

**Constantino, Mike**

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**From:** Lawler, Daniel [daniel.lawler@klgates.com]  
**Sent:** Wednesday, June 08, 2011 1:39 PM  
**To:** Avery, Courtney; Constantino, Mike  
**Cc:** Urso, Frank  
**Subject:** #10-090: Centegra's Response to Request to Defer Review Board Consideration  
**Attachments:** Centegra Response.pdf

Ms. Avery and Mr. Constantino,

Please include in the project file for #10-090, Centegra Hospital-Huntley, the attached response of the applicants, Centegra Health System and Centegra Hospital-Huntley, to the request to defer Review Board consideration dated June 7, 2011 by Mr. Joe Ourth of Arnstein & Lehr. Thank you

Dan Lawler

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June 8, 2011

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**Via E-Mail and Facsimile**

Mr. Dale Galassie  
Chairman  
Illinois Health Facilities and Services Review  
Board  
525 West Jefferson Street  
2nd Floor  
Springfield, IL 62761

**Re: Applicants' Response to Objectors' Request to Defer Consideration of Project  
No. 10-090, Centegra Hospital-Huntley**

Dear Chairman Galassie:

Our firm represents Centegra Health System and Centegra Hospital-Huntley, the applicants in Project No. 10-090, Centegra Hospital-Huntley. This letter responds to a request dated June 7, 2011 from Mr. Joe Ourth on behalf of Sherman Hospital, St. Alexius Medical Center, and Advocate Good Shepherd Hospital that the Illinois Health Facilities and Services Review Board ("Review Board") defer action on Project No. 10-090. Mr. Ourth's request should be denied as untimely and without merit.

Centegra's permit application was filed over five months ago and the public hearing, attended by Mr. Ourth and his clients, was held four months ago. No request to defer was made until yesterday, the day before the end of the public comment period. This eleventh hour request is an untimely attempt to unduly delay consideration of Project No. 10-090.

As for the merits, Mr. Ourth cites no legal authority to support his extraordinary request for a deferral of Review Board action pending the approval of a Comprehensive Health Plan ("Health Plan") from the as yet to be constituted Center for Comprehensive Health Planning (the "Center"). No such authority exists. To the contrary, the same legislation that provided for the creation of the Center and a Health Plan also amended the Health Facilities Planning Act ("Planning Act") (20 ILCS 3960/1 *et seq.*) so as to leave no doubt that Review Board action was *not* dependant on the prior completion of a Health Plan by the Center.

Mr. Ourth's request to defer should be denied, and Project No. 10-090 should be considered by the Review Board in the ordinary course.

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**I. Mr. Ourth's Request is Untimely and Intended for Purposes of Undue Delay**

Mr. Ourth's recent request is not based on any recent development. Rather, it is based on Public Act 96-0031 that became effective on June 30, 2009, and on Centegra's permit application that was filed on December 29, 2010. The comment period on this application opened on January 11 and a public hearing was held on February 16, 2011.

At the public hearing, Mr. Ourth's clients had over 25 representatives give oral statements during the all-day hearing, and not one of them asked for a deferral of Review Board action. Mr. Ourth was present during the entire public hearing and made no request for a deferral of the project. In their numerous written submissions, none sought deferral of Review Board action on Project No. 10-090, until yesterday.

If Mr. Ourth and his clients were truly motivated by the "importance of comprehensive planning" advanced in his June 7th letter, they would have made their deferral request months ago. The fact that they did not, and waited to nearly the end of the comment period and just three weeks before the Review Board's meeting, shows that their true intent is solely to delay consideration of the project. This tactic should not be countenanced by the Review Board and the request should be denied for this reason alone.

**II. The Legislature Did Not Intend Review Board Action to Await Development of a Health Plan**

Mr. Ourth's request essentially seeks an open-ended moratorium on Review Board action pending development of a Health Plan. The request is contrary to legislative intent as expressed in the plain language of the Planning Act. *See, ACME Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 37-38 (Ill. 2009)(the cardinal rule of statutory construction is to give effect to the intent of the legislature, and legislative intent is best determined from the plain language of the statute).

A plain reading of Public Act 96-0031 shows that the legislature was well aware that the Health Plan would take many years to develop and it did not intend the Review Board to remain idle during that time. The legislature intended the new Review Board to immediately act on all applications, and did not carve out an exception for new hospital applications. Because the legislature did not expressly except new hospital applications from Board action, the moratorium proposed by Mr. Ourth should not be read into the statute. *People ex rel. Madigan v. Kinzer*, 232 Ill. 2d 179, 184-85 (2009)(in determining legislative intent, courts do not depart from the statute's plain language "by reading into it exceptions, limitations, or conditions the legislature did not express"). Mr. Ourth's desire to limit a moratorium only to new hospital applications belies the self-serving motive behind his clients' request. They want the Review Board to be able to proceed on any applications they might file, but not on Centegra's.

