

McDermott Will & Emery

Boston Brussels Chicago Düsseldorf Frankfurt Houston London Los Angeles Miami
Milan Munich New York Orange County Paris Rome Seoul Silicon Valley Washington, D.C.

Strategic alliance with MWE China Law Offices (Shanghai)

Steven H. Hoefft, P.C.
Attorney at Law
shoefft@mwe.com
+1 312 334 7737

RECEIVED

AUG 02 2013

**HEALTH FACILITIES &
SERVICES REVIEW BOARD**

August 1, 2013

VIA FEDERAL EXPRESS

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

Re: Centegra Hospital - Huntley, Project No. 10-090, Request for Expedited Remand

Dear Ms. Avery:

We received a copy of a July 24, 2013 letter to you from Hadley Steng of Centegra Health System, in which Centegra requested expedited review of its application to construct a new hospital in Huntley, Illinois. Centegra did not disclose to Mercy that this request was made. Centegra's request for special treatment should be denied.

Enclosed is a copy of the transcript of a hearing conducted by Circuit Court Judge Petrunaro on July 23, 2013. Judge Petrunaro explained that while she was remanding the matter for clarification of the Board's September 11, 2012 written decision, she was not directing what the Board could or could not do regarding Centegra's application. Judge Petrunaro stated:

"I'm not telling them that they can or can't revoke again. That certainly is not before me at all. I'm not saying it's proper or improper. That's not an issue that even - I would even think would address - would be addressed. All I'm asking is that they clarify, give me further explanation for the reasons that they have set forth what the factors were that they considered relative to page ten of that decision. However they choose to do that, and whatever else they choose to do I don't believe is something - I think everyone can agree that I don't have jurisdiction to address that."

As you know, this is the second time Centegra's application was remanded to the Board. After the Board first denied Centegra's application, Centegra sought administrative review. Magistrate Judge Hart remanded the application to the Board because an error in the record was discovered. On remand, the Board reversed itself and approved Centegra's application. Mercy and others

Courtney R. Avery

August 1, 2013

Page 2

sought judicial review of the Board's second decision, which resulted in Judge Petrunaro's remand of the case to the Board.

As it did before when Centegra's application was remanded to it, the Board should reconsider the merits of Centegra's application. There has been and will soon be significant new information that relates to Centegra's application. For example, we understand the Board will soon release its new bed need inventory. Recent figures from the U.S. Census Bureau show that the population of McHenry County declined from April, 2010 to April, 2012. Such new information about bed need and population growth should be considered by the Board at a public hearing before Centegra's application is voted on. Centegra's application should not be decided based on stale data.

Centegra is pushing for a quick decision from the Board. Every applicant who appears before the Board would like expedited treatment of its application, but the Board's rules do not authorize such special treatment. Moreover, there is no need for the Board to rush. Centegra has publicly announced it will not break ground before October, 2013 at the earliest. Centegra stated in its application that construction of a hospital would not be complete until September 30, 2016.

Centegra's request for special expedited treatment should be denied. The Board should consider Centegra's application at a public hearing in light of the current information available to it.

Sincerely,



Steven H. Hoeft, P.C.

Enclosure

cc: Daniel Lawler, Aaron Shepley, Barnes & Thornburg
Michael Martin, Dunn, Martin, Miller & Heathcock, Ltd.
Diane Moshman, Illinois Attorney General Office
Joe Ourth, Hal Morris, Elizabeth Thompson, Arnstein & Lehr

1 APPEARANCES: (Continued)

2 MR. HAL MORRIS, Attorney At Law
3 Appeared on behalf of Advocate Health and
Hospitals Corporation;

4 HON. LISA MADIGAN, Illinois Attorney General
5 BY: MR. THOR INONYE, Assistant Attorney General
6 Appeared on behalf of defendants Illinois Health
7 Facilities Review Board, Illinois Department of
8 Public Health, Dale Galassie and Dr. Lemar
9 Hasbrouck.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 THE COURT: All right. Mercy Crystal Lake and Illinois
2 Health Facilities Review Board, 12 MR 1824. And this is
3 also 12 MR 1840. Good morning, everyone.

4 MR. LAWLER: Good morning, your Honor.

5 MR. MARTIN: Good morning, your Honor.

6 MR. LAWLER: Dan Lawler for the defendants Centegra
7 Health System.

8 MR. MARTIN: And Mike Martin for the same defendants.

9 MR. SHEPLEY: Aaron Shepley from Centegra Health
10 Systems.

11 MR. HOEFT: Good morning, your Honor. Steven Hoeft for
12 the plaintiff, Mercy.

13 MR. MORRIS: Good morning, your Honor. Hal Morris for
14 Advocate Health and Hospitals Corporation.

15 MR. INONYE: Good morning, your Honor. Thor Inonye
16 from the Attorney General's Office.

17 THE COURT: Thank you. And I received the emergency
18 motion. Thank you for pointing that out to me that I cited
19 the wrong -- I am going to tell you that, frankly, I still
20 think that the same problem exists on page ten. So what I
21 would like to do is issue an order that clarifies and I will
22 ask them to clarify the findings on page ten. I appreciate
23 that there is a written report that lays out exactly what
24 the staff report says and would like them to clarify their

1 findings relative to page ten. Thank you for that order.
2 If you could give me that, I would appreciate it.

