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January 23, 2018

**RECEIVED**

**Via Email and Overnight Delivery**

JAN 25 2018

**HEALTH FACILITIES &  
SERVICES REVIEW BOARD**

Ms. Jeannie Mitchell  
General Counsel  
Illinois Health Facilities and Services Review Board  
525 West Jefferson, 2nd Floor  
Springfield, IL 62761

**RE: Valley Ambulatory Surgery Center, St. Charles, Project #17-057**

**Response to False Statements of John Glennon  
to the Illinois Health Facilities & Services Review Board**

Dear Ms. Mitchell:

We represent Surgery Partners, Inc., an applicant on Project #17-057, Valley Ambulatory Surgery Center ("VASC"), by which VASC seeks to relocate its existing facility in a 30-year old wood structure to a newly constructed building down the street in St. Charles. The project proposes no new categories of service and no additional surgical capacity. All providers within 45-minutes travel time have been sent impact statements, and no existing providers have objected to the project.

A public hearing request on the project was submitted by a Mr. John Glennon who gave his address as Northbrook, Illinois, which is located 40 miles from St. Charles. A public hearing was conducted by the Health Facilities & Services Review Board ("Review Board") in St. Charles on January 18, 2018. No existing providers appeared in opposition to the project. The only two opponents were Mr. Glennon and an attorney for the landlord of the building in which the facility is currently located who essentially stated that if VASC was not satisfied with the premises, it should fix the place itself.

**At the public hearing, Mr. Glennon made numerous false statements of material fact which he knew, or reasonably should have known, were false at the time that he made them. Mr. Glennon's statements relating to various transactions involving Surgery Partners were demonstrably false, as addressed below.**

## **SURGERY PARTNERS DISCLOSED ALL TRANSACTIONS TO THE REVIEW BOARD**

Surgery Partners previously disclosed to the Review Board all transactions that Mr. Glennon falsely stated were not disclosed. Specifically, Surgery Partners disclosed to the Review Board the transactions involving NovaMed, Symbion, and Bain Capital.

**The NovaMed Transaction was Disclosed to the Review Board:** In 2011, a Surgery Partners's subsidiary acquired NovaMed, Inc., which indirectly held majority interests in four ambulatory surgical treatment centers ("ASTCs") in Illinois. Prior to the transaction, Mr. Linas Grikis of McDermott Will & Emery sent a letter to the Review Board dated January 21, 2011, which disclosed and described the transaction, and also requested an advisory opinion as to whether the transaction was a change of ownership within the meaning of the Review Board's regulations. A copy of Mr. Grikis's letter dated January 21, 2011, is included with this letter as Attachment 1.

**The Symbion Transaction was Disclosed to the Review Board:** In 2014, a Surgery Partners' subsidiary acquired Symbion, which indirectly held a minority interest in VASC. Prior to the transaction, Ms. Clare Connor Ranalli of McDermott Will & Emery sent a letter to the Review Board dated June 13, 2014 which disclosed and described the transaction, and also requested an advisory opinion as to whether the transaction was a change of ownership within the meaning of the Review Board's regulations. A copy of Ms. Connor Ranalli's letter dated June 13, 2014 is included with this letter as Attachment 2.

**The Bain Capital Transaction was Disclosed to the Review Board:** In 2017, Bain Capital, through an affiliate, BCPE Seminole Holdings, LP, acquired a majority interest in Surgery Partners from H.I.G. Prior to the transaction, Ms. Connor Ranalli of McDermott Will & Emery sent a letter to the Review Board dated May 16, 2017 which disclosed and described the transaction, and also requested an opinion as to whether the transaction required an application for exemption for a change of ownership under the Review Board's regulations. A copy of Ms. Connor Ranalli's letter dated May 16, 2017 is included with this letter as Attachment 3.

## **THE PRIOR TRANSACTIONS DID NOT REQUIRE REVIEW BOARD APPROVAL**

The Review Board's staff provided Surgery Partners with written advisory opinions that each of the above transactions did not constitute changes of ownership under the Review Board's regulations and did not require applications for approval.

**The NovaMed Transaction Did Not Require Review Board Approval:** In response to Mr. Grikis's letter of January 21, 2011 relating to the NovaMed transaction, Mr. Mike Constantino responded in writing that **"it does not appear that the transaction you propose will result in a change in the operational control of the four ASTCs nor does it appear that the proposed transaction will result in a change in control of the four facilities' physical plant and capital assets."** A copy of Mr. Constantino's letter to Mr. Grikis is included with this letter as Attachment 4. (Please note that Mr. Constantino's letter is dated January 24, 2010, but was in fact sent in January 2011 as it was responding to Mr. Grikis's letter of January 21, 2011.)

**The Symbion Transaction Did Not Require Review Board Approval:** In response to Ms. Connor Ranalli's letter of June 13, 2014 related to the Symbion transaction, Ms. Courtney Avery advised in a letter dated June 16, 2014, that "**a certificate of need for a change [of] ownership is not required for the proposed acquisition....**" A copy of Ms. Avery's letter to Ms. Connor Ranalli dated June 16, 2014 is included with this letter as Attachment 5.

**The Bain Capital Transaction Did Not Require Board Approval:** In response to Ms. Connor Ranalli's letter of May 16, 2017 relating to the Bain Capital transaction, Mr. Constantino advised in letters dated May 22, 2017, that "**the proposed change will not require an application for exemption for a change of ownership.**" Copies of Mr. Constantino's letters to Ms. Connor Ranalli dated May 22, 2017 are included with this letter as Attachment 6.

Had Mr. Glennon been interested in the truth relating to Surgery Partner's disclosures to the Review Board of these transactions, and the written opinions of the Review Board's staff indicating that the transactions were not changes of ownership under the applicable regulations, he could have easily accessed this information with a simple request. Instead, he chose to repeatedly make false statements to Review Board member Marianne Murphy and to yourself, as presiding officer, at the public hearing in St. Charles on January 18th.

**GLENNON FALSELY STATED THAT THE PRIOR TRANSACTIONS WERE NOT DISCLOSED TO THE REVIEW BOARD AND REQUIRED APPROVAL**

The transcript of the public hearing shows Mr. Glennon made numerous statements relating to the above transactions that were false and misleading:

1. **Mr. Glennon falsely states that none of the transactions were reported to the Review Board:** "[T]here have been numerous corporate transactions by out-of-state equity funds and others that have resulted in change of ownership and changes in control of this facility, *none of which have been reported to the Board....*" Emphasis added; Transcript of Hearing, Project #17-057, Conducted on January 18, 2018 ("Transcript"), pages 12-13. Relevant excerpts of the Transcript are included with this letter as Attachment 7.
2. **Mr. Glennon falsely states that the transactions are not documented in the Review Board's records:** "These transactions suggest there have been a series of ownership and control changes *that should be documented in the Board records, but they are not.*" Emphasis added; Transcript, page 13, lines 14-17.
3. **Mr. Glennon repeats the false statement that none of the transactions were disclosed to the Review Board:** "But the conclusion for my purposes today is quite simple: *That none of this has been disclosed to or approved by the Board.*" Emphasis added; Transcript, page 13, lines 22-24.
4. **Mr. Glennon falsely suggests that the Symbion/VASC transaction was not documented with the Review Board and that it required approval:** "It's not at all

clear from the file when Surgery Partners took control of this facility from the founders, but it appears to be years ago. The file for this project evidenced no approval by the Board of takeover of control of this facility by Surgery Partners.” Transcript, page 14, lines 3-9.

5. **Mr. Glennon again repeats the false statement that none of the transactions were disclosed to the Review Board:** “According to the Board’s own website, *Surgery Partners has not disclosed the Symbion transaction, the ownership of Nova Med that was controlled by H.I.G. Captial, or its ownership by Bain Capital.*” Transcript, pages 14-15.

The correspondence between the Review Board’s staff and McDermott Will & Emery, included as Attachments 1 through 6 to this letter, conclusively establish that the above statements by Mr. Glennon are false and misleading.

