

1 START TIME: 10:03 A.M.

2

3 MS. AVERY: Good morning everyone. And there
4 will be beeps throughout, I'm sure, because this is a
5 little bit after ten, but I wanted to get started as close
6 to starting time as possible.

7 So, again, thank you for participating; and I
8 want us to go around and do a quick introduction so we'll
9 know who is here. We also are recording the procedure, and
10 we'll have a process and we'll have a transcript so we'll
11 be able to keep track and get everything documented
12 accurately on record.

13 So, Karen, we will need a transcript of it.

14 Okay. Are you ready? People please introduce
15 themselves for the record.

16 Courtney Avery.

17 MR. AXEL: Jack Axel.

18 MR. PARKHURST: Ed Parkhurst.

19 MR. OURTH: Joe Ourth.

20 MS. REESE: Sonya Reese.

21 MS. HOOD: Janet Hood.

22 MS. DAVIS: Penny Davis.

23 MS. RAMAN: Prashanthi Raman.

24 MS. HALLER: Barb Haller, Illinois Hospital

1 Association.

2 MS. COOPER: Anne Cooper.

3 MR. OLLAYOS: Joseph Ollayos.

4 MR. SHEETS: Chuck sheets.

5 MR. SULLIVAN: Terry Sullivan.

6 MR. BELL: Bill Bell.

7 MS. SNAVELY: Ashley Snavely.

8 MS. SKINNER: Honey Skinner.

9 MR. MAYO: Mark Mayo, ASC Association.

10 MR. MUNIZ: Richard Muniz.

11 MR. LEITCH: David Leitch.

12 MR. ELDRIDGE: David Eldridge.

13 MR. CARVALHO: Dave Carvalho.

14 MS. MELTZER: Wendy Meltzer, Illinois Citizens
15 for Better Care.

16 MR. TINKNELL: Tim Tinknell.

17 MR. ALBRITTON: Shawn Albritton, Presence
18 Health.

19 MR. KNIERY: John Kniery, Foley and
20 Associates.

21 MS. BURMAN: Claire Burman.

22 MR. FOLEY: Charles Foley, Foley and
23 Associates.

24 MS. AVERY: Is Frank on?

1 MR. URSO: Yeah, I'm here. I already
2 mentioned my name.

3 MR. CONSTANTINO: Mike Constantino.

4 MR. ROATE: George Roate.

5 MR. AGBODO: Nelson Agbodo.

6 MS. AVERY: Anyone else?

7 (Pause)

8 MS. AVERY: Okay. Thank you all. And as you
9 can see, we have a large party that has joined us, so I ask
10 that when you speak to please state your name, so that the
11 Court Reporter will know who is speaking.

12 And we will take as many questions and
13 comments as possible to fit within the hour, and if you
14 want to provide additional comments or think of something
15 later that you please send them to me by noon on Friday,
16 and you can send them to my e-mail address or you can send
17 it to the HFSRB e-mail address that's on the web site. My
18 e-mail address is courtney.avery@illinois.gov.

19 And, I'll turn it over to you Ann Guild.

20 MS. GUILD: Do you want me to go through this?

21 MS. AVERY: Give an overview, like we
22 discussed.

23 MS. GUILD: Okay. Well, I'm just going to go
24 through like section by section.

1 Disease Treatment Centers at the very end, there was a
2 statement regarding the Board may require dialysis
3 facilities and licensed nursing homes to report additional
4 information. That's new to this definition; is that
5 correct?

6 MS. GUILD: It shouldn't be. Going back --

7 MR. URSO: What page are you on and what line?
8 That may help people get to that.

9 A It's on page 2 of the handout that
10 Courtney -- and it's the last sentence, right before the
11 "institution", "place of business".

12 MR. CARVALHO: I'm pretty sure this has always
13 been in there, because when this definition came up, it was
14 very important to the Board that they knew where these
15 places were.

16 MR. BIBO: This is Mike Bibo, and I think take
17 it from page 4, the second full paragraph. Let's move
18 forward from there.

19 MS. AVERY: And, Anne, you may recall, since
20 we're no longer able to get the data from the national
21 level, monthly the ESRD's report their quarterly activity
22 to the Board. But, no, it's not new. It's been there. We
23 just moved it around.

24 MS. COOPER: Okay. I see. Thank you.

1 MR. SHEETS: Okay. So, just a quick
2 grammatical issue. On Subparagraph 8, page 2 it looks
3 like -- I'm not sure that you want the word "housing"
4 there. But are you talking about a room that houses major
5 medical equipment? Is that what you're trying to say, Ann?

6 MS. GUILD: Right, right.

7 MS. AVERY: This is a format that we submitted
8 to LRB, and I'm sure the formatting will be different once
9 they finalize it, which will also be posted on the web
10 site. So right now, the formatting may look a little off,
11 and as soon as LRB is done with it, it will look different.

