct copy of Ms. Rozran's email to me of June 8, 2011 is attached hereto as Attachment B.

10. Within a week after June 8, 2011, I saw that the Staff had posted notice on the State Board's website under the Centegra Project of a document labelled "Market Assessment and Impact Study 6/3/2011." I clicked on the link which led to a PDF file that contained a cover letter dated June 2, 2011 from Joe Ourth of Arnstein & Lehr to State Board Chairman Dale Galassie that referenced the Centegra Project in the "Re" section of the letter, referred to a "Market Impact and Assessment Study" in the body of the letter, and further stated that the study was "relative to the proposed Centegra Hospital-Huntley project". Following Mr. Ourth's letter was a page containing the following title in large bold print: "Market Assessment and Impact Study." Underneath this title in smaller print was a subtitle "Proposed Mercy-Crystal Lake Hospital" that was followed by smaller print with "(Project 10-089)". On the lower left corner of the page was a logo and the words "Krentz Consulting." (This title page and the 31 page document following will be referred to herein as the "Krentz Mercy Study".) A true and correct copy of the Mr. Ourth's cover letter together with the Krentz Mercy Study in the PDF file that was linked to the Staff's notice labeled "Market Assessment and Impact Study 6/3/2011" is included in the Administrative Record in the above captioned matter (Centegra Hospital-Huntley, Docket No. HFSRB #11-11) at pages 189 to 221 of 497, and is referred to herein as the "Ourth June 2nd Centegra Submission".

11. I read the Ourth June 2nd Centegra Submission after its notice was posted by the Staff and before the June 28, 2011 State Board meeting at which the Centegra Project was initially considered. On first reading, I noticed that the large font title of the Krenz Mercy Study matched the title in Mr. Ourth's cover letter and assumed that even though the Study pertained to the Mercy Project, Mr. Ourth considered it to be relevant and "relative to the proposed Centegra Hospital-Huntley Project", as he said in the cover letter, because the study contained information purporting to relate to McHenry County as a whole and the Centegra Project was located in McHenry County. Based on the content of Mr. Ourth's cover letter, I did not consider it unusual that Mr. Ourth submitted the Krenz Mercy Study into the Centegra Project file. (I had read the Ourth June 2nd Centegra Submission before reading his submissions of June 2, 2011 into the Mercy Project file.)

12. After the State Board meeting on June 28, 2011, I gave my secretary, Diana Quaid-Piazza, a number of documents that I had accumulated in my office since the beginning of June relating to the Centegra Project, including the Ourth June 2nd Centegra Submission. I placed a yellow Post-It on the document with my hand-written note "Advocate: Market Assessment Impact" to inform Ms. Quaid-Piazza the name of the file I wanted her to create for our firm's internal record keeping. A true and correct copy of the first page of the Ourth June 2nd Centegra Submission that I gave to Ms. Quaid-Piazza with my Post-It note on it is attached hereto as Attachment C.

13. Ms. Quaid-Piazza created a file entitled "Advocate: Market Assessment Impact" using our firm's "LegalKEY" record keeping program. On March 18, 2012, I searched our LegalKEY program to determine the date on which Ms. Quaid-Piazza created the file and the program shows that the file was created on July 6, 2011. A true and correct print out of the LegalKEY report showing the date of creation of the file (with internal identifiers redacted) is attached hereto as Attachment D.




14. The Staff's notice of the filing of the Ourth June 2nd Centegra Submission and the link to the submission has been on the State Board's website from early June 2011 to the present day, March 18, 2012.

15. In connection with the Mercy Project, 2011, I noticed that when the Staff posted notice of the record of the public hearing held on March 18, 2011, the linked PDF files contained copies of documents that were intended for the Centegra Project. On March 29, 2011 I telephoned the Staff and left a message with Mr. Michael Constantino noting the misfiled documents and requesting that they be removed from the Mercy Project file and included in the Centegra file. That same day, Mr. Constantino responded to me with an e-mail stating, "Those pages you referenced have been deleted from the Mercy file and moved to the Centegra Project file." (A true and correct copy of Mr. Constantino's email to me dated Tuesday, March 29, 2011 is attached as Attachment E hereto.) I documented my telephone contact with Mr. Constantino in an email to him dated March 29, 2011, a true and correct copy of which is attached hereto as Attachment F.

#### CERTIFICATION

I, Daniel J. Lawler, under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109), certify that that the statements set forth in this instrument are true and correct, and are based upon my personal knowledge.

Dated: March 18, 2012

  
\_\_\_\_\_  
Daniel J. Lawler

**Lawler, Daniel**

---

**From:** Lawler, Daniel  
**Sent:** Wednesday, June 08, 2011 2:00 PM  
**To:** 'Andrea R. Rozran [arozran@diversifiedhealth.net]'; 'Susan Milford (smilford@centegra.com)'; 'Aaron Shepley (ATShepley@Centegra.com)';  
**Cc:** 'Streng Hadley (HStreng@centegra.com)'; 'Rowena Wermes (RWermes@Centegra.com)'; 'S. Yablon Marshall (myablon@diversifiedhealth.net)'  
**Subject:** Confirm receipt of Centegra and Mercy submissions

Andrea,

I was just speaking with Susan and we noted that neither Centegra's Huntley nor Mercy submissions have been posted on the Board's website. Hadley has confirmed that both were delivered. Please call Mike Constantino to confirm that he has both submissions (as well as Centegra's response to Ourth's request to defer consideration). Thanks much.

Dan

Daniel J. Lawler  
K&L Gates LLP  
70 W. Madison St., Ste. 3100  
Chicago, IL 60602-4207  
t. 312-807-4289  
f. 312-827-8114  
daniel.lawler@klgates.com  
<http://www.klgates.com/>

**Lawler, Daniel**

---

**From:** Andrea R. Rozran [arozran@diversifiedhealth.net]  
**Sent:** Wednesday, June 08, 2011 2:19 PM  
**To:** Lawler, Daniel  
**Cc:** 'Susan Milford'; 'Aaron Shepley'; 'Streng Hadley'; 'Rowena Wermes'; 'S. Yablon Marshall'  
**Subject:** RE: Confirm receipt of Centegra and Mercy submissions  
Bonnie Hills, who keeps the files, just reviewed the public comment files with me for the information you requested.

The Huntley file includes Mike's submission, a submission from Susan, and today's letter from Dan.

The Mercy file includes Mike's submission and Aaron's submission. Also, Joe Ourth just filed the deferral request for Mercy, which she has received.

Andrea R. Rozran

Principal, Diversified Health Resources, Inc.

Chicago Telephone: 312-266-0466

Chicago Fax: 312-266-0715

[arozran@diversifiedhealth.net](mailto:arozran@diversifiedhealth.net)

---

**From:** Lawler, Daniel [mailto:daniel.lawler@klgates.com]  
**Sent:** Wednesday, June 08, 2011 2:00 PM  
**To:** 'Andrea R. Rozran [arozran@diversifiedhealth.net]'  
**Cc:** 'Susan Milford (smilford@centegra.com)'; 'Aaron Shepley (ATShepley@Centegra.com)'; 'Streng Hadley (HStreng@centegra.com)'; 'Rowena Wermes (RWermes@Centegra.com)'; 'S. Yablon Marshall (myablon@diversifiedhealth.net)'  
**Subject:** Confirm receipt of Centegra and Mercy submissions

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Dan

Daniel J. Lawler  
K&L Gates LLP  
70 W. Madison St., Ste. 3100  
Chicago, IL 60602-4207  
t. 312-807-4289  
f. 312-827-8114  
daniel.lawler@klgates.com  
<<http://www.klgates.com/>>

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**ARNSTEIN & LEHR LLP**  
ATTORNEYS AT LAW SINCE 1893

120 South Riverside Plaza · Suite 1200  
Chicago, Illinois 60606  
Phone 312.876.7100 · Fax 312.876.0288  
www.arnstein.com

Joe Ourth  
312.876.7815  
jourth@arnstein.com

June 2, 2011

**RECEIVED**

JUN 03 2011

HEALTH FACILITIES &  
SERVICES REVIEW BOARD

VIA Federal Express

Mr. Dale Galassie  
Chair  
Illinois Health Facilities and Services  
Review Board  
525 W. Jefferson  
Springfield, IL 62761

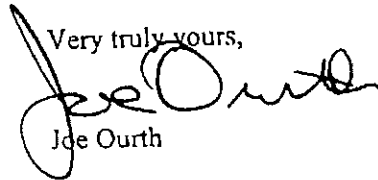
*Attachment:  
Market Assessment  
Impact*

Re: Market Assessment and Impact Study  
Centegra Hospital – Huntley  
Project No. 10-090

Dear Chairman Galassie:

Sherman Hospital, St. Alexius Medical Center, and Advocate Good Shepherd Hospital wish to submit the enclosed Market Assessment and Impact Study relative to the proposed Centegra Hospital - Huntley project. We believe the enclosed study provides detailed analytical information showing that the proposed new 123-bed hospital is not needed.

Very truly yours,

  
Joe Ourth

JRO:eka  
Enclosures

CHICAGO HOFFMAN ESTATES SPRINGFIELD MILWAUKEE  
FORT LAUDERDALE MIAMI TAMPA WEST PALM BEACH BOCA RATON CORAL GABLES  
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Client Name: Centegra Health System (██████████)  
Matter Name: Huntley CON Issues  
Office: 0 CHICAGO  
Barcode: ██████████  
Type: F Default Folder  
Media Type: 02 MANILA LEGAL  
Number: 287  
Create Date: 7/6/2011 09:35:33  
Title: Advocate: Market Assessment Impact  
Comments:  
Note:  
Location: 17 17 Record Center - Chicago  
Atty: LAWLERD Lawler, Daniel J.  
Status: ACTIVE  
Do not add: No  
Box #:  
Box Location:

Record is checked out. Atty: Lawler, Daniel J.. Date 2011-07-06 ; Office: 0, Floor: 32, Room: , Phone: , Extension: 4289

ATTACHMENT D

**Lawler, Daniel**

---

**From:** Constantino, Mike [Mike.Constantino@Illinois.gov]

**Sent:** Tuesday, March 29, 2011 12:00 PM

**To:** Lawler, Daniel

**Subject:** DONE

Those pages you referenced have been deleted from the Mercy file and moved to the Centegra Project file...

Mike Constantino  
Illinois Department of Public Health  
525 West Jefferson  
Springfield, Illinois 62761  
Fax:(217) 785-4111  
Phone:(217) 785-1557

*ATTN: DANIEL F*

**Lawler, Daniel**

---

**From:** Lawler, Daniel  
**Sent:** Tuesday, March 29, 2011 5:00 PM  
**To:** 'Constantino, Mike'  
**Subject:** Documentation of Technical Assistance Phone call

Mike,

To document the phone message I left in your voice mail from earlier today: I noted that documents from Project No. 10-090, Centegra Hospital - Huntley had been posted on the Review Board's webpage for Applications Deemed Complete under Project No. 10-089, Mercy Crystal Lake. Thank you for correcting that.

Dan Lawler

-----Original Message-----

**From:** Constantino, Mike [mailto:Mike.Constantino@Illinois.gov]  
**Sent:** Tuesday, March 29, 2011 12:00 PM  
**To:** Lawler, Daniel  
**Subject:** DONE

Those pages you referenced have been deleted from the Mercy file and moved to the Centegra Project file...

Mike Constantino  
Illinois Department of Public Health  
525 West Jefferson  
Springfield, Illinois 62761  
Fax:(217) 785-4111  
Phone:(217) 785-1557

ATTACHMENT F



# **Exhibit 3**

## Lawler, Daniel

---

**From:** Lawler, Daniel  
**Sent:** Wednesday, June 08, 2011 2:00 PM  
**To:** 'Andrea R. Rozran [arozran@diversifiedhealth.net]'; 'Susan Milford (smilford@centegra.com)'; 'Aaron Shepley (ATShepley@Centegra.com)';  
**Cc:** 'Streng Hadley (HStreng@centegra.com)'; 'Rowena Wermes (RWermes@Centegra.com)'; 'S. Yablon Marshall (myablon@diversifiedhealth.net)'  
**Subject:** Confirm receipt of Centegra and Mercy submissions

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Dan

Daniel J. Lawler  
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70 W. Madison St., Ste. 3100  
Chicago, IL 60602-4207  
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f. 312-827-8114  
daniel.lawler@klgates.com  
<http://www.klgates.com/>

# **Exhibit 4**

**Lawler, Daniel**

---

**From:** Andrea R. Rozran [arozran@diversifiedhealth.net]  
**Sent:** Wednesday, June 08, 2011 2:19 PM  
**To:** Lawler, Daniel  
**Cc:** 'Susan Milford'; 'Aaron Shepley'; 'Streng Hadley'; 'Rowena Wermes'; 'S. Yablon Marshall'  
**Subject:** RE: Confirm receipt of Centegra and Mercy submissions  
Bonnie Hills, who keeps the files, just reviewed the public comment files with me for the information you requested.

The Huntley file includes Mike's submission, a submission from Susan, and today's letter from Dan.

The Mercy file includes Mike's submission and Aaron's submission. Also, Joe Ourth just filed the deferral request for Mercy, which she has received.

Andrea R. Rozran

Principal, Diversified Health Resources, Inc.