3 MR. LAWLER: Thank you, your Honor.

4 THE COURT: Thank you for your time today.

5 (Matter later recalled.)

6 THE COURT: Recalling Mercy and Illinois Health
7 Facilities and Review Board, 12 MR 1824 and 12 MR 1840.
8 Good morning again.

9 MR. LAWLER: Good morning, your Honor. Dan Lawler.
10 Counsel are in agreement with the proposed order.

11 THE COURT: Okay.

12 MR. LAWLER: We just want to make sure that the Court
13 is agreeable to it.

14 MR. HOEFT: Your Honor, I have an objection to that --

15 THE COURT: Oh.

16 MR. HOEFT: -- which I told Mr. Lawler.

17 THE COURT: Okay.

18 MR. HOEFT: I don't think -- I would ask --

19 THE COURT: Can I ask you to say your name again?

20 MR. HOEFT: Steven Hoeft for Mercy.

21 THE COURT: Thank you.

22 MR. HOEFT: I apologize. I foresee that someone will
23 argue this order saying the only thing the board can do is
24 stick with the vote it already had and give a reason for

1 it. We believe that it should be remanded to the board for
2 the board to do whatever the board decides to do consistent
3 with the Court's order, but the Court should not preclude
4 the board from reconsidering what it did before, revoting,
5 whatever the board decides to do in light of the record
6 before it. But we don't want this order to be read as
7 saying the only thing the board can do is stick with the
8 decision it's got and give an explanation for the decision
9 made before.

10 The board composition has changed. I don't know
11 what the board is going to do, but they should have the
12 freedom to do what they think is appropriate.

13 THE COURT: Well, that's interesting because, frankly,
14 all I sent it back for was to get clarification as to the
15 findings. And either way, it's the same boilerplate -- I
16 don't care whether they stuck it on the end of the findings
17 from the board staff or whether it was at the beginning of
18 the letter, like the other ones I've seen, and like the one
19 that was in the case and another one that was pending before
20 me, the same thing had happened. I tend to agree. I looked
21 at it and thought if there is 11 -- well, they put 11,500.
22 I counted 9,500.

23 I think there was a supplemental filing as well.
24 So I was concerned as to how I was going to ascertain what

1 their reasoning was for whatever they did. But I guess I'm
2 concerned. I don't know that I -- okay. Let me ask the
3 question. Are they allowed to vote again if I'm just
4 seeking clarification?

5 MR. HOEFT: I don't know the answer to that, your
6 Honor. The board has to decide that.

7 THE COURT: I mean, I haven't made a decision yet
8 whether they were correct or not correct. I just want them
9 to clarify what was done. That's all I'm seeking.

10 MR. HOEFT: I understand that, your Honor. But with
11 the dismissal of the complaint, it's back before the board,
12 and I'm simply saying whatever the board thinks it should
13 do.

14 THE COURT: I didn't dismiss a complaint.

15 MR. HOEFT: I thought it was dismissed without
16 prejudice.

17 MR. MORRIS: The electronic docket, I believe, shows
18 that it was dismissed without prejudice.

19 THE COURT: My order did not say that. That may be a
20 coding error, unfortunately. I can't address that, to be
21 honest with you. But I just felt that I needed
22 clarification.

23 MR. HOEFT: I apologize. We saw the dismissal without
24 prejudice.

1 THE COURT: We'll check that. I can't speak to that.

2 MR. HOEFT: I understand.

3 THE COURT: I'm sure it was inadvertent.

4 MR. HOEFT: Okay.

5 THE COURT: If it happened that way, I think it's
6 probably closing it out was probably what happened.

7 MR. HOEFT: Okay.

8 MR. LAWLER: Could we maybe then reflect that in this
9 order?

10 MR. INONYE: Your Honor, I think that the Court retains
11 jurisdiction for this remand and then it comes back to your
12 Honor without them having to file new complaints.

13 THE COURT: I would agree. I would think that once it
14 comes back, you have -- I don't think you need a new
15 complaint.

16 MR. MORRIS: If the dismissal without prejudice is
17 taken away, I think that's probably true.

18 THE COURT: Can I -- you know what, can I pass you
19 folks for a few minutes? I would like to pull up the docket
20 so I can see what it says.