12 MR. SHEETS: Understood. Thanks.

13 MS. GUILD: So, I'm moving to page 10, "Annual
14 report of capital expenditures", and there will be changes
15 similar to this throughout. The attempt was to clarify the
16 respective roles of the Department of Public Health and the
17 State Board, consistent with what it is currently. So,
18 Section 5.3 is not really substantive. It's just things
19 have changed since the Act was first written and
20 particularly since the work of the State Task Force on
21 Health Planning Reform was completed. You'll see a similar
22 change on page 11, no change on page 12 --

23 MS. AVERY: Ann, dependent on how people print
24 it, their page number may be different.

1 MS. GUILD: Okay. Great.

2 MS. AVERY: You might want to go by the
3 section numbers.

4 MS. GUILD: Okay. Let's see. I should have
5 marked this -- okay. So 5.3, that kind of -- clarification
6 of roles; Section 5.4(c) -- no, (d)(2), the same; Section
7 6.2, pretty much the same and to clarify what the State
8 Board Staff Report -- how that's used, just a couple word
9 changes.

10 Section 8.5, really the same and including
11 just a couple of changes to make it kind of more concise.

12 Section 10, again clarifying the roles of the
13 State Board and the State Agency.

14 And then Section 11, Frank, maybe I'm going to
15 have you do Sections 11 and 12. Are you on?

16 MR. URSO: Yes. Section 11, we're proposing
17 some language in Section 11 that would require that there
18 be a final written decision before someone can file for
19 judicial review of a Board decision. So there's a link
20 actually between Section 11 and Section 12, Sub (11), where
21 we talk more specifically about a final written decision.
22 So there's an interrelationship between those two sections.

23 So, Section, once again, 11 just proposes that
24 there be a final written decision, and then Section 12, Sub

1 (11) talks more specifically about requesting that final
2 written decision.

3 In Section 12, Sub (11), we're proposing that
4 statutorily we'll be stating and defining essentially when
5 the Board decision will be final and when its labeled as a
6 final decision, by a date certain. So that's why we wanted
7 to -- wanted to clarify those issues.

8 MR. SHEETS: Frank, long-term care industry as
9 a whole, you know, I've been told that we could live with
10 the second section changes but that Section 11 sort of
11 looks like almost it's an additional burden to place on any
12 applicant that appeals a decision, and I'm assuming you're
13 trying to address some court decisions on this.

14 MR. URSO: Yeah, exactly. We're trying to
15 conform and address the Medina versus the Board, Appellate
16 decision, which came out several months ago. That court --
17 essentially it was the Appellate Court that essentially
18 said that the administrative decision should contain some
19 findings and ultimate conclusions linked together by some
20 rationale, and they go on to say that the Board should
21 provide reasons for its decisions. One of the ways we're
22 attempting to address the Medina Appellate Court decision
23 is by making it a requirement that if you're going to seek
24 judicial review of a Board decision, that you need to seek

1 a final written decision, which will contain hopefully a
2 more elaborate rationale and finding and conclusions of the
3 Board decision.

4 MR. SHEETS: Doesn't the Court decision,
5 though, require you to do that in all instances? I'm not
6 trying to be difficult. I'm thinking there might be a
7 better way; if you were to reference the transcript somehow
8 and the statute and say the Board should disclose its
9 reasoning in a discussion before the vote or something like
10 that.

11 MR. FRANK: I think you're talking about a
12 statutory change? That's what you're referencing right
13 now?

14 MR. SHEETS: Right. I'm just trying to think
15 of a better way. Again the Administrative Review law still
16 applies with the same, you know, calendar days, right?

17 MR. URSO: Correct, it does.

18 MR. SHEETS: So maybe if you're going to go
19 with this, maybe there's a way to extend that time so that
20 there's -- you know, the applicant or whoever is appealing
21 has more time to complete this.

22 MR. URSO: All right. If you have some
23 proposed language or you want to put your thoughts from
24 your client in detail, you know, I'd be glad to take a look

1 at that.

2 MR. SHEETS: Great. Will do.

3 MR. URSO: My understanding is, this Section
4 11 is your concern, and Section 12, Sub (11) you're okay
5 with; did I hear you correctly?

6 MR. SHEETS: That's correct.

7 MR. CARVALHO: Chuck, you may want to think
8 through whether -- be careful what you wish for. What
9 Frank is setting up here is if someone wants a written
10 decision, they can ask for one and they can get one, and
11 then the likelihood -- if they want to appeal, if they want
12 to appeal, the likelihood -- presumably they want the
13 appeal to go quickly. The likelihood that that written
14 decision will satisfy what the Court wanted is pretty high.

