Constantino, Mike

From: Lawler, Daniel [daniel.lawler@klgates.com]
Sent: Tuesday, March 22, 2011 10:07 AM
To: Constantino, Mike
Cc: 'Susan Milford (smilford@centegra.com)'
Subject: Project 10-089: K&L Gates Opposition Statement
Attachments: KLG Opposition Statement.pdf

Mike,

Attached is a PDF file containing the written comment I submitted at the public hearing on March 18 on behalf of Centegra Health System and its affiliates in opposition to project no. 10-089, Mercy Crystal Lake Hospital and Medical Center. Because of its length (284 pages), I'm submitting this copy so that it may be included in the project file as a single document.

Dan Lawler

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March 17, 2011

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

Public Hearing Submission in Opposition to
Mercy Crystal Lake Hospital & Medical Center
Project No. 10-089

Dear Ms. Avery:

Our firm represents Centegra Health System, Centegra Hospital-McHenry, Centegra Hospital-Woodstock and Centegra Hospital-Huntley. This submission is made on their behalf in opposition to the application of Mercy Crystal Lake Hospital & Medical Center, Project No. 10-009 made by Mercy Alliance, Inc. and its affiliates (collectively "Mercy").

The Statute governing State Board review of Mercy's Certificate of Need ("CON") application is expressly intended to assure that persons establishing a new health care facility in Illinois have the background and character necessary to provide a proper service for the community.[1] To this end, the Statute requires the State Board to affirmatively determine an applicant's fitness to provide a proper standard care "with particular regard to the qualification, background and character of the applicant."[2]

An applicant for a CON puts its background and character at issue. Mercy acknowledges this and submits evidence of its background and character at pages 81-86, 92, 110, and 115 of its CON application. This submission provides additional, relevant documentation of Mercy's background and character.

The last time Mercy filed an application for a new hospital in Crystal Lake, three people connected with that application were indicted including Mercy's contractor, Jacob Kiferbaum, and its attorney, Steven Loren. The third person was Stuart Levine, the State Board's Vice-Chairman. All three pled guilty to a variety of crimes to which they were co-conspirators.[3] Mercy's men on that scandalized 2003 CON application were Javon Bea, Richard Gruber and Herbert Franks, who were Mercy's CEO, Vice President and Registered

Agent, respectively. Mercy's latest CON application has the same three men on the front page; and they still have the same titles. Nothing has changed.[4]

Herbert Franks filed Mercy's first application in July 2003.[5] According to Steven Loren, it was Franks who brought Mercy together with Kiferbaum.[6] In November 2003, Kiferbaum sent Javon Bea and Richard Gruber a letter stating that Kiferbaum Construction Services was a "full service" firm and that those services included the "securing of the Certificate of Need."[7]

Mercy did not hire Kiferbaum at first. Mercy went before the State Board in December 2003 and its Crystal Lake project was unanimously voted down: zero votes for, eight votes against.[8] The next thing Javon Bea did was hire Kiferbaum. Bea and Kiferbaum entered into a contract in January 2004.[9]

In February 2004, Kiferbaum introduced Richard Gruber to Stuart Levine. According to Gruber's own sworn statement, Levine told Gruber that Kiferbaum was a man of integrity and that Gruber could trust him.[10] Gruber replied that he was impressed with Kiferbaum's construction company.

In addition to his work for Mercy, Herbert Franks was also involved in the attempt to have Edward Hospital hire Kiferbaum on another CON project. In testimony before the Illinois Joint Committee on Government Reform, Edward's CEO, Pamela Davis, said that Franks and Mercy's lobbyist Mike Noonan approached her in March 2004 and said she should hire Kiferbaum for an Edward project because Kiferbaum had influence with members of the State Board. They told her that for the Mercy project, State Board member Levine had personally met with Kiferbaum and Mercy's CEO to reassure Mercy's CEO that Kiferbaum could "get things done."[11]

But Bea apparently needed more reassurance. On April 20, 2004, the day before Mercy's application was reconsidered by the State Board, Kiferbaum called up Levine and said, "Javon Bea is panicking now."[12] Kiferbaum said Bea was panicking because he did not know who the fifth vote would be to approve his CON application. Levine told Kiferbaum that Mercy's lawyer, Steve Loren, "knows exactly what's what and things are fine." Kiferbaum was to tell Bea that he was in good hands.

The next day, Bea, Gruber, Franks and Loren appeared before the State Board for a vote on Mercy's CON application.[13] The approval of Mercy's application was described by one reporter who was there as follows:

> "In the middle of the vote, the roll call was halted as [Chairman Thomas] Beck and Levine whispered to each other. Levine then approached Dr. Imad

> Alamanseer, who had voted 'pass' instead of 'yes' or 'no.' After another whispered conversation between Levine and Alamanseer, Alamanseer changed his 'pass' to 'yes,' providing the vote needed to pass the project."[14]

After the State Board meeting, Levine called Steven Loren and discussed the Mercy CON approval. Loren said that, "Javon knows that he stole, he said he's at second base."[15] Loren said that Bea was really upset that two State Board members, Danalynn Rice and Pamela Orr, had not voted for the project. Loren said that Bea "had been promised up and down the wazoo that he was going to get the support of the uh, those 2 women.... on, on the theory that the unions were helping him out." Shortly afterwards, Kiferbaum called Levine to discuss the State Board meeting. Kiferbaum told Levine that Javon Bea said "Stuart was masterful" and "we would never ever would of gotten' this."[16] Kiferbaum said Javon Bea knows "how to play the game."

In June 2004, Pamela Davis' whistleblower suit was leaked to the Chicago Sun-Times and her allegations of the conspiracy to rig the Mercy CON vote were made public.[17] That same month, the existence of a federal criminal investigation into the approval of the Mercy Crystal Lake CON was made public.[18] In July 2004, based on the allegations of impropriety relating to State Board actions, the Governor imposed a moratorium on "all meetings and actions of the Board until the Board is reconstituted by law."[19] In August 2004, all of the sitting State Board members were removed from office by an Act of the Illinois General Assembly.[20]

Despite the immediate repercussions of the Mercy scandal, including the federal criminal investigation, the moratorium on State Board action, and the removal of all sitting Board members, Mercy still tried to keep its ill-gotten gain. For over a year, it fought Centegra Health System's lawsuit to overturn the CON permit in the Circuit Court of McHenry County. On May 6, 2005, Judge Maureen McIntyre ruled in Centegra's favor and invalidated the CON for Mercy Crystal Lake Hospital. The judge found that the decision to approve Mercy's CON application was against the manifest weight of the evidence, and was also arbitrary and capricious.[21] The following business day, Monday May 9, 2005, Levine and Kiferbaum were indicted. The United States Attorney's press release announcing the indictments laid out the corrupt scheme to approve Mercy's CON permit:

> **"Mercy Hospital - $1.5 million kickback from Kiferbaum to Levine:** Levine solicited a kickback of approximately $1.5 million from Kiferbaum relating to the construction of Mercy Hospital's $49 million Crystal Lake facility. Kiferbaum agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date. Levine used his influence with the Planning Board to ensure that Mercy Hospital received approval of its application to build the Crystal Lake hospital after hiring

> Kiferbaum's company. In voting for, and influencing other Planning Board members to vote for, Mercy's application, Levine concealed from the Planning Board his financial arrangement or contacts with Kiferbaum. After the Planning Board voted to approve Mercy's application on April 21, 2004, Levine reported to Individual 1 that hiring Kiferbaum did it for Mercy. When Levine told Kiferbaum that no one really knew that Levine was orchestrating the approval, Kiferbaum said he could not thank Levine enough, and Levine said they were in this together. Levine directed that Kiferbaum pay the kickback proceeds to Individual 1 pursuant to a sham consulting contract for $1,728,000, which included the $1.5 million kickback that Levine had solicited and $228,000 that Kiferbaum still owed from the CMS addition kickback. On May 1, 2004, Levine told Individual 1 that other people knew that Mercy received its CON because of the combination of Kiferbaum, Hurtgen and a law firm and that this information would spread like wildfire."[22]

After these indictments, Mercy finally threw in the towel and stipulated that it would not appeal Judge McIntyre's decision that invalidated Mercy's CON permit.[23]

In May 2007, the Illinois General Assembly created the Task Force on Health Planning Reform ("Task Force") to investigate and make recommendations regarding the State Board. (Public Act 95-0005, effective May 31, 2007.) In its Final Report, the Task Force noted:

> "Both the 93rd and 94th General Assemblies restructured the [State] Board, after extensive debates about the history and performance of the Board, and in response to proposals for its complete elimination. Additionally, illegal activity in 2004, involving conflicts of interest and criminal indictments of a board member for influence peddling, kickbacks, and other corrupt actions by parties involved in applications subject to review, prompted the Governor and General Assembly to reduce the size and makeup of the board, and to impose more strict membership requirements."[24]

The Task Force's Final Report included "recommendations to ensure the integrity of the CON Board and its activities."[25] In response to the Task Force recommendations, the General Assembly made extensive amendments to the Health Facilities Planning Act, including a revision to the Act's purpose statement to now provide: "The integrity of the Certificate of Need process is ensured through revised ethics and communications procedures."[26]

The integrity of the CON process was destroyed by the activities surrounding the Mercy Crystal Lake scandal in 2004. There is now a new State Board, but the people on Mercy's latest CON application are the same: Javon Bea, Richard Gruber, and Herbert Franks. Less than a month after the latest Crystal Lake application was deemed complete, Mercy hired a professional lobbyist for the stated purpose of lobbying the State Board with regard to the proposed new hospital in Crystal Lake.[27]

I urge the State Board to fulfill its statutory mandate to give "particular regard to the qualification, background and character of the applicant" (20 ILCS 3960/6) and to deny Project No. 10-089, Mercy Crystal Lake Hospital and Medical Center.

Respectfully submitted,

Centegra Health System,
Centegra Hospital-McHenry,
Centegra Hospital-Woodstock, and
Centegra Hospital-Huntley

By: _____
One of their Attorneys

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1 Illinois Health Facilities Planning Act, 20 ILCS 3960/2; Exhibit 1 hereto.

www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=407&ChapAct=20%20ILCS%203960/&ChapterID=5&ChapterName=EXECUTIVE+BRANCH&ActName=Illinois+Health+Facilities+Planning+Act

2 Illinois Health Facilities Planning Act, 20 ILCS 3960/6; Exhibit 2 hereto.

www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=407&ChapAct=20%20ILCS%203960/&ChapterID=5&ChapterName=EXECUTIVE+BRANCH&ActName=Illinois+Health+Facilities+Planning+Act

3 *See* Plea Agreements of Stuart Levine, Jacob Kiferbaum and Steven Loren attached hereto as Exhibits 3, 4 and 5, respectively.

4 *See* Front pages of CON applications for Mercy Crystal Lake Hospital project numbers 03-049 and 10-089; Exhibit 6 hereto.

5 Letter dated July 9, 2003 from Herb Franks to Jeffrey Mark; Exhibit 7 hereto.

6 Levine – Loren Call, April 21, 2004, 8:03 p.m., pages 8-9, Trial Exhibit April 21: 2003_329, *United States v. Rezko,* 05-CR-0691, U.S. Dist. Court, N.D. 111.; Exhibit 8 hereto.

www.justice.gov/usao/iln/hot/us_v_rezko_exhibits/2008_03_20/april_21_2003_329.pdf

7 Letter dated November 25, 2003 from Jacob Kiferbaum to Javon Bea and Richard Gruber; Exhibit 9 hereto

8 Results of December 17, 2003 meeting of the Illinois Health Facilities Planning Board; Exhibit 10 hereto.

www.hfsrb.illinois.gov/hfpbdec03vote.htm

9 Construction Contract for Mercy Alliance; Exhibit 11 hereto.

10 Defendant Mercy Crystal Hospital and Medical Center, Inc.'s Response to Plaintiffs' First Set of Interrogatories filed in *Northern Illinois Medical Center v. Illinois Health*

Facilities Planning Board, Case No. 04-MR-106 ("Case No. 04-MR-106") Circuit of McHenry County, Illinois; Exhibit 12 hereto.

11 *See* Pam Davis' Testimony to Illinois General Assembly Joint Committee on Government Reform and Certified Declaration of Pamela Davis filed in Case No. 04-MR-106 and submitted to the Illinois; attached hereto as Exhibits 13 and 14, respectively.

www.ilga.gov/joint/Documents/Testimony%20of%20Pam%20Davis.pdf

www.ilga.gov/joint/Documents/Documents%20distributed%20at%205-5-09%20hearing.pdf

12 Levine – Kiferbaum Call, April 20, 2004, 4:52 p.m., Trial Exhibit April 20: 1652__303 in *United States v. Rezko, 05, CR-0691, U.S. Dist. Court, N.D. 111.*; Exhibit 15 hereto.

www.justice.gov/usao/iln/hot/us_v_rezko_exhibits/2008_03_20/april_20_1652_303.pdf

13 Transcript excerpts of Illinois Health Facilities Planning Board Meeting, April 26, 2004; Exhibit 16 hereto.

14 "Hospitals Left Scratching Their Heads," by Alice Hohl, Daily Southtown, April 22, 2004; Exhibit 17 hereto.

www.ilga.gov/joint/Documents/Documents%20distributed%20at%205-5-09%20hearing.pdf

15 Levine-Loren call, April 21, 2004, 8:03 p.m.; Exhibit 8 hereto.

www.justice.gov/usao/iln/hot/us_v_rezko_exhibits/2008_03_20/april_21_2003_329.pdf

16 Levine-Kiferbaum call, April 21, 2004; 8:33 p.m.; Trial Exhibit April 20: 2033__332 in *United States v. Rezko, 05, CR-0691, U.S. Dist. Court, N.D. 111.*; Exhibit 18 hereto.

17 *See* Chicago Sun-Times articles dated June 25 and 27, 2004 attached as Exhibit 19 hereto.

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18 "Feds Investigate Mercy Hospital Permit," by Jeff Kolky, Northwest Herald, June 26, 2004; Exhibit 20 hereto.

19 Moratorium On All Business of the Health Facilities Planning Board, dated July 7, 2004; Exhibit 21 hereto.

20 Public Act 93-889, effective August 2, 2004: "Notwithstanding any provision of this Section to the contrary, the term of office of each member of the State Board is abolished on the effective date of this amendatory Act of the 93rd General Assembly and those members no longer hold office."; Exhibit 22 hereto.

21 Memorandum Opinion and Order of Judge Maureen McIntyre dated May 6, 2005; attached as Exhibit 23 hereto.

22 Press release of Monday May 9, 2005 of United States Attorney, Northern District of Illinois: "Levine, Kiferbaum and Hurtgen Indicted On Fraud Charges Alleging Kickbacks, Influence-Peddling and Insider-Dealing"; Exhibit 24 hereto.

23 Stipulation entered June 2, 2005 in Case No. 04-MR-106; Exhibit 25 hereto.

24 Final Report of the Task Force on Health Planning Reform to the Illinois General Assembly at page 7; attached as Exhibit 26 hereto.

www.idph.state.il.us/tfhpr/reports/TFHPR%20Final%20Report.pdf

25 Exhibit 26 hereto at page 11.

26 20 ILCS 3960/6; attached as Exhibit 2 hereto.

27 Amended Lobbyist Registration dated February 9, 2011 and Annual Lobbyist Registration dated January 20, 2011; attached as Exhibit 27 hereto. The Amended Lobbyist Registration shows that the State Board was added as an entity intended to be lobbied and the description of the intended lobbying activity was expanded to include "the siting of new hospital in Crystal Lake."

Table of Contents

Exhibit

1. Illinois Health Facilities Planning Act, 20 ILCS 3960/2.

2. Illinois Health Facilities Planning Act, 20 ILCS 3960/6.

3. Plea Agreement of Stuart Levine.

4. Plea Agreement of Jacob Kiferbaum.

5. Plea Agreement of Steven Loren.

6. Front pages of CON applications for Mercy Crystal Lake Hospital Project Numbers 03-049 and 10-089.

7. Letter dated July 9, 2003 from Herbert Franks to Jeffrey Mark.

8. Levine – Loren Call, April 21, 2004, 8:03 p.m., Trial Exhibit April 21: 2003_329, *United States v. Rezko,* 05-CR-0691, U.S. Dist. Court, N.D. 111.

9. Letter dated November 25, 2003 from Jacob Kiferbaum to Javon Bea and Richard Gruber.

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11. Kiferbaum Construction Contract for Mercy Alliance.

12. Defendant Mercy Crystal Hospital and Medical Center, Inc.'s Response to Plaintiffs' First Set of Interrogatories filed in *Northern Illinois Medical Center v. Illinois Health Facilities Planning Board, Case No. 04-MR-106 ("Case No. 04-MR-106") Circuit of McHenry County, Illinois.*

13. Pam Davis' Testimony to Illinois General Assembly Joint Committee on Government Reform.

14. Certified Declaration of Pamela Davis filed in Case No. 04-MR-106 and submitted to the Illinois.

15. Levine – Kiferbaum Call, April 20, 2004, 4:52 p.m., Trial Exhibit April 20: 1652__303 in *United States v. Rezko, 05, CR-0691, U.S. Dist. Court, N.D. 111.*

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19. Chicago Sun-Times articles dated June 25 and 27, 2004.

20. "Feds Investigate Mercy Hospital Permit," by Jeff Kolky, Northwest Herald, June 26, 2004.

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25. Stipulation entered June 2, 2005 in Case No. 04-MR-106.

26. Excerpts of Final Report of the Task Force on Health Planning Reform to the Illinois General Assembly.

27. Amended Lobbyist Registration dated February 9, 2011 and Annual Lobbyist Registration dated January 20, 2011 of Quarles & Brady.

EXHIBIT 1

(20 ILCS 3960/2) (from Ch. 111 1/2, par. 1152)
(Section scheduled to be repealed on December 31, 2019)

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

The changes made to this Act by this amendatory Act of the 96th General Assembly are intended to accomplish the following objectives: to improve the financial ability of the public to obtain necessary health services; to establish an orderly and comprehensive health care delivery system that will guarantee the availability of quality health care to the general public; to maintain and improve the provision of essential health care services and increase the accessibility of those services to the medically underserved and indigent; to assure that the reduction and closure of health care services or facilities is performed in an orderly and timely manner, and that these actions are deemed to be in the best interests of the public; and to assess the financial burden to patients caused by unnecessary health care construction and modification. The Health Facilities and Services Review Board must apply the findings from the Comprehensive Health Plan to update review standards and criteria, as well as better identify needs and evaluate applications, and establish mechanisms to support adequate financing of the health care delivery system in Illinois, for the development and preservation of safety net services. The Board must provide written and consistent decisions that are based on the findings from the Comprehensive Health Plan, as well as other issue or subject specific plans, recommended by the Center for Comprehensive Health Planning. Policies and procedures must include criteria and standards for plan variations and deviations that must be updated. Evidence-based assessments, projections and decisions will be applied regarding capacity, quality, value and equity in the delivery of health care services in Illinois. The integrity of the Certificate of Need process is ensured through revised ethics and communications procedures. Cost containment and support for safety net services must continue to be central tenets of the Certificate of Need process.
(Source: P.A. 96-31, eff. 6-30-09.)

EXHIBIT 2

(20 ILCS 3960/6) (from Ch. 111 1/2, par. 1156)

(Section scheduled to be repealed on December 31, 2019)

Sec. 6. Application for permit or exemption; exemption regulations.

(a) An application for a permit or exemption shall be made to the State Board upon forms provided by the State Board. This application shall contain such information as the State Board deems necessary. The State Board shall not require an applicant to file a Letter of Intent before an application is filed. Such application shall include affirmative evidence on which the State Board or Chairman may make its decision on the approval or denial of the permit or exemption.

(b) The State Board shall establish by regulation the procedures and requirements regarding issuance of exemptions. An exemption shall be approved when information required by the Board by rule is submitted. Projects eligible for an exemption, rather than a permit, include, but are not limited to, change of ownership of a health care facility. For a change of ownership of a health care facility between related persons, the State Board shall provide by rule for an expedited process for obtaining an exemption. In connection with a change of ownership, the State Board may approve the transfer of an existing permit without regard to whether the permit to be transferred has yet been obligated, except for permits establishing a new facility or a new category of service.

(c) All applications shall be signed by the applicant and shall be verified by any 2 officers thereof.

(c-5) Any written review or findings of the Board staff or any other reviewing organization under Section 8 concerning an application for a permit must be made available to the public at least 14 calendar days before the meeting of the State Board at which the review or findings are considered. The applicant and members of the public may submit, to the State Board, written responses regarding the facts set forth in the review or findings of the Board staff or reviewing organization. Members of the public shall submit any written response at least 10 days before the meeting of the State Board. The Board staff may revise any findings to address corrections of factual errors cited in the public response. At the meeting, the State Board may, in its discretion, permit the submission of other additional written materials.

(d) Upon receipt of an application for a permit, the State Board shall approve and authorize the issuance of a permit if it finds (1) that the applicant is fit, willing, and able to provide a proper standard of health care service for the community with particular regard to the qualification, background and character of the applicant, (2) that economic feasibility is demonstrated in terms of effect on the existing and projected operating budget of the applicant and of the health care facility; in terms of the applicant's ability to establish and operate such facility in accordance with licensure regulations promulgated under pertinent state laws; and in terms of the projected impact on the total health care expenditures in the facility and community, (3) that safeguards are provided which assure that the establishment, construction or modification of the health care facility or acquisition of major medical equipment is consistent with the public interest, and (4) that the proposed project is consistent with the orderly and economic development of such facilities and equipment and is in accord with standards, criteria, or plans of need adopted and approved pursuant to the provisions of Section 12 of this Act.

(Source: P.A. 95-237, eff. 1-1-08; 96-31, eff. 6-30-09.)

EXHIBIT 3

FILED
OCT 27 2006
JUDGE AMY ST. EVE
United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 05 CR 691
	)	Judge Amy J. St. Eve
STUART LEVINE	)	

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant, STUART LEVINE, and his attorney, JEFFREY STEINBACK, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure, and is governed in part by Rule 11(c)(1)(C), as more fully set forth in Paragraph 22, below.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in the above captioned case.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Plea Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities or agencies except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and defendant, STUART LEVINE, and his attorney, JEFFREY STEINBACK, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the Superseding Indictment with 15 counts of mail fraud or wire fraud in violation of 18 U.S.C. §§ 1341, 1343, and 1346 (Counts One through 15), one count of attempted extortion in violation of 18 U.S.C. §§ 1951 and 2 (Count Sixteen), six counts of misapplication of funds in violation of 18 U.S.C. § 666 (Counts Seventeen through Twenty-Two), and two counts of money laundering in violation of 18 U.S.C. § 1956 (Counts Twenty-Three and Twenty-Four).

2. Defendant has read the charges against him contained in the Superseding Indictment in this case and the charges have been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crimes with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to Count One and Count Twenty-Three of the Superseding Indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts One and Twenty-Three of the Superseding Indictment in this case. In pleading guilty, Defendant admits the following facts and that those facts establish his guilt

beyond a reasonable doubt. The following is not a complete statement of all the details known to Defendant regarding the individuals and events described below. The following facts are set forth solely as a factual basis for this guilty plea:

With respect to Count One, beginning no later than in and about the spring of 2003 and continuing through at least in or about July 2004, in the Northern District of Illinois, Eastern Division, and elsewhere, Defendant, Antoin "Tony" Rezko ("Rezko"), Joseph Cari, Steven Loren, Jacob Kiferbaum, Individual A, and others known and unknown to the Grand Jury, devised and intended to devise, and participated in, a scheme and artifice to defraud the beneficiaries of the Teachers' Retirement System of the State of Illinois ("TRS") and the people of the State of Illinois, of money, property, and the intangible right to defendant's honest services, by means of materially false and fraudulent pretenses, representations, and promises, and material omissions, and in furtherance thereof used the United States mails and other interstate carriers, in violation of Title 18, United States Code, Sections 1341, 1346, and 2.

With respect to Count Twenty-Three, on or about March 4, 2004, at Chicago, in the Northern District of Illinois, Eastern Division, Defendant and Rezko knowingly caused to be conducted a financial transaction affecting interstate commerce, when Individual C gave Individual D a $125,000 check drawn on a JP Morgan Chase Bank

account made out to a company controlled by Individual D, which involved the proceeds of specific unlawful activity, namely mail fraud in violation of Title 18, United States Code, Sections 1341 and 1346, knowing that the transaction was designed in whole and in part to conceal the nature, source, ownership, and control of the proceeds of said specified unlawful activity, and that while conducting and attempting to conduct such financial transaction, Defendant knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, in violation of Title 18, United States Code, Sections 1956(a)(1)(B)(I) and 2.

Defendant's Position At TRS and the Planning Board

Defendant was a member of the TRS Board of Trustees from approximately October 2000 through about July 2004. In that capacity, Defendant owed the beneficiaries of TRS a duty of honest services. Defendant was also a member of the Illinois Health Facilities Planning Board ("Planning Board") from about August 1996 through about June 2004, and was last re-appointed to the Planning Board in about August 2003. In that capacity, Defendant owed the people of the State of Illinois a duty of honest services.

In or about the spring of 2003, when certain State of Illinois officials advocated consolidating TRS, the Illinois State Board of Investment, and the State University Retirement System, into a single pension fund, Individual A approached Rezko and Individual

B on behalf of Defendant and Individual A for assistance in defeating this proposal. Defendant and Individual A were against the pension consolidation idea because they wanted to preserve their influence and Defendant's position with TRS. Defendant understood that Rezko and Individual B had significant influence with the State of Illinois administration because of their relationships with senior State of Illinois officials and their roles as important fundraisers. Defendant learned from Individual A that Rezko and Individual B agreed to use their relationships and influence with senior State of Illinois officials to oppose the pension consolidation plan in exchange for the agreement of Defendant and Individual A to use their influence and Defendant's position at TRS to ensure that TRS used investment firms and hired lawyers identified by Rezko and Individual B. Defendant agreed to assist Rezko and Individual B with TRS in exchange for their help defeating the consolidation proposal.

In about August 2003, Defendant was re-appointed to the Planning Board. Prior to that point, Defendant discussed his possible re-appointment with Individual A and, separately, with Individual B. Individual A said he'd get back to Defendant about his request and later called Defendant and said that it would happen. A short time later, Defendant was at a meeting in Rezko's office with Individual B and Individual B said that the board seat Defendant wanted had been taken care of. Defendant understood from

these conversations that he would be re-appointed to the Planning Board.

About the time Defendant was re-appointed, Rezko and Defendant discussed Defendant's appointment and Rezko said that he had suggested that Defendant be made the vice-chairman of the Planning Board and that Rezko expected to influence a certain number of votes on the Planning Board. In February 2004, the Planning Board elected Defendant as vice-chairman.

In or about the spring of 2004, Rezko and Defendant agreed that Defendant, whose term on the TRS Board was due to expire in May 2004, needed to be reappointed to the TRS Board and that additional TRS Board members needed to be appointed who would cooperate with Rezko and Defendant. Rezko agreed to use his relationships and influence with high-ranking State of Illinois officials to facilitate these efforts. Rezko subsequently indicated to Defendant that Rezko had arranged for Defendant to be re-appointed to the TRS Board, and Defendant was re-appointed on about May 14, 2004.

Defendant's Efforts to Obtain Payments From Investment Firms

Investment Firm 1

In about late 2002, Defendant learned from Individual C that Investment Firm 1 was trying to obtain investment funds from TRS. Defendant understood that Individual C would earn a finder's fee

from Investment Firm 1 if TRS invested with that firm, and Defendant agreed to help Investment Firm 1 obtain TRS funds.

In or about the spring of 2003, Individual A indicated to Defendant that Rezko had complained to Individual A that a certain local public official, who Defendant knew had a relationship with and raised money for a certain public official, had been pushing Rezko and Individual B for money, which Defendant understood to mean that the local public official wanted to make money from the State of Illinois because of his assistance to the certain public official. Defendant offered to have Individual C share his finder's fee with the local public official so that Defendant could gain favor with Rezko, and Individual A later indicated that Rezko wanted Individual C to split his finder's fee with the local public official. Defendant then told Individual C that Individual C would have to split his finder's fee from Investment Firm 1 with a local public official.

Rezko subsequently told Defendant that Rezko did not want Individual C to split his finder's fee with the local public official. Rezko said that he would supply Defendant with the name of another individual who would split Individual C's fee.

On or about August 14, 2003, the TRS Board approved an investment of a total of $50 million in two investment funds operated by Investment Firm 1. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts

relating to its consideration of the application for funds of Investment Firm 1, including his arrangements with Rezko. Individual C received a total of $375,000 from Investment Firm 1 for acting as a consultant to Investment Firm 1 in connection with TRS. Defendant, Rezko, and Individual C agreed that Individual C would pay $250,000 of that fee as he was directed by Defendant.

Defendant asked Steve Loren, who was outside counsel for TRS and an associate of Defendant's, to prepare a draft contract that would appear to justify Individual C's splitting his finder's fee by paying $250,000 of that fee to a third party, although Defendant knew that the contract would be a sham. Loren drafted a sham consulting agreement for Individual C, in order to conceal the fraudulent nature of the payments by Individual C to a third party, and Defendant arranged to get a copy of the consulting agreement to Individual C.

In or about early 2004, Rezko told Defendant that Individual C should split his finder's fee from Investment Firm 1 with Individual D, who was involved with Rezko in the operation of a chain of pizza restaurants. Defendant relayed this instruction to Individual C, and gave Individual C the sham consulting agreement that Loren had prepared in order to conceal the fraudulent nature of the payments. As Defendant expected, Individual C and Individual D each signed the sham consulting agreement.

As Defendant knew, on or about March 4, 2004, acting at Defendant's direction, Individual C gave Individual D a check in the amount of $125,000 payable to Individual D's company as the first installment of the money that Individual D would receive. Defendant knew that the purpose of providing the $125,000 to Individual D was to conceal the nature, source, ownership, and control of the proceeds of the money.

In or about late April 2004, Individual D asked Individual C to pay the remaining $125,000 immediately, instead of waiting for July. At that point, Individual C refused to make the payment early. After learning that Individual C had refused to pay Individual D the $125,000 immediately, Rezko spoke with Defendant. Rezko directed Defendant to arrange for Individual C to make the payment to Individual D.

On or about April 26, 2004, Defendant directed Individual C to make the second $125,000 payment to Individual D immediately, which Individual C agreed to do. Defendant subsequently learned that Individual C gave Individual D a check for $125,000 made payable to Individual D's company that same day.

On or about July 18, 2003, at Chicago, Investment Firm 1 sent and delivered by UPS, a commercial interstate carrier, an envelope from Investment Firm 1 in Chicago, Illinois, and addressed to TRS in Springfield, Illinois, which envelope contained a TRS Questionnaire that had been completed by Investment Firm 1 as part

of Investment Firm 1's application for TRS funds. Defendant admits that this mailing was in furtherance of scheme, for the purpose of executing the scheme, and attempting to do so and was reasonably foreseeable to him.

Investment Firms 2 and 3

In or about late 2003 and early 2004, Defendant agreed with Individual C that Defendant would use his influence and position at TRS to help Investment Firms 2 and 3 get investments from TRS. Individual C agreed that he would split any finder's fees that he received from Investment Firms 2 and 3 at Defendant's direction. Investment Firms 2 and 3 each agreed to pay a finder's fee to Individual C, and each applied for TRS funds.

Defendant directed Loren to assist Individual C by providing advice about the sorts of investments that TRS would consider and reviewing investment proposals submitted by Individual C and others. As Defendant knew, Loren subsequently met with representatives of Investment Firms 2 and 3 and discussed potential TRS investments. Defendant arranged for TRS staff members to meet with representatives of Investment Firms 2 and 3 and indicated to TRS staff that Rezko and Defendant wanted TRS staff to recommend that the TRS Board approve investments in Investment Firms 2 and 3.

On or about April 12, 2004, Defendant directed Individual C to share his potential finder's fees from Investment Firms 2 and 3 with Individual E, who was a friend and business associate of

Defendant. Defendant knew that Individual E would provide no services to Individual C or Investment Firms 2 or 3 in connection with their applications to receive TRS funds. Defendant arranged with Individual E that Defendant would later receive a portion of the payments Individual E received from Individual C.

On or about April 14, 2004, Rezko and Defendant agreed that they would each receive approximately one-third of the finder's fees that they expected Individual C to receive for TRS investments in Investment Firms 2 and 3. At that time, Rezko and Defendant expected that Individual C would receive approximately $250,000 from Investment Firm 2 and $1 million from Investment Firm 3.

TRS staff initially recommended that the TRS Board approve a $25 million investment with Investment Firm 2 and the TRS Board was scheduled to vote on that recommendation at the May 2004 TRS Board meeting. Shortly before the May 2004 TRS Board meeting, TRS staff learned that Investment Firm 2 had not initially disclosed that Individual C would receive a finder's fee as required by a TRS questionnaire. After learning that the TRS staff was concerned about Investment Firm 2's failure to disclose the finder's fee for Individual C, Defendant tried to help Investment Firm 2 remain on the TRS agenda. On or about May 20, 2004, Defendant was approached by law enforcement agents. As a result of that approach, Defendant stopped trying to help Investment Firm 2 remain on the TRS agenda. Defendant intentionally concealed from and failed to disclose to

the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 2, including his arrangements with Rezko.

TRS staff had not completed its review of Investment Firm 3's application when Defendant was approached by law enforcement agents on or about May 20, 2004. After that date, Defendant did not further attempt to assist Investment Firm 3's application. Investment Firm 3's application was never presented to the TRS Board. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 3, including his arrangements with Rezko.

Investment Firm 4

In or about late February or early March 2004, after Investment Firm 4 had made a presentation to TRS staff members seeking funds from TRS, Defendant spoke with Joseph Cari about Investment Firm 4's application. Defendant and Cari agreed that Defendant would help Investment Firm 4 get funds from TRS and that Investment Firm 4 would hire a consultant chosen by Defendant.

On or about April 14, 2004, Rezko and Defendant discussed Investment Firm 4's application for TRS funds. Defendant told Rezko that Investment Firm 4 had agreed to hire a consultant chosen by Defendant in exchange for Defendant's help. Rezko told Defendant that he would provide Defendant with the name of a person

who would receive the consulting fee on behalf of Rezko and Defendant. Rezko and Defendant agreed that they would share evenly the finder's fees that Investment Firm 4 paid to the consultant they chose. At that time, Rezko and Defendant expected that Investment Firm 4 would pay the consultant they chose approximately $750,000.

In that same conversation, Rezko and Defendant discussed an application by Cari's private equity firm for ISBI funds. Defendant had arranged with Cari that Cari's private equity firm would pay a 2% finder's fee to a person identified by Defendant. Rezko and Defendant agreed that they would share evenly the finder's fees that Cari's private equity firm paid, which they expected would be approximately $700,000.

In or about late April 2004, Rezko provided Defendant with the name of Individual F as the person who would receive the consulting fee from Investment Firm 4. Defendant spoke with Individual F and confirmed that Individual F would receive a finder's fee from Investment Firm 4, although Individual F would not be expected to do any actual work for Investment Firm 4. Defendant and Individual F agreed that Individual F would send a portion of the finder's fee he received from Investment Firm 4 to a company controlled by Individual E.

In or about late April 2004, Defendant directed Loren to prepare a draft contract for Investment Firm 4. Defendant told

Loren that there was going to be a split of finder's fees relating to the TRS investment in Investment Firm 4. Loren prepared a draft compensation agreement, which Defendant sent to Individual F.

On or about May 1, 2004, Defendant discussed with Individual E the possibility of changing the agreement between Rezko and Defendant so that Rezko would keep the entire $750,000 fee from Investment Firm 4 while Defendant and Individual E would keep the entire $700,000 fee that Defendant expected from Cari's private equity firm.

Defendant directed Cari to make sure that Investment Firm 4 hired Individual F as a consultant, and knew that Cari in turn put pressure on Investment Firm 4 to hire Individual F, such as by threatening Investment Firm 4 that it would not get TRS money if it did not hire a consultant.

After Defendant was approached by law enforcement agents on or about May 20, 2004, he did not try to interfere with Investment Firm 4 or its application for TRS funds. Investment Firm 4 received approval for an approximately $85 million investment at the May 25, 2004 TRS Board meeting. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 4, including his arrangements with Rezko.

