

Constantino, Mike

From: Woll, Deitzah [dwoll@Sidley.com]
Sent: Wednesday, March 24, 2010 1:19 PM
To: Urso, Frank
Cc: Spalding, Jim; Skinner, Mary J.; Jack Axel; Constantino, Mike; Roate, George; Mills, Michael
Subject: Vanguard: Settlement Offer
Attachments: Letter to HFSR - 100324.pdf

Dear Mr. Urso:

Please find attached a settlement letter from Jim Spalding, Senior Vice President and Assistant General Counsel, Vanguard Health Services. Based on conversation yesterday, we understand that you will follow up with us later today. We look forward to hearing from you as soon as possible.

Please feel free to contact us if you have any questions.

Best,
Deitzah

Deitzah A. Woll | Associate | SIDLEY AUSTIN LLP |
One South Dearborn Street | Chicago, Illinois 60603 |
Phone: 312.853.3456 | Fax: 312-853-7036 | dwoll@sidley.com

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By E-mail

March 24, 2010

Mr. Frank Urso
Counsel
Health Facilities and Services Review Board
Illinois Department of Public Health
535 West Jefferson Street
Springfield, Illinois 62761

Re: Vanguard Health Systems/Compliance Matters

Dear Mr. Urso:

You have indicated that two hospitals owned by Vanguard Health Systems ("Vanguard"), MacNeal Hospital and Louis A. Weiss Memorial Hospital ("Weiss Hospital"), are subject to compliance matters from the Illinois Health Facilities and Services Review Board (the "Board") as a result of Project Nos. 00-066 and 05-009. As a result of these outstanding compliance matters, you have indicated that the Board will not deem Vanguard's applications for change of ownership of Westlake Hospital and West Suburban Medical Centers (Project Nos. 09-013 and 09-014) complete until such compliance matters are resolved.

The purpose of this letter is to follow up from our conversation with you and other Board staff late yesterday afternoon and to provide you with a proposed settlement for any outstanding compliance issues that may adversely affect the completeness of two pending Certificates of Need ("CON") applications. In an attempt to quickly resolve these matters, we propose a settlement of \$50,000 for any outstanding compliance issues related to Project Nos. 00-066 and 05-009. Based on our review of the 2009 Board settlements that are publicly available on the Board's website, and understanding the facts surrounding these compliance matters, we believe that this offer of settlement is not only reasonable but consistent with prior settlement amounts for similar compliance issues.

Based on our conversation yesterday, we understand that you, in receipt of a *bona fide* and serious offer of settlement, will reach out to the Chairman of the Board to receive input and agreement that our offer of settlement is sufficient to allow you to recommend to the Chairman that the two pending CON applications may be deemed complete. Because these outstanding compliance matters may adversely affect or delay our change of ownership applications, we

would appreciate your efforts in helping to expedite the resolution of these matters as soon as possible.

Background

A. MacNeal Hospital, Project No. 00-066

On November 16, 2000, a CON Permit (Project No. 00-066) was issued by the Board to MacNeal Hospital for the establishment of an open heart surgery program and operating room dedicated to open heart surgery. The first open heart surgery was performed on February 16, 2001, in an existing operating room, and construction on the new operating room was completed in September 2001. A progress report was provided to the Board in May 2001. During the construction period, management personnel changed, and MacNeal Hospital failed to file timely a final cost report.

From May 2001 to April 2007—nearly six years—there was no interaction between the Board and MacNeal Hospital related to this project, including no notification that MacNeal Hospital failed to file a final cost report.

In April 2007, the Board notified MacNeal Hospital that a final cost report had not been filed. MacNeal Hospital immediately initiated a dialogue with Board staff, and a final cost report was filed on May 7, 2007. MacNeal Hospital did not receive additional correspondence or contact from the Board after filing the final cost report on May 7, 2007, and believed that the matter was settled.

On February 17, 2010, the Chief Executive Officer of MacNeal Hospital, Brian Lemon, received a letter from Michael Mills, Compliance Coordinator of the Board, regarding the completion of Project No. 00-066. Mr. Lemon immediately contacted Mr. Mills, and Mr. Mills asked Mr. Lemon to provide documentation of the chronology provided above, which Mr. Lemon promptly provided after investigation into the discrepancy on March 8, 2010. On March 15, 2010, Mr. Lemon placed a follow-up call to Mr. Mills, and was told that his March 8, 2010, letter had been forwarded to the State Board's counsel for resolution. A copy of Mr. Lemon's letter is attached is as Exhibit A.