15 If, instead, you come up with an alternative
16 solution where you suggest that the Board ad hoc, at each
17 meeting, ad hoc their reasoning, the likelihood that the
18 Court is going to send that back and say, "Can you flesh
19 that out a little" is pretty high, and you may -- and in a
20 desire to make things work quickly, you may set it up, but
21 it's more likely to slow things down for a referral back to
22 the Board for a written decision.

23 MR. SHEETS: Good point. We'll talk about
24 those and hopefully send you something comprehensive.

1 MS. GUILD: The other thing is, basically all
2 you have to do is write a letter, two sentences: "Can I
3 get a written decision on project X Y Z?"

4 MR. SHEETS: Another good point. The concern
5 is the time frames, you know. So we'll try and doodle
6 through all this stuff and see if we can come up with
7 something that's better. If it's not, then I'm sure that
8 Frank will ignore it.

9 MR. URSO: After I review it.

10 MS. COOPER: Frank, I've just got a question
11 regarding the timing. My understanding is, sort of, when
12 the written decision would be issued would be at a
13 subsequent Board meeting. So we'd probably be looking at
14 like six weeks between the initial decision and then when
15 the final written decision is approved; is that correct?

16 MR. URSO: Theoretically I guess that's
17 correct, yes. Because the final written decision has to be
18 approved by the Board. Yes.

19 MS. COOPER: So how would that affect, like,
20 timing, if you wanted to file an appeal, because it's my
21 understanding that it's a 35-day -- 35 calendar days to
22 file an appeal.

23 MR. URSO: That's correct.

24 MS. COOPER: So how would the timing of the

1 filing of appeal interplay with the final written decision.

2 MR. URSO: We are taking a very close look at
3 that and that's why we're saying in 12, Sub (11) that
4 the -- written decision approved by the Board before it's a
5 final decision. So the clock would start once there's a
6 final decision, so whenever that was. So, in other words,
7 let's say within ten days of a Board meeting someone
8 requests a final, written decision. That will, of course,
9 be drafted and the Board has to approve it. Once the Board
10 approves it, that's when the clock starts. So we're hoping
11 that that -- we think that that will not hinder anybody
12 from a time constraint perspective. They still have their
13 35 days once that final decision has been approved, that
14 final, written decision has been approved.

15 MR. AXEL: I have a question related to the
16 practical ramifications of Section 12, sub (11), when
17 you're talking about a change of ownership. Let's just say
18 hypothetically the Board approves a change of ownership on
19 June 1st. When could that change of ownership occur?
20 What's the earliest date?

21 MR. URSO: Well, you know, that depends on
22 what your client wants to do. I mean, essentially, once
23 the Board meets and approves the change of ownership, your
24 client could say, "Okay, I trust that that's going to be

1 the final decision," and they can move forward. If they
2 want to wait until -- and some people do, as you know Jack.
3 If some people want to wait until they get that actual
4 letter that formalizes the Board's decision, then they can
5 wait until they get that formal letter. That -- my
6 understanding is the formal letter usually takes at least,
7 at least ten days after a Board meeting, if not longer, and
8 many times it is longer. So, with this kind of scenario,
9 if nobody requests a final, written decision, that Board
10 decision by statute, in this proposed language, becomes
11 final after ten days, which is a date certain; which is not
12 the case currently. If someone is waiting for the written
13 decision to come from Board Staff, we don't have a date
14 certain when that is issued. Now it would be a date
15 certain when that decision is finalized.

16 MR. AXEL: So, going back to my scenario,
17 Frank, Board approves a change of ownership on June 1st;
18 the transaction goes through on June 2nd; and on June 4th,
19 somebody requests written decision. Has the permit holder
20 violated any rules by closing the transaction on June 2nd?

21 MR. URSO: I don't think so, Jack. I don't.
22 There's nowhere does it say, to my recollection, in the
23 Board's statute or in its rules that after a Board, at a
24 Board meeting, approves a particular project or transaction

1 that that permit holder or exemption holder has to wait a
2 certain period of time before they could act on the Board
3 action at a Board meeting. So, I think it's just depending
4 upon your client. If they want to wait for that 10-day
5 period that this proposed language goes by elapses, or if
6 they want to just -- the following day after a Board action
7 they want to act on the Board approval.

8 MR. AXEL: I just wanted to make sure, and
9 particularly in the area we're dealing in now, where you're
10 getting multi-state transactions, and as you're aware, when
11 you're talking about a change of ownership, there are only
12 a few states that require CON approval of that. You know,
13 I would hate to put an additional burden on anyone of
14 having to wait ten days. That was my concern, Frank.

15 MR. URSO: I don't think they have to, Jack.
16 But if somebody is more comfortable -- okay -- for the
17 official word of Board action, the formal word either by
18 a -- you know, the permit letter or the exemption letter,
19 currently now they have a date certain, if this proposed
20 language is enacted, whereby the final decision will
21 declare them ten days after that decision is made at a
22 Board meeting.

