

Valley Ambulatory Surgery Center, L.P.  
CON Application – Project 17-057  
January 18, 2018 Public Hearing  
Written Testimony of John Glennon

I. Establishment of Need / Utilization

Illinois Health Facilities and Service Review Board regulation (“Planning Board”) Section 1110.1540(d) describes the process for establishing the need for an ASTC, which includes the requirement of physician referral letters. The Applicants project 8,038 surgeries in Year 1 and 8,350 surgeries in Year 2.

**Upon review of the Applications’ physician referral letters, the surgeries only add up to 6,143 surgeries each for Year 1 and Year 2; far less than the 8,350 surgeries estimated by Year 2. Furthermore, Health Planning Area 8 is already underutilized. According to the ASTC Profile Health Service Area Summary (2016), Health Planning Area 8 has a total of 62 Operating Rooms and Procedure Rooms with a total Surgery Time of 50,637.12 hours. That calculates to a utilization rate of 816.72 hours per OR/PR; far below the standard of 1,500 hours.**

It should also be noted that not a single physician referral letter in the Application satisfies Planning Board Section 1110.1540(d)(1), which expressly requires documentation of the physician’s total number treatments referred to existing IDPH-licensed ASTCs or hospitals. The physician referral letters address the physicians’ surgeries for the past 12 months performed at the current facility and referrals to the Applicants proposed new facility, not to any competitive facilities. Planning Board Section 1110.1540(d)(2)(A) makes clear that the Applicants must provide this documentation.

Planning Board Section 1110.1540(d)(2)(C) limits the percentage of total physician referrals to their previous caseload and further states “[t]he percentage of projected referrals used to justify the proposed establishment cannot exceed the historical percentage of applicant market share within a 24-month period after project completion”. This rule might be thought of as expressly limiting the establishment of a new ASTC establishment to protect the safety-net institutions.

Finally, physician referral letters are used to establish need. It is necessary to demonstrate 1,500 hours of utilization per OR/PR. The Applicants state that the physician referral letters project to 8,350 surgeries in Year 2, utilization rate of 1,507 hours. At 6,143 surgeries, this Project does not meek the utilization rate of 1,500 hours per OR/PR.

II. The Application fails to conform to the Safety Net Impact Statement requirements.

A. Section 5.4(c) of the Planning Act requires that the Application provide a safety net impact statement that contains analyses: (i) the impact of the proposed project on

“essential safety net services in the community;” and (ii) the impact on another safety net provider or health care system to cross-subsidize safety net services.

B. Planning Board Section 1110.230 interprets and implements the Planning Act’s Safety Net Impact Statement. The Safety Net Impact Statement requires, if reasonably known to the applicant, all the following information:

- i. The project's material impact, if any, on essential safety net services in the community;
- ii. The project's impact on the ability of another provider or health care system to cross-subsidize safety net services; and
- iii. How the discontinuation of a facility or service might impact the remaining safety net providers in a given community.

In addressing the Safety Net Impact, Applicants state that the proposed ASTC will not have an adverse impact on essential safety net services because they are proposing a new ambulatory surgical treatment center to provide patients and staff with a better clinical environment and that they are not enrolled in Medicaid, and therefore, no Medicaid information is included in the Application.

However, this Project will have an impact on the ability of other providers or health care systems to cross-subsidize safety net services. For Calendar Year 2016, Applicants report that they performed 5,701 surgeries. Applicants project that they will perform 8,350 surgeries by the end of Year 2. That is an increase of over 2,600 surgeries that will need to be diverted or siphoned from the other area health care facilities, including the local safety-net hospitals. The diversion of 2,600surgeries can only reduce the capacity of those hospitals to cross-subsidize safety-net services. Applicants’ surgeries are reimbursed by private insurance (85%) and Medicare (13%). Applicants are not enrolled in Medicaid and barely performs charity care. Applicants projected increase to 8,350 surgeries is greater than the 2016 Medical/Surgical admissions at 4 of the 5 safety-net hospitals.

Both Section 3 of the Planning Act and Section 1130.140 of the Planning Board’s regulations define "Charity care" as care provided by a health care facility for which the provider does not expect to receive payment from the patient or a third-party payer. Applicants reported in the Application 14 charity care patients (2014 – 2016) and in their annual questionnaires 46 charity care patients (2012 – 2016). However, in Applicants’ Exemption Application filed with the Planning Board on October 30, 2017, the Applicants’ state that they do not track the charity care patients by individual, but rather by charity dollars via financial transaction code. Based on the conflicting charity care data provided in the Application, Exemption Application, and reported annually, it is difficult to determine what analysis the Applicants are considering in reporting charity care, and whether the amounts for charity care conform to the definition of charity care provided in the Planning Act and the Planning Board’s regulations.

In response to a request for additional information related to charity care, the Applicants’ attorney submits to the Planning Board, in a letter date January 8, 2018, that the Applicants provided charity care to 170 patients (2014 – 2016) and enrolled in Medicaid in December

2017. The Replacement Pages submitted on October 24, 2017, October 30, 2017, and the attorney letter dated January 8, 2018 should not be considered by the Planning Board. Section 6(c) of the Planning Act provides that all applications shall be signed by the applicant and shall be verified by any 2 officers thereof. The October 24, 2017 Replacement Pages, October 30, 2017 Replacement Pages, and the January 8, 2018 attorney letter submitted to the Planning Board are not signed by the Applicants nor are they verified by any 2 officers of the Applicants.

Analyzing the impact of the Project on area safety-net facilities can be done simply:

- Applicants admits that it knows the residential zip codes of its current and proposed patients.
- Applicants identified the physicians who will perform surgery on the proposed patients and it is highly probable that it understands who performed previous surgeries. It can easily survey the physicians to determine their hospital privileges. Consequently, attributing both the current patient load and the proposed increase is a simple statistical exercise.
- The cross-subsidy analysis is simply a question of distributing the proposed patients to the hospital nearest their residence where the proposed physician has privileges. The Applicants can do the cross-subsidy analysis if the Planning Board requires it to.

### III. Alternatives

There are important alternatives to this Project that are not considered in the Alternative section of the Application. The only alternatives presented are (1) rehabilitation or improvement of the present site, and (2) the construction of the new facility. There is no evidence that in recognizing the clear and foreseeable damage the new facility poses to existing safety-net facilities that the Applicants engaged in joint consideration with the existing safety-net facilities of a plan to establish a jointly owned ASTC or a hospital outpatient facility that would share the profits from the proposed surgeries with the non-profit hospitals to assist with cross-subsidize charity care. Subsections (4)(d) and (4)(f) of Section 12 of the Planning Act requires consideration of Alternatives and Planning Board Section 1120.230(c) requires the Applicants to provide a detailed Alternatives analysis.

The Application fails to conform to the Alternatives analyses requirements. The Application contain absolutely no discussion of a joint facility with a Safety-Net provider(s) that would help such provider(s) cross-subsidize Safety Net care. Likewise, the Applicants have simply failed to fully analyze the cost of repairs to the existing facility since the Applicants have only documented 6,143 surgeries in year 2, not the more than 8,350 required to meet the utilization standard.

IV. The Application reveals a dangerous new problem for Illinois – private equity funds owning and operating health care facilities in Illinois without disclosure to and approval from the Planning Board Illinois Health Facilities and Service Review Board. Surgery Partners, Inc. has owned and operated several Illinois health care facilities since 2011, but this Application

is the first time Surgery Partners, Inc. has disclosed it to the Illinois Health Facilities and Service Review Board.

- a. The Application discloses that Surgery Partners owns and operates 3 NovaMed ASTC's and Valley Ambulatory Surgery Center, but it does not appear that Surgery Partners has obtained approval for these health care facilities.
  - i. On January 20, 2011, NovaMed entered into an Agreement and Plan of Merger with Surgery Center Holdings, Inc. ("Surgery Partners") with NovaMed becoming a wholly owned subsidiary of Surgery Partners. **On May 4, 2011, the Surgery Partners acquisition of NovaMed was completed.** (Source: Surgery Partners SEC Form 10K (FYE 12/31/2016); NovaMed SEC Schedule 13D 01/20/2011; NovaMed SEC Form 8K 05/04/2011; NovaMed SEC Form 8K 05/04/2011 Exhibit 99.1)
  - ii. In April 2004, Symbion initially acquired a minority interest in Valley Ambulatory Surgery Center, L.P. After receiving approval for a change of ownership, Exemption Application #18-04 effective 10/22/04, Symbion purchased the capital stock of VASC, INC., the general partner of Valley Ambulatory Surgery Center, LP. (Source: Symbion, Inc. SEC Form 10K (FYE 12/31/2005))
  - iii. On November 3, 2014, Surgery Partners acquired Symbion. At that time, Surgery Partners was owned and controlled by private-equity firm, H.I.G. Capital, and Symbion was owned by private-equity firm, Crestview Partners. (Source: Surgery Partners SEC Form 10K (FYE 12/31/2016); Application Appendix 3).
  
- b. In its December 31, 2016 SEC Form 10K filing, Surgery Partners stated that it was controlled by H.I.G. Capital and that H.I.G. Capital controlled a majority of the voting power of Surgery Partners outstanding common stock and beneficially owned 55% of Surgery Partners. Further, Surgery Partners stated within this Form 10K filing the following:

“[F]or as long as H.I.G. continues to beneficially own shares of Surgery Partners common stock representing more than a majority of the voting power of our common stock, it will be able to direct the election of all of the members of Surgery Partners board of directors and could exercise a controlling influence over Surgery Partners business and affairs, including any determinations with respect to mergers or other business combinations, the acquisition or disposition of assets, the incurrence of indebtedness, the issuance of any additional common stock or other equity securities, the repurchase or redemption of common stock and the payment of dividends. Similarly, H.I.G. will have the power to determine matters submitted to a vote of Surgery Partners stockholders without the consent of Surgery Partners other stockholders, will have the power to prevent a change in Surgery Partners control and could take other actions that might be

favorable to H.I.G.” (Source: Surgery Partners SEC Form 10Q (FQE 09/30/2016); Surgery Partners SEC Form 10K (FYE 12/31/2016); Application Appendix 3).