B. Weiss Hospital; Project No. 05-009

On August 4, 2005, a CON Permit was issued to Wellness Associates, LLC ("Wellness"), VHS Acquisition Number 3, Inc. d/b/a Weiss Hospital, and Vanguard for the development of a medical office building adjacent to Weiss Hospital. Wellness, an independent developer and owner of the medical office building, was the primary applicant and was identified on the application as the site owner and operating entity. Weiss Hospital and its parent, Vanguard, were named as co-applicants because of the medical office building's proximity to the hospital. Weiss Hospital's project-related expenditure was below the capital expenditure threshold in effect at that time as well as the threshold that is in effect currently. The post-permit contact person identified in the application was an individual identified as the manger of Wellness. This person

has no relationship, formal or otherwise, with either Weiss Hospital or Vanguard. Wellness, as the developer, was intended to have all responsibility in fulfilling the post-permit obligations of Project No. 05-009. Indeed, Wellness' manager was named as the post-permit contact person on the CON application, and there was no contact between the Board staff and Weiss Hospital or Vanguard following the issuance of the CON Permit.

On March 18, 2010—six days ago—Board staff advised Vanguard's CON consultant that there were potential compliance matters pertaining to Project No. 05-009. After receiving notification of this compliance matter, Vanguard has worked diligently to resolve it as quickly as possible by consulting with Board staff, speaking with you on March 18th, providing you with documentation of the relevant background information relating to the compliance matter, and speaking with you and Board staff during a conference call yesterday.

Proposed Settlement

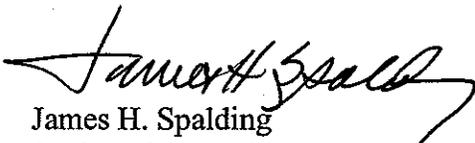
Vanguard remains committed to complying with all applicable statutory and regulations. Considering the relatively minor violations of the Board's regulations and our diligent efforts to resolve promptly these compliance matters, we propose a settlement of \$50,000, to be paid by Vanguard, for any outstanding compliance issues related to Project Nos. 00-066 and 05-009. We believe that this proposed settlement is fair given our belief that Vanguard was not responsible for filing the final cost report for Project No. 05-006, our belief that the compliance issue related to Project No. 05-006 was resolved with the filing of the final cost report, and our efforts to expedite follow up with the Agency to quickly resolve these matters.

* * *

Vanguard stands ready to continue to work with you and the Board to resolve this matter as quickly as possible. Consistent with our phone conversation yesterday, we understand that you will reach out to us later today regarding the completeness determinations of Project Nos. 09-013 and 09-014.

We would be happy to answer any further questions you have regarding this matter.

Sincerely,



James H. Spalding
Senior Vice President and Assistant General Counsel
Vanguard Health Systems



3249 South Oak Park Avenue
Berwyn, Illinois 60402
Phone: 708-783-9100
www.macneal.com

March 8, 2010

Michael D. Mills
Compliance Coordinator
State of Illinois
Health Facilities and Services Review Board
525 West Jefferson St
Springfield, IL. 62761

Dear Mr. Mills:

This letter is in response to your letter of February 17, 2010 regarding completion of the MacNeal Hospital open heart surgery project in 2001. In review, you had asked about an apparent discrepancy between a letter we provided to Jeffrey Mark in 2007 and a progress report submitted by MacNeal in May of 2001. The 2007 letter had been in response to an inquiry from the Board regarding completion of the project. Due to the passage of time and multiple personnel changes at MacNeal, in the 2007 letter we could only estimate that the project had been completed in February of 2001. This was based on when the first open heart case was done at MacNeal. The MacNeal progress report from May of 2001, however, indicated that the project was 60% complete at that time. We did not have the May, 2001 progress report in our files but you were kind enough to fax us a copy.

Upon investigation of the discrepancy between our 2007 letter and the 2001 progress report, we discovered the following by reviewing logs kept by the MacNeal open heart surgery team. Prior to completion of the two new OR's that are today home to our open heart surgery program, MacNeal began performing cases in an existing OR modified for that purpose. Procedures were performed there between February 2001 and November, 2001. The open heart surgery logs indicate that the first case was performed in the new OR's on November 6, 2001.

Also in your letter of February 17, 2010 you pointed out that there was an error in our 2007 letter. You are correct, there was a typographical error that incorrectly listed the total approved CON amount as \$1,150,000 versus the correct total of \$1,850,000. I apologize for the confusion that error may have caused.

A final clarification may be in order to prevent any confusion regarding why I personally did not know the full history of this project. Although I was the MacNeal administrator at the time MacNeal's open heart CON was issued, I left MacNeal in early 2001. I returned in October of 2006. During the intervening years, there were several administrators at MacNeal – a fact that may have added to the confusion about the history of this project.

I hope that this information resolves the discrepancies and will enable closure on this matter. I appreciate your helpfulness and ask that you please contact me if there is anything further we can provide.

Sincerely,

Brian J. Lemon
Chief Executive Officer