23 MR. SHEETS: Frank, so is the permit letter
24 not coming until the ten days have passed? Is that

1 accurate?

2 MR. URSO: My research and analysis on this is
3 that the permit letter usually -- and there's always
4 exceptions to these, as you know, Chuck. But usually is --
5 that permit letter or exemption letter isn't sent out prior
6 to ten days. It's usually after that ten-day period.

7 MR. AXEL: Could be 40 days, Frank, right,
8 after?

9 MR. URSO: To get the permit letter, exemption
10 letter? Oh, yeah, it could be, I suppose. I suppose it
11 could.

12 MR. AXEL: Not recently.

13 MR. PARKHURST: In this legal discussion --
14 and I'm certainly not a lawyer -- what standing does the
15 Agency's web site have when they post the Board decisions
16 within a day or two of the Board meeting?

17 MR. SHEETS: Well, and to follow up with that,
18 Frank, what do we call this 10-day period where the Board
19 has made a decision? I mean, it's not a final decision but
20 it's a decision? It does create some problems.

21 MR. URSO: What we're trying to do is
22 formalize when the Board action is actually called the
23 "final decision", to just clarify that, because there is no
24 place out there that actually clarifies and states when a

1 decision is final. Now, it's proposed in the statute that
2 the Board action is being declared final ten days after the
3 Board meeting.

4 MS. DAVIS: Frank, again not an attorney, but
5 in terms of when we do leases or documents related to an
6 asset purchase, those are based on -- the deal becomes --
7 we obligate millions of dollars based on a CON date. So
8 from a practical standpoint, if I have a lease signed now
9 that will obligate me based on the March meeting, then I'm
10 obligated on that date, not ten days later.

11 MS. RANALLI: I agree with Penny, what you
12 said and some of the concerns that are being expressed. I
13 think in the past -- and people can jump in if they
14 disagree -- you know, all applicants would advise their
15 clients and believe that the statutory language was such
16 that the Board decision was final as of the date of the
17 meeting when the Board acted on it. And the permit letter
18 was a very important document, but nonetheless, that
19 decision was finalized at the Board meeting, and frequently
20 important obligations were entered into very shortly after
21 the Board date, not always.

22 Now it seems to me this language would at a
23 minimum place a permit holder at risk, unless they waited
24 for that 10-day period to elapse. And also, not to be

1 cynical here, but some people who oppose a project could
2 muck things up a bit by simply requesting a written
3 decision, just to delay the timing of permit holders being
4 able to move forward, to do what's necessary to effect
5 their project which is, you know, somewhat concerning.

6 MS. DAVIS: Yeah, I would add to that, our
7 compliance rules only allow us X amount of days, for
8 instance, on pricing, if it's a change of ownership, and
9 because, you know, we follow very strict compliance rules,
10 if this drags out, then we have to go in and reprice a
11 deal, which could then negatively impact what has already
12 been approved by the Board.

13 MR. URSO: You know, I hear what you are
14 saying. I think you -- I know the reason we put this in
15 here is more from an administrative, judicial review
16 standpoint, so that there would be a clear indication when
17 a Board decision was called a final decision, and it was
18 more of a legal clarification. I believe that applicants
19 who have succeeded in getting the Board to approve their
20 projects could move forward like they've always moved
21 forward in terms of operations. If someone who has a
22 project approved normally waited for a permit or exemption
23 letter that formalizes it as an official document from the
24 Board and Board Staff, this proposed language cuts that

1 time down probably, because, like I said, it's usually
2 after ten days when a permit or exemption letter is issued.

3 MS. RANALLI: Frank, could I just ask a
4 question quick on that point that you just said? The
5 current language says the final decision will take place
6 ten days after the decision of the Board meeting. That's
7 not, I don't think, inherently problematic, because all
8 permit holders would have to do is sort of adjust their
9 prior actions to ten days after the Board date. But it
10 goes on to say if a request is made for a written decision
11 within that 10-day period, presumably the date of the Board
12 approval will be the effective date for the final decision
13 of the Board, and I'm not one hundred percent understanding
14 that, which is just probably my fault. But I'm reading
15 that to mean that then the Board decision isn't final until
16 the Board issues its written decision, and then that means,
17 under the Administrative Review law again, I think -- I'm
18 not a litigator, but I think you have 35 days from a final
19 decision to request Administrative Review; so that in
20 effect, someone who wanted to request it would then wait
21 until the written decision of the Board and have 35 days
22 after that. I'm not sure, but that's kind of what that's
23 telling me or that's how I'm reading that. Is that
24 accurate, or am I missing it?