- c. In May 2017, Bain Capital acquired H.I.G. Capital’s equity interest in Surgery Partners. It is important to note at the time of filing of this Application, October 18, 2017, H.I.G. Capital no longer had an equity interest in Surgery Partners. As of August 31, 2017, Bain Capital beneficially owned 65.7% of the issued and outstanding Surgery Partners common stock. (Source: Surgery Partners Schedule 14C (July 5, 2017); Surgery Partners SEC Schedule 13D (August 31, 2017); Surgery Partners SEC Schedule 14C (October 10, 2017)).
  - i. According to the Planning Board’s website, Surgery Partners has not disclosed its ownership and operational control of the NovaMed health facilities or Valley Ambulatory Surgery Center until this Application was filed on October 18, 2017. Surgery Partners continues to fail to disclose to the Board that it was controlled by H.I.G. Capital and now Bain Capital even though Surgery Partners submits as part of this Application Appendix 3, Surgery Partners SEC Form 10K for FYE 12/31/2016. Surgery Partners clearly knew insofar as that at the time of filing this Application, H.I.G. Capital no longer had its equity interest in Surgery Partners, but Bain Capital did have a majority equity interest in Surgery Partners.
- d. Pursuant to the Planning Act and the Planning Board’s regulations, disclosure to the Planning Board of H.I.G. Capital’s, and now Bain Capital’s ownership and control of Surgery Partners was required because Surgery Partners owns and controls the NovaMed health care facilities and owns and controls the general partner of Valley Ambulatory Surgery Center, L.P.
  - i. Section 3 of the Planning Act defines "change of ownership of a health care facility" as a change in the person who has ownership or control of a health care facility's physical plant and capital assets. A change in ownership is indicated by the following transactions: sale, transfer, acquisition, lease, change of sponsorship, or other means of transferring control. 20 ILCS 3960/3.
  - ii. Planning Board Section 1130.140 defines “Change of ownership” and “Control” in pertinent part as follows:
    1. "Change of Ownership" means a change in the person who has operational control of an existing health care facility or a change in the person who has ownership or control of a health care facility's physical plant and capital assets. A change of ownership is indicated by, but not limited to, the following transactions: sale, transfer, acquisition, leases, change of sponsorship or other means of transferring control. [20 ILCS 3960/3] Examples of change of ownership include:
      - **a transfer of stock or assets resulting in a person obtaining majority interest (i.e., over 50%) in the person who is licensed or certified (if**

- **the facility is not subject to licensure), or in the person who owns or controls the health care facility's physical plant and capital assets; or**
- **any other transaction that results in a person obtaining control of a health care facility's operations or physical plant and capital assets, including leases.**

2. "Control" means that a person possesses any of the following discretionary and non-ministerial rights or powers:

In the case of an entity, the ability to direct the management and policies of the entity, whether through the voting of securities, corporate membership, contract, or otherwise. Examples of such control include, without limitation:

- **holding 50% or more of the outstanding voting securities of an issue;**
- **having the power to require or approve the use of funds or assets of the entity; or**
- **having the power to approve, amend or modify the entity's bylaws or other governance documents.**
- **In the case of capital assets or real property, the power to direct or cause the direction of the personal property, real property or capital assets that are components of the project (i.e., fixed equipment, mobile equipment, buildings and portions of buildings). Examples of such control include, without limitation: ownership of 50% or more in the property or asset, or serving as lessee or sublessee.**

3. The licensee for the is facility is Valley Ambulatory Surgery Center, L.P. and the general partner is VASC, Inc. In November 2004, Symbion bought VASC Inc. and in November 2014, Surgery Partners acquired Symbion, which includes the general partner VASC, Inc. As the General Partner, VASC, Inc. (as owned by Symbion and now Surgery Partners) can exclusively decide any matter relating to the activities of the limited partnership. As a matter of constitutional and statutory law, the general partner has the authority to make any decision related to this health care facility without the advice, guidance, or counsel from the general partners. 805 ILCS 215/406. The ownership and control of the general partner made any subsequent changes to review and approval by the Planning Board.

e. Lease

Under the lease, the Applicants alleged necessary repairs are the type of repairs that are the responsibility of VASC, Inc.'s. The Lease was included in the Exemption Application, E-048-17, as Attachment 2. The lease is a triple net lease, which the landlord is responsible for keeping the roof, foundation, glass, and all structural portions and elements in good repair and condition, and the tenant, VASC, Inc., is responsible to maintain, repair and replace those portions of the facility which are not

the responsibility of the landlord. Growing retaining earnings instead of addressing tenant repairs is one way to claim a need for a new facility.

It is questionable whether this facility is no longer suitable as Applicants claim. In this Application, Applicants claim they were able to recruit new physicians to this facility in 2017.

f. Private Equity in Illinois health care facilities

- i. There is no prohibition on either for-profit ownership or private equity ownership of a health care facility in the Planning Act. There are express requirements for the Board to consider the impact of any facility's establishment on the safety net as described above. The Planning Board should carefully consider the desirability of segregating Medicaid and charity care in not-for-profits only as this Application proposes.
- ii. The real impact of private equity in health care should be understood and it jumps out in the financial pages of this Application.
  1. Attachment 34 of the Application (page 128), VASC Inc.'s balance sheet shows that it has \$17 million in retained earnings (2016). Applicants claim the facility needs repairs and thus, the need for a new facility is necessary. The lease provides that those types of repairs are the responsibility of VASC, Inc.'s. and the \$17 million in retained earnings would go a long way in addressing those repairs.
  2. Attachment 34 of the Application (page 127), VASC, Inc. reveals its Net Margin Percentage as 11.6% (2014), 13.5% (2015), 16.1% (2016), and projected 23.0% (2020).
  3. Attachment 2 of the Application (pages 035 – 037) provides that the Letter of Intent for renting the new facility is a preliminary expression of general intentions with neither party having a contractual obligation to the other until a definitive agreement has been fully executed and delivered by the parties. Surgery Partners will only guarantee 50% of the lease payments for 5 years with a performance based guarantee reduction of 20% per year. This Letter of Intent fails to give enough assurances that the Applicants will have control of the site for the new health care facility.

It is my understanding that one of the purposes of the Illinois Health Facilities Planning Act is to maintain and improve the provision of essential health care services and increase the accessibility of those services to the medically underserved and indigent. It is abundantly clear to me that this Application is far from complete and fails to justify the need for a new ASTC given the lack of disclosure of ownership and control, lack of need, underutilization, and the impact on the safety-net institutions in the community. I would hope that the Planning Board would undergo further diligence into this Application.



## **NovaMed to Be Acquired by Surgery Partners for \$13.25 Per Share**

January 21, 2011 07:00 AM Eastern Standard Time

CHICAGO—(BUSINESS WIRE)—NovaMed, Inc. (NASDAQ:NOVA) ("NovaMed" or the "Company"), a leading operator of ambulatory surgery centers in partnership with physicians, today announced that it has entered into a definitive merger agreement to be acquired by an affiliate of Surgery Center Holdings, Inc. ("Surgery Partners") in a transaction valued at approximately \$214 million, including the assumption or repayment of approximately \$105 million of indebtedness. Surgery Partners is an affiliate of H.I.G. Capital, LLC, a leading global private equity investment firm. The merger agreement was unanimously approved by NovaMed's board of directors, including a special committee of independent directors.

Under the terms of the merger agreement, NovaMed stockholders would receive \$13.25 per share in cash, representing a premium of 54.6% over the closing price of NovaMed's common stock as of the time of Surgery Partners' initial offer on August 2, 2010; a 17.7% premium over the Company's 90 day average closing price; and a 10.7% premium over the Company's 30 day average closing price.

The transaction is expected to close in the second quarter of 2011, subject to customary closing conditions, including customary antitrust and regulatory approvals. Further, the transaction is subject to the approval of the merger agreement by holders of a majority of the outstanding shares of the Company's common stock. Certain NovaMed directors and officers that in the aggregate own approximately 10.5% of NovaMed's outstanding shares have entered into agreements with Surgery Partners to vote in favor of the merger.

"We are excited about NovaMed and Surgery Partners joining forces in our efforts to establish the preeminent ambulatory surgery center ("ASC") provider in the country," said Christopher Laitala, Managing Director of H.I.G. Capital. "We believe this transaction will be beneficial for all parties involved, including shareholders, physician partners, patients and payors alike. We remain excited about the prospects for the ASC industry as a whole and look forward to building on Surgery Partners' market leading position."



Mike Doyle, CEO of Surgery Partners, said, "We extend a very warm welcome to the NovaMed team and look forward to leveraging the strengths of both companies to provide the optimal outcome for our patients, physicians and employees. We would also like to congratulate NovaMed's management team on their accomplishments. We look forward to a bright future ahead."

Jefferies Finance LLC and THL Credit, Inc. have committed to provide debt financing for the transaction.

NovaMed will file a preliminary proxy statement with the SEC, which will contain detailed information about the transaction and the board and special committee process. Once the SEC completes its review of the preliminary proxy statement, NovaMed will file the definitive proxy statement with the SEC and distribute it to stockholders.

William Blair & Company is serving as financial advisor and DLA Piper LLP (US) is serving as legal advisor to NovaMed's board of directors. McDermott, Will and Emery LLP is serving as legal advisor to H.I.G. Capital and Surgery Partners.

#### About NovaMed

NovaMed operates, develops and acquires ambulatory surgery centers in partnership with physicians and holds majority ownership interests in 37 surgery centers located in 19 states. Learn more at [www.novamed.com](http://www.novamed.com).

#### About Surgery Partners

Surgery Partners acquires, develops and manages free-standing ambulatory surgical centers (ASCs) in partnership with leading physicians. The company owns and operates twelve ASCs. As one of the largest ASC operators in the Southeast, Surgery Partners is dedicated to clinical excellence in outpatient surgery services and provides its centers with experienced and efficient operations leadership, development expertise, and practice partnership. Learn more at [www.surgery-partners.com](http://www.surgery-partners.com).