Chicago Telephone: 312-266-0466

Chicago Fax: 312-266-0715

[arozran@diversifiedhealth.net](mailto:arozran@diversifiedhealth.net)

---

**From:** Lawler, Daniel [mailto:daniel.lawler@klgates.com]  
**Sent:** Wednesday, June 08, 2011 2:00 PM  
**To:** 'Andrea R. Rozran [arozran@diversifiedhealth.net]'  
**Cc:** 'Susan Milford (smilford@centegra.com)'; 'Aaron Shepley (ATShepley@Centegra.com)'; 'Streng Hadley (HStreng@centegra.com)'; 'Rowena Wermes (RWermes@Centegra.com)'; 'S. Yablon Marshall (myablon@diversifiedhealth.net)'  
**Subject:** Confirm receipt of Centegra and Mercy submissions

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Dan

Daniel J. Lawler  
K&L Gates LLP  
70 W. Madison St., Ste. 3100  
Chicago, IL 60602-4207  
t. 312-807-4289  
f. 312-827-8114  
daniel.lawler@klgates.com  
<<http://www.klgates.com/>>

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# **Exhibit 5**

**Lawler, Daniel**

---

**From:** Constantino, Mike [Mike.Constantino@Illinois.gov]

**Sent:** Tuesday, March 29, 2011 12:00 PM

**To:** Lawler, Daniel

**Subject:** DONE

Those pages you referenced have been deleted from the Mercy file and moved to the Centegra Project file...

Mike Constantino  
Illinois Department of Public Health  
525 West Jefferson  
Springfield, Illinois 62761  
Fax:(217) 785-4111  
Phone:(217) 785-1557

3/18/2012

# **Exhibit 6**



**Lawler, Daniel**

---

**From:** Lawler, Daniel  
**Sent:** Tuesday, March 29, 2011 5:00 PM  
**To:** 'Constantino, Mike'  
**Subject:** Documentation of Technical Assistance Phone call

Mike,

To document the phone message I left in your voice mail from earlier today: I noted that documents from Project No. 10-090, Centegra Hospital - Huntley had been posted on the Review Board's webpage for Applications Deemed Complete under Project No. 10-089, Mercy Crystal Lake. Thank you for correcting that.

Dan Lawler

-----Original Message-----

**From:** Constantino, Mike [mailto:Mike.Constantino@Illinois.gov]  
**Sent:** Tuesday, March 29, 2011 12:00 PM  
**To:** Lawler, Daniel  
**Subject:** DONE

Those pages you referenced have been deleted from the Mercy file and moved to the Centegra Project file...

Mike Constantino  
Illinois Department of Public Health  
525 West Jefferson  
Springfield, Illinois 62761  
Fax:(217) 785-4111  
Phone:(217) 785-1557

## CERTIFICATE OF SERVICE

Daniel J. Lawler, an attorney, hereby certifies that he caused the foregoing Applicants' Response in Opposition to the Petition to Intervene of Mercy Alliance, et al., to be served upon the following persons by email and this 19th day of March, 2012 before the hour of 8:30 am and by first class U.S. Mail delivery before the hour of 4:30 pm.

Hon. Richard E. Hart  
Administrative Law Judge  
One North Old State Capitol Plaza  
Springfield, IL 62701-1323  
Ph: 217-753-0055  
Fax: 217-753-1056  
Email: rhart1213@aol.com

Frank W. Urso  
General Counsel  
Illinois Health Facilities and Services Review  
Board  
122 South Michigan Avenue, Suite 700  
Chicago, IL 60603  
Ph: 312-814-5418  
Fax: 312-814-1503  
Email: frank.urso@illinois.gov

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Joe Ourth  
Jenifer H. Caracciolo  
Tracey A. Salinski  
Arnstein & Lehr LLP  
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Chicago, IL 60606  
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Fax: 312-876-0288  
Email: jourth@arnstein.com



Daniel J. Lawler

# **Exhibit I**

**Before The  
HEALTH FACILITIES AND SERVICES REVIEW BOARD  
State of Illinois**

HEALTH FACILITIES AND SERVICES	)	
REVIEW BOARD,	)	
	)	
Complainant,	)	
	)	
v.	)	<b>Docket No. HFSRB #11-11</b>
	)	
CENTEGRA HEALTH SYSTEM and	)	
CENTEGRA HOSPITAL-HUNTLEY,	)	
Project No. 10-090	)	
	)	
Respondents.	)	

**EMERGENCY MOTION TO  
CONDUCT HEARING WITHIN MANDATORY STATUTORY  
TIME LIMIT AND REFRAIN FROM  
REMANDING TO THE STATE BOARD**

The Applicants/Respondents, Centegra Health System and Centegra Hospital-Huntley (collectively "Centegra") respectfully move the Administrative Law Judge ("ALJ") to conduct the administrative hearing on this matter within the mandatory statutory time from and to refrain from remand, this matter to the Illinois Health Facilities and Services Review Board ("State Board") and in support thereof, states as follows:

**Summary**

The ALJ should proceed with expedience to the administrative hearing as scheduled on March 22nd and 23rd in Chicago, Illinois for the following reasons:

- 1) Centegra has a protected right and interest to have the administrative hearing completed in 90 days;
- 2) The ALJ has no legal authority to remand this matter to the State Board prior to conducting a hearing, whether to correct the record or otherwise. The hearing officer's sole authority --and indeed responsibility-- under State Law is to conduct the hearing which is afforded to Centegra as a matter of right within the statutory 90 days and *then* make recommendations to the Board;

- 3) The State Board has no legal authority to either request or accept a remand of this matter, and even if it did, it has not taken the formal action necessary to officially make such a request because neither the attorney for the Board nor the Board Chairman has the authority to make such a request unilaterally;
- 4) The State Board has no legal authority to conduct further public hearing or public comment proceedings;
- 5) The State Board's *only* statutory authority to act following a remand from the ALJ is to accept or reject the ALF's Report and Recommendation and under its final administrative decision. The State Board has *no* legal authority to conduct additional proceedings, hold additional public hearings or receive additional oral or written public comment.
- 6) The proposed remand places an impossible burden on Centegra, requiring it to confirm every document filed by every person was properly filed in Centegra's project and not in another project.
- 7) Centegra will suffer irreparable harm of this matter in remanded;
- 8) A remand order will deprive Centegra of due process;

#### **Background**

1. On Thursday, March 15, 2012, less than one week before the scheduled commencement of the administrative hearing the State Board's attorney, Frank Urso, contacted the ALJ's office requesting an emergency hearing. The ALJ granted this request and scheduled an emergency hearing for the next day, Friday March 16 at 10:00 a.m.

2. Prior to the conference call, no written motions were presented by *anyone* and in fact, when initially contacted by Centegra's attorneys, Mr. Urso would not divulge what the purpose for the "emergency" conference call was. Ultimately, when confronted with the rules requiring that written motions accompany any request for relief, Mr. Urso wrote that: "Board Counsel have requested to have a status meeting tomorrow, not a hearing. The subject matter will be the project file;" thereby confirming that the State would not be requesting relief during the "status conference."

3. During the conference call on March 16<sup>th</sup> it was revealed that a singular document of thirty-three pages (compared to an administrative record of over 11,000 pages) from Advocate Health and Hospital (“Advocate”) was not included in the project file for Centegra’s project. Although it apparent from the State’s website that the failure to include the document was most likely the result of the conduct of the attorney for Advocate, the State and Advocate went well out of their way to suggest that it is “unknown” who was responsible for the omission. No matter who was responsible, it is beyond dispute that Centegra Health System played no part in the “mistake” and not once since this issue arose has any party suggested to the contrary.

4. Without any notice whatsoever, during the conference call the State Board attorneys literally blind-sided Centegra by stating that the matter needed to be remanded to the State Board due to this allege “error.”

5. The ultimate focus of the March 16th conference call was the ALJ’s request, that the parties address the issue of whether the document was in the Centegra project file when the State Board acted on the Centegra project.

6. Advocate served and filed a brief shortly after 5:00 p.m. the evening of March 16, 2012. Advocate’s brief did not request a remand; much less cite any authority for such an unprecedented action. On Monday March 19, 2012, Centegra filed and served a brief at 8:20 a.m. in opposition to the request to supplement the record. The State Board filed nothing.

7. On Monday March 19, 2012 at approximately 10:00 a.m., the ALJ conducted a hearing. Prior to addressing the written submission by Advocate and Centegra, the ALJ allowed the State Board to address the ALJ. Mr. Urso then orally requested that the matter be remanded to the State because State Board’s Chairman Dale Galassie wanted the matter returned to the

State Board. The State Board's attorneys failed to provide any legal authority to support this request.

8. After hearing argument by the parties on Mr. Urso's statement and the written submission of Advocate and Centegra, the ALJ expressed the following thoughts on the matter: (1) there was no error in the record; (2) the State Board's staff filed submission from Advocate as directed by Advocate's counsel; (3) a concern about the precedent that remand based on the would have, given that an intervenor, either by neglect or intentionally could submit the wrong document into a project file, or the right document into the wrong project file, which would then require a remand of the matter after the administrative hearing had been requested. The ALJ then took the matter under advisement and continued it to the previously final prehearing conference on March 21, 2012.

9. Late in the afternoon of March 19, 2012, the ALJ's office contacted the parties to advise that the ALJ had made a decision to be announced at a telephone conference to be scheduled as soon as possible. The telephone conference was scheduled for 4:30 p.m.

10. The conference call proceeded at approximately 4:30 p.m. on March 19, 2012. No court reporter was present.

11. During the call, the ALJ's office sent the parties a proposed decision, a copy of which is attached hereto as Exhibit A. To the shock and dismay of Centegra, the proposed order provided for the remand of their application to the State Board for the purpose of allowing the State and/or Advocate to essentially correct *their* mistake.

12. During the conference call both the undersigned counsel for Centegra and Centegra's General Counsel, Aaron T. Shepley, objected to the proposed decision on the grounds that Centegra had a statutory right to the administrative hearing within 90 days, that the ALJ had

no authority to remand the matter, that the State Board had no legal authority to conduct proceedings on the matter at the time, and that the proposed remand would violate Centegra's statutory and due process rights. Centegra's counsel requested that the matter be continued so that the matter could be made of record with a court reporter present. The State Board's attorney, Mr. Urso, objected to Centegra's request. The ALJ granted Centegra's request and set the matter for hearing for 3:00 p.m. on Tuesday, March 20, 2012.

13. Significantly the requestors of the remand, the State Board's attorneys have yet to file a single document and have failed to cite any legal authority for their irregular request for remand. In fact, the most likely reason the attorneys for the State Board have presented no support for their position is that there is none. None at all.

**I. CENTEGRA HAS A PROTECTED RIGHT AND INTEREST TO HAVE ITS ADMINISTRATIVE HEARING COMPLETED WITHIN 90 DAYS**

14. The Illinois Health Facilities Planning Act (20 ILCS 3960/10) imposes an affirmative legal obligation on the ALJ to complete the Administrative Hearing requested by Centegra within 90 days. Section 10 of the Planning Act states, "The hearing officer *shall* take actions necessary to ensure that the hearing is completed within a reasonable time period, *but not to exceed 90 days*, except for delays or continuances agreed to by the person requesting the hearing." This matter was initially set for hearing on March 22-23, 2012 at the prehearing conference conducted by the ALJ on February 23, 2012 in order to comply with the statutory mandate to complete the hearing within 90 days. Centegra has repeatedly stated on the record, and asserts again that it does not agree to any delay or continuance of this hearing.

15. The Planning Act and the Illinois Administrative Procedure Act confers upon Centegra the right to a hearing before the hearing officer on the State Board's initial denial of its permit application in Project No. 10-090 Centegra Hospital-Huntley. Following the State



Board's four-to-four vote on this project on December 7, 2011, which was deemed a Denial of the permit application, Centegra requested the State Board provided Centegra with a notice of opportunity for right before a hearing officer on the initial denial and Centegra requested the administrative hearing of the Board on December 20, 2011. Pursuant to statute, the Illinois Department of Public Health ("IDPH") appointed Richard L. Hart as the Hearing Officer and the State Board set the initial prehearing conference for February 23, 2012.

16. At the prehearing conference February 23, 2012, Centegra requested that the hearing be set for the week of March 19, 2012 in order to meet the statutory 90 day time requirement. While the State Board's counsel initially stated that the Board was agreeable to a hearing that week, then sought to delay the hearing into April after Advocate Health and Hospital Corporation ("Advocate") protested about the status of the Administrative Record. Upon raising concerns about the 90 day time requirement and after the State Board's attorney acknowledged that a hearing in April would be beyond the 90 days, the Hearing Officer set this matter for hearing on March 22 and 23, 2012.

## **II. THE ALJ HAS NO LEGAL AUTHORITY TO REMAND AND THE STATE BOARD HAS NO LEGAL AUTHORITY TO ACCEPT REMAND OR CONDUCT FURTHER PROCEEDINGS AT THIS TIME**

17. The powers of administrative agencies are strictly confined to their enabling statutes, and powers or authorities of agencies must find their source in the provisions of the statute that created the agency. *Granite City Division of Nat'l Steel Co. v. Ill. Pollution Control Bd.*, 155 Ill. 2d 149, 171 (1993). A decision by an agency which lacks the statutory power to enter the decision is treated the same as a decision by an agency which lacks personal or subject matter jurisdiction--the decisions are void. *Business & Professional People for the Public Interest v. Ill. Commerce Comm.*, 136 Ill. 2d 192, 244 (1989). Further, administrative agencies must comply with the procedures and rules promulgated by the legislature, and the purpose of

judicial review of an administrative agency's decision is to keep the agency within its statutory grant of authority and thus "guard the rights of the parties which are guaranteed by the constitution and statutes." *Ragano v. Civil Service Commission*, 80 Ill. App. 3d 523, 527 (1st Dist. 1980).