Investment Firm 5

In about 2003, Rezko told Defendant that Individual G, who

worked with Rezko's real estate business, would act as a finder on Rezko's behalf. Defendant agreed with Rezko to use Defendant's influence and position at TRS on behalf investment firms that Individual G brought to TRS, including Investment Firm 5. Defendant used his influence with the TRS staff to ensure that Individual G and representatives of Investment Firm 5 met with key members of the TRS staff, as well as with Loren. Defendant encouraged TRS staff to recommend that TRS place funds with Investment Firm 5.

TRS staff indicated to Defendant and others that the TRS staff would recommend that Investment Firm 5 receive a $25 million investment from TRS at the May 2004 TRS Board meeting. On or about May 20, 2004, a TRS staff member expressed concern to Defendant that Investment Firm 5 had disclosed that Individual H, with whom TRS staff members had not had contact, would be the recipient of a finder's fee. In response, Defendant tried to allay the TRS staff member's concerns in order to help Investment Firm 5.

After Defendant was approached by law enforcement agents later that day, Defendant no longer tried to help Investment Firm 5. Investment Firm 5's application for TRS investment funds was not addressed at the May 2004 TRS Board meeting. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the

application for funds of Investment Firm 5, including his arrangements with Rezko.

Investment Firm 6

In about early 2004 Defendant learned from Individual I and others that Investment Firm 6 was interested in attracting investments from Illinois state pension funds, including TRS. Defendant agreed with Individual I that Defendant and Rezko would use Defendant's position at TRS and their influence at TRS and other state pension funds to help Investment Firm 6 obtain investments. Individual I agreed that he would split any finder's fees he received from Investment Firm 6 with Defendant in exchange for Defendant's assistance. Individual I further agreed to split with Defendant the ongoing management fees that Investment Firm 6 would earn from investments from TRS. Individual I agreed to pay Defendant two-thirds of the finder's fees and management fees that Individual I received so that Defendant could share those fees with Rezko.

On or about April 14, 2004, Defendant advised Rezko about Defendant's arrangement with Individual I. Rezko and Defendant agreed that they would share evenly the fees that Individual I would receive for TRS and other Illinois state pension fund investments in Investment Firm 6. Rezko also agreed to use his influence with other Illinois state pension funds to help Investment Firm 6 obtain investments from those entities. Rezko

and Defendant each expected to receive at least approximately $1.3 million in fees from Individual I, based on the size of the investment that Rezko and Defendant believed TRS would make in Investment Firm 6.

To assist Investment Firm 6, Defendant arranged for a meeting with Defendant, Loren, Individual I, and representatives of Investment Firm 6 so that the Investment Firm 6 representatives could explain their firm and investment products to Loren. At Defendant's request, Loren provided Investment Firm 6 with advice about how Investment Firm 6 should proceed with an application for funds from TRS.

On or about May 19, 2004, Defendant told Individual I that he intended to recommend Investment Firm 6 to TRS staff after the May 2004 TRS Board meeting.

At the time that Defendant was approached by law enforcement agents on or about May 20, 2004, Investment Firm 6 had not yet applied for TRS funds. Defendant did not attempt to help Investment Firm 6 obtain TRS funds after that date. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to the potential application for funds by Investment Firm 6, including his arrangements with Rezko.

Investment Firm 7

In about early 2004, Defendant learned that TRS staff had decided to recommend that the TRS Board allocate available funds

for real estate investments among the existing TRS real estate managers, which included Investment Firm 7, and that TRS staff were going to recommend that TRS invest $220 million with Investment Firm 7 at the February 2004 TRS Board meeting.

Defendant arranged to postpone the planned TRS allocation to Investment Firm 7 in order to force Investment Firm 7 or Individual J, a principal with Investment Firm 7, to pay a fee to Defendant for his support for the potential allocation. Defendant provided information to TRS staff about a possible sale of Investment Firm 7, which resulted in TRS staff recommending at the February 2004 TRS Board meeting that the TRS Board postpone the planned allocation to Investment Firm 7. The TRS Board, including Defendant, agreed that TRS would not allocate $220 million to Investment Firm 7 pending further investigation.

In or about April 2004, Rezko and Defendant agreed to use their influence and Defendant's position at TRS to prevent Investment Firm 7 from getting its $220 million allocation unless Individual J agreed either to pay an approximately $2 million fee to a consultant chosen by Rezko and Defendant, or to arrange for approximately $1.5 million in political contributions to be made to a certain public official. Rezko and Defendant agreed that they would split the fee paid to the consultant if that was what Individual J chose to do. Rezko and Defendant further agreed that Defendant would arrange for an intermediary, namely Individual A,

to indicate to Individual J that Investment Firm 7 had not received its $220 million allocation because Investment Firm 7 had not contributed significantly to a certain public official.

In about early May 2004, Defendant directed Individual A to tell Individual J that there had been a meeting involving Rezko and Individual B concerning plans for raising political donations from pension fund managers, and that during this meeting Rezko had observed that Investment Firm 7 had a lot of TRS funds under management but had not made any political donations. Subsequently, Defendant learned from Individual A that Individual A told Individual J words to the effect that Investment Firm 7 had not gotten its $220 million allocation from TRS because of its failure to make political donations.

On or about May 8, 2004, Individual J advised Individual A that he would not be extorted. Individual A advised Defendant of this conversation and told Defendant that Individual J had threatened to inform law enforcement about what Rezko and Individual B were doing. Individual A and Defendant agreed to discuss the matter with Rezko.

On or about May 10, 2004, Rezko, Defendant, Individual A, and Individual B agreed that in light of Individual J's reaction, it was too risky to continue demanding money from Investment Firm 7 or blocking its $220 million allocation. They further agreed that although Investment Firm 7 would receive the $220 million

allocation, it would not receive any further business from any State of Illinois entity, including TRS.

On about May 25, 2004, the TRS Board, including Defendant, voted to invest a total of $220 million with Investment Firm 7. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 7, including his arrangements with Rezko, Individual A, and Individual B.

TRS Asset Manager

In or about the Spring of 2004, Rezko, Individual E, and Defendant agreed to establish or obtain a company that they or their nominees would own and control. Rezko, Individual E, and Defendant further agreed that they would use their influence and Defendant's position at TRS to ensure that TRS would make hundreds of millions of dollars of real estate investments with their company. Defendant, Rezko and Individual E expected to share the profits from the company. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to his plan to establish a real estate asset management company, including his arrangements with Rezko and Individual E.

Mercy Health System Corporation's Application for a CON

In late 2003, Defendant and Kiferbaum agreed that Defendant would use his position as a Planning Board member to influence the Planning Board to approve the application of Mercy Health System

Corporation ("Mercy") for a Certificate of Need ("CON") so that Kiferbaum's construction company could build its new hospital in Crystal Lake, Illinois. In exchange for Defendant's help, Defendant and Kiferbaum agreed that Kiferbaum would pay a kickback as directed by Defendant, with the exact amount and manner of the payments to be determined at a later date.

After agreeing with Kiferbaum about the kickback, Defendant met with Rezko and told Rezko that Kiferbaum was willing to pay a kickback to ensure that Mercy's application would be approved. Rezko then agreed to use his influence with the Planning Board to support Mercy's application in exchange for a share of that kickback. Defendant and Rezko agreed they would evenly divide the kickback from Kiferbaum, which they expected would be approximately $1 million or more.

At its meeting on December 17, 2003, the Planning Board issued an intent-to-deny with respect to Mercy's CON application. Defendant voted to deny Mercy's application with the expectation that Mercy would respond to the intent-to-deny and the Planning Board would approve Mercy's application at a subsequent meeting with Rezko's support from behind the scene.

Shortly before the Planning Board meeting on April 21, 2004, Defendant had several telephone conversations with another Planning Board member about Mercy and its application for a CON. That Planning Board member said he had his "marching orders" from Rezko and that Rezko wanted to help on Mercy's application. In another

telephone conversation with the same Planning Board member, Defendant said that it was important that Rezko's direction on the vote be communicated to the other Planning Board members that Rezko influenced on the Planning Board.

At its meeting on April 21, 2004, the Planning Board considered Mercy's application for a CON. At this meeting, Defendant and a majority of the Planning Board voted in favor of Mercy's application. Defendant intentionally concealed from and failed to disclose to the Planning Board material facts relating to its consideration of Mercy's application, including his arrangements with Rezko and Kiferbaum. After the meeting concluded, another Planning Board member and Defendant met with Rezko and discussed the Mercy vote.

After the April 21, 2004, Planning Board meeting, Defendant directed Kiferbaum to pay the kickback relating to Mercy to Individual E pursuant to a sham consulting contract. Steve Loren drafted the contract. Defendant, Kiferbaum, and Individual E agreed that the purpose of the contract was to make Kiferbaum's payments to Individual E look legitimate; that Individual E would not, in fact, to do any work for Kiferbaum; and that Individual E would share the Mercy kickback with Defendant.

Defendant and Kiferbaum also discussed the fact that Kiferbaum was paying money at Defendant's direction to John Glennon in connection with another contract and the fact that Kiferbaum still owed Glennon $200,000 to $300,000 on that an earlier contract.

Defendant told Kiferbaum to stop paying Glennon and said that the money remaining to be paid to Glennon would be rolled into the dollar amount of the kickback to be paid on Mercy.

6. Defendant also acknowledges that for the purpose of computing his sentence under the U.S. Sentencing Guidelines, the following conduct, to which he stipulates, constitutes other instances of fraudulent conduct, and admits that these facts constitute relevant conduct under Section 1B1.3 of the Guidelines beyond a reasonable doubt. The following is not a complete statement of all the details known to Defendant regarding the individuals and events described below.

Investment Firm 7 (2001)

In about late 2001, Defendant learned that Investment Firm 7 was seeking an approximately $100 million investment from TRS. Defendant spoke with Individual J about that potential allocation. Defendant wanted Individual J to pay Defendant and Individual E $500,000 plus a portion of the fees that Investment Firm 7 would earn on an annual basis from TRS if Investment Firm 7 received the allocation in exchange for Defendant's help ensuring that TRS approved the $100 million allocation. Defendant understood that Individual J had agreed to Defendant's demand, and voted in favor of the allocation without disclosing his interest in the matter to the TRS Board in December 2001, when the $100 million investment was approved. After the allocation was approved, however,

Individual J, refused to pay Defendant the $500,000 that Defendant believed was owed to him.

Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 7 in 2001, including his discussions with Individual J.

Investment Firm 8

In about early 2002, Defendant learned that Investment Firm 8 wanted to obtain an investment from TRS. Individual K, who Defendant understood was going to receive a finder's fee from Investment Firm 8 if it received a TRS investment, asked Defendant to help Investment Firm 8 obtain an investment from TRS. Defendant agreed to help and subsequently attempted to assist Investment Firm 8 to receive investment funds from TRS. Individual A subsequently indicated to Defendant that because he had helped Individual K, Defendant could stop paying fees to Individual K for lobbying the state of Illinois on behalf of a client of Defendant's. Investment Firm 8 received an investment of approximately $150 million from TRS in about August 2002. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 8, including his arrangements with Individual A and Individual K.

Investment Firm 9

In about 2003, Defendant learned from Individual C that Investment Firm 9 was looking for investors for an investment into

senior living facilities. Defendant agreed to help Investment Firm 9 and expected to receive a kickback if he could arrange for TRS money to be invested with Investment Firm 9.

Defendant encouraged Individual A to arrange for his real estate asset management firm, which invested hundreds of millions of dollars in TRS funds, to invest in Investment Firm 9. Defendant explained to Individual A that Defendant and Individual E would make money if Individual A's firm invested in Investment Firm 9. Individual A agreed to investigate Investment Firm 9 to determine if he wanted his firm to make an investment.

Defendant, Loren, Individual A, and another individual met in about early 2004 to discuss the amount of money that Individual A's firm would receive in TRS funds at the February 2004 TRS Board meeting. At that meeting, Individual A indicated that he wanted his real estate asset management firm to receive a larger allocation of money from TRS if his firm was going to invest money with Investment Firm 9. It was agreed that TRS would increase the amount of money allocate a larger amount of money to Individual A's firm to cover any investment that Individual A's firm made with Investment Firm 9, which investment Defendant expected would be in the tens of millions of dollars.

Individual A's firm received a total allocation of $220 million from TRS at the February 2004 TRS Board meeting. Defendant intentionally concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the

allocation for funds of Investment Firm 9, including his arrangements with Individuals A and E.

Individual A's firm did not invest any money in Investment Firm 9, so Defendant did not receive any kickback.

Edward Hospital's Application for a CON

Beginning in late 2003, Defendant, Kiferbaum, and P. Nicholas Hurtgen ("Hurtgen") agreed that Defendant would use his position as a Planning Board member to attempt to force Edward Hospital ("Edward") to hire Kiferbaum's construction company to build Edward's Plainfield, Illinois hospital and medical office building by threatening representatives of Edward that the Planning Board would not approve Edward's application for the hospital facility unless Kiferbaum's construction company was given the construction contracts to build them The total costs of constructing the hospital were projected to be approximately $90 million, and the total costs of constructing the medical office building were projected to be approximately $23 million. In exchange for Defendant's assistance, Defendant and Kiferbaum agreed that Kiferbaum would pay an Edward related kickback to Defendant or Defendant's designee. Hurtgen assisted with the Edward scheme because he wanted his employer, Bear Stearns & Co. ("Bear Stearns"), to receive the financing work for the new hospital.

Shortly before the Planning Board meeting on December 17, 2003, Hurtgen told Defendant that his client, Edward, had a CON application before the Planning Board, and Hurtgen asked Defendant

to find out how the application was going. Defendant made inquiry and then told Hurtgen that Edward would get an intent-to-deny for the medical office building at the December meeting if it did not agree to defer that application so that its medical office building application and its hospital application could be heard at the same time.

At the Planning Board meeting on December 17, 2003, Edward did not request to defer the medical office building application, and the Planning Board issued an intent-to-deny with respect to that application. Soon thereafter, Hurtgen asked Defendant if it would make a difference for Edward if Edward hired Kiferbaum's construction company to build the hospital. Defendant said it might and asked Hurtgen to introduce Kiferbaum to the CEO of Edward. Hurtgen agreed to make that introduction.

No later than early 2004, Kiferbaum and Hurtgen knew that Defendant was prohibited by law from engaging in *ex parte* communications with applicants with matters pending before the Planning Board, and each knew that Defendant could not communicate with representatives from Edward about their pending applications. Therefore, in order to protect Defendant and conceal his role, Kiferbaum and Hurtgen communicated with Edward representatives, in place of and on behalf of Defendant, in order to communicate Defendant's threats and promises to Edward.

On or about December 22, 2003, Hurtgen talked to the Edward CEO and said, among other matters, that if Edward hired Kiferbaum,

Hurtgen thought Edward would not have any further difficulties with the Planning Board. Hurtgen also said he was selling "clout," and that Defendant is the "clout." The following day, on or about December 23, 2003, Kiferbaum and Hurtgen met with the Edward CEO to persuade the Edward CEO to hire Kiferbaum's construction company to build the two pending projects. Kiferbaum told the CEO that he had been working with Mercy on its new project, and that its application to build a new hospital in Crystal Lake was going to be approved.

In response to representations by Kiferbaum and Hurtgen that they were working with Defendant, and that Defendant had the ability to, and would, cause the Planning Board to approve or deny Edward's application - depending on whether or not Edward Hospital hired Kiferbaum - the Edward CEO requested that Kiferbaum and Hurtgen demonstrate that they were telling the truth about Defendant's role by setting up a meeting with Defendant, which Kiferbaum and Hurtgen agreed to do.

On or about April 17, 2004, Defendant told Kiferbaum that he would speak to Kiferbaum and the Edward CEO at a restaurant on April 18, and he would have Hurtgen or someone else with him. On or about April 17, 2004, Hurtgen and Defendant agreed that Hurtgen would join Defendant at the breakfast the next day.

On or about April 18, 2004, Defendant and Kiferbaum talked about the meeting that they were going to have that morning at a restaurant. Defendant said he would talk to Kiferbaum and the

Edward CEO at the restaurant. Defendant instructed Kiferbaum to tell the Edward CEO that because of the ethics law concerning *ex parte* communications relating to pending projects, the CEO should not ask anything direct about her particular project. Defendant said that the CEO knew why she was there with Kiferbaum, and she was either going to do it or she was not going to do it. Defendant said he would bump into Kiferbaum "by mistake" a little later that day.

On or about Sunday, April 18, 2004, Defendant and Hurtgen went to a restaurant in Deerfield, Illinois, as planned, in order to prove to the CEO that Defendant, Hurtgen, and Kiferbaum were working together, and to prove that their representations concerning Defendant and the Planning Board were real. Defendant and Hurtgen walked over to the table where Kiferbaum and the CEO were sitting. Defendant said that he was the Chairman of the Board of CMS, and that Kiferbaum had done a project for them. Defendant said that Kiferbaum is a person upon whom one can rely, and he is a person whose word can be depended on.

Shortly after that meeting, Kiferbaum thanked Defendant for what he had done at the restaurant. Kiferbaum said that it went perfectly and the CEO understood. Kiferbaum said that he told the CEO that they had to come to some sort of agreement. Defendant said that he had never been in a better position. Defendant said that if the CEO promised to sign a contract, Kiferbaum should say that he accepted her word, and that he would do whatever he could.

On or about April 20, 2004, the Edward Project Administrator faxed Kiferbaum a letter stating that Edward would not hire Kiferbaum Construction Company for their project. When Kiferbaum received the letter of rejection from Edward, he called Defendant and told him about the letter. Defendant indicated that Edward's application would not be approved.

On or about April 21, 2004, the Planning Board held a Board meeting at which Edward's application for a permit to build the Plainfield hospital was considered. Edward had not hired Kiferbaum, and Defendant voted against Edward's application to build a new hospital, and the Planning Board issued a notice of its intent-to-deny the application.

Defendant acknowledges that a reasonable estimate of the net value of the benefit that would have been received by the contractor that would have built the new hospital and medical building for Edward was approximately $1,810,000.

7. For the purpose of calculating his sentence under the Sentencing Guidelines, Defendant also admits to the following facts and that these facts constitute a criminal offense and prove it beyond a reasonable doubt, and pursuant to Section 1B1.2 of the Guidelines, defendant stipulates to having committed the following criminal offense. The following is not a complete statement of all the details known to Defendant regarding the individuals or the events described below.

Chicago Medical School and Northshore Supporting Organization

Beginning no later than in or about early 2001 and continuing through at least in or about June 2004, in the Northern District of Illinois, Eastern Division, and elsewhere, Defendant and others devised and intended to devise, and participated in, a scheme and artifice to defraud the Finch University of Health Sciences/Chicago Medical School, now known as the Rosalind Franklin University of Medicine and Science ("Chicago Medical School" or "CMS"), a not-for-profit private education institution located in North Chicago, Illinois, and the Northshore Supporting Organization ("NSO"), a charitable trust established to support and operate for the benefit of CMS, of money, property, and the intangible right to the honest services of Defendant and Kiferbaum by means of materially false and fraudulent pretenses, representations, and promises, and material omissions, and in furtherance thereof used and caused the use of the United States mails and other interstate carriers, and interstate and foreign wires.

It was part of the scheme that Defendant, with the assistance of Kiferbaum, Individual E, and others, fraudulently obtained and sought to obtain millions of dollars for the benefit of Defendant and his nominees and associates which conduct involved a series of kickbacks related to construction contracts and a real estate contract, as well as the diversion of assets from CMS and NSO. In carrying out this scheme, Defendant misused the positions of trust that he held with CMS and NSO and defrauded these institutions of

their rights to his honest services. Defendant's fraudulent transactions in the course of the scheme included a kickback and deceit relating to the construction of an addition to the Chicago Medical School; a kickback and deceit relating to the construction of student housing at CMS; a kickback and deceit relating to CMS's sale of real property at 1101 N. Dearborn St., Chicago; and deceit in connection with the diversion of assets from CMS and NSO, the charitable trust established to support CMS.

More specifically, Defendant admits as follows:

The CMS Addition

Defendant and Kiferbaum were each members of the CMS Board of Trustees ("CMS Board") and in that capacity they each owed a fiduciary duty and a duty of honest services to the Chicago Medical School.

In or about the summer of 2001, CMS was considering the construction of an addition to the Chicago Medical School. Defendant and Kiferbaum talked about this project and Kiferbaum determined to submit a proposed contract for the project on behalf of his construction company. Defendant told Kiferbaum to include within the costs of his proposed contract an extra $1 million for Defendant. Defendant had sufficient power on the CMS Board to determine whether Kiferbaum received the CMS addition construction contract and Kiferbaum knew that Defendant had that power. If Kiferbaum refused to pay this kickback, Defendant would prevent Kiferbaum from getting this contract. Kiferbaum agreed to pay this

kickback of $1 million and did in fact pay approximately $700,000 of that kickback as directed by Defendant.

The CMS Board voted to award the construction contract for the CMS addition to Kiferbaum's construction company. In connection with the CMS Board's consideration of the construction contract, Defendant and Kiferbaum concealed from the CMS Board that they had agreed to Kiferbaum paying a $1 million kickback to Defendant using CMS funds, and that Defendant - who participated in the CMS Board's consideration of the contract - had a substantial personal financial interest in its approval.

Thereafter, Defendant and Kiferbaum caused CMS to pay an extra $1 million in connection with the construction of the CMS addition by Kiferbaum inflating the total cost of the contract, resulting in a contract of approximately $18 million.

In order to conceal the fraudulent nature of the extra $1 million paid by CMS to Kiferbaum's construction company, Defendant directed Kiferbaum to pay the extra $1 million to North Amercian Capital Opportunities, LLC ("NACO"), the consulting company belonging to Defendant's business associate, John Glennon, and Kiferbaum agreed to do so. Defendant understood that Glennon was not then required to pay any of the $1 million to Defendant but Defendant understood that Defendant, Glennon, and Individual E contemplated future business endeavors together. In order to conceal the fraudulent nature of the payments to Glennon, Defendant caused a sham marketing contract to be prepared, which was signed

by Kiferbaum and Glennon in or about early December 2001. This contract provided that Kiferbaum's construction company would pay Glennon's company $28,000 a month for approximately three years, for a total of approximately $1 million. Defendant and Kiferbaum did not disclose the contract to CMS.

Beginning in or about December 2001 and continuing on a monthly basis through in or about June 2004, Glennon sent to Kiferbaum an invoice requesting payment of $28,000 each month, despite the fact that Glennon and his company did not provide any substantial services to Kiferbaum's company in exchange for those payments. Over time, Kiferbaum caused his company to pay Glennon's company a total of approximately $700,000.

In or about December 2003 or January 2004, Defendant and Kiferbaum agreed that the balance that Kiferbaum still owed on the kickback relating to the CMS addition would be combined with the kickback payment that Kiferbaum would make relating to Mercy Hospital. Based on that agreement, Kiferbaum stopped paying Glennon's company in approximately January 2004. Neither Glennon nor his company sued for the balance of the contract, an amount in the range of $200,000 to $300,000.

As described above, in paragraph 5, in or about April 29, 2004, Defendant and Individual E caused a sham consulting contract to be drafted and sent to Kiferbaum, providing that Kiferbaum's construction company would pay approximately $1,728,000 million to Individual E's company. Defendant arranged for that contract to

include the payment of the kickback relating to Mercy and, additionally, to include the balance of the kickback owed to Defendant in connection with the construction of the CMS addition.

Notwithstanding their positions as members of the CMS Board, Defendant and Kiferbaum intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements for the construction of the CMS addition, including, specifically, the nature or purpose of the additional costs to CMS, their agreements and actions concerning the $1 million kickback described above, and the sham marketing and consulting contracts to conceal the fraudulent nature of the diversion, and the planned diversion, of CMS funds to Glennon and Individual E.

CMS Student Housing

In or about the summer of 2002, CMS was considering the construction of new student housing. Defendant and Kiferbaum talked about this project and Kiferbaum determined to submit a proposed contract for the project on behalf of his construction company. Defendant again told Kiferbaum to include within the costs of his proposed contract an extra $1 million for Defendant. Defendant had sufficient power on the CMS Board to determine whether Kiferbaum received the CMS student housing construction contract and Kiferbaum knew that Defendant had that power. If Kiferbaum refused to pay this kickback, Defendant would prevent Kiferbaum from getting this contract. Kiferbaum agreed to pay this

kickback of $1 million and did in fact pay $1 million as directed by Defendant.

The CMS Board voted to award the construction contract for the student housing to Kiferbaum's construction company. In connection with the CMS Board's consideration of the student housing contract, Defendant and Kiferbaum concealed from the CMS Board that they had agreed to Kiferbaum paying a $1 million kickback to Defendant using CMS funds, and that Defendant - who participated in the CMS Board's consideration of the contract - had a substantial personal financial interest in its approval.

Thereafter, Defendant and Kiferbaum caused CMS to pay an extra $1 million in connection with the construction of the CMS student housing by Kiferbaum inflating the total cost of the contract, resulting in a contract of approximately $22 million.

In order to conceal the fraudulent nature of the extra $1 million paid by CMS to Kiferbaum's construction company, in or about December 2002, Defendant directed Kiferbaum to pay this extra $1 million to Individual L, an associate of Defendant's, and Kiferbaum agreed to do. Based on Defendant's direction, on or about December 12, 2002, Kiferbaum caused his company to issue a check in the amount of $628,000, made payable to Individual L. About three months later, on or about March 13, 2003, and again at Defendant's direction, Kiferbaum caused his company to issue a check in the amount of $372,000, also made payable to Individual L. Further, in an effort to conceal the fraudulent nature of the

payments made to Individual L, in or about March 2003, some months after the first check had been issued, Defendant caused a sham marketing contract to be prepared and sent to Kiferbaum. Although the contract stated that Individual L would provide services to Kiferbaum's construction company, Individual L did not provide any such services and Defendant understood that none would be provided.

Notwithstanding their positions as members of the CMS Board, Defendant and Kiferbaum intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements for the construction of the CMS student housing, including, specifically, the nature or the purpose of the additional costs to CMS, their agreements and actions concerning the $1 million kickback described above, and the use of a sham marketing contract to conceal the fraudulent nature of the diversion of CMS funds to Individual L.

The Scholl Property

In connection with CMS's sale of real property at 1101 N. Dearborn Street, Chicago, the long time location of the Dr. William M. Scholl School of Podiatric Medicine ("the Scholl Property"), in or about late 2002, Defendant solicited a sales transaction which would include a kickback of money to Defendant. Defendant agreed to support the sale of the Scholl Property to a certain buyer in exchange for a portion of a third party's finder fee, a portion subsequently estimated to be approximately $1.5 million. Defendant did support that buyer's bid for the Scholl Property and,

notwithstanding his position as a member of the CMS Board, Defendant intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements concerning the sale, including, specifically, his agreement and actions concerning the approximately $1.5 kickback described above. Because of the federal investigation and the incomplete nature of the underlying transaction, Defendant was never paid the approximately $1.5 million.

Northshore Supporting Organization ("NSO")

Defendant also fraudulently diverted a total of $6 million NSO, a charitable trust established to support CMS and for which Defendant served as a trustee, by causing NSO to lend $3 million to a company controlled by Defendant and $3 million to a company controlled by Individual E, and by subsequently arranging to have both of those loans "gifted" without repayment, as set forth below.

In or about the spring and summer of 2001, Defendant and Individual E caused NSO to be created with the purpose of supporting CMS. On or about July 19, 2002, Defendant fraudulently caused NSO to lend $3 million to Defendant's company, S.L. Investment Enterprises, L.P., and $3 million to a company controlled by Individual E. In connection with those loans, notes were executed on behalf of the companies requiring each company to repay the $3 million loan to NSO at the end of 20 years, with an

interest rate of 7.5% per annum, resulting in each company owing approximately $12.5 million in 20 years.

On or about December 1, 2002, Defendant and Individual E each signed a promissory note agreeing to substitute as the borrower of the funds borrowed from NSO by their respective companies. Defendant then used his position as an NSO trustee to cause NSO to donate those two promissory notes to CMS but only on the condition that CMS immediately sell the promissory notes to Individual L for $1 million, the same amount of the kickback that Defendant and Kiferbaum had fraudulently obtained from CMS in connection with the construction of the student housing and diverted to Individual L.

To accomplish this fraudulent transaction, Defendant initially agreed to act as an escrow holder for the notes pursuant to an escrow agreement that required that the notes be maintained in a sealed envelope, thereby concealing from CMS the amounts of the notes and the fact that Defendant and Individual E were the obligors on the notes. On or about January 9, 2003, Defendant arranged to have the Chairman of the CMS Board sign two documents, one accepting the promissory notes as a donation and the other agreeing to sell the promissory notes to Individual L for $1 million, and Defendant never revealed to the Chairman the amounts of the notes of that Defendant and Individual E were the obligors.

On or about January 31, 2003, Defendant and Individual L caused a check for $1 million, drawn on an account belonging to Individual L, to be sent to Defendant. On or about February 3,

2003, Defendant presented the check for $1 million to the President/CEO of CMS. In order to conceal the fraudulent nature of this transaction, Defendant falsely represented to the President/CEO that the $1 million was a personal donation from Defendant and Individual E. Defendant failed to disclose to the President/CEO any information concerning the $6 million promissory notes, including the fact that Defendant had previously arranged with the Chairman of the CMS Board that the $1 million from Individual L would constitute Individual L's payment for the purchase of the NSO promissory notes.

After purchasing the promissory notes for $1 million, Individual L transferred the promissory notes to Defendant and Individual E, respectively, as "gifts," thereby freeing Defendant and Individual E from any obligation to repay the $3 million each had purported to borrow from NSO. By means of this sequence of transactions, Defendant fraudulently obtained and converted $3 million to his personal use, and $3 million to the use of his longtime associate, Individual E.

Notwithstanding his position as a member of the CMS Board of Trustees, Defendant intentionally concealed from and failed to disclose to CMS material facts relating to the series of transactions involving NSO and Individual L, including Defendant's role in these transactions, the personal financial interests of Defendant and Individual E in these transactions, Kiferbaum's earlier payments to Individual L, and that the promissory notes

sold by CMS for $1 million had a total face value substantially in excess of that amount.

In order to conceal the fraudulent nature of this transaction, on or about December 22, 2003, Defendant caused a tax return to be filed with the IRS on behalf of NSO and which Defendant signed, and in which Defendant claimed that NSO donated notes receivable with a value of $6 million to CMS's Scholarship Fund. Defendant intentionally failed to disclose to the IRS certain material facts concerning this transaction, including the fact that the donation of the promissory notes was conditioned on the School's agreement to sell the promissory notes for $1 million, as part of a series of transactions that resulted in the transfer of the $6 million to two NSO trustees, namely, Defendant and Individual E.

Other Transaction

While on the CMS Board, Defendant also solicited other personal financial gain in connection with other CMS assets, including CMS's real property at 2020 W. Ogden Ave., Chicago ("2020 Property"). In that regard, in or about 2000, Defendant solicited a sale transaction for the real property at 2020 Property which would provide a kickback of money to Defendant. The amount of the kickback was never finalized and the proposed sales transaction never occurred. As a member of the CMS Board, Defendant intentionally concealed from and failed to disclose to CMS material facts relating to the proposed sale transaction, including,

specifically, his solicitation of personal financial gain in connection with the proposed transaction.

In furtherance of this scheme, on or about December 12, 2001, at Deerfield, in the Northern District of Illinois, Eastern Division, Defendant, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be placed in an authorized depository for mail matter, to be sent and delivered by the United States Postal Service, according to the directions thereon, an envelope containing a check in the amount of approximately $28,000, from Kiferbaum Construction Company, payable to Glennon's consulting company, NACO, which envelope was addressed to the company's address in Chicago, Illinois; in violation of Title 18, United States Code, Sections 1341, 1346, and 2.

8. For purposes of calculating the Sentencing Guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties stipulate and agree on the following points:

a. The Sentencing Guidelines effective on November 1, 2005 apply.

b. <u>Count One -- Mail Fraud</u>

i. The applicable Guidelines Section is § 2C1.1.

ii. Pursuant to Guideline § 2C1.1(a)(1), the base offense level is 14 because defendant was a public official;

iii. Pursuant to Guideline § 2C1.1(b)(1), the offense level is increased 2 levels because the offense involved more than one bribe or extortion;

iv. Pursuant to Guideline §§ 2C1.1(b)(2) and 2B1.1(b)(1)(L), the offense level is increased by 20 levels because the intended loss was more than $7 million and less than $20 million.

v. Pursuant to Guideline § 2C1.1(b)(3), the offense level is increased 4 levels because the offense involved a public official in a high-level decision-making and sensitive position;

vi. Pursuant to Guideline § 3B1.1(a), the offense level is increased by 4 levels because defendant was an organizer and leader of criminal activity that involved five or more participants;

vii. Based on the above, the adjusted offense level for Count One is 44.

c. Count Twenty-Three -- Money Laundering

i. The applicable Guidelines Section is § 2S1.1.

ii. Pursuant to Guideline § 2S1.1(a)(1), the base offense level is determined by the underlying offense from which the laundered funds were derived, which is 40.

iii. Pursuant to Guideline § 2S1.1(b)(2)(B), the offense level is increased by 2 levels because defendant was convicted under 18 U.S.C. § 1956;

iv. Pursuant to Guideline § 3B1.1(c), the offense level is increased 2 levels because defendant was an organizer and leader in criminal activity that involved fewer than five participants;

v. Based on the above, the adjusted offense level for Count Twenty-Three is 44.

d. Stipulated Offense in Paragraph 7

i. The applicable Guidelines Section is § 2B1.1.

ii. Pursuant to Guideline § 2B1.1(a)(1), the base offense level is 7 because the offense is referenced in Guideline § 2B1.1 and has a statutory maximum term of imprisonment of 20 years or more;

iii. Pursuant to Guideline § 2B1.1(b)(1)(K), the offense level is increased by 20 levels because the intended loss was more than $7 million and less than $20,000,000;

iv. Pursuant to Guideline § 2B1.1(b)(8), the offense level is increased by 2 levels because the offense involved a misrepresentation that defendant was acting on behalf of charitable and educational organizations;

v. Pursuant to Guideline § 2B1.1(b)(9), the offense level is increased by 2 levels because the offense involved sophisticated means;

vi. Pursuant to Guideline § 3B1.1(a), the offense level is increased by 4 levels because defendant was an organizer

and leader of criminal activity that involved five or more participants;

vii. Pursuant to Guideline § 3B1.3, the offense level is increased by 2 levels because defendant abused a position of private trust in a manner that significantly facilitated the commission and concealment of the offense;

viii. Based on the above, the adjusted offense level for the Stipulated Offense is 37.

e. Grouping - Multiple Counts:

i. Pursuant to Guideline § 3D1.2(c), Counts One and Twenty-Three are grouped together in a single group for sentencing purposes because the mail fraud scheme (Count One) embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to the money laundering count (Count Twenty-Three). Pursuant to Guideline § 3D1.3(a), the offense level applicable to this group is 44;

ii. Pursuant to Guideline § 3D1.2(d), the Stipulated Offense is grouped with Counts One and Twenty-Three in a single group for sentencing purposes because the offense level is determined largely on the basis of the total amount of harm or loss;

iii. Pursuant to Guideline § 3D1.3(b), the offense level for the group of the Stipulated Offense, Count One, and Count Twenty-Three is determined under Guideline § 2C1.1 because the

counts involve offenses of the same general type and Guideline § 2C1.1 produces the highest offense level. As the aggregated quantity involves more than $20 million and less than $50 million of intended loss, the adjusted offense level is 46.

f. The parties agree that Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with thi s provision, and if Defendant continues to accept responsibility for his actions, within the meaning of Guideline § 3E1.1, a 2-level reduction in the offense level is appropriate.

g. The parties agree that Defendant has provided truthful information and timely notice of his intention to enter a plea of guilty, within the meaning of Guideline § 3E1.1(b), so that an additional 1-level reduction in the offense level is appropriate, if the offense level is 16 or greater, and the Court finds that a reduction under Guideline § 3E1.1(a) is appropriate.

h. Based on the facts known to the government, Defendant's criminal history points equal 0, and Defendant's criminal history category is I.

i. Based on the above calculations, which are preliminary in nature, and assuming that defendant's criminal history category is I, the preliminary projected applicable offense level is a level 43, so that the preliminary projected applicable sentencing range is a life term of imprisonment.

j. Defendant and his attorneys and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this plea agreement. Defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

9. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or Court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and Defendant shall not have a right to withdraw his plea on the basis of such corrections.