#### About H.I.G. Capital

H.I.G. Capital is a leading global private equity investment firm with more than \$8.5 billion of equity capital under management. Based in Miami, and with offices in San Francisco, Atlanta, Boston, and New York in the U.S., as well as affiliate offices in London, Hamburg and Paris in Europe, H.I.G. specializes in providing capital to small- and medium-sized companies with attractive growth potential. H.I.G. invests in management-led buyouts and recapitalizations of profitable and well managed service or manufacturing businesses. H.I.G. also has extensive experience with financial restructurings and operational turnarounds. Since its founding, H.I.G. has invested in and managed more than 200 companies worldwide. The firm's current portfolio includes companies with combined revenues in excess of \$8 billion. For more information, please refer to the H.I.G. website at [www.higcapital.com](http://www.higcapital.com).

#### Additional Information and Where to Find It

In connection with the Merger, NovaMed will prepare a proxy statement to be filed with the SEC. When completed, a definitive proxy statement and a form of proxy will be mailed to the stockholders of the company. **BEFORE MAKING ANY VOTING DECISION, NOVAMED'S STOCKHOLDERS ARE**

URGED TO READ THE PROXY STATEMENT REGARDING THE MERGER CAREFULLY AND IN ITS ENTIRETY BECAUSE IT WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED MERGER. NovaMed's stockholders will be able to obtain, without charge, a copy of the proxy statement (when available) and other relevant documents filed with the SEC from the SEC's website at <http://www.sec.gov>. NovaMed's stockholders will also be able to obtain, without charge, a copy of the proxy statement and other relevant documents (when available) by directing a request by mail or telephone to NovaMed, Inc., Attn: Investor Relations, 333 West Wacker Drive, Suite 1010, Chicago, Illinois 60606, or by calling (312) 664-4100, or from the investor relations section of the company's website, <http://www.novamed.com>.

#### Participants in Solicitation

NovaMed and its directors and officers may be deemed to be participants in the solicitation of proxies from NovaMed's stockholders with respect to the special meeting of stockholders that will be held to consider the Merger. Information about NovaMed's directors and executive officers and their ownership of the company's common stock is set forth in the proxy statement for NovaMed's 2010 Annual Meeting of Stockholders, which was filed with the SEC on April 14, 2010. Stockholders may obtain additional information regarding the interests of NovaMed and its directors and executive officers in the Merger, which may be different than those of NovaMed's stockholders generally, by reading the proxy statement and other relevant documents regarding the Merger, when filed with the SEC.

#### Cautionary Statement Regarding Forward-Looking Statements

This press release contains forward-looking statements that relate to possible future events. These statements are based on management's current expectations and are subject to risks and uncertainties, which could cause our actual results to differ materially from those expressed or implied in this press release. These risks and uncertainties include: the current difficult economy and tightened credit markets; our current and future debt levels; our ability to access capital on a cost-effective basis to continue to successfully implement our growth strategy; reduced prices and reimbursement rates for surgical procedures; our ability to acquire, develop or manage a sufficient number of profitable surgical facilities; our ability to maintain successful relationships with the physicians who use our surgical facilities; our ability to grow and manage effectively our increasing number of surgical facilities; competition from other companies in the acquisition, development and operation of surgical facilities; uncertainty around national healthcare reform and the application of existing or proposed government regulations, or the adoption of new laws and regulations, that could limit our business operations, require us to incur significant expenditures or limit our ability to relocate our facilities if necessary; and uncertainties associated with the proposed acquisition of NovaMed by a company controlled by Surgery Partners, including uncertainties relating to the anticipated timing of filings and approvals relating to the transaction, the expected timing of completion of the transaction and the ability to complete the transaction. Readers are encouraged to review a more complete discussion of the factors affecting NovaMed's business and prospects in its filings with the Securities and Exchange Commission, including the company's 2009 Form 10-K filed on March 16, 2010. Readers should not place undue reliance on any forward-looking statements. Except as required by the federal securities laws, NovaMed undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events, changing circumstances or any other reason after the date of this press release.

## Contacts

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Glennon

Good morning and thank you for the opportunity to address several concerns regarding this application. I know time is always short at hearings such as this, so I will get directly to the substance of my concerns.

And this morning I am also submitting for your consideration many pages of backup material and other public documents that support what I am saying. In the interest of saving time, for this hearing I will not get into all the citations and cross references, but I will refer to the documents being submitted.

I urge the Board and staff to look further into this application with respect to four issues which are in need of much further investigation.

First, with respect to 'The Establishment of Need and Utilization' section of the application, it appears there are some basic shortcomings, and those are outlined in detail in the documents I have attached. But the basic issue is that the numbers just don't add up. The Applicants project 8,038 surgeries in year 1 and 8,359 in Year 2. But the surgery referral letters add up to only 6,143. I believe the staff should also consider whether any of the physician referral letters comply with section 1110.1540(d) (1) which outlines what information is supposed to be included in those letters.

Second, the Safety Net Impact Statement appears to be deficient. Section 5.4 of the Planning Act requires that the Applicant detail the impact on essential Safety Net Service in the area and the impact on other safety net providers or systems. The application states that the ASTC will not have a negative impact as defined by the statute despite the fact that the Applicants' own numbers suggest that that the new facility would siphon off approximately 2,600 surgeries from other health facilities. The detail for that estimate is proved in the documents attached.

And with respect to the charity care component of the application, Applicant states that they do not track charity care by individual but rather by charity dollars via financial transaction codes rather than by dollar amount provided. It is not at all clear how the Applicants' method of calculating charity care complies with the requirements of the regulations.

Third, with respect to the section dealing with Alternatives, the Board may wish to delve further into whether the application meets the basic requirement of of Section 12 (4) of the Act, regarding the availability of facilities which may serve as alternatives or substitutes, and multi -institutional planning and the establishment of multi-institutional systems where feasible. It appears that the application contains zero discussion of a joint facility that would help safety net providers cross subsidize Safety Net care.

And fourth, regarding a much broader issue of basic public policy and required disclosures, a review of the public records related to the application suggests that there have been numerous corporate transactions by out of state equity funds and others that have resulted in changes of ownership and control of this facility, none of which has been approved by the Board, and most of which have not even been disclosed.

And an important side note. Most of us are familiar with the US Securities and Exchange Commission, and its strict disclosure requirements and potentially severe penalties for inadequate disclosure. Because of these requirements and penalties, in general we are able to believe what is filed in SEC documents.

With this in mind, I bring to your attention several corporate transactions that are detailed in SEC filings by the Applicant and other parties, that have never been disclosed to, and never been approved by, the Board in connection with this ASTC. These transactions suggest there has been a series of ownership and control changes that should be documented in Board records, which are not.

The list of corporate changes of ownership and stock transactions is quite complicated and lengthy, the detail for which I have provided. But the conclusion for our purposes today is quite simple—none of this has been disclosed to or approved by the Board.

First, the Application discloses that Surgery Partners owns and operates VASC, along with three Novamed ASTCs. It is not at all clear from the file when Surgery Partners took control of this facility from the founders, but it appears to be years ago. The file for this project evidences no approval by the Board of takeover of control by Surgery Partners.

And there is more. As described in SEC filings, copies of which are attached:

--On May 4, 2011 Surgery Partners acquired Nova Med.

--In April 2014, Symbion acquired a minority interest in VASC.

--On November 3, 2014 Surgery Partners acquired Symbion. At that time Symbion was owned and controlled by a private equity firm, H.I.G. Capital and Symbion was owned by private equity firm Crestview Partners.

--In its December 31, 2016 SEC Form 10k, Surgery Partners stated that it was owned by H.I.G. Capital, and

--In May, 2017, Bain Capital acquired H.I.G. Capital's interest in Surgery Partners.

All of these transactions are detailed in SEC filings, copies of which I have provided.

According to the Board's own website, Surgery partners has not disclosed:

--the Symbion transaction

--Its ownership of Novamed (until October of 2017)

--that it was controlled by HIG Capital

--Its ownership by Bain Capital.

At this hearing I do not need to get into a discussion of the Board's strict requirements for disclosure of control and ownership, but I believe a review of the documents I have provided will suggest it is not at all clear that legally required disclosure and approval of most of these transactions have occurred. And it is reasonable to conclude that the Board's own records on these matters leave open the basic question of who really controls this facility.

Again, thank you for your time this morning, and I hope the materials I have provided will generate a much more thorough review of the points I have raised this morning, and hopefully some answers to these questions.

Good Morning, I am Scott Seraphin and an attorney for Valley Medical Building Corporation. Valley Medical Building Corporation owns the current site and is the landlord to VASC, Inc.

Under the lease, the necessary repairs claimed by the Applicants are typically the type of repairs that are the responsibility of the tenant, VASC, Inc. The Lease was included in the Exemption Application, E-048-17, as Attachment 2 and is a "triple net lease". The landlord is responsible for keeping the roof, foundation, glass, and all structural portions and elements of the building, Common Area and Premises in good repair and condition, and the tenant, VASC, Inc., is responsible to maintain, repair and replace those portions of the facility which are not the responsibility of the landlord. The majority of the listed repairs are those in nature the responsibility of the tenant.

With that said, Valley Medical Building Corporation has assisted the tenant in addressing some of their repairs. In 2016, Valley Medical Building Corporation contributed half of the cost for the facility's new air conditioning (\$62,230) and paid for the exterior painting, and deck repair and re-staining at Valley Medical Inn (\$27,500).

It appears to me that VASC's responsibility for the majority of the repairs/upgrades, cited as a reason for a new facility, has not been disclosed to this Board. I would believe it less expensive to attend to the necessary repairs/upgrades than to build a new facility.

Good Morning, I am Scott Seraphin and an attorney for Valley Medical Building Corporation. Valley Medical Building Corporation owns the current site and is the landlord to VASC, Inc.

Under the lease, the necessary repairs claimed by the Applicants are typically the type of repairs that are the responsibility of the tenant, VASC, Inc. The Lease was included in the Exemption Application, E-048-17, as Attachment 2 and is a "triple net lease". The landlord is responsible for keeping the roof, foundation, glass, and all structural portions and elements of the building, Common Area and Premises in good repair and condition, and the tenant, VASC, Inc., is responsible to maintain, repair and replace those portions of the facility which are not the responsibility of the landlord. The majority of the listed repairs are those in nature the responsibility of the tenant.