### **III. CENTEGRA WOULD SUFFER IRREPARABLE HARM IF THIS HEARING IS NOT HELD**

18. As noted throughout this document, as between the State Board and Advocate and Centegra, only one of the three is completely innocent: Centegra. If ALJ were to take the extraordinary and unprecedented step of refusing to hold a hearing and instead remand the case back to the State Board to fix the record based upon nothing more than the statement that the State Board's Chairman wanted it remanded, the ALJ's order of remand will have caused immediate and irreparable harm to Centegra and made Centegra a victim of Advocate's mistake, victims of the State Board's mistake and victims of a decision made with no legal authority whatsoever.

19. A decision to remand this matter to the State Board create further delay of many months as the State Board's counsel has advised that if the matter is remanded it would not likely appear before the State Board until September 2012. This process has already languished for nearly fifteen months even though Centegra has met every deadline imposed by Statute, the State Board and the ALJ.

20. A decision to remand will nullify thousands of man and woman hours spent working on this project, attending public hearings and appearing before the Board and will force all of this work to be done again. It will place the burden of someone else's error squarely and unjustifiably on Centegra's shoulders.

21. “An alleged injury is defined as irreparable when it is of such nature that the injured party cannot be adequately compensated therefore in damages or when damages cannot be measured by any certain pecuniary standard.” *Kalbfleisch v. Columbia Comty Unit School No. 4*, 396 Ill.App.3d 1105, 1116 (5th Dist.2009) When this definition is applied to the present circumstances, it is beyond debate that a decision to remand will cause irreparable harm to Centegra. The draft ruling tendered to the parties yesterday suggests that a remand would cause no harm to Centegra because:

“[A]pplicant will have another opportunity to request a hearing after the State Board makes a further determination in this case. There is no denial of due process, but rather a strong respect for due process on the part of counsel for the State Board in their bringing the misfiling to the attention of the hearing officer at the earliest possible time after discovery and requesting that the matter be reconsidered by the State Board in light of the misfiled documents”

With due respect, nothing could be farther from the truth. Centegra’s statutory right to a hearing within 90 days vested *immediately* upon Centegra’s filing of the request for the hearing. The hearing is based upon the denial on December 7, 2011 not at some other uncertain date in the future. That is precisely why the Planning Act *mandates* that the hearing be completed within 90 days.

#### **IV. CENTEGRA’S PROPOSAL**

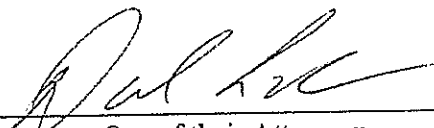
22. The ALJ requested Centegra to provide in writing its proposal for proceeding and the legal authority to do so. The legal authority to proceed in Section 10 of the Planning Act which requires that this hearing be completed with 90 days. In addition, under Section 1130.180 of the State Board’s rules (attached), any pleadings, motions, offers of proof, and objections may be made part of the record of proceedings. Consequently, concerns by any party regarding the contents of the record may be raised by motion, pleadings, offer of proof or objection and

included by the ALJ into the record to be returned to the State Board within the ALJ's report and recommendation after the conclusions of the hearing.

WHEREFORE, the Applicants/Respondents Centegra Health System and Centegra Hospital-Huntley request that the Administrative Law Judge Richard L. Hart complete the Administrative Hearing requested in this matter within the mandatory 90 day time period, proceed to conduct the hearing scheduled for March 22-23, 2012 and refrain from remanding this matter to the State Board until after the Administrative Hearing is completed and the ALJ completes its recommendation and report to the Illinois Health Facilities and Services Review Board, and grant the Applicants/Respondents any additional relief to which they are entitled upon the premises.

Respectfully submitted,

Centegra Health System and Centegra Hospital-Huntley, the Applicants/Respondents

By:   
One of their Attorneys

Daniel J. Lawler  
K&L GATES LLP  
70 West Madison Street  
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Chicago, IL 60602  
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Fax: (312) 827-8114  
Email: [daniel.lawler@klgates.com](mailto:daniel.lawler@klgates.com)

**Joint Committee on Administrative Rules**  
**ADMINISTRATIVE CODE**

**TITLE 77: PUBLIC HEALTH**  
**CHAPTER II: HEALTH FACILITIES PLANNING BOARD**  
**SUBCHAPTER b: OTHER BOARD RULES**  
**PART 1130 HEALTH FACILITIES PLANNING PROCEDURAL RULES**  
**SECTION 1130.1180 RECORDS OF PROCEEDINGS**

---

**Section 1130.1180 Records of Proceedings**

- a) A full and complete record shall be kept of all proceedings. The record shall consist of the following:
- 1) all pleadings (including all notices and responses to pleadings), motions, and rulings;
  - 2) a transcript of the hearing, if any, and all evidence received;
  - 3) a statement of matters officially noticed;
  - 4) offers of proof, objections and rulings on those matters;
  - 5) proposed findings and exceptions;
  - 6) any decision, opinion or report by the administrative law judge;
  - 7) all staff memoranda or data submitted to the administrative law judge or members of the agency in connection with their consideration of the case; and
  - 8) any communication determined to be ex parte, but such communications shall not form the basis for any finding of fact. (See 20 ILCS 3960/4.2.)
- b) HFPB shall be the official custodian of all papers and documents filed in proceedings before HFPB.
- c) The records of administrative proceedings, including the transcript, are public records and shall be open to reasonable public inspection at the offices of HFPB. The administrative law judge reports shall be available for public inspection after it has been delivered to HFPB.

(Source: Added at 30 Ill. Reg. 14852, effective September 1, 2006)

**CERTIFICATE OF SERVICE**

Daniel J. Lawler, an attorney, hereby certifies that he caused the foregoing **Notice of Motion and Emergency Motion to Conduct Hearing Within Mandatory Statutory Time Limit and Refrain from Remanding to the State Board**, to be served upon the following persons by email and this 20th day of March, 2012 before the hour of 2:00 p.m. and by first class U.S. Mail delivery before the hour of 4:30 p.m.

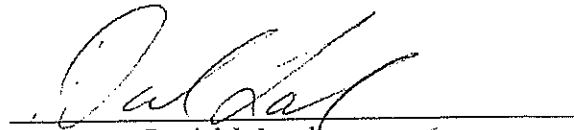
Hon. Richard E. Hart  
Administrative Law Judge  
Hart, Southworth & Witsman  
One North Old State Capitol Plaza, Suite 501  
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Illinois Health Facilities and Services Review  
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Daniel J. Lawler

**Before The  
HEALTH FACILITIES AND SERVICES REVIEW BOARD  
State of Illinois**

HEALTH FACILITIES AND SERVICES )	
REVIEW BOARD, )	
Complainant, )	
v. )	Docket No. HFSRB #11-11
CENTEGRA HEALTH SYSTEM and )	
CENTEGRA HOSPITAL-HUNTLEY, )	
Project No. 10-090 )	
Respondents. )	

**NOTICE OF MOTION**

To: Hon. Richard E. Hart  
Administrative Law Judge  
Hart, Southworth & Witsman  
One North Old State Capitol Plaza, Suite 501  
Springfield, IL 62701-1323  
Ph: 217-753-0055  
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Email: [jourth@arnstein.com](mailto:jourth@arnstein.com)

PLEASE TAKE NOTICE that on March 20, 2012, at 3:00 p.m. or as soon thereafter as counsel may be heard, the respondent Centegra Health System and Centegra Hospital-Huntley shall appear before Judge Richard E. Hart, via telephonic conference and then and there present the attached Notice of Motion and Emergency Motion to (1) Conduct Hearing within Mandatory Statutory Time Limit and (2) Objection to Remand, copies of which are served upon you herewith.

Dated: March 20, 2012

Respectfully submitted,

Centegra Health System and Centegra Hospital-  
Huntley, the Applicants/Respondents

By:   
One of their Attorneys

Daniel J. Lawler  
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70 West Madison Street  
Suite 3100  
Chicago, IL 60602  
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Email: [daniel.lawler@klgates.com](mailto:daniel.lawler@klgates.com)



## CERTIFICATE OF SERVICE

Daniel J. Lawler, an attorney, hereby certifies that he caused the foregoing **Notice of Motion and Emergency Motion to Conduct Hearing Within Mandatory Statutory Time Limit and Refrain from Remanding to the State Board**, to be served upon the following persons by email and this 20th day of March, 2012 before the hour of 3:00 p.m. and by first class U.S. Mail delivery before the hour of 4:30 p.m.

Hon. Richard E. Hart  
Administrative Law Judge  
Hart, Southworth & Witsman  
One North Old State Capitol Plaza, Suite 501  
Springfield, IL 62701-1323  
Ph: 217-753-0055  
Fax: 217-753-1056  
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---

Daniel J. Lawler

# **Exhibit J**

March 23, 2012

Daniel J. Lawler  
D 312.807.4289  
F 312.827.8114  
daniel.lawler@klgates.com

VIA EMAIL AND U.S. MAIL

Honorable Richard E. Hart  
Administrative Law Judge  
Hart, Southworth & Witsman  
One North Old State Capitol Plaza  
Suite 501  
Springfield, IL 62701-1323

**Re: IHFSRB v. Centegra Hospital-Huntley (Project No. 10-090),  
Docket No. IHFSRB #11-11**

Dear Mr. Hart:

Please know that I and my client, the Applicant/Respondent Centegra Health System ("Centegra"), have worked tirelessly over the last two days to reach an accord with Mr. Frank Urso, attorney for the Illinois Health Facilities and Services Review Board ("State Board"), in order to protect Centegra's right to the administrative hearing and avoid a remand to the State Board. Mr. Urso is adamant that he would not agree to anything short of a cancellation of Centegra's hearing and a remand.

I and my colleague, Claire Reed, worked feverishly over the last two days to reach an accord with our opponents, the Intervenor Advocate Health Care and Hospital Corporation ("Advocate") and the Complainant State Board. We spent long hours in good faith negotiations that included a 1½ hour face-to-face meeting with Advocate's counsel, Mr. Joe Ourth and Mr. Hal Morris, at their offices of Arnstein & Lehr LLP in Chicago on Wednesday afternoon (March 21). Ms. Reed and I also had a 1½ hour face-to-face meeting with the State Board's attorneys, Mr. Frank Urso and Mr. Juan Morado, Jr., at their offices in Chicago on Thursday afternoon (March 22). That meeting was also attended by Advocate's counsel (Mr. Ourth and Mr. Morris), Mercy's attorneys (Mr. Steven Hoeft, Ms. Monica Halloran and Mr. Linas Grikis) who were present in person and the State Board's Administrator, Courtney Avery, who participated by telephone.

Though Advocate has aggressively opposed Centegra's project throughout the last 15 months of the proceedings, and though Centegra is convinced that Advocate is wholly responsible for the filing error that is the basis upon which Mr. Urso has requested the cancellation of Centegra's administrative hearing and remand to the State Board, Centegra reached a proposed compromise agreement with Advocate that protected Centegra's interest and Advocate's interest. Since the only two parties with anything at stake had mutually agreed to major compromises, we believed in good faith that this compromise would be

Honorable Richard E. Hart  
March 23, 2012  
Page 2

acceptable to Mr. Urso, especially given that the only two parties who could legitimately object to the record had agreed on how to move forward with the administrative hearing. The terms of the proposed compromise agreement were reduced to writing and are included as "Option 2" on page 3 of "Advocate Health and Hospitals Corporation's Status Report on Alternate Manners to Address Identified Irregularities in the Record" filed in this matter on March 23, 2012. A reproduction of those terms as set forth in this filing is included with this letter as Attachment A.

With the proposed compromise agreement in hand, I, Ms. Reed, Mr. Ourth and Mr. Morris entered the meeting with Mr. Urso and the others on Thursday with the hope and expectation that it would be agreeable to the attorneys for the State Board and Mercy. As noted above, because the matter at hand centers on Centegra's requested administrative hearing and Advocate's misfiled document, and because these two parties had agreed to terms, we saw no reasonable basis for the State Board or Mercy to reject our proposed compromise agreement.

At the meeting at the State Board's offices on Thursday afternoon, Mr. Urso and Mr. Hoefft rejected our proposed compromise agreement out of hand. For the next hour plus, counsel for Centegra and Advocate essentially pleaded and attempted to reason with Mr. Urso to come to some agreement that would allow the administrative hearing before your Honor to proceed and to avoid a remand. Mr. Urso rejected all proposals that did not include a cancellation of Centegra's hearing and administrative remand to the State Board. He took this position in complete disregard of the financial impact upon not one but two health systems that will be forced to bear the exorbitant cost and loss of productivity associated with a return to the Board and the inevitable delay that goes along with it.