For Mr. Glennon to falsely accuse Surgery Partners of concealing information from regulatory authorities is all the more appalling given that Mr. Glennon himself was indicted and convicted of concealing a felony from federal authorities. As set forth in a report of the Review Board of the Illinois Attorney Registration and Disciplinary Commission filed June 21, 2013:

“The Administrator charged Respondent [John Edward Glennon] with one count of misconduct following Respondent’s federal conviction for misprision of a felony. *Respondent was paid \$700,000 from an inflated contract tied to a scheme involving Stuart Levine, Jacob Kiferbaum and the Chicago Medical School.* Respondent initially failed to report his knowledge of criminal conduct to the federal authorities. Respondent later cooperated with the federal authorities, pled guilty to misprision of a felony, and was sentenced to probation.”

Emphasis added; In re John Edward Glennon, Commission No. 2009 PR 0137, filed June 21, 2013, Synopsis of Review Board Report and Recommendation. A copy of the ARDC Review Board’s Synopsis and Report is included with this letter as Attachment 8.

Ms. Jeannie Mitchell, General Counsel  
January 23, 2018  
Page 5

Please provide a copy of this response to Board Member Murphy who attended the public hearing and was present during the above statements made by Mr. Glennon.

Very truly yours,

BARNES & THORNBURG LLP



Daniel J. Lawler

Enclosures

cc: Ms. Courtney Avery, Administrator, IHFSRB  
Mr. Mike Constantino, Lead Project Reviewer, HFSRB  
Mr. Tony Taparo, President, Atlantic Region, Surgery Partners, Inc.  
Mr. Daniel Hauer, Administrator, Valley Ambulatory Surgery Center, L.P.

**MW&E Letter Dated January 21, 2011 (NovaMed transaction)**

**ATTACHMENT 1**

# McDermott Will & Emery

Boston Brussels Chicago Düsseldorf Houston London Los Angeles Miami Milan  
Munich New York Orange County Rome San Diego Silicon Valley Washington, D.C.  
Strategic alliance with MWE China Law Offices (Shanghai)

Linas J. Grikis  
Attorney at Law  
lgrikis@mwe.com  
+1 312 984 7745

January 21, 2011

## VIA U.S. MAIL AND ELECTRONIC MAIL

Mr. Mike Constantino  
Illinois Health Facilities and Services Review Board  
2nd Floor  
525 West Jefferson Street  
Springfield, Illinois 62761

Re: Proposed Merger Transaction

Dear Mike:

This letter serves to confirm the discussions we had on January 13, 2011 regarding the proposed merger transaction which is reflected in the chart attached hereto as Exhibit A (the "**Proposed Transaction**"), which corrects the one typo we noted in the chart provided on January 13, 2011. We are now authorized to disclose the identity of the parties and the names of the parties are used herein instead of titles such as Superparent, Parent, etc. Based upon those discussions, we are requesting a letter confirming that no action of the Illinois Health Facilities and Services Review Board (the "**Board**") is required regarding the Proposed Transaction.

As we discussed during our call, NovaMed, Inc. ("**NovaMed**") is a publicly traded company that indirectly holds interests in ambulatory surgery centers in Illinois (the "**Facilities**"). NovaMed has two wholly owned subsidiary corporations that each own membership interests in two Facilities. Specifically, NovaMed Management Services, LLC ("**NMS**") owns (i) 77% of the membership interests of NovaMed Eye Surgery Center of Maryville, LLC (and physician owners, each licensed to practice medicine in Illinois, own the remaining 23% membership interests); and (ii) 69.5% of the membership interests of NovaMed Eye Surgery Center of Chicago-Northshore, LLC (and physician owners own the remaining 30.5% membership interests). NovaMed Acquisition Company, Inc. ("**NAC**"), owns membership interests of the other two Illinois Facilities. Specifically, NAC owns 51% of the membership interests of NovaMed Surgery Center of Oak Lawn, LLC (and physician owners own the remaining 49% membership interests); and (ii) 51% of the membership interests of NovaMed Eye Surgery Center of River Forest, LLC (and physician owners own the remaining 49% membership interests). NMS and NAC may be referred to herein individually as a "Manager", and, collectively, as the "Managers." The Illinois Facilities are manager-managed LLCs (with the respective Manager/member (e.g., NMS or NAC) serving in such capacity). As more fully explained below, the members of each LLC hold reserved powers over the operations of each of the Facilities.

U.S. practice conducted through McDermott Will & Emery LLP.

227 West Monroe Street Chicago Illinois 60606-5096 Telephone: +1 312 372 2000 Facsimile: +1 312 984 7700 www.mwe.com

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The Proposed Transaction involves our client, Surgery Center Holdings, LLC, a Delaware limited liability company, creating a subsidiary corporation ("**Merger Sub**"), wholly owned by Surgery Center Holdings, Inc., a Delaware corporation (a subsidiary of Surgery Center Holdings, LLC), which will be merged with and into NovaMed. NovaMed will be the surviving entity in the merger, and the resulting corporate structure will be as is reflected in the organizational chart.

Under the Proposed Transaction, each Facility will continue to be owned by Manager and the physician owners. The day to day management of each Facility will not change. The Proposed Transaction will not alter the operational control over the Facilities. Ultimate control over the Facilities lies with the members. Each Facility Operating Agreement provides that the business operations of the Facility are to be operated by a manager, pursuant to a Management Agreement that is subject to the reserved powers of the members and the specific terms of the Management Agreement. Manager has entered into a long-term Management Agreement with each Facility and the Management Agreement cannot be amended without the approval of the physician owners. The Management Agreement for each Facility will not change and will remain in place after the closing of the Proposed Transaction.

The clinical/medical operations of each Facility are currently operated and governed by an independent medical staff. This will continue unchanged after the closing of the Proposed Transaction. No change in medical staff is contemplated in connection with the Proposed Transaction. Further, there will be no change in the license holders and there will be no change to the Medicare provider numbers or tax ID numbers of each Facility. Each Facility will retain the same name and address and there is no anticipated change in the clinical and non-clinical personnel of the Facilities.

Similarly, the physician owners of each Facility will continue to control (e.g., direct the management and policies) the clinical operations at each Facility, as well as control certain "major actions" (including the use of capital assets) at each Facility. The members of each Facility (including the minority physician owners) have certain reserved powers over the operations of each Facility. As such, the Manager is prohibited from taking certain "major" actions with respect to the Facilities without the approval of a super-majority vote of the members (which would include the physician members of each Facility), including:

- Change the nature of the business or purpose of the Facilities;
- Dissolve or liquidate the Facilities;
- Amend the Facilities' Operating Agreement or Articles of Organization;
- Incur Indebtedness and execute promissory notes, loan agreements, etc., outside of the ordinary course of business in excess of threshold amounts ranging from \$75,000 to \$250,000 depending on the Facility (the "**Threshold Amounts**");

Mike Constantino

January 21, 2011

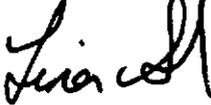
Page 3

- Incur capital expenditures or capital commitments in excess of the Threshold Amounts;
- Amend or modify any contract or agreement with, or make any loans to, (i) any Member, officer or employee of a Facility; or (ii) any NovaMed entity or its officers, directors or employees;
- Amend the terms of the Management Agreement in a manner that changes the economics between a Facility and a Manager;
- Reorganizing a Facility, causing a Facility to merge or consolidate with or into another entity or sell all or substantially all of its assets to another entity;
- Acquiring another entity or substantially all of the assets of another entity; or
- Changing a Facility's capital contribution policy.

Based upon the facts presented above and our discussions, it is our belief that the Proposed Transaction will not result in a change of ownership because it will not result in either a change of control or change of ownership as defined by Board rules. We look forward to receiving your confirmation that Board action is not required.

Please let us know if there is anything else you need from us.