With that said, Valley Medical Building Corporation has assisted the tenant in addressing some of their repairs. In 2016, Valley Medical Building Corporation contributed half of the cost for the facility's new air conditioning (\$62,230) and paid for the exterior painting, and deck repair and re-staining at Valley Medical Inn (\$27,500).

It appears to me that VASC's responsibility for the majority of the repairs/upgrades, cited as a reason for a new facility, has not been disclosed to this Board. I would believe it less expensive to attend to the necessary repairs/upgrades than to build a new facility.



District Office:  
127 S. 1<sup>st</sup> Street, Suite 204  
Geneva, Illinois 60134  
630.457.5460

Springfield Office:  
211-N Stratton Building  
Springfield, Illinois 62706  
217.782.5457



**Steven A. Andersson**  
STATE REPRESENTATIVE • 65TH DISTRICT

Committees:

- Appropriations - General Services
- Cities & Villages
- Judiciary - Civil
- Museums, Arts & Cultural Enhancements
- Renewable Energy & Sustainability
- Small Business Empowerment & Workforce Development
- Transportation: Regulation, Roads & Bridges

**REMARKS OF STATE REPRESENTATIVE STEVEN A. ANDERSSON  
BEFORE THE  
ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD  
ON VALLEY AMBULATORY SURGERY CENTER CON APPLICATION  
JULY 18, 2018**

Good morning. I am Steve Andersson (A-N-D-E-R-S-S-O-N), Illinois State Representative of the 65<sup>th</sup> District. My legislative district includes the surgery center that is the subject of today's hearing.

I wish to welcome Board member Murphy, Board General Counsel Mitchell, and the staff of the Illinois Health Facilities and Services Review Board to St. Charles.

As the local State Representative, I express my *strong support* for the Valley Ambulatory Surgery Center CON Application, Project #17-057.

There is widespread local support for this CON application, as reflected on the Review Board's web page devoted to Project #17-057. Among those who have filed formal letters of support are:

- The Mayor of St. Charles, the Honorable Ray Rogina, who is with us today.
- The local state legislators whose districts include the Valley Surgery Center – Senator Karen McConnaughay and myself.
- Every other state legislator whose district includes a portion of St. Charles – Senator Jim Oberweis, Representative Mike Fortner, and Representative Keith Wheeler.

Remarks of State Representative Steven A. Andersson

- The Kane County Health Department – Director Barbara Jeffers.
- The Kane County Board Chairman – the Honorable Chris Lauzen.
- And the St. Charles Chamber of Commerce.

These formal letters of support indicate in some detail why Valley Surgery Center needs a new and modern facility, and the strong merits of its CON application. In broad summary, after 30 years in the same location, the current building is no longer suitable for use as a surgery center. As other witnesses today will elaborate, there are serious issues with the roof, foundation, exterior, layout, and mechanical systems. The current building is not handicapped accessible; it falls short of modern fire safety standards; and does not comport with current standards for federal Medicaid service.

Rather than rebuild the current facility, which would result in a lengthy disruption of all patient care, Valley plans a seamless transition to a new facility to be built less than two blocks away from the current building. This plan will not only avoid disruption of patient care, but also improve the quality of healthcare delivery in a truly modern and compliant facility.

Valley Surgery Center has duly exercised its rights as a tenant, timely giving the landlord of the current building notice that it will not exercise its option to extend the lease after 2019. That is their right, and I respectfully suggest that the CON process was never intended to involve state government in landlord-tenant matters.

I have extensively toured Valley Surgery Center, and I know many people who have been patients there. While by all accounts the service

Page 3

Remarks of Representative Steven A. Andersson

has always been excellent – the physicians and staff are truly excellent – the shortcomings of the current building are numerous and plainly obvious. Approval of this CON application will preserve and modernize an important healthcare delivery business in the community I have been elected to represent.

For the record, I am submitting a written copy of my remarks, and attaching the various letters of support that I referenced here today.

Thank you.

A handwritten signature in black ink, appearing to read 'SA Andersson', with a long, sweeping flourish extending to the right.

Steven A. Andersson  
State Representative  
District 65

ILLINOIS HOUSE OF REPRESENTATIVES

SPRINGFIELD OFFICE:

213-N STRATTON BUILDING  
SPRINGFIELD, ILLINOIS 62706  
PHONE: 217.782.1486

DISTRICT OFFICE:

959 OAK STREET  
NORTH AURORA, ILLINOIS 60542  
PHONE: 630.345.3464

Email: [office@repkeithwheeler.org](mailto:office@repkeithwheeler.org)



**KEITH R. WHEELER**  
STATE REPRESENTATIVE • 50<sup>TH</sup> DISTRICT

Appropriation-General Services  
Economic Development & Housing  
House Violence Prevention  
Task Force  
Labor & Commerce  
Public Utilities  
Restorative Justice  
Small Business Empowerment &  
Workforce Development  
Transportation: Regulation  
Roads & Bridges

January 2, 2018

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

**RE: *Valley Ambulatory Surgery Center, St. Charles***  
**Project 17-057**

Dear Ms. Avery:

I am writing to express my strong support for Valley Ambulatory Surgery Center, L.P.'s ("VASC") Certificate of Need application (Project 17-05) to relocate to a new building with modern, state-of-the-art design and an improved clinical environment for patients and staff.

It is my understanding that, under Illinois Certificate of Need laws, this relocation is treated as a discontinuation of the existing facility and establishment of a new facility, though it will not add any new services or surgical capacity to the service area. Thus, VASC does not anticipate opposition to the project from the existing area health care providers.

For almost 40 years, VASC has provided outpatient surgical procedures in St. Charles from the same building. The existing facility is in need of many repairs, has serious design deficiencies, and is no longer tenable as an ambulatory surgery center. For instance, the building is not handicap-accessible, and many doors fail to reach ADA requirements. In addition, the sterile processing work space is not separated into clean and dirty instrument areas, and there is no enclosed loading dock to protect the integrity of medical products. These building design flaws all fail to comply with current codes and best practices and have resulted in citations to the surgery center.

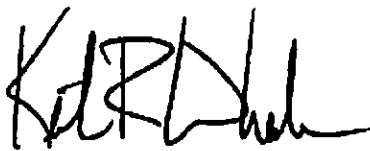
The exterior of the building requires roofing and foundation repairs, and the main entrance's ill design often requires cars to back-up and re-approach when dropping off and picking up patients.

In addition, the building has recurring electrical and plumbing problems, and it has not been cabled for modern IT needs. The fire sprinkler lines leak, periodically requiring closure of the facility. Recurring false alarms are the result of a malfunctioning fire alarm system. The building's layout includes four separate patient areas, resulting in staffing duplications and other inefficiencies, and there is insufficient storage space for operating room equipment, soiled linen, and red bag (biohazard) waste. The staff lockers do not connect directly to the sterile corridor, as required, preventing one-way flow of staff from non-sterile to sterile areas of the facility.

To ensure that patient care is not interrupted for the massive and expensive required repairs, VASC plans to relocate to a new building with less total square footage and a more efficient and modern design. VASC's new building will be located 1/4 mile from the existing facility, making it convenient for patients and staff. It will be compliant with current ADA and NFPA codes and best practices, and will feature a more cost-efficient layout with new mechanical and electrical systems.

For thirty years, VASC has served the residents of the St. Charles community, and I support its efforts to offer a modern and efficient facility that is consistent with current codes and best practices. Again, I strongly encourage you to approve VASC's application so it may continue to serve the residents of St. Charles with the highest of standards and patient care. Please don't hesitate to contact me at 630.345.3464 or by email at [office@repkeithwheeler.org](mailto:office@repkeithwheeler.org) regarding any questions or concerns.

Best Wishes,



Keith R. Wheeler  
State Representative  
Illinois' 50<sup>th</sup> District



**Kane County  
Health Department**

**Barbara Jeffers, MPH**  
*Executive Director*

Public Health Center  
1240 N. Highland Avenue  
Aurora, Illinois 60506  
630.208.3801

Public Health Center  
1750 Grandstand Place  
Elgin, Illinois 60123  
630-208.3801

December 14, 2017

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

**RECEIVED**

DEC 29 2017

**HEALTH FACILITIES &  
SERVICES REVIEW BOARD**

Re: Support for Valley Ambulatory Surgery Center, St. Charles (Project 17-057)

Dear Ms. Avery:

On behalf of the Kane County Health Department (the "Department"), I am writing to express support for the above-referenced Certificate of Need application filed by Valley Ambulatory Surgery Center, L.P. ("VASC").

The Department's mission is to promote, protect, and advocate for health and wellness in the Kane County community. In 2013, the Department received national public health department five-year accreditation status – the first county health department in Illinois to achieve this status. The Department strives to increase access and improve health services for local residents, and that is why it supports VASC's proposal to relocate to a newly-constructed building with state-of-the-art design.

For 30 years, VASC has provided outpatient surgical care for Kane County residents from the same building. We have been informed by affiliates from VASC, that the existing building is now outdated and requires substantial improvements and modernization. Numerous doors are not ADA compliant, the building is not handicap-accessible, and as a two-story wood-framed construction, the building does not meet certain federal healthcare standards. In addition, current codes require sterile processing work space separated into clean and dirty instrument areas, unlike the existing building's design. The new facility proposed by VASC would comply with state and federal building and public health standards and industry best practices. In addition, it would be located close to the existing facility, making it convenient for patients and staff. Most importantly, it would improve the clinical environment for patients and provide a modern facility.

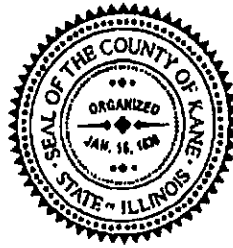
Accordingly, the Department supports CON Project 17-057 so that VASC may relocate to a newly constructed building – which will benefit Kane County and improve healthcare services for the community.