The remand insisted upon by Mr. Urso will impose a literally impossible burden on my client Centegra, especially given the precedent it establishes. The basis of Mr. Urso's request for remand is that *one* document in our 11,100 page project file was subjectively intended by its submitter to be filed in another project file before the State Board, and that *one* document filed in the other project file was subjectively intended by its submitter to be filed into the Centegra project file. In response to an inquiry by Mr. Ourth at our meeting on Thursday, Mr. Urso indicated that the relative importance of the misfiled documents had no bearing on the necessity to remand, and that the misfiling of even one single form letter of support or opposition to a project, that was identical to thousands of other form letters, could create incurable error in the record that could compel Mr. Urso to seek a remand of the administrative hearing. Given this precedent, the *only* way Centegra could ever be assured that its record was not, in Mr. Urso's words "incurably tainted", would be to confirm that every single document filed in Centegra's record, and every single document in every other project file before the State Board (which includes tens of thousands of form letters from tens of thousands of submitters), was properly filed in accordance with the subjective intent of the

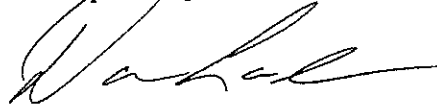
Honorable Richard E. Hart  
March 23, 2012  
Page 3

submitter of each and every document. Mr. Urso was completely indifferent to my plea that the precedent he was establishing on behalf of the State Board imposed a literally impossible burden on Centegra and upon all applicants to come before the Board, and would create uncertainty as to the validity of every action of the State Board since no one could ever be able to know for sure whether or not the Board's decision was based on an incurably tainted record.

Again, I and Centegra did everything within our power and within reason to reach an accord with Mr. Urso, going even to the extent of entering into an agreement with the party that has opposed us so strenuously and aggressively in this 15-month proceeding and that, by your Honor's own acknowledgement at the morning hearing on Monday, March 19th, was the party whose filing mistake is the basis upon which Mr. Urso now proposes to impose greater costs, greater delays, and a literally impossible burden *on Centegra*.

Finally, I note for the record that, to date, the State Board's attorneys have *not* filed a written motion to remand. At our meeting with the State Board's attorneys on Thursday, they indicated that while their "client" wanted a remand, they had only suggested remand to Your Honor as an option, and that it was Your Honor who came to the conclusion to send the matter back to the State Board.<sup>1</sup>

Respectfully submitted,



Daniel J. Lawler

DJL:dp

cc: Frank Urso, attorney for State Board  
Juan Morado Jr., attorney for State Board  
Joe Ourth, attorney for Advocate  
Hal Morris, attorney for Advocate

---

<sup>1</sup> I note for the record, that neither Mr. Urso nor anyone else attending the face-to-face meeting at the State Board's offices on Thursday requested that the discussions remain confidential, nor would such a request have been appropriate especially given that a non-attorney representative of the State Board, Administrator Avery, participated in the meeting by telephone. In addition, Advocate's counsel, Mr. Morris, specifically advised Mr. Urso that he intended to memorialize various proposals discussed at the meeting and present them in writing to your Honor today, and Mr. Urso did not object to the proposed disclosure.

Honorable Richard E. Hart  
March 23, 2012  
Page 4

Steven Hoefft, attorney for Mercy  
Linus Grikis, attorney for Mercy

**Option 2:**

(Initiated by Advocate and Centegra)

1. Document: The Parties would stipulate and agree with respect to only the "Market Assessment and Impact Study – Proposed Centegra – Huntley Hospital (Project 10-090)" that such shall be treated in this matter as if it had been made part of the official record before the Board in the Centegra proceeding Project No. 10-090. The Parties reserve the right to challenge or to object to this or any other document on any other grounds that would otherwise be available to it.
2. Record Before the Board: The Parties would stipulate and agree that the "Market Assessment and Impact Study – Proposed Centegra-Huntley Hospital (Project 10-090)" was not before the Board as part of the official record in the Centegra proceeding, Project 10-090. The Market Assessment was before the Board as part of the official record in the Mercy Crystal Lake Hospital proceeding, Project 10-089.
3. Resumption/Rescheduling of Hearing: The Parties would stipulate and agree that the Centegra hearing would be scheduled after a short continuance to mutually agreeable dates during the week of April 2, 2012 (subject to confirmation).
4. No Adverse Inference: The Parties would stipulate and agree that no party shall comment on and the Parties agree that the Hearing Officer shall make no adverse inference based on these agreements.
5. Status if Remanded: The Parties agree that if the matter is remanded to the Review Board prior to the conclusion of the requested administrative hearing in this matter, the above stipulations and agreements are null and void.

# **Exhibit K**



March 30, 2012

VIA EMAIL AND FIRST CLASS MAIL

Daniel J. Lawler  
D 312.807.4289  
F 312.827.8114  
daniel.lawler@klgates.com

Honorable Richard E. Hart  
Administrative Law Judge  
Hart, Southworth & Witsman  
One North Old State Capitol Plaza  
Suite 501  
Springfield, IL 62701-1323

Re: Centegra Health System, Project No. 10-090  
**Docket HFSRB #11-11**

Dear Mr. Hart:

The applicants/respondents Centegra Health System and Centegra Hospital-Huntley (collectively "Centegra") continue to object to an order of remand and continue to assert their statutory right that the administrative hearing on Centegra Health System, Project No. 10-090, Docket HFSRB #11-11 "be completed within a reasonable period of time, but not to exceed 90 days, except for delays or continuances agreed to by the person requesting the hearing." 20 ILCS 3960/10.

During a number of the telephonic hearings on this matter there have been discussions as to when the 90-day component of the statutory deadline expired. The State Board's General Counsel, Mr. Frank Urso, has said several times that the State Board counts the days from the date that the applicants request the hearing. As discussed during the telephonic hearing on March 20, 2012, Centegra requested the hearing in a letter dated December 20, 2011, and 90-days from that date was March 19, 2012.

Neither the Illinois Health Facilities Planning Act ("Planning Act") nor the State Board's rules state when the 90-day period commences. However, the Planning Act does specifically state that once a hearing is requested, the State Board has 30 days to schedule an initial hearing and, within that same 30-day time period, the Director of the Department of Public Health, shall appoint a hearing officer. *Then* the Planning Act states that the hearing officer shall ensure that the hearing is completed within 90 days except for delays or continuances agreed to by the person requesting the hearing. Section 10 of the Planning Act provides:

"The State Board shall schedule a hearing, and the Director shall appoint a hearing officer within 30 days thereafter. The hearing officer shall take actions necessary to ensure that the hearing is completed within a reasonable period of

Honorable Richard E. Hart  
March 30, 2012  
Page 2

time, but not to exceed 90 days, except for delays or continuances agreed to by the person requesting the hearing.”

20 ILCS 3960/10.

This provision of the Planning Act reflects a legislative intent that the hearing officer have a full 90-days to complete the administrative hearing, which means that the 90-day period would commence from the time the Director of IDPH provides notice of the hearing officer’s appointment and the State Board schedules the initial hearing (which actions must be completed within 30-days of the applicant’s request for hearing).

The State Board received notice from IDPH of the hearing officers appointment on January 5, 2012 and on January 17, 2012, the State Board scheduled the initial pre-hearing conference for February 23, 2012. The 30-day statutory period for the completion of these two acts ended on January 19, 2012, which would appear to be the *latest* date that would commence the 90-day period for completion of the administrative hearing. Ninety days from January 19, 2012 is Wednesday, April 18, 2012.

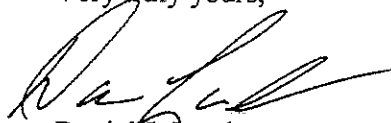
For the above reason, there is a reasonable argument that, under the provisions of Section 10 of the Planning Act, your Honor has until April 18, 2012 to complete this administrative hearing. In order to avoid the expense and delay of potential litigation to protect its statutory right to the requested administrative hearing, Centegra would agree to the scheduling and completion of the evidentiary hearing on April 5 and April 6, 2012 or any two consecutive days from April 16 to April 18, 2012. (Centegra’s key participants for the hearing will be out of the country the week of April 9.) But we must know by noon on Tuesday, April 3, 2012, whether or not Centegra’s requested hearing will be conducted and completed on the referenced days.

By proposing hearing dates by April 18, 2012, Centegra does not waive its objections to having the March 22-23, 2012 hearing cancelled and delayed without Centegra’s consent based upon matters first raised in *ex parte* communications from the State Board’s attorneys. We are proposing these dates because Centegra believes that a

Honorable Richard E. Hart  
March 30, 2012  
Page 3

circuit court judge could reasonably find that your Honor has until April 18, 2012 to complete the hearing based on the above provisions of the Planning Act.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Lawler", written over a horizontal line.

Daniel J. Lawler  
Attorney for Centegra  
Applicants/Respondents

DJL:dp

cc: Mr. Frank Urso, Mr. Juan Morado Jr.  
Mr. Joe Ourth, Mr. Hal Morris  
Mr. Steven Hoeft  
Mr. Linas Grikis

# **Exhibit L**



- ◀ News
- ◀ Sports
- ◀ Business
- ◀ Entertainment/Lifestyles
- ◀ Editorials/Letters/Columns
- ◀ Obituaries/Death Notices
- ◀ Classifieds
- ◀ Contact Information
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- ◀ Southtown Home



## SOUTH

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### Hospitals left scratching their heads

Unknown what vote means for Orland plans

*Thursday, April 22, 2004*

By Alice Hohl  
Staff writer

A strange turn of events at the Illinois Health Facilities Planning Board on Wednesday has stoked fears the board — which will decide the fate of two Orland Park hospital plans in June — is being politicized.

On Wednesday, the board narrowly approved Illinois' first new hospital in almost 25 years — a 70-bed hospital to open in 2006 as Mercy Crystal Lake Hospital and Health Center.

The board turned down two hospitals proposed for Plainfield and Bolingbrook, saying they did not meet state criteria.

The Crystal Lake plan, put forth by Mercy Health System, was unanimously rejected in December.

It won approval on a 4-to-3 vote Wednesday, with one pass, after several speeches and developments that left health care professionals in the audience puzzled.

Board members spoke of the board's power to ignore state criteria. They whispered in conferences during the vote, and one board member changed his mind after seeing the votes of his peers.

Those for and against the two proposed hospitals in the Orland Park/Tinley Park

Interstate 80 corridor came to the hearing and watched closely for signs of what to expect in June, when their proposals come before the board.

Stunned by what unfolded, hospital executives did not want to comment on the "irregularities" because many of them have projects pending before the board.

In December, the board denied Mercy's Crystal Lake proposal. Hospital planners had a chance to modify their plans to meet state standards. Those guidelines are intended to keep health care costs down by regulating the number and cost of new facilities.

On Wednesday, some of the board's eight members expressed concern about Mercy's system of hospitals. Mercy Alliance Inc. is the parent company of Mercy Health System, which operates 49 facilities in 21 Illinois communities. Mercy directly employs all the physicians and specialists who practice there.

Others were concerned the hospital didn't propose at least 100 medical-surgical beds — the minimum by state standards for establishing a new full-service hospital in the area. Mercy also proposed a hospital in an area, fast-growing McHenry County, that has too many licensed beds already, according to state calculations.

It appeared the proposal would be turned down again until board chairman Thomas Beck signaled his support.

Also supporting the proposal was Stuart Levine.

Levine and Beck are the only two members who have served on the board before the election of Democratic Gov. Rod Blagojevich.

In the middle of the vote, the roll call was halted as Beck and Levine whispered to each other. Levine then approached Dr. Imad Alamanseer, who had voted "pass" instead of "yes" or "no." After another whispered conversation between Levine and Alamanseer, Alamanseer changed his "pass" to "yes," providing the vote needed to pass the project.

Asked after the meeting about what happened, Alamanseer said, "I was convinced that there was merit to the project; I just wanted to see how the others would view the project."

Another board member, Pamela Orr, who's new to her post, left the meeting during discussion of the Crystal Lake project. When she returned, she decided to pass on the Crystal Lake vote.

The overall vote crystallized competing philosophies on the board.

The board's assistant legal counsel, David Carvalho, has tried to push the new board members toward a strict reading of state regulations, asking the board members to adhere to existing standards and avoid approving projects that do not meet those standards.

Carvalho said approving new facilities in areas where too many licensed beds already exist is unfair to those health care facilities who "sit on the sidelines" waiting to propose

projects until existing beds are filled.

"It makes it difficult for the board going forward," Carvalho said.

Beck and Levine said they disagree and value the board's freedom.

During the meeting, the two joked about "the old days" when they approved projects bearing all negative staff recommendations and turned down projects that met each and every criterion.

"You never know what we're going to do," Beck said.

Sources said parties with projects that come before the board are concerned Beck and Levine — a politically connected member who formerly served on the Illinois Gaming Board — will take control and leave board decisions vulnerable to lobbyists.

Political powerbrokers including Jeff Ladd and David Wilhelm are representing some of the major players with desires to build hospitals in affluent, high-growth areas.

Also Wednesday, Beck announced the board's newest member will be Bernard Weiner, who has previously served on the Health Facilities Planning Board with Beck and Levine. He's been a contributor to the campaigns of Republicans Lee Daniels and George Ryan.

The power balance on the board is particularly crucial because four more hospital proposals are pending and the board is in the midst of rewriting its rules and standards.

Naperville-based Edward Hospital's plan for Plainfield, denied on a 7-to-1 vote, and Adventist Health System's plan for Bolingbrook, denied by unanimous vote, can be brought back to the board for reconsideration.

The proposals by St. Francis Hospital to build a new hospital at LaGrange Road and 171st Street and by Advocate to build a new hospital at LaGrange Road and 179th Street will be considered at the board's June 16 meeting in Chicago.