10. Defendant understands that, in imposing the sentence, the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

11. Defendant understands: (a) Count One, to which he will plead guilty, carries a maximum penalty of 20 years' imprisonment;

a maximum fine of $250,000, or twice the gross gain or twice the gross loss, whichever is greater; and a term of supervised release of at least two but not more than three years, as well as any restitution ordered by the Court; and (b) Count Twenty-Three, to which he will also plead guilty, carries a maximum penalty of 20 years' imprisonment, a maximum fine of $500,000, or twice the property involved with the transaction, whichever is greater, a term of supervised release of at least two but not more than three years which the Court may specify, as well as any restitution the Court may order. Defendant understands that the terms of imprisonment and supervised release on each count could be imposed consecutively and that the fines imposed on each count could be cumulative.

12. Defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, Defendant will be assessed $100 on each count to which he has pled guilty, in addition to any other penalty imposed. Defendant agrees to pay the special assessment of $200 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

13. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. If defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by

the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, Defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

b. If the trial is a jury trial, the jury would be composed of twelve layperson selected at random. Defendant and his attorneys would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt, and that it was to consider each count of the indictment separately.

c. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

d. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorneys would be able to

cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.

e. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

14. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorneys have explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

15. Defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, Defendant knowingly waives the right to appeal any sentence within the maximum provided in the statutes of conviction (or the manner in which that sentence was determined), in exchange for the concessions made by the United States in this Plea Agreement. Defendant also waives his right to challenge his sentence or the manner in which it was determined in any collateral attack, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of

involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

16. Defendant understands that the Superseding Indictment and this Plea Agreement are matters of public record and may be disclosed to anyone.

17. Defendant agrees he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate by representatives of the United States Attorney's Office for the Northern District of Illinois, including the following:

a. Defendant agrees to provide complete and truthful information in any investigation and pre-trial preparation, and complete and truthful testimony, if called upon to testify, before any grand jury and court proceeding, and any related civil, administrative, or court proceeding.

b. The parties agree that they will jointly recommend that defendant's sentencing be postponed until after the conclusion of any ongoing investigation in which Defendant is cooperating, and the conclusion of any prosecution arising from that investigation.

18. Nothing in this Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest or penalties from defendant. If requested to do so by the IRS, Defendant agrees to transmit his original records, or copies thereof, and any additional books and records which may be helpful, for any years requested by the IRS, to the Examination Division of the IRS so that the IRS can conduct a civil audit of defendant.

19. Defendant understands that pursuant to Title 12, United States Code, Section 1829, his conviction in this case will prohibit him from directly or indirectly participating in the affairs of any financial institution insured by the Federal Deposit Insurance Corporation (FDIC) except with the prior written consent of the FDIC and, during the ten years following his conviction, the additional approval of this Court. Defendant further understands that if he violates this prohibition, he may be punished by imprisonment for up to five years and a fine of up to $1,000,000.

20. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him in this case, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

21. The government and defendant agree that at the time defendant began to cooperate with the government, defendant's guidelines calculation would have been determined pursuant to the Sentencing Guidelines effective on November 5, 2003, but that, due to a change in the applicable law, defendant's guidelines calculation must now be determined pursuant to the Sentencing Guidelines in effect on the day that defendant will be sentenced. In order to reflect the parties' mutual expectations at the time defendant began his cooperation with the government, and in light of the fact that defendant's cooperation required delaying his

guilty plea and sentencing, the government and defendant agree that if the government makes a motion for departure pursuant to Guideline § 5K1.1, the government will use the Sentencing Guidelines in effect on November 5, 2003 as the starting point for determining the extent of the downward departure that the parties will propose to the Court in this case.

22. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation, and, if Defendant continues to provide full and truthful cooperation, shall move the Court, pursuant to Sentencing Guideline § 5K1.1, to depart downward from the applicable sentencing guidelines range, and pursuant to Rule 11(c)(1)(C), to impose an agreed sentence of imprisonment of 67 months incarceration. Other than the agreed term of incarceration, the Court remains free to impose any sentence the Court deems appropriate. However, under Rule 11(c)(1)(C), the plea will be null and void if the Court refuses to impose the 67 month sentence of incarceration to which the parties have agreed.

23. a. Regarding restitution as to the offenses of conviction, defendant understands that pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant to make restitution in any case in which the Court determines that there is a property loss to the victim of the offense of conviction, minus any credit for funds repaid prior to sentencing.

b. Regarding restitution as to the aspects of the stipulated offense relating to the Scholl Property, Defendant further voluntarily agrees to pay restitution in an amount up to $1.5 million, minus any credit for funds repaid prior to sentencing by any party, to Rosalind Franklin University of Medicine and Science, formerly known as Finch University of Health Sciences/the Chicago Medical School, pursuant to Title 18, United States Code, Sections 3663A(a)(3) and 3664.

c. Defendant further understands that while forfeiture of property is not typically treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose, it is agreed by the parties that any payments made in satisfaction of the civil forfeiture judgment discussed in paragraph 24 below shall be credited to any outstanding restitution judgment.

d. Defendant understands that Title 18, United States Code, Section 3664 and Sections 5E1.1 and 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in setting a fine and in determining the schedule, if any, according to which restitution is to be paid in this case. Defendant agrees to provide full and truthful information to the Court and United States Probation Officer regarding all details of his economic circumstances, and to provide such information to the United States Attorney's office. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title

18, United States Code, Section 1001, or as a contempt of the Court, and would constitute a breach of this Plea Agreement.

24. Defendant further acknowledges that the government will file a civil complaint against certain property, namely $5 million, alleging that the property is subject to forfeiture. Defendant relinquishes all right, title, and interest he may have in this property that is used to satisfy the amount due and further agrees to the entry of a judgment against him, extinguishing any interest or claim he may have had in the property subject to forfeiture. Defendant further agrees to cooperate fully and truthfully in identifying and forfeiting tainted assets subject to forfeiture, regardless of where they may have been transferred or hidden. Any attempt on the part of defendant to conceal property prior to the satisfaction of this judgment shall be deemed to violate this plea agreement. Defendant agrees that no transfers of property available to satisfy this judgment can be effectuated by Defendant or his agents without concurrence of the government or approval of the Court. To the extent that Defendant owns any property available to satisfy this judgment jointly, he agrees that any efforts to sell, to transfer, or otherwise convey his interest shall be subject to the same conditions. Further, defendant agrees maintain all financial obligations relating to any property so as to preserve and protect the availability of the property to satisfy the forfeiture judgment.

25. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Plea Agreement. He further understands that in the event he violates this Plea Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute Defendant not subject to any of the limits set forth in this Plea Agreement, or to resentence Defendant. Defendant understands and agrees that in the event that Defendant's plea is subsequently withdrawn, vacated or breached by Defendant, and the Government elects to void the Plea Agreement and prosecute Defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Plea Agreement may be commenced against Defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Plea Agreement and the commencement of such prosecutions.

26. Defendant and the government agree that after Defendant has entered a plea of guilty in this case, the government will move to dismiss the indictment and superseding indictment without prejudice against Defendant in United States v. Stuart Levine, 05 CR 408-1 (Grady, J.). Defendant understands and agrees that in the event that Defendant's Plea is subsequently withdrawn, vacated or breached by Defendant, and the Government elects to void the Plea Agreement and prosecute Defendant, the government may bring charges

against Defendant based on any of the allegations in the superseding indictment in United States v. Stuart Levine, 05 CR 408 (Grady, J.) that are not time-barred by the applicable statute of limitations on the date of the signing of this Plea Agreement in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Plea Agreement and the commencement of such prosecutions.

27. After sentence has been imposed on the counts to which Defendant pleads guilty as agreed herein, the government will move to dismiss the original indictment and the remaining counts of the Superseding Indictment in this case as to Defendant.

28. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement, to cause Defendant to plead guilty.

29. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

30. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: October 27, 2006

By:
PATRICK J. FITZGERALD
UNITED STATES ATTORNEY

STUART LEVINE
Defendant

CHRISTOPHER S. NIEWOEHNER
Assistant United States Attorney

JEFFREY STEINBACK
Attorney for Defendant

KAARINA SALOVAARA
Assistant United States Attorney

EXHIBIT 4

FILED
JUN 2 0 2005
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 05 CR 408-2
	)	Judge John F. Grady
JACOB KIFERBAUM	)	

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, JACOB KIFERBAUM, and his attorneys, JAMES R. STREICKER and THEODORE POULOS, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure, and is governed in part by Rule 11(c)(1)(C), as more fully set forth in Paragraph 19, below.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in the above captioned case.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities or agencies except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, JACOB KIFERBAUM, and his attorneys, JAMES R. STREICKER and THEORDORE POULOS, have agreed upon the following:

1. Defendant acknowledges that he has been charged in Counts 1 through 7, and 9 through 20 of the indictment in this case with mail fraud and wire fraud, namely, participating in a scheme to defraud and to obtain money and property by means of material false and fraudulent pretenses and misrepresentations in violation of 18 U.S.C. §§ 1341, 1343, 1346 and 2. Defendant further acknowledges that he has been charged in Count 24 with attempted extortion, namely attempting to obtain property with the consent of the victim, induced under the color of official right, and by the wrongful use of actual and threatened fear of economic harm in violation of 18 U.S.C. §§ 1951 and 2, and that he has been charged in Counts 27 and 28 with the misapplication of funds, namely, construction funds belonging to the Finch University of Health Sciences/Chicago Medical School ("Chicago Medical School" and "CMS"), now known as the Rosalind Franklin University of Medicine and Science, in violation of 18 U.S.C. §§ 666 and 2.

2. Defendant has read the charges against him contained in the indictment in this case and the charges have been fully explained to him by his attorneys.

3. Defendant fully understands the nature and elements of the crimes with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to Count 24 of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charge contained in Count 24 of the indictment in this case. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt. The following is not a complete statement of all the details known to the defendant regarding the defendant's criminal conduct. The following facts are set forth solely as a factual basis for this guilty plea:

COUNT TWENTY-FOUR

Planning Board/Edward Hospital

Defendant JACOB KIFERBAUM ("Kiferbaum" or "defendant") admits that he owned and operated Kiferbaum Construction Company, a construction company located in Deerfield, Illinois. Beginning in or about December 2003 and continuing through in about May 2004, at Deerfield, Highland Park, and Naperville, Illinois, Kiferbaum, together with Stuart Levine ("Levine") and P. Nicholas Hurtgen ("Hurtgen"), did attempt to commit extortion, which extortion would obstruct, delay, and affect commerce, in that the defendants attempted to obtain property, in the form of a construction contract from Edward Health Services Corporation ("Edwards Hospital"), on behalf of and for the benefit of Kiferbaum, with Edward Hospital's consent induced under the color of official right, and by the wrongful use of actual and threatened fear of economic harm; in violation of Title 18, United States Code, Sections 1951, and 2.

Levine was a member of the Illinois Health Facilities Planning Board ("Planning Board"), and in that capacity he owed a duty of honest services to the Planning Board, the State of Illinois, and the people of the State Illinois. State law required an entity

seeking to build a hospital, medical office building, or other medical facility in Illinois to obtain a permit, known as a "Certificate of Need" ("CON"), from the Planning Board prior to beginning construction. Beginning in or about 2003, Edward Hospital sought CONs to construct a hospital and a medical office building in Plainfield, Illinois.

Beginning in or about December 2003, and continuing through approximately May 2004, Kiferbaum, Levine, and Hurtgen agreed that they would use Levine's position as a member of the Planning Board to force Edward Hospital to hire Kiferbaum Construction Company to build Edward Hospital's Plainfield facility, and would do so by threatening representatives of Edward Hospital that the Planning Board would not approve those facilities unless Kiferbaum Construction Company was given the construction contracts to build them. The total costs of constructing the hospital were projected to be approximately $90 million, and the total costs of constructing the medical office building were projected to be approximately $23 million.

If Kiferbaum Construction Company had obtained the contracts to build those facilities, the company, and/or its subcontractors, would have purchased items from out of state. Moreover, if the Planning Board had approved those facilities, Edward Hospital would have purchased items from out of state.

Kiferbaum understood that Hurtgen participated in this scheme with Kiferbaum and Levine because Hurtgen wanted his employer, Bear Stearns, to receive the financing work for the new hospital. Hurtgen agreed that he would introduce Kiferbaum to the CEO of Edward Hospital. From prior business dealings with Levine, in which Levine had asked for and received kickbacks from Kiferbaum, Kiferbaum understood that Levine would require Kiferbaum to pay a kickback to Levine or Levine's designee in connection with the Edward Hospital projects.

No later than early 2004, Kiferbaum knew that Levine was prohibited by law from engaging in ex parte communications with applicants with matters pending before the Planning Board, and knew that Levine could not communicate with representatives from Edward Hospital about their pending applications. Therefore, in order to protect Levine and conceal his role, Kiferbaum and Hurtgen communicated with Edward Hospital representatives, in place of and on behalf of Levine, in order to communicate Levine's threats and promises to Edward Hospital.

On or about December 23, 2003, Kiferbaum and Hurtgen met with the Edward Hospital CEO to persuade the CEO to hire Kiferbaum Construction Company to build the pending projects. Kiferbaum told the CEO that he had been working with Mercy Health System Corporation ("Mercy Hospital") on its new project, and that Mercy's application to build a new hospital in Crystal Lake was going to be approved. Unbeknownst to Kiferbaum and Hurtgen, the Edward Hospital CEO, and the Edward Hospital Project Administrator, were cooperating with the government.

On or about January 15, 2004, Kiferbaum met with Edward Hospital's CEO, and the Project Administrator, at Edward Hospital. Kiferbaum confirmed that if Edward Hospital hired Kiferbaum, they would get approval from the Planning Board, but if they did not hire him, Edward Hospital would not get approval.

On or about February 10, 2004, Kiferbaum met with the Edward Hospital CEO, and the Project Administrator, at Edward Hospital. Kiferbaum said that he was confident that Edward Hospital's project would be approved if they signed a contract with him.

In response to representations by Kiferbaum and Hurtgen that they were working with Levine, and that Levine had the ability to, and would, cause the Planning Board to approve or deny Edward Hospital's application - depending on whether or not Edward Hospital hired Kiferbaum - the Edward Hospital CEO requested that Kiferbaum and Hurtgen demonstrate that they were telling the truth about Levine's role by setting up a meeting with Levine, which Kiferbaum and Hurtgen agreed to do.

On or about April 16, 2004, Kiferbaum talked with the Edward Hospital CEO about setting up a meeting that would demonstrate that Kiferbaum and Levine knew each other.

On or about Friday, April 17, 2004, Levine told Kiferbaum that he would speak to Kiferbaum and the CEO at the restaurant on Sunday, and he would have Hurtgen or someone else with him.

On or about Sunday, April 18, 2004, Levine and Kiferbaum talked about the meeting that they were going to have that morning at a restaurant. Levine said he would talk to Kiferbaum and the CEO at the restaurant. Levine instructed Kiferbaum to tell the CEO that because of the ethics law concerning *ex parte* communications relating to pending projects, the CEO should not ask anything direct about her particular project. Levine said that the CEO knew why she was there with Kiferbaum, and she was either going to do it or she was not going to do it. Levine said he would bump into Kiferbaum "by mistake" a little later that day.

On or about Sunday, April 18, 2004, Levine and Hurtgen went to a restaurant in Deerfield, Illinois, as planned, in order to prove to the CEO that Levine, Hurtgen, and Kiferbaum were working together, and to prove that their representations concerning Levine and the Planning Board were real. Levine and Hurtgen walked over to the table where Kiferbaum and the CEO were sitting. Levine said that he was the Chairman of the Board of CMS, and that Kiferbaum had done a project for them. Levine said that Kiferbaum is a person upon whom one can rely, and he is a person whose word can be depended on.

Shortly after that meeting, Kiferbaum thanked Levine for what he had done at the restaurant. Kiferbaum said that it went perfectly and the CEO understood. Kiferbaum said that he told the CEO that they had to come to some sort of agreement. Levine said that they would find out what she's made of. Levine said that he had never been in a better position. Levine said that if the CEO promised to sign a contract, Kiferbaum should say that he accepted her word, and that he would do whatever he could.

On or about April 20, 2004, the Edward Hospital Project Administrator faxed Kiferbaum a letter stating that Edward Hospital would not hire Kiferbaum Construction Company for their project. When Kiferbaum received the letter of rejection from Edward Hospital, he called Levine and told him about the letter. Levine indicated that Edward Hospital's application would not be approved.

On or about April 21, 2004, the Planning Board held a Board meeting at which Edward Hospital's application for a permit to build the Plainfield hospital was considered. Edward Hospital had not hired Kiferbaum, and Levine voted against Edward Hospital's application to build a new hospital, and the Planning Board issued a notice of its intent to deny the application.

Kiferbaum acknowledges that a reasonable estimate of the net value of the benefit that would have been received by the contractor that would have built the new hospital and medical building for Edward Hospital was between $1,000,000 and $2,500,000.

PROFFER PROTECTED INFORMATION

Chicago Medical School and Mercy Hospital

The parties agree that information concerning the Chicago Medical School, and Mercy Hospital, provided by the defendant pursuant to § 1B1.8, and the terms of the Proffer Letter dated June 4, 2004 ("Proffer Letter"), cannot be used against the defendant in aggravation of his sentence, except as provided in the Proffer Letter, the Letter Agreement entered into by the parties, dated April 13, 2005 ("Letter Agreement"), and this plea agreement. Pursuant to § 1B1.8, the defendant states the following:

CHICAGO MEDICAL SCHOOL

The CMS Addition

Kiferbaum and Levine were each members of the Board of Trustees of the Chicago Medical School. In that capacity, they each owed a fiduciary duty and a duty of honest services to the Chicago Medical School.

In or about the summer of 2001, Levine told Kiferbaum to include an extra $1,000,000 for Levine in the costs set forth in the proposed construction contract, that Kiferbaum Construction was seeking to obtain, to build an addition to the School. Based on conversations with Levine, Kiferbaum believed that Levine was powerful enough to control whether Kiferbaum received the CMS construction contract. Kiferbaum also believed that, if he refused to pay that kickback, Levine would prevent Kiferbaum from getting this contract. Kiferbaum agreed to pay a secret kickback of $1,000,000 to Levine, and, did in fact pay approximately $700,000 of that kickback, as directed by Levine.

CMS awarded to Kiferbaum Construction Company the construction contract for the addition to the School. Levine and Kiferbaum caused CMS to pay an extra $1,000,000 in connection with the construction of that building by inflating the total cost of the contract, resulting in a contract of approximately $18 million. In connection with the consideration of the construction contract by the CMS Board of Trustees, Levine and Kiferbaum concealed from the Board of Trustees that they had agreed to the payment of this kickback using CMS funds, and that Levine - who participated in the CMS Board of Trustees' consideration of the contract - had a substantial personal financial interest in its approval.

In order to conceal the fraudulent nature of the extra $1 million to be paid by CMS to Kiferbaum Construction Company, Levine directed Kiferbaum to pay this extra $1 million to Individual 2's consulting company, and Kiferbaum agreed to do so.

In order to conceal the fraudulent nature of the payments to Individual 2, Levine caused a sham marketing contract to be prepared, which was signed by Kiferbaum and Individual 2 in or about early December 2001. This contract provided that Kiferbaum Construction Company would pay Individual 2's company $28,000 a month for approximately three years, for a total of approximately $1 million.

Beginning in or about December 2001 and continuing through in or about June 2004, Individual 2 sent invoices requesting payment of $28,000 every month, despite the fact that Individual 2 and his company did not provide any substantial services in exchange for those payments. Kiferbaum caused his company to pay Individual 2's company a total of approximately $700,000.

In or about December 2003 or January 2004, Levine and Kiferbaum agreed that the balance that Kiferbaum still owed on the kickback relating to the CMS addition would be combined with kickback payments that Kiferbaum would make relating to Mercy Hospital. Based on that agreement, Kiferbaum stopped paying Individual 2's company in approximately January 2004.

In or about April 29, 2004, Levine and Individual 1 caused a sham consulting contract to be drafted and sent to Kiferbaum, providing that Kiferbaum Construction Company would pay approximately $1,728,000 million to Individual 1's company. Levine arranged for that contract to include payments for a kickback relating to Mercy Hospital, as described below, and to include payments completing the kickback relating to the construction of the CMS addition.

Notwithstanding their positions as members of the CMS Board of Trustees, Levine and Kiferbaum intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements for the construction of the CMS addition, including, specifically, their agreements and actions concerning the $1 million kickback described above.

CMS Student Housing

In or about the summer of 2002, Levine told Kiferbaum to include an extra $1,000,000 for Levine in the costs set forth in the proposed construction contract relating to the construction of student housing. Kiferbaum agreed to pay a kickback of $1,000,000 to Levine, and did in fact pay $1,000,000 million as a kickback, as directed by Levine. Kiferbaum understood that, if he did not agree to pay the kickback, Levine would prevent him from obtaining the student housing construction contract.

CMS awarded to Kiferbaum Construction Company the construction contract for the addition to the School. Levine and Kiferbaum caused CMS to pay an extra $1,000,000 in connection with the construction of that building by inflating the total cost of the contract, resulting in a contract of approximately $22 million.

In order to conceal the fraudulent nature of the extra $1 million to be paid by CMS to Kiferbaum Construction Company, in or about December 2002, Levine directed Kiferbaum to pay this extra $1 million to Individual 3, which Kiferbaum agreed to do.

Based on Levine's direction, on or about December 12, 2002, Kiferbaum caused his company to issue a check in the amount of $628,000, made payable to Individual 3.

Based on Levine's direction, on or about March 13, 2003, Kiferbaum caused his company to issue a check in the amount of $372,000, made payable to Individual 3.

In order to conceal the fraudulent nature of the payments made to Individual 3, in or about March 2003, Levine caused a sham marketing contract to be prepared and sent to Kiferbaum. Although the contract stated that Individual 3 would provide services to Kiferbaum Construction Company, no such services were ever provided.

Notwithstanding their positions as members of the CMS Board of Trustees, Levine and Kiferbaum intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements for the construction of the CMS student housing, including, specifically, their agreements and actions concerning the $1,000,000 kickback described above.

Planning Board/Mercy Hospital

Levine solicited a kickback of approximately $1.5 million from Kiferbaum relating to the construction of Mercy Hospital's Crystal Lake facility. Kiferbaum agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date. At Levine's direction, the kickback proceeds were to be paid to Individual 1 pursuant to a sham consulting contract. Levine agreed to and, according to Levine, did use his influence with the Planning Board to ensure that Mercy Hospital would and did receive approval of its application to build the Crystal Lake facility after it contracted with Kiferbaum Construction Company to build that facility.

In or about late 2003, Levine and Kiferbaum agreed that Levine would use his position as a Planning Board member to influence the Planning Board to approve Mercy's application, if Mercy gave Kiferbaum Construction Company the construction contract - of approximately $49 million - to build Mercy's proposed hospital. In exchange, Levine asked Kiferbaum for a kickback of approximately $1.5 million, to be paid at Levine's direction. Kiferbaum agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date.

On or about January 23, 2004, approximately one month after the Planning Board had made known its intent to deny Mercy Hospital's application to build the Crystal Lake facility, Kiferbaum and Mercy Hospital signed a construction contract, agreeing that Kiferbaum Construction Company would build the new hospital for Mercy.

On or about April 21, 2004, the Planning Board voted in favor of granting Mercy's application for a permit to build a new hospital; Levine voted to approve the application. According to Levine, he also took steps to cause other Planning Board members to vote to approve Mercy's application.

On or about April 21, 2004, Levine told Kiferbaum what happened at the Planning Board meeting. Levine said that nobody could have gotten this done but Levine; there was a mutiny with the Board members who did not want to approve Mercy's application; and nobody really knew that Levine was orchestrating it. Kiferbaum said that he could not thank Levine enough. Levine said that they were in this together.

Shortly after Mercy's application was approved, Levine directed Kiferbaum to make the kickback payments relating to Mercy Hospital to Individual 1. Levine told Kiferbaum he would have a

consulting agreement prepared for Kiferbaum Construction Company and Individual 1's company.

On or about April 29, 2004, Individual 1 sent a sham consulting agreement to Kiferbaum, which provided that Kiferbaum Construction Company would make payments to a company operated by Individual 1, totaling approximately $1,728,000. This amount included proposed kickback payments relating to Mercy, and payments that Kiferbaum still owed as part of the kickback relating to the CMS addition. This agreement was never signed by Kiferbaum.

6. For purposes of calculating the Guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties stipulate and agree on the following points:

a. The Guideline calculations are based on facts relating to Edward Hospital and events concerning Edward Hospital.

b. The applicable Guidelines version is the 2003 Guidelines Manual.

c. The applicable Guidelines Section is § 2C1.1, and the base offense level is 10.

d. The parties agree that pursuant to Guideline §§ 2C1.1(b)(2)(A) and 2B1.1(b)(1)(I), the base offense level should be increased by 16 levels because a reasonable estimate of the net value of the benefit to be received in connection with the Edward Hospital contracts relating to the construction of a new hospital and medical office building was between $1,000,000 and $2,500,000.

e. The parties agree that the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for his actions, within the meaning of Guideline § 3E1.1, a 2 level reduction in the offense level is appropriate.

f. The parties agree that the defendant has provided truthful information and timely notice of his intention to enter a plea of guilty, within the meaning of Guideline § 3E1.1(b), so that an additional 1 point reduction in the offense level is appropriate, if the offense level is 16 or greater, and the Court finds that a reduction under Guideline § 3E1.1(a) is appropriate.

g. Based on the facts known to the government, the defendant's criminal history points equal 0, and the defendant's criminal history category is I.

h. Based on the above calculations, which are preliminary in nature, and assuming that defendant's criminal history category is I, the preliminary projected applicable offense level is a level 23, so that the preliminary projected applicable sentencing range is 46 to 57 months.

i. The defendant and his attorneys and the government acknowledge that the above calculations are preliminary in nature

and based on facts known to the government as of the time of this plea agreement. The defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

7. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and the defendant shall not have a right to withdraw his plea on the basis of such corrections.

8. The defendant understands that, in imposing the sentence, the court will be guided by the United States Sentencing Guidelines. The defendant understands that the Guidelines are advisory, not mandatory, but that the court must consider the Guidelines in determining a reasonable sentence.

9. Defendant understands that Count 24 of the indictment to which he will plead guilty carries a maximum penalty of 20 years' imprisonment; a maximum fine of $250,000, twice the gross gain to

the defendant, or twice the gross loss to the victims, whichever is greatest; and a term of supervised release of at least three years but not more than five years, as well as any restitution ordered by the Court.

10. The defendant understands that in accordance with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed $100 on Count 24 of the Indictment to which he has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of $100 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

11. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve layperson selected at random. Defendant and his

attorneys would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt, and that it was to consider each count of the indictment separately.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorneys would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.

(e) At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no

inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

12. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorneys have explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

13. The defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, in exchange for the concessions made by the United States in this Plea Agreement, the defendant knowingly agrees to waive the right to appeal any sentence imposed that is within or below the guidelines range of 23, and knowingly agrees to waive the right to appeal any stipulated guideline calculations. The defendant also waives his right to challenge any sentence imposed that is within or below the guidelines range of 23, and/or any stipulated guideline calculations, or the manner in which the sentence was determined, in any collateral attack, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

14. Defendant understands that the indictment and this Plea Agreement are matters of public record and may be disclosed to anyone.

15. Defendant agrees he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate, including the following:

a. Defendant agrees to provide complete and truthful information and testimony, (i) in any criminal investigation and any pre-trial preparation if called upon to do so by the government; (ii) before any grand jury, and (iii) in any United States District Court proceeding, state court proceeding, and civil, administrative, or other court proceeding, if called upon to do so by the government;

b. The parties agree that the parties will jointly recommend that the defendant's sentencing be postponed until after the conclusion of any on-going investigation in which the defendant is cooperating, and the conclusion of any prosecution arising from that investigation;

c. Defendant agrees to provide complete and truthful testimony before the United States District Court in any criminal proceeding, if called to testify by any defendant;

d. Defendant agrees that in the event that he breaches the terms of this plea agreement, or the plea agreement is vacated for any reason - other than the government's breaching the terms of this plea agreement, when there has been no breach, withdrawal, or rejection by the defendant - then the defendant's grand jury testimony, in part and/or in whole, can be used against him in any proceeding, including, but not limited to, before the grand jury and/or in any criminal prosecution against him, without restriction, and all proffer protection provided pursuant to the Proffer Letter, and under Guideline § 1B1.8, shall be null and void.

e. In the event that the defendant's grand jury testimony can be used against him, pursuant to subsection (d) of this paragraph, as stated above, the parties agree and stipulate that the admissibility and use of the defendant's grand jury testimony is not governed by Rule 11 of the Federal Rules of Criminal Procedure. Specifically, the defendant's testimony is not governed by Rule 11(f), or Rule 410 of the Federal Rules of Evidence, because the defendant's grand jury testimony does not constitute a plea of guilty which was later withdrawn, or a statement made in the course of any proceedings under Rule 11 regarding a plea of guilty or a plea of nolo contendere, or a statement made in the course of plea discussions with an attorney for the government.

The defendant agrees that he will not seek to use Rule 11 or Rule 410 to prevent the admission of his grand jury testimony into evidence.

f. Defendant understands and agrees that the information concerning Edward Hospital and events concerning Edward Hospital, provided by the defendant pursuant to § 1B1.8, and the terms of the Proffer Letter, may be presented to the court, may be used in the factual foundation of this plea agreement, may be used in calculating the defendant's sentence, and may be used in any other manner.

g. The defendant understands and agrees that information concerning CMS and Mercy Hospital, provided by the defendant pursuant to § 1B1.8, and the terms of the Proffer Letter, may be disclosed to the court, the grand jury, and as otherwise deemed appropriate by the government.

16. Nothing in this Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest or penalties from the defendant, or his business, the KCC Group Design+Build, Inc., formerly known as Kiferbaum Construction Company ("KCC Group"). If requested to do so by the IRS, the defendant agrees to transmit his original records, and KCC Group's original records, or copies thereof, and any additional books and records which may be helpful, for any years requested by the IRS,

to the Examination Division of the IRS so that the IRS can conduct a civil audit of defendant, and his business.

17. The United States Attorney's Office for the Northern District of Illinois agrees not to seek additional criminal charges against the defendant, and agrees not to seek criminal charges against KCC Group, Design+Build, Inc., formerly known as Kiferbaum Construction Company, in the Northern District of Illinois, for the events between January 1, 2001 and June 1, 2004, which occurred in the Northern District of Illinois, relating to CMS, Mercy Hospital, and Edward Hospital, which the defendant has described in the grand jury and in any proffer provided to the United States, and which are described in this plea agreement. However, nothing in this Agreement limits the United States in the prosecution of the defendant or KCC Group in other districts, or for crimes which the defendant has not disclosed in the grand jury or in any proffer provided to the United States, or which are not described in this plea agreement.

18. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him in this case, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

19. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation, and, if the defendant continues to provide full and truthful cooperation, shall move the Court, pursuant to Sentencing Guideline § 5K1.1, to depart downward from the applicable sentencing guidelines range, and pursuant to Rule 11(c)(1)(C), to impose an agreed sentence of imprisonment of 27 months incarceration. Other than the agreed term of incarceration, the Court remains free to impose any sentence the Court deems appropriate. Under Rule 11(c)(1)(C), the plea will be null and void if the Court refuses to impose the 27 month sentence of incarceration to which the parties have agreed.

20. It is understood by the parties that the sentencing judge is obligated to consult and take into account the Sentencing Guidelines in imposing a reasonable sentence.

21. Regarding restitution:

a. The parties agree that the offense of conviction results in no restitution;

b. The parties agree that pursuant to Title 18, United States Code, Section 3663(a)(3), based on the agreement of the parties, the defendant will cause KCC Group, Design+Build, Inc., formerly known as Kiferbaum Construction Company, which the defendant is the 100% owner, to pay $7,050,908 in restitution to CMS, on or before July 1, 2005, thereby disgorging Kiferbaum

Construction Company's net profits before taxes from the construction of the CMS addition and the CMS student housing;

c. The parties agree and that a failure of KCC Group to pay $7,050,908 on or before July 1, 2005 means that the defendant is in breach of this plea agreement;

d. The defendant agrees that the money paid pursuant to this Paragraph shall be non-refundable.

22. The defendant understands that Title 18, United States Code, Section 3664 and Sections 5E1.1 and 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in setting a fine and in determining the schedule, if any, according to which restitution is to be paid in this case. The defendant agrees to provide full and truthful information to the court and United States Probation Officer regarding all details of his economic circumstances, and to provide such information to the United States Attorney's office. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court, and would constitute a breach of this Plea Agreement.

23. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. He further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it

null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that the defendant's Plea is subsequently withdrawn, vacated or breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

24. Defendant and his attorneys acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

25. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

26. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.

27. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment.

28. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorneys. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: June 20, 2005

PATRICK J. FITZGERALD
UNITED STATES ATTORNEY

JACOB KIFERBAUM
Defendant

JACQUELINE STERN
Assistant United States Attorney

JAMES R. STREICKER
Attorney for Defendant

THEODORE POULOS
Attorney for Defendant

EXHIBIT 5

AE

FILED
SEP 15 2005
SEP 15 2005
JUDGE AMY ST. EVE
United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 05 CR 691-3
	)	Judge Amy J. St. Eve
STEVEN LOREN	)	

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, STEVEN LOREN, and his attorney, MICHAEL L. SIEGEL, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in the above captioned case.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities or agencies except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, STEVEN LOREN, and his attorney, MICHAEL L. SIEGEL, have agreed upon the following:

1. Defendant acknowledges that he has been charged in Count 14 of the indictment in this case with corruptly endeavoring to obstruct and impede the due administration of the internal revenue laws in violation of 26 U.S.C. § 7212(a).

2. Defendant has read the charge against him contained in the indictment in this case and the charge has been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crime with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to Count 14 of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charge contained in Count 14 of the indictment in this case. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt. The following is not a complete statement of all the details known to the defendant regarding the defendant's criminal conduct. The following facts are set forth solely as a factual basis for this guilty plea:

Individual A - Investment Firm 1 (Count 14)

Defendant Steven Loren ("Loren" or "defendant") admits that he was an attorney; he and his law firm were outside counsel to the Teachers' Retirement System of the State of Illinois ("TRS"), which was a public pension plan for certain Illinois teachers. Stuart Levine ("Levine") was a member of the TRS Board of Trustees. Individual A acted as a placement agent for Investment Firm 1, an asset management company located in Chicago, Illinois, that solicited and received $50 million in TRS funds to invest. Individual A also acted as a placement agent for Investment Firm 2 and Investment Firm 3 in connection with those firms' efforts to obtain funds from TRS.

Beginning in or about the fall of 2003 and continuing until in or about May 2004, Loren corruptly endeavored to obstruct and impede the due administration of the internal revenue laws.

In or about the fall of 2003, Levine told Loren that he had arranged for Individual A to find potential investments for TRS; entities receiving funds from TRS that were introduced to TRS by Individual A would pay a finder's fee to Individual A; and Individual A would split his placement fees with certain individuals at the direction of Levine and his associates. Based on his conversations with Levine, it was Loren's understanding that Levine's associates, who were close to a high ranking public official, would use those placement fees as an incentive or reward to those who made campaign contributions that would benefit the high ranking public official, and that Levine's associates would be able to steer money to the people that they selected, and those people would get money without providing any services.

At Levine's direction, Loren assisted Levine by advising Individual A as to the sorts of investments that TRS would consider, and reviewing investment proposals submitted by Individual A and others. Levine told Loren that, based on Levine's request, Individual A had agreed to split a finder's fee with a person identified by Levine.

Levine directed Loren to prepare a sham consulting contract that would appear to justify Individual A's splitting his finder's fee with a third party. Levine instructed Loren to draft a consulting agreement that would pass scrutiny if someone like the U.S. Attorney looked at it. Levine did not give Loren the names of the parties but, instead, told Loren to use "X" and "Y" in place of the parties' names. Loren agreed to draft the sham contract,

knowing that the contract would be used to make a fraudulent transaction appear legitimate.

In order to conceal the fraudulent nature of the transaction, Loren included certain terms and conditions in the contract that Loren believed would be typical in a legitimate consulting contract. Loren drafted an agreement that he thought would be plausible in the context of a third party working with Individual A.