Very truly yours,



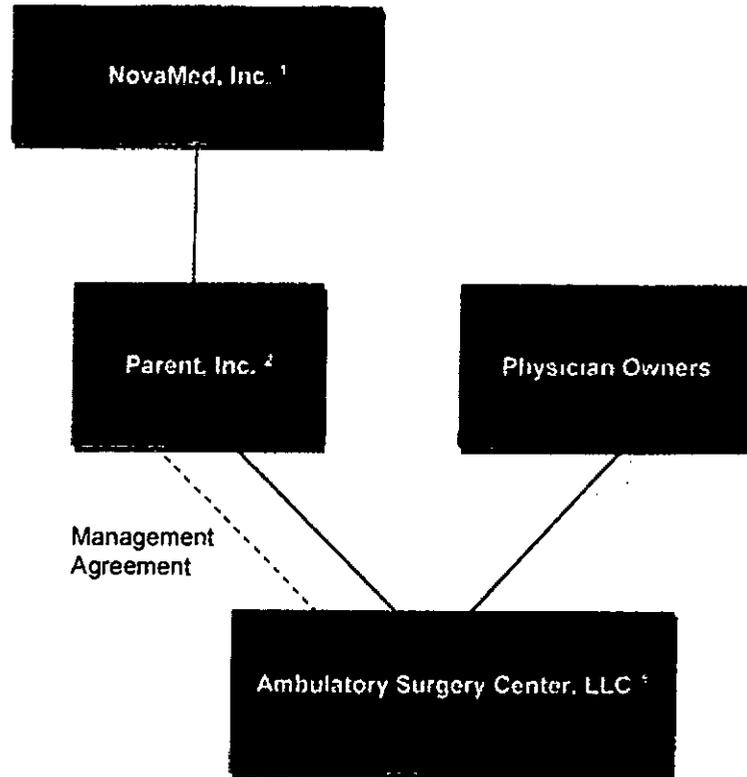
Linas Grikis

cc: Brian S. Hucker

Attachment

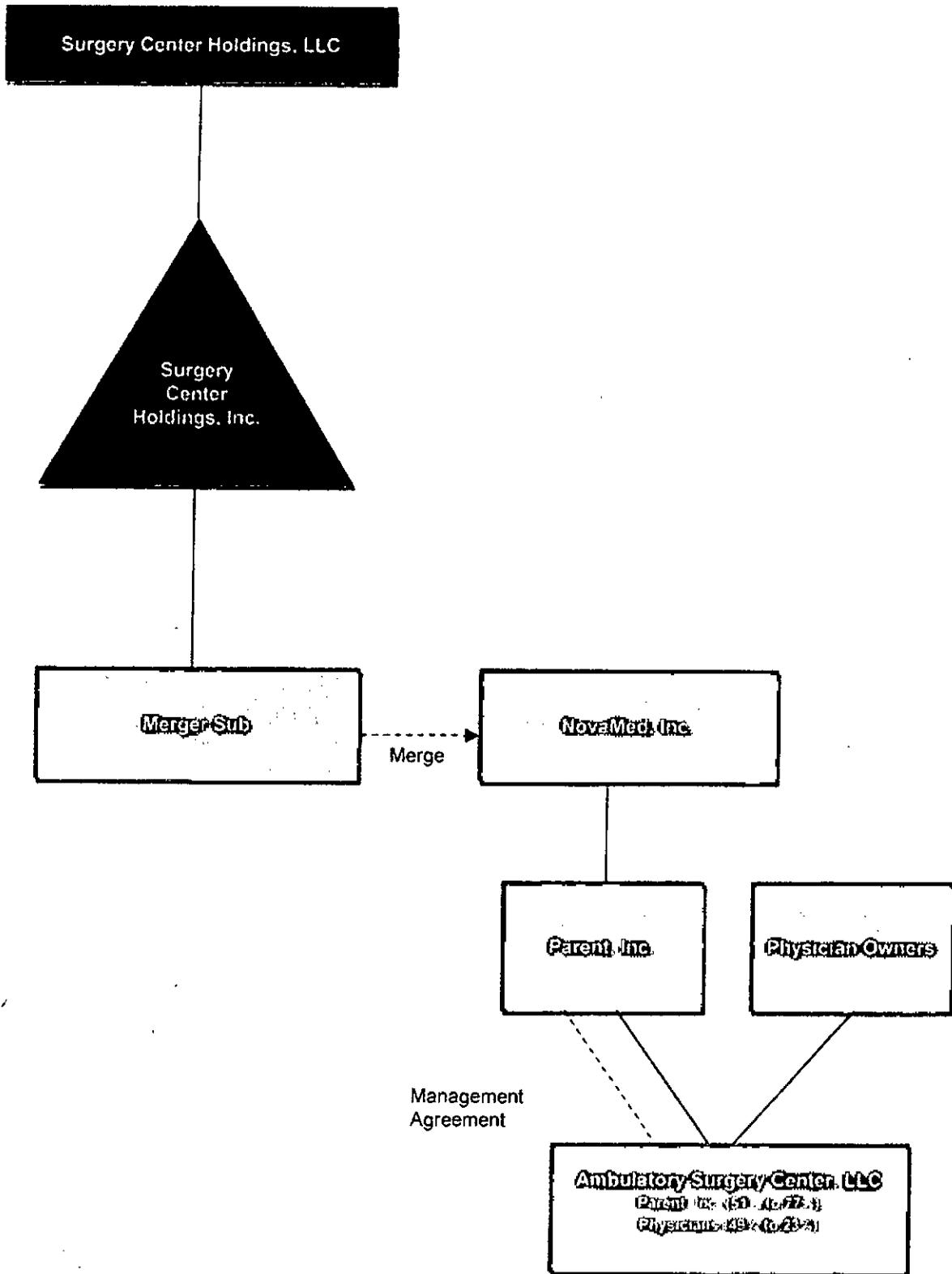
**EXHIBIT A**  
**TRANSACTION SUMMARY CHARTS**

# Structure Chart Before Proposed Merger

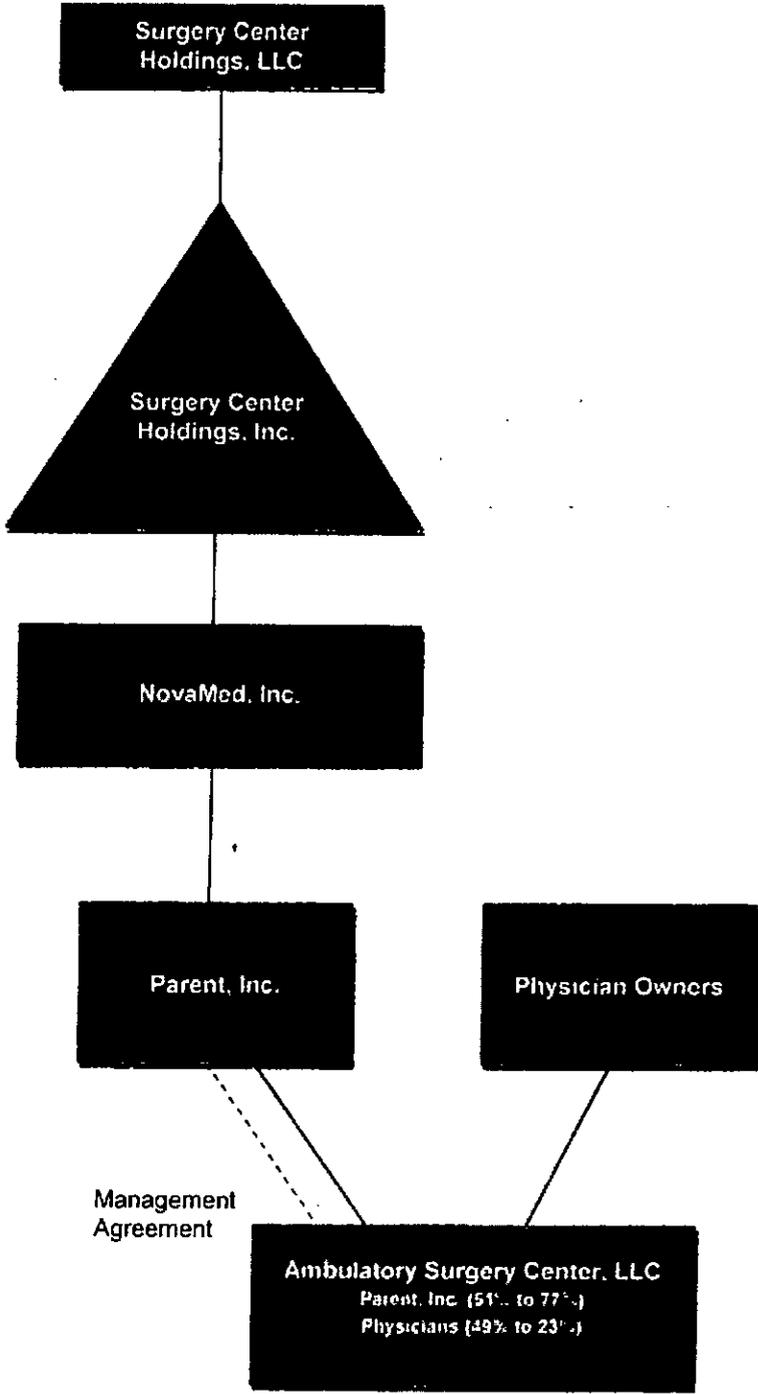


1. Superparent, Inc. pre-transaction is a public company owned by numerous shareholders.
2. NovaMed Acquisition Company, Inc. ("NAC"); NovaMed Management Services, LLC ("NMS").
3. NAC owns 51% of the Membership Interests of NovaMed Surgery Center of Oak Lawn, LLC and 51% of the Membership Interests of NovaMed Eye Surgery Center of River Forest, LLC. NMC owns 77% of NovaMed Eye Surgery Center of Maryville, LLC and 69.5% of NovaMed Eye Surgery Center of Chicago-Northshore, LLC.