*Southtown health writer*

*Alice Hohl may be reached at [ahohl@dailysouthtown.com](mailto:ahohl@dailysouthtown.com) or (708) 633-5993.*

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# **Exhibit M**





OFFICE OF THE GOVERNOR  
207 STATE CAPITOL, SPRINGFIELD, ILLINOIS 62706

ROD BLAGOJEVICH  
GOVERNOR

ADMINISTRATIVE ORDER

Number 1 (2004)  
July 7, 2004

**MORATORIUM ON ALL BUSINESS OF THE  
HEALTH FACILITIES PLANNING BOARD**

Pursuant to its authorizing legislation, "[t]he State [Health Facilities Planning] Board shall meet at least once each quarter, or as often as the Chairman of the State Board deems necessary, or upon the request of a majority of the members." 20 ILCS 3960/4 (West 2004). The Board most recently met on June 15 and June 16, 2004. In light of recent allegations concerning the propriety of certain Board actions, the Governor hereby imposes a moratorium on all meetings and actions of the Board until the Board is reconstituted by law.

Any questions regarding the implementation of this Order should be directed to the Governor's Office.

# **Exhibit N**

Public Act 093-0889

HB7307 Enrolled

LRB093 22682 AMC 52334 b

AN ACT concerning executive agencies.

Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:

Section 5. The Illinois Health Facilities Planning Act is amended by changing Sections 4, 4.2, and 19.6 as follows:

(20 ILCS 3960/4) (from Ch. 111 1/2, par. 1154)

(Section scheduled to be repealed on July 1, 2008)

Sec. 4. Health Facilities Planning Board; membership; appointment; term; compensation; quorum. There is created the Health Facilities Planning Board, which shall perform the functions described in this Act.

The State Board shall consist of 5 voting members. Each member shall have a reasonable knowledge of health planning, health finance, or health care at the time of his or her appointment. No person shall be appointed or continue to serve as a member of the State Board who is, or whose spouse, parent, or child is, a member of the Board of Directors of, has a financial interest in, or has a business relationship with a health care facility.

Notwithstanding any provision of this Section to the contrary, the term of office of each member of the State Board is abolished on the effective date of this amendatory Act of the 93rd General Assembly and those members no longer hold office.

~~Notwithstanding any provision of this Section to the contrary, the term of office of each member of the State Board is abolished on the effective date of this amendatory Act of the 93rd General Assembly, but all incumbent members shall continue to exercise all of the powers and be subject to all of the duties of members of the State Board until all new members of the 9-member State Board authorized under this amendatory Act of the 93rd General Assembly are appointed and take office. Beginning on the effective date of this amendatory Act of the 93rd General Assembly, the State Board shall consist of 9 voting members.~~

The State Board shall be appointed by the Governor, with the advice and consent of the Senate. Not more than 3 ~~5~~ of the appointments shall be of the same political party at the time of the appointment. No person shall be appointed as a State Board member if that person has served, after the effective date of Public Act 93-41 ~~this amendatory Act of the 93rd General Assembly~~, 2 ~~3~~-year terms as a State Board member, except for ex officio non-voting members.

The Secretary of Human Services, the Director of Public Aid, and the Director of Public Health, or their designated representatives, shall serve as ex-officio, non-voting members of the State Board.

Of those members initially appointed by the Governor under this amendatory Act of the 93rd General Assembly, 2 shall serve

~~for terms expiring July 1, 2005, 2 shall serve for terms expiring July 1, 2006, and 1 shall serve for a term expiring July 1, 2007. Of those members initially appointed by the Governor under this amendatory Act of the 93rd General Assembly, 3 shall serve for terms expiring July 1, 2004, 3 shall serve for terms expiring July 1, 2005, and 3 shall serve for terms expiring July 1, 2006.~~ Thereafter, each appointed member shall hold office for a term of 3 years, provided that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term and the term of office of each successor shall commence on July 1 of the year in which his predecessor's term expires. Each member appointed after the effective date of this amendatory Act of the 93rd General Assembly shall hold office until his or her successor is appointed and qualified.

State Board members, while serving on business of the State Board, shall receive actual and necessary travel and subsistence expenses while so serving away from their places of residence. A member of the State Board who experiences a significant financial hardship due to the loss of income on days of attendance at meetings or while otherwise engaged in the business of the State Board may be paid a hardship allowance, as determined by and subject to the approval of the Governor's Travel Control Board.

The Governor shall designate one of the members to serve as Chairman and shall name as full-time Executive Secretary of the State Board, a person qualified in health care facility planning and in administration. The Agency shall provide administrative and staff support for the State Board. The State Board shall advise the Director of its budgetary and staff needs and consult with the Director on annual budget preparation.

The State Board shall meet at least once each quarter, or as often as the Chairman of the State Board deems necessary, or upon the request of a majority of the members.

~~Three~~ Five members of the State Board shall constitute a quorum. The affirmative vote of ~~3~~ 5 of the members of the State Board shall be necessary for any action requiring a vote to be taken by the State Board. A vacancy in the membership of the State Board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the State Board as provided by this Act.

A State Board member shall disqualify himself or herself from the consideration of any application for a permit or exemption in which the State Board member or the State Board member's spouse, parent, or child: (i) has an economic interest in the matter; or (ii) is employed by, serves as a consultant for, or is a member of the governing board of the applicant or a party opposing the application.

(Source: P.A. 93-41; eff. 6-27-03.)

(20 ILCS 3960/4.2)

(Section scheduled to be repealed on July 1, 2008)

Sec. 4.2. Ex parte communications.

(a) Except in the disposition of matters that agencies are authorized by law to entertain or dispose of on an ex parte basis including, but not limited to rule making, the State Board, any State Board member, employee, or a hearing officer shall not engage in ex parte communication, ~~after an~~

~~application for a permit is received~~, in connection with the substance of any pending or impending application for a permit with any person or party or the representative of any party. This subsection (a) applies when the Board, member, employee, or hearing officer knows, or should know upon reasonable inquiry, that the application is pending or impending.

(b) A State Board member or employee may communicate with other members or employees and any State Board member or hearing officer may have the aid and advice of one or more personal assistants.

(c) An ex parte communication received by the State Board, any State Board member, employee, or a hearing officer shall be made a part of the record of the ~~pending~~ matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.

(d) "Ex parte communication" means a communication between a person who is not a State Board member or employee and a State Board member or employee that reflects on the substance of a pending or impending State Board proceeding and that takes place outside the record of the proceeding. Communications regarding matters of procedure and practice, such as the format of pleading, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications. Technical assistance with respect to an application, not intended to influence any decision on the application, may be provided by employees to the applicant. Any assistance shall be documented in writing by the applicant and employees within 10 business days after the assistance is provided.

(e) For purposes of this Section, "employee" means a person the State Board or the Agency employs on a full-time, part-time, contract, or intern basis.

(f) The State Board, State Board member, or hearing examiner presiding over the proceeding, in the event of a violation of this Section, must take whatever action is necessary to ensure that the violation does not prejudice any party or adversely affect the fairness of the proceedings.

(g) Nothing in this Section shall be construed to prevent the State Board or any member of the State Board from consulting with the attorney for the State Board.

(Source: P.A. 91-782, eff. 6-9-00; revised 1-28-04.)

(20 ILCS 3960/19.6)

(Section scheduled to be repealed on July 1, 2008)

Sec. 19.6. Repeal. This Act is repealed on July 1, 2006  
2008.

(Source: P.A. 93-41, eff. 6-27-03.)

Section 10. The Lobbyist Registration Act is amended by changing Section 8 as follows:

(25 ILCS 170/8) (from Ch. 63, par. 178)

Sec. 8. Contingent fees prohibited.

No person shall retain or employ another to lobby with respect to any legislative, executive, or administrative action ~~promote or oppose legislation~~ for compensation contingent in whole or in part upon the outcome of the action ~~passage or defeat of any legislation, or the approval or veto~~

~~of any legislation by the Governor, and no person shall accept any such employment or render any such service for compensation contingent upon the outcome of the legislative, executive, or administrative action passage or defeat of any legislation or the approval or vote of any legislation by the Governor.~~  
(Source: P.A. 76-1848.)

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

Effective Date: 8/9/2004

Floor Actions

Date	Action
8/9/2004	Public Act.....093-0889

# **Exhibit O**



U. S. Department of Justice

*United States Attorney  
Northern District of Illinois  
Federal Building*

*Patrick J. Fitzgerald  
United States Attorney*

*219 South Dearborn Street, Fifth Floor  
Chicago, Illinois 60604  
(312) 353-5300*

FOR IMMEDIATE RELEASE  
MONDAY MAY 9, 2005

PRESS CONTACT:  
Randall Samborn (312)353-5318  
U.S. Attorney's Office

**LEVINE, KIFERBAUM AND HURTGEN INDICTED ON FRAUD CHARGES  
ALLEGING KICKBACKS, INFLUENCE-PEDDLING AND INSIDER-DEALING**

**Hospital projects in McHenry and Will counties subjected to pay-to-play scheme**

CHICAGO— Three Chicago area executives -- one of them a former member of the Illinois Health Facilities Planning Board, which controls medical facility construction projects in Illinois, and one a managing director of Bear Stearns & Co., an investment firm that arranges financing for public works projects in Illinois -- were indicted on federal charges for allegedly engaging in insider-dealing, influence-peddling, kickbacks and corruption involving their private interests and public duties, federal officials announced today. One defendant, **Stuart Levine**, a lawyer and businessman, allegedly engaged in a fraud scheme to obtain a total of at least \$9.5 million for himself and certain associates, while the other two defendants, **Jacob Kiferbaum**, an architect and construction firm executive, and **P. Nicholas Hurtgen**, a lawyer and investment banker, allegedly participated in the same fraud scheme to obtain multi-million dollar contracts for their businesses through construction kickbacks or other fraudulent deals. Levine and Hurtgen were arrested this morning by federal agents. Kiferbaum is cooperating with the investigation and was not arrested. All three were charged with various counts of fraud and extortion in a 28-count indictment that was returned by a



federal grand jury last Wednesday and unsealed today, announced Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois.

Levine, 59, of Highland Park, and Hurtgen, 42, of Glencoe, were expected to be arraigned later today in U.S. District Court in Chicago. Kiferbaum, 52, also of Glencoe, will be arraigned at a later date. Through his attorney, Kiferbaum has authorized the government to disclose that he is cooperating in the investigation.

The indictment identifies the defendants, with the charges against each, as follows:

**Stuart Levine** – 19 counts of mail fraud, 4 counts of wire fraud, 2 counts of misapplication of funds, 2 counts of money laundering and one count of extortion – a businessman whose interests included S.L. Investment Enterprises, L.P., and a former member of the Illinois Health Facilities Planning Board (Planning Board), a state commission appointed by the Governor that grants or denies a permit, known as a “Certificate of Need” (CON), to build hospitals, physician offices or other medical facilities statewide. Levine was also a member of the board of trustees of Rosalind Franklin University of Medicine and Science, formerly known as Finch University of Health Sciences/Chicago Medical School (Chicago Medical School or CMS) in North Chicago, and he was chairman of its real estate committee. He was also a trustee of the Northshore Supporting Organization (NSO), a charitable trust that supported Chicago Medical School;

**Jacob Kiferbaum** – 16 counts of mail fraud, 3 counts of wire fraud, 2 counts of misapplication of funds and one count of extortion – chief executive officer of KCC Group Design + Build, Inc., formerly known as Kiferbaum Construction Corp., of Deerfield. Kiferbaum was also a trustee of Chicago Medical School; and

**P. Nicholas Hurtgen** – 3 counts of mail fraud, 3 counts of wire fraud and 1 count of extortion – formerly senior managing director in the Chicago office of Bear Stearns & Co., an investment bank that did business and sought to do business with the State of Illinois, Edward Hospital in Naperville, part of Edward Health Services Corp., and Mercy Health System Corp., of Janesville, Wis.

The indictment also seeks forfeiture from Levine alone of approximately \$9.5 million as proceeds of the alleged fraud, and approximately \$1 million in alleged money laundering proceeds, as well as his residence at 57 South Deere Park Dr., Highland Park, and a residence in Weston, Fla.

The indictment alleges that Levine, Hurtgen and Kiferbaum engaged in a fraud scheme between early 2001 through at least June 2004 to defraud Chicago Medical School, NSO, the Planning Board and the State of Illinois of money and the honest services of Levine and Kiferbaum in connection with four construction projects and a fraudulent transaction involving \$6 million belonging to the charity.

According to the indictment, the fraud scheme included the following fraudulent transactions:

**Edward Hospital:** Levine, Kiferbaum and Hurtgen agreed that they would use Levine's position on the Planning Board to attempt to force Edward Hospital to hire Kiferbaum's company to build a \$90 million hospital and \$23 million medical office building in Plainfield, by threatening Edward Hospital representatives that the Planning Board would not approve those projects unless Kiferbaum was hired to build them. Hurtgen assisted in the scheme because he wanted his employer, Bear Stearns, to receive the financing work from the new Edward hospital.