1 MR. URSO: I think that that is correct.

2 MS. RANALLI: So then the final decision of
3 the Board really could be a moving target. It's ten days
4 unless someone issues a written decision, and then it's
5 whenever the Board issues its written decision and then
6 you'd have 35 days after that, if you wanted to challenge
7 something, to request Administrative Review.

8 MR. URSO: There's always two sides to these
9 kinds of --

10 MS. RANALLI: I get what -- I understand where
11 you're coming from.

12 MR. URSO: We didn't want any proposed changes
13 to this section to cut the time or limit the time for
14 someone to seek judicial review.

15 MS. RANALLI: Right.

16 MR. URSO: That was probably the main reason
17 why we were proposing this language.

18 MS. RANALLI: Did that used to be, the
19 Administrative Review -- anyone can weigh in on this -- 35
20 days after the permit letter was issued?

21 MR. SHEETS: The decision.

22 MS. RANALLI: Which is when the Board voted
23 previously? Is that how you told us 35 days?

24 MR. SHEETS: Yes.

1 MS. RANALLI: That's what I thought.

2 MR. URSO: I think -- depending on who you
3 were talking to, they might say the clock starts after that
4 permit letter, the date of that permit letter or exemption
5 letter.

6 MR. SHEETS: Frank, if you look at the old
7 language, though -- I mean, the written decision -- you
8 know, the Staff of the Board shall prepare a written copy
9 of the final decision. In other words, the final decision
10 was at the meeting. You know what I mean? And you're
11 saying in your proposed language that if there is a request
12 for a written decision, then the date of the Board
13 approval, you know, is pushed forward.

14 MS. RANALLI: Kind of stayed pending that
15 written decision.

16 MR. SHEETS: Right. So isn't there a way,
17 Frank, just to extend -- if you're worried about the 35
18 days, which we all are, isn't there a way just to extend
19 that period longer and still have the Board's decision at
20 the meeting, you know, be an actual, relied-upon decision,
21 and then for purposes of appeal, change the time frame, but
22 only for purposes of appeal? Is that possible?

23 MR. URSO: Well, we could take a look at that.

24 MR. MAYO: Two things on this. Last session,

1 House Bill 2423 called for a 30-day period for this request
2 for a written decision. Now you're talking about ten days
3 and to Clare's point, I think everybody should realize that
4 the Board only has to consider at the next meeting the
5 written draft of the final decision. It does not mean that
6 the Board has to take action on its final decision at that
7 meeting. They could look at it, send it back, postpone it.
8 So this could stretch on for months, leaving what some is
9 describing as an applicant in limbo because they don't know
10 if they have a final decision or not.

11 MS. DAVIS: It would make sense to me that
12 there be some language that allows the applicant to act on
13 the Board vote as if it is final, so that we're not in
14 limbo. It would be impossible to request landlords or
15 other folks that we, you know, may be entering into an
16 obligation, to wait an additional period of time.

17 MS. RANALLI: Right. Entering into
18 construction contracts, all sorts of things would be sort
19 of held in abeyance possibly.

20 MS. DAVIS: Right.

21 MR. AXEL: I get a little squeamish anytime
22 there are subsequent approvals tied to anything. Does a
23 potential exist for a project to get approved on a five to
24 zero vote and then it's brought up at the second meeting

1 for whatever this approval is called and there are six
2 members at the meeting but not necessarily the five members
3 who voted in favor of the project the first time through,
4 and you can't get five people to approve this second vote,
5 if you will? Does the potential for that to happen?

6 MR. URSO: It is not the intention --

7 MR. AXEL: Frank, I understand it's not the
8 intention.

9 MR. URSO: Can I finish, Jack.

10 MR. AXEL: You bet.

11 MR. URSO: I don't think it's the intention of
12 this language to have the project substantively considered
13 again. All it is is a consideration and approval of what
14 was already voted on and considered and analyzed by the
15 Board. It's not the intention to revote the substance of
16 the project again.

17 MR. AXEL: I understand that.

18 MR. CARVALHO: Can I intervene, because
19 there's a long history of this, and a mathematician would
20 say you've created a situation with too many constraints
21 and too few variables. In other words, there's not a way
22 to please everybody on this.

23 The history of this from the gitgo has been
24 this Board has always acted by acting, taking a vote,

1 discussing why they're going to do something, acting, and
2 for a long period of time, that sufficed. Now, at various
3 intervals when the statute has been amended, people have
4 interjected that they'd like a written opinion, and the
5 conundrum has always been -- the model that's often been
6 held up as an example is the ICC, in part because some
7 legislators are very familiar with that model. The down
8 side of the -- you know, the ICC doesn't act and then ask
9 their folks to go write an opinion. They meet, they
10 circulate opinions, they vote -- in effect they vote on the
11 opinion, just like a court -- well, not necessarily a
12 court, but, in other words, the lag time is all built in
13 beforehand so that the final decision can be voting on the
14 written final decision.

