

HEALTH FACILITIES and SERVICES REVIEW BOARD
STATE OF ILLINOIS

Health Facilities and Services Review Board,

Complainant,

vs.

Kish Health System and Kishwaukee Community
Hospital,
Project #09-069

Docket No. HFSRB 14-03

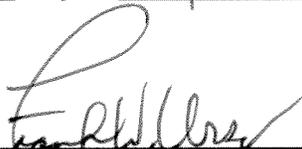
Respondent.

PROOF OF SERVICE

The undersigned certifies that true and correct copies of the attached Notice of Intent to Impose a Fine, Notice of an Opportunity for an Administrative Hearing and Appearance before the Health Facilities and Services Review Board, and Notice of Allegations of Non-Compliance were sent by certified mail in a sealed envelope, postage prepaid to:

Joseph C. Dant
Vice President Business Development
Kishwaukee Community Hospital
One Kish Hospital Drive
DeKalb, IL. 60115

The said documents were deposited in the United States mail in Chicago, Illinois, on the 17th day of April, 2014.



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

cc: M. Constantino
C. Avery
M. Mills

HEALTH FACILITIES and SERVICES REVIEW BOARD
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Respondent.

NOTICE OF INTENT TO IMPOSE A FINE, NOTICE OF AN OPPORTUNITY FOR AN
ADMINISTRATIVE HEARING AND APPEARANCE BEFORE THE HEALTH
FACILITIES AND SERVICES REVIEW BOARD AND NOTICE OF ALLEGATIONS OF
NON-COMPLIANCE

Pursuant to the authority granted by the Illinois Health Facilities Planning Act (20 Ill. Comp. Stat. 3960/1 et seq.) (the "Act") and the Illinois Health Facilities Planning Procedural Rules (the "Code") (77 Ill. Admin. Code 1130), NOTICE is given that:

NOTICE OF INTENT TO IMPOSE A FINE

In accordance with Section 14.1 of the Act, the Illinois Health Facilities and Services Review Board ("HFSRB" or "State Board") intends to impose a fine of Two-Hundred and Ninety Thousand Dollars (\$290,000.00) against Respondent. This action is based upon Respondent's failure to comply with the Act and Code as set forth in the Allegations of Non-Compliance in Attachment A.

Respondent shall pay a fine of Two-Hundred and Ninety Thousand Dollars (\$290,000.00) to the State Board. Upon receipt of the fine by the State Board, a final order will be presented for approval to the State Board. The final order will dismiss this matter with prejudice.

Make the fine payable to the: Illinois Department of Public Health. Send the payment to the:

Health Facilities and Services Review Board
525 West Jefferson St., Second Floor
Springfield, IL 62761

NOTICE OF AN OPPORTUNITY FOR AN ADMINISTRATIVE HEARING

In accordance with Sections 10 and 14.1(c) of the Act and Sections 1130.1010 and 1130.1020 of the Code, Respondent is hereby offered the opportunity for an administrative hearing before a duly appointed Administrative Law Judge to show cause why Respondent should not be fined, provided that Respondent requests such a hearing within thirty (30) days after receipt of this Notice.

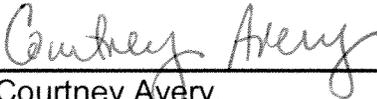
Failure to request a hearing within thirty (30) days from receipt of this Notice will constitute a waiver of the right to such hearing.

NOTICE OF AN OPPORTUNITY TO APPEAR
BEFORE THE HEALTH FACILITIES AND SERVICES REVIEW BOARD

In accordance with Sections 10 and 14.1(c) of the Act, Respondent is offered the opportunity to appear before the HFSRB. The Respondent is NOT required to appear before the HFSRB at this time, but if Respondent wants to appear before the HFSRB to respond to the Allegations of Non-Compliance a written request must be made within thirty (30) days after receipt of this Notice.

Failure to request an opportunity to appear before the HFSRB within thirty (30) days from the receipt of this Notice will constitute a waiver of the right to such an opportunity.