Hurtgen agreed to introduce Kiferbaum to the CEO of Edward Hospital. As a result of Kiferbaum's recent prior dealings with Levine, Kiferbaum understood that Levine would direct him to provide a kickback. According to the indictment, in mid-December 2003, Hurtgen called Edward's CEO and said that the hospital should postpone its application before the Planning Board on Dec. 17 to allow time to hire Kiferbaum if it wanted to have its CON approved; otherwise, it would be denied – which, in fact, is what occurred at the Dec. 17 meeting. Although Levine was barred from *ex parte* communications with Edward representatives about its pending application, on Dec. 23, 2003, Hurtgen and Kiferbaum met with Edward's CEO to attempt to force the hiring of Kiferbaum's company. On Jan. 8, 2004, Hurtgen met again with the CEO and also Edward's project administrator. The defendants were unaware that the hospital officials were cooperating with the FBI at the time of those meetings. In explaining his role in persuading Edward officials to hire Kiferbaum's company, Hurtgen said that Bear Stearns would finance the hospital if it was approved, the indictment alleges. During the January meeting, Hurtgen said he might be able to arrange a situation in which Levine would inadvertently bump into the CEO and Hurtgen in response to the CEO's request for proof that the threats and promises were real. After further discussions among various parties related to proving that Levine and Hurtgen knew each other and were talking, Levine and Hurtgen went to a restaurant in Deerfield on April 18, 2004, to prove to the CEO that Levine, Hurtgen and Kiferbaum were working together and that their threats and promises were real. Levine and Hurtgen walked over to the table where Kiferbaum and the CEO were sitting. Levine said that he was the board chairman of CMS and

that Kiferbaum had done a project for them, adding that Kiferbaum is a person who could be relied upon and whose word could be depended on, according to the indictment. At the April 21 Planning Board meeting, Edward had not hired Kiferbaum and, with Levine voting against the project, its Plainfield hospital application was denied;

**CMS addition – \$1 million kickback from Kiferbaum at direction of Levine:** In connection with an \$18 million contract in the summer of 2001 for Kiferbaum's company to build an addition to CMS, Levine and Kiferbaum agreed that Kiferbaum would include an extra \$1 million for Levine in the cost of the project. Kiferbaum then paid approximately \$700,000, at Levine's direction, to a business operated by Individual 2, an attorney and CEO of a consulting company in Chicago. Levine and Kiferbaum later agreed that the remaining amount would be paid to a company operated by Individual 1, a medical doctor and businessman who shared a business suite with Levine, and who was also a trustee of CMS and NSO. Levine and Kiferbaum did not disclose to CMS the nature or purpose of the additional costs to CMS, nor did they disclose that Levine was directing the payment of CMS funds, or that Individuals 1 and 2 had agreed to receive them. Levine, Kiferbaum and Individuals 1 and 2, used sham marketing and consulting contracts to conceal the fraudulent nature of the diversion, and the planned diversion, of CMS funds to Individuals 1 and 2;

**CMS student housing – \$1 million kickback from Kiferbaum at direction of Levine:** In connection with a \$22 million contract in the summer of 2002 for Kiferbaum's company to build a student dormitory for CMS, Levine and Kiferbaum agreed that Kiferbaum would include an extra \$1 million for Levine in the cost of the project. Kiferbaum then paid the money, at Levine's direction, in the form of a \$628,000 check on Dec. 12, 2002, and a \$372,000 check on March 13, 2003, to Individual 3, a European businessman who maintained financial accounts in Chicago. Levine and Kiferbaum did not disclose to CMS the nature or purpose of the additional costs to CMS, nor did they disclose that Levine was directing the payment of CMS funds. Levine and Kiferbaum concealed the fraudulent nature of the diversion of CMS funds to Individual 3 through the use of a sham marketing contract;

**Diversion of \$6 million by Levine from NSO:** On July 19, 2002, Levine caused NSO to lend \$3 million to his company, S.L. Investment Enterprises, and \$3 million to a company controlled by Individual 1, and then arranged to have both loans forgiven without repayment. Each company executed promissory notes requiring them to repay NSO after 20 years, with an annual interest rate of 7.5 percent, resulting in each company owing NSO approximately \$12.5 million at that time. On Dec. 1, 2002, Levine and Individual 1 signed promissory notes substituting themselves as the borrowers. Levine then used his position as an NSO trustee to

arrange for NSO to "donate" the notes to CMS in a sealed envelope and with the condition that CMS would immediately sell the notes to Individual 3 for \$1 million, which was the amount of the kickback that Levine and Kiferbaum fraudulently obtained from CMS in building the student dormitory and diverted to Individual 3. After purchasing the notes from CMS for \$1 million, Individual 3 transferred them to Levine and Individual 1 as "gifts," thus freeing Levine and Individual 1 from any obligation to repay the \$6 million that they had purportedly borrowed from NSO. As a result, Levine fraudulently obtained \$3 million for himself, and \$3 million for Individual 1, through the use of the \$1 million that was fraudulently obtained from CMS by Levine and Kiferbaum; and

**Mercy Hospital - \$1.5 million kickback from Kiferbaum to Levine:** Levine solicited a kickback of approximately \$1.5 million from Kiferbaum relating to the construction of Mercy Hospital's \$49 million Crystal Lake facility. Kiferbaum agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date. Levine used his influence with the Planning Board to ensure that Mercy Hospital received approval of its application to build the Crystal Lake hospital after hiring Kiferbaum's company. In voting for, and influencing other Planning Board members to vote for, Mercy's application, Levine concealed from the Planning Board his financial arrangement or contacts with Kiferbaum. After the Planning Board voted to approve Mercy's application on April 21, 2004, Levine reported to Individual 1 that hiring Kiferbaum did it for Mercy. When Levine told Kiferbaum that no one really knew that Levine was orchestrating the approval, Kiferbaum said he could not thank Levine enough, and Levine said they were in this together. Levine directed that Kiferbaum pay the kickback proceeds to Individual 1 pursuant to a sham consulting contract for \$1,728,000, which included the \$1.5 million kickback that Levine had solicited and \$228,000 that Kiferbaum still owed from the CMS addition kickback. On May 1, 2004, Levine told Individual 1 that other people knew that Mercy received its CON because of the combination of Kiferbaum, Hurtgen and a law firm and that this information would spread like wildfire.

Mr. Fitzgerald announced the charges with Robert D. Grant, Special Agent-in-Charge of the Chicago Office of the Federal Bureau of Investigation; Kenneth T. Laag, Inspector-in-Charge of the U.S. Postal Inspection Service; James Vanderberg, Special Agent-in-Charge of the U.S. Department of Labor Office of Inspector General in Chicago; and Byram Tichenor, Special Agent-in-Charge of the Internal Revenue Service Criminal Investigation Division in Chicago. The U.S. Attorney's

Office in Milwaukee also cooperated with the investigation, and the investigation is continuing, the officials said.

“Individuals who serve on public boards or boards of private institutions and charities must serve the interests of the public or the institution and not steal for themselves,” Mr. Fitzgerald said. “Beyond owing basic duties of honesty and integrity, hospital Planning Board members play an important role in providing access to health care while containing costs. The indictment charges that Levine instead sold out his duties and gave out state approvals and hospital contracts on the basis of ‘who you know’ and worse, ‘who you pay,’” he added.

The government is being represented by Assistant U.S. Attorneys Jacqueline Stern, Christopher Niewoehner, Kaarina Salovaara and James Barz.

Upon conviction, the charges alleged in the indictment carry the following maximum penalties on each count: mail fraud, wire fraud and extortion – 20 years in prison and a \$250,000 fine; and misapplication of government funds – 10 years and a \$250,000 fine. One of the money laundering counts carries a maximum prison term of 20 years and the other count a maximum of 10 years, and both carry a maximum fine of \$500,000 or twice the amount of the money involved in the transaction. As an alternative maximum fine, the Court could impose a fine of twice the gross profit to any defendant or twice the loss to any victim. The Court, however, would determine the appropriate sentence to be imposed.

The public is reminded that an indictment contains only charges and is not evidence of guilt. The defendants are presumed innocent and are entitled to a fair trial at which the government has the burden of proving guilt beyond a reasonable doubt.

###

# **Exhibit P**

# The Illinois Task Force on Health Planning Reform

Pursuant to  
Public Act 095-0005

**Co-chairs:**

Senator Susan Garrett, *Co-Chair*

Representative Lisa Dugan, *Co-Chair*

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**Illinois Task Force on Health Planning Reform Members**

**Committee Members**

<b>Member</b>	<b>Affiliation</b>
Sen. Susari Garrett, Co-Chair	State Senate (D)
Rep. Lisa Dugan, Co-Chair	State House of Representatives (D)
Gary Barnett	Sara Bush Lincoln Health Center
Kenneth Robbins	Illinois Hospital Association
Jay Doherty	City Club of Chicago
Sister Sheila Lyne	Mercy Hospital and Medical Center
Hal Ruddick	SEIU Local #4
Donna Thompson	Access Community Health Network
Sen. Pamela Althoff	State Senate (R)
Sen. Bill Brady	State Senate (R)
Rep. Louis Lang	State House of Representatives (D)
Rep. Brent Hassert	State House of Representatives (R)
Rep. Renée Kosel	State House of Representatives (R)
Claudia Lenhoff	Champaign County Health Care Consumers
William McNary	Citizen Action Illinois
Heather O'Donnell	Center for Tax and Budget Accountability
Margie Schaps	Health and Medicine Policy Research Group
Lisa Madigan represented by Paul Gaynor	Office of the Attorney General
Vacancy	State Senate (D)

**Ex-Officio Members**

<b>Member</b>	<b>Affiliation</b>
Secretary Carol Adams represented by Dr. Myrtis Sullivan	Illinois Department of Human Services
Director Damon T. Arnold represented by David Carvalho	Illinois Department of Public Health
Director Barry Maram, and designee Mike Jones	Illinois Department of Healthcare and Family Services
Executive Secretary Jeffrey S. Mark	Illinois Health Facilities Planning Board
Ginger Ostro	Governor's Office of Management and Budget

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# Memorandum

December 31, 2008

to: Members, Illinois House of Representative  
Members, Illinois Senate

from: Senator Susan Garrett, *Co-Chair*  
Representative Lisa Dugan, *Co-Chair*

re: **Illinois Task Force on Health Planning Reform**

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This document is the final report of the **Task Force on Health Planning Reform** ("Task Force") required by Senate Bill 244 (PA 95-0005) of the 95<sup>th</sup> General Assembly. Senate Bill 244 amended the Illinois Health Facilities Planning Act to create a 19-member Task Force to evaluate the current "Certificate of Need" (CON) program and recommend changes to the structure and function of both the Illinois Health Facilities Planning Board and the Illinois Department of Public Health (IDPH) in the review of applications to establish, expand, or modify health facilities and related capital expenditures.

The Task Force met 14 times to meet our goals, with the final 3 meetings focused on developing a consensus on the recommendations. On December 19, 2008, the Task Force voted 12 to 1 to approve the attached final recommendations. With one dissenting opinion, a minority report has been provided to the Task Force (see Appendix A).

The Task Force determined its main reform goal as follows:

The State of Illinois will promote the distribution of health care services and improve the healthcare delivery system in Illinois by establishing a statewide comprehensive plan and ensuring a predictable, transparent and efficient CON process.

In order to meet this goal, the Task Force recommends the establishment of a Statewide Comprehensive Health Plan, as well as reforms to the Illinois Health Facilities Planning Board, in order to increase the efficiency and effectiveness of both overall health planning and the CON process. The Comprehensive Health Plan will comprehensively address health and mental health services, to specifically focus on identifying health disparities, identifying state-level and regional needs, and determining the impact of market forces on access to high quality services for uninsured and underinsured residents. Cost containment and support for safety net services will continue to be tenets of the CON process. The process will lead to evidence-based assessments, projections and decisions applied to capacity, quality, value and equity in health care delivery. Further, the CON Process will result in written and consistent decisions based on the Comprehensive Health Plan, as well as other plans recommended by the Center for Comprehensive Health Planning, a new unit to be established under IDPH. In addition, the integrity of the CON Process will be insured through revised structure and policies, including the introduction of a Special Nomination Panel for the CON Board membership, along with improved ethics and communications procedures.

The **Illinois Health Facilities Planning Act** (20 ILCS 3960, et seq.) became effective in 1974. It created a 13-member **Illinois Health Facilities Planning Board** ("CON Board") to review the

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

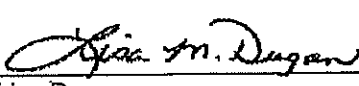
In response, the 95<sup>th</sup> General Assembly enacted House Resolution 1497, which required the Legislative Commission on Government Forecasting & Accountability to conduct a comprehensive evaluation of the Illinois Health Facilities Planning Act, including a review of the performance of the Illinois Health Facilities Planning Board. The Commission contracted with the Lewin Group to conduct the evaluation. Their subsequent report, entitled "An Evaluation of Illinois' 'Certificate of Need' Program" was submitted in February 2007 and had 6 main recommendations, including "the Illinois legislature continue the 'Certificate-of-Need' program with an abundance of caution."

The Lewin Group recommendations were the catalyst for the creation of this Task Force, which began a long and deliberative process on January 31, 2008. The Task Force engaged in a course of action to review the health planning process in an open and impartial fashion. As testimony was received and discussed, it became evident that Illinois needed the safeguards in place which are afforded by the regulated health facility planning process, and an initial decision was made to maintain the CON process. From then on, the Task Force focused on how to restructure the process. The principle findings outlined in this report stem from the intent of the Task Force to streamline the CON process, take significant steps toward transparency, and unite comprehensive health planning and health facility efforts for statewide gains.