Respectfully,

Barbara Jeffers, MPH  
Executive Director  
Kane County Health Department

# COUNTY OF KANE

*Christopher J. Lauzen*  
Kane County Board Chairman



Kane County Government Center  
719 South Batavia Avenue  
Geneva, IL 60134  
P: (630) 232-5930  
F: (630) 232-9188  
[clauzen@kanecoboard.org](mailto:clauzen@kanecoboard.org)  
[www.countyofkane.org](http://www.countyofkane.org)

December 8, 2017

**RECEIVED**

DEC 13 2017

**HEALTH FACILITIES &  
SERVICES REVIEW BOARD**

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

Re: Valley Ambulatory Surgery Center, St. Charles (Project 17-057)

Dear Ms. Avery:

I write to express my strong support for this Certificate of Need application of Valley Ambulatory Surgery Center ("VASC"), which will allow it to relocate to a new building with modern, state-of-the-art design and an improved clinical environment for patients and staff.

For 30 years, VASC has provided outpatient surgical procedures in St. Charles from the same, now outdated building. The facility is sorely in need of repairs and has serious design deficiencies; in short, the building is simply no longer suitable as an ambulatory surgery center. Design flaws in the building make compliance with current codes and best practices extremely difficult and have resulted in citations to the surgery center. Many doors fail to reach ADA requirements, and the building is not handicap-accessible. Additionally, sterile processing work space is not separated into clean and dirty instrument areas, and the loading area is not designed to protect the integrity of medical products.

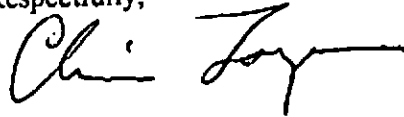
Furthermore, the building's infrastructure includes serious electrical and plumbing deficiencies, and has not been cabled for modern IT needs. Leaking fire sprinkler lines and a malfunctioning fire alarm system have resulted in recurring false alarms and periodic closures of the facility. The building's layout includes four separate patient areas, resulting in staffing complications and other inefficiencies, and there is inadequate storage space for operating room equipment, soiled linen, and red bag (biohazard) waste. Staff lockers do not connect directly to the sterile corridor, as required to prevent one-way flow of staff from nonsterile to sterile areas of the facility. The exterior of the building requires roofing and foundation repairs, and the design of the main entrance often requires cars to back-up and re-approach when dropping off and picking up patients.

To avoid interruption in patient care for the massive and expensive required repairs, VASC plans to relocate to a new building with less total square footage and a more efficient and modern design. Located only one-quarter mile from the existing facility, VASC's new building will be convenient for patients and staff. The new building will be compliant with current codes and best practices, and will feature a more cost-efficient layout with new mechanical and electrical systems.

Under Illinois Certificate of Need laws, this relocation is treated as a discontinuation of the existing facility and establishment of a new facility, though it will not add any new services or surgical capacity to the service area. Thus, VASC does not anticipate opposition to the project from area health care providers.

VASC has served the residents of Kane County since 1987, and I support its efforts to offer a modern and efficient facility that is consistent with current codes and best practices. The residents of Kane County deserve no less, and I encourage you to approve VASC's applications.

Respectfully,

A handwritten signature in cursive script, appearing to read "Chris Lauzen".

Chris Lauzen  
Kane County Board Chairman





**RECEIVED**

DEC 28 2017

HEALTH FACILITIES &  
SERVICES REVIEW BOARD

December 6, 2017

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

*RE: Valley Ambulatory Surgery Center, St. Charles (Project 17-057)*

Dear Ms. Avery:

The St. Charles Chamber of Commerce supports this Certificate of Need application of Valley Ambulatory Surgery Center, L.P.'s ("VASC") to enable it to relocate to a new building in St. Charles with modern, state-of-the-art design and an improved clinical environment for patients and staff. VASC has been an upstanding member of the St. Charles Chamber of Commerce and, we believe, a valued asset in our community.

Since 1987, VASC has provided outpatient surgical procedures in St. Charles from the same building. The existing facility is in need of many repairs and has serious design deficiencies; by contrast, the new facility will be compliant with current ADA and NFPA (fire safety) codes and best practices, and will feature a more cost-efficient layout with new mechanical and electrical systems.

For 30 years, VASC has served the residents of the St. Charles community, and the St. Charles Chamber of Commerce supports its efforts to offer a modern and efficient facility that is consistent with current codes and best practices.

Respectfully,

Kirsten Marr  
Administrative Assistant  
St. Charles Chamber of Commerce  
216 Riverside Avenue, St. Charles, IL 60174  
Ph 630.584.8384/Fax 630.584.6065  
Email [info@stcharleschamber.com](mailto:info@stcharleschamber.com)/Website [www.stcharleschamber.com](http://www.stcharleschamber.com)

# City of St. Charles

Raymond P. Rogina  
Mayor

December 15, 2017

Ms. Courtney Avery  
Administrator  
Illinois Health Facilities and Services Review Board  
525 West Jefferson, Second Floor  
Springfield, Illinois 62761

*RE: Valley Ambulatory Surgery Center, St. Charles Project 17-057*

Dear Ms. Avery:

Please consider this letter my support and that of the residents of the St. Charles community for Valley Ambulatory Surgery Center, L.P.'s ("VASC") Certificate of Need application (Project 17-05) to relocate to a new building with modern, state-of-the-art design and an improved clinical environment for patients and staff.


Under Illinois Certificate of Need laws, this relocation is treated as a discontinuation of the existing facility and establishment of a new facility, though it will not add any new services or surgical capacity to the service area. Thus, VASC does not anticipate opposition to the project from area health care providers.

As with any older building, repairs and maintenance are necessary. The City's Building and Code Office and Fire Prevention Office have provided me with notice that leaking fire sprinkler lines and a malfunctioning fire alarm system have resulted in recurring false alarms. Additionally, roofing repairs were permitted in 2012.

For thirty years, VASC has provided outpatient surgical procedures in St. Charles. To ensure that patient care is not interrupted for the massive and expensive required repairs, VASC plans to relocate to a new building with less total square footage and a more efficient and modern design. VASC's new building will be located only one-quarter mile from the existing facility, making it convenient for patients and staff. It will be compliant with current codes and best practices.

VASC has served the residents of the St. Charles community since 1987, and I support its efforts to offer a modern facility that is consistent with current codes. The residents of St. Charles deserve no less, and I encourage you to approve VASC's applications.

Respectfully,

  
Raymond P. Rogina  
Mayor of St. Charles

ILLINOIS STATE SENATE

DISTRICT OFFICE  
641 S. 8TH STREET  
WEST DUNDEE, ILLINOIS 60118  
847.214.8245  
SENATOR@KARENMCCONNAUGHAY.COM



SPRINGFIELD OFFICE  
103D CAPITOL BUILDING  
SPRINGFIELD, ILLINOIS 62706  
217.782.1977

**KAREN MCCONNAUGHAY**  
STATE SENATOR · 33RD DISTRICT

December 5, 2017

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

*RE: Valley Ambulatory Surgery Center, St. Charles  
Project 17-057*

---

Dear Ms. Avery:

I am writing to express my support for Valley Ambulatory Surgery Center, L.P.'s ("VASC") Certificate of Need application (Project 17-05) to relocate to a new building with an improved clinical environment for patients and staff.

Since 1987, VASC has provided outpatient surgical procedures in St. Charles from the same building. The existing facility is in need of many repairs, has serious design deficiencies, and is no longer tenable as an ambulatory surgery center. For instance, the building is not handicap-accessible, and many doors fail to reach ADA requirements. In addition, the sterile processing work space is not separated into clean and dirty instrument areas, and there is no enclosed loading dock to protect the integrity of medical products. These building design flaws have failed to comply with current codes and best practices and have resulted in citations to the surgery center.

Furthermore, the building has recurring electrical and plumbing problems, and it has not been cabled for modern IT needs. The fire sprinkler lines leak, periodically requiring closure of the facility. Recurring false alarms are the result of a malfunctioning fire alarm system.

To ensure that patient care is not interrupted for the massive and expensive required repairs, VASC plans to relocate to a new building with less total square footage and a more efficient design.

ILLINOIS STATE SENATE

DISTRICT OFFICE  
641 S. 8TH STREET  
WEST DUNDEE, ILLINOIS 60118  
847.214.8245  
SENATOR@KARENMCCONNAUGHAY.COM



SPRINGFIELD OFFICE  
103D CAPITOL BUILDING  
SPRINGFIELD, ILLINOIS 62706  
217.782.1977

**KAREN MC CONNAUGHAY**  
STATE SENATOR • 33RD DISTRICT

Under Illinois Certificate of Need laws, this relocation is treated as a discontinuation of the existing facility and establishment of a new facility, though it will not add any new services or surgical capacity to the service area. Thus, VASC does not anticipate opposition to the project from the existing area health care providers.

For thirty years, VASC has served the residents of the St. Charles community, and I support its efforts to offer an efficient facility that is consistent with current codes and best practices and I encourage you to support this project.

Respectfully,

A handwritten signature in black ink that reads "Karen McConnaughay". The signature is written in a cursive style.

Senator Karen McConnaughay  
33rd District

District Office:  
127 S. 1<sup>st</sup> Street, Suite 204  
Geneva, Illinois 60134  
630.457.5460

Springfield Office:  
211-N Stratton Building  
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**Steven A. Andersson**  
STATE REPRESENTATIVE • 65TH DISTRICT

Committees:

- Appropriations - General Services
- Cities & Villages
- Judiciary - Civil
- Museums, Arts & Cultural Enhancements
- Renewable Energy & Sustainability
- Small Business Empowerment & Workforce Development
- Transportation: Regulation, Roads & Bridges

December 12, 2017

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

RE: Valley Ambulatory Surgery Center, St. Charles Project 17-057

Dear Ms. Avery,

Please accept this as my strong support for Valley Ambulatory Surgery Center, L.P.'s ("VASC") Certificate of Need application (Project 17-05) to relocate to a new building with modern, state-of-the-art design and an improved clinical environment for patients and staff. VASC has provided outpatient surgical procedures in St. Charles from the same building since 1987.