21 MR. HOEFT: Okay. Thank you, your Honor.

22 THE COURT: My guess, and I shouldn't guess without
23 looking, is that when they saw remand, that a code entered
24 that they did that. I don't believe my order reflected I

1 dismissed it.

2 MR. MORRIS: No, it doesn't.

3 THE COURT: I think it just reflects -- so I just would
4 like to double-check that, and let's get this all taken care
5 of. Give me just a few minutes.

6 MR. HOEFT: Thank you, your Honor.

7 (Matter passed and recalled.)

8 THE COURT: All right. Recalling Mercy Crystal Lake,
9 12 MR 1824, 12 MR 1840. Is everyone -- okay. Let me pull
10 up the docket sheet while we're here. And I'll show you
11 what I see. 4,500 bucks is really cheap for a car with
12 47,000 miles on it. I'm amazed by that. All right. Let's
13 see. I do show that it was closed. It should not have been
14 closed. We'll take care of that. I think it's probably
15 just an error in terms of a coding error. I do show that it
16 was dismissed without prejudice. And that, again, should
17 not have occurred based upon what was in the order and what
18 my intention was, so I apologize for that. We will figure
19 it out on our end.

20 MR. HOEFT: All right.

21 THE COURT: Again, it should not. I think that they
22 saw remanded and --

23 MR. HOEFT: Oh, I can understand what happened there,
24 your Honor.

1 THE COURT: Okay. Not a problem on that issue.

2 MR. HOEFT: But we still, your Honor, believe that it
3 should go back to the board because the board is different
4 now, and they are going to have to look at your decision and
5 the prior decision, come up with reasons, and whether they
6 come up with the same reason or different reasons or they
7 want to vote again, again, I think it would be like an
8 Appellate Court remanding to a trial court with directions
9 to say your decision was inadequate, you have it back
10 again. So that's our position.

11 I really do think it should be dismissed here
12 because you said the order they issued was deficient. And
13 unless it's corrected, it's not going to be stayed. It's
14 now going back to them, the ball is in their court.

15 THE COURT: I am going to go through and let me I
16 apologize, can you again just say your name for the record?

17 MR. HOEFT: Oh, I'm sorry, I keep forgetting. It's
18 Steven Hoeft for Mercy, your Honor.

19 THE COURT: Thank you.

20 MR. HOEFT: I apologize.

21 THE COURT: Can I get your name?

22 MR. INONYE: Thor Inonye. I am on behalf of the board.

23 THE COURT: What's your position?

24 MR. INONYE: Your Honor, we don't really take a

1 position other than the fact that we don't want an order
2 that directs us to do anything specifically. If the board
3 wants to, you know, revote, they can, but they shouldn't be
4 ordered to do so. But basically what typically happens in
5 something like this is that they are going to go through and
6 figure out what their justification was and send it back and
7 they will write it out and send it back. They are not going
8 to revote typically, so we don't want an order saying they
9 have to revote except as there is a new composition or
10 anything like that. They just, pursuant to your order, is
11 come up with the justification or the reasons for -- on the
12 previous.

13 THE COURT: Thank you. Can I get your name for the
14 record?

15 MR. MORRIS: Hal Morris on behalf of Advocate. I think
16 that really underscores the issue here with just a remand is
17 that the board is going to have to vote on something, even
18 if it's the reasons, and because it's a new board, we don't
19 know whether they can agree with what the old board did, we
20 don't know what their reasons are. Much less do we even
21 know if they can agree on reasons. So with your order, I
22 believe you've indicated that it's a deficient order without
23 reasons and it's appropriate that it goes back to the board
24 and they then get to do whatever they want in terms of

1 having to vote on something because they are going to have
2 to vote on the reasons since they operate in open session
3 according to the Open Meetings Act.

4 MR. HOEFT: Your Honor, Steven Hoeft. In case -- I
5 wasn't asking the order say they have to revote, if that was
6 how it came out.

7 THE COURT: Okay.

8 MR. HOEFT: I'm simply saying it should be remanded for
9 further proceedings up to the board, but I am not asking
10 that they be directed to do anything.

11 THE COURT: Are you objecting to the order that was
12 provided?

13 MR. HOEFT: Yes.

14 THE COURT: In what format?

15 MR. HOEFT: Because the final sentencing to say that
16 what they must do is they must follow that and they must
17 conform with the reasons, and nothing else. And, again, I
18 don't know what the board is going to do, but because it's a
19 new board, they may decide as they have done before, they
20 changed their mind before in this application. So not
21 knowing what they are going to do or how they are going to
22 do it, I think they've got to decide what to do. They
23 issued a deficient order, now they have to figure out how to
24 correct it. You have given them a road map with your

1 decision.