**Structure Chart – Merger**



Structure Chart – After Proposed Merger



**MW&E Letter Dated June 13, 2014 (Symbion transaction)**

**ATTACHMENT 2**

# 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)

Clare Connor Ranalli  
Attorney at Law  
cranalli@mwe.com  
+1 312 984 3365

June 13, 2014

Ms. Courtney Avery  
Administrator  
Health Facilities & Services Review Board  
525 W. Jefferson Street, 2<sup>nd</sup> Floor  
Springfield, IL. 62761

**RECEIVED**

**JUN 16 2014**

**HEALTH FACILITIES &  
SERVICES REVIEW BOARD**

Re: Request for Advisory Opinion

Dear Ms. Avery:

I am writing to request an advisory opinion regarding whether a proposed transaction (the "Proposed Transaction") might require a Certificate of Need for change of ownership pursuant to the Illinois Health Facilities and Services Review Board's ("HFSRB") rules and regulations, and the Illinois Health Facilities Planning Act (the "Act"). While I do not believe it does, I nonetheless think it prudent to request an advisory opinion from you.

Valley Ambulatory Surgery Center, LP (the "Surgery Center") is a multi-specialty surgery center located in St. Charles, Illinois. It is owned by both physicians who each own directly in the Surgery Center ("Physicians") and VASC, Inc., a subsidiary of Symbion Holdings Corporation a Delaware corporation (the latter through various subsidiaries per the attached organizational chart). As you can see from the organization chart, the Physicians own a sixty percent (60%) interest in the Surgery Center and Symbion holds a minority interest. The Proposed Transaction involves the acquisition of Symbion Holdings Corporation by our client Surgery Center Holdings, Inc., but the ownership will not impact in any way the current percentage ownership interest in the Surgery Center. The Physicians will continue to own sixty percent (60%) of the Surgery Center.

Further the day to day management and control of the Surgery Center will not change, i.e. certain decisions regarding the Surgery Center cannot occur without the Physicians' consent. These include: (1) disposition of the assets of the Surgery Center; (2) change in the operations of the Surgery Center including a change in the surgical specialties/services offered; (3) a capital expenditure that would exceed the HFSRB capital expenditure threshold of \$3,259,740.00; (4) a change in the Bylaws/Operating Agreement pertaining to the Surgery Center; (5) a change in the membership interest in the Surgery Center; and (6) a change in the ownership/equity held in the Surgery Center by the Physicians.

Thus, I do not believe that a change of ownership, per HFSRB rules and/or the Act, is occurring as a result of the Proposed Transaction. I would appreciate your confirmation, through an advisory opinion, of our interpretation.

Thank you.

  
Clare Connor Ranalli

cc: Mike Constantino

U.S. practice conducted through McDermott Will & Emery LLP.

**MW&E Letter Dated May 16, 2017 (Bain transaction)**

**ATTACHMENT 3**

# McDermott Will & Emery

Boston Brussels Chicago Dallas 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)

Clare Connor Ranalli  
Attorney at Law  
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+1 312 984 3365

May 16, 2017

## VIA OVERNIGHT FEDERAL EXPRESS

Mike Constantino  
Supervisor  
Illinois Health Facilities & Services Review  
525 W. Jefferson, 2nd floor  
Springfield, IL 62761

Re: Request(s) for Determination of Reviewability – NovaMed Eye Surgery Center and  
NovaMed Center for Reconstructive Surgery

Dear Mike:

Per our conversation, please see the attached requests for a determination of reviewability relating to a stock change for up the corporate chain from the facility level.

Thank you.

Very truly yours,

  
Clare Connor Ranalli

CCR/pc  
Enclosures  
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# DETERMINATION OF REVIEWABILITY

## PART I: CHECKLIST

### SECTION A:

IS THE PROJECT AUTOMATICALLY REVIEWABLE BECAUSE OF ITS NATURE?

**a1. Are you establishing one of the following "health care facilities"? NO**

- 1.1. Hospital
- 1.2. Long-Term Care facility (includes ICF/DD)
- 1.3. ASTC (Ambulatory Surgical Treatment Center)
- 1.4. ESRD (End Stage Renal Disease) Center
- 1.5. FEC (Freestanding Emergency Center)
- 1.6. BC (Birth Center)
- 1.7 An institution, place, building, or room used for the provision of a health care category of service.
- 1.8 An institution, place, building, or room used for the provision of major medical equipment used in the direct clinical diagnosis or treatment of patients whose project costs is in excess of the capital expenditure minimum.

**a2. Are you discontinuing (closing) one of the following "health care facilities"? NO**

- 1.1. Hospital
- 1.2. ASTC (Ambulatory Surgical Treatment Center)
- 1.3. ESRD (End Stage Renal Disease) Center
- 1.4. FEC (Freestanding Emergency Center)
- 1.5. BC (Birth Center)
- 1.6 An institution, place, building, or room used for the provision of a health care category of service.
- 1.7 An institution, place, building, or room used for the provision of major medical equipment used in the direct clinical diagnosis or treatment of patients whose project costs is in excess of the capital expenditure minimum.

**a3. Is your project for the acquisition of "major medical equipment" (as defined on Page APP 7)? NO**

**a4. Are you establishing or discontinuing a "category of service" (as listed on Page APP 1)? NO**

## DETERMINATION OF REVIEWABILITY

a5. Are you changing *the bed capacity of a health care facility by increasing the total number of beds or by distributing beds among various categories of service or by relocating beds from one physical facility or site to another by more than 20 beds or more than 10% of total bed capacity as defined by the State Board, whichever is less, over a 2 year period* [20 ILCS 3960/5]? NO

a6. Does your project involve a “change of ownership” or “control” of an existing health care facility that is not a long-term care facility (as defined on Pages APP 2 and APP 4 respectively)? NO. However, there is a change in investment interest at a “great grandparent” level, and we are seeking confirmation under the circumstances. This does not involve a change of ownership or control of the licensee.

a7. Does your project “substantially change the scope or change the functional operation of a health care facility” (as defined on Page APP 8)? NO

IF YES TO ANY OF THE QUESTIONS IN SECTION A, IT APPEARS THAT A PERMIT OR EXEMPTION TO PERMIT IS REQUIRED.

IF NO TO ALL THE QUESTIONS IN SECTION A, PROCEED TO SECTION B.

### SECTION B:

OTHER CONDITIONS REQUIRING A CERTIFICATE OF NEED OR EXEMPTION TO PERMIT:

b1. Have ALL “components” (as defined on Page APP 3) of the project or transaction been identified? YES

b2. Does the “total estimated project cost” worksheet (Page Form 4) include all the “components” from b1? N/A

If the proposed project involves construction or modernization, are there any additional projects that are interdependent architecturally or programmatically where the undertaking of one compels the undertaking of the other?