On November 14<sup>th</sup>, I was privileged to tour VASC and met with physicians and staff. I was very impressed with their dedication in providing patient-focused outpatient surgical care for residents in District 65. However, the need for modernization is very apparent. Several of the needs include:

- The building is not handicap-accessible, and many doors fail to reach ADA requirements,
- The fire sprinkler lines leak, periodically requiring closure of the facility. Recurring false alarms are the result of a malfunctioning fire alarm system.
- There are recurring electrical and plumbing problems and it is not cabled for modern IT needs.
- There is insufficient storage space for operating room equipment, soiled linen and biohazard waste.
- The exterior of the building requires roofing and foundation repairs.

In short, the existing facility is in need of many repairs, has serious design deficiencies, and is no longer tenable as an ambulatory surgery center. VASC's plans to relocate to a new building with a more efficient and modern design that is compliant with current ADA and NFPA codes and best practices, will ensure that patient care is not interrupted for massive and expensive required repairs. The new building will be located only one-quarter mile from the existing facility, making it convenient for patients and staff.

I fully support VASC's efforts to offer a modern and efficient facility that is consistent with current codes and best practices, and I encourage you to approve VASC's applications.

Regards,

Steve Andersson  
District 65

ILLINOIS STATE SENATE

DISTRICT OFFICE:  
959 OAK STREET  
NORTH AURORA, IL 60542  
PHONE: 630/800-1992

SPRINGFIELD OFFICE:  
108D STATE CAPITOL  
SPRINGFIELD, IL 62706  
PHONE: 217/782-0471  
FAX: 217/782-4243

EMAIL: senatoroberweis@gmail.com



**JIM OBERWEIS**  
STATE SENATOR • 25<sup>TH</sup> DISTRICT

MINORITY SPOKESMAN  
• LABOR

MEMBER:

- APPROPRIATIONS II
- ENVIRONMENT & CONSERVATION
- HUMAN SERVICES
- STATE GOVERNMENT
- TRANSPORTATION
- LEGISLATIVE AUDIT COMMISSION

December 22, 2017

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

**RE: *Valley Ambulatory Surgery Center, St. Charles***  
**Project 17-057**

Dear Ms. Avery:

I am writing to express my strong support for Valley Ambulatory Surgery Center, L.P.'s ("VASC") Certificate of Need application (Project 17-05) to relocate to a new building with modern, state-of-the-art design and an improved clinical environment for patients and staff.

It is my understanding that, under Illinois Certificate of Need laws, this relocation is treated as a discontinuation of the existing facility and establishment of a new facility, though it will not add any new services or surgical capacity to the service area. Thus, VASC does not anticipate opposition to the project from the existing area health care providers.

For almost 40 years, VASC has provided outpatient surgical procedures in St. Charles from the same building. The existing facility is in need of many repairs, has serious design deficiencies, and is no longer tenable as an ambulatory surgery center. For instance, the building is not handicap-accessible, and many doors fail to reach ADA requirements. In addition, the sterile processing work space is not separated into clean and dirty instrument areas, and there is no enclosed loading dock to protect the integrity of medical products. These building design flaws all fail to comply with current codes and best practices and have resulted in citations to the surgery center.

The exterior of the building requires roofing and foundation repairs, and the main entrance's ill design often requires cars to back-up and re-approach when dropping off and picking up patients.

Furthermore, the building has recurring electrical and plumbing problems, and it has not been cabled for modern IT needs. The fire sprinkler lines leak, periodically requiring closure of the facility. Recurring false alarms are the result of a malfunctioning fire alarm system. The building's layout includes four separate patient areas, resulting in staffing duplications and other inefficiencies, and there is insufficient storage space for operating room equipment, soiled linen, and red bag (biohazard) waste. The staff lockers do not connect directly to the sterile corridor, as required, preventing one-way flow of staff from non-sterile to sterile areas of the facility.

To ensure that patient care is not interrupted for the massive and expensive required repairs, VASC plans to relocate to a new building with less total square footage and a more efficient and modern design. VASC's new building will be located 1/4 mile from the existing facility, making it convenient for patients and staff. It will be compliant with current ADA and NFPA codes and best practices, and will feature a more cost-efficient layout with new mechanical and electrical systems.

For thirty years, VASC has served the residents of the St. Charles community, and I support its efforts to offer a modern and efficient facility that is consistent with current codes and best practices. Again, I strongly encourage you to approve VASC's application so it may continue to serve the residents of St. Charles with the highest of standards and patient care.

Very sincerely,

A handwritten signature in cursive script that reads "Jim Oberweis".

Senator Jim Oberweis

**DISTRICT OFFICE:**  
135 FREMONT ST.  
WEST CHICAGO, IL 60185  
(630) 293-9344  
FAX (630) 293-9785  
KANE /DUPAGE/COOK COUNTY



**SPRINGFIELD OFFICE:**  
200-4N STRATTON OFFICE BLDG.  
SPRINGFIELD, IL 62706  
(217) 782-1653  
FAX (217) 782-1275  
E-MAIL: mike.fortner@sbeglobal.net

**MIKE FORTNER**  
STATE REPRESENTATIVE  
49TH DISTRICT

December 15, 2017

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

*RE: Valley Ambulatory Surgery Center, St. Charles  
Project 17-057*

---

Dear Ms. Avery:

I am writing to express my strong support for Valley Ambulatory Surgery Center, L.P.'s ("VASC") Certificate of Need application (Project 17-05) to relocate to a new building with modern, state-of-the-art design and an improved clinical environment for patients and staff.

It is my understanding that, under Illinois Certificate of Need laws, this relocation is treated as a discontinuation of the existing facility and establishment of a new facility, though it will not add any new services or surgical capacity to the service area. I am unaware of any opposition to the project from the existing area health care providers.

For almost 40 years, VASC has provided outpatient surgical procedures in St. Charles from the same building. The existing facility is in need of many repairs, has serious design deficiencies, and is no longer tenable as an ambulatory surgery center. For instance, the building is not handicap-accessible, and many doors fail to reach ADA requirements. In addition, the sterile processing work space is not separated into clean and dirty instrument areas, and there is no enclosed loading dock to protect the integrity of medical products. These building design flaws do not comply with current codes and best practices and have resulted in citations to the surgery center.

The exterior of the building requires roofing and foundation repairs, and the main entrance's design often requires cars to back-up and re-approach when dropping off and picking up patients. The building has recurring electrical and plumbing problems, and it has not been cabled for modern IT needs. The fire sprinkler lines leak, periodically requiring closure of the



facility. Recurring false alarms are the result of a malfunctioning fire alarm system. The building's layout includes four separate patient areas, resulting in staffing duplications and other inefficiencies, and there is insufficient storage space for operating room equipment, soiled linen, and red bag (biohazard) waste. The staff lockers do not connect directly to the sterile corridor, as required to prevent one-way flow of staff from nonsterile to sterile areas of the facility.

VASC plans to relocate to a new building with less total square footage and a more efficient and modern design. This will ensure that patient care is not interrupted for the massive and expensive required repairs. VASC's new building will be located only one-quarter mile from the existing facility, making it convenient for patients and staff. It will comply with current ADA and NFPA codes and best practices, and will feature a more cost-efficient layout with new mechanical and electrical systems.

For thirty years, VASC has served the residents of the St. Charles community, and I support its efforts to offer a modern and efficient facility that is consistent with current codes and best practices. I encourage you to approve VASC's application so it may continue to serve the residents of St. Charles with the highest of standards and patient care.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael R. Fortner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael R. Fortner  
State Representative

Hello, my name is Tony Taparo – I'm the President of the Atlantic Group for Surgery Partners.

1. Recognize the Board for attending hearing:

I want to thank the CON Board member, Maryanne Murphy, and the Board's General Counsel, Jeannie Mitchell, all the CON staff, and the Mayor of St. Charles (Raymond Rogina) for attending the hearing today.

2. Background on self:

- I'm a healthcare professional with over 30 years of experience.
- For the last 20 years I've been in a management role with Surgery Partners, and the last 10 years I've been the President of ASTC Operations, currently managing six regional teams, 50 ASTCs, in 17 states.
- Prior to that I worked 10 years for HCA/Healthtrust (Nashville based healthcare companies) as a COO and CFO in multiple hospitals and physician practices.

3. Background on Surgery Partners:

- Surgery Partners is the largest standalone, independent outpatient surgical services company in the United States, focused on providing high quality patient care in a low cost setting.
- Currently, Surgery Partners has a comprehensive network of outpatient care services comprising of:
  - 106 ASTCs
  - 18 Surgical Hospitals
  - 60 Physician Practices
  - 32 States
  - Over 5,000 Affiliated Physicians
  - Over 500,000 Annual Patients
- In Illinois, Surgery Partners has 4 ASTCs; Family Vision Care Center, Optical Lab, Optical Group Purchasing Organization (GPO), and a regional corporate office in Chicago. Since November 2004, Surgery Partners has partnered with Valley Ambulatory Surgery Center to provide high quality, low cost, surgical care to the patients of St. Charles.

4. Background on Valley ASC:

- Valley Ambulatory Surgery Center, opened in October <sup>1987</sup>~~1897~~, is a multi-specialty facility with seven ORs and 1 procedure room.
- It is fully licensed, Medicare certified, and AAAHC accredited.
- For the year ending 2017, Valley performed 7,312 surgical cases, and currently has over 60 surgeons on active staff.

5. Specifics on Valley ASC project:

- Valley Ambulatory Surgery Center is requesting approval to establish a multi-specialty ASTC that will be located in newly constructed steel building across the street from our current location.
- By establishing a new state-of-the-art facility, Valley will be able to provide patients and staff a better clinical environment, more efficient space, avoid an enormous disruption in service to the patients and physicians, and avoid cost-prohibitive repairs to the existing facility.
- The proposed new facility will consist of six Operating Rooms and two Procedure Rooms with three dedicated luxury overnight care suites. It will not be increasing surgical capacity or adding new categories of service.
- As I previously mentioned, the current building is 30 years old and now outdated and simply no longer suitable as an ASTC. The extensive upgrades needed would cause closures and a major disruption in patient care, and would still not meet the current design standards for ASTC.
- Identify key building deficiencies (Daniel & Marcy):
  - Sterile processing work space not separated into clean and dirty instrument areas, as required by current codes and best practices.
  - Building not handicap accessible, and numerous doors not ADA compliant.
  - Building is wood-framed construction, and not within NFPA (fire safety) or CMS (federal Medicaid/Medicare) standards.
  - Recurring electrical and plumbing problems. Leaks in the fire sprinkler lines have required closures of the facility on several recent occasions.