2 THE COURT: Can I ask you this, though? What would you
3 suggest the proper language should be in terms of the order
4 that's provided?

5 MR. HOEFT: I actually think that the order should be
6 that the case is dismissed without prejudice and it's
7 remanded to the board for further deliberations consistent
8 with your opinion, and then they've got -- they should
9 decide what they are going to do.

10 THE COURT: And what would you believe -- again, give
11 me your name for the record.

12 MR. MORRIS: I'm sorry. Hal Morris on behalf of
13 Advocate. I agree with Mr. Hoeft because I think ultimately
14 it comes down to what is the status of this permit. And as
15 your Honor's order has suggested, the permit without the
16 reasons articulated in it is not really valid because it
17 doesn't have a sufficient articulation that would be subject
18 to administrative review. So I agree with Mr. Hoeft that it
19 would be appropriate to send it back to the board, and then
20 the board does whatever the board does with it when it goes
21 back.

22 MR. LAWLER: Your Honor, Dan Lawler for the --

23 THE COURT: Thank you.

24 MR. LAWLER: -- defendant Centegra. Your Honor, your

1 jurisdiction is to review final decisions of the agency.

2 THE COURT: That's true.

3 MR. LAWLER: You have a final decision. Now, the
4 effect of your remand is not unlike the procedure that
5 Advocate, Mr. Morris' client, and Sherman took advantage
6 of. There is a statutory provision in the Planning Act that
7 says if an adversely affected party wants the board to
8 provide a specification for its decision, it can ask the
9 board to do that, and then the board -- that's why they
10 issued the ten-page written decision in September. It
11 wasn't a revote on our application, it was a specification
12 of the reasons for its final decision.

13 Now, your Honor's order is saying that that
14 decision -- for purposes of administrative review, I'd like
15 to see more reason for it, but it's not a revote on the
16 project. You weren't saying that voting on the merits or
17 substance of the permits, you were just saying this decision
18 I'd like to see more explanation for. So it's similar to
19 the process in which when Mr. Morris' client asked for
20 further specification of the board's decision, the board did
21 that. But that's all it did. It didn't reopen the whole
22 project for reconsideration. This is not a reconsideration
23 of our project. It's --

24 THE COURT: Not what I -- I have not requested a

1 reconsideration. I have asked a clarification for the
2 reasons that they voted as they did. And I appreciate that
3 the ten-page was -- I appreciate the provision. I don't
4 think it clarifies the reasons for the decision. I would
5 like that clarified. What they decide to do with that, I
6 don't think I control that aspect of it, nor is it my
7 intention to control how they achieve what I have asked. I
8 just want clarification for the reasonings and for what's on
9 page ten of that order.

10 If they choose to revote and if they have to vote
11 to approve whatever it is that they are giving me, that's
12 their procedure. I do not control how they operate. So
13 it's a whole lot of talk about nothing, isn't it?

14 MR. MARTIN: See order signed.

15 MR. HOEFT: I think, your Honor, given that is what we
16 hope, what you've just explained, and so as long as we don't
17 get caught with that order taken out of context, I'm fine.

18 THE COURT: I'm not telling them that they can or can't
19 revote again. That certainly is not before me at all. I'm
20 not saying it's proper or improper. That's not an issue
21 that even -- I would even think would address -- would be
22 addressed. All I'm asking is that they clarify, give me
23 further explanation for the reasons that they have set forth
24 what the factors were that they considered relative to page

1 ten of that decision. However they choose to do that, and
2 whatever else they choose to do I don't believe is
3 something -- I think everyone can agree that I don't have
4 jurisdiction to address that.

5 MR. HOEFT: Thank you, your Honor.

6 THE COURT: Thank you. Have a good day. And we will
7 correct our -- I apologize again. Again, I do believe it's
8 just a coding error. We'll make sure it's taken care of.

9 MR. HOEFT: We just saw that.

10 THE COURT: No, no, no, I appreciate you bringing that
11 to my attention.

12 MR. MORRIS: I think it's actually on both cases.

13 THE COURT: Is it? Thank you for telling me that. I
14 appreciate that. Have a good day.

15 (AND THOSE WERE ALL THE PROCEEDINGS HAD.)

16

17

18

19

20

21

22

23

24

1 STATE OF ILLINOIS)
2 COUNTY OF W I L L) SS.
3
4
5
6

7 I, STEVE VITHOULKAS, Official Court Reporter for
8 the 12th Judicial Circuit, Will County, Illinois, do hereby
9 certify the foregoing to be a true and accurate transcript
10 of the electronic recording of the proceedings of the
11 above-entitled cause, which recording contained a
12 certification in accordance with rule or administrative
13 order.
14
15
16
17
18
19
20
21
22
23
24



STEVE VITHOULKAS
Official Court Reporter.