15 Whenever the request for something like that
16 in this context has been raised, the point has always been
17 pointed out, do you guys really want to build in the lag
18 time that will be created? Because the Board, when they
19 look at something, they look at the draft decision, and
20 they talk about the draft decision, and they might not
21 agree on the draft decision. They might ask for the Staff
22 to go back and rewrite the draft decision, and since
23 they're meeting every six weeks, they're building in a
24 bunch of lag time before they have that final decision.

1 But the good thing is that once that final decision is
2 written, it's done; you can walk out with -- you know what
3 the final decision is.

4 Now we're going into the situation where the
5 Board just acting and saying why they're acting apparently
6 has been found wanting by the courts, and they ask them to
7 do something in writing. So, the situation that Frank has
8 proposed has lag time, which we're all counting up, but, of
9 course, after that initial decision. But the problem is,
10 the lag time is going to be one way or another, if you're
11 going to require a written decision of this body. It's
12 either going to be beforehand, so that they can all agree
13 on something and vote on it finally; or it's going to be
14 afterhand, and I think the reason Frank has proposed it
15 this way is, you know, 90 percent of the decisions are
16 going to cruise along like they always have, because nobody
17 is going to ask for a written decision, and why build in
18 all of that lag time for the 90 percent that nobody
19 complains about.

20 But the lag is going to be somewhere or
21 another, if you want the Board to all agree on final
22 language.

23 MR. OURTH: David, I think you raised a good
24 point, and what Frank is talking about, I don't -- and this

1 is speaking -- speaking for me, and not on behalf of any
2 client. I can understand why he wants to have the written
3 decision part before litigation goes forward. I would like
4 to suggest, maybe there's a way of addressing that.

5 I am concerned about the final decision part
6 and that maybe there's an approach that we have. Right now
7 1130.660 basically says that a permit is effective on the
8 date of the Planning Board authorization. And like Clare
9 and some others have been saying, most of our practitioners
10 rely on 1130.660 to say, okay, the day of the vote is final
11 action and for a change of ownership, we can do that the
12 next day, for example, or a discontinuation. And I think
13 that we want to -- don't want to lose that part of it in
14 having a floating effective date. We need to have a
15 certain and short effective date.

16 Now, I think that there may be some ways to
17 address what I think that Frank and the Board may be going
18 to, and I'm not sure that there's going to be substantive
19 opposition to it, is that before the case can proceed for a
20 decision, you know, essentially that there needs to be the
21 written decision of the Board before the Board takes
22 actions on it. I am wondering if there are some ways to
23 address that lag time that David is talking about in the
24 case of litigation and having to do with the Court taking

1 action or not taking action until there is the written
2 decision, but maybe not doing that through the final
3 decision timing of that, and whether that would get to the
4 intent of what the Board is talking about without creating
5 some potential ambiguity as to the final decision for, as
6 Dave Carvalho said, 90 percent of the cases.

7 Substantively I'm not disagreeing with where
8 you're trying to go with this. Just being concerned about
9 the 90 percent, the change of ownership, the same things --
10 Jack just beat me to the question on that. Is that kind of
11 where -- I mean, we're really only concerned here about the
12 litigation aspect of it.

13 MR. URSO: Basically that's how I was trying
14 to describe it before, is that if someone is seeking
15 judicial review of a Board decision, we wanted to delineate
16 clearly when the clock would start. I will tell you -- I
17 will tell everybody on the call -- and I don't want
18 everybody to get the wrong impression with this or all of a
19 sudden say, "We don't like that number", but we've only had
20 a request for a written decision twice since 2009. I don't
21 want everybody requesting it tomorrow to get that number
22 up, but we've only had a request two times since 2009. So
23 in reality, there's not been a lot of cases that have
24 had -- that have been delayed by the waiting and the lag

1 time for an approved written final, written decision.

2 MS. DAVIS: Frank, again, being a
3 non-attorney, the decision of the Board at the Board
4 meeting is actually the final decision, and I think what
5 I'm hearing is that it's within ten days to get a summary
6 or an explanation, not a final decision; it's more an
7 explanation of the decision made at the Board meeting.

8 MR. URSO: I would say it's a verification.
9 Okay? And, Penny and everybody else, that decision will
10 not be different ten days after a Board meeting. It's
11 going to be the same decision.

12 MS. DAVIS: So can we not call it a final
13 decision? Can we instead call it, you know, justification
14 of final decision at the Board meeting or summary of the
15 final decision made at the Board meeting? That would allow
16 us to act and obligate, you know, as Clare mentions,
17 construction or leases or anything else based on the
18 decision made at the Board meeting. By calling it a final
19 decision, it gives me the impression, especially as a
20 non-attorney, that there's another 10-day window that I
21 have to wait.