- Inefficient building layout (four separate areas for patients necessitate staffing duplications and create other inefficiencies).

6. Reference broad-based letters of support:

- Mayor of St. Charles – Raymond Rogina
- Kane County Board Chairman – Chris Lauzen
- State Senator 33<sup>rd</sup> District – Karen McConnaughay
- State Representative 65<sup>th</sup> District – Steve Andersson
- State Senator 25<sup>th</sup> District – Jim Oberweis
- State Representative 49<sup>th</sup> District – Michael Fortner
- Executive Director (Kane County Health Dept.) – Barbara Jeffers
- State Representative 50<sup>th</sup> District – Keith Wheeler
- St. Charles Chamber of Commerce

7. Closing comments:

Again I want to thank the CON Board and staff for their time and the opportunity to present our proposed project that will continue provide low cost, high quality care to the patients of St. Charles and the surrounding communities the for the next 30 years.

I respectfully request CON Board approve this project.



# Ex-Ryan aide pleads guilty

## Consultant faces jail in kickback scheme

November 20, 2007 | By Jeff Coen, Tribune staff reporter

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A one-time top adviser to former Gov. George Ryan pleaded guilty in federal court on Monday in connection with a real estate deal involving a suburban medical school and indicated he is cooperating with prosecutors.

John Glennon, an influential Republican real estate consultant, was accused in 2005 of helping conceal \$700,000 in kickbacks from the owner of a construction firm to win a contract for an expansion of the North Chicago school. After plea negotiations, Glennon acknowledged on Monday that he knew the \$700,000 came from restricted bond proceeds that were meant solely for the expansion project.

Glennon, CEO of a consulting business called North American Capital Opportunities, had been hired by the Chicago Medical School as a financial adviser. Assistant U.S. Atty. Kaarina Salovaara told U.S. District Senior Judge John Grady that Glennon concealed his knowledge of how he was paid and entered into a separate contract with the construction firm to accept the funds.

Two members of the school's board of trustees, Stuart Levine and Jacob Kiferbaum, owner of the construction firm, agreed to inflate the 2001 contract to include the payment for Glennon. A third board member, identified in the Glennon plea agreement as Individual A, also had knowledge of the situation, prosecutors said.

Kiferbaum has previously pleaded guilty and admitted he paid Levine \$1.7 million in kickbacks to obtain two lucrative construction contracts with Rosalind Franklin University of Medicine & Science.

The indictment against Levine accused him of using his role on the Illinois Health Facilities Planning Board to block hospital projects unless Kiferbaum built them. It was dismissed last year as a part of his cooperation with authorities. In a separate case, Levine pleaded guilty to corruption charges while he was on the state teachers pension board and agreed to cooperate in the ongoing federal probe.

Salovaara told the judge that Glennon, who also was a trustee with the Teachers' Retirement System, is cooperating with investigators.

In exchange, the government is expected to recommend he be sentenced to less than 8 months in prison.

The maximum penalty he could face would be 3 years in prison.

Levine is expected to be a witness against Antoin "Tony" Rezko, a political insider and former fundraiser for Gov. Rod Blagojevich. Rezko and others allegedly acted in concert with Levine's to shake down investment firms wanting to do business with the Teachers' Retirement System in exchange for campaign money and funds.

Since he was charged in 2005, Glennon has been released on a \$500,000 bond secured by his home in Lake Forest. No date was set Monday for his sentencing. Glennon's plea came eight months after Judge Grady dismissed the charges against a fourth co-defendant, P. Nicholas Hurtgen, who also was accused of forcing kickbacks from hospital projects.

The judge found that the indictment against Hurtgen, a former senior managing director at Bear Stearns & Co. in Chicago, did not specifically outline that Hurtgen knew that kickbacks were involved.

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jcoen@tribune.com

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### **DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH**

**M.R.26211 - In re: John Edward Glennon. (September 25, 2013)**

Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission for leave to file exceptions to the report and recommendation of the Review Board is denied. Respondent is suspended from the practice of law for three (3) years, as recommended by the Review Board.

Suspension effective October 16, 2013.

Respondent John Edward Glennon shall reimburse the Client Protection Program Trust Fund for any Client Protection payments arising from his conduct prior to the termination of the period of suspension.

Order entered by the Court.

*In re* [John Glennon](#), (Supreme Court Order)

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### DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH

*Filed June 21, 2013*

**In re John Edward Glennon**  
Respondent-Appellee

Commission No. 2009PR00137

#### **Synopsis of Review Board Report and Recommendation** (June 2013)

The Administrator charged Respondent with one count of misconduct following Respondent's federal conviction for misprision of a felony. Respondent was paid \$700,000 from an inflated contract tied to a scheme involving Stuart Levine, Jacob Kiferbaum and the Chicago Medical School. Respondent initially failed to report his knowledge of criminal conduct to the federal authorities. Respondent later cooperated with the federal authorities, pled guilty to misprision of a felony, and was sentenced to probation.

The Hearing Board found Respondent engaged in a criminal act that reflected adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(a)(3) of the 1990 Illinois Rules of Professional Conduct; failed to report another lawyer's misconduct in violation of Rule 8.3(a); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4); and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(a)(5). The Hearing Board considered various factors aggravating and mitigating his misconduct, and recommended that Respondent be suspended for three years.

On review, the Administrator requested that the Review Board recommend that Respondent be disbarred. The Review Board found substantial evidence of mitigation. Respondent's knowledge of Levine's misdeeds appeared to have been limited to the transaction with Chicago Medical School. Respondent has never been disciplined, and offered character testimony. He expressed remorse for his misconduct. He cooperated with the government resulting in the federal government's acknowledgment that Respondent should be permitted a downward departure of the federal sentencing guideline. His misconduct was not the result of his representation of a client; he did not counsel a client to engage in illegal activity nor did he assist a client in doing so. Accordingly, the Review Board recommended that Respondent be suspended for three years.

#### **BEFORE THE REVIEW BOARD OF THE ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION**

*In re* [John Glennon, 2009pr0137](#) (Review Board)

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Respondent-Appellee,

No. 971154.

### REPORT AND RECOMMENDATION OF THE REVIEW BOARD

The Administrator charged Respondent with one count of misconduct following Respondent's federal conviction for misprision of a felony. Respondent's conviction arose out of the Operation Board Games federal corruption probe, after the federal authorities discovered Respondent was paid \$700,000 from an inflated contract tied to a scheme involving Stuart Levine, Jacob Kiferbaum and the Chicago Medical School. Respondent initially failed to report the criminal conduct to the federal authorities. Respondent later cooperated with the federal authorities, pled guilty to misprision of a felony, and was sentenced to probation. The Hearing Board heard the testimony of the Respondent, considered various factors aggravating and mitigating his misconduct, and recommended that Respondent be suspended for three years.

On review, the Administrator challenges the sanction recommendation and seeks a recommendation of disbarment. We conclude that a three year suspension will adequately serve the purposes of the disciplinary process.

### RESPONDENT'S CRIMINAL MISCONDUCT

Respondent was involved in a scheme with Stuart Levine and Jacob Kiferbaum whereby the parties engaged in a misapplication of Chicago Medical School's bond money

PAGE 2:

resulting in at least \$700,000 of an intended \$1,000,000 of restricted bond funds being paid to Respondent's company. The facts surrounding Respondent's involvement are set out in greater detail in the Hearing Board's Report. However, the following facts were elicited at the hearing and during Respondent's criminal proceedings.

Respondent owned a company, North American Capital Opportunities (NACO) The company advised business clients on financing strategies. Respondent had a background in and was familiar with bond transactions and the use of tax exempt bonds for financing.

Respondent knew Stuart Levine and Jacob Kiferbaum. Both men sat on the Board of Trustees of the Chicago Medical School. Levine was also an attorney. In 1999, Respondent began to provide business related services to Chicago Medical School, which at the time was located in North Chicago in Lake County. Respondent and NACO initially acted as consultants in the consideration of the development of an additional parcel of property for the school on the west side of Chicago. Respondent testified that he spent a great deal of time in discussions about this development, for which he did not believe he received full compensation.

Ultimately, CMS decided to finance construction of an administration building on the Lake County property by the issuance of tax exempt bonds through the Illinois Health Finance Authority. Respondent was hired as the school's financial adviser in connection with the bond transaction. Respondent understood, given his background, that the bond proceeds were restricted funds and could only be used for certain specified costs

*In re* John Glennon, 2009pr0137 (Review Board)

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for construction. Prior to submission of the proposal, Kiferbaum, Levine, and a person identified in the federal indictment as unindicted Individual A, reached an

PAGE 3:

agreement whereby Kiferbaum would secretly inflate his contract proposal to the Chicago Medical School to include an extra \$1,000,000 in the proposed cost. Kiferbaum then agreed to pay NACO the \$1,000,000. The parties agreed that this \$1,000,000 would be paid to Respondent out of the restricted bond proceeds of the tax exempt restricted bonds. When Respondent learned of this agreement, Respondent knew the payment to him was a misapplication of the proceeds of the tax exempt bonds. He knew that Kiferbaum should not pay the bond proceeds to him for work unrelated to the construction project. Nevertheless, he then entered into a contract with Kiferbaum's construction company to be paid 36 monthly payments of \$28,000 per month for services to Kiferbaum Construction Company. However, Respondent never provided services to Kiferbaum Construction Company; the contract was a sham contract to cover up the use of the bond proceeds to pay Respondent for his alleged past services rendered at the request of Levine. Kiferbaum did not disclose these payments to CMS. Respondent knew again that this was a misapplication of bond funds and that it was a felony offense to misapply the bond proceeds in this manner. Following the execution of this contract, Kiferbaum submitted construction invoices to CMS deliberately hiding the fact that money was being paid to Respondent out of bond proceeds. Kiferbaum's company paid Respondent \$700,000 pursuant to the terms of this contract.