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**A. The development of the Health Plan will take 2 to 5 years, or more**

Public Act 96-0031 added Section 19.5 to the Planning Act. This Section expressly acknowledges that the Health Plan may still be a work in progress two to five years after the appointment of a full 9-member Review Board. It provides:

**“Sec. 19.5. Audit. Twenty-four months after the last member of the 9-member Board is appointed, as required under this amendatory Act of the 96th General Assembly, and 36 months thereafter, the Auditor General shall commence a performance audit of the Center for Comprehensive Health Planning, State Board, and the Certificate of Need processes to determine:**

**(1) whether progress is being made to develop a Comprehensive Health Plan and whether resources are sufficient to meet the goals of the Center for Comprehensive Health Planning[.]”** (Emphasis added; 20 ILCS 3960/19.5(1).)

The last member of the 9-member Board was appointed just last week on June 2, 2011 with the appointments of Review Board members Robert J. Hilgenbrink, Kathryn J. Olson, and Richard H. Sewell. Consequently, it will not be until **June 2013** when the Auditor General commences an audit to determine *whether progress is being made* in the development of the Health Plan. The commencement of the second audit to determine the status of the Health Plan is not until **June 2016**. Public Act 96-0031 does not require the Health Plan to be completed by June 2013, or even by 2016.

Also, under Public Act 96-0031, the Illinois Department of Public Health (“IDPH”) must establish the Center, and the Governor must appoint a Comprehensive Health Planner. (20 ILCS 2310/2310-217(a) and (b)(2)). Then, “[t]he first Plan shall be submitted to the State Board of Health within one year after hiring the Comprehensive Health Planner.” (20 ILCS 2310/2310-217(d).) To date, IDPH has not established the Center and the Governor has not appointed a Comprehensive Health Planner. Consequently, the one-year period for submitting the Health Plan to the Board of Health has not even begun.

**B. The Review Board is not to defer action while awaiting a Health Plan**

The General Assembly did not intend the Review Board to sit idle while a Health Plan was being developed. Nothing in Public Act 96-0031 suggests in any way that the Review Board is expected to defer action until it has the Health Plan in hand. Rather, the plain language

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of Public Act 96-0031 evinces a legislative intent that the Review Board was to commence its statutory duties immediately, *including action on applications for new hospitals.*

Public Act 96-0031 became effective on June 30, 2009, and contemplated an immediate transition of responsibility from the sitting Planning Board to the new Review Board, with no moratorium on the Board's activity. The amendment to Section 4 of the Planning Act states:

“Notwithstanding any other provision in this Section, members of the State Board holding office on the day before the effective date of this amendatory Act of the 96th General Assembly shall retain their authority.” 20 ILCS 3960/4.

To further facilitate an immediate transition and continuity of Board action, Public Act 96-0031 provided that the terms of those serving on the 5-member Planning Board the day before June 30, 2009 would be extended until the date upon which members of the 9-member Board were appointed. (20 ILCS 3960/4.) In addition, the Public Act allowed sitting Planning Board members to be reappointed to the 9-member Review Board. (20 ILCS 3960/4(b).) Further, the change to the 9-member Review Board was to occur on March 1, 2010 and Public Act 96-0031 provided that, prior to the date, the sitting Planning Board was to “establish a plan to transition its powers and duties to the Health Facilities and Services Review Board.” (20 ILCS 3960/4(b).) These provisions express a legislative intent that the new Review Board was to immediately and continuously function as soon as the 5-member Planning Board ceased.

Contrary to Mr. Ourth's proposal that the Review Board table new hospital applications for the foreseeable future, Public Act 96-0031 specifically contemplated that the new Review Board would be acting on new hospital applications. Public Act 96-0031 amended Section 12(8) of the Planning Act to specifically include as “substantive projects” those projects for the construction of “a new or replacement facility located on a new site...” (20 ILCS 3960/12(8).) Centegra Hospital-Huntley is a project to construct a new hospital on a new site. It should be acted on by the Review Board and it should not be deferred.

Mr. Ourth's letter request does make one salient point: In the past 30 years, there has only been one new, non-replacement, general-purpose hospital that has been approved by the Board and subsequently constructed, namely Adventist Bolingbrook Hospital, Project No. 03-095. Illinois is the fifth largest state by population with nearly 13 million people, and it has only had one new general hospital in 30 years. If Mr. Ourth's clients have their way, there will not be another one in the foreseeable future.