Loren drafted the contract knowing that it falsely represented that services would be provided by the third party, when in fact Loren believed that no services would be provided by the third party. Loren drafted the sham contract in a manner that he believed would make it falsely appear that payments by Individual A to the third party constituted legitimate business expenses to Individual A, and legitimate income to the third party. Loren believed that the payments would be reported to the Internal Revenue Service as legitimate expenses of Individual A, and legitimate income to the third party, even though the payments did not constitute legitimate expenses or income. Loren expected Individual A to deduct the payment, although the payment could not be lawfully deducted.

Loren gave the draft consulting agreement to Levine. Loren instructed his secretary not to save the consulting agreement on the computer.

When Loren prepared the sham agreement for Individual A and an unknown third party, Loren knew that the sham agreement was wrong because it was concealing an illegal fee arrangement.

Loren understood that Levine had agreed to use his official position at TRS to help Individual A get additional TRS funding for investments that Individual A introduced to TRS, in exchange for Individual A's sharing his finder's fees at Levine's direction, with Levine getting his directions from another individual.

Loren, Levine, Individual A, and others, took steps to hide and conceal, and to attempt to hide and conceal, the purposes of the corrupt endeavor, and acts done as part of the corrupt endeavor.

Loren acknowledges that he abused his position as outside counsel to TRS, which was a position of trust, by aiding and abetting Levine and by failing to report Levine's conduct to TRS,

and that Loren used his skills as an attorney to prepare the contract.

Loren acknowledges that Individual A paid a portion of his fee to a third party, and that it was reasonably foreseeable to Loren that the fee would be approximately $250,000. It was also reasonably foreseeable to Loren that Individual A would deduct that payment as being a legitimate expense, even though, Loren believed that the payment was an illegal payment. Loren further acknowledges that by preparing the sham contract at Levine's direction, Loren corruptly endeavored to obstruct and impede the due administration of the internal revenue laws, by impeding the Internal Revenue Service's ability to review the true facts concerning that transaction. Loren further acknowledges that it was reasonably foreseeable to Loren that Individual A's future deduction of that payment of $250,000 as a legitimate business expense would cause a tax loss of approximately $70,000.

All in violation of Title 26, United States Code, Section 7212(a).

Individual A - Investment Firms 2 and 3

In or about late 2003 and early 2004, based on Levine's direction, Loren met with Individual A and other individuals to review information concerning certain potential TRS investments, including information relating to Investment Firms 2 and 3. It was not a routine part of Loren's duties as TRS's outside counsel to meet with entities seeking TRS investment dollars. It was Loren's understanding that Levine wanted TRS to invest funds with Investment Firms 2 and 3 because each of those firms agreed to pay a finder's fee to Individual A, and Individual A agreed to split his finder's fees as directed by Levine.

Loren and Levine each concealed from and failed to disclose to the TRS Board material facts relating to Investment Firms 1, 2, and 3, including Levine's arrangement with Individual A that Individual A would split each of his finder's fees at Levine's direction in exchange for Levine's assistance in obtaining TRS funds.

As an attorney for TRS, Loren knew that he had a duty to be truthful with TRS, and to act honestly. Loren understood that withholding the information about Levine's arrangements concerning Individual A's placement fees was a breach of Loren's attorney/client responsibilities to TRS, and it meant that Loren was not being honest or truthful with TRS. Loren acknowledges that

he failed to provide TRS with material information which had come into his possession.

PROFFER PROTECTION

The parties agree that Loren has provided information to the government under Sentencing Guideline § 1B1.8, pursuant to the terms of a proffer letter dated November 23, 2004 ("Proffer Letter"), and pursuant to the terms of a Letter Agreement, dated July 5, 2005 ("Letter Agreement"), including, but not limited to information concerning the following: (1) The Illinois Teachers Retirement System pension fund (TRS) and events relating to TRS during 1991-2004; (2) Rosalind Franklin University of Medicine & Science, f/k/a Finch University of Health Sciences/the Chicago Medical School ("CMS") and events relating to the School in 2002-2004; (3) Mercy Alliance, Inc. ("Mercy Hospital") and events concerning Mercy Hospital in 2003-2004; (4) All information relating to Individual B; (5) Individual A and various entities that Individual A owned, operated, or controlled, or for which Individual A was an agent or representative (hereinafter collectively referred to as "Individual A") and events relating to Individual A in 2003-2004.

Individual A: Loren agrees that the information concerning Individual A provided by Loren pursuant to § 1B1.8, and the terms of the Proffer Letter, Letter Agreement, and this Plea Agreement, may be used in any manner, including in the factual foundation of a plea agreement, in calculating Loren's sentence, and before the grand jury or court. The information concerning Individual A includes any information concerning, relating to, or surrounding: (i) Individual A's statements, actions, and conduct; (ii) any statements, actions, conduct, events, and transactions, relating to Individual A; and (iii) any documents or materials that Individual A created, used, or reviewed or caused to be created, used or reviewed, or that relate to Individual A or to any event or transaction relating to Individual A.

Proffer Protected Statements: The parties agree that other statements made by Loren pursuant to § 1B1.8, and the terms of the Proffer Letter and Letter Agreement, cannot be used against Loren in the government's case-in-chief, or in aggravation of Loren's sentence, except as provided in the proffer letter, and the Letter Agreement. Those statements, however, may be used in any other manner, including being disclosed to the court, the grand jury, witnesses, and defendants. Those statements include the following:

Financial Benefits: Levine, with the assistance of Loren, and others, fraudulently used and sought to use Levine's position and influence as a member of the TRS Board of Trustees to obtain financial benefits for Levine's nominees and associates.

Splitting Fees: Levine advised Loren that Levine intended to use, and was using, his official position on the TRS Board, to assist other people, besides Individual A, in obtaining TRS funds for certain entities, and that in return, those people would split placement fees with persons identified by Levine. Levine advised Loren that he was acting in concert with others in connection with the splitting of placement fees.

Levine asked Loren to help in this scheme by providing advice concerning investments to certain potential applicants, and by reviewing materials concerning possible TRS investments, which Loren agreed to do. At Levine's direction, Loren assisted Levine by advising certain people as to the sorts of investments that TRS would consider, and by reviewing various investment proposals and various documents. At Levine's request, Loren described for certain individuals the types of private equity investments TRS might be interested in, and gave them an overview as to how TRS was planning on allocating its private equity investments.

Sham Contracts for Investment Firm 4: In the spring of 2004, after Investment Firm 4 had submitted an application to receive funds from TRS, Levine attempted to steer a consulting contract relating to the TRS transaction to a particular individual.

After Loren had started working on Firm 4's documents, Levine told Loren, in substance, to make sure the deal did not get killed. Levine told Loren to keep Levine apprised of what happened, and Loren did so.

In or about April 2004, Levine said there was going to be a split of a placement fee related to the TRS investment in Investment 4. Levine directed Loren to prepare a draft contract for Investment Firm 4, which Loren agreed to do. Levine directed Loren to include certain terms in the contract, including the amounts to be paid and the dates of payment. Levine did not give Loren the names of the parties, but instead, told Loren to use "X" and "Y" in place of the parties' names. On or about April 29, 2004, Loren prepared a draft compensation agreement using "X" and "Y" in place of the parties' names. Loren drafted the contract believing that it falsely represented that services would be provided by the consultant, when in fact Loren believed that no services would be provided. Loren drafted the sham contract in a

manner that he believed would make it falsely appear that payments by Investment Firm 4 constituted legitimate payments for services rendered, even though no such services were rendered.

Levine and Loren concealed from and failed to disclose to the TRS Board material facts relating to its consideration of the application for funds of Investment Firm 4, including Levine's attempt to steer placement fees to a consultant named by Levine.

In or about May 2004, Levine also directed Loren to prepare a sham contract relating to Investment Firm 4 and another state pension board. On or about May 15, 2004, Loren prepared the sham contract that Levine requested. Based on conversations with Levine, Loren understood that one of Levine's close associates was going to receive a part of the placement fee that Investment Firm 4 would have to pay in order to obtain funding from the other state pension board. Loren thought that Levine was facilitating a placement fee for his close associate, even though that individual was not going to provide any services in exchange for the money. Loren drafted the contract knowing that it falsely represented that services would be provided by the Levine's close associate. Loren drafted the sham contract in order to make it appear that the payments to Levine's close associate were legitimate payments in exchange for services.

Asset Managers for TRS: In or about April 2004, Levine met with Loren to find out how Levine's nominees or associates could do business with TRS, and to discuss the possibility of Levine doing business with TRS in the future, including the possibility of setting up a company to do business with TRS as an asset manager. Levine asked Loren to present ideas to Levine that would allow participation by Levine's nominees or associates, without such participation being disclosed to TRS. Loren subsequently explained to Levine that if a development company entered into a business relationship with an asset manager, there would be no requirement to disclose the ownership of the developer.

Information Concerning Levine: Over the course of time, Loren withheld information concerning various actions that Levine took that Loren believed breached Levine's fiduciary duty to TRS. Loren believed that he had a duty to disclose to TRS what Levine was doing, and did not do so. By failing to disclose information about Levine's on-going conduct, Loren was not being honest with TRS, and Loren breached his attorney/client responsibilities.

6. For purposes of calculating the Guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties stipulate and agree on the following points:

a. The parties agree that the Guideline calculations are based on information relating to Individual A and events concerning Individual A in 2003-2004.

b. The parties agree that the applicable Guidelines version is the 2003 Guidelines Manual.

c. The parties agree that the applicable Guidelines Section is § 2T1.1(1), which refers to the Tax Table in § 2T4.1.

d. The parties agree that pursuant to Guideline § 2T1.1, the base offense level is 14, because the intended tax loss ($250,000 x 28%) was approximately $70,000, in that defendant Loren knew that the payment to be made by Individual A to a third party was an illegal payment, and defendant Loren acknowledges that it was reasonably foreseeable to the defendant that Individual A's future deduction of that payment of $250,000 as a legitimate business expense would cause a tax loss of approximately $70,000.

e. The parties agree that the base offense level should be increased by 2 levels, pursuant to Guideline § 3B1.3, because the defendant abused a position of trust, and used a special skill, in carrying out the offense, in a manner that significantly facilitated the commission and concealment of the offense, namely,

the defendant abused his position as outside counsel to TRS by aiding and abetting Levine's scheme involving Individual A and by failing to report Levine's conduct relating to Individual A to TRS, and the defendant used his skills as an attorney to prepare the sham contract for Individual A.

f. The parties agree that the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for his actions, within the meaning of Guideline § 3E1.1, a 2 level reduction in the offense level is appropriate.

g. The parties agree that the defendant has provided timely notice of his intention to enter a plea of guilty, and has provided truthful information, within the meaning of Guideline § 3E1.1(b), so that an additional 1 point reduction in the offense level is appropriate, if the offense level is 16 or greater, and the Court finds that a reduction under Guideline § 3E1.1(a) is appropriate.

h. Based on the facts known to the government, the defendant's criminal history points equal 0 and the defendant's criminal history category is I.

i. Based on the above calculations, which are preliminary in nature, and assuming that the defendant's criminal history

category is I, the preliminary projected applicable offense level is a level 13, so that the preliminary projected applicable sentencing range is 12 to 18 months.

j. The defendant and his attorney, and the government, acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this plea agreement. The defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this plea agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

7. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and the defendant shall not have a right to withdraw his plea on the basis of such corrections.

8. The defendant understands that, in imposing the sentence, the court will be guided by the United States Sentencing Guidelines. The defendant understands that the Guidelines are

advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. Defendant understands that Count 14 of the indictment to which he will plead guilty carries a maximum penalty of 3 years' imprisonment, a maximum fine of $250,000, any costs of prosecution, and a term of supervised release of one year, as well as any restitution ordered by the Court.

10. The defendant understands that in accordance with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed $100 on Count 14 of the Indictment to which he has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of $100 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

11. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charge against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government, and the

judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve layperson selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would

not appear voluntarily, he could require their attendance through the subpoena power of the court.

(e) At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

12. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

13. The defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, in exchange for the concessions made by the United States in this Plea Agreement, the defendant knowingly agrees to waive the right to appeal any sentence imposed that is within or below the guidelines range corresponding to offense level 13, Criminal History Category I, and waives the right to appeal any stipulated guideline calculation. The defendant also waives his right to challenge any sentence imposed that is within or below that guidelines range, and any stipulated guideline calculation, or the manner in which the sentence was determined, in any collateral attack, including but

not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

14. Defendant understands that the indictment and this Plea Agreement are matters of public record and may be disclosed to anyone.

15. Defendant agrees he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate, including the following:

a. Defendant agrees to provide complete and truthful information and testimony, (i) in any criminal investigation and any pre-trial preparation if called upon to do so by the government; (ii) before any grand jury, and (iii) in any United States District Court proceeding, state court proceeding, and civil, administrative, or other court proceeding, if called upon to do so by the government;

b. The parties agree that the parties will jointly recommend that the defendant's sentencing be postponed until after the conclusion of any on-going investigation in which the defendant is cooperating, and the conclusion of any prosecution arising from that investigation, if the government deems such postponement appropriate;

c. Defendant agrees that in the event that he breaches the terms of this plea agreement, or the plea agreement is vacated for any reason - other than the government's breaching the terms of this plea agreement, when there has been no breach, withdrawal, or rejection by the defendant - then any grand jury testimony provided by the defendant, in part and/or in whole, can be used against him in any proceeding, including, but not limited to, before the grand jury and/or in any criminal prosecution against him, without restriction;

d. In the event that the defendant's grand jury testimony can be used against him, pursuant to subsection ~~(d)~~ (c) of this paragraph, as stated above, the parties agree and stipulate that the admissibility and use of the defendant's grand jury testimony is not governed by Rule 11 of the Federal Rules of Criminal Procedure or Rule 410 of the Federal Rules of Evidence. The defendant agrees that he will not seek to use Rule 11 or Rule 410 to prevent the admission of his grand jury testimony into evidence.

16. The United States agrees not to seek additional criminal charges against the defendant, in the Northern District of Illinois, for the events between January 1, 2000 and November 23, 2004, which occurred in the Northern District of Illinois, relating to Individual A, TRS, CMS, and Mercy Hospital, which the defendant has described in the grand jury or in proffers provided to the United States, or which are described in this plea agreement.

However, nothing in this Agreement limits the United States in prosecution of the defendant in other districts, or for crimes which the defendant has not disclosed in the grand jury or in proffers provided to the United States, or which are not described in this plea agreement.

17. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him in this case, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

18. At the time of sentencing, the government shall make known to the sentencing judge the extent of the defendant's cooperation, and, assuming the defendant's full and truthful cooperation, shall move the Court, pursuant to Sentencing Guideline § 5K1.1, to depart downward from the applicable sentencing guidelines range. The government shall make no recommendation concerning the imposition of a term of imprisonment, but remains free to make any other recommendations that it deems appropriate. The defendant is free to recommend whatever sentence he deems appropriate.

19. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose the maximum penalties as set forth in paragraph 9 above. However,

the sentencing court is obligated to consult and take into account the Sentencing Guidelines in imposing a reasonable sentence. The defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, the defendant will have no right to withdraw his guilty plea.

20. Regarding restitution, the parties agree that the offense of conviction resulted in no loss and therefore restitution is inappropriate.

21. The defendant understands that Title 18, United States Code, Section 3664 and Section 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in setting a fine. The defendant agrees to provide full and truthful information to the court and United States Probation Officer regarding all details of his economic circumstances, and to provide such information to the United States Attorney's office. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court, and would constitute a breach of this Plea Agreement.

22. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. He further understands that in the event he violates this Agreement, the government, at

its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that the defendant's Plea is subsequently withdrawn, vacated or breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

23. Defendant and his attorneys acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

24. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

25. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.

26. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorneys. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: 9-15-05

PATRICK J. FITZGERALD
UNITED STATES ATTORNEY

STEVEN LOREN
Defendant

JACQUELINE STERN
Assistant United States Attorney

MICHAEL L. SIEGEL
Attorney for Defendant

EXHIBIT 6

Copy

03-049

Ray Passeri, Executive Secretary
Illinois Health Facilities Planning Board
525 W. Jefferson Street - Second Floor
Springfield, Illinois 62761

RECEIVED
JUL 11 2003
HEALTH FACILITIES PLANNING BOARD

ILLINOIS HEALTH FACILITIES PLANNING BOARD

APPLICATION FOR PERMIT

SECTION I. IDENTIFICATION, GENERAL INFORMATION, AND CERTIFICATION (IDEN)

This section must be completed for all projects.

A Facility/Project Identification

Facility Name: Mercy Crystal Lake Hospital and Medical Center
Location: East side State Rd. 31 between Three Oaks & Raymond Roads City: Crystal Lake
County: McHenry Zip: 60014 Illinois State Representative District: 64

B. Applicant Identification (provide for each co-applicant [refer to Part 1130.220] and insert after this page)

Exact Legal Name: Mercy Crystal Lake Hospital and Medical Center, Inc.
Address: 2000 Lake Avenue, Woodstock IL 60098
Name of Registered Agent: Herbert Franks, Esq., Marengo, IL
Name of Chief Executive Officer: Javon R. Bea Title: President/CEO
CEO Address: Same as applicant Telephone No. (815) 337-5739

Type of Ownership: X Non-profit Corporation For-profit Corporation Limited Liability Company Partnership Governmental Sole Proprietorship Other (specify)

Corporations and limited liability companies must provide an Illinois certificate of good standing; partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.

APPEND DOCUMENTATION AS ATTACHMENT IDEN-1 AFTER THE LAST PAGE OF THIS SECTION.

C. Primary Contact Person (person who is to receive correspondence or inquiries during the review period)

Name: Eli L. Beeding Jr. Title: The Beeding Group
Address: 7488 County Road 3, Marble, CO 81623
Telephone No. 970-963-4877 E-mail Address:
Fax Number 970-704-0794

D. Additional Contact Person (person such as consultant, attorney, financial representative, registered agent, etc. who also is authorized to discuss application and act on behalf of applicant)

Name Richard H. Gruber Title: Vice President
Address: Same as B. above
Telephone No. (608) 756-6112 E-mail Address: rgruber@mhsjvl.org Fax Number (608) 756-6236

* See bottom of page 2

Corrected Page

ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD
APPLICATION FOR PERMIT

SECTION I. IDENTIFICATION, GENERAL INFORMATION, AND CERTIFICATION

This Section must be completed for all projects.

Facility/Project Identification

Facility Name: Mercy Crystal Lake Hospital and Medical Center, Inc.		
Street Address: SE Corner of State Rte 31 & Three Oaks Road		
City and Zip Code: Crystal Lake, IL 60014		
County: McHenry	Health Service Area: 8	Health Planning Area: A-10

Applicant /Co-Applicant Identification

[Provide for each co-applicant [refer to Part 1130.220].

Exact Legal Name: Mercy Crystal Lake Hospital and Medical Center, Inc.
Address: 2000 Lake Avenue, Woodstock, IL 60098
Name of Registered Agent: Herbert Franks
Name of Chief Executive Officer: Javon R. Bea
CEO Address: 1000 Mineral Point Avenue, Janesville, WI 53548
Telephone Number: 608-756-6112

Type of Ownership of Applicant/Co-Applicant

- [x] Non-profit Corporation
- [ ] For-profit Corporation
- [ ] Limited Liability Company
- [ ] Partnership
- [ ] Governmental
- [ ] Sole Proprietorship
- [ ] Other

- Corporations and limited liability companies must provide an **Illinois certificate of good standing.**
- Partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.

APPEND DOCUMENTATION AS ATTACHMENT-1 IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

Primary Contact

[Person to receive all correspondence or inquiries during the review period]

Name: Dan Colby
Title: Vice President
Company Name: Mercy Health System Corporation, Inc.
Address: 1000 Mineral Point Avenue, Janesville, WI 53548
Telephone Number: 608-756-6123
E-mail Address: dcolby@mhsjvl.org
Fax Number: 608-756-6236

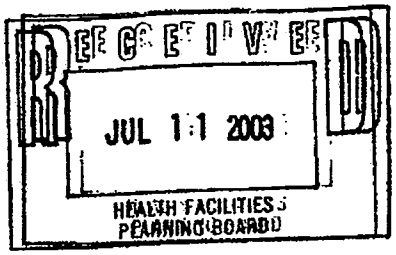
Additional Contact

[Person who is also authorized to discuss the application for permit]

Name: Richard H. Gruber
Title: Vice President
Company Name: Mercy Health System Corporation, Inc.
Address: 1000 Mineral Point Avenue, Janesville, WI 53548
Telephone Number: 608-756-6112
E-mail Address: rgruber@mhsjvl.org
Fax Number: 608-756-6236

EXHIBIT 7

Franks Gerkin McKenna, P.C.
Lawyers



July 9, 2003

Mr. Jeffrey Mark
Executive Secretary
Illinois Health Facilities
Planning Board, 2nd Floor
525 W. Jefferson Street
Springfield, IL 62761

Re: Application for Permit

Dear Mr. Mark:

I am pleased to enclose the original and five copies of an Application for Permit for the Mercy Crystal Lake Hospital and Medical Center. Also enclosed is our $700.00 check for a filing fee. I understand that you will be reviewing this application for completeness in the next two weeks. If there is anything that you need, please call me or fax me so we can expedite the proceedings.

We are looking forward to working with you.

Very truly yours,

FRANKS, GERKIN & McKENNA, P.C.

Herbert H. Franks

HHF/db
Enclosures

19333 East Grant Highway
P.O. Box 5
Marengo, Illinois 60152-0005
Tel 815.923.2107
Email: franklaw@mc.net
Fax 815.923.2114

EXHIBIT 8

DATE: 4/21/04
TIME: 8:03 p.m.
ACTIVITY: Home Telephone 1 outgoing to (847) 432-0498
CALL#: 329

SPEAKERS:
LEVINE: Stuart Levine
LOREN: Steven Loren

* * * *

LOREN Hi.

LEVINE You have no idea.

LOREN Let, let me get this on the other phone, one second.

(PAUSE)

LOREN Hi.

LEVINE Uh, from the minute, from the minute I walked in there uh, Beck, Beck, Beck wanted to resign uh, uh, he, and, and, and uh, ih, ih, ih, because see there's, there's much more here then uh, than uh, meets the eye because other people had been promised that this wouldn't happen.

LOREN Mm hm.

LEVINE And uh, and um, and of course no-, nobody, nobody knows that it's me. And nobody really knows that it's Tony for the reason that it's Tony.

LOREN Right.

LEVINE And, and um, uh, I kept the whole thing together boy, and Beck's not resigning.

LOREN Oh a-, after the hearing itself it wouldn't of been hard for anyone who was present to see that you were the one who moved this.

LEVINE Well, but I had no choice.

1 LOREN I, I understand that.

2 LEVINE But I mean, but I mean but all through
3 the whole day and, and, and I took Beck
4 over to Tony's and now Beck's not
5 resigning.

6 LOREN Mm hm.

7 LEVINE I mean I kept the whole, you know uh,
8 but uh, but oh what I fuckin' thing.

9 LOREN Oh, he threatened to resign over this?

10 LEVINE No he was, he, he didn't want it to take
11 place. Tony and I both decided we
12 wanted, I like getting things done. And
13 he, he wanted all the hospitals up in
14 the same time.

15 LOREN Right.
16
17 LEVINE Now, I mean Mercy is not Edward's
18 problem so you know I mean uh, uh, I
19 mean uh, uh, and you know, he thought,
20 he thought it got uh that the Board
21 would look uh, foolish uh, giving it to
22 uh, to uh, uh, uh, Mercy with uh, uh,
23 you know uh, given the uh, the, the
24 staff findings uh and uh, that there was
25 you know no, no chance for real cover.
26 And another problem is that, that
27 there's really no control over the staff
28 because...

29 LOREN (UI).

30 LEVINE The staff doesn't report to the
31 Executive Director. But that's all
32 going to get cured now. Now that I see
33 Tom's problems, I'm gonna get those
34 cured. But um, uh, but uh, tell me do
35 you think the other hospital systems in
36 McHenry could successfully keep you out
37 with litigation?

38 LOREN Well, Centegra approached uh, Javon.

1 LEVINE Mm hm.

2 LOREN And you know the President of Centegra
3 who was there uh, said that he thought
4 his Board was going to bring some kind
5 of challenge and Javon volunteered and
6 they're going to get together one day,
7 not next week but the week after, to try
8 and see if they can work out their
9 differences and Javon was saying you
10 know that this, this market's large
11 enough for both of us and all you're
12 going to do with litigation is alienate
13 yourself from the Board in the future so
14 why would you want to do that. Maybe
15 they can work something out.

16 LEVINE Well that was, that was interesting that
17 uh, that he took it upon himself to say
18 I'm the strong man. Of course he was
19 that day.

20 LOREN Right.

21 LEVINE Uh, but...

22 LOREN But he, he's also, you know the, the guy
23 from Mercy is pretty polished and to the
24 extent he can work something out.

25 LEVINE Well I, I, that, that would be, that
26 would be very smart and very good. Uh,
27 um,...

28 LOREN Now, now the, the other uh, you know
29 Centegra can bring a lawsuit, but the
30 lawsuit wouldn't be against the Board it
31 would be against uh, more, more likely
32 would be against uh, Mercy under the
33 fact that the CON shouldn't of been
34 issued which is kind of screwy
35 procedural issue.

36 LEVINE Well now my, my only point is the, the
37 thing would be delayed in getting built.

38 LOREN Right.

LEVINE I don't give a shit about the rest. (laughs)

LOREN Well Ja, Ja, Javon knows that he stole, he said he's at second base.

LEVINE Ah, he, he understands what we got pulled off for him? The magnitude of it.

LOREN Ah, he, he, he's no dummy. You know what he was really upset about?

LEVINE Mmmm.

LOREN He had been promised up and down the wazoo that he was going to get the support of the uh, those 2 women...on, on the theory that the unions were helping him out. You know both Rice and Orr and uh, Orr, Orr, Orr got up to leave just 'cause she didn't want to be there for the vote.

LEVINE Uh, well that she, so uh, who's he work with, with the unions?

LOREN Balanoff.

LEVINE He worked with Balanoff?

LOREN Someone did for him.

LEVINE Well...

LOREN (UI) Victor.

LEVINE Oh I see. Well I, I hope that Javon is going to complain loudly.

LOREN Uh, he probab-, well, I, I think he also appreciates that the last thing that he and Mercy need is any kind of spotlight. So I don't think he's going to go, I think he's going to try and work something out quietly.

LEVINE Oh that's good. Well that's good. But,

1		but he understands the magnitude...
2	LOREN	Yeah.
3 4	LEVINE	Of what was done on the, on that Board by me today.
5 6 7	LOREN	He does. In fact he said he can't believe that you did what you did on their behalf.
8		(PAUSE)
9 10	LEVINE	Uh, I didn't do it on their behalf. (laughs)
11	LOREN	Well...
12 13 14 15 16	LEVINE	Why, but why, why, well, he, I'm sh-, that's good, it's good, it's good that he thinks that because he uh, uh, uh, he um, um, uh, thinks that uh, that for some reason I'm just doing it for Jacob.
17	LOREN	Pam uh, out did herself.
18	LEVINE	She is, what an arrogant bitch.
19	LOREN	(UI).
20 21 22 23 24 25 26 27	LEVINE	What an arrogant bitch. Can you imagine walkin' out that she still had to come back. You know what she is absolutely appalled that she didn't get her CON today. I mean she just can't believe it. I mean she came in to get her CON and they didn't give it to her. She is fuckin' nuts.
28 29	LOREN	She is what she is. Now is she going to get hers in June?
30	LEVINE	No.
31	LOREN	(laughs)
32 33	LEVINE	She's not going to get shit. Because uh, uh, um, the, the Adventist are going

1		to get it there. She's fucked.
2	LOREN	Now what's Ladd going to do?
3 4	LEVINE	Regarding? Oh, he represents the Adventist. He's getting (UI).
5	LOREN	He represents Centegra too.
6 7 8 9 10	LEVINE	Yeah I know but uh, he can't have everything. He, he, he got, he, he uh, got fucked here, but he's going to, his client will get the Bolingbrook Hospital.
11 12 13	LOREN	Well, can someone communicate to him that Bolingbrook won't happen either if he can't...
14	LEVINE	No because it don't work that way.
15	LOREN	Oh.
16 17	LEVINE	Well we'll see. We'll see, we'll see, we'll see, we'll see.
18 19	LOREN	Well I just cannot believe that that woman got up and walked out.
20	LEVINE	Uh, did you see what Beck did? (laughs)
21	LOREN	Mm hm.
22	LEVINE	(sighs)
23 24 25	LOREN	Now there, there obviously is not much inter-action or coordination amongst those Board members.
26 27 28	LEVINE	Oh this, this, this was a little bit, they did not want to do uh, uh, I'll, the problem was...
29 30	LOREN	They didn't want to take one hospital out of turn.
31 32	LEVINE	Exactly. And they, they were bent out of shape about it, but, but uh, when

1 push came to shove there it was.

2 LOREN Mm hm. What did you have to tell, say
3 to uh, that one doctor you uh...

4 LEVINE Oh no this was, Beck uh, uh, Beck didn't
5 want to vote for it unless he had to.

6 LOREN Mm hm.

7 LEVINE So he passed. So you had, you had three
8 votes, three passes and three no's. If
9 Beck didn't want to vote, if he voted
10 yes and, and the other guy voted no we
11 would of lost and that would of been it.

12 LOREN Mm hm.

13 LEVINE He wanted to know what he was going to
14 vote uh, um, uh, because if, if, if the
15 other guy was going to vote no, Beck
16 would have made a move to, to have it
17 deferred.

18 LOREN Hasn't Anne Murphy ever said anything to
19 any of you about uh, these side bars?

20 LEVINE Fuck her she thinks she's powerful to
21 stop it? I had a deal to close.

22 LOREN (laughs)

23 LEVINE Please. She, sh-, she tried to help a
24 little bit you noticed.

25 LOREN Oh she definitely did.

26 LEVINE And that other idiot, wait 'til I finish
27 with him. He, he, he hasn't got a clue
28 and all of a sudden he's makin' a speech
29 why they shouldn't expect to get a CON.
30 And I'm sittin' there waiting to vote it
31 in. (laughs) I don't know, I can't
32 imagine what it look like from out there
33 with a, with Beck comin' to talk to me,
34 and my goin' to talk to the other guy.

1 LOREN Well it, it, it looked like there was
2 orchestration going on.

3 LEVINE Looked like there was a shoe hitting
4 somebody over the head. Could you, did,
5 did you ever in your life see a vote
6 stop in the middle?

7 LOREN No, no.

8 LEVINE Neither did I.

9 LOREN Uh, now it, it made no difference, you
10 know the, the, the basis that Mercy put
11 out on the record there was some common
12 sense to what they were saying.

13 LEVINE It is a, it is a legitimate CON.

14 LOREN Right.

15 LEVINE Uh, uh, you know so the uh, the, uh, uh
16 where they getting the physicians from?
17 They bringin' 'em all in from Wisconsin?

18 LOREN I have no idea. They're probably coming
19 from Guadalajara as we speak. (laughs)

20 LEVINE (laughs)

21 LOREN (UI).

22 LEVINE (laughs) Oh Lord.

23 LOREN I, I finally figured out though when I
24 met Herb Frank how the whole thing fell
25 into place.

26 LEVINE When you met who?

27 LOREN Her-, Herb Frank...

28 LEVINE Oh.

29 LOREN Is good friends with Izzy Levy.

30 LEVINE Right.

1 LOREN And Herb Frank represents Harvard
2 Hospital and Harvard got acquired by
3 Mercy.

4 LEVINE I see.

5 LOREN So I, I'm assuming that Mercy probably
6 went to Herb Frank and said can you, can
7 you, can you find out how we can get
8 somebody on the, on the uh,...

9 LEVINE No, no, uh,...

10 LOREN And then the thing with the JUF.

11 LEVINE No, no, that, that's, that's exactly how
12 it happened. They uh, they um, um,
13 with, that that's when it came to Jacob
14 and said...

15 LOREN They got an invitation with Izzy's name
16 on it and they saw you were the honor,
17 the honoree.

18 LEVINE And Massuda was on the dinner committee.

19 LOREN Mm hm.

20 LEVINE Um, did you, were you there this morning
21 with Northwestern and Massuda?

22 LOREN Yeah.

23 LEVINE Could you fuckin' believe it?

24 LOREN I actually thought it was kind of
25 amusing.

26 LEVINE Amusing. If you want our help you, you
27 better let podriatrists in. I said
28 Fortunee, I said you must never do that
29 again. She said well I want Pod...I
30 said, I said, I said you're not here for
31 the podiatrists' interests...you're here
32 for the people of the State of Illinois.

33 LOREN (laughs)

1 LEVINE Okay. (laughs)

2 LOREN Medicine at its best.

3 LEVINE Well she, you know she's not subtle.
4 (laughs) Northwestern called and
5 complained. Meanwhile if I were them...

6 LOREN Called to complain...who, who'd they
7 call?

8 LEVINE They called staff to complain it was a
9 terrible thing she did. Meanwhile when
10 she got those three women to vote
11 against their thing.

12 LOREN Mm hm.

13 LEVINE To me if they have half a brain they
14 would do somethin' with...she could
15 cause them an enormous problem. She,
16 she could cause the situation where
17 sometime they need a vote they can't get
18 it. It would be stupid on her part to
19 do it, but she would do it.

20 LOREN Yeah that's a, none of those hospitals
21 really appreciate that, whether they
22 like the treatment or not, they're at
23 the mercy of that Board, so why would
24 they go and alienate people.

25 LEVINE Um, well first of all Northwestern is
26 Northwestern. They worship, everybody
27 has to be honored that they walked in
28 the room. And I'm telling you that Pam
29 could not believe she didn't get her
30 CON.

31 LOREN Well actually I would have thought it
32 would of been much more entertaining had
33 you given her the CON for the office
34 building.

35 LEVINE That's what I wanted to do.

36 LOREN And not the hospital.

LEVINE That's what I wanted to do. Could you imagine she said we bought this land we had no thought of building a hospital. Can you imagine that baldface lying cunt.

LOREN Well why don't you let her build the, the office building.

LEVINE Huh?

LOREN Why don't you let her have her, her cake (UI).

LEVINE I suggested, I suggested it to 'em, they don't want to give her anything.

LOREN Well, the, they're really in a pickle now 'cause based on what they said today...I think they probably have to take down that option between now and the time, they better get an extension, otherwise they're going to own 60 acres of land in Plainfield with nothin' to do with it.

LEVINE Good. (chuckles) Serves 'em right. She's responsible for this, this was a terrible strategy. Of course um, Honey was their lawyer.

LOREN Mm hm. (UI).

LEVINE She's pissed. Oh, she's pissed at me because uh, um, um, Pam who went around her back all over the place because Pam is such a fucky-doody, she knows that uh, that um, I'm, I'm sure that Pam said that Nick was talkin' to me. So she's, she's probably um, uh, pissed.

LOREN Well I heard, you know I went outside and eavesdropped.

LEVINE Mm hm.

LOREN On Pam, on Pam and Honey's conversation.

1 LEVINE Mm hm.

2 LOREN I, I was around the corner.

3 LEVINE Mm hm.

4 LOREN And, and Honey was saying you know Pam,
5 you can't do what you just did. She
6 said, you know, you know what I really
7 wanted to tell him. She said no, what
8 did you want to tell him. I wanted to
9 tell him next time I see you you'll be
10 in prison.

11 LEVINE (chuckles) To say to who?

12 LOREN Beck.

13 LEVINE To Beck.

14 LOREN Yeah.

15 LEVINE What'd he do?

16 LOREN Nothing and when she, when she turned,
17 when she walked out and turned her back
18 on the guy.

19 LEVINE He, he'd be in prison?

20 LOREN Yeah, yeah.

21 LEVINE Maybe she knows somethin' we don't.
22 (laughs)

23 LOREN (laughs) But you know she was besides
24 herself because you know it, it was
25 embarrassing to her.

26 LEVINE It was embarrassing to her?

27 LOREN To Honey.

28 LEVINE Oh of course it was embarrassing to her.
29 But you know I mean uh, uh,...

30 LOREN So they clearly, now...look, I was
31 watching the body language.

1 LEVINE Mm hm.

2 LOREN They clearly believe that what Beck was
3 doin' was begging them to defer so he
4 could give them, give them the CON in
5 June.

6 LEVINE Edwards thinks that?

7 LOREN Mm hm.

8 LEVINE No. (chuckles)

9 LOREN Clearly with her, that's the
10 expectation.

11 LEVINE Oh they're so wrong. He was just trying
12 to uh, to be uh, to talk a little bit
13 nice. After the, after the big blow up
14 uh, and, well I mean everybody likes to
15 be a, to a, to, they cannot give it to
16 uh, to the Adventist, then there's only
17 going to be one.