The Task Force urges the General Assembly to implement its recommendations to establish and implement a Statewide Comprehensive Health Plan, as well as to reform the Certificate of Needs process. We believe that the overall changes included in the recommendations will have the effect of rejuvenating and insulating the Illinois Health Facilities Planning Board. Our work concluded on December 31, 2008 and any proposed reforms are due to be implemented by July 1, 2009, which corresponds to the sunset date for the CON program in House Bill 5017. The Task Force expects to be available to the 96<sup>th</sup> General Assembly for the legislative implementation of these recommendations. A complete record of the Task Force activities is available on the Illinois Department of Public Health website.

Signers,

  
\_\_\_\_\_  
Susan Garrett  
Illinois State Senator

  
\_\_\_\_\_  
Lisa Dugan  
Illinois State Representative

## **Introduction**

This document is the final report of the **Task Force on Health Planning Reform** ("Task Force") required by Senate Bill 244 (PA 95-0005) of the 95<sup>th</sup> General Assembly. Senate Bill 244 amended the Illinois Health Facilities Planning Act to create a 19-member Task Force to evaluate the current "Certificate of Need" (CON) program and recommend changes to the structure and function of both the Illinois Health Facilities Planning Board and the Illinois Department of Public Health (IDPH) in the review of applications to establish, expand, or modify health facilities and related capital expenditures. The Task Force concluded its work on December 31, 2008 and any proposed reforms are due to be implemented by July 1, 2009. A complete record of the Task Force activities is available on the Illinois Department of Public Health website (see Appendix C for further information).

## **Background**

The **Illinois Health Facilities Planning Act** (20 ILCS 3960, et seq.) became effective in 1974. It created a 13-member **Illinois Health Facilities Planning Board** ("CON Board") to review the necessity of capital expenditures for the establishment or modification of health facilities and the procurement of medical equipment. Entities subject to the Act include licensed and state-operated: hospitals; long-term care facilities; dialysis centers; ambulatory surgery centers; and alternative health care delivery models. Facilities operated by the federal government are exempt. Transactions requiring a permit now include any: construction or modification by or on behalf of a health care facility exceeding the expenditure minimum (\$8,850,717); substantial increase in a facility's bed capacity; substantial change in the scope or functional operation of a facility; and, proposed establishment or discontinuation of a facility or category of service. In addition, the acquisition of major medical equipment (valued at more than \$8,850,717) or health and fitness centers (valued at more than \$4,231,660) must obtain a permit or exemption. These thresholds are updated annually for inflation<sup>1</sup>.

Proposals to repeal the Illinois Health Facilities Planning Act have not been enacted, but there has been a substantial reorganization of the CON Board. Proponents have successfully argued that although the CON Board has not historically denied many projects, the review process requires applicants to more carefully develop and scale their projects to established criteria and standards of need. Many existing hospitals and the communities they serve have generally supported the "Certificate of Need" law, because elimination could jeopardize their economic vitality by a radical proliferation or expansion of unnecessary facilities.

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

The 94<sup>th</sup> General Assembly subsequently enacted Senate Bill 2436 (P.A. 94-0983) that extended the "Sunset" date to April 1, 2007, so that the status of the Board and the "Certificate of Need" program would be subject to further and more intensive evaluation, given the acceleration of health facility capital expenditures, the national trends of such health care regulation, continuing concerns about increasing health care costs, the need for more effective cost containment, and the controversial history of Illinois' current system.

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<sup>1</sup> Figures from the Illinois Health Facilities Planning Board, Memo dated June 18, 2008

House Resolution 1497, enacted by the 95<sup>th</sup> General Assembly, required the Legislative Commission on Government Forecasting & Accountability to conduct a comprehensive evaluation of the Illinois Health Facilities Planning Act. This included a review of the performance of the Illinois Health Facilities Planning Board to determine if it was meeting the goals and objectives that were originally intended, as well as meeting the goals of subsequent amendments and revised Board policies.

The Commission contracted with the Lewin Group to conduct the evaluation. Their subsequent report, entitled "An Evaluation of Illinois' 'Certificate of Need' Program" was submitted in February 2007, and recommended "the Illinois legislature continue the 'Certificate-of-Need' program with an abundance of caution." Specifically, six main recommendations of the Lewin Group report were as follows: 1) the CON program be extended for 3 years; 2) other policies which support safety-net hospitals be evaluated; 3) a more proactive Charter for the Health Facilities Planning Board be considered; 4) CON Board size and composition be modified; 5) CON Board member compensation be considered; and 6) the workload of the CON Board be focused on reviewing new facilities, as well as monitoring the viability of safety net hospitals. The Lewin Group also found that given the potential for harm to specific critical elements of the health care system, non-traditional rationales for maintaining "Certificate-of-Need" laws deserve consideration, until further study is conducted on the impact that specialty providers and ambulatory surgery centers may have on safety-net providers. Explicit transfers of funds to safety-net hospitals may also be more direct policy tools for their protection.

In response to the Lewin Group analysis and additional concerns regarding health planning in Illinois, the 95th General Assembly enacted Senate Bill 611 (Public Act 95-0001) that extended the "sunset" date of the Illinois Health Facilities Planning Act from April 1, 2007 to May 31, 2007 so that interested parties could agree on a strategy to further extend the "sunset" date, and develop a more comprehensive reform agenda.

Subsequently, the 95<sup>th</sup> General Assembly enacted Senate Bill 244 (PA 95-0005) which created the Task Force on Health Planning Reform. House Bill 5017 extended the conclusion of the Task Force to December 31, 2008 and the sunset for the CON program to July 1, 2009.

### **Task Force Activities**

The Task Force on Health Planning Reform began a long and deliberative process on January 31, 2008 and engaged in a review of the health planning process in an open and impartial fashion.

The 19 member Task Force was co-chaired by Senator Susan Garrett and Representative Lisa Dugan (for further detail on members see page 3). The Task Force was designed to include:

- 6 persons appointed by the Director of IDPH;
- 2 appointed by the President of the Senate (1 as co-chair);
- 2 appointed by the Senate Minority Leader;
- 2 appointed by the Speaker of the House of Representatives (1 as co-chair);
- 2 appointed by the House Minority Leader;
- 1 The Attorney General, or designee; and
- 4 appointed by the Attorney General representing health care consumers.

A vote of 12 appointed Task Force members is required to adopt recommendations for the Governor and General Assembly, as well as for the final report.

In accordance with Senate Bill 244 (PA 95-0005), the Task Force gathered information and heard testimony concerning:

1. The impact of health planning on the provision of essential and accessible health care services, including; prevention of duplication of facilities and services; improved efficiency of the health care system; maintenance of an environment in the health care system that supports quality care; economic use of resources; and the effect of repealing the Act.
2. Reform of the Illinois Health Facilities Planning Board, including identifying and recommending initiatives to meet special needs.
3. Reforms to ensure that health planning under the Illinois Health Facilities Planning Act is coordinated with other health planning laws and activities of the State.
4. Reforms to enable the Planning Board to focus its review efforts on CON applications involving new facilities, discontinuation of services, major expansions, and volume-sensitive services, and to expedite review of other projects to the maximum extent possible.
5. Reforms to enable the Planning Board to determine how procedures should be amended to give special attention to the impact of those projects on traditional community hospitals.
6. Implementation of policies and procedures which give special consideration to the impact of the projects it reviews on access to "safety net" services.
7. Changes to make the planning policies and procedures predictable, transparent, and as efficient as possible.
8. Reforms which ensure that patient access to new and modernized services are not delayed during a transition period.
9. Identification of necessary resources to support the work of the Agency and the Board.

The legislation also directed the Task Force to recommend reforms regarding:

1. Size and membership of the Illinois Health Facilities Planning Board.
2. Changes in the state's long-range health facilities plan (10-year scope, to be updated every year).
3. Changes in regulations that establish separate criteria, standards and procedures when necessary to adjust for structural, functional, and operational differences between long-term care facilities and acute care facilities.
4. Changes in policies and procedures which ensure that the planning board updates standards and criteria on a regular basis and proposes standards to keep pace with the health care system.
5. Expediting the review and approval of projects and determining their impact on "safety net" services.
6. Revisions of enforcement processes and compliance standards to ensure fairness and consistency with the severity of the violations.
7. Conflict-of-interest standards and increases in penalties for violations.
8. Other changes determined necessary to improve the administration of this Act.

The Illinois Department of Public Health was required to provide staff support services. The Department, as directed by the Task Force, was authorized to hire staff or consultants and incur other expenditures from appropriated funds. The Department received assistance from the Illinois Public Health Institute and contracted for technical assistance from Laura McAlpine (McAlpine Consulting for Growth).

The Task Force conducted public hearings from January to December 2008 in Chicago and Springfield with video conferencing. The initial meeting focused on review of the statutory requirements and determination of future meetings dates. In the February meetings, the Task Force agreed on changes to the timeline, organized the work plan, reviewed the current



structure of the CON process and evaluated the Lewin Group study. Although the Act originally abolished the Task Force on March 1, 2008, the Task Force requested an extension to their deadline to December 31, 2008 during their February 8<sup>th</sup> meeting. During subsequent public hearings, the Task Force heard from fifty expert witnesses and interested parties, including representatives of unions, health facilities, the Justice Department, the Federal Trade Commission, health professionals, as well as previous and current representatives of the CON Board (for a detailed list of presenters and website information on their testimony see Appendix B and Appendix C). Presentations varied from clarification and analysis of the current CON process to specific recommendations on Safety Net Hospitals. One of the initial decisions of the Task Force members was to maintain the CON process. Moving forward, the Task Force focused on recommendations to improve and re-structure the CON process.

### **Final Recommendations:**

#### **Overview**

The Task Force began extensive deliberations on September 15, 2008 with the assistance of a facilitator in order to allow all Task Force members to participate in the discussion. These deliberations, using a draft Blueprint document of recommendations and a draft organizational chart, continued on October 8<sup>th</sup>, October 30<sup>th</sup>, and December 8<sup>th</sup>, concluding on December 19<sup>th</sup> with a vote of 12 to 1 on the final Blueprint recommendations<sup>2</sup>. A minority report is attached in Appendix A.

As testimony was received and discussed, it became evident that Illinois should continue with the safeguards in place, which are afforded by the regulated health facility planning process. The principle findings outlined in this report stem from the intent of the Task Force to streamline the process, take significant steps toward transparency, and to unite comprehensive health planning and health facility efforts for statewide gains.

The Task Force determined its main reform goal as follows:

The State of Illinois will promote the distribution of health care services and improve the healthcare delivery system in Illinois by establishing a statewide comprehensive plan and ensuring a predictable, transparent and efficient CON process.

In order to meet this goal, the Task Force recommends the establishment of a comprehensive health planning agency charged with creating a plan, which will allow for a stronger CON process. At present, the statewide health planning efforts have been fragmented at best, with no single source for health planning in a global sense. The inability of the current CON Board to conduct sufficient planning was determined by the Task Force as a major deficit in its functioning. Significant reforms are also being recommended for the CON process. Implementation of these recommendations will increase the efficiency and effectiveness of both overall health planning and the CON process.

The objectives of the Comprehensive Health Plan are to assess existing community resources and determine health care needs, to support safety net services for the uninsured and underinsured residents, to promote adequate financing for health care services, and to recognize and respond to changes in community health care needs. To this end, strategies include conducting a biennial comprehensive assessment of health resources and service needs, conducting needs assessments, collecting and analyzing relevant, objective and

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<sup>2</sup> Aye: Chicago - Garrett, Dugan, Althoff, Gaynor, Lyne, McNary, Robbins, Ruddick, Schaps; Phone - Barnett, Kosel, Lenhoff

Nay: Chicago - Brady

accurate data, identifying issues related to health care financing, evaluating the findings of the inventory/needs assessment and annually reporting to the General Assembly and the public. The Comprehensive Health Plan will comprehensively address health and mental health services, specifically focus on identifying health disparities, identify state-level and regional needs, and determine the impact of market forces on access to high quality services for uninsured and underinsured residents.

The existing objectives of the current Certificate of Need Process include improving the financial ability of the public to obtain necessary health services, establishing an orderly and comprehensive health care delivery system, maintaining and improving the provision of essential health care services, increasing the accessibility of these services, assuring the reduction and closure of health care services and/or facilities is performed in an orderly and timely manner while considering the public interest, and assessing the financial burden patients experience as a result of unnecessary health care construction and modification.

In order to reform the CON process and better meet the existing objectives, the Task Force recommends applying the findings from the Comprehensive Health Plan and the establishment of mechanisms to support adequate financing of the health care delivery system. Cost containment and support for safety net services will continue to be tenets of the CON process. The process will lead to evidence-based assessments, projections and decisions applied to capacity, quality, value and equity in health care delivery. Further, the CON Process will result in written and consistent decisions based on the Comprehensive Health Plan, as well as other plans recommended by the Center for Comprehensive Health Planning, a new unit to be established under IDPH.

Restructuring the Illinois Health Facilities Planning Board is a principal element of the recommendations, based upon consideration of the Lewin Report and testimony gathered by the Task Force. We recommend the CON Board be made up of 9 paid members, with a Chairman as the principal officer of the Board, and the elimination of the Executive Secretary position. The duties of the Executive Secretary, to the greatest extent possible, will be assumed by the Chairman. This board will continue to be located at IDPH with operational support. The Task Force suggests reviewing the compensation levels paid to the members of the Election Board for comparable salaries.