22 MR. SHEETS: Penny, the problem is the
23 Administrative Review law refers to "final administrative
24 decision". So that's what cues the appeal times. But I'm

1 sure Joe's suggestion -- I mean, maybe -- and, Joe, correct
2 me if I'm wrong. The Board has to file the record within
3 so many days after the review is filed, right? So.

4 MR. OURTH: It depends on whether it's
5 judicial or administrative.

6 MR. SHEETS: Right. But if it's a judicial
7 appeal, you know, maybe there's a way to include that
8 language and incorporate it under the Administrative Review
9 law, that they have to supply a written decision. I don't
10 know, but there's a lot of ideas I think we can come up
11 with, and, Frank, we would be more than happy to send them
12 to you.

13 MR. URSO: Yeah, and I would encourage Joe and
14 Clare and all of the other folks, Penny, please feel free
15 to send your comments, and if there's a better way of doing
16 this in our effort to try to satisfy an Appellate Court
17 decision, we will definitely take a look at it. The
18 purpose was not to curtail anybody's rights in this
19 endeavor. It was mainly to provide some clarity, and
20 perhaps the clarity was emphasized more from a legal,
21 judicial review standpoint. But I appreciate all of these
22 comments.

23 MS. DAVIS: If it's possible even, Frank, to
24 add language in there that allows the applicant to act on

1 the decision made at the Board meeting without risk.

2 MR. URSO: Could I ask people on the call, do
3 your clients or have you in the past -- how many have
4 waited for the formal permit letter or exemption letter
5 before they act? I mean, how often are people waiting on
6 that rather than moving and implementing their plan right
7 after a Board decision?

8 MR. AXEL: Frank, I've actually had quite a
9 few clients want to hold back until they get back the
10 permit letter, particularly if the project involves a major
11 capital expenditure.

12 MR. URSO: Okay.

13 MS. DAVIS: We act upon the Board meeting
14 vote.

15 MR. URSO: So it's pretty much what I had said
16 previously. Some people move and implement their plan
17 right after a Board meeting and some people wait until they
18 get that formalized document from Board and Board Staff. I
19 mean, that seems to be an accurate reflection of what was
20 just said. The proposed rules now say it's ten days, and
21 you can rely upon that rather than having to wait for the
22 formal permit or exemption letter.

23 MS. DAVIS: And for us, based on compliance
24 reasons and, you know, obligations to landlords or

1 acquisitions, we have to act quickly, because we've already
2 waited and, you know, put together a number, for instance,
3 on the change of ownership, 60 to 90 days prior to the
4 Board meeting, so that we can have an Asset Purchase
5 Agreement in place at the time of the application, or a
6 lease, so that we have accurate numbers to put within the
7 application. So we are already holding out or holding
8 people at bay for a long period of time. So that's, I
9 would say, our reasoning in terms of acting upon -- we
10 believe the action of the Board at the Board meeting is a
11 final decision.

12 MR. AXEL: I have actually seen major
13 multi-state changes of ownership go through within 24 hours
14 of the vote and, in fact, the transaction being held up
15 awaiting vote by the Health Facilities and Services Review
16 Board. Any additional delays I think are an unnecessary
17 burden, particularly for changes of ownership, and I'm
18 wondering whether or not changes of ownership should be out
19 of this all together.

20 MS. AVERY: Frank, were you about to comment
21 on that?

22 MR. URSO: No, I think Jack summarized what he
23 wanted to say on that. That is fine.

24 MR. CARVALHO: Jack, ponder the question I

1 raised, though, which is, okay, what if someone sues, or in
2 the case of change of ownership or a -- then the lawsuit --
3 you're going to go to the Court, and the Court is going to
4 say, "Well, the Board needs to have a" -- if they follow
5 that other case, they're going to say they want to see what
6 the -- they want to see the written decision by the Board.
7 This is the problem Jack is -- Frank is trying to solve a
8 problem because something new happened. In Medina, the
9 court said, "We're not happy with just what's in the
10 transcripts". And everybody is describing how Frank's
11 elusion has been changed to status quo. But the status quo
12 has already been disrupted. So the question is, how do we
13 address this new disruption to the status quo that is the
14 least problematic for everybody? We can't do it by saying
15 that the status quo didn't change, because it did change.

16 MR. AXEL: I understand that, David. The
17 issue that I'm having is are we changing -- are we making
18 changes that are going to adversely affect 95 percent of
19 the permit holders for the benefit of the 5 percent that
20 are going to end up in court?

21 MR. CARVALHO: I think you're absolutely
22 right. The question is, Frank and the Board have a problem
23 that needs to be solved, and the collective folks on this
24 call can help us all solve it, but it is a problem, and it

1 does need to be solved.

