

**Before The
HEALTH FACILITIES AND SERVICES REVIEW BOARD
State of Illinois**

HEALTH FACILITIES AND SERVICES)	
REVIEW BOARD,)	
)	
Complainant,)	
)	
v.)	Docket No. HFSRB #11-11
)	
CENTEGRA HEALTH SYSTEM and)	
CENTEGRA HOSPITAL-HUNTLEY,)	
Project No. 10-090,)	
)	
Respondents.)	

CENTEGRA’S EXCEPTIONS TO ALJ’s PROPOSAL FOR DECISION

The Applicants/Respondents, Centegra Health System and Centegra Hospital-Huntley (collectively “Centegra”) respectfully submit the following Exceptions to the Proposal for Decision of Administrative Law Judge (“ALJ”) Richard E. Hart on Project No. 10-090, Centegra Hospital-Huntley issued on March 30, 2012:

Background

1. On December 29, 2010, Centegra filed an application to establish a new 128-bed hospital in Huntley, Illinois with the Illinois Health Facilities and Services Review Board (“State Board”) designated as Centegra Hospital-Huntley, Project No. 10-090. The State Board initially considered the project at its meeting on June 28, 2011. A motion for approval failed to receive the votes necessary for approval resulting in the issuance of Intent-to-Deny.

2. On December 7, 2011 the State Board again considered the project and a motion for approval received four affirmative votes and four negative votes, with one State Board member absent. Because five affirmative votes were required to approve the project, the 4-4 vote was deemed an Initial Denial of the application.

3. The State Board issued a written decision in a letter dated December 9, 2011 (the “Denial Letter”) stating that the denial of Centegra’s permit application was based on Centegra’s alleged failures to document conformance with three Review Criteria. The Denial Letter notified Centegra of their right under Section 10 of the Illinois Health Facilities Planning act (“Planning Act”) to a hearing before an Administrative Law Judge (“ALJ”) for purposes of reviewing the State Board’s denial of the application. The Planning Act directs that the ALJ “take actions necessary to ensure that the hearing is completed within a reasonable period of time, but not to exceed 90 days except for delays or continuances agreed to by the person requesting the hearing.” 20 ILCS 3960/10. Centegra timely requested an administrative hearing, and the Acting Director of the Illinois Department of Public Health appointed Richard E. Hart as the ALJ.

4. At a prehearing conference on February 23, 2012, ALJ Hart scheduled the administrative hearing for March 22-23, 2012 in Chicago. However, on March 15, 2012, the State Board’s attorneys made a telephone call to ALJ Hart without notifying Centegra or any other party to the administrative proceeding and without providing Centegra or any other party an opportunity to participate in the telephone call. During this telephone call, the State Board’s attorneys argued to ALJ Hart that there was “an error in the record” which “could have a major impact on the evidentiary hearing scheduled for March 22-23, 2012.” This communication by the State Board’s attorneys to ALJ Hart was an *ex parte* communication under the Illinois Administrative Procedure Act which prohibits communications with an ALJ “in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or the representative of any party, except upon notice and opportunity for all parties to participate.” 5 ILCS 100/1060(a).

5. The State Board's attorneys said the "error" in the record was that a consultant's report submitted by the attorney for Advocate Hospitals and Health Corporation ("Advocate") into Centegra's project file should have been submitted into the project file of Mercy Crystal Lake Hospital and Medical Center, Project No. 10-089 ("Mercy Project"), and a consultant's report Advocate's attorney submitted into the Mercy Project file should have been submitted into Centegra's project. The State Board's Staff had posted these documents on the Board's website in early June 2011 shortly after they were submitted. Consequently, Advocate and everyone else had actual notice of where the consultant's reports were filed prior to the State Board's meetings on Centegra's project on June 8, 2011 and December 7, 2011, and neither Advocate nor anyone else claimed there was "error" in the record based on these filings.

6. On March 20, 2012, two days before Centegra's requested hearing was to commence, ALJ Hart announced that he was cancelling the hearing based upon the alleged error in the record and intended to return the matter to the State Board to reconsider the project. Centegra objected to the cancellation of its hearing and to the proposed remand to the State Board for reconsideration of Centegra's project.

7. On March 30, 2012, ALJ Hart issued his Proposal for Decision in which he recommended that the State Board "(i) correct Respondent's record, and (ii) reconsider Respondent's application for permit with the corrected record."

Centegra's Exceptions to the Proposal for Decision

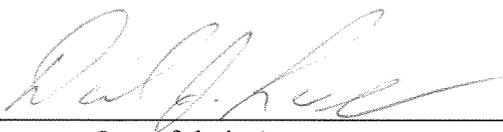
8. Centegra submits the following exceptions to ALJ Hart's Proposal for Decision:
- (a) There is no "error" in the record. The State Board's Staff filed documents from Advocate's attorneys as directed by Advocate's attorneys. Even if the consultant's reports were misfiled, the State Board's Staff publicly posted the documents on the Board's website in early June 2011 so Advocate's had notice of the filing and could have refiled the documents if it thought they were misfiled.

- (b) ALJ Hart's cancellation of Centegra's hearing denied Centegra its statutory right to a hearing to review the State Board's December 7, 2011. The State Board should therefore send this matter back to ALJ Hart to conduct and complete the hearing as required by Section 10 of the Planning Act.
- (c) ALJ Hart's Proposal for Decision is based upon matters first presented to him in an *ex parte* communication. The Illinois Administrative Procedure Act state law governing this proceeding prohibits the ALJ from making any findings based on *ex parte* communications. Consequently, both ALJ Hart's Proposal for Decision, and any decision of the State Board based on that Proposal, would violate the Illinois Administrative Procedure Act.
- (d) ALJ Hart's Proposal for Decision violates the State Board's own rules because it effectively vacates the State Board's decision of December 7, 2011, and the Board's rules specifically prohibit an ALJ from vacating the State Board's decision.

9. If the State Board adopts the Proposal for Decision and reconsiders Centegra's project, Centegra respectfully requests that the State Board approve Centegra Hospital-Huntley, Project No. 10-090, on the grounds that the project is in substantial compliance with the State Board's Review Criteria as more fully addressed in Centegra's written Brief in Support of Centegra's Exceptions to ALJ's Proposal for Decision which is filed together with these Exceptions.

Respectfully submitted,

CENTEGRA HEALTH SYSTEM and
CENTEGRA HOSPITAL-HUNTLEY,
Applicants/Respondents

By: 
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CERTIFICATE OF SERVICE

Daniel J. Lawler, an attorney, hereby certifies that he caused the foregoing **Exceptions to the Proposal for Decision of the Administrative Law Judge**, to be served upon the following persons by email this 4th day of May, 2012 before the hour of 5:00 p.m. and by first class U.S. Mail delivery before the hour of 5:30 p.m.

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