The hearing request and the request to appear before the HFSRB shall be made in writing and directed to Frank W. Urso, General Counsel, Health Facilities and Services Review Board, 122 S. Michigan, Suite 700, Chicago, Illinois 60603.



Courtney Avery,
Board Administrator,
Health Facilities and Services
Review Board

Dated this 17th day of April 2014.

ATTACHMENT A.

HEALTH FACILITIES and SERVICES REVIEW BOARD
STATE OF ILLINOIS

Health Facilities and Services Review Board,

Complainant,

vs.

Kish Health System and Kishwaukee Community
Hospital,
Project #09-069

Respondent.

Docket No. HFSRB 14-03

NOTICE OF ALLEGATIONS OF NON-COMPLIANCE

Pursuant to the Illinois Health Facilities Planning Act ("Act") (20 Ill. Comp. Stat. 3960/1 et seq.) and the Health Facilities Planning Rules ("Code") (77 Ill. Admin. Code 1130), the Illinois Health Facilities and Services Review Board ("HFSRB" or State Board") has the following authority.

Section 12. of the Act establishes, in part, that:

"[T]he State Board shall exercise the following powers and duties:

Prescribe rules, regulations, standards, criteria, procedure or reviews which may vary according to the purpose for which a particular review is being conducted or the type of project reviewed and which are required to carry out the provisions and purposes of this Act."

Complainant bases its intent to fine Respondent Two-Hundred and Ninety Thousand Dollars (\$290,000.00) upon the following provisions of the Act and/or Code.

Section 14.1(a) of the Act and Section 1130.790 of the Code allows, in part, that:

"The State Board may deny an application for a permit, may revoke or take other action as permitted by this Act with regard to a permit as the State Board deems appropriate, including the imposition of fines as set forth in this Section, for any one or a combination of the following:

"2) The establishment, construction, or modification of a health care facility without a permit or in violation of the terms of a permit.

(3) The violation of any provision of this Act or any rule adopted under this Act."

Section 14.1 (b) of the Act states, in part:

"(b) Persons shall be subject to fines as follows:

(2.5) A permit holder who fails to comply with the post-permit and reporting requirements set forth in Section 5 shall be fined an amount not to exceed \$10,000 plus an additional \$10,000 for each 30-day period, or fraction thereof, that the violation continues. This fine shall continue to accrue until the date that (i) the post-permit requirements are met and the post-permit reports are received by the State Board or (ii) the matter is referred by the State Board to the State Board's legal counsel. The accrued fine is not waived by the permit holder submitting the required information and reports. Prior to any fine beginning to accrue, the Board shall notify, in writing, a permit holder of the due date for the post-permit and reporting requirements no later than 30 days before the due date for the requirements. This paragraph (2.5) takes effect 6 months after August 27, 2012 (the effective date of Public Act 97-1115)."

Section 1130.770 of the Code states, in part:

"a) Written Notification

- 1) Each permit holder shall notify HFSRB upon its project completion.
 - 2) All information concerning project completion shall be submitted on 8½ by 11" paper.
 - 3) All information regarding progress completion shall be submitted within the allowable time frames established in subsections (a)(1) and (a)(5) and shall be sent only by any recognized overnight courier or personal delivery service.
 - 4) No project completion reports will be accepted by email or fax.
 - 5) The notification shall be submitted no later than 90 days following the project completion date. The permit holder shall provide the supporting documentation in subsections (b), (c) and (d) within 90 days following the notification.
- d) For a project with a cost above the capital expenditure minimum in place at the time of permit approval, the permit holder shall submit a notice that

the project has been brought to a conclusion and submit a report of final realized costs containing the following:

- 1) itemization of all project costs;
 - 2) itemization of those project costs that have been or will be submitted for reimbursement under Titles XVIII and XIX;
 - 3) certification that the final realized costs are the total costs required to complete the project and that there are no additional or associated costs or capital expenditures related to the project that will be submitted for reimbursement under Title XVIII or XIX;
 - 4) certification of compliance with all terms of the permit to date, including project cost, square footage, services, etc.; certification attesting to compliance with the requirements of this Section must be in the form of a notarized statement signed by an authorized representative the permit holder;
 - 5) the final Application and Certification for Payment for the construction contract, as per the American Institute of Architects form G702 or equivalent; and
 - 6) for permits with a project cost equal to or greater than three times the capital expenditure minimum in place at the time of permit approval, an audited financial report of all project costs and sources of funds.
- f) Failure to timely file the project's final realized cost report, notice of project completion, all necessary supporting documentation following the project completion, or any project cost overrun information shall subject the permit or exemption holder to fines, permit revocation, and the penalties and sanctions mandated in the Act (see 20 ILCS 3960/14.1) and Section 1130.790."