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**C. Mr. Ourth's request for a moratorium is contrary to the purposes of the Planning Act**

Mr. Ourth's proposed moratorium on Review Board action would defeat the purpose of the Planning Act to "establish an orderly and comprehensive health care delivery system that will guarantee the availability of quality health care to the general public." (20 ILCS 3960/1.) This purpose statement has been in the Planning Act since its inception in 1974, so the Review Board has not needed the Health Plan to establish an orderly and comprehensive health care delivery system. To require the Board to now await a Health Plan before it can act would unduly delay the public's access to quality health care.

There is a demonstrated need for a new hospital in Planning Area A-10, McHenry County. The purpose of the Planning Act and public policy would be thwarted if the satisfaction of that need were indefinitely deferred at the pleasure of opposing facilities.

**III. Mr. Ourth's Request is Ambiguous and Misleading**

Mr. Ourth prefaced his request with a statement that the 2009 amendment to the Planning Act arose "as a direct response to two cases of corruption involving a previous Review Board" and that "one case related to a new hospital in the far southwest suburbs, but the other grew directly from one of the same hospital projects currently before the Board." Mr. Ourth's ambiguity invites speculation as to which one of the hospital projects currently before the Board is the culprit.

To clarify the record, in Project No. 03-049, Mercy Crystal Lake Hospital and Medical Center, Mercy's contractor, Jacob Kiferbaum, promised a \$1 million plus kick-back from his contract with Mercy to Planning Board Vice-Chairman Stuart Levine in exchange for Levine rigging the vote on Mercy's project. Centegra opposed Project No. 03-049 and stood alone in its court challenge to the corrupt issuance of Mercy's permit. Mercy fought for over a year to keep its ill-gotten gain, and did not stop fighting until shortly after Kiferbaum and Levine were indicted.

For the purpose of addressing and clarifying Mr. Ourth's statement, I am including with this letter the U.S. Attorney's press release dated May 9, 2005 on the indictments of Kiferbaum and Levine (Attachment 1), and the Stipulation entered into on June 2, 2005 by which Mercy agreed to not appeal the circuit court's reversal of the permit issued on Project No. 03-049. (Attachment 2).

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**Conclusion**

Mr. Ourth's letter request dated June 7, 2011 to defer Review Board action on Project No. 10-090, Centegra Hospital-Huntley, should be denied. It is an untimely, last-minute ploy intended to delay proceedings and it is without merit. There is no legal authority for this extraordinary request; it is contrary to the expressed purpose of the Planning Act and contrary to the intention of the legislature as expressed in the plain language of Public Act 96-0031.

On behalf of Centegra Health System and Centegra Hospital-Huntley, I respectfully request that the application for permit in Project No. 10-090 be processed and considered by the Review Board in the ordinary course, and that Board action not be delayed or deferred for any of the reasons set forth in Mr. Ourth's letter request.

Thank you for your consideration of this response.

Very truly yours,

K&L GATES LLP



Daniel J. Lawler

DJL:dp  
Enclosures

cc: Mr. Frank Urso, General Counsel, IHFSRB  
Ms. Courtney Avery, Administrator, IHFSRB  
Mr. Michael Constantino, Lead Project Reviewer



U. S. Department of Justice

*United States Attorney  
Northern District of Illinois  
Federal Building*

*Patrick J. Fitzgerald  
United States Attorney*

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

FOR IMMEDIATE RELEASE  
MONDAY MAY 9, 2005

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Individuals who serve on public boards or boards 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.

###

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

NORTHERN ILLINOIS MEDICAL CENTER, )  
MEMORIAL MEDICAL CENTER, and )  
CENTEGRA HEALTH SYSTEM, )

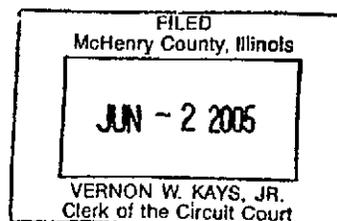
Plaintiffs, )

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. )



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  
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Fax: (815) 459-8429

MERCY CRYSTAL LAKE HOSPITAL  
AND MEDICAL CENTER INC. and  
MERCY HEALTH SYSTEM  
CORPORATION, Defendants

Dated: May 26, 2005

By:   
Steven H. Hoeff, 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 - 13<sup>th</sup> 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 HOSPITAL  
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 - 13<sup>th</sup> Floor  
Chicago, Illinois 60601

ELI L. BEEDING, JR. and THE BEEDING  
GROUP, Defendants

Dated: May \_\_\_, 2005

By: \_\_\_\_\_  
Eli L. Beeding