18 LOREN Mm hm.

19 LEVINE And Jeff Ladd represents them.

20 (PAUSE)

21 LOREN Which is the uh, oh Bolingbrook is the
22 Adventist.

23 LEVINE Yeah, the Adventist. Advocate...

24 LOREN I'm surprised you guys gave the
25 Ambulatory Care to Provena uh, today
26 based on what I thought were their
27 problems with the Board. I thought they
28 had a personality issue with uh, with
29 one of their people.

30 LEVINE Uh, apparently (UI).

31 LOREN (UI) Hospital.

32 LEVINE Uh, uh, apparently whatever it was been
33 solved.

1 LOREN You know I and, and some of these CON's
2 that were up today, I asked Herb Frank,
3 who was sitting next to me for part of
4 the hearing.

5 LEVINE Mm hm.

6 LOREN I said you know do, do these people have
7 to come in for a CON when they decide to
8 go from 2-ply to 1-ply toilet paper.

9 LEVINE (laughs)

10 LOREN Do you have any idea of the application
11 fee that these hospitals have to pay?

12 LEVINE No.

13 LOREN It's enormous. How much you think Mercy
14 had to submit for the CON application?

15 LEVINE How much?

16 LOREN $100,000.

17 LEVINE And you know that the governor's office
18 had taken away from the CON Board. We
19 don't even have an employee.

20 LOREN No.

21 LEVINE Anyway that's, that, I'm going to clean
22 up. I think I'm going to clean up that
23 Board so, 'cause it'll be easier to work
24 for poor Tom. I have to pitch in and be
25 a spokesman.

26 LOREN Well you have two vacancies there.

27 LEVINE No, they're filled. Bernie Weiner.

28 LOREN So why, why were people not there?

29 LEVINE Well he wasn't appointed in time to be
30 at this meeting.

31 LOREN Mm hm.

1 LEVINE And the other, Orr was there.

2 LOREN I thought you only had eight people
3 there today?

4 LEVINE Uh, everybody was there.

5 LOREN Oh the Board's nine.

6 LEVINE The Board's nine, right. (laughs)

7 LOREN What's going on with the other Board
8 appointments, you heard anything?

9 LEVINE No we'll get into that tomorrow. That's
10 enough for one day.

11 LOREN Well, I hope you enjoyed, you know I do
12 not understand how anyone can expect any
13 of you to serve on this Board. You know
14 the, the amount of work that, that, if
15 it's, this is done properly.

16 LEVINE Oh I, I,...

17 LOREN It's a full time job.

18 LEVINE I don't, I don't do a goddamn thing. I
19 don't even, I don't read a goddamn
20 thing. If there's, if there's, if, ,if
21 there's, if there's something I have an
22 interest in it uh, I mean I, I, I don't
23 do anything. I don't read a goddamn
24 thing unless there's a particular thing
25 that I gotta, I gotta bone up on a
26 little.

27 LOREN It's a full-time job.

28 LEVINE Beck has a full-time job.

29 LOREN Then what is it?

30 LEVINE Pardon?

31 LOREN What, what does he do full time?

32 LEVINE No, no, Beck, he uh, Beck he, he's a

consultant uh, uh, various, Beck's done very well for himself because he, he was uh, he was in the right place with the right guys at the County and uh, he did what he was supposed to and um, and he came out uh, fine and he's a, he's got some great relationships. He's like Stricklin.

LOREN: So what did Tony think of the whole thing today?

LEVINE: He don't give a shit. He wanted to make sure that it got done. He was grateful...

LOREN: He should be royally upset that these 2 union people are, are causing problems.

LEVINE: He, he needs 5 votes. He has 5 votes.

LOREN: So he doesn't care.

LEVINE: And he had to give the union, I mean you know they, they, they have uh, uh, the Service Employees always had a person on that Board.

LOREN: Mm hm.

LEVINE: Um,...

LOREN: Well you know who, who Orr works for?

LEVINE: Emil, well she comes from Emil Jones doesn't she?

LOREN: No.

LEVINE: Who?

LOREN: She works for Ed Smith.

LEVINE: Oh she does.

LOREN: Yeah. She works, she's an organizer for the Laborers.

LEVINE Oh.

(PAUSE)

LEVINE Oh well that's good to know. I'll have to work on that.

LOREN That's what Stricklin told me. I asked, you know he, that, that's Ed Smith's person. She didn't get on there by accident.

LEVINE I could, see, see, if I would of known, I could of um, uh, I can uh, I can get there. But they were just, Balanoff was supposed to deliver her?

LOREN Yeah. Both of 'em, Rice too.

LEVINE He failed.

LOREN She seems to be quite the uh, unpleasant person.

LEVINE Balanoff?

LOREN No, Rice.

LEVINE The big fat one?

LOREN No that's Orr.

LEVINE Oh.

LOREN Rice is the (UI).

LEVINE No, no, Orr, Orr is the new one. Pam Orr is the, is the new Board member.

LOREN The black woman.

LEVINE Yeah.

LOREN Oh no, no, I'm, I'm, I'm thinkin' of the heavy set woman who was sitting next to (UI).

LEVINE Yeah she, she's uh, uh, she's a union

EXHIBIT 9

KIFERBAUM
DESIGN + BUILD

November 25, 2003

Mr. Javon R. Bea, President/CEO
Mr. Richard H. Gruber, Vice President
Mercy Alliance, Inc.
Mercy Woodstock Medical Center
2000 Lake Avenue
Woodstock, IL 60098

Re: Mercy Crystal Lake

Gentlemen:

We would like to thank you for taking the time to share your plans for Mercy Crystal Lake and allow us to introduce you to Kiferbaum Construction Corporation.

As we discussed, Kiferbaum is a full service design/build firm that can assist Mercy through the entire development process for this exciting project. By establishing a relationship early, Kiferbaum will provide Mercy with a single source of responsibility and accountability. Our delivery system ties all the facets of the project together from preliminary planning through facility turn over. This would include programming, design, budgeting, securing of the Certificate of Need, obtaining municipal and other governmental entitlements as well as quality, on-time construction. Our established project control systems and web based document sharing will provide a platform allowing us to be easily integrated with your internal project team.

Kiferbaum Construction Corporation will be delighted to move forward with you as part of your team. Over the next several days I will be forwarding an agreement to solidify our relationship for your review and approval.

In the interim, should you have any questions or require additional information please do not hesitate to contact Jeff Kaplan, Paul Chuma or myself. We look forward to working with Mercy Alliance.

Sincerely,

KIFERBAUM CONSTRUCTION CORPORATION

J. Kiferbaum

Jacob Kiferbaum
President

C: Herbert H. Franks

790 Estate Drive / Deerfield, IL 60015 / 847.914.9600 · FAX 847.914.9650 / www.kiferbaum.com

EXHIBIT 10

Illinois Department of Public Health • Pat Quinn, Governor • Damon T. Arnold, M.D., M.P.H., Director
health facilities and services review board

RESULTS OF DECEMBER 17, 2003, MEETING OF THE ILLINOIS HEALTH FACILITIES PLANNING BOARD

Members present

Dr. Alamanseer, Thomas Beck, Michael Gonzales, Stuart Levine, Dr. Malek, Dr. Massuda, Danalynn Rice and Annamarie York.

Members absent

Thomas Balanoff

PROJECT	VOTE
Permit renewal requests	
Marion Healthcare (01-076)	Approved 7-0 (Rice declared a conflict)
St. Mary Medical Center (03-015)	Approved 8-0
Condell Medical Center (00-002)	Approved 6-2
Austin Comm. Kidney Center (01-004)	Approved 8-0
Exemption requests	
Neomedica - Evergreen Park (E-045-03)	Approved 8-0
Extension requests	
West Frankfort Comm Hospital (02-021)	Approved 6-2
Alterations	
Condell Medical Center (00-002)	Approved 6-2

Compliance issues/Settlement agreements

None

Declaratory Rulings

None

Health Worker Self-Referral Act

None

Completion Reports on Conditional Permits

None

Applications subsequent to initial review

St. James Hospital (03-008)	Approved 8-0
RCG-Merrionette Park (03-045)	Board voted 4-4 and issued an Intent-to-Deny
Hillsboro Area Hospital (03-051)	Approved 7-0 (Rice declared a conflict)
Oakview (03-052)	Approved 8-0
Iroquois Memorial Hospital (03-057)	Approved 8-0
CGH Medical Center (03-062)	Approved 8-0
Lake Villa Dialysis (03-067)	Approved 8-0
Rockford Dialysis (03-068)	Approved 8-0
DeKalb Dialysis (03-069)	Approved 8-0
Tri-Cities Dialysis (03-070)	Approved 8-0
Dixon Kidney Center (03-071)	Approved 8-0
Freeport Dialysis (03-072)	Approved 8-0
Highland Ambulatory Surgery Center (03-013)	Applicant deferred
Carle Foundation Hospital (03-041)	Approved 6-2
Provena St. Joseph Med. Center (03-042)	Approved 7-0 (Malek declared a conflict)
Edward Healthcare Center (03-043)	Board voted 2-6 and issued an Intent-to-Deny
Eye Surgery Center-Hinsdale (03-048)	Approved 6-2
Mercy Crystal Lake Hospital (03-049)	Board voted 0-8 and issued an Intent-to-Deny
Surgery Center of Joliet (03-053)	Board voted 1-6 and issued an Intent-to-Deny (Malek declared a conflict)
St. Joseph Village (03-066)	Approved 8-0

Applications subsequent to intent-to-deny

None

Other Business

None

[x] idph online home

about the department

Illinois Department of Public Health
535 West Jefferson Street
Springfield, Illinois 62761
Phone 217-782-4977
Fax 217-782-3987
TTY 800-547-0466
Questions or Comments

EXHIBIT 11

Construction Contract

For

Mercy Alliance, Inc.

Crystal Lake, Illinois

JK 00605

CONSTRUCTION CONTRACT

For

MERCY ALLIANCE, INC.

Crystal Lake, Illinois

THIS AGREEMENT (the "Agreement"), made this 23rd day of January, 2004, by and between KIFERBAUM CONSTRUCTION CORPORATION, hereinafter called "Contractor", with its principal place of business at 790 Estate Drive, Deerfield, IL 60015 and MERCY ALLIANCE, INC., hereinafter called "Owner", with its principal place of business 1000 Mineral Point Avenue, Janesville, Wi, 53547-5003.

WITNESSETH:

Owner is the owner of the real estate legally described in Exhibit "A" attached hereto (the "Site").

Contractor and Owner, in consideration of the mutual covenants and agreements contained herein, hereby agree as follows:

Article 1. Scope of the Work

Contractor shall furnish, or cause to be furnished, all of the material and perform, or cause to be performed, all of the work necessary for construction work and at Owner's option, for certain design work at the site as set forth below (the "Work"). The Work includes the design and completion of certain site improvement work (the "Site Work") and an approximate seventy (70) bed hospital and multi-specialty physician clinic (the "Building Work", and collectively with the Site Work referred to as the "Work" and the project is referred to herein as the "Project"). Contractor's Work shall consist of the following:

A. Contractor's Design Services. At Owner's option, and to the extent determined by Owner, Contractor shall cause to be prepared the civil engineering drawings necessary for the Site Work and all of the mechanical, electrical, plumbing, and fire protection drawings and specifications for the design of the systems identified below necessary for the construction of the Building Work (collectively referred to as the "Contractor's Design Services"):

1. Mechanical System. Mechanical drawings consisting of plans showing single line layouts with approximate sizing of major duct and piping systems, plans showing sizes and outline of central heating, cooling and ventilation equipment and riser diagrams showing distribution system.

2. Electrical System. Electrical drawings consisting of plans showing sizes and outline of fixed equipment; riser diagrams for construction, showing arrangements of feeders, sub-feeders, bus ducts, load centers, and branch circuit panels, typical lighting layout, and typical electrical plan layout showing switches, and outlets.

3. Plumbing System. Plumbing drawings showing the completed plumbing system.

4. Fire Protection System. Fire protection drawings showing the completed fire protection system.

5. Such Work within the same general scope as may be designated by Owner.

The above referenced design documents (the "Contractor's Design Documents") shall be prepared in accordance with the preliminary architectural plans (the "Preliminary Plans") attached hereto as part of Exhibit "B" and made a part hereof, the "Owner's Design Documents" (defined below) and Applicable Laws. The Contractor shall not be responsible for any design services except those outlined above.

B. **Construction Services.** Contractor shall furnish, or cause to be furnished, all of the material and labor necessary for the Work in accordance with the Contract Documents and all Work shall be performed in accordance with all Applicable Laws.

C. **Other Design Work.** The Owner has entered into a separate contract with Hammel, Green and Abrahamson, Inc. (the "Architect") for the design of the hospital and clinic and other separate contracts for all other design work, including but not limited to structural engineering and landscape design work (the "Owner's Design Work"). All architectural services shall be rendered by the Architect. The Architect will have direct supervision of the architectural work and the Contractor shall have no liability relating to the errors and omissions of the Architect or Owner's other design professionals and Contractor shall be entitled to rely upon all such design work as having been prepared in accordance with all applicable building and zoning codes and all other laws and regulations in effect as of the date hereof ("Applicable Laws"). The design documents caused to be prepared by Owner (the "Owner's Design Documents") shall be prepared in accordance with the Preliminary Plans. If anything contained in the Contract Documents is inconsistent with this Agreement, the document with the most specific provision or information shall govern.

Upon completion of the Preliminary (Scope) Design Documents, Contractor and Owner shall establish a target guaranteed maximum price ("GMP") for each of the following: (i) the Site Work (the "Site Work Target GMP") and (ii) the Building Work (the "Building Target GMP"), which target maximum prices shall be set forth on Exhibit D attached hereto. The Owner and Contractor agree to cause their respective design work (i.e the Owner's Design Documents and the Contractor's Design Documents") to be prepared with scope and budget controls that are consistent with and in reasonable conformance with the Site Work Target GMP and Building Target GMP and each will advise the other when either party becomes aware that either target GMP may be exceeded. Contractor and Owner shall each submit to the other its design documents for approval. Both parties agree that they will promptly review and approve, or disapprove (with specifically stated reasons therefor) the applicable design documents, and that they will not withhold their approval except for matters which in their reasonable opinion are warranted. Each party shall reasonably address the other's reasonable objections and make requested changes. When Contractor's Design Documents and Owner's Design

Documents have been approved by Contractor and Owner by affixing thereon the signature or initials of an authorized officer or employee of each of said respective parties, the Contractor's Design Documents and Owner's Design Documents shall be deemed to be made a part hereof. Upon Owner's reasonable request, Contractor shall make minor modifications to any documents delivered by Contractor and identify areas of possible cost savings or time savings in order to reduce the Site Work Target GMP or the Building Target GMP. Upon Owner's approval of the Contractor's Design Documents and finalization of the Owner's Design Documents for the particular phase, Contractor shall, within thirty (30) days of each separate approval date, guarantee and establish a lump sum price for the relevant phase of the Work (such price being hereinafter referred to as the "Site Work Price" and "Building Price", as the case may be, or in general as a "Phase Price") and Exhibit D attached hereto shall be amended accordingly. In addition, Exhibit D will be amended to set forth the date for substantial completion of the particular phase of the Work (i.e. the Site Work or the Building Work) and to identify all appropriate "Contract Documents". This Agreement and all Change Orders issued after the execution of this Agreement and all exhibits attached hereto from time to time are referred to herein as the Contract Documents. In the event the Site Work Price or Building Price exceeds the Site Work Target GMP or Building Target GMP, and Owner requests that the Project be redesigned for value engineering purposes, then the Contractor and Owner agree to work in good faith to redesign the particular phase until the Work for that phase can be completed for an amount equal to or less than the relevant Target GMP. Neither Contractor nor Owner will not act in an unreasonable, arbitrary or capricious manner with respect to withholding its approval of any documents delivered to the other. Upon the relevant Phase Price being determined and Contractor obtaining all necessary permits for each phase of the Work, Contractor shall commence the applicable phase of the Work.

Article 2. Time of Completion

The Work shall be substantially completed, in conformance with the Contract Documents (as such shall be amended from time to time in accordance with the terms of Article 1 hereof) and a detailed schedule for each phase shall be approved by Owner and Contractor as Exhibit "E" (individually or collectively, as the context dictates, referred to as the "Contract Time"). If Contractor is delayed at any time in the progress of the Work by any act or neglect of Owner, or by any employee of Owner, or by any separate contractor employed by Owner, or by changes ordered in the Work, or by labor disputes, weather, fire, unusual delay in transportation, fuel, material, or labor shortages or unavailability, unavoidable casualties or any causes beyond Contractor's control, then the Contract Time shall be extended by a period equal to such delay. Such delay shall hereinafter be referred to as "excused delay". All claims for extension of time shall be made, in writing, to Owner no more than twenty (20) days after the occurrence of the delay; otherwise they shall be waived. In the case of a continuing cause of delay, only one (1) claim is necessary.

Article 3. Contract Sum 2.5% [illegible]

The Site Work Price and Building Work Price referred to above shall be be the aggregate of (i) the sum of the cost of all work to be performed under all Subcontracts entered into by the Contractor for the Site Work and Building Work and the costs associated with the Contractor's insurance and general conditions, (as per Exhibit "G" attached) (ii) a payment to Contractor equal to four and eight tenths percent (4.8%) of the sum of the amounts specified at subsection (i) above for Contractor's overhead; and (iii) a fee to Contractor equal to three and two tenths percent (3.2%) of the aggregate of the amounts described in (i) and (ii) above (collectively referred to as the "Contract Sum", which amounts will be set forth in Exhibit "D", as revised from time to time in accordance with the terms of Article 1. Owner shall pay the Contract Sum in current funds. The Contract Sum shall become a guaranteed lump sum price for the Work as provided for at Article 1 subject to further modification only for Change Orders as provided for in Article 6, for additional costs arising out of excused delays and for such other reasons as may be expressly set forth herein. All other costs of the Project in excess of the Contract Sum shall be borne by the Contractor.

Article 4. Payment for Design Services and Construction Services and the Contract Sum

A. Payments for Contractor's Design Services. Owner shall pay Contractor for Contractor's Design Services within twenty-one (21) days of Contractor's invoice on a monthly progress payment basis. The total cost for the Contractor's Design Services shall be $_____ and such amount shall not be included in the Contract Sum.

B. Construction Services - Progress Payments of the Contract Sum. Owner shall make monthly payments on account of this Agreement within fifteen (15) business days after receipt of Application for Payment, as set forth in Exhibit "F", by Contractor, as follows:

1. Until fifty percent (50%) of each of the three phases of the Work is completed, Owner shall make payments on account to the Contractor equal to ninety percent (90%) of the aggregate value of the respective phase of Work completed, based upon the value of labor, services and materials incorporated in that phase of the Work and of materials stored at the site up to the last day of the preceding month, less the aggregate amount of previous payments made by Owner to Contractor.

2. After fifty percent (50%) of the Work for the applicable phase is completed, Owner shall make payments on account to Contractor equal to ninety-five percent (95%) of the aggregate value of labor, services and materials incorporated in that portion of the Work and of materials stored at the site up to the last day of the preceding month, less the aggregate amount of previous payments made by Owner to Contractor.

3. Along with each Application for Payment to Owner or contemporaneous with payment, Contractor shall deliver its general lien waiver and further lien waivers from all "major" Subcontractors on the project waiving liens for Work for which payment was requested by Contractor and paid for by Owner on the preceding Application for Payment. Major Subcontractors shall mean those Subcontractors and material suppliers having contracts with Contractor in respect to the project contemplated hereby in excess of $25,000.00.

C. Final Payment. Full payment of the Site Work Price and the Building Price ("Final Payment(s)") shall be due and payable separately at such times as each of the phases of the Work are substantially complete and this Agreement substantially performed. Issuance of a temporary certificate of occupancy (with respect to the Building Work only), I.D.P.H approval (with respect to the Building Work only), and the issuance by Architect of its Certificate of Substantial Completion shall be deemed to be conclusive evidence that the Work is substantially complete in the event of a dispute. If there should remain minor items to be completed, Contractor and Owner shall list such items and Contractor shall deliver, in writing, its unconditional promise to complete said items within a reasonable time thereafter. Owner may retain a sum equal to one hundred fifty percent (150%) of the estimated cost of completing any unfinished item, provided that said unfinished items are listed separately and the estimated cost of completing each item is likewise listed separately. Thereafter, Owner shall pay to Contractor monthly, on the 10th day of each month, the amount retained for incomplete items as each of said items is completed.

In the event any payment by Owner to Contractor is due, and is not paid by Owner to Contractor on such due date, Owner shall pay interest on said unpaid amount (upon receipt of invoice) from and after its due date, to and including the date of payment, at the rate of four percent (4%) per annum over the prime rate of interest charged to its largest commercial corporate borrowers by Harris Bank of Chicago (or similar institutions if said Bank shall cease to exist or to publish such a prime rate) from the date when the same is due hereunder until the same shall be paid, but if such rate shall exceed the highest rate allowed by law, such rate shall be reduced to the highest rate allowed by law.

Contractor's request for Final Payment for a particular phase (less sums withheld for incomplete items) shall be accompanied by the following instruments:

1. Contractor's affidavit that all payrolls and bills for materials and equipment, and other indebtedness connected with the Work for which Owner has paid Contractor prior to the time of application have been paid or otherwise satisfied, and

2. Consent of surety, if any, to final payment.

3. Final lien waivers.

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Article 5. (For Future Use)

Article 6. Changes in the Work

Owner, without invalidating this Agreement, may order changes in the Work within the general scope of this Agreement, consisting of additions, deletions or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by a Change Order and shall be executed under the applicable conditions of the Contract Documents.

A Change Order is a written order to Contractor signed by Owner issued after the execution of the Agreement authorizing a change in the Work or an adjustment in the Contract Sum or Contract Time. A Change Order shall be signed by Contractor and Owner if there is an adjustment in the Contract Sum or Contract Time. The Contract Sum and Contract Time may be changed only by a Change Order.

The cost or credit to Owner resulting from a change in the Work shall be determined in one or more of the following ways:

A. By mutual acceptance of a lump sum properly itemized;

B. By unit prices stated in the Contract Documents or subsequently agreed upon; or

C. By cost and a mutually acceptable fixed or percentage fee.

If none of the methods set forth above is agreed upon, Contractor, provided it received a Change Order, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of Contractor's reasonable expenditures and savings, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, Contractor shall keep and present an itemized accounting, together with appropriate supporting data. The amount of credit to be allowed by Contractor to Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease in the cost of the Work. When both additions and credits are involved in any one change, the allowance for Contractor's general conditions/insurance and overhead/fee shall be figured on the basis of net increase, if any.

If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will create a hardship on Contractor or Owner, the applicable unit prices shall be equitably adjusted to prevent such hardship.

Article 7. Correction of Work

If during the period of construction the Work is found to be defective or not in accordance with the Contract Documents, Contractor shall correct it with reasonable promptness after receipt of written notice from Owner to do so unless Owner has previously given Contractor written acceptance of such condition. Owner shall give such notice promptly after discovery of the condition.

All such defective or nonconforming Work shall be corrected or removed from the site, if necessary, and the Work shall be corrected to comply with the Contract Documents without cost to Owner. Contractor shall bear the cost of making good all Work of separate contractors destroyed or damaged by such removal or correction.

If Contractor does not remove such defective or nonconforming Work within a reasonable time, Owner may remove it and store the materials or equipment at the expense of Contractor. If Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, Owner may, upon ten (10) additional days written notice, sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all costs that should have been borne by Contractor. If such proceeds of sale do not cover all costs which Contractor should have borne, the difference shall be charged to Contractor and an appropriate Change Order shall be issued. If payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to Owner.

Contractor guarantees the Work for a period of one (1) year only after the date the Work is substantially complete or for such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents. Any guarantee Work shall be done in accordance with the requirements above as to correction, repair or replacement of Work during the construction period. Owner shall be required to perform routine and appropriate regular maintenance during the guarantee period. To the extent products, equipment, systems or materials incorporated in the Work are specified and purchased by the Owner, they shall be covered exclusively by the warranty of the manufacturer.

Article 8. Insurance

A. Contractor's Liability Insurance. Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from Contractor's operations under this Agreement, whether such operations be by Contractor, by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

1. Claims under workmen's compensation, disability benefits, and other similar employee benefit acts;

2. Claims for damages arising out of bodily injury, occupational sickness or disease, or death of its employees;

3. Claims for damages arising out of bodily injury, sickness or disease, or death of any person other than its employees;

4. Claims for damages insured by usual personal injury liability coverage which are sustained by (i) any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (ii) any other person;

5. Claims for damages arising out of injury to or destruction of tangible property, and

6. Claims for damages because of bodily injury or property damage arising out of the ownership, maintenance or use of motor vehicles.

The insurance required by Subparagraphs (A) (3); (A) (4), (A) (5) and (A) (6) of this Article 8 shall be written for limits of liability of not less than One Million & NO/100 Dollars ($1,000,000.00) each occurrence with a general aggregate limit of Two Million & NO/100 Dollars ($2,000,000.00). The insurance required by Subparagraphs (A) (1) and (A) (2) of this Article 8 shall be written for limits required by law. Said insurance shall include contractual liability insurance as applicable to Contractor's obligations to indemnify Owner as required by Subparagraph (P) of Article 9. In addition to the foregoing, Contractor shall maintain a general liability umbrella of Ten Million & NO/100 Dollars ($10,000,000.00).

B. Owner's Liability Insurance. Owner shall be responsible for purchasing and maintaining such other insurance as will protect it against claims which may arise from operations under this Agreement.

C. Property Insurance. Contractor shall purchase and maintain until the date the Work is substantially complete All Risk Builder's Risk insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of Contractor, Owner, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils normally insured against in an All Risk Builder's Risk policy.

Contractor shall purchase and maintain such steam boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of Contractor, Owner, Subcontractors and Sub-subcontractors in the Work.

Any insured loss is to be adjusted with Contractor and made payable to Contractor, as trustee for the insureds as their interests may appear.

If Owner requests, in writing, that insurance for special hazards be included in the property insurance policy, Contractor shall, if possible include such insurance and the cost thereof shall be charged to Owner by appropriate Change Order.

Contractor and Owner waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under Paragraphs (C) and (D) of Article 8, except such rights as they may have to the proceeds of such insurance.

If required, in writing, by any party in interest, Contractor, as trustee, shall, upon the occurrence of an insured loss, give bond for the proper performance of its duties. Contractor shall deposit in a separate account any money so received and it shall distribute it in accordance with such agreement as the parties in interest may reach. If, after such loss, no other special agreement is made, replacement of damaged Work shall be covered by an appropriate Change Order.

Contractor, as trustee, shall have power to adjust and settle any loss with the insurers. Priority in distribution shall be given so as to reimburse Contractor for Work for which payment had not been made by Owner as of the date of loss.

D. Loss of Use Insurance. Owner, at its option, may purchase and maintain such insurance as will insure it against loss of use of its property due to fire or other hazards, however caused, and shall look only to such insurance in respect to such loss. Owner hereby releases Contractor from all claims for loss or damage to its business or property, lost profits, and indirect or consequential damages.

E. Owner-Contractor Protective Liability Insurance. In lieu of providing Owner with the insurance specified at Section 8.A., Contractor may purchase Owner-Contractor Protective insurance from the Contractor's usual sources as primary coverage for the Owner's vicarious liability for construction operations under the Agreement. In such case the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate limits required for Contractor's Liability Insurance under Section 8.A.

F. Professional Liability. [to be discussed].

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Article 9. Miscellaneous Provisions

A. Supervision and Construction Procedure. Contractor shall supervise and direct the Work and shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Agreement.

B. Labor and Materials. Unless otherwise specifically noted, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, transportation, and other facilities and services necessary for the proper execution and completion of the Work. All materials shall be new unless otherwise specified. Owner shall not

hire any non-union contractors or subcontractors to perform work at the Site until Contractor has completed the Work.

C. Discipline of Employees. Contractor shall, at all times, enforce strict discipline and good order among its employees, and shall not knowingly employ on the Work any unfit person or anyone not skilled in the task assigned to him.

D. Surveys and Easements. Owner shall furnish all boundary and topographical surveys (showing the location of all existing improvements, building, set back lines and easements), unless otherwise specified, and shall furnish all easements necessary for access to the site, including easements for installation and maintenance of utilities.

E. Taxes. Contractor shall pay all sales, consumer, use and other similar taxes required by law. If the Project is exempt from state sales tax, Owner shall provide Contractor with reasonably satisfactory evidence of such prior to the commencement of the Work.

F. Permits and Fees. Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all building permits, and all governmental building fees and licenses (except environmental permits, impact fees, annexation fees, tap-on fees, recapture changes or municipal donations) necessary for the proper execution and completion of the Work which are applicable at the date of this Agreement.

G. Concealed Conditions. If in the performance of the Work the Contractor finds latent or concealed conditions or soil conditions which materially differ from the conditions the Contractor reasonably anticipated, or normally encountered, then the Contract Sum and/or the Contract Time shall be equitably adjusted by Change Order within a reasonable time after the conditions are first observed.

Contractor represents that it has no knowledge whether the site of the Work is located in an area that has been or may be designated as a flood plain, flood way and/or wetlands. Owner acknowledges and agrees that in the event that the Work is delayed, disrupted or suspended as a result of any action of any public authority because the site of the Work is found to be in or on a flood plain, flood way or wetlands, then the Contract Time shall be extended for the period of disruption, delay or suspension. Contractor shall be reimbursed by Owner for any costs, damages or losses, including loss of anticipated profit which arise as a result of any delay, disruption or suspension mentioned above.
Owner represents and warrants that to the best of its knowledge the Owner, is not in violation of any Federal, state or local environmental law, statute or ordinance, and that the Site is free from any hazardous materials that would trigger response or remedial action under any existing environmental laws, or any existing common law theory based on a nuisance or strict liability.

H. Notices. Contractor shall comply with all Applicable Laws. If Contractor observes that any of the Contract Documents are at variance any Applicable Laws, it shall promptly notify Owner, in writing, and any necessary changes shall be made by appropriate modification. If

Contractor performs any Work actually knowing it to be contrary to such Applicable Laws, and without such notice to Owner, it shall assume full responsibility therefore and shall bear all costs attributable thereto, provided however, to the extent of any changes in, or adoption of new laws, ordinances or regulations, after the date of this Agreement, Owner shall be responsible for all costs attributable thereto.

I. Cash Allowance. Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. These allowances, unless otherwise stated, shall cover the cost of the materials and equipment delivered and unloaded at the site and all applicable taxes, Contractor's handling costs on the site, labor and installation costs. Contractor's general conditions/insurance and overhead/fee and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance. If the cost, when determined, is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order which will include additional handling costs on the site, labor, installation costs, general conditions, insurance, overhead, fee and other expenses.

J. Superintendent. Contractor shall employ a competent superintendent who shall be in attendance at the Site at all reasonable times during the progress of the Work.

K. Responsibility of Contractor. Contractor shall be responsible to Owner for the acts and omissions of all of its employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work under a contract with Contractor.

L. Progress Schedule. Contractor, after being awarded the Agreement, shall prepare and submit to Owner an estimated progress schedule for the Work. This schedule shall indicate the dates for starting and completion of various stages of construction and shall be revised as required by the conditions of the Work.

M. Drawings and Specifications at Site. Contractor shall maintain at the Site for Owner one (1) copy of all drawings, specifications, addenda, approved shop drawings, Change Orders and other modifications in good order and marked to record all changes made during construction. These materials shall be available to Owner. The drawings marked to record all changes made during construction shall be delivered to Owner upon completion of the Work and receipt of Payment.

N. Use of Site. Contractor shall confine operations at the Site to areas permitted by all Applicable Laws, permits and the Contract Documents and shall not unreasonably encumber the Site with any materials or equipment.

O. Cutting and Patching. Contractor shall do all cutting, fitting or patching of its Work that may be required to make the several parts of the Work fit together properly and shall not endanger any Work by cutting, excavating or otherwise altering the Work or any part of it.

P. **Cleaning Up.** Contractor, at all times, shall keep the Site reasonably free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work, Contractor shall remove all its waste materials and rubbish from and about the project as well as all of its tools, construction equipment, machinery and surplus materials, and shall clean all glass surfaces and leave the building "broom clean", or its equivalent, except as otherwise specified. If Contractor fails to clean up, Owner may do so and the cost thereof shall be charged to Contractor.

Q. **Indemnification.** Contractor shall indemnify and hold harmless Owner and its employees, from and against all claims, damages, losses and reasonable expenses, including reasonable attorneys' fees (unless caused in whole or in part by a party indemnified hereunder or any of its contractors or agents), arising out of or resulting from the performance of the Work, provided that such claim, damage, loss or expense is (i) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself); and (ii) caused by any negligent act or omission of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The indemnification obligations under this Subparagraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts. Owner shall notify Contractor of any claim under this indemnity in such time as to avoid prejudice to Contractor and Contractor shall have the right to defend with its own counsel, provided such is reasonably acceptable to Owner. Such indemnification shall not include, nor shall the Contractor be liable for, indirect, special or consequential costs, expenses or damages.

R. **Written Notice.** Written notice shall be deemed to have been deemed duly served on the first business day following receipt if delivered in person, by messenger or by nationally recognized overnight courier for next business day delivery or by facsimile transmission to the individual or member of the firm or to an officer of the corporation for whom it was intended, or, if delivered at or sent by registered or certified mail three (3) business days after being deposited in the United States mail, postage prepaid, to the last business address known to the party who gives the notice,

If to Owner: David E. Kurtz
Mercy Alliance
1000 Mineral Point Avenue
Janesville, WI 54547-5003
608-756-6173

If to Contractor: Mr. Jacob Kiferbaum
Kiferbaum Construction Corporation
790 Estate Drive
Deerfield, IL 60015
Fax: (847) 914-9650

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or at such other address as the parties may hereafter designate by written notice to the other.

S. Claims for Damages. Should either party to this Agreement suffer injury or damage to persons or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, claim shall be made, in writing, to such other party within a reasonable time after the first observance of such injury or damage.

T. Royalties and Patents. Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights relating to equipment or materials incorporated in the Work and shall save Owner harmless from loss on account thereof, except that Owner shall be responsible for all such loss when a particular design process or the product of a particular manufacturer or manufacturers is specified by Owner, but if Contractor has actual knowledge that the design, process or product specified is an infringement of a patent, it shall be responsible for such loss unless it promptly gives such information to Owner.

U. Termination of Agreement by Contractor. In the event (i) the Work is stopped by any public authority, or through the act, omission, or inaction of Owner, without the fault of Contractor, (ii) Owner fails to pay Contractor any payment after it is due, (iii) Owner breaches any of its other obligations under the Agreement, (iv) a voluntary or involuntary petition shall be filed by Owner under any law having for its purpose the adjudication of Owner as bankrupt, (v) a receiver is appointed for the property of Owner by reason of the insolvency of Owner, (vi) any department of the State or Federal government, or any officer thereof, duly authorized, shall take possession of the business or property of Owner by reason of the insolvency of Owner, (vii) Owner makes an assignment for the benefit of its creditors, such shall be deemed to be a default by Owner. In the event of a default by Owner, Contractor may cease all or any portion of the Work and Owner shall be responsible for all increased costs arising out of such delay and such delay shall extend the Contract Time. Further, in any such event and irrespective of whether or not Contractor ceases all or any portion of the Work, after thirty (30) days written notice to Owner and failure of Owner to remove the default or cure such default, Contractor may terminate this Agreement, remove any materials, equipment, and tools from the Site, and recover from Owner payment for all Work executed, any loss sustained by Contractor, Contractor's reasonable profit and such other damages as Contractor may sustain by reason of Owner's default and the termination of the Agreement and all amounts set forth in Section 9.2 below.

V. Termination of Agreement by Owner. If Contractor is adjudged a bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if it fails to make uncontested payment to Subcontractors or for materials or labor, or persistently disregards Applicable Laws or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then Owner may, without prejudice to any right or remedy

and after giving Contractor and its surety, if any, thirty (30) days written notice (and failure of Contractor to cure or commence to cure with all due diligence such matter within such thirty (30) day period), terminate the employment of Contractor and take possession of the Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor and may finish the Work by whatever method it may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, such excess shall be paid to Contractor. If such cost exceeds such unpaid balance of the Contract Sum, Contractor shall pay the difference to Owner.