Recommendations to streamline the application process include the elimination of the letter of intent. Additional recommendations to refocus and streamline the CON process include a separate cost threshold for hospital and non-hospital applications, as well as the removal of the application of common financing as a test for whether projects are inter-related. In order to increase support for safety net services, recommendations drafted jointly by the Attorney General's Office and the Illinois Hospital Association were accepted. Charity care and safety net service recommendations include, but are not limited to, the following: 1) reasonable conditions or stipulations agreed to by the applicant that address health resource needs; 2) special consideration to the impact of the project on access to safety net services; 3) definitions of safety net services and charity care; and, 4) establishment of a review standard requiring a 'Safety Net Impact Statement' with CON applications, including a mechanism for public comment on such statements.

The Task Force is also making recommendations to ensure the integrity of the CON Board and its activities. These include the use of a Special Nomination Panel to provide some independence in the appointment of Board members, clarifying limits on ex parte communication, and a renewed emphasis on ethics for CON Board and staff. The composition

and qualifications of this new Nomination Panel may be revised to ensure its timely formation and effectiveness. This, and oversight of the Panel, will be addressed during the drafting of legislation.

Given the important nature of the work coming before the CON Board, we are recommending an orderly, acceptable and timely transition process that preserves the existing authority of the CON Board while adjustments are made to comply with new rules formulated from legislation. Further, the Task Force also recommends that the "sunset" of the existing law be extended for at least 10 years, in order to provide stability and continuity to the process.

The following sections provide the following: a) Organizational Chart of the proposed reorganization of the CON Board and the implementation of the Center for Comprehensive Health Planning; b) Blueprint of the Task Force recommendations; and c) Financial estimates on the cost of establishing the Center for Comprehensive Health Planning, as well as the reorganization of the CON Board.

# **Exhibit Q**

Hart, Southworth & Witsman  
Attorneys at Law

Suite 501  
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Springfield, Illinois 62701 - 1323

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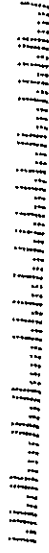
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Mr. Daniel J. Lawler  
Ms. Claire M. Reed  
K&L Gates LLP  
70 West Madison Street, Suite 3100  
Chicago, Illinois 60602-4207

6060284244 0029



# **Exhibit R**

HEALTH FACILITIES AND SERVICES REVIEW BOARD  
STATE OF ILLINOIS

HEALTH FACILITIES AND SERVICES REVIEW)  
BOARD, )  
)  
Complainant, )  
)  
vs. ) No. HFSRB 11-11  
)  
CENTEGRA HOSPITAL HUNTLEY PROJECT #10-090 )  
)  
Respondent. )

**ADMINISTRATIVE LAW JUDGE'S REPORT**

The Administrative Law Judge makes this written report to the Health Facilities and Services Review Board - State of Illinois (hereinafter referred to as the "Board") pursuant to 77 Ill. Admin. Code 1130.1130:

**FINDINGS OF FACT**

1. The Board denied an application for permit submitted by CENTEGRA HOSPITAL HUNTLEY PROJECT #10-090 ("Respondent").

2. Respondent subsequently exercised its right to have an administrative hearing in by a written request directed to the Board.

3. An administrative hearing was scheduled for March 22, 2012 and March 23, 2012 by agreement of the parties.

4. Prior to the administrative hearing, the Board discovered that the record considered by the Board in denying Respondent's application for permit (i) contained a Market Assessment and Impact Study – Proposed Mercy-Crystal Lake Hospital (Project 10-089), which should have been filed in Case No. HFSRB 12-01, and (ii) did not contain a Market Assessment and Impact Study – Proposed Centegra-Huntley Hospital (Project 10-090), which should have been filed in Respondent's record.

5. On March 16, 2012, Mr. Hart conducted a status hearing by telephone. The following appeared and consented to conduct the hearing by telephone:

1. Mr. Frank Urso and Mr. Juan Morado, representing the Board
2. Mr. Dan Lawler and Mr. Aaron Shepley, representing Respondent

3. Mr. Joe Ourth, Mr. Hal Morris, and Ms. Tracey Salinski, representing intervenor Advocate
4. Mr. Steven Hoeft and Mr. Linas Grikas, representing intervenor Mercy

Mr. Urso advised that the Board had discovered the above-described error in the filing of documents in Respondent's record.

6. On March 19, 2012, Mr. Hart conducted a status hearing by telephone. The following appeared and consented to conduct the hearing by telephone:

1. Mr. Frank Urso and Mr. Juan Morado, representing the Board
2. Mr. Dan Lawler, representing Respondent
3. Mr. Joe Ourth, Mr. Hal Morris, and Ms. Tracey Salinski, representing intervenor Advocate
4. Mr. Steven Hoeft and Mr. Linas Grikas, representing intervenor Mercy

The parties considered how to proceed given the error in the record. Mr. Urso requested that the matter be remanded to the Board to reconsider Respondent's application given the proper record. Mr. Lawler proposed proceeding with the administrative hearing. Mr. Hart expressed his concern that parties might file documents improperly in order to cause a remand.

7. On March 20, 2012, Mr. Hart conducted a status hearing by telephone. The following appeared and consented to conduct the hearing by telephone:

1. Mr. Frank Urso and Mr. Juan Morado, representing the Board
2. Mr. Dan Lawler, representing Respondent
3. Mr. Joe Ourth, Mr. Hal Morris, Ms. Eileen Steiner and Ms. Tracey Salinski, representing intervenor Advocate
4. Mr. Steven Hoeft and Mr. Linas Grikas, representing intervenor Mercy

Mr. Hart asked whether the Board considered the erroneous report in making its decision to deny Respondent's application. None of the parties could answer. Mr. Urso proposed asking the Board whether it considered the report. Mr. Hart advised that the administrative hearing scheduled for March 22, 2012 and March 23, 2012 would have to be cancelled until the parties can resolve this issue. The parties decided to meet on March 22, 2012 to discuss.

8. On March 26, 2012, Mr. Hart conducted a status hearing by telephone. The following appeared and consented to conduct the hearing by telephone:

1. Mr. Frank Urso and Mr. Juan Morado, representing the Board
2. Mr. Dan Lawler, representing Respondent
3. Mr. Joe Ourth, Mr. Hal Morris, and Ms. Tracey Salinski, representing intervenor Advocate
4. Mr. Steven Hoeft and Mr. Linas Grikas, representing intervenor Mercy

The parties advised that they had not reached an agreement regarding how to proceed with this matter.



## CONCLUSIONS OF LAW

1. The purpose of the Illinois Health Facilities Planning Act is stated at 20 ILCS 3960/2, as follows:

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

2. Motions are governed by 77 Ill. Admin. Code 1130.1130.

## FINDINGS OF ADMINISTRATIVE LAW JUDGE

Based upon the evidence presented and the conclusions of law set forth above, the Administrative Law Judge makes the following findings:

1. Respondent's record (i) contained a Market Assessment and Impact Study – Proposed Mercy-Crystal Lake Hospital (Project 10-089), which should have been filed in Case No. HFSRB 12-01, and (ii) did not contain a Market Assessment and Impact Study – Proposed Centegra-Huntley Hospital (Project 10-090), which should have been filed in Respondent's record.

2. The Board may have considered the erroneously filed report in making its decision to deny Respondent's application for permit.

3. The Administrative Law Judge has no authority to supplement the record *nunc pro tunc*, thus artificially correcting Respondent's record now even though it was flawed at the time the Board made its decision.

4. The issue of fault or responsibility for the misfiling is irrelevant unless it was intentional, which it does not appear to be.

5. The facts in this case are unique and peculiar and the action taken here should not constitute a precedent upon which future decisions can be based.

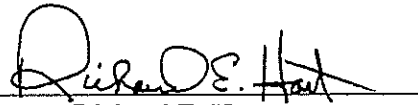
## RECOMMENDATION

The Administrative Law Judge hereby recommends that the Board:

1. Correct Respondent's record in order to (i) include the Market Assessment and Impact Study – Proposed Centegra-Huntley Hospital (Project 10-090) and (ii) exclude the Market Assessment and Impact Study – Proposed Mercy-Crystal Lake Hospital (Project 10-089).
2. Reconsider Respondent's application for permit with the corrected record.

The Administrative Law Judge simultaneously submits herewith a transcript of the record, all exhibits admitted into evidence, copies of all pleadings and documents or evidence made a part of the record.

The Administrative Law Judge simultaneously submits herewith a Proposal for Decision, pursuant to 77 Ill. Admin. Code 1130.1160.

A handwritten signature in black ink, appearing to read "Richard E. Hart", is written over a horizontal line.

Richard E. Hart,  
Administrative Law Judge

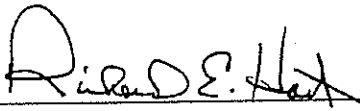
Hart, Southworth & Witsman  
One North Old State Capitol Plaza, Suite 501  
Springfield, Illinois 62701  
Telephone: (217) 753-0055

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Administrative Law Judge's Report was served by placing a copy of same in an envelope marked "Certified Mail - Return Receipt Requested," addressed to:

Alexis Kendrick  
Compliance Officer  
Health Facilities and Services Review Board - State of Illinois  
122 S. Michigan Avenue, 7<sup>th</sup> Floor  
Chicago, Illinois 60603  
(# 7011 1570 0003 1081 6946)

this 30<sup>th</sup> day of March, 2012.

  
\_\_\_\_\_

# **Exhibit S**

HEALTH FACILITIES AND SERVICES REVIEW BOARD  
STATE OF ILLINOIS

HEALTH FACILITIES AND SERVICES REVIEW )  
BOARD, )  
 )  
Complainant, )  
 )  
vs. ) No. HFSRB 11-11  
 )  
CENTEGRA HOSPITAL HUNTLEY PROJECT #10-090 )  
 )  
Respondent. )

**PROPOSAL FOR DECISION**

This matter comes to the Health Facilities and Services Review Board - State of Illinois (hereinafter referred to as the "Board") for a final decision. After a review of the record and the Administrative Law Judge's Report, the Board finds as follows:

1. The Administrative Law Judge has made a written report to the Board pursuant to 77 Ill. Admin. Code 1130.1130.
2. The Board denied an application for permit submitted by CENTEGRA HOSPITAL HUNTLEY PROJECT #10-090 ("Respondent").
3. Respondent subsequently exercised its right to have an administrative hearing in by a written request directed to the Board.
4. An administrative hearing was scheduled for March 22, 2012 and March 23, 2012 by agreement of the parties.
5. Prior to the administrative hearing, the Board discovered that the record considered by the Board in denying Respondent's application for permit (i) contained a Market Assessment and Impact Study – Proposed Mercy-Crystal Lake Hospital (Project 10-089), which should have been filed in Case No. HFSRB 12-01, and (ii) did not contain a Market Assessment and Impact Study – Proposed Centegra-Huntley Hospital (Project 10-090), which should have been filed in Respondent's record.
6. The Administrative Law Judge has filed with the Board his Administrative Law Judge's Report (hereinafter referred to as the "Report"), recommending that the Board (i) correct Respondent's record, and (ii) reconsider Respondent's application for permit with the corrected record.

7. The Administrative Law Judge has submitted to the Board a transcript of the record, all exhibits admitted into evidence, copies of all pleadings and documents or evidence made a part of the record herein.

8. The Administrative Law Judge has submitted to the Board a Proposal for Decision, pursuant to 77 Ill. Admin. Code 1130.1160.

WHEREFORE, the Board orders that the Administrative Law Judge's Report be and the same is hereby adopted in full as the decision of the Board.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2012.

ILLINOIS HEALTH FACILITIES AND  
SERVICES REVIEW BOARD - STATE OF  
ILLINOIS

By: \_\_\_\_\_  
Its Chairperson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Proposal for Decision was served by placing a copy of same in an envelope marked "Certified Mail - Return Receipt Requested," addressed to:

Alexis Kendrick  
Compliance Officer  
IL Health Facilities and Services Review Board  
122 South Michigan Avenue, 7<sup>th</sup> Floor  
Chicago, Illinois 60603  
(# 7011 1570 0003 1081 6946)

Mr. Daniel J. Lawler  
Ms. Claire M. Reed  
K&L Gates LLP  
70 West Madison Street, Suite 3100  
Chicago, Illinois 60602-4207  
(# 7011 1570 0003 1081 6960)


Mr. Steven H. Hoefft  
Ms. Monica Quinn Halloran  
McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago, Illinois 60606  
(#7011 1570 0003 1081 6991)

Mr. Frank W. Urso  
General Counsel  
IL Health Facilities and Services Review Board  
122 South Michigan Avenue, 7<sup>th</sup> floor  
Chicago, Illinois 60603  
(# 7011 1570 0003 1081 6953)

Mr. Joe Ourth  
Ms. Jenifer H. Caracciolo  
Ms. Tracey A. Salinski  
Mr. Hal R. Morris  
Arnstein & Lehr LLP  
120 South Riverside Plaza, Suite 1200  
Chicago, Illinois 60606  
(#7011 1570 0003 1081 6984)

Mr. Linas J. Grikis  
Polsinelli Shugart, PC  
161 North Clark Street, Suite 4200  
Chicago, Illinois 60603  
(#7011 1570 0003 1081 6977)

and by depositing same in the United States mail in Springfield, Illinois, with postage prepaid, this 30<sup>th</sup> day of March, 2012.

  
\_\_\_\_\_