The Respondent's alleged violations are based upon the following facts:

1. Respondent received a permit for project # 09-069 from the Board on March 2, 2010.
2. Based upon the March 18, 2010 permit letter, Respondent was notified that annual progress reports were due "every 12-months from the permit issuance date until such time as the project is completed" (see Attachment B.).
3. An annual progress report was due by 4-2-11. The annual progress report was not timely and was received by the Board on 7-28-11.

4. The project completion date was detailed on the March 18, 2010 permit letter as June 30, 2011.
5. Based upon the March 18, 2010 permit letter, Respondent was required to submit a notice of project completion within 30 days following the project completion date and the final realized costs report within 90 days following the project completion date, or by September 30, 2011. The Respondent was also required to provide the supporting documentation contained in Section 1130.770 of the Board's Rules.
6. A final costs report was received by the Board on 8-24-11 but it did not contain the required information according to the Board's Rules. The report lacked the following items:
 - a. Itemization of those project costs that have been or will be submitted for reimbursement under Titles XVIII and XIX;
 - b. Certification that the final realized costs are the total costs required to complete the project and that there are no additional or associated costs or capital expenditures related to the project that will be submitted for reimbursement under Title XVIII or XIX;
 - c. Certification of compliance with all terms of the permit to date, including project cost, square footage, services, etc.; certification attesting to compliance with the requirements of this Section must be in the form of a notarized statement signed by an authorized representative the permit holder;
 - d. The final Application and Certification for Payment for the construction contract, as per the American Institute of Architects form G702 or equivalent.
7. On August 24, 2011 a Board staff member (M. Constantino) sent an email, with an attachment containing the necessary requirements, to Respondent (J. Dant) notifying Respondent that the 8-24-11 final costs report did address all the final costs report requirements (see Attachment C.).
8. Respondent claimed that an August 30, 2011 final costs report was sent to the Board (see Attachment D.). There is no record of the Board receiving this document in the mail logs for 2011. This document is not in the # 09-069 project file. This report was also incomplete.
9. On June 2, 2012 Respondent was notified by email that the final cost report lacked the required certifications and documents. This correspondence also stated that the report was noncompliant and requested prompt attention to this matter.

10. On February 5, 2014 Respondent was contacted by telephone by Board staff informing Respondent that the final cost report was not complete.
11. On February 10, 2014 Respondent submitted a revised, final cost report that contained all required statements and data.



STATE OF ILLINOIS

HEALTH FACILITIES AND SERVICES REVIEW BOARD

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 FAX: (217) 785-4308

March 18, 2010

CORRECTED
CERTIFIED MAIL
RETURN RECEIPT REQUESTEDJoe Dant, Vice President Business Development
Kishwaukee Community Hospital
One Kish Hospital Drive
Dekalb, Illinois 60115**RE: PERMIT: Illinois Health Facilities Planning Act 20 ILCS 3960**

Dear Mr. Dant:

On March 2, 2010, the Illinois Health Facilities and Services Review Board approved the application for permit for the referenced project based upon the project's substantial conformance with the applicable standards and criteria of Part 1110 and 1120. In arriving at a decision, the State Board considered the findings contained in the State Agency Report, the application material, and any testimony made before the State Board.