W. **Inspection.** Owner and its representative shall, at their sole risk, and at reasonable times, have access to the Work whenever it is in preparation or progress, and Contractor shall permit and facilitate inspection of the Work by Owner, its agents, and public authorities concerned with such Work. Owner shall hold Contractor harmless from any injury sustained by Owner or any of its employers or agents during such inspections.

X. **Financing.** Contractor shall comply with all reasonable compliance requests from Owner's lender, however, consent or approval must not require Contractor to subordinate its lien rights; must not materially increase the scope of Contractor's obligations under this Agreement; must not decrease the scope of Contractor's rights under this Agreement and must be consistent with lending practices typical of institutional lenders for commercial real estate development in the metropolitan Chicago area.

Y. **Consequential Damages.** Except as expressly provided for in Section 9, the Owner and Contractor agree to waive all claims against the other for all consequential damages that may arise out of or relate to this Agreement. The Owner agrees to waive damages including, but not limited to the Owner's loss of use of the Property, all rental expenses incurred, loss of services of employees, or loss of reputation. Except as expressly provided for in Section 9, the Contractor agrees to waive damages including but not limited to the loss of business, loss of financing, principal office overhead and profits, loss of profits not related to this Project, or loss of reputation. The provisions of this Paragraph shall govern the termination of this Agreement and shall survive such termination.

JK 00619

Z. **Payment in the Event of Termination.**

1. At any time, Owner may terminate this Agreement for its convenience. If Owner terminates this Agreement for its convenience and neither it, nor any of its affiliates proceeds with the Project for any reason and the Project is abandoned, Owner shall pay the following termination fee to Contractor: (i) all of Contractor's actual out-of-pocket expenses through the date of termination, including, but not limited to, amounts expended by Contractor for general conditions, insurance and overhead; and (ii) a termination fee as liquidated damages, and not as a penalty, as the parties acknowledge that the Contractor's damages will be difficult or impossible to ascertain, equal to one percent (1%) of the estimated cost of the Work as set forth in the Owner's application for a certificate of need

("CON")(as designated in the Owner's Illinois Health Facilities Planning Board CON application, Section N, Project Costs and Sources of Funds, line items for site preparation, off-site work and new construction contracts). It will be deemed that Owner has terminated this Agreement for convenience if Owner obtains a CON and prior to Contractor commencing the Work, Owner allows it to expire. Notwithstanding anything contained above, Owner will not owe any amounts to Contractor under either this Subsection Z.1 or Subsection Z.2 below if Owner does not obtain a CON.

2. If Owner terminates this Agreement for convenience or any other reason, except for Contractor's material breach and failure to cure pursuant to Section 9.V hereof, and Owner, or its affiliate, proceeds with the Project at any time thereafter, Owner shall pay the following termination fee to Contractor: (i) all of Contractor's actual out-of-pocket expenses through the date of termination, including, but not limited to, amounts expended by Contractor for general conditions, insurance and overhead; and (ii) a termination fee as liquidated damages, and not as a penalty, as the parties acknowledge that the Contractor's damages will be difficult or impossible to ascertain, equal to five percent (5%) of the estimated cost of the Work as set forth in the Owner's application for a CON (as designated in the Owner's Illinois Health Facilities Planning Board CON application, Section N, Project Costs and Sources of Funds, line items for site preparation, off-site work and new construction contracts). The above amounts are intended to be the parties' good faith estimate of the value of Contractor's consulting services rendered through the date of termination and Contactor's estimated damages, including, but not limited to, lost profits and lost opportunity costs.

Article 10. Titles

Titles of articles are used in this Agreement solely for the convenience of those examining it and are not to be resorted to as aids in its construction or interpretation.

Article 11. Successors

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Article 12. Law Governing

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. The parties hereto irrevocably agree that all actions or proceedings in any way, manner or respect arising out of or from or related to this Agreement shall be litigated only in courts having situs in Illinois. All costs and reasonable attorneys' fees incurred by the prevailing party in enforcing this Agreement shall be paid to the prevailing party by the other party to this Agreement.

Article 13. Financing Contingency

Prior to [Date], and prior to Contractor being required to commence the Work, Owner shall provide to Contractor reasonably satisfactory evidence indicating that firm financing is available to pay for all costs of the project of which the improvements contemplated hereunder are a part (with all pre-construction and pre-disbursement contingencies satisfied), said financing to provide payment to Contractor under and according to the terms of this Agreement. Further, Owner agrees to refrain from taking any action which might directly or indirectly void or constitute a default under any loan agreements in connection with the project and agrees that all agreements made in connection with such financing are deemed made for the benefit of Contractor. Owner shall be responsible for all costs arising out of delays in securing financing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

KIFERBAUM CONSTRUCTION CORPORATION (Contractor)

BY: _____

ITS: PRESIDENT

MERCY HEALTH SYSTEM

BY: _____

ITS: President

EXHIBIT "A"

LEGAL DESCRIPTION

The North 1464.54 feet of the West 580.14 feet of the Southeast Quarter of Section 10 (exception therefrom that part taken for State Route 31 and Three Oaks Road), all in Township 43 North, Range 8 East of the Third Principal Meridian in McHenry County, Illinois.

The Parcel contains approximately 16.71 acres.

EXHIBIT "B"

The Contract Documents for this project are as follows:

Drawings	A200, A200A thru A200D, A201A thur A201D, A202A thru A202D, A203C, A203D, A204C, A204D, A205C, A205D, A210, A220, A230, A250, A400, C300, C400, C500, and Site Plan by Hammel, Green, and Abrahmson, Inc. (Dated 5/22/03)

EXHIBIT "D"

This _____ day of _____, 2003, Mercy Alliance, Inc. and Kiferbaum Construction Corporation in accordance with Article 1 of the Construction Contract hereby amend the Agreement as follows:

1. Building Target GMP is $ [To be Determined].

2. The Site Work GMP is $ [To Be Determined].

3. The Building Price is $ [To Be Determined]

4. The Site Work Price is $ [To Be Determined]

5. The Contract Sum is $ [To Be Determined]

6. The Construction Documents which form the basis for the Building Price are: _____ _____.

7. The Construction Documents which form the basis for the Site Work Price are: [To Be Determined].

Mercy Alliance, Inc.	Kiferbaum Construction Corporation
By:_____	By:_____
Its:_____	Its:_____

EXHIBIT "E"

MILESTONE SCHEDULE

EXHIBIT "F"

APPLICATION FOR PAYMENT FORM
(CONTRACTOR'S SWORN STATEMENT)

EXHIBIT "G"

MERCY CRYSTAL LAKE – SUMMARY OF FIXED LINE ITEMS.

January 28, 2004

			FIXED
1.	General Conditions	2.70	~~2.70%~~
~~2.~~	~~Insurance~~		~~0.65%~~
3.	Overhead	4.80	~~4.80%~~
4.	Fee	2.50	~~3.20%~~
	Total	10.00%	~~11.35%~~

Note: Items 1,2, & 3 are time sensitive and are calculated based upon our 18 month construction projection. In the event that this project extends beyond 20 months, due to circumstances beyond Kiferbaum's control, additional general conditions, insurance and overhead will be assessed on a pro-rata basis.

JK 00627

EXHIBIT 12

THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

NORTHERN ILLINOIS MEDICAL CENTER, MEMORIAL MEDICAL CENTER, and CENTEGRA HEALTH SYSTEM,	)	
Plaintiffs,	)	
v.	)	No. 04-MR-106
ILLINOIS HEALTH FACILITIES PLANNING BOARD, ILLINOIS DEPARTMENT OF PUBLIC HEALTH, MERCY CRYSTAL LAKE HOSPITAL AND MEDICAL CENTER, INC., MERCY HEALTH SYSTEM CORPORATION, ELI L. BEEDING JR., and THE BEEDING GROUP,	)	
Defendants.	)	

DEFENDANT MERCY CRYSTAL LAKE HOSPITAL AND MEDICAL CENTER, INC.'S RESPONSE TO PLAINTIFFS' FIRST SET OF INTERROGATORIES

Defendant Mercy Crystal Lake Hospital and Medical Center, Inc. states as its responses to the Plaintiffs' First Set of Interrogatories as follows:

Interrogatories

1. State whether any director, officer, employee, attorney or agent of Mercy Crystal Lake Hospital and Medical Center Inc., Mercy Health System Corporation or Mercy Alliance Inc. had any communication with Stuart Levine relating in any way to: a proposed hospital in Crystal Lake, Illinois; Jacob Kiferbaum; Kiferbaum Construction; Nicholas Hurtgen; or Bear Stearns & Co. during the period January 1, 2003 to the present. If so, state as to each such communication the date, the name and address of each person who was a participant to the communication or present during any such communication, and the substance of what was said.

ANSWER: Other than communications to the Illinois Health Facilities Planning Board, defendant knows of only one communication involving Stuart Levine and an employee of defendant. In or about February 2004, Mercy employee Rich Gruber had a brief conversation with Stuart Levine and Jacob Kiferbaum. Kiferbaum introduced Levine and Gruber to each

other, and Levine told Gruber that Kiferbaum was a man of integrity and that Gruber could trust him, or words to that effect. Gruber replied that he was impressed with Kiferbaum's construction company, or words to that effect. Gruber, Levine, and Kiferbaum were present during this conversation.

2. State whether any director, officer, employee, attorney or agent of Mercy Crystal Lake Hospital and Medical Center Inc., Mercy Health System Corporation or Mercy Alliance Inc. had any communication with Thomas Beck, Michael Malek, Fortunee Massuda, Annamarie Carrie-York, Danalyn Rice, Imad Almanaseer, or Pamela Orr relating in any way to: a proposed hospital in Crystal Lake, Illinois; Jacob Kiferbaum; Kiferbaum Construction; Nicholas Hurtgen; or Bear Stearns & Co. during the period January 1, 2003 through April 21, 2004. If so, state as to each such communication the date, the name and address of each person who was a participant to the communication or present during any such communication, and the substance of what was said.

ANSWER: Other than communications to the Illinois Health Facilities Planning Board, defendant knows of no such communication.

3. State whether Herbert Frauks or Mike Noonan had any communication with Pamela Meyer Davis or William Kottman or any other officer, employee or agent of Edward Hospital between January 1, 2004 and April 21, 2004 in which any of the following was mentioned: a proposed hospital in Crystal Lake, Illinois; a proposed hospital in Plainfield, Illinois; Jacob Kiferbaum or Kiferbaum Construction; Stuart Levine; or the Illinois Health Facilities Planning Board. If so, state as to each such communication the date, the name and

address of each person who was a participant to the communication or present during any such communication, and the substance of what was said.

ANSWER: Defendants object to this interrogatory because it seeks information covered by the attorney work product doctrine and attorney-client privilege. Subject to these objections, defendant knows of no such communication.

Dated: March 9, 2005

Respectfully submitted,

Mercy Crystal Lake Hospital and Medical Center, Inc.

By: Brett Johnson
One of its attorneys

Steven H. Hoeft
Brett R. Johnson
McDermott Will & Emery LLP
227 West Monroe Street
Chicago IL 60606
(312)-372-2000

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Illinois that, on March 9, 2005, he caused to be served on the person(s) listed below in the manner shown Defendant Mercy Crystal Lake Hospital And Medical Center, Inc.'s Response To Plaintiffs' First Set Of Interrogatories:

Mr. Jeffrey R. Ladd
Daniel J. Lawler
Lawrence M. Gavin
Bell Boyd & Lloyd
Three First National Plaza
70 W. Madison - Suite 3100
Chicago, IL 60602

David G. Phoenix
Thomas C. Zanck
Militello Zanck & Coen PC
40 Brink Street
Crystal Lake, IL 60014

Katherine H. Laurent
Assistant Attorney General
Office of the Attorney General
General Law Bureau
James R. Thompson Center
100 W. Randolph – 13th Floor
Chicago, IL 60601
(312) 814-3327

Mr. Eli L. Beeding, Jr.
The Beeding Group
7488 County Road 3
Marble, CO 81623

☒ United States Mail, First Class

☐ By Messenger

☐ By Overnight Delivery

☒ By Facsimile

Dated at Chicago, Illinois, this 9th day of March, 2005.

Beth Johnson

VERIFICATION

I, Richard Gruber, being first duly sworn on oath, state the I am a Vice President of Mercy Health System Corporation, authorized for the purpose of executing this document on behalf of Mercy Health System Corporation, that I do not have personal knowledge of all the facts recited in the foregoing document, and that certain statements and information made herein have been collected and made available to me by counsel and employees of Mercy Health System Corporation and others; and based on this information, in addition to my personal knowledge, I certify on behalf of Mercy Health System Corporation that the answers made herein are true and correct.

STATE OF WISCONSIN)
) ss.
ROCK COUNTY)

On March 9, 2005 before me, Ralph Tupinka, Notary Public, personally appeared Richard Gruber, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

CHI99 4434546-1.066323.0018

EXHIBIT 13

May 5, 2009

Pam Davis' Testimony to Illinois General Assembly
Joint Committee on Government Reform

Good morning, I'm Pam Davis, President & CEO of Edward Hospital & Health Services. Thank you for inviting me to testify this morning to the Joint Committee on Government Reform. I am testifying today in support of House Amendment number four of Senate Bill 1905.

There are two compelling reasons to take strong action and support this amendment.

First and foremost is **accountability to the public**. In order to restore what shred of public trust still remains in the process of health care expansion review and approvals, also known as Certificate of Need, **the General Assembly needs to hit the reset button**. The state officials who hold the two positions specifically mentioned in Amendment Four were directly connected to the Planning Board as the corruption played out more than five years ago. When the scandal broke in 2004, every Planning Board member, regardless of any alleged involvement, was excused. However, two key players in the process mentioned in Amendment Four, for some reason, were kept on. I agree with the criteria that Speaker Madigan put forth in the case of the Teacher's Retirement Fund. Speaker Madigan is quoted in the State Journal Register on April 4 of this year talking about TRS's Jon Bauman...and I quote... "Mr. Bauman was on deck before, during and after the scandal at TRS." While I am certainly not accusing either the Executive Secretary of Deputy Director of illegal behavior, I submit that this General Assembly must act as they did in the TRS case, and remove all remnants from the former Planning Board or risk tainting all of their C-O-N reform efforts.

The second reason to support Amendment Four is to **improve the competency of health care planning in Illinois**. New rules were supposed to have been completed by December 31, 2004 – that's more than four years ago. Under the leadership of these two

public officials, the rules process has been fraught with delays, uncertainty and lack of transparency.

Let's start with accountability.

I have been president at Edward Hospital in Naperville for more than 20 years. We have grown from a small community provider into our region's most preferred hospital. Over the years we have carefully planned and built a medical center with more than 20 locations to keep up with the demand of one of the fastest growing areas in the state, if not the nation.

Back in 2003 we were planning to expand into Plainfield by building an outpatient center and a new hospital. At the time, we were very crowded on our Naperville campus—in fact, we were running at 106% occupancy—mostly because of the growing number of patients coming from south of Naperville including Plainfield. It just made sense to bring services closer to this growing region in Plainfield.

In December 2003 we appeared before the Planning Board with the Edward Plainfield Outpatient Center – not the hospital just yet, but the outpatient center application. To our knowledge, an outpatient center like this had never been turned down by the Planning Board. However, the Planning Board including Chair Tom Beck and Vice Chair Stuart Levine, among others, attacked the project and voted an intent-to-deny. I was stunned. Something was terribly wrong.

I had been approached separately a few days prior to, and immediately after the hearing by Nick Hurtgen of Bear Stearns and Jacob Kiferbaum of Kiferbaum Construction who said they had the clout to get the votes I needed. After how badly the hearing had gone, I felt certain that I, and Edward, were in the process of being extorted.

I went to the FBI with my suspicions.

As you can imagine, the FBI agents had suspicions of their own about my story. They don't get many cold calls like this.

But to their credit, the FBI agreed to take action.

On January 6, 2004, the FBI recorded a meeting I held with Hurtgen who reiterated that he was politically connected to the Illinois state government and could get things done, and that our projects would not be approved unless I went along.

On March 17, 2004, I met with Herbert Franks and Mike Noonan who were assisting Mercy Hospital in seeking to obtain approval of Mercy's Crystal Lakes CON. They told me that I should hire Kiferbaum to construct our hospital in Plainfield because Kiferbaum wielded influence with two or three Planning Board members. They said that for the Mercy project, Board member Levine personally met with Kiferbaum and Mercy's CEO to reassure the Mercy's CEO that Kiferbaum could get things done.

In April of 2004 I met with Jacob Kiferbaum at the Egg Shell Café in Deerfield and he told me point blank that Mercy was going to be approved because it was using his company for construction…and that I had to use Kiferbaum Construction or my project would not be approved. Levine and Hurtgen were seated at another table. Mr. Levine walked over and said that I could trust Kiferbaum and that Kiferbaum's word was good. Of course, the FBI had surveillance of this meeting.

For eight months, I worked undercover with the FBI and wore a recording device for hours at a time including many phone calls and other meetings with the schemers.

This was one of the most stressful times of my life. I couldn't eat properly, my blood pressure shot up, and my finger nails were actually cracking under the stress. In the end, as you know, the investigation led to the conviction of Planning Board Vice Chair Stu Levine, Nick Hurtgen, Jacob Kiferbaum among others. I'm proud of what I did along with Bill Kottmann, a colleague and Vice President at Edward. I'm also proud, and

saddened, that these tapes opened the door into the pay-to-play world of our former Governor.

When all of this was happening in December 2003 and into 2004, where was the executive secretary of the Planning Board along with the deputy director of the Department of Public Health? Sitting right there at the Planning Board meetings watching the corruption play out publicly while doing little if anything to stop it.

The most compelling example of the corruption playing out publicly happened in April 2004 in connection to the Mercy Hospital decision. During the hearing, which played out publicly in front of hundreds of onlookers, the Mercy Hospital project was approved.

Here's how Alice Hohl, the reporter from the Daily Southtown reported the vote on the Mercy Hospital application which won approval 4-3 on April 21, 2004...and I quote from her 2004 story... "Board members spoke of the Board's power to ignore state criteria. They whispered in conferences during the vote, and one member changed his mind after seeing the vote of his peers...In the middle of the vote, the roll call was halted as Beck and Levine whispered to each other. Levine then approached Dr. Imad Alamanseer, who had voted 'pass' instead of 'yes' or 'no'. After another whispered conversation between Levine and Alamanseer, Alamanseer changed his 'pass' to 'yes', providing the vote needed to pass the project." Unquote.

Members of this Joint Committee, I was there. I watched this happening. There was an audible gasp in the room when Alamanseer changed his vote and Mercy was approved. It was apparent to me and many others in the room that the fix was in. If ever there was a smoking gun, this was it. Yet, as the reporter writes in her story, and I quote... "Stunned by what unfolded, hospital executives did not want to comment on the 'irregularities' because many of them have projects pending before the board" endquote.

With Illinois hospitals basically held hostage by the audacity of the corrupt Board members, the Executive Secretary and Deputy Director watched along with the rest of us.

Yet, to the best of my knowledge, they did little or nothing to report the irregularities or to stop the corruption. And there are plenty of other hospital officials who feel as I do about the leadership of the Planning Board, yet they are too afraid to testify.

Even Stu Levine found the whole situation amusing. During a taped conversation on April 21, 2004, which was revealed during the Tony Rezko trial, Mr. Levine refers to the Mercy vote and says, and I quote, "Looked liked there was a shoe hitting somebody over the head. Could you, did, did you ever in your life see a vote stop in the middle?" endquote.

During 2003 and 2004, the Executive Secretary and Deputy Director were also part of closed-door sessions with Levine, Beck and the other Planning Board members – sessions that were not open to the public. We have no idea what exactly was said, or what was concocted during these private sessions. Again, while not pointing to any illegalities by either public official, I can only imagine that the corrupt Board members were emboldened by this lack of transparency.

What we do know is that the tip of the iceberg was clearly on display at the April 20, 2004, hearing regarding Mercy Hospital.

The Mercy Hospital approval was later set aside because of the corruption.

In fact the only new hospital built in the past 20 plus years is Adventist Bolingbrook Hospital. Adventist Bolingbrook was favored by Tony Rezko. We know this from another transcript from the Rezko trial where former Planning Board Chair Tom Beck says of Rezko, and I quote… "he wants Edwards down and Bolingbrook up…he wants them yes…he wants Edwards to have nothing." End-quote.

Throughout the past five or six years, the Executive Secretary and Deputy Director have also treated Edward disrespectfully during our many appearances before them seeking a hospital in Plainfield. I'd be happy to send this Committee a list of our grievances about

past applications. However, I'd like to focus my support for Amendment Four on the big picture – on accountability and competence.

During the many months of testimony connected to the Illinois Task Force on Health Planning Reform which some of you served on, one thing became abundantly clear: the need for a proactive statewide health plan.

The Executive Secretary and Deputy Director are two of the key public health officials responsible for overseeing the proper execution of the Illinois Health Facilities Planning Act. Section 1100.30 currently states that, and I quote… "This State Plan is…specifically designed to develop a procedure which establishes an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public" and "which promotes through the process of comprehensive health planning the orderly and economic development of health care facilities in the State of Illinois to avoid unnecessary duplication of facilities or services." End quote.

This section provides a clear direction for public health that has not been followed. The fact that the Task Force recommendations spell out a new structure and process for achieving the stated goals of the Health Facilities Planning Act is evidence that the job has been seriously botched.

Plus, health planning in Illinois will only have integrity if it's supported by rules that make sense, rules that are transparent, and rules that are easy to understand and are applied consistently and in a way that supports such a plan. We are nowhere close to that in Illinois under the current leadership in public health. If the CON process is to continue, it needs to be supported by good rulemaking. Further, someone needs to look at how these rules are implemented.

For instance, Public Act 05-005, which was passed nearly unanimously and intended to ensure high growth areas of the state had adequate access to hospital services, was not

implemented as intended—and it has not had the desired effect. Why? Because, under the Deputy Director's supervision, inputs into the bed need formula remain outdated, flawed and extremely difficult to understand. And staunch defense of this flawed formula has stymied effective health planning, rational allocation of services, and access to health care.

The IDPH Bed Inventory, which provides information on the supply and future demand for various hospital services across the state, provides clear evidence of the mess that has developed. There are thousands of excess beds in the City of Chicago, and huge excesses in other areas of the State. But then you have some areas where there aren't enough beds. There is large variation in bed supply and bed need across Planning Areas. There is a strange imbalance of bed supply and bed need within Planning Areas. Obviously, things have not been working as they should.

What we are missing in Illinois is a participative and interactive planning process where we look at this as a whole and say, 'something's not right,' and 'what are we going to do to fix this?' Instead, we have a process where we hear 'this is the way it is,' and 'the rules are the rules.'

In conclusion, House Amendment Four of Senate Bill 1905 deserves your support.

All holdovers in a leadership position of public health should not be connected to any reformed planning board or certificate of need process. State officials – especially those appointed by the Governor and/or holding high level state positions – should be held accountable for their actions, and in-action.

One of the primary reasons that health care planning in Illinois needs to be reformed is because leadership has been clearly ineffective in dealing with these issues. We need new blood and new ideas to get what you want done enacted properly.

Ladies and gentlemen, approximately $5 billion dollars worth of hospital expansion projects were reviewed by the Health Facilities Planning Board last year. That's $5 billion dollars with a "B". No wonder pay-to-play schemes have been targeted at hospitals. The temptation for corruption is huge. This system needs a complete overhaul including new leadership and ex-officio members. The system is broken. In a joint statement to the Illinois Task Force on Health Planning Reform, the U.S. Department of Justice and Federal Trade Commission said, and I quote, "C-O-N laws can be subject to various types of abuse, creating additional barriers to entry, as well as opportunities for anticompetitive behavior by private parties." End-quote. The report went on to say that, and I quote, "The CON process itself may sometimes be susceptible to corruption." End-quote.

We know that all too well in Illinois.

Please step to your responsibilities and help overhaul this system…or send it to the scrap heap.

-end-

EXHIBIT 14

CERTIFIED DECLARATION OF PAMELA DAVIS

I, PAMELA DAVIS, declare under penalty of perjury under the laws of the United States of America that the following statements of fact are true and correct:

1. I am over eighteen years of age. I have personal knowledge of the facts stated in this declaration and I could testify competently to such facts.

2. Since 1988, I have been the President and Chief Executive Office of the Edward Health Services Corporation (EHSC), the parent of Edward Hospital (EH).

3. In November 2003, Edward Hospital filed a permit application, Certificate of Need (CON), with the Illinois Health Facilities Planning Board to establish a medical office building (MOB) in Plainfield, Illinois.

4. On January 6, 2004, I met with Mr. Hurtgen of Bear Stearns. He said he was politically connected to the Illinois state government and can "get things done." Hurtgen further told us that Stuart Levine and the Illinois State Facilities Planning Board Chairman Thomas Beck would decide the fate of both Edward's application for a permit to construct a new hospital in Plainfield and Mercy's in Crystal Lake. He told us to use Kiferbaum's construction company or the Edward CON would not be approved.

5. I met with Herbert Franks and Mike Noonan on or about March 17, 2004. They were assisting Mercy Hospital in seeking to obtain approval of Mercy's Crystal Lakes hospital construction permit. They told me that I should hire Kiferbaum to construct the new Edward facility, because Kieferbaum wielded influence with 2-3

members of the State Board. They said that for the Mercy project, Board member Levine had personally met with Kiferbaum and Mercy's CEO to reassure the Mercy's CEO that Kiferbaum could "get things done."

6. On or about April 19, 2004, I met with Jacob Kieferbaum at the Egg Shell Café in Deerfield, Illinois. Kieferbaum said that he was good friends with Levine and with five of the existing Board members; that the Mercy construction would be approved at the Board meeting of April 21, 2004; and that if we did not use Kiferbaum's company, the Certificate of Need to build the new Edward Hospital in Plainfield would not be approved by the Board. Stuart Levine and Nicholas Hurtgen were also at the Egg Shell Café although they were seated at another table. Mr. Levine walked over to our table. He said that I could trust Kiferbaum and that Kieferbaum's word was good.

FURTHER THE DECLARANT SAYETH NOT.

Pamela Meyer Davis

Executed on March 4, 2005

EXHIBIT 15

DATE: 4/20/04
TIME: 4:52 p.m.
ACTIVITY: Home Telephone 1 incoming from (847) 833-7300
CALL#: 303

SPEAKERS:
LEVINE: Stuart Levine
KIFERBAUM: Jacob Kiferbaum

* * * *

LEVINE Hello.

KIFERBAUM Stuart, Jacob.

LEVINE Hi Jacob.

KIFERBAUM Am I disturbing you?

LEVINE No, not at all.

KIFERBAUM Javon Bea is panicking now.

LEVINE Alright now, now, now I want you to listen to me real good. He's got a lawyer. His lawyer's with him as a matter of fact and everything is just fine and just, and, and, and that, that, that's that. You can not respond. His lawyer is with him and uh, his lawyer's been communicating. He knows exactly what's what and things are fine.

KIFERBAUM Okay. So that, that's who I'm gonna call. He asked me about the fifth vote (UI) I said...

LEVINE He asked you about what?

KIFERBAUM A fifth vote.

LEVINE You know what, you know what. You, you just uh,...

KIFERBAUM Okay, I know what to say.

LEVINE I, I, I'm, I am telling you that a, that, that uh, uh, uh, uh his lawyer's

been with him all afternoon. I mean you know Steve. And, and, and, and, and I'm telling you that things are uh, things are fine. And, and but having him, you know it's just uh, uh, uh if he, if he wants to panic let him panic. But he's got a lawyer. And uh, and uh, I don't want him uh, you know think that you can, you call and (UI) get you know uh, uh, it's, it's, it's gonna be...what he wants you to do? Or what does he, what does he...

KIFERBAUM I hear you.

LEVINE Yeah what, what, what did, what he called and says uh, what is he panicking about?

KIFERBAUM Well he said that he heard, he spent some time with Steve and Steve was telling him, telling him, telling him that it's not, he's not sure that it's going to go through tomorrow because uh, they...

LEVINE Well there, there, there was just, just, you just, uh yeah you know what uh, uh, uh, uh, uh, there uh, uh, uh, everything is fine.

KIFERBAUM Okay.

LEVINE And, and there was, there was a possibility that uh, that the presentation will be made and it would have been put off uh, uh, to uh, to June, and Steve was right to uh, to say that he's not sure that it's going to uh, uh, uh, to go which would not have been adverse to his client's uh, uh, position. This is, you know it's complicated, this and that, but uh, uh, uh, uh, you know, you don't want to give him any, any, any special uh, information. And uh, if you want to uh, ca-, what are you gonna do?

1	KIFERBAUM	Apparently he knows the special...He
2		went on and on with names, and this
3		name, and that name, and you know I
4		said, "listen, you know, I, I let me
5		find out". I didn't tell him where.
6	LEVINE	Well, yeah but will he know (UI). But,
7		uh, but, you just, you, you just tell
8		him that, that um, uh, he's, that he
9		couldn't have a better team (UI)...
10	KIFERBAUM	Good hands.
11	LEVINE	Uh, huh?
12	KIFERBAUM	That he is in good hands.
13	LEVINE	He's in good hands. And, and, and, and
14		uh, and that's that. If he wants to
15		sweat all night uh, let him sweat all
16		night. The fact of the matter is he'll
17		find out tomorrow. You can't, you know
18		they're all fucking nuts.
19	KIFERBAUM	(laughs)
20	LEVINE	Ah, but I'll tell you who's going to go
21		nuts tomorrow is, is, is that other
22		bitch. But let's forget (laughs) not
23		worry about that.
24	KIFERBAUM	Huh?
25	LEVINE	Huh?
26	KIFERBAUM	I love to hear that. (laughs)
27	LEVINE	Yea, now you're not gonna be there.
28	KIFERBAUM	I'm not?
29	LEVINE	Yeah, right.
30	KIFERBAUM	Okay. I, I will uh,...
31	LEVINE	No. I think it's good because, because
32		uh, uh, she'll say it's not...it serves
33		no purpose uh, at all.

1 KIFERBAUM Okay.

2 LEVINE Uh, to the contrary. Uh, because uh,
3 she'll uh, you know.

4 KIFERBAUM I, I hear you.

5 LEVINE Yeah.

6 KIFERBAUM I know, I know what to do now. I'm
7 going to tell him you're in good hands.

8 LEVINE Yeah abs, uh, uh, uh, uh, uh, uh, abs,
9 absolutely. I've been on, but you know
10 this is uh, uh, uh, we're fine.

11 KIFERBAUM Thank you.

12 LEVINE And, and I'll be there. And, and, then,
13 and circumstances being what they are,
14 I'm participating fully.

15 KIFERBAUM Okay.

16 LEVINE Okay.

17 KIFERBAUM I'll talk to you.

18 LEVINE Okay. Bye-bye.

EXHIBIT 16

STATE OF ILLINOIS

DEPARTMENT OF PUBLIC HEALTH

HEALTH FACILITIES PLANNING BOARD
BOARD MEETING

B-4 Mercy Crystal Lake Hosp. and Med. Cntr.
Construct and establish a 70-bed hsopital with a 45-physician clinic attached which consists of offices, treatment rooms & suppiort space.

REPORT OF PROCEEDINGS held at the Holiday Inn Mart Plaza, 350 North Orleans, Chicago, Illinois on the 21st day of April, 2004 at 9:10 o'clock a.m, before Thomas Beck, Chairman.

PRESENT:

THOMAS BECK, CHAIRMAN
STUART LEVINE, VICE CHAIRMAN
ANNE MURPHY, LEGAL COUNSEL
DAVID CARVALLO
DR. IMAD ALMANSEER
ANNAMARIE CARRIE YORK
DANALYN RICE
FRANK URSO, LEGAL COUNSEL
PAMELA ORR
DR. MICHAEL MALEK
JEFFREY MARK
DONALD JONES
DR. FORUNEE MASSUDA

1 CHAIRMAN BECK: Would the applicant
2 be sworn in, please?
3 (Witnesses sworn.)
4 COURT REPORTER: Thank you. Please
5 state your names for the record?
6 MR. BEA: Javon Bea, J-a-v-o-n, last
7 name B-e-a.
8 MR. GRUBER: Richard Gruber,
9 R-i-c-h-a-r-d G-r-u-b-e-r.
10 MR. GLASER: Lou Glaser,
11 G-l-a-s-e-r.
12 MR. COLBY: Sam Colby, S-a-m
13 C-o-l-b-y.
14 MS. RIPSCH: Sue Ripsch,
15 R-i-p-s-c-h.
16 MR. NEMEPH: Joe Nemeph,
17 N-e-m-e-p-h.
18 MR. LOREN: Steven Loren, L-o-r-e-n.
19 MR. STRICKLIN: David Stricklin,
20 S-t-r-i-c-k-l-i-n.
21 MR. FRANKS: Herb Franks,
22 F-r-a-n-k-s.
23 CHAIRMAN BECK: Is that all? Mr.
24 Jones.

1 motion? Mr. Levine moves. Is there a
2 second? Dr. Massuda seconds.
3 Call the roll, please.
4 MR. MARK: Mr. Levine.
5 MR. LEVINE: Yes.
6 MR. MARK: Dr. Almanseer.
7 DR. ALMANSEER: Can I pass?
8 MR. MARK: Dr. Malek.
9 DR. MALEK: Yes.
10 MR. MARK: Dr. Massuda.
11 DR. MASSUDA: Yes.
12 MR. MARK: Ms. Orr.
13 MS. ORR: Pass.
14 MR. MARK: Ms. Rice?
15 MS. RICE: No.
16 MR. MARK: Ms. Carrie York.
17 MS. YORK: No.
18 MR. MARK: Mr. Beck?
19 CHAIRMAN BECK: Where are we at?
20 MR. MARK: Mr. Beck.
21 CHAIRMAN BECK: Yes.
22 MR. LEVINE: I change my vote.
23 MR. MARK: Anyone else wish to
24 multiply their votes? Okay.

1 The motion is currently passed.

2 CHAIRMAN BECK: The motion is

3 approved.

4 MR. GRABER: Thank you very much.

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STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

I, STUART KAROUBAS depose and say that I am an electronic reporter doing business in the State of Illinois; that I reported verbatim the foregoing proceedings and that the foregoing is a true and correct transcript to the best of my knowledge and ability.

Stuart Karoubas
STUART KAROUBAS

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 3RD DAY OF
MAY, A.D. 20 04.

NOTARY PUBLIC

OFFICIAL SEAL
RONALD LEONARD JR
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES : 10-11-06

EXHIBIT 17

SOUTH

Hospitals left scratching their heads

Unknown what vote means for Orland plans

Thursday, April 22, 2004

By Alice Hohl
Staff writer

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

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

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

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

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

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

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

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

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

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

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

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

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

Also supporting the proposal was Stuart Levine.

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

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

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

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

The overall vote crystallized competing philosophies on the board.

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

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

projects until existing beds are filled.

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

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

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

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

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

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

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

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

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

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

Southtown health writer

Alice Hohl may be reached at ahohl@dailysouthtown.com or (708) 633-5993.

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EXHIBIT 18

DATE: 4/21/04
TIME: 8:33 p.m.
ACTIVITY: Home Telephone 1 incoming from (847) 833-7300
CALL#: 332

SPEAKERS:
LEVINE: Stuart Levine
KIFERBAUM: Jacob Kiferbaum

* * * *

LEVINE: Hello.

KIFERBAUM: Stuart.

LEVINE: Jacob, how are you?

KIFERBAUM: I'm fine. How are you doing?

LEVINE: You have no, I'm gonna tell you something. Nobody, nobody could have gotten this done but me and I'll tell you what I mean by that.

KIFERBAUM: They told me.

LEVINE: It real-, it real-, it real-,...

KIFERBAUM: They told me.