# DETERMINATION OF REVIEWABILITY

## SECTION C: WORKSHEET TOTAL ESTIMATED PROJECT COST

(This must include all "Components" as defined on Page APP 3)

If there is no cost in any of the lines below, please enter 0 (zero). Costs should be through date of completion of the project.

| USE OF FUNDS   | AMOUNT |
|--|--------|
| C <sub>1</sub> - Preplanning Costs   | N/A    |
| C <sub>2</sub> - Site Survey and Soil Investigation                          | N/A    |
| C <sub>3</sub> - Site Preparation  | N/A    |
| C <sub>4</sub> - Off Site Work   | N/A    |
| C <sub>5</sub> - New Construction Contracts                                  | N/A    |
| C <sub>6</sub> - Modernization Contracts                                     | N/A    |
| C <sub>7</sub> - Contingencies   | N/A    |
| C <sub>8</sub> - Architectural/Engineering Fees                              | N/A    |
| C <sub>9</sub> - Consulting and Other Fees                                   | N/A    |
| C <sub>10</sub> - Movable or Other Equipment (not in construction contracts) | N/A    |
| C <sub>11</sub> - Bond Issuance Expense (project related)                    | N/A    |
| C <sub>12</sub> - Net Interest Expense During Construction (project related) | N/A    |
| C <sub>13</sub> - Fair Market Value of Leased Space or Equipment             | N/A    |
| C <sub>14</sub> - Acquisition of Building or Other Property (excluding land) | N/A    |
| C <sub>15</sub> - All other project related costs to be capitalized          | N/A    |
| C <sub>16</sub> - TOTAL ESTIMATED PROJECT COST                               | N/A    |

DETERMINATION OF REVIEWABILITY

PART II: CERTIFICATION

DATE: May 16, 2017

PROJECT IDENTIFICATION

-Name of the Project (Facility) NovaMed Surgery Center of Chicago – Northshore, LLC  
d/b/a NovaMed Eye Surgery Center – Northshore (“Licensee”)

-Total Estimated Project Cost: N/A.

-Project Description:  
[Includes Type of service(s) and scope of work]

The Licensee is owned by various persons, with its majority (66.5%) member being NovaMed Management Services, LLC. The Licensee’s members own its assets and control its operations. H.I.G. Surgery Centers, LLC, through various intervening entities, indirectly owns a majority interest of NovaMed Management Services, LLC. After the business transaction at issue, it will no longer have an interest in NovaMed Management Services, LLC. However, NovaMed Management Services’ majority interest in the Licensee will not change. Further, the Licensee will continue to control its assets and day-to-day operations without any change.

-Location:  
-Street Address: 3034 W. Peterson Avenue  
-City: Chicago County: Cook Zip: 60659

APPLICANT IDENTIFICATION

-Name of the person completing this Assessment: Clare Connor Ranalli

-Title: Partner

-Street Address: 444 West Lake Street  
-City: Chicago County: Cook Zip: 60606

-Email Address: Cranalli@mwe.com

I HEREBY CERTIFY THAT I HAVE THOROUGHLY REVIEWED THE SUBMITTED INFORMATION, AND THAT THE ATTACHED INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Clare Connor Ranalli      05/16/17  
Signature: Clare Ranalli, Authorized Representative      Date  
for NovaMed Surgery Center of Chicago – Northshore, LLC

## DETERMINATION OF REVIEWABILITY

Title: Partner, McDermott Will & Emery, LLP

-Street Address: 444 West Lake Street, Suite 4000

-City: Chicago

County:

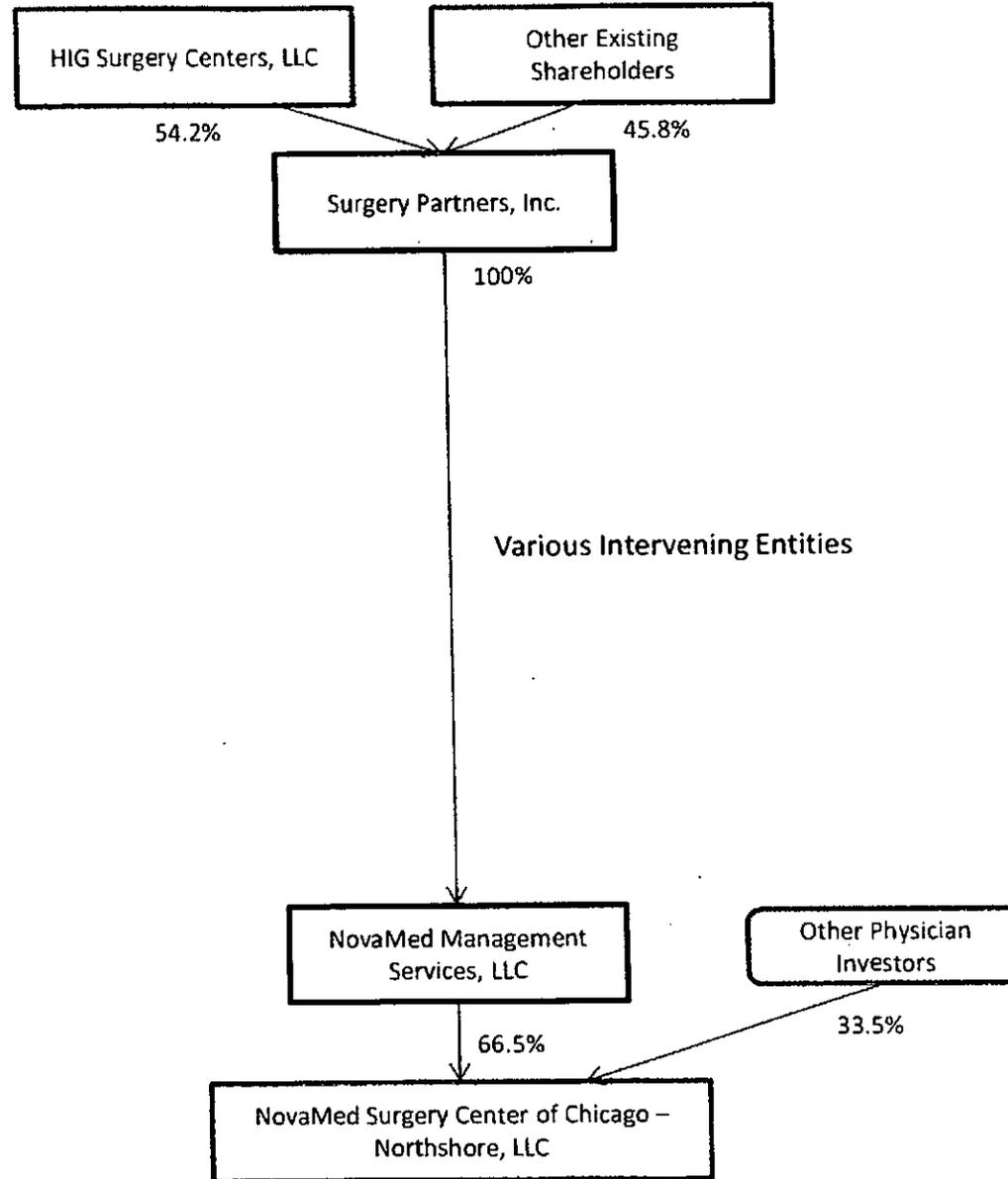
Cook

Zip: 60606-0029

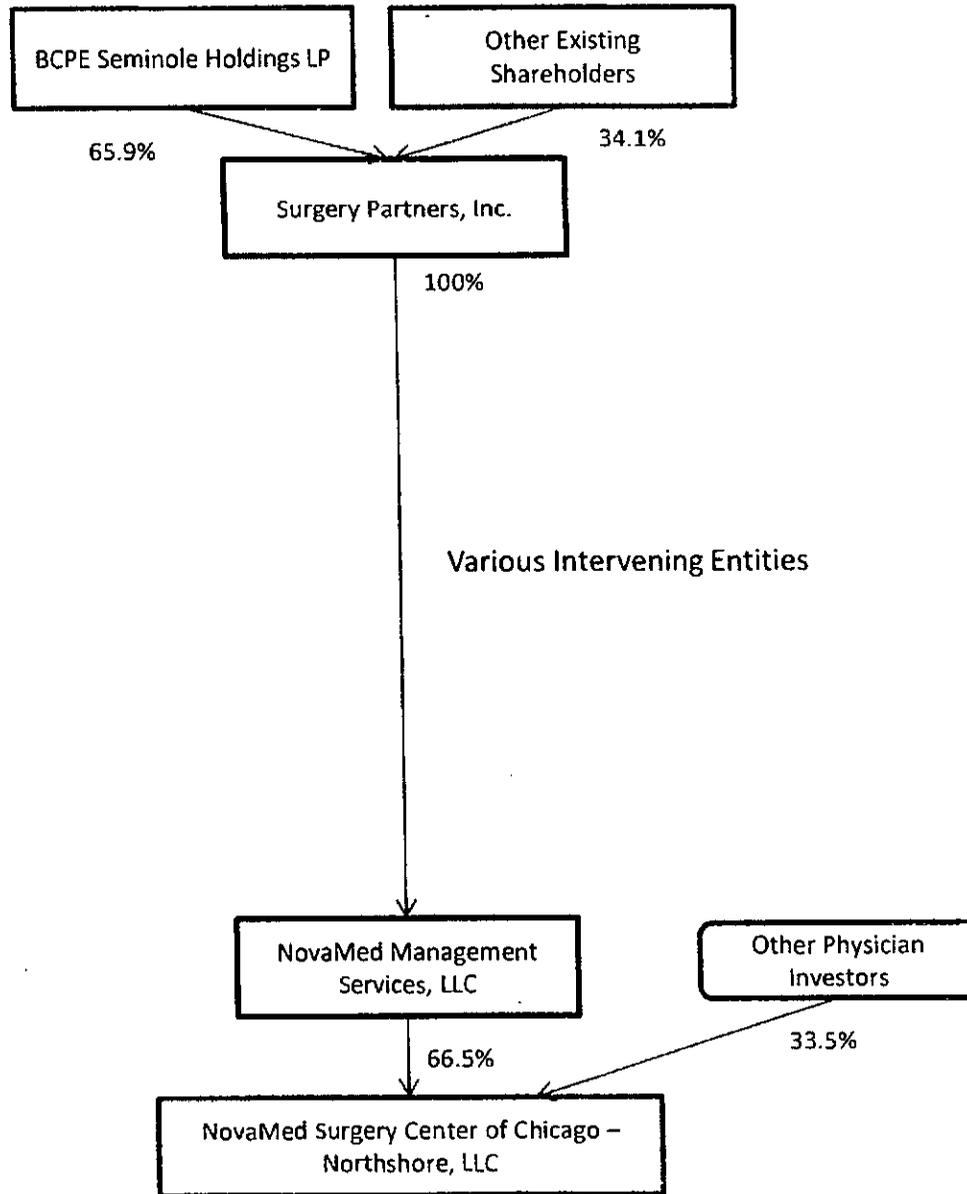
Email Address: Cranalli@mwe.com

Telephone: (312) 984-3365

# Pre-Closing



# Post-Closing



# DETERMINATION OF REVIEWABILITY

## PART I: CHECKLIST

### SECTION A:

IS THE PROJECT AUTOMATICALLY REVIEWABLE BECAUSE OF ITS NATURE?

**a1. Are you establishing one of the following "health care facilities"? NO**

- 1.1. Hospital
- 1.2. Long-Term Care facility (includes ICF/DD)
- 1.3. ASTC (Ambulatory Surgical Treatment Center)
- 1.4. ESRD (End Stage Renal Disease) Center
- 1.5. FEC (Freestanding Emergency Center)
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- 1.8 An institution, place, building, or room used for the provision of major medical equipment used in the direct clinical diagnosis or treatment of patients whose project costs is in excess of the capital expenditure minimum.

**a2. Are you discontinuing (closing) one of the following "health care facilities"? NO**

- 1.1. Hospital
- 1.2. ASTC (Ambulatory Surgical Treatment Center)
- 1.3. ESRD (End Stage Renal Disease) Center
- 1.4. FEC (Freestanding Emergency Center)
- 1.5. BC (Birth Center)
- 1.6 An institution, place, building, or room used for the provision of a health care category of service.
- 1.7 An institution, place, building, or room used for the provision of major medical equipment used in the direct clinical diagnosis or treatment of patients whose project costs is in excess of the capital expenditure minimum.

**a3. Is your project for the acquisition of "major medical equipment" (as defined on Page APP 7)? NO**

**a4. Are you establishing or discontinuing a "category of service"  
(as listed on Page APP 1)? NO**

## DETERMINATION OF REVIEWABILITY

a5. Are you changing *the bed capacity of a health care facility by increasing the total number of beds or by distributing beds among various categories of service or by relocating beds from one physical facility or site to another by more than 20 beds or more than 10% of total bed capacity as defined by the State Board, whichever is less, over a 2 year period* [20 ILCS 3960/5]? NO

a6. Does your project involve a “change of ownership” or “control” of an existing health care facility that is not a long-term care facility (as defined on Pages APP 2 and APP 4 respectively)? NO. However, there is a change in investment interest at a “great grandparent” level, and we are seeking confirmation under the circumstances. This does not involve a change of ownership or control of the licensee.

a7. Does your project “substantially change the scope or change the functional operation of a health care facility” (as defined on Page APP 8)? NO

IF YES TO ANY OF THE QUESTIONS IN SECTION A, IT APPEARS THAT A PERMIT OR EXEMPTION TO PERMIT IS REQUIRED.

IF NO TO ALL THE QUESTIONS IN SECTION A, PROCEED TO SECTION B.

### SECTION B:

OTHER CONDITIONS REQUIRING A CERTIFICATE OF NEED OR EXEMPTION TO PERMIT:

b1. Have ALL “components” (as defined on Page APP 3) of the project or transaction been identified? YES

b2. Does the “total estimated project cost” worksheet (Page Form 4) include all the “components” from b1? N/A

If the proposed project involves construction or modernization, are there any additional projects that are interdependent architecturally or programmatically where the undertaking of one compels the undertaking of the other?

## DETERMINATION OF REVIEWABILITY

**b3. Does the “total estimated project cost” (line C<sub>16</sub>) of the worksheet meet or exceed the current “capital expenditure minimum” (as defined on Page APP 1)? N/A**

- Hospitals: \$12,950,881
- Long-Term Care: \$7,320,061
- All other applicants: \$3,378,491

IF YES TO b2 AND b3, YOU MAY NEED A CERTIFICATE OF NEED. SUBMIT THE ASSESSMENT FORM TO HFSRB STAFF FOR AN ADVISORY OPINION.

**If you have ANY questions while completing ANY of the contents of this form, contact HFSRB staff at (217) 782-3516.**

**If the Assessment indicates a CON Permit or Exemption to Permit is required, you can contact HFSRB staff for technical assistance with applicable rules.**

**DETERMINATION OF REVIEWABILITY**

**SECTION C: WORKSHEET**  
**TOTAL ESTIMATED PROJECT COST**

(This must include all "Components" as defined on Page APP 3)

If there is no cost in any of the lines below, please enter 0 (zero). Costs should be through date of completion of the project.

| <b>USE OF FUNDS</b>  | <b>AMOUNT</b> |
|--|---------------|
| C <sub>1</sub> - Preplanning Costs   | N/A           |
| C <sub>2</sub> - Site Survey and Soil Investigation                          | N/A           |
| C <sub>3</sub> - Site Preparation  | N/A           |
| C <sub>4</sub> - Off Site Work   | N/A           |
| C <sub>5</sub> - New Construction Contracts                                  | N/A           |
| C <sub>6</sub> - Modernization Contracts                                     | N/A           |
| C <sub>7</sub> - Contingencies   | N/A           |
| C <sub>8</sub> - Architectural/Engineering Fees                              | N/A           |
| C <sub>9</sub> - Consulting and Other Fees                                   | N/A           |
| C <sub>10</sub> - Movable or Other Equipment (not in construction contracts) | N/A           |
| C <sub>11</sub> - Bond Issuance Expense (project related)                    | N/A           |
| C <sub>12</sub> - Net Interest Expense During Construction (project related) | N/A           |
| C <sub>13</sub> - Fair Market Value of Leased Space or Equipment             | N/A           |
| C <sub>14</sub> - Acquisition of Building or Other Property (excluding land) | N/A           |
| C <sub>15</sub> - All other project related costs to be capitalized          | N/A           |
| <b>C<sub>16</sub> - TOTAL ESTIMATED PROJECT COST</b>                         | <b>N/A</b>    |

DETERMINATION OF REVIEWABILITY

PART II: CERTIFICATION

DATE: May 16, 2017

PROJECT IDENTIFICATION

-Name of the Project (Facility) NovaMed Surgery Center of Oak Lawn, LLC d/b/a NovaMed Center for Reconstructive Surgery ("Licensee")

-Total Estimated Project Cost: N/A.

-Project Description:  
[Includes Type of service(s) and scope of work]

The Licensee is owned by various persons, with its majority (57%) member being NovaMed Acquisition Company, Inc. The Licensee's members own its assets and control its operations. The members of NovaMed Acquisition Company, Inc. currently include H.I.G. Surgery Centers, LLC, which, through various intervening entities, indirectly owns a majority interest in NovaMed Acquisition Company, Inc. After the business transaction at issue, H.I.G. Surgery Centers, LLC will no longer have an interest in NovaMed Acquisition Company, Inc. However, NovaMed Acquisition Company's majority interest in the Licensee will not change. Further, the Licensee will continue to control its assets and day-to-day operations without any change.