- **PROJECT: #09-069 – Kishwaukee Community Hospital - Outpatient Cancer Center -** The permit holders are approved to relocate, modernize and expand the Kishwaukee Cancer Care Center located at One Kish Hospital Drive in 24,315 total gross square feet of space, that consists of 23,438 gross square feet of new construction and 877 gross square feet of as is space. Services to be provided are medical oncology infusion/chemotherapy, PET/CT, complementary medicine, a boutique, community staff and patient education, patient and family support, community outreach, and research. The operating entity licensee is Kish Health System, One Kish Hospital Drive, Dekalb, Illinois. The owner of the site is Kishwaukee Community Hospital, One Kish Hospital Drive, Dekalb, Illinois.
- **PERMIT HOLDERS:** The permit holders are Kish Health System, and Kishwaukee Community Hospital, One Kish Hospital Drive, Dekalb, Illinois.
- **PERMIT AMOUNT:** \$15,830,661
- **PROJECT OBLIGATED BY:** September 2, 2011
- **PROJECT COMPLETION DATE:** June 30, 2011

This permit is valid only for the defined construction or modification, site, amount and the named permit holder and is **not transferable or assignable**.

In accordance with the Planning Act, the permit is valid until such time as the project has been completed, provided that all post permit requirements have been fulfilled, pursuant to the requirements of 77 Ill. Adm. Code 1130.

The permit holder is responsible for complying with the following requirements in order to maintain a valid permit. Failure to comply with the requirements may result in expiration of the permit or in State Board action to revoke the permit.

1. OBLIGATION-PART 1130.720

The project must be obligated by the Project Obligation Date, unless the permit holder obtains an "Extension of the Obligation Period" as provided in 77 Ill. Adm. Code 1130.730. Obligation is to be reported as part of the first annual progress report (see 2. below) for permits requiring obligation within 12 months after issuance. For major construction projects which require obligation within 18 months after permit issuance, obligation must be reported as part of the second annual progress report. If project completion is required prior to the respective annual progress report referenced above, obligation must be reported as part of the notice of project completion. The reporting of obligation must reference a date certain when at least 33% of total funds assigned to project cost were expended or committed to be expended by signed contracts or other legal means.

2. ANNUAL PROGRESS REPORT-PART 1130.760

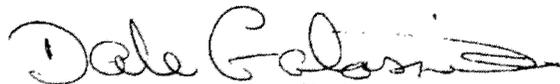
An annual progress report must be submitted to IDPH every 12-month from the permit issuance date until such time as the project is completed.

3. PROJECT COMPLETION REQUIREMENTS-PART 1130.770

The permit holder must submit a written notice of project completion as defined in Section 1130.140. Each permit holder shall notify IHFSRB within 30 days following the project completion date and provide supporting documentation within 90 days following the completion date and must contain the information required by Section 1130.770.

This permit does not exempt the project or permit holder from licensing and certification requirements, including approval of applicable architectural plans and specifications prior to construction. Should you have any questions regarding the permit requirements, please contact Mike Constantino.

Sincerely,



Dale Galassie, Acting Chairman
Illinois Health Facilities and Services Review Board

From: Dant, Joe [<mailto:jdant@kishhospital.org>]
Sent: Wednesday, August 24, 2011 3:12 PM
To: Constantino, Mike
Subject: RE: final cost report

Mike,

It seems we jumped the gun – my director of engineering knew we had a few other inclusions and we sent it to too soon. We'll have it turned around shortly.

Thanks,

Joe

Joseph C. Dant
Vice President, Business Development
KishHealth System

From: Constantino, Mike [<mailto:Mike.Constantino@Illinois.gov>]
Sent: Wednesday, August 24, 2011 11:55 AM
To: Dant, Joe
Subject: final cost report

Hi Joe:

I need for you to address the requirements for the final cost report. See b of attached pdf file.

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

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**Attachment
D**



August 30, 2011

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

Re: Project No. 09-069
Kishwaukee Community Hospital
Notification of Project Completion and Final Cost Report

Dear Ms. Avery:

In accordance with Title 77, Section 1130.770 of the Illinois Administrative Code we wish to inform you that Project No. 09-069, Kishwaukee Community Hospital has been completed. As part of the final cost report the following information is provided:

1. A detailed itemization of all project costs and sources of funds is attached.
2. Pursuant to Section 1130.770 of the Illinois Administrative Code, this certifies that the final realized cost report referenced above is the total cost required to complete the Project and that there are no additional or associated costs or capital expenditures related to the project which will be submitted for reimbursement under Titles XVIII and XIX.
3. We certify we are in compliance with the requirements of all terms of the permit to date, including, without limitation project costs, square footage and services.
4. We attach the final Application and Certification for payment for the construction contract.