LEVINE: (UI) it required there was a mutiny first thing this morning um one of the Board members that didn't wanna do it. But for reasons that uh, that uh, have nothin' to do with specifically with this, but because other people have been promised this wouldn't happen. You know uh, and, and, and, and, and of course nobody really knows that I'm...they, they know that I'm handling it, but they don't know that I'm really orchestrating it. And, and I just stay calm and you know this and that. I mean the chairman was gonna resign. You cannot imagine. But it was all fine by the end of the day. I mean all fine. They actually, we, we, uh, the vote had to be stopped and I had to go and sraighten people out

1		right there in front of the entire
2		audience. (laughs)
3	KIFERBAUM	I heard and I couldn't believe. I
4		couldn't believe it. You know and then
5		I heard the story about the bitch.
6	LEVINE	Oh, she wa-, you know what, she is so
7		fuckin' arrogant. She could not believe
8		that she didn't get her CON. She
9		actually walked out on the chairman.
10	KIFERBAUM	I heard it. (laughs) She is, you know
11		what, if she even calls tomorrow...
12	LEVINE	Yeah.
13	KIFERBAUM	(UI) said you know I don't want even to
14		get close...
15	LEVINE	No, no don't, don't even return her
16		calls.
17	KIFERBAUM	No I'm not returning calls. I have
18		nothing. You know she sent me a letter.
19	LEVINE	What'd she say?
20	KIFERBAUM	The letter said you know after
21		deliberation we've decided not (UI)
22		services.
23	LEVINE	(laughs)
24	KIFERBAUM	I, you know okay.
25	LEVINE	Well she got a letter today too.
26	KIFERBAUM	Okay.
27	LEVINE	(laughs)
28	KIFERBAUM	But, you know but listen, I, I'm telling
29		you I can't thank you enough.
30	LEVINE	Well, no we're, we're in this together.
31	KIFERBAUM	(UI) I could tell you the people that I

spend, I had dinner with all are in awe and know that they would have never...

LEVINE Never.

KIFERBAUM (UI) anything close to it.

LEVINE Um, they, they still have a struggle you know because you know they go, the other hospital systems wanna sue 'em and all this and that, but Steve told me that Javon is a very cool guy and...

KIFERBAUM Yeah.

LEVINE He said to the chairman of Centegra or somebody said that, that, that, the uh, Centegra Board is thinkin' of suing try to stop 'em from happening and, and he's sitting down with them because you know he knows that it's not in his interest so I hope he works somethin' out.

KIFERBAUM He worked something out he's already told...come to the side and say you know what it's not gonna be to your benefit, to my benefit you're gonna waste money on lawyers. We're gonna waste money on lawyers. Let's figure it out. We're building only a 70 bed hospital. We're gonna work on, let's divide the turf to make sure that we don't hurt you. The guy listened to him and he said you know you think that you're gonna get anywhere with it. You're not gonna get anywhere. Apparently they've done it before in some other spot which it came to bite them in the ass. So...

LEVINE Well be that it may, but Steve told me he said something I thought was very clever, he said, why would you wanna piss off this Board.

KIFERBAUM (UI).

LEVINE Meaning, meaning that he's got the Board at the moment Javon.

1	KIFERBAUM	Yeah.
2	LEVINE	At the moment he does.
3	KIFERBAUM	Yeah. So I mean he's a very...
4	LEVINE	Gotta make sure the thing gets built.
5	KIFERBAUM	Yeah. Well...(laughs)
6	LEVINE	(laughs)
7 8 9	KIFERBAUM	But I, I felt so bad, when I heard what was goin' on over there and I, I got a report afterwards I was just...
10 11 12	LEVINE	Well I mean you know listen this is, this is...but, but uh, Ja-, nobody could have kept this together because, bec-...
13 14	KIFERBAUM	No doubt in my mind. No doubt in their mind.
15	LEVINE	(laughs)
16 17 18	KIFERBAUM	(UI) Those idiots. I'll tell you something. They paid money to this guy uh, Cruz or whatever his name I forgot.
19	LEVINE	Reyes. You know what, it's...
20	KIFERBAUM	Reyes.
21 22 23 24 25 26	LEVINE	It's, but you see everybody thinks that's why it was done. If it, it's, you have no idea what a wonderful cover it is for me. They think that the governor told Tony to do this for Victor Reyes.
27	KIFERBAUM	Yeah, for Victor (laughs) Reyes.
28 29 30 31 32	LEVINE	That, that's what they think. I mean they would, I mean uh, Tony promised other people this wouldn't happen. He don't want them to think it's him. The world we live in.

1	KIFERBAUM	(laughs) Listen, I heard one word,
2		people, you know Javon came to me and
3		said, Stuart was masterful.
4	LEVINE	(laughs)
5	KIFERBAUM	All he said is one word he was, no he
6		said Jacob I wanna let you know, we
7		would never ever would of gotten' this.
8	LEVINE	So I take it he's not nervous anymore.
9		(laughs)
10	KIFERBAUM	Oh you know but it, it's nice that he
11		recognized (UI).
12	LEVINE	No ab-, a-, a-, a-, absolutely I mean
13		he's gonna be doing business here.
14		We'll all be doing business here.
15	KIFERBAUM	Yeah he, he knows how to, how to play
16		the game. He's not stupid.
17	LEVINE	Steve Loren told me that Javon told him
18		that Jacob Kiferbaum is the smoothest
19		guy he's ever done business with. How
20		do you like that? Huh.
21	KIFERBAUM	(laughs)
22	LEVINE	So not too bad.
23	KIFERBAUM	Well I, I hope, I hope this is gonna be
24		uh, a good thing for both of us, you
25		know we'll move on. And uh, I'm just
26		now, try to figure out how uh, you know
27		I heard that Bolingbrook also was there.
28	LEVINE	Well Bolingbrook. No because they were
29		both, they both had their, their, their,
30		we, Javon was there on, because he
31		already had it denied and you get one
32		more shot.
33	KIFERBAUM	Yeah.
34	LEVINE	These people were up for the first time,
35		Pam and Bolingbrook and they each got

uh, uh, uh, turned down and they'll come back for the second try. But only one of 'em could get it.

KIFERBAUM Interesting.

LEVINE And it ain't gonna be Pam.

KIFERBAUM Good.

LEVINE Because Jeff Ladd represents the uh, uh, Ad uh, the Ad, the, the Adventist at uh,...

KIFERBAUM You know the mayor.

LEVINE And he rep-, and, and Jeff Ladd represents Centegra.

KIFERBAUM Yeah.

LEVINE And Jeff Ladd got fucked today, but we'll make it up for him over there.

KIFERBAUM Huh. Interesting.

LEVINE And there's no room for Pam.

KIFERBAUM Well I'll go and figure this whole thing. You know my head is spinning by trying to figure out (laughs) who, who got fucked and who uh, but you know the mayor of Bolingbrook is a very good friend of mine. He's a Republican. I don't know if you know him Roger Claar.

LEVINE Hm mm.

KIFERBAUM I, he's uh, he's a nice man I've built in Bolingbrook like 10 million square feet.

LEVINE Mm hm.

KIFERBAUM So, I have very, very, very close relationship with him. I contribute to his campaign and all the time if I ever need anything he's always, any ground

1		breaking that I do over there and so on.
2	LEVINE	Mm hm.
3	KIFERBAUM	Very good relationship with him. I
4		haven't approached him on this thing.
5	LEVINE	You know what, you know you gotta be
6		very careful 'cause Pam thinks, if she
7		sees...
8	KIFERBAUM	Absolutely. No I don't want, I agree
9		with you. If she sees that I've joined
10		the other side that'll be...
11	LEVINE	No uh, well then, then, then and how,
12		you know (UI) but, but b-, believe me
13		uh, uh, um, uh, uh, uh Tony sees an
14		avenue of doing business uh, with uh,
15		with uh, um, uh, I'm doing business with
16		him. And, and he's got the power boy.
17	KIFERBAUM	Good.
18	LEVINE	And, and, and it's only,...
19	KIFERBAUM	I can't, I can't thank you enough...
20	LEVINE	it's only guaranteed for...
21	KIFERBAUM	I know that you had to step up to the
22		plate more than you anticipated or I
23		anticipated.
24	LEVINE	but, eh, listen, y-, eh, y-, you don't
25		like the heat, stay out of the fire,
26		fire, you don't like the heat, stay out
27		of, what the fuck is this, you know what
28		I'm talkin' about. You gotta do,
29		listen, we, we wanna get things done,
30		you do what you gotta do to get it done.
31		(talking in background)
32	KIFERBAUM	I hear you. I appreciate it.
33	LEVINE	Alright.
34	KIFERBAUM	We'll talk.

1 LEVINE Okay Jacob.

2 KIFERBAUM Take care. Thank you.

3 LEVINE Bye-bye. Yeah. Bye.

4 KIFERBAUM Bye.

EXHIBIT 19

Hospital president alleges

Whistleblower lawsuit may taint Wall Street, Springfield

BY CHRIS FUSCO, LORI RACKL, DAVE MCKINNEY, STEVE WARMBIR AND TIM NOVAK
Staff Reporters

A top Chicago financial powerbroker allegedly tried to shake down a Naperville hospital seeking to expand, a lawsuit says.

Either give the $200 million project to a contractor friendly with a state official who must approve the expansion or the project dies.

The hospital balked.

And the state all but killed the expansion two months ago.

That deal was just one of a host of shake-down schemes involving financial powerbroker Nicholas Hurtgen, who runs the Chicago office of Bear, Stearns & Co. Inc., according to a federal whistleblower lawsuit. The civil suit was filed under seal in May by administrators at Edward Hospital in Naperville. The Chicago Sun-Times obtained it Thursday.

While the alleged schemes vary in detail, Hurtgen is described as one of the key players.

Also named was Jacob Kiferbaum, who runs a Deerfield construction company.

Kiferbaum is friends with Stuart Levine, a millionaire political powerbroker. Until he resigned this month, Levine was vice chairman of the state board that decides whether hospitals can open or expand.

None of the men returned messages for comment. Bear, Stearns declined to comment, as did the lawyer for the two plaintiffs, Edward executives Pamela Meyer Davis and William G. Kottmann.

The lawsuit describes an earlier scheme also involving Edward Hospital.

The hospital wound up getting $189 million in state funding in 2001 after agreeing to work with Bear, Stearns, the lawsuit alleges.

Another scheme was just this year. It involves a proposed hospital in Crystal Lake.

Levine and the board approved the project — that Kiferbaum is building, according to the lawsuit. Bear, Stearns did the work to finance the deal, with $69 million in state money.

The final deal is the biggest.

The lawsuit, with no details, contends there was a "kickback" scheme involving the $10 billion deal that Gov. Blagojevich pushed through last year to bail out the state pension plans. Bear, Stearns played a major role in that deal too. No details were given concerning the alleged kickback.

Sometime after the lawsuit was filed on May 24 federal subpoenas were issued to members of the Illinois Health Facilities Planning Board. A criminal investigation is under way into the approval of the Mercy Crystal Lake Hospital and Medical Center, the governor's office confirmed Thursday.

"We asked the inspector general's office to step in and investigate," the governor's spokeswoman, Cheryle Jackson, said late Thursday. "Subsequently, the U.S. attorney's office asked that the inspector general's office pull back and stop its investigation until the U.S. attorney can complete its investigation."

Subpoenas recently were sent to Thomas P. Beck, chairman of the Illinois Health Facilities Planning Board, and all the other board members.

Levine, fund-raising chief for Republican Jim Ryan's failed 2002 campaign for governor, resigned from the board June 7.

Another board member, Dr. Imad Almanaseer, asked not to be reappointed. He cast a controversial deciding vote on the new hospital in Crystal Lake. At first, Almanaseer passed on the vote but after Levine got up and whispered in his ear, Almanaseer cast the crucial fifth vote needed to pass the project.

Jacob Kiferbaum, with Sandy Kiferbaum and Bill Clinton in 2001, is accused in a suit filed by Edward Hospital of being part of a shakedown scheme. The hospital says it was pressed to give business to certain firms in return for favorable state treatment. –COURTESY OF MIDWEST CONSTRUCTION

KEY PLAYERS

JACOB KIFERBAUM

Kiferbaum, 52, is president and founder of Kiferbaum Construction Corp. in Deerfield. He's one of the top contractors in Illinois and has been involved in the design and construction of more than 220 projects.

He's vice president of the America-Israel Chamber of Commerce and – along with Stuart Levine – is on the board of trustees of the Rosalind Franklin University of Medicine and Science, formerly known as Finch University of Health Sciences/The Chicago Medical School in North Chicago. Kiferbaum's company has built some multimillion-dollar buildings at the medical school.

STUART P. LEVINE

Levine, a Chicago attorney who made a fortune through HMOs, is a major political power player in Illinois, contributing more than $1.5 million to politicians since 1994.

More than half that money went to former Illinois Attorney General James Ryan, who unsuccessfully ran for governor in 2002. More than $340,000 went to Lee Daniels, who stepped down as House Minority leader in 2002 and is under federal investigation because his staffers allegedly did political work on the taxpayers' dime.

Levine, 58, of Highland Park, received his law degree from Chicago-Kent College of Law and is chairman of the board of trustees of Rosalind Franklin University of Medicine and Science. He was also knighted by the King of Sweden in 1994 for promoting economic ties between the United States and that country.

Stuart P. Levine

BEAR, STEARNS & CO.

Bear, Stearns has a long history of helping Illinois governments raise money by issuing bonds.

The firm helped sell bonds for McCormick Place's latest expansion and Gov. Blagojevich's $10 billion deal to bail out the state pension systems. The company's Chicago office is run by P. Nicholas Hurtgen, 41, of Glencoe, once a top aide to former Wisconsin Gov. Tommy Thompson.

Wall Street to Springfield

The various allegations in the lawsuit, if proven, could touch Wall Street, Springfield and even President Bush's campaign.

The campaign is headed in the Midwest by a Bear, Stearns consultant whose firm received an $809,133 commission on the $10 billion bond deal. That consultant is Robert Kjellander, the Illinois National Republican Committeeman. He is not named anywhere in the suit.

Whistleblower lawsuits such as the one in the Bear, Stearns case are filed under seal and given to the U.S. Attorney's office but the defendants do not immediately receive a copy. Such cases are assigned to the chief judge of the U.S. District Court.

The U.S. attorney's office has 60 days by law to investigate the claims in the lawsuit and decide whether or not it wants to intervene in the lawsuit.

But the U.S. attorney's office can ask the chief judge for extensions to that deadline and often receives them for further investigation. A U.S. attorney's spokesman declined to comment on the whistleblower lawsuit.

The scheme outlined in that lawsuit begins in 2001. That's when Hurtgen was introduced to Edward Hospital officials by Donald Udstuen. Udstuen was a former close advisor to Gov. Ryan. Udstuen has pleaded guilty to corruption charges. Udstuen, a former chief operating officer of the Illinois State Medical Society, has since cooperated with the feds. Ryan has also been charged and is awaiting trial.

Initially, Edward Hospital wanted to use Morgan Stanley for financing their 2001 project, but Udstuen insisted that it was "important" for the hospital to give the deal to Hurtgen at Bear, Stearns. The hospital did, and the state approved the deal.

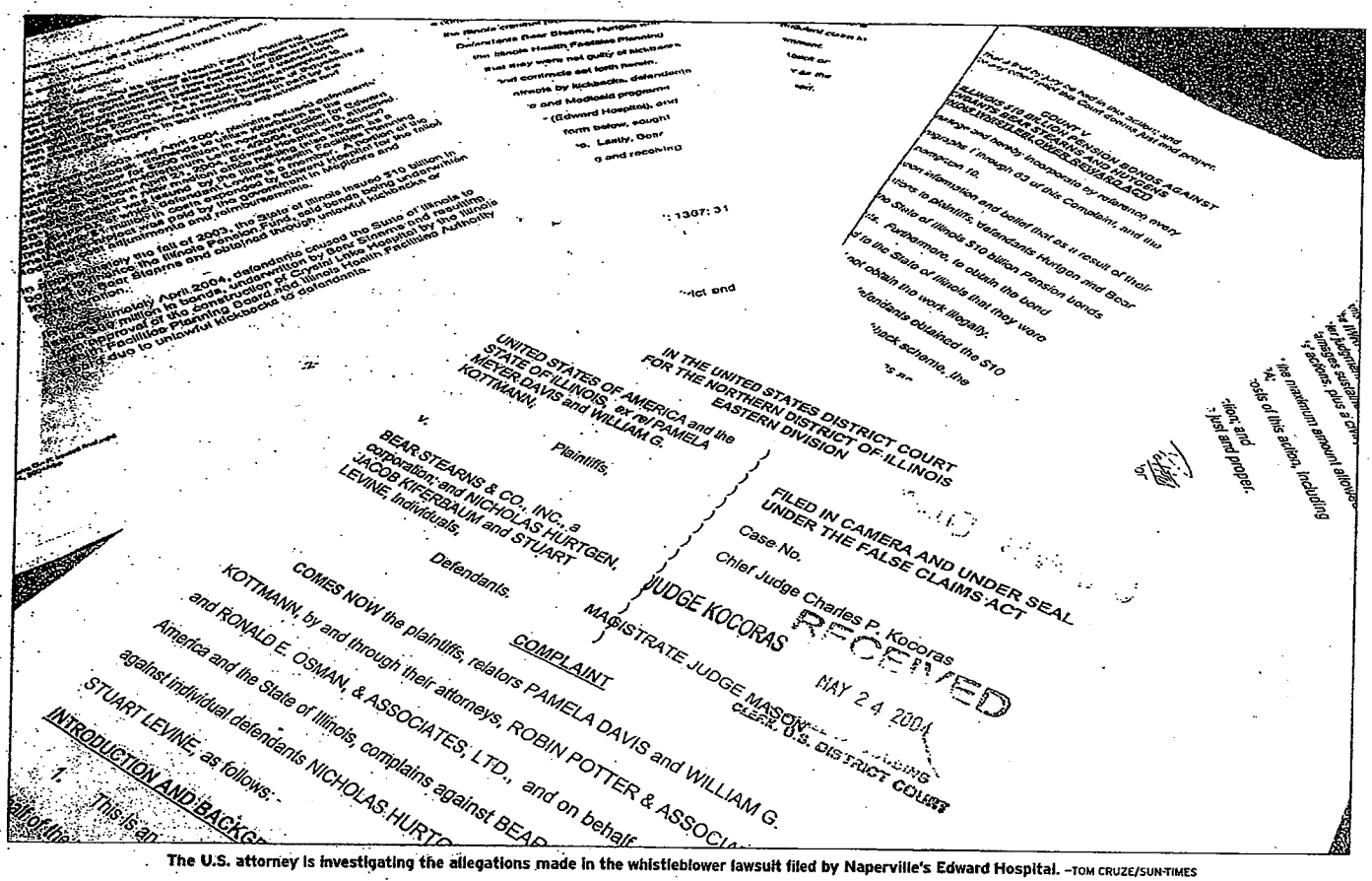
But in another deal, Edward Hospital didn't go along with the program, the lawsuit says.

When Edward approached the board to build a new hospital in nearby Plainfield, Edward wouldn't cave into pressure to hire Kiferbaum Construction Corp.

Kiferbaum and Levine are friends. Both serve on the board of the Rosalind Franklin University of Medicine and Science, formerly known as Finch University of Health Sciences/The Chicago Medical School in North Chicago. Kiferbaum's company has received tens of millions of dollars to build several projects at the school.

In a Jan. 6, 2004, meeting with Edward officials, Bear Stearns' Hurtgen told them "he was politically connected to the Illinois state government administration and can 'get things done.' " the suit reads.

shakedown by power broker



The U.S. attorney is investigating the allegations made in the whistleblower lawsuit filed by Naperville's Edward Hospital. –TOM CRUZE/SUN-TIMES

Hurtgen told the Edward officials that Levine and Beck would decide the fate of Edward's plans.

Edward officials pressed Kiferbaum to prove that he had influence with state regulators.

They got their proof during a meeting at the Egg Shell Cafe in Deerfield, the lawsuit alleges.

Kiferbaum met the Edward Hospital officials there, telling them he was "good friends" with Levine and a majority of the nine-member state board. Kiferbaum told them if his company wasn't used, Edward's plans would not be approved.

Also at the restaurant, at the same time, was Levine and Hurtgen, but they were sitting somewhere else.

Levine walked over to the table and told the Edward's officials that they could "trust" Kiferbaum and "that his word was good," the lawsuit says.

Shortly before the board meeting, Edward officials told Kiferbaum that he wouldn't be getting the contract because his fees were too high, and he lacked experience in building hospitals.

On April 21, the state board indicated its intentions to deny Edward's plans for a new hospital in nearby Plainfield and a delayed a final vote on Edward's medical office building, also in Plainfield.

Bob Kjellander
National Republican Committeeman

Donald Udstuen
Ryan pal admitted corruption

Pension questions

Another alleged kickback scheme doesn't involve hospitals but pensions. The lawsuit contends that a $10 billion deal to bail out state pension plans was "underwritten in part by Bear Stearns and obtained through unlawful kickbacks or remuneration."

"Had the State of Illinois known that defendants obtained the $10 billion Pension Bond underwriting as part of a criminal kickback scheme, the State of Illinois would not have issued or approved Bear Stearns as an underwriter," the suit claims. As a result, the state is entitled to at least $8 million to $10 million in damages, the amount paid to Bear, Stearns, the suit alleges.

The lawsuit, however, does not provide specifics nor does it say who paid or received the "kickbacks."

Budget plugged

Bear, Stearns was handpicked by Blagojevich's budget office as the lead underwriter for the administration's $10 billion pension borrowing program last year, a deal designed to shore up the state's poorly funded employee pension systems.

The largest borrowing deal in state history was put on a legislative fast-track last year. It sprinted out of the General Assembly in April 2003, only six weeks after the governor proposed the plan as a key to helping bail Illinois out of a $5 billion budget hole.

Republicans largely opposed the plan, describing it as fraught with risk. But one of the GOP's most prominent players wound up reaping an unexpected financial bonanza as a result of the deal.

Kjellander, a well-known Republican lobbyist who is the Midwest coordinator for President Bush's re-election campaign, was hired by Bear, Stearns as a consultant to secure "state-level business."

In a company filing, Bear, Stearns disclosed it had paid Kjellander's firm $809,133 in fees in 2003 — an amount that stunned Democrats because of its size.

The state GOP's national committeeman and a personal friend of White House senior adviser Karl Rove, Kjellander's involvement in the bond deal became an issue last May in his successful bid to retain the party post.

Conservative critics accused Kjellander of putting personal gain above party loyalty but could not block him from winning re-election to a four-year term as Republican national committeeman, a post he has held since 1995.

Kjellander said his consulting firm did not represent Bear, Stearns before the Health Facilities Planning Board in any capacity. As for the questions about the pension bond deal he said, "I'm not a lawyer so I can't begin to respond to that. All I know is the bond deal was scrutinized every which way possible, and there was nothing wrong with it."

> "Had the State of Illinois known that defendants obtained the $10 billion Pension Bond underwriting as part of a criminal kickback scheme, the State of Illinois would not have issued or approved Bear Stearns as an underwriter,"
>
> THE LAWSUIT CLAIMS

Lawsuit spurs questions on how hospitals get OKd

Whistleblowers allege shakedown by state health planning board

BY LORI RACKL AND CHRIS FUSCO
Staff Reporters

When a state board recently approved a new hospital for Crystal Lake, some members of the audience reportedly gasped in disbelief.

After all, the hospital plan appeared doomed. Staff had clearly recommended against it. The board itself had initially panned it. The only thing that saved it was a last-minute vote switch by a board member.

Mysterious? You bet.

Now, answers to the mystery may be surfacing in a federal whistleblower lawsuit alleging kickbacks and shakedowns in the way new hospitals get approved in Illinois.

The lawsuit alleges that the Illinois Health Facilities Planning Board approved Mercy Health System's plans for the McHenry County hospital because it would be built by politically connected contractor Jacob Kiferbaum.

The civil suit, which is under seal but was obtained last week by the Chicago Sun-Times, got the feds' attention. The governor's office has confirmed that a criminal investigation is under way.

Mercy officials released a written statement Friday saying it intends "to cooperate with the inquiry" but believes "we have acted properly."

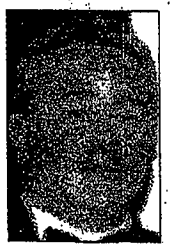
Shortly after the whistleblower suit was filed, the U.S. attorney's office issued subpoenas to members of the planning board, a little-known panel that decides whether new hospitals and other major health-related projects get the go-ahead.

At the heart of both the lawsuit and the criminal investigation is whether the board's decisions are being made for the public good or to line the pockets of a few politically plugged-in power brokers.

The suit was filed last month by administrators of Naperville's Edward Hospital who wanted the board to approve a new hospital and medical office building in Plainfield.

Edward officials claim they were told they'd get board approval if they hired Kiferbaum Construction Corp. of Deerfield to build it.

The Edward administrators describe a March meeting with two lobbyists who had represented



Jacob Kiferbaum
Contractor

Stuart P. Levine
Quit board

Mercy's Crystal Lake hospital project: Mike Noonan, with the firm Greenberg Traurig, which includes Chicago power broker Victor Reyes, and Herb Franks, a McHenry County lawyer and father of state Rep. Jack Franks (D-Woodstock).

State records show that Kiferbaum contributed $1,500 to Jack Franks' campaign. Both Noonan and Herb Franks declined to comment for this story.

Edward officials claim the lobbyists told them they should hire Kiferbaum because the firm wielded influence on the state board. To back up their claims, they noted that board Vice Chairman Stuart Levine had personally assured Mercy's CEO that Kiferbaum could "get things done."

Levine and Kiferbaum serve on the board of trustees of a North Chicago medical school, where Kiferbaum's firm has done tens of millions of dollars worth of construction work. Levine has pumped well over $1 million into candidates' coffers.

The lawsuit alleges that Kiferbaum and Levine were joined by financial heavyweight Nicholas Hurtgen in pressuring Edward officials to give their business to Kiferbaum or see their plans shot down. Hurtgen heads the Chicago office of Bear, Stearns & Co. Inc., which stood to benefit by providing the financing for the projects, the suit claims.

Edward officials refused to hire Kiferbaum. The state board in April indicated it planned to deny Edward's Plainfield hospital request.

At that same April meeting, the board went against staff recommendation and narrowly approved Mercy Crystal Lake Hospital and Medical Center. The 70-bed, $81 million hospital is to be built by Kiferbaum, according to the lawsuit. And it's being financed through $69 million in state-issued bonds, which the suit says are being underwritten by Bear, Stearns.

When it appeared Mercy might not muster the five votes needed for approval, Levine whispered in the ear of fellow board member Dr. Imad Almanaseer, who then changed his vote from a "pass" to a "yes," giving Mercy the go-ahead.

Shortly afterward, two McHenry County hospitals owned by Centegra Health System filed a lawsuit seeking to overturn the board's ruling, calling the decision "arbitrary and capricious."

State Sen. Pamela Althoff (R-Crystal Lake) called for the state to investigate the board's action.

Levine abruptly resigned from the board earlier this month. Almanaseer was a no-show for the board's June meeting. His term expires July 1.

Four new hospital proposals — including Edward's — still stand before the beleaguered board, which meets again in August. Officials at each of the hospitals except Edward said they were not being pressured to go with Kiferbaum for their construction or Bear, Stearns for their financing.

Adventist Health System executive Ernie Sadau said in a written statement that his company was "shocked" by the Sun-Times' report of the controversy swirling around the planning board.

"We sincerely hope that our application to build a hospital in Bolingbrook will not be unjustly affected by this news."

Contributing: *Dave McKinney,*

EXHIBIT 20

Feds investigate Mercy hospital permit

Publication Northwest Herald
Date June 26, 2004
Section(s) Main
Page

By JEFF KOLKEY

jkolkey@nwherald.com

and ERIC R. OLSON

eolson@nwherald.com

The U.S. attorney general's office is conducting a criminal investigation into a decision to approve a permit to build Mercy Crystal Lake Hospital and Medical Center, officials confirmed Friday.

Federal prosecutors have subpoenaed documents from the Illinois Health Facilities Planning Board, said Jeffrey Mark, executive secretary for the board.

Mercy officials said they are cooperating.

"We can tell you that we believe that we have acted properly," Mercy spokeswoman Barb Bortner said in a written statement. "In addition, we have been cooperative and intend to continue to cooperate with the inquiry."

Mercy's proposal to build the $81 million hospital was approved April 21 in a controversial vote in which one planning board member changed his vote after a whispered conversation with a colleague.

The proposal was approved despite failing to meet most state criteria for building a hospital.

Since the vote, the board members involved in the whispered exchange, Stuart Levine and Imad Almanaseer, have quit. Levine resigned June 7, and Almanaseer asked not to be reappointed when his term expires July 1.

Levine, a wealthy lawyer who has donated more than $1 million to political candidates since 1994, may be the focus of the investigation. A sealed lawsuit filed by Edward Hospital in Naperville claims that Levine used his influence with the planning board to win contracts for friends in the construction and finance industries, according to a report in the Chicago Sun-Times.

The U.S. attorney general's office declined to comment on the case.

But Cheryl Jackson, spokeswoman for Gov. Rod Blagojevich,

said an independent state inquiry started several weeks ago was halted at the request of federal prosecutors.

"We asked for the inspector general to investigate," Jackson said. "Soon after the inspector general began their investigation, the U.S. attorney's office asked for the inspector general to hold off on their investigation until they had completed their own investigation."

Health facilities planning board members are appointed by Blagojevich, but Jackson said the governor will take no action until the investigation concludes.

Centegra Health System, the largest health-care provider in McHenry County, is suing to invalidate the planning board's decision to allow the 70-bed hospital at Route 31 and Three Oaks Road in Crystal Lake. The lawsuit claims that the board disregarded its own rules when it approved the hospital.

"We raised our concern after the board's approval by filing the appeal with the McHenry County Circuit Court," Centegra spokesman Geoff Huys said. "Others are now having some concerns about the actions of the planning board."

Planning board member Danalynn Rice of Marion voted against the Mercy proposal. She said she was unaware of any wrongdoing by her colleagues on the board.

"It's unfortunate if those people have done anything they shouldn't have done," Rice said. "I'm sorry for that if that's happened. They made their choice."

EXHIBIT 21

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

ROD BLAGOJEVICH
GOVERNOR

ADMINISTRATIVE ORDER

Number 1 (2004)
July 7, 2004

MORATORIUM ON ALL BUSINESS OF THE HEALTH FACILITIES PLANNING BOARD

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

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

EXHIBIT 22

Public Act 093-0889

HB7307 Enrolled LRB093 22682 AMC 52334 b

AN ACT concerning executive agencies.

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

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

(20 ILCS 3960/4) (from Ch. 111 1/2, par. 1154)
(Section scheduled to be repealed on July 1, 2008)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20 ILCS 3960/4.2)

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

Sec. 4.2. Ex parte communications.

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

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

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

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

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

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

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

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

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

(20 ILCS 3960/19.6)

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

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

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

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

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

Sec. 8. Contingent fees prohibited.

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

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

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

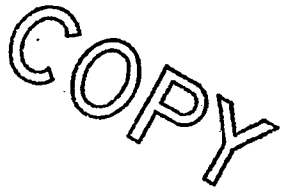
Effective Date: 8/9/2004

Floor Actions

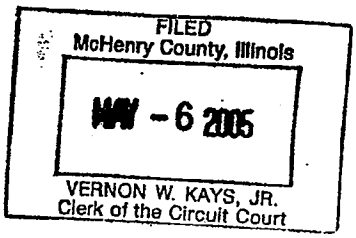
Date	Action
8/9/2004	Public Act 093-0889

EXHIBIT 23

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS



NORTHERN ILLINOIS MEDICAL CENTER, MEMORIAL MEDICAL CENTER, AND CENTEGRA HEALTH SYSTEM,	)	
Plaintiff	)	
vs.	)	CASE NO: 04 MR 106
ILLINOIS HEALTH FACILITIES PLANNING BOARD, ILLINOIS DEPARTMENT OF PUBLIC HEALTH, MERCY CRYSTAL LAKE HOSPITAL AND MEDICAL CENTER, INC. MERCY HEALTH SYSTEM CORPORATION, ELI L. BEEDING JR. AND THE BEEDING GROUP,	)	
Defendants	)	



MEMORANDUM OPINION AND ORDER

This cause came before the Court on Count I of the Complaint filed by the Plaintiffs' Northern Illinois Medical Center, Memorial Medical Center and Centegra Health System for Administrative Review of the Decision of Illinois Health Facilities Planning Board ("State Board") pursuant to 735 ILCS 5/3-110, 5/3-111 20 ILCS 3960/11. Plaintiffs seek reversal of the Administrative Decision of the State Board which granted a permit to the Mercy Crystal Lake Hospital and Medical Center, Inc. ("Mercy Hospital") to construct a new hospital in Crystal Lake. Plaintiffs contend that the State Board's actions in approving the issuance of the permit were against the manifest weight of the evidence and arbitrary and capricious, particularly in light of the negative reports of the Illinois Department of Public Health ("State Agency").

The Court has reviewed all the relevant pleadings, including Count I of the Complaint for Administrative Review, Plaintiffs' Motion to Reverse Administrative Decision, the Memorandum in support of said Motion, the Response of Mercy Hospital and Mercy Health System Corporation and Reply of Plaintiffs thereto. The Court has further reviewed the entire certified record of administrative proceedings which includes the Application for Permit, documents in support of the application, the State Agency reports, the Record of Public Hearing on September 29, 2003 and the transcripts of hearings before the State Board on December 17, 2003 and April 21, 2004, with corrections made at the June 15, 2004 State Board meeting. The Court has reviewed the case law cited by the parties in their written submissions and has had the benefit of the oral arguments of the attorneys for the Plaintiffs and Defendants.

BACKGROUND

The Illinois Health Facilities Planning Act was instituted "to establish a procedure designed to reverse the trends of increasing in costs of health care resulting from unnecessary construction or modification of health care facilities .... and to improve the financial ability of the public to obtain necessary health services and to establish an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public". 20 ILCS 3960/2 To that end, the Planning Act provided for the creation of a Board and defined its duties and functions. The powers and duties of the State Board include the prescribing of rules, regulations, standards, criteria and procedures to carry out the provisions of the Act. 20 ILCS 3960/12 The regulations and criteria are contained in Sections 1110 through 1260 of Title 77 of the Illinois Administrative Code. A health care facility cannot be modified or constructed unless the Board issues a permit. 20 ILCS 3060/5.1 In evaluating an application for

permit or Certificate of Need, the Board is assisted by Illinois Department of Public Health which serves as administrative and staff support for the Board. 20 ILCS 3960/4

On July 11, 2003, Mercy Hospital filed an Application for Certificate of Need (CON) with the Illinois Health Facilities Planning Board. The application requests a permit for establishment and construction of a new 70 bed hospital with adjacent office facilities for 45 physicians in Crystal Lake, Illinois. The proposed hospital would have 56 medical/surgical beds; 10 obstetrics beds and 4 intensive care beds. The hospital site is located within a MSA, known as area A-10. The initial application was deemed incomplete on July 24, 2003 and by letter of that date, additional information was requested. That information was provided on July 30, 2003, which included a listing of all hospitals within 45 minutes of the proposed facility.

A public hearing was conducted on September 29, 2003 in Crystal Lake, Illinois. In addition to persons associated with Mercy Hospital and its parent corporation, Mercy Health System, hundreds of interested persons testified or offered written submissions both in favor of and in opposition of the proposed project.

The Illinois Department of Public Health issued its initial report evaluating Mercy Hospital's application. The report found that overall, Mercy Hospital did not meet the review criteria of Illinois Administrative Code, Sections 1110 and 1120. The State Agency submitted its report to the Board on December 17, 2003 and the Board conducted a hearing on that same date. At the meeting the Board denied the application.

Thereafter, Mercy Hospital submitted additional information for the project to the State Agency and requested another hearing date before the State Board. A Supplemental Agency Report was prepared based on the new materials and submitted to the State Board at its April 21, 2004 meeting. The report did change some of its findings in the supplemental report dealing

with financial and economic considerations under Section 1120 of the Illinois Administrative Code. The evaluations pertaining to Section 1110 remained unchanged. At the Board meeting on April 21, 2004, the Board approved Mercy Hospital's application. The State Agency issued a letter on May 15, 2004 informing the applicant of the State Board's approval of the project.

On May 26, 2004, the Plaintiffs filed its Complaint for Administrative Review of the State Board's decision to grant the CON to Mercy Hospital. The Plaintiffs assert that the decision of the State Board should be reversed because (a) it is against the manifest weight of the evidence; (b) the issuance of the permit was arbitrary and capricious; (c) the vote of the Board on April 21st did not specify the action proposed and the Board did not make any findings; and, (d) the voting process was improper and evidence of arbitrary conduct.

REVIEW OF THE BOARD'S DECISION

A. MANIFEST WEIGHT OF THE EVIDENCE:

The Plaintiffs contend that the Decision of the Board to issue the permit to Mercy Hospital for the establishment and construction of a new hospital in Crystal Lake, Illinois was against the manifest weight of the evidence.