-Location:

-Street Address: 6311 W. 95<sup>th</sup> Street

-City: Oak Lawn

County: Cook

Zip: 60453

APPLICANT IDENTIFICATION

-Name of the person completing this Assessment: Clare Connor Ranalli

-Title: Partner

-Street Address: 444 West Lake Street

-City: Chicago

County: Cook

Zip: 60606

-Email Address: Cranalli@mwe.com

I HEREBY CERTIFY THAT I HAVE THOROUGHLY REVIEWED THE SUBMITTED INFORMATION, AND THAT THE ATTACHED INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Clare Connor Ranalli

Signature: Clare Ranalli, Authorized Representative  
for NovaMed Surgery Center of Oak Lawn, LLC

05/16/17  
Date

## DETERMINATION OF REVIEWABILITY

Title: Partner, McDermott Will & Emery, LLP

-Street Address: 444 West Lake Street, Suite 4000

-City: Chicago

County:

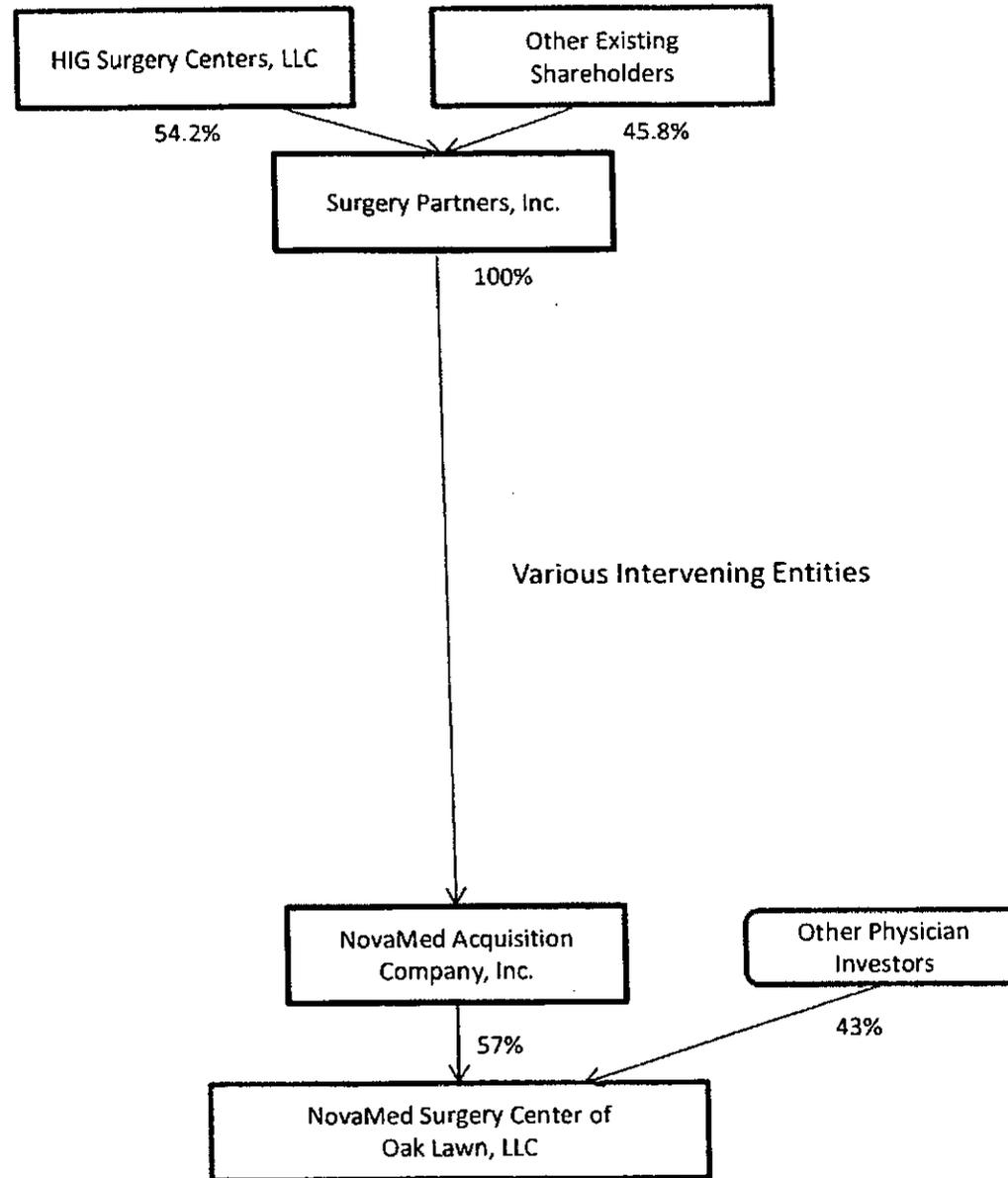
Cook

Zip: 60606-0029

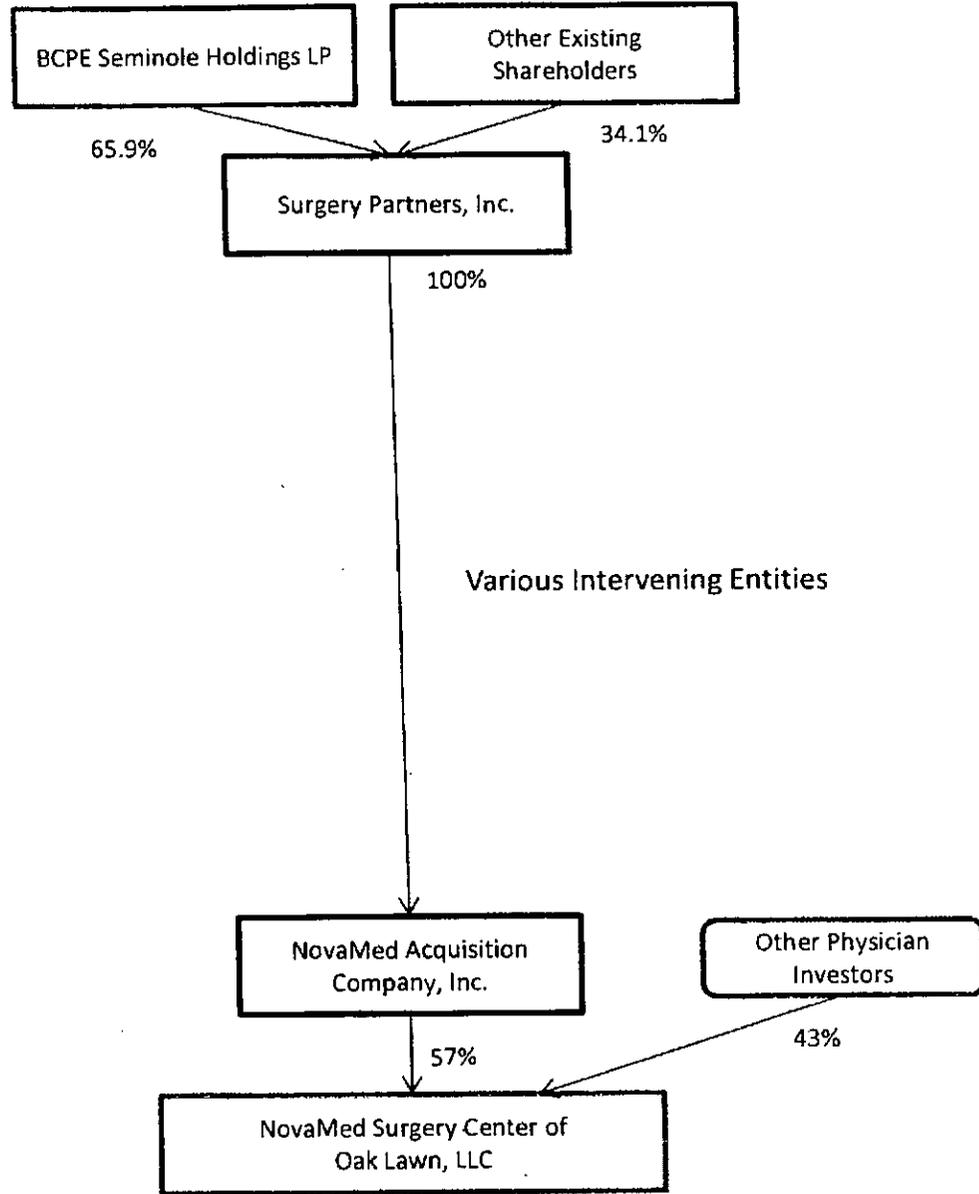
Email Address: Cranalli@mwe.com

Telephone: (312) 984-3365

# Pre-Closing



# Post-Closing



**Advisory Opinion of 1-24-2011 (NovaMed transaction)**



STATE OF ILLINOIS  
**HEALTH FACILITIES AND SERVICES REVIEW BOARD**

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525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 FAX: (217) 785-4111