2 MR. URSO: I welcome your comments.

3 MS. AVERY: And, again, if you can get those
4 to us by Friday, that will be very helpful, at noon.

5 MR. MAYO: I have a question regarding the tie
6 between the capital expenditure definition, which is on
7 page 6. It's my understanding of that is it says it's
8 really three things. It means, A, on behalf of health care
9 facility, B, using general accounting principles; and it
10 doesn't say "C", but says "and which exceeds the capital
11 expenditure minimum."

12 MS. GUILD: Which is our existing language.
13 Nothing has changed.

14 MR. MAYO: I'm trying to point something out.
15 It should be like A, B and C, but there is no C. So, it is
16 three parts to that, no?

17 MS. AVERY: What page are you on again?

18 MR. MAYO: Page 6, the definition of the term
19 "Capital Expenditure".

20 MR. AXEL: Mark, you're saying they're missing
21 the letter C?

22 MR. MAYO: No, I'm just asking if there really
23 are three parts. I don't care if the letter is there, but
24 there are three parts to the definition, correct or not?

1 MS. AVERY: I just see A and B on my copy.

2 MR. URSO: I don't think any changes were made
3 to that section, if I'm --

4 MS. AVERY: There weren't.

5 MR. MAYO: No, there's not.

6 MS. GUILD: Well, the first two describe kind
7 of substantively what a capital expenditure is. And then
8 the "and" refers to what the amount is.

9 MS. AVERY: "Which exceeds the capital" -- and
10 and they're all tied together, and I suppose you could put
11 a C there.

12 MR. MAYO: Even without putting the C there,
13 then it goes into the reporting that you have on the Annual
14 Report for Capital Expenditures, which is at the bottom of
15 page 9 and the top of page 10. It has a capital
16 expenditure in excess of \$200,000, and you're currently not
17 using the capital expenditure definition term that you have
18 in your statutory language.

19 MS. GUILD: What are you saying on page 9?
20 I'm not seeing what you're referring to.

21 MR. MAYO: Expenditures in excess of \$200,000.
22 Any expenditure in excess of \$200,000, any capital
23 expenditure. You're not using the statutory definition
24 that you have in your definition of capital expenditure.

1 MS. GUILD: As I recall and maybe -- well, I'm
2 sure there's others on the call who could respond to that.
3 And I don't remember which year it was, but it was kind of
4 in the Pam Taylor era, there was a major change to the Act,
5 and the Capital Expenditure Report was something that the
6 Illinois State Medical Society wanted, and the \$200,000 was
7 just an agreed figure. That wasn't related to what, you
8 know -- what would be -- not what would require a permit,
9 but what they wanted to have reported, because the capital
10 expenditure increased at that point in time, and I don't
11 remember what the numbers were, but just to make sure that
12 somebody was keeping track of what they thought was
13 significant capital expenditures that were under the
14 threshold. So that was the rationale for it.

15 MR. URSO: Mark, first of all, this wasn't a
16 section that was touched. It all was existing language.
17 If you think there needs to be some modifications or
18 clarifications, can you send us your thoughts in writing
19 and we'll take a look at them?

20 MR. MAYO: Sure that's not a problem. And
21 with regard to this issue about minimums, you'll recall
22 that at one point we had sent to the Board and asked the
23 Board and Claire, and the Staff's response said that the
24 legislation -- the Legislature is the one that determines

1 the categories for minimums, and you had a hospital
2 category, a nursing home category, another category, and we
3 asked that a specific line item be put in for Ambulatory
4 Surgical Treatment Centers, and I noticed this is not in
5 your draft, even though it's something that could be added
6 at this point.

7 MR. URSO: Mark, I guess my best response is,
8 if you think we're missing something here, get it to us in
9 writing, show us the authority, and we'll take a look at
10 it.

11 MR. MAYO: Not a problem. Thank you.

12 MS. AVERY: Okay. Is that it for everyone?

13 (Pause)

14 MS. AVERY: All right. Is there anyone that
15 wants to note that they're on the call that didn't
16 participate in the roll call?

17 (Pause)

18 MS. AVERY: Okay. Again, I remind you, if you
19 have any comments that you want to send, please send them
20 by noon on Friday; and just an FYI for interested
21 parties -- it will be posted on the web site later today --
22 the Board is is planning to meet on the 20th, February
23 20th, from 10 to 2 at the Bolingbrook Golf Club in
24 Bolingbrook, Illinois. So check the web site posted at the

1 end of the day, and the agenda and location and everything
2 will be posted.

3 MR. AXEL: Will projects be reviewed at that
4 session?

5 MS. AVERY: There will be a few. I can't tell
6 you what they are right now, because I'm not in my office.
7 And if you have any questions, just give me a call.

8 MR. AXEL: Okay.

9 MS. AVERY: Thanks, everyone.

10

11 END TIME: 11:04 a.m.

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