Based on this information, we request that you deem the Project complete in accordance with Section 1130.770 of the Illinois Administrative Code.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph C. Dant".

Joseph C. Dant
Vice President, Business Development

Exhibit A
HFSRB Permit 09-069 Kishwaukee Community Hospital

Itemized Schedule of Final Project Costs and Source of Funds

Description of Costs	Approved Permit Amount	Actual Costs	Variance
Preplanning Costs	\$157,000	\$110,651	\$46,439
Site Survey & Soil Investigation	\$38,853	\$30,065	\$8,788
Site Preparation	\$844,144	\$798,835	\$45,309
Off Site Work	\$627,253	\$383,812	\$288,441
New Construction Contract	\$8,568,534	\$8,641,168	(\$72,634)
Modernization Contracts	\$0	\$0	\$0
Contingencies	\$600,000	\$26,607	\$573,393
Architectural/Engineering Fees	\$768,532	\$767,620	\$912
Consulting and Other Fees	\$58,000	\$55,626	\$2,374
Moveable or Other Equipment	\$3,453,895	\$1,761,900	\$1,691,995
Bond Issuance Expense	\$275,000	\$0	\$275,000
Net Interest Expense During Construction	\$330,000	\$0	\$330,000
Other Costs to be Capitalized	\$109,450	\$186,786	(\$77,336)
Total Project Cost	\$15,830,661	\$12,763,070	\$3,067,591
Source of Funds			
Cash and Securities	\$2,240,661	\$12,096,837	(\$9,856,176)
Pledges	\$0	\$666,233	(\$666,233)
Bond Issues	\$13,590,000	\$0	\$13,590,000
Mortgages	\$0	\$0	\$0
Total Source of Funds	\$15,830,661	\$12,763,070	\$3,067,591

APPLICATION AND CERTIFICATE FOR PAYMENT

TO : Kishwaukee Health System **PROJECT :** Kishwaukee Cancer Care Ctr Expansion
FROM : Power Construction Company, LLC **ARCHITECT :** BSA Life Structures
APPLICATION NO.: 14 **PERIOD TO :** December 31, 2010
PROJECT NO.: 05-52000 **CONTRACT DATE :** November 03, 2009

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY		Additions	Deductions
Change Order approved in previous months by Owner		\$26,607	\$(871,594)
TOTAL			
APPROVED THIS MONTH			
Number	Date Approved		
006	01/14/2011	\$0	\$68,428
TOTALS		\$26,607	\$(939,962)
Net change by Change Orders			\$(913,355)

Application is made for payment, as shown below, in connection with the Contract.

1. ORIGINAL CONTRACT SUM\$ 10,772,343
2. NET CHANGE BY CHANGE ORDERS.....\$ (913,355)
3. CONTRACT SUM TO DATE.....\$ 9,858,988
4. TOTAL COMPLETED & STORED TO DATE.....\$ 9,858,988
5. RETAINAGE.....\$ 0
6. TOTAL EARNED LESS RETAINAGE\$ 9,858,988
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (line 6 from prior Certificate).....\$ 8,943,250
8. CURRENT PAYMENT DUE\$ 915,738
9. BALANCE TO FINISH, INCLUDING RETAINAGE.....\$ 0

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

Contractor : Power Construction Company, LLC

By : John Zarfengo

Date : January 14, 2011

State of : Illinois County of : DeKalb
 Subscribed and sworn to before me this 14th day of January, 2011
 Notary Public R.L. DeLaney
 My commission expires: 5th day of December, 2014
 State of Illinois, County of Cook

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of Work is in accordance with the Contract Documents, and the Contractor is entitled to the payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED.....\$ 915,738

ARCHITECT : BSA Life Structures

By : _____

Date : _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