January 24, 2010

Linas Grikas, Attorney at Law  
McDermott Will & Emory  
227 West Monroe Street  
Chicago, Illinois 60606-5096

**RE: Health Facilities Planning Act - Certificate of Need to Permit Assessment of Applicability**

**Facilities:** NovaMed Eye Surgery of Maryville, LLC., NovaMed Eye Surgery Center of Chicago-Northshore, LLC., NovaMed Surgery Center of Oak Lawn, LLC., NovaMed Surgery Center of River Forest, LLC.

**Project Description:** Change of ownership of a health care facility

Dear Mr. Grikas:

This is in response to your above-captioned request for an Advisory Opinion on the applicability of Certificate of Need permit for your project.

As described in your request your project is for the merger of NovaMed, Inc. and Surger Center Holdings, LLC., through a Merger Sub. The surviving entity will be NovaMed, Inc. NovaMed, Inc. currently holds an indirect interest in four ambulatory surgical treatment centers (ASTC's) in Illinois as identified above. This indirect interest consists of Nova Med, Inc. wholly owning two subsidiary corporations (NovaMed Management Services, LLC., NovaMed Acquisition Company, Inc.) that each own membership interest in the four ASTC's and act as Managers of the ASTC's. Each facility has a physician ownership interest as well. At the conclusion of the merger each facility will continued to be owned by the Managers and the physician owners. The day to day management will not change nor will the operational control be altered by the transaction. The licensee operating entity will not change. Based upon the information you submitted and certified and our understanding of your transaction and of the Illinois Health Facilities Planning Act (20 ILCS 3960) and the relevant sections of the Administrative Code; it does not appear that the transaction you propose will result in a change in the operational control of the four ASTC's nor does it appear that the proposed transaction will result in a change in control of the four facilities' physical plant and capital assets.

**A Permit or Exemption of the Health Facilities Services and Review Board (HFSRB) is Not Required.**

This opinion is based upon our understanding of the Illinois Health Facilities Planning Act (20 ILCS 3960) and the relevant sections of the Administrative Code.

This is a staff advisory opinion and does not constitute a determination by the State Board. Should you wish to obtain a determination by the State Board, you may request a declaratory ruling pursuant to the provisions contained in 77 Ill. Adm. Code 1130.810, "Declaratory Rulings." Declaratory ruling requests must be made in writing and should be addressed to the Illinois Health Facilities and Services Review Board, 525 West Jefferson 2<sup>nd</sup> Floor, Springfield, Illinois 62761.

This opinion relates solely to the applicability of certificate of need requirements and is based upon the applicable statutory requirements, rules and regulations in effect as of this date. In addition you are advised that this opinion does not address the applicability of or need to comply with any other regulations or requirements of other programs or agencies, such as licensing or certification.

Sincerely,

A handwritten signature in cursive script that reads "Mike Constantino".

Mike Constantino  
Project Reviewer

**Advisory Opinion Letter dated June 16, 2014 (Symbion transaction)**



STATE OF ILLINOIS  
HEALTH FACILITIES AND SERVICES REVIEW BOARD

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 FAX: (217) 785-4111

June 16, 2014

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Clare Connor Ranalli  
Attorney at Law  
McDermott Will & Emery  
227 West Monroe Street  
Chicago, Illinois 60606-5096

Re: Advisory Opinion

Dear Ms. Ranalli:

We are receipt of your advisory opinion request dated June 13, 2014. Our review of the information you have forwarded to us indicates that a certificate of need for a change ownership is **not** required for the proposed acquisition by Surgery Center Holdings, Inc. of a minority interest in Valley Ambulatory Surgery Center, LP located at 2210 Dean Street, St. Charles, Illinois.

This opinion is based upon the information contained in your request, the Health Facilities Planning Act, and the current rules of the State Board. This is a staff advisory opinion and does not constitute a determination by the State Board. This opinion relates solely to the applicability of certificate of need requirements and is based upon the applicable statutory requirements, rules and regulations in effect as of this date. In addition you are advised that this opinion does not address the applicability of or need to comply with any other regulations or requirements of other programs or agencies, such as licensing or certification.

Should you wish to obtain a determination by the State Board, you may request that this declaratory ruling request be put on the State Board agenda in writing to me.

If you should have questions please contact Mike Constantino or George Roate at 217.782.3516 or [mike.constantino@illinois.gov](mailto:mike.constantino@illinois.gov) or [george.roate@illinois.gov](mailto:george.roate@illinois.gov)

Sincerely,

A handwritten signature in cursive script that reads "Courtney R. Avery".

Courtney Avery, Administrator  
Illinois Health Facilities and Services Review Board

cc: Kathy Olson, Chairman

**Advisory Opinion Letters dated May 22, 2017 (Bain transaction)**



STATE OF ILLINOIS  
HEALTH FACILITIES AND SERVICES REVIEW BOARD

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 FAX: (217) 785-4111

May 22, 2017

Clare Connor Ranalli, Partner  
McDermott, Will & Emory  
444 West Lake Street  
Chicago, Illinois 60606

Re NovaMed Surgery Center of Oak Lawn, LLC d/b/a NovaMed Center for  
Reconstructive Surgery

Dear Ms. Ranalli:

We are in receipt of your request for a *Determination of Reviewability* dated May 16, 2017. The request asks the State Board Staff to provide an opinion if the proposed change in the indirect ownership of NovaMed Surgery Center of Oak Lawn, LLC requires an application for exemption for a change of ownership under current State Board rule.

The State Board defines a change of ownership "*as a change in the person who has operational control of an existing health care facility or a change in the person who has ownership or control of a health care facility's physical plant and capital assets.*" [77 IAC 1130.140]

From the information provided in your request and reviewed by the State Board Staff, it is our understanding the proposed transaction will result in BCPE Seminole Holdings, LP owning less than a majority interest in NovaMed Surgery Center of Oak Lawn, LLC. Additionally BCPE Seminole Holdings, LP

1. will not have the right or power to approve and remove a controlling portion of the governing body of the licensed facility;
2. does not have the right or power to approve the use of funds or assets of the licensed facility;
3. does not have the right or power to approve, amend, or modify by-laws or other rules of governance for the licensed entity;
4. will not be financially responsible for guaranteeing or making payments on any debt related to the licensed facility; and
5. will not be involved in the operation or provision of care and control the use of equipment or other capital assets that are components of the licensed entity?

Based upon the above the proposed change will **not** require an application for exemption for a change of ownership.

This opinion is based upon the information contained in your request, the Health Facilities Planning Act, and the current rules of the State Board. This is a staff advisory opinion and does not constitute a determination by the State Board. Should you wish to obtain a determination by the State Board, you may request a declaratory ruling pursuant to the provisions contained in 77 Ill. Adm. Code 1130.810, "Declaratory Rulings." Declaratory ruling requests must be made in writing and should be addressed to Courtney Avery, Administrator.

This opinion relates solely to the applicability of certificate of need requirements and is based upon the applicable statutory requirements, rules and regulations in effect as of this date. In addition you are advised that this opinion does not address the applicability of or need to comply with any other regulations or requirements of other programs or agencies, such as licensing or certification.

If you should have any questions please contact Mike Constantino or George Roate at 217.782.3516 or [Mike.Constantino@illinois.gov](mailto:Mike.Constantino@illinois.gov) or [George.Roate@illinois.gov](mailto:George.Roate@illinois.gov)

Sincerely,



Mike Constantino, Project Reviewer  
Illinois Health Facilities and Services Review Board



STATE OF ILLINOIS