When the federal government learned of the transaction during its investigation, the federal government charged Respondent with misprision of a felony. Respondent cooperated with the federal government. As a result of his cooperation, the government recommended a downward departure from the federal sentencing guidelines. Judge Grady sentenced Respondent to probation, imposed a \$20,000 fine and sentenced Respondent to 320 hours of community service. Kiferbaum paid restitution of \$1,000,000 to CMS.

PAGE 4:

At the time of the disciplinary hearing Respondent was still on probation. He conceded he should have reported the crimes. He also testified at length and offered documents as to the alleged extent of his services to CMS regarding both the property in North Chicago and the property on the west side of Chicago.

Respondent's conviction of misprision of a felony is conclusive evidence of his guilt of the crime. *See*, Supreme Court Rule 761(f); *In re Ciardelli*, 118 Ill.2d 233, 514 N.E.2d 1006 (1987). The Hearing Board found, and the parties do not dispute, that Respondent engaged in a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(a)(3); failed to report another lawyer (Levine) for engaging in criminal and fraudulent conduct in violation of Rule 8.3(a); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4); and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(a)(5).

### SANCTION RECOMMENDATION

The purpose of the attorney disciplinary system is not to punish the attorney for his misconduct, but "to protect the public, maintain the integrity of the legal profession, and protect the administration of justice from reproach." *In re Winthrop*, 219 Ill. 2d 526, 559, 848 N.E.2d 961, 981(2006). In determining the appropriate sanction, this Board considers the nature of the misconduct charged and proved, and any

*In re John Glennon*, 2009pr0137 (Review Board)

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Like the Hearing Board, we find that the cases relied upon by the Administrator in support of disbarment are distinguishable as they either involve more egregious misconduct or contain less mitigating evidence than the present case. *See, e.g., In re Vavrick*, 117 Ill.2d 408,

PAGE 5:

512 N.E.2d 1226 (1987) (disbarment for deliberate conversion of a client's money and conviction of grand theft; little evidence offered in mitigation).

There is no question that Respondent's misconduct is serious and warrants a substantial sanction. As noted by the Hearing Board, Respondent purposely concealed the illegal activity of Levine and Kiferbaum because he personally benefitted from the illegal activity. Yet, while his misconduct was ongoing and was not the result of an isolated lack of judgment, his knowledge of Levine's illegal activities appears to have been limited to the transactions with CMS.

Respondent offered evidence mitigating his misconduct. He has not been previously disciplined and he offered character testimony. Respondent expressed remorse for his misdeeds. The Hearing Board was in the best position to judge Respondent's expressions of remorse and weigh his contrition and we give deference to their conclusions. *See, In re Topper*, 135 Ill.2d 331, 350-51, 553 N.E.2d 306 (1990) (candor at disciplinary hearing and expressions of remorse proper factors to consider in mitigation).

Respondent offered additional significant, and we believe persuasive, evidence that mitigates his misconduct. He cooperated in the criminal proceedings and in the federal probe, resulting in the federal government's acknowledgment that Respondent should be permitted a downward departure of the federal sentencing guideline. Judge Grady also acknowledged Respondent's cooperation at his sentencing hearing. *See, In re Cetwinski*, 143 Ill.2d 396, 406, 574 N.E. 2d 645 (1991) (respondent's substantial cooperation in a federal investigation noted as mitigation, contributing in a reduction of the sanction from disbarment to a three year suspension).

PAGE 6:

His misconduct was not the result of his representation of a client. He did not counsel a client to engage in illegal activity nor did he assist a client in doing so. *Cf., In re Rosenthal*, 73 Ill. 2d 46, 382 N.E.2d 257 (1978) (disbarment warranted for respondent's participation in and concealment of an extortion scheme perpetuated against a client by a public official); *In re Goulding*, 91 CH 208, *petitions for leave to file exceptions denied*, No. M.R. 13055 (Mar. 21, 1997) (four year suspension for an attorney who assisted a client in hiding funds from the IRS).

Rather, Respondent's misconduct arose out of his consulting activities, activities that he has continued engaging in since the time of his misconduct without incident. He has accepted responsibility for his wrongdoings and he presents no present danger to the public. We agree with the Hearing Board that a three year suspension is consistent with the purpose of the disciplinary system.

We recommend to the Court that Respondent, John Edward Glennon, be suspended for a period of three years.

Respectfully Submitted.

*In re John Glennon*, 2009pr0137 (Review Board)

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Keith E. Roberts, Jr.

### CERTIFICATION

I, Kenneth G. Jablonski, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on June 21, 2013.

Kenneth G. Jablonski, Clerk of the  
Attorney Registration and Disciplinary  
Commission of the Supreme Court of Illinois

*In re* [John Glennon, 2009pr0137](#) (Review Board)

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**VALLEY AMBULATORY  
SURGERY CENTER**  
*Dedicated to Excellence in Patient Care*

**REMARKS OF ANTHONY GIAMBERDINO, M.D.  
BEFORE THE  
ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD  
ON VALLEY AMBULATORY SURGERY CENTER CON APPLICATION**

Good morning, Review Board member Murphy and General Counsel Mitchell, and the staff of the Illinois Health Facilities and Services Review Board. My name is Dr. Anthony P. Giamberdino (G-I-A-M-B-E-R-D-I-N-O).

My perspective on this CON application is informed by long, first-hand experience. I have been a full-time staff anesthesiologist at the Valley Ambulatory Surgery Center for the past 27 years, and have served as its Medical Director and Chief of Anesthesia for more than a decade. I respectfully suggest that nobody is in a better position than me to evaluate the capabilities and limitations of the current building.

I also have a unique perspective on this CON application because, while serving as the VASC Medical Director, I am also a co-owner of the current building and thus part of the landlord group. In other words, I would economically benefit as a member of the landlord group from the surgery center being required to stay at its current address -- necessitating a full-scale tenant rebuild by Valley. However, as a physician I must put the interests of our patients first.

I am here today to express my strong support for this CON application.

Simply stated, after 30 years, the current building is no longer suitable for use as an ambulatory surgery center.

Multiple evolutions in the life safety code and infection control guidelines have made compliance with current codes and best practices extremely difficult -- and have resulted in citations to the VASC.

The current building is not handicapped-accessible in accordance with modern ADA requirements.

Sterile processing work space is not separated into clean and dirty instrument areas, and the loading area is not designed to protect the integrity of medical products.

The infrastructure of the current building has serious electrical and plumbing deficiencies, and is not cabled for modern IT needs.

Leaking fire sprinkler lines and a malfunctioning fire alarm system have resulted in recurring false alarms and periodic closures of the facility.

Staff lockers do not connect directly to the sterile corridor, as is required to prevent one-way flow of staff from non-sterile to sterile areas of the facility.

The building exterior requires extensive roofing and foundation repairs.

The main entrance and the interior have significant layout problems that can only be addressed through reconstruction.

I could go on.



To avoid the long interruption in patient care that would be required for a massive re-build of the current building, VASC plans to relocate to a new, steel-framed building with less total square footage, and a more efficient and modern design. That new facility would be just a quarter-mile from the current building. The new facility would be convenient for patients and staff, compliant with current codes and best practices, and feature a cost-efficient layout with new mechanical and electrical systems. Moreover, this new facility would be much better able to adapt over time to continually evolving life safety and infection control guidelines.

VASC has an outstanding clinical staff, and urgently needs a modern facility to meet the outpatient surgical needs of the greater St. Charles area for years to come.

I respectfully urge your favorable consideration of this CON application, and will leave you with a written copy of my remarks. For your convenience, I have also attached a copy of my support letter dated December 8, 2017, which has been posted on the Review Board web page for Project #17-057.

Thank you.



**VALLEY AMBULATORY  
SURGERY CENTER**  
*Dedicated to Excellence in Patient Care*





**VALLEY AMBULATORY  
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**Remarks of Daniel Hauer before the Illinois Health Facilities and Services  
Review Board on Valley Ambulatory Surgery Center (Project #17-057)**

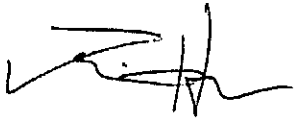
Good morning. My name is Daniel Hauer and I am the Administrator of Valley Ambulatory Surgery Center. First off, I would like to thank everyone for their interest in the health care that is delivered in the Fox Valley. A little about my background, I have worked in health care for the last 14 years, from emergency medical services to hospital trauma centers and have now spent the last eight years in ambulatory surgery centers.

Valley Ambulatory Surgery Center was founded in 1987 by a group of physicians with a vision that outpatient surgery could be safely performed outside of the traditional hospital delivery model and where a more physician-to-patient approach allowed for an individualized treatment plan. 30+ years and 110,000+ patients later, here we are. We have earned a strong reputation in the Fox Valley as "the place" for elective surgery with some of the best quality outcomes in the nation.

In regards to our relocation request, health care standards and patient expectations have evolved dramatically since 1987. For example, our current building is constructed out of wood with electrical infrastructure based on code sets from the 1980s. In addition, American Disability Act (ADA) compliance is an ever growing challenge and concern with many parts of our building still lagging behind the times. As for the expectation and demand of today's patient population, there is a need for larger operating rooms to accommodate higher acuity surgical cases and patients expect health care facilities to offer a modern, accommodating atmosphere where amenities are plentiful and privacy is maintained.

In summary, Valley Ambulatory Surgery Center has served the patients of St. Charles and the surrounding Fox Valley for the last 30 years, and if allowed, we are eager to continue serving the Fox Valley for the next 30 years. This project request for our relocation is a testament of our continued commitment to the community and should be perceived as nothing more than an opportunity to offer patients a state-of-the-art surgery center where safety and preparedness meets welcoming and convenient. Thank you for your time and consideration.

Respectfully,



Daniel C. Hauer, CASC  
Administrator  
Valley Ambulatory Surgery Center