If factual findings are made by an administrative agency, they are viewed as prima facie correct and a reviewing court will not disturb those findings, unless they are contrary to the manifest weight of the evidence. BRIDGESTONE/FIRESTONE, INC. vs. DOHERTY, 305 Ill. App. 3d 141 (1999).

At the administrative hearing on April 21, 2004, no factual findings were made by the State Board. On May 14, 2004, the executive secretary of the Board issued a letter notifying Mercy Hospital that the State Board had approved the Application for Permit. That letter

indicated that Board based its approval upon the project's substantial conformance with the applicable standards and criteria of Part 1110 and 1120. It further stated that, "In arriving at a decision, the State Board considered the findings contained in the State Agency Report, the application material, the State Agency's Report of Public Hearing held on September 29, 2003 and any testimony made before the State Board".

The aforesaid letter does not set forth specific findings of fact. It does state the Board's conclusions and the basis therefore. Section 10 of the Planning Act does not require the Board to specify its findings of facts and conclusions unless negative action on an Application is taken. 20 ILCS 3960/10 In addition, Section 1130.680 of the Administrative Code requires the Board to specify its "finding of fact and conclusions of law" only when the Board denies an application. ACCESS CENTER FOR HEALTH, LTD. Vs. HEALTH FACILITIES PLANNING BOARD, 283 Ill App 3d 227 (1996).

In the case at bar, the State Board did not deny Mercy Hospital's Application for Permit or CON. Even if findings were necessary, that may not be enough for the trial court to reverse the Board's decision. If the record contains competent and sufficient evidence that supports the agency's decision, the decision should be affirmed. CATHEDRAL ROCK OF GRANITE CITY, INC. vs. ILLINOIS HEALTH FACILITIES PLANNING BOARD. 308 Ill App 3d 529 (1999).

An administrative agency's decision is against the weight of the evidence only if the opposite conclusion is clearly evident. The mere fact that the opposite conclusion is reasonable or that the reviewing court may have ruled differently does not justify reversal of an administrative decision. A trial court may not reweigh the evidence or make an independent

determination of the facts. ABRAHAMSON vs. ILLINOIS DEPARTMENT OF PROFESSIONAL REGULATION, 153 Ill. App 2d 76 (1992)

In order to approve and authorize the issuance of a permit if it finds the State Board must find that the proposed project is consistent with the orderly and economic development of such facilities and is in accord with standards, criteria or plans of need adopted and approved pursuant to provisions of Section 12 of 20 ILCS 3960.

Section 12 of the Illinois Health Facilities Planning Act authorizes the State Board to prescribe rules, regulations, criteria and procedures to carry out the purposes of the Act. That section further enumerates certain factors the Board shall consider in developing health care facility plans. Those factors include the number of existing and planned facilities offering similar programs, the extent of utilization of existing facilities, the availability of facilities which may serve as alternatives or substitutes and the availability of personnel necessary to operate the facility. 20 ILCS 3960/12(1) and (4).

Acting as an administrative and support arm of the State Board, the State Agency prepared two reports for the Board's review and consideration. Those reports consider the application and supporting documentation submitted. The State Agency evaluated Mercy Hospital's application with respect to financial and economic criteria set forth in Section 1120 of Title 77 of the Illinois Administrative Code and the general review criteria and needed related criteria set forth in Section 1110 of the Illinois Administrative Code 77 Illinois Adm. Code. The Administrative Code has the force and effect of law. MEDCAT LEASING CO. vs. WHITLEY, 253 Ill App 3rd 801 (1993).

The Agency report completed for submission to the State Board Hearing on December 17, 2003 found that the Mercy Hospital Application, was in conformity with three of the four

applicable economic feasibility criteria and that the financial feasibility criteria were not applicable. The Agency report found that aside from meeting the background of applicant criterion (1110.230), that Mercy Hospital met none of the other criteria under Section 1110, the general or need related criteria, including the criteria for a variance to bed need.

At the December 17, 2003 State Board Hearing, Mercy Hospital had various representatives present who presented testimony regarding the application and in response to questioning by Board members. Those present for Mercy were Javon Bea, President of Mercy Hospital; Richard Gruber, Vice President of Mercy Hospital; Dan Colby, President of mercy Harvard Hospital and three attorneys representing Mercy. The Board addressed concerns regarding the bed variance, the shortage of obstetrical beds in the M.S.A., the additional physicians that Mercy would bring to staff its proposed hospital and the impact of the hospital on staffing in other area hospitals. At the conclusion of the hearing, the State Board denied Mercy Hospital's application. No findings were made. However, before the Notice of Intent to Deny was sent on January 27, 2004, Mercy Hospital on January 15, 2004 sent a letter with supplemental information requesting leave to reappear before the Board at the February meeting.

After receipt of the supplemental information from Mercy Hospital, the State Agency issued another report for submission to the Board at its April 21, 2004 meeting. No hearing was held regarding Mercy's application between December 17 and the April 21st meeting. The report of the State Agency for the April hearing contained the same findings regarding the general criteria and needed related criteria; that being that except for applicant meeting the background criteria, Mercy Hospital did not meet the other 1110 criteria. The State Agency found that with the change in cost submitted by Mercy in the supplemental materials, Mercy now met all of the economic feasibility factors.

At the hearing on April 21, 2004 before the Board representatives of Mercy appeared as well as its legal counsel. With respect to bed need, Mercy Hospital had submitted data from the Center for Disease Control which indicated that 76% of the hospitals in the United States have less than 100 beds. Upon questioning, hospital personnel acknowledged that this study was not Illinois or McHenry County based but rather reflected nationwide statistics. Documentation regarding the decrease in average patient stays was discussed using 980 figures versus today. Testimony was received regarding the 45 new physicians Mercy would bring to the proposed hospital, which physicians would be in their employ. Mercy representatives opined that with these new doctors in place, patients who resided in the M.S.A. who sought treatment outside of the M.S.A. would return for care. There was discussion concerning the findings by the State Agency on the general criteria and need criteria not being met. Board member Levine believed that the rules were outdated and needed to be revised to reflect current data. He was particularly impressed with the 45 physicians who would be moving to McHenry County to staff the proposed hospital. At the conclusion of the hearing, the Board voted to approve the application and the motion passed. On May 14, 2003, a letter advising of the approval of the application for permit was sent to Mercy Hospital.

Plaintiffs assert that the decision of the State Board is against the manifest weight of the evidence because the proposed project was not in accordance with the standards, criteria or plans of need adopted and approved pursuant to the provisions of the Illinois Health Facilities Planning Act. In particular, the Plaintiffs direct the Court to the State Agency reports wherein it was noted that Mercy Hospital's proposed project was not in conformity with the general review criteria and need related criteria under Sections 1110 of the Illinois Administrative Code.

The Defendants counter Plaintiffs assertions by directing the Court to the standard of review and the discretionary authority the State Board has under 1130.660 of the Illinois Administrative Code. That provision states in pertinent part the follows:

> "The State Board shall consider the application and any supplemental information or modification submitted by the applicant, IDPH report(s), the public hearing testimony, if any and other information coming before it in making its determination whether to approve the project. The applications are reviewed to determine compliance with review criteria enumerated in 77 Ill. Adm. Code 1110 and 1120. The failure of a project to meet one or more review criteria, as set forth in 77 Ill. Adm. Code 1110 and 1120 shall not prohibit the issuance of a permit."

The applicability of Section 1130.660 has been addressed in a number of cases, which cases have been cited by the parties herein. With the exception of the Court in SPRINGBOARD, the Courts have recognized that the State Board does have the authority to approve an application where one or more of the review criteria were not met. DIMENSIONS MEDICAL CENTER, LTD. Vs. SUBURBAN ENDOSCOPY CENTER, 298 Ill App 3d 93 (1998). ACCESS CENTER FOR HEALTH LTD. vs. HEALTH FACILITIES PLANNING BOARD, 283 Ill App 3d 227 (1996), CATHEDERAL ROCK OF GRANITE CITY vs. ILLINOIS HEALTH FACILITIES PLANNING BOARD, 308 Ill. App 3d 529 (1999) and MARION HOSPITAL CORPORATION vs. ILLINOIS HEALTH PLANNING BOARD, FACILITIES SPRINGWOOD is distinguishable from the aforementioned cases because the Court did not consider the applicability of 1130.660 in that case. SPRINGWOOD ASSOCIATES vs. HEALTH FACILITIES PLANNING BOARD, 269 Ill App 3d 944 (1995).

However, in each of the cases where the Courts upheld the Board's decision to exercise its discretionary authority, the courts looked to the record to determine if there was adequate evidence to support the Board's decision. None of the cases cited by the Defendants have State

Agency Reports that found lack of conformity with essentially all of the need related and general criteria as in the case at bar.

The letter of May 14, 2004, issued on behalf of the State Board found substantial conformance with the applicable standards and criteria of part 1110 and 1120 based on its consideration of the findings contained in the State Agency reports, the application material, the report of public hearing on September 29, 2003 and any testimony made before the State Board.

At the public hearing the majority of those who testified were in opposition to the proposed project. Almost 2000 letters were submitted both in support of and in opposition to Mercy Hospital. More letters were in opposition. Many of the letters submitted were form letters used by supporters of Plaintiffs' and Defendants' respective positions. Some of the letters were from Mercy's website, which did not allow negative input.

The State Agency Reports submitted to the State Board for hearings on December 17, 2003 and April 21, 2004 found that the proposed project was not in conformity with the following general review and need related criteria: 110.320(a): Establishment of Additional Hospitals, 110.320(b); Allocation of Additional Beds, 1110.520(a); Unit Size; 1110.520(b); Variances to Bed Needs, 110.520(b)(2); Medically Underserved Variance, 1110.230(a); Location, 1110.230(c); Alternatives, 1110.230(d); Need for the Project, 1110.230(e); and Size of the Project. The project was in conformity with 1110.230(b), Background of Applicant, which provided that the applicants complied with the necessary licensure and certification information required and are fit, willing, able and have the necessary background to provide a proper standard of healthcare service for the community.

In response to the adverse reports of the State Agency, Mercy Hospital addressed the growing population trends in McHenry County, the shortage of physicians in McHenry County

and the changes in the practice of medicine that have reduced the average length of patient stays in hospitals. Mercy Hospital asserts that as a result of the decline in the patient length of stays, there is no longer a need for the requirement of 100 medical/surgical beds as established in 1980 and that only 67 beds are needed to serve the same number of patients.

Section 1110.320(2) of the Illinois Administrative Code requires that hospitals within a M.S.A. must have a minimum of 100 medical/surgical beds. Hospitals situated outside a M.S.A. do not have such a limitation. Mercy Hospital proposes 56 med/surg. beds with initially 32 of the entire 70 beds being built out and the remaining 38 being shells for later construction. The Defendant hospital did not identify how the 32 beds would be allocated. At the Board hearing of April 21, 2004, Mr. Glaser, on behalf of Mercy Hospital stated that all 70 beds would immediately be built out, contrary to the data in the application and earlier testimony. (R3541) (R.14) Section 1110.230.530(a)(1)(A) provides that a new obstetric unit with a M.S.A. must have 20 beds. Mercy proposal is for 10 obstetric beds.

Mercy Hospital submitted material based on average length of patient stays in 1980 to the present, claiming that 67 beds would now provide care for the same number of patients in a 100 bed facility in 1980. The documentation presented gives nationwide figures with no specific data for Illinois.

The 100 bed standard was established in 1992 and not 1980 and is applicable only to hospitals within a Metropolitan Statistical Area, such as the proposed location. Furthermore, according to the bed inventory data, the A-10 planning area (M.S.A.), where the proposed facility would be located, has 35 excess medical surgical beds and 7 excess ICU beds. Assuming that the present average length of patient stays reduces the need for beds, then the proposed additional beds at Mercy Hospital would only increase the surplus but also affect the target

utilization rates at neighboring hospitals, which is also taken into account under the need related criteria. Presently the hospitals in proximity to the proposed project are generally not operating at the State's target utilization rates.

The only shortage of beds in the M.S.A. is obstetrical beds, which shortage is 20 beds. Mercy's application proposes 10 obstetrical beds. Mercy Health System Corporation operates Mercy Harvard Hospital, which is within M.S.A. 10. Mercy Harvard Hospital closed its obstetrical unit approximately three years ago and has not reopened since Mercy acquired the hospital approximately two years ago.

There are located within planning Area 10 three hospitals which offer the same services as the proposed project. Two of these three hospitals are within 30 minutes of the proposed facility. These are Northern Illinois Medical Center in McHenry and Memorial Medical Center in Woodstock. The third hospital, Mercy Harvard is within 45 minutes of the proposed facility. Additionally, there are four other hospitals not within the planning area, but within 30 minutes of the site of Mercy Hospital. They are Advocate Good Shepherd, Barrington, St. Alexius Medical Center, Hoffman Estates, Sherman Hospital, Elgin and Provena St. Joseph Hospital in Elgin. Each of these health facilities offer the same services as the proposed hospital.

Defendant acknowledges the presence of these other hospitals and that Mercy will offer no services not already provided by these facilities. However, Mercy contends that with the growth of population within the county, the travel times will increase in the future and thereby increasing the travel times in excess of 30 minutes to those hospitals. The estimates of future travel times do not take in account road expansion projects which might be undertaken. The evidence on the travel times and future projections offered by the Defendant are in some instances inaccurate and other instances speculative.

Mercy opines that a significant percentage of patients are leaving the planning area for health care and that with the establishment of a new hospital, a good percentage of those patients will return to the area for treatment. Competent evidence is lacking to support this opinion. Evidence at the public hearing and elsewhere in the record shows that approximately 75% of the residents within zip code targeted area received care at existing hospitals and that other patients leaving the target area are doing so for specialized or tertiary care. It is also unclear if Mercy's opinion takes into account the services received at the hospitals located within 30 minutes but outside of area A-10.

The review criteria does provide for variance for bed need. 77 Ill. Adm. Code 1110.530(b)(2). In order to satisfy the variance to bed need requirements, Mercy Hospital had to document that access to the proposed service is restricted in the planning area by documenting at least one of the following: (i) the absence of service within the planning area; (ii) limitations on government funded or charity patients; (iii) restrictive admissions policies of existing providers; (iv) the area population and existing care system exhibits indicators of median care problems such as an average family income level below the state poverty level, high infant morality or designation as a "Health Manpower Shortage Area:, or (v) the project will provide for a portion of the population who must currently travel over 45 minutes to receive service. Mercy Hospital was found to have documented none of the aforesaid criteria in order to receive a variance. Evidence presented showed that seven hospitals are within 45 minutes and all offer the same services Mercy will offer, if not more. Travel studies submitted by mercy were in some ways misleading as they included round trip travel times which is not the standard for review or were based on future projections. No evidence whatsoever was submitted to document items (i) through (iv).

Much was made by the Board at the April 21, 2003 hearing about the 45 physicians Mercy Hospital would bring to staff its hospital and adjacent offices. It is unclear from the evidence where these physicians will come from. However, Mercy did indicate that with the opening a new hospital, it would close three of its physician staffed facilities now located in and Cary and Crystal Lake. Board member, Mr. Levine, commented at the April 21st meeting how impressed he was that these new physicians would help make a dent in the shortage of physicians in the area. There was a chart provided showing a physician shortage in McHenry County. The underlying data for the information in the chart is unknown. While the Board addressed the shortage of physicians in the area, it appears not to have adequately considered the shortage of healthcare support staff. The evidence in the record reflects that there is a shortage of health care personnel needed to staff hospitals. There are not enough nurses, medical technicians and laboratory technicians to staff hospitals nationwide and in McHenry County. Testimony at the public hearing expressed a concern that the new hospital would not be able to adequately staff its facility and would have to recruit medical personnel from other area hospitals, thereby causing shortages of necessary and required staff in those facilities. Area hospitals have experienced staffing problems which have resulted in their not being able to maximize the use of their facilities.

The record further documents that the proposed hospital would adversely impact the utilization rates at hospitals within the M.S.A. and nearby. Mr. Ryder, of Advocate Health Care in Barrington testified at the public hearing that more than 25% of its patients are from the towns targeted by Mercy Hospital. A study submitted at the public hearing by Plaintiffs and prepared by Deloitte and Touche, at Plaintiff's instance concluded that Northern Illinois Medical Center and Memorial Medical Center, both in A-10 would lose approximately 9,500 cases annually.

Upon a review of the record, there is not sufficient and competent evidence supporting the State Board's decision to grant the issuance of the permit to Mercy Hospital. While the Board has the authority to issue a permit when all of the criteria under 1110 are not met, there needs to be some rationale basis to excuse compliance with the criteria. The record does not reflect that Mercy Hospital presented sufficient evidence showing that the proposed hospital facility was needed, was the most effective or least costly alternative and was in a medically underserved planning area. Sufficient evidence did not establish that the project warranted a variance to bed need.

Mercy Hospital's application did not meet the necessary general review and need related criteria and the factors set forth in 20 ILCS 3960/12. The written submissions and oral testimony did not rebut the Agency's findings that Mercy Hospital's application was not in conformity with the criteria set forth in 77 Ill. Adm. Code 1110. This Court finds that the State Board's decision is against the manifest weight of the evidence.

B. ARBITRARY AND CAPRICIOUS

The Plaintiffs also contend that the Board's decision was arbitrary and capricious. The Illinois Supreme Court in GREER vs. ILLINOIS HOUSING DEVELOPMENT AUTHORITY, 122 Ill 2d 462 (1988) set forth guidelines to be applied by the Court in determining whether the decision of an Agency is arbitrary and capricious. Those guidelines direct the Court to consider: 1. Did the Agency rely on factors the legislature did not intend the agency to consider; 2. Did the Agency fail to consider an important aspect of the problem, or 3. Did the Agency offer an explanation for its decision which runs counter to the evidence before the agency or which is so

implausible that it could not be ascribed to a difference in view or the product of agency expertise.

The State Board in the case at bar excused the mercy Hospital's failure to comply with essentially all of the general and need related criteria. The only rationale for the Board's actions capable of being gleaned from the hearing on April 21st was that the rules and review criteria are outdated and that this new facility will help fill the shortage of physicians in the service area.

At that April Board meeting, Board members expressed concern about the Board's decision being termed "arbitrary and capricious" if it approved the Mercy Hospital Application for Permit in light of the State Agency's two reports showing non conformity with the 1110 criteria. In response thereto, Board member Stuart Levine stated that the rules and criteria are "woefully out of date". He further stated that he has participated in "a lot of applications that were granted that had complete negative findings. And those occurred in instances where there were valid reasons and justifications given in each of the areas that, of course, are in the Board's discretion to do". R 3264. Yet, Mr. Levine did not offer any explanation or justification for the Board's approval in the instant case, other than he was impressed with the 45 new physicians who would be coming to McHenry County and who would make a dent in the physician shortage.

The Board hearing on April 21 focused in large part on the new physicians who would be employed by Mercy Hospital. However, the rules governing the Board's decisions do not provide for criteria which address physician shortages. The documentation provided by Mercy regarding physician shortages was done by Solucient and is in the record at page 2913. The chart shows that Crystal Lake, the location of the proposed hospital, has no physician shortage. Lake in the Hills, Cary and Algonquin are the other target service areas. No data is provided for

physicians in Lake in the Hills. On Solucient's documentation, Cary and Algonquin do show physician shortages. The source for the data is not disclosed. Even with these claimed shortages, Mercy System Corporation is going to close its two physician offices in Crystal Lake and one in Cary.

Furthermore, while there may be a shortage of physicians in the area, the Board did not discuss and apparently did not consider the evidence in the record of the shortages of registered nurses, laboratory technicians and medical technologists in the area. The public hearing record is replete with testimony of medical personal on the shortage of such personnel. These personnel are needed to staff a hospital. Mercy Hospital offered no evidence where this staff would come from other than stating they would recruit medical personnel who worked outside of the area. Northing in the record indicates a surplus of such personnel in other areas of the state. No evidence was presented on the number of resident medical personnel who worked outside of the M.S.A. or beyond the 30 minute travel time. Testimony at the public hearing showed a concern among McHenry County health care workers that Mercy would recruit staff from area facilities thereby affecting the viability of those hospitals.

Upon a review of the record, the Court finds that State Board relied on factors not intended by the legislature and that they failed to consider important aspects of the problem concerning the shortage of medical support staff and the impact the proposed hospital would have on the hospitals within the M.S.A. and within 30 minutes travel time. When the Board first denied the Mercy Hospital's application, it had information on the 45 new employee-physicians who would be at the physician offices adjacent to the hospital. Yet, at the April 21st meeting, the new physicians appeared to be the primary basis for the affirmative vote.

The Court finds that the actions of the State Board, in approving the application for permit for the Mercy Hospital project, was arbitrary and capricious.

C. NECESSARY PARTIES

Plaintiffs contend that the decision should be reversed because the proper party was not joined as a party to the application. Particularly, Plaintiffs claim that Section 1130.220(b) of the Illinois Administrative Code requires that Mercy Health Systems Corporation be a co-applicant.

Section 1130.220 provides in pertinent part as follows:

"The following person(s) must be the applicant(s) for permit or exemption, as applicable:

(b)(3) any related person who is or will be financially responsible for guaranteeing or making payments on any debt related to the project."

It is undisputed that Mercy Health System falls within that classification and that they were not parties to the application. The State Agency Report, however, reflects that is considered that entity to be a co-applicant even though it wasn't. Documentation was submitted verifying the bond rating of Mercy Health System Corporation and other data was provided regarding its corporate structure and related entities.

The non inclusion of Mercy Health System as an applicant may have affected the economic review criteria under 1120.310(a). The State Agency found that Criterion 1120.310(a) was "not applicable as the applicant's document proof of an "A "bond rating". Mercy Health System should have been a party to the application for permit. However, the failure to include Mercy Health System Corporation as a co-applicant, standing alone, would not be a basis for a finding of the State Board's decision being against the manifest weight of the evidence.

D. THE VOTING PROCESS

The Plaintiffs claim that the voting process was improper by the Board not specifying the nature of the motion voted on and Board members engaging in off the record discussions. It is apparent from the record that the Board on motion knew that it was voting to approve the permit. While formality is lacking, the record reflects that in the other proceedings that day, which are part of the record the Board used the same methodology in voting.

While the off record comments by Board members may be irregular, they do not constitute ex parte communications. The Court can not attribute any significance to the off record comments in this review.

Based on a review of the record and for the foregoing reasons, the Court hereby finds that the Decision of the Illinois Health Planning Board to grant the issuance of the permit to Mercy Hospital and Mercy Health Systems was against the manifest weight of the evidence and arbitrary and capricious.

IT IS HEREBY ORDERED that the Decision of the Illinois Health Planning Board to issue a permit in Project No. 03-049 is reversed.

DATED: May 6, 2005

ENTERED Maureen P. McIntyre

MAUREEN P. McINTYRE
CIRCUIT JUDGE

EXHIBIT 24

U. S. Department of Justice

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FOR IMMEDIATE RELEASE
MONDAY MAY 9, 2005

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

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

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

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

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

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

> **Stuart Levine** – 19 counts of mail fraud, 4 counts of wire fraud, 2 counts of misapplication of funds, 2 counts of money laundering and one count of extortion – a businessman whose interests included S.L. Investment Enterprises, L.P., and a former member of the Illinois Health Facilities Planning Board (Planning Board), a state commission appointed by the Governor that grants or denies a permit, known as a "Certificate of Need" (CON), to build hospitals, physician offices or other medical facilities statewide. Levine was also a member of the board of trustees of Rosalind Franklin University of Medicine and Science, formerly known as Finch University of Health Sciences/Chicago Medical School (Chicago Medical School or CMS) in North Chicago, and he was chairman of its real estate committee. He was also a trustee of the Northshore Supporting Organization (NSO), a charitable trust that supported Chicago Medical School;
>
> **Jacob Kiferbaum** – 16 counts of mail fraud, 3 counts of wire fraud, 2 counts of misapplication of funds and one count of extortion – chief executive officer of KCC Group Design + Build, Inc., formerly known as Kiferbaum Construction Corp., of Deerfield. Kiferbaum was also a trustee of Chicago Medical School; and
>
> **P. Nicholas Hurtgen** – 3 counts of mail fraud, 3 counts of wire fraud and 1 count of extortion – formerly senior managing director in the Chicago office of Bear Stearns & Co., an investment bank that did business and sought to do business with the State of Illinois, Edward Hospital in Naperville, part of Edward Health Services Corp., and Mercy Health System Corp., of Janesville, Wis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# # # #

EXHIBIT 25

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

NORTHERN ILLINOIS MEDICAL CENTER, MEMORIAL MEDICAL CENTER, and CENTEGRA HEALTH SYSTEM,	)	
Plaintiffs,	)	
v.	)	No. 04-MR-106
ILLINOIS HEALTH FACILITIES PLANNING BOARD, ILLINOIS DEPARTMENT OF PUBLIC HEALTH, MERCY CRYSTAL LAKE HOSPITAL AND MEDICAL CENTER, INC., MERCY HEALTH SYSTEM CORPORATION, ELI L. BEEDING JR., and THE BEEDING GROUP,	)	
Defendants.	)	

FILED
McHenry County, Illinois
JUN - 2 2005
VERNON W. KAYS, JR.
Clerk of the Circuit Court

STIPULATION

The parties, through their respective counsel, stipulate and agree as follows:

1. On May 6, 2005, the Court in the above captioned case entered a Memorandum Opinion and Order with respect to Count I of the Complaint, in which the Court ordered that the decision of the Illinois Health Facilities Planning Board to issue a permit in Project No. 03-049 is reversed.

2. There remains pending before the Court: (a) Plaintiffs' Motion For Leave To Add Additional Grounds To Reverse Administrative Decision And For Other Relief, which seeks to add additional grounds to reverse the permit under Count I; and (b) Second Amendment To Complaint, which contains Counts II, III and IV and which seeks to reverse the permit on independent grounds.

3. Defendants Illinois Health Facilities Planning Board, Illinois Department of Public Health, Mercy Crystal Lake Hospital and Medical Center Inc., Mercy Health System

Corporation, Eli L. Beeding, Jr. and The Beeding Group, hereby stipulate and agree to waive all rights to appeal the Order entered on May 6, 2005 which ordered that the decision of the Illinois Health Facilities Planning Board to issue a permit in Project No. 03-049 is reversed, and to waive all rights to appeal the Final Judgment Order entered on this Stipulation.

4. In reliance on defendants' waiver of any rights to appeal, Plaintiffs stipulate and agree that Plaintiffs' Motion For Leave To Add Additional Grounds To Reverse Administrative Decision And For Other Relief may be denied as moot and that the Second Amendment to Complaint may be dismissed as moot.

5. Then parties agree that this Stipulation may be signed in counterparts.

Stipulated and Agreed:

NORTHERN ILLINOIS MEDICAL CENTER,
MEMORIAL MEDICAL CENTER, and
CENTEGRA HEALTH SYSTEM, Plaintiffs,

Dated: May 27, 2005

By: _____

Jeffrey R. Ladd, Reg. No. 1157289
Lawrence M. Gavin, Reg. No. 0926108
Daniel J. Lawler, Reg. No. 6180981
BELL, BOYD & LLOYD LLC
70 West Madison Street, Suite 3100
Chicago, Illinois 60602
Phone: (312) 372-1121
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Thomas C. Zanck, Reg. No. 3102122
Militello, Zanck & Coen PC
40 Brink Street
Crystal Lake, Illinois 60014
Phone: (815) 459-8800
Fax: (815) 459-8429

MERCY CRYSTAL LAKE HOSPTIAL AND MEDICAL CENTER INC. and MERCY HEALTH SYSTEM CORPORATION, Defendants

Dated: May 26, 2005

By: _____
Steven H. Hoeft, Esq.
McDermott Will & Emery LLP
227 West Monroe Street
Chicago, Illinois 60606-5096

ILLINOIS HEALTH FACILITIES PLANNING BOARD and ILLINOIS DEPARTMENT OF PUBLIC HEALTH, Defendants

Dated: May ___, 2005

By: _____
Deborah L. Simpson, Esq.
Katherine H. Laurent, Esq.
Office of the Attorney General
General Law Bureau
James R. Thompson Center
100 West Randolph – 13th Floor
Chicago, Illinois 60601

ELI L. BEEDING, JR. and THE BEEDING GROUP, Defendants

Dated: May 25, 2005

By: _____
Eli L. Beeding, Jr.

MERCY CRYSTAL LAKE HOSPTIAL AND MEDICAL CENTER INC. and MERCY HEALTH SYSTEM CORPORATION, Defendants

Dated: May ___, 2005

By:_____

Steven H. Hoeft, Esq.
McDermott Will & Emery LLP
227 West Monroe Street
Chicago, Illinois 60606-5096

ILLINOIS HEALTH FACILITIES PLANNING BOARD and ILLINOIS DEPARTMENT OF PUBLIC HEALTH, Defendants

Dated: May 25, 2005

By: Katherine Laurent

Deborah L. Simpson, Esq.
Katherine H. Laurent, Esq.
Office of the Attorney General
General Law Bureau
James R. Thompson Center
100 West Randolph – 13th Floor
Chicago, Illinois 60601

ELI L. BEEDING, JR. and THE BEEDING GROUP, Defendants

Dated: May ___, 2005

By:_____

Eli L. Beeding

EXHIBIT 26

The Illinois Task Force on Health Planning Reform

Pursuant to
Public Act 095-0005

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

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Illinois Task Force on Health Planning Reform Members

Committee Members

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

Ex-Officio Members

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

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Memorandum

December 31, 2008

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

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

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

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

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

The Task Force determined its main reform goal as follows:

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

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

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

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

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

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

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

Signers,

Susan Garrett
Illinois State Senator

Lisa Dugan
Illinois State Representative

Introduction

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

Background

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

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

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

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

---

[1] Figures from the Illinois Health Facilities Planning Board, Memo dated June 18, 2008

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

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

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

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

Task Force Activities

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

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

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

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

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

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

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

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

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

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

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

Final Recommendations:

Overview

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

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

The Task Force determined its main reform goal as follows:

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

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

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

[2] Aye: Chicago - Garrett, Dugan, Althoff, Gaynor, Lyne, McNary, Robbins, Ruddick, Schaps; Phone – Barnett, Kosel, Lenhoff
Nay: Chicago - Brady

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

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

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

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

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

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

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

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

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

EXHIBIT 27

Illinois Lobbying Entity Registration

Secretary of State

Index Department
111 E. Monroe
Springfield, IL 62756
217-782-7017
www.cyberdriveillinois.com

Registration Type: Annual **Registration Date:** 01-20-2011

Entity Information

Entity ID: 1564

Reg Year: 2011

Name: QUARLES & BRADY

Address: 300 N. LASALLE STREET SUITE 4000

City: CHICAGO **State:** IL **Zip Code:** 60654-3422

Phone: (312) 715-5000 **Extension:** **Fax:**

Authorized Agent Information

Name: SANFORD M. STEIN

Address: QUARLES & BRADY 300 N. LASALLE STREET, SUITE 4000

City: CHICAGO **State:** IL **Zip Code:** 60654

Phone: (312) 715-6162 **Extension:** **Fax:**

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Illinois Lobbying Entity Registration

Secretary of State

Index Department
111 E. Monroe
Springfield, IL 62756
217-782-7017
www.cyberdriveillinois.com

Registration Type: Annual

Entity Name: QUARLES & BRADY

Contractual Lobbying Firms

Clients

DEUTSCHE BANK NATIONAL TRUST COMPANY

ONE HOPE UNITED

SUNOVION PHARMACEUTICALS, INC.

VILLAGE OF LYNWOOD

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Illinois Lobbying Entity Registration
Secretary of State

Index Department
111 E. Monroe
Springfield, IL 62756
217-782-7017
www.cyberdriveillinois.com

Registration Type: Annual

Entity Name: QUARLES & BRADY

The registrant intends to lobby the following Executive and/or Legislative Branch Agencies during the registration period:

CENTRAL MANAGEMENT SERVICES, DEPT. OF
CHILDREN AND FAMILY SERVICES, DEPT. OF
COMMERCE COMMISSION
FINANCIAL AND PROFESSIONAL REGULATION, DEPT. OF
GAMING BOARD
GENERAL ASSEMBLY MEMBERS
GOVERNOR'S OFFICE
HEALTHCARE AND FAMILY SERVICES
HUMAN SERVICES, DEPT. OF
ILLINOIS STATE TOLL HIGHWAY AUTHORITY
TRANSPORTATION, DEPT. OF

The registrant intends to lobby the following subject matter:

BANKING AND FINANCIAL SERVICES
ECONOMIC DEVELOPMENT
EDUCATION
HEALTH CARE
PUBLIC HEALTH
SOCIAL SERVICES
TRAVEL OR TOURISM

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Illinois Lobbying Entity Registration

Secretary of State

Index Department
111 E. Monroe
Springfield, IL 62756
217-782-7017
www.cyberdriveillinois.com

Registration Type: Annual

Entity Name: QUARLES & BRADY

The registrant's intended activity description involves the following actions:

☑ Executive ☑ Legislative ☑ Administrative

Brief description of the lobbying activity which the registrant intends to perform:

Quarles & Brady intends to monitor developments and advocate on behalf of firm client sin the areas of funding opportunities for child and family welfare service programs; public health; banking and financial services; issues related to gaming expansion, expansion of medical and hospital services; procurement and public finance.

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Illinois Lobbying Entity Registration

Secretary of State

Index Department
111 E. Monroe
Springfield, IL 62756
217-782-7017
www.cyberdriveillinois.com

Registration Type: Amended **Registration Date:** 02-09-2011

Entity Information

Entity ID: 1564

Reg Year: 2011

Name: QUARLES & BRADY

Address: 300 N. LASALLE STREET SUITE 4000

City: CHICAGO **State:** IL **Zip Code:** 60654-3422

Phone: (312) 715-5000 **Extension:** **Fax:**

Authorized Agent Information

Name: SANFORD M. STEIN

Address: QUARLES & BRADY 300 N. LASALLE STREET, SUITE 4000

City: CHICAGO **State:** IL **Zip Code:** 60654

Phone: (312) 715-6162 **Extension:** **Fax:**

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Illinois Lobbying Entity Registration

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Registration Type: Amended

Entity Name: QUARLES & BRADY

Contractual Lobbying Firms

Clients

DEUTSCHE BANK NATIONAL TRUST COMPANY
MERCY HEALTH SYSTEM CORPORATION, INC.
ONE HOPE UNITED
SUNOVION PHARMACEUTICALS, INC.
VILLAGE OF LYNWOOD

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Illinois Lobbying Entity Registration
Secretary of State

Index Department
111 E. Monroe
Springfield, IL 62756
217-782-7017
www.cyberdriveillinois.com

Registration Type: Amended

Entity Name: QUARLES & BRADY

The registrant intends to lobby the following Executive and/or Legislative Branch Agencies during the registration period:

CENTRAL MANAGEMENT SERVICES, DEPT. OF
CHILDREN AND FAMILY SERVICES, DEPT. OF
COMMERCE COMMISSION
FINANCIAL AND PROFESSIONAL REGULATION, DEPT. OF
GAMING BOARD
GENERAL ASSEMBLY MEMBERS
GOVERNOR'S OFFICE
HEALTH FACILITIES AND SERVICES REVIEW BOARD
HEALTHCARE AND FAMILY SERVICES
HUMAN SERVICES, DEPT. OF
ILLINOIS STATE TOLL HIGHWAY AUTHORITY
TRANSPORTATION, DEPT. OF

The registrant intends to lobby the following subject matter:

BANKING AND FINANCIAL SERVICES
ECONOMIC DEVELOPMENT
EDUCATION
HEALTH CARE
PUBLIC HEALTH
SOCIAL SERVICES
TRAVEL OR TOURISM

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Registration Type: Amended

Entity Name: QUARLES & BRADY

The registrant's intended activity description involves the following actions:

☑ Executive ☑ Legislative ☑ Administrative

Brief description of the lobbying activity which the registrant intends to perform:

Quarles & Brady intends to monitor developments and advocate on behalf of firm clients in the areas of funding opportunities for child and family welfare service programs; public health; banking and financial services; issues related to gaming expansion, expansion of medical and hospital services; procurement and public finance; siting of new hospital in Crystal Lake.

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Registration Type: Amended

Entity Name: QUARLES & BRADY

Exclusive Lobbyist Information

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STEIN, SANFORD M.
300 N. LASALLE STREET CHICAGO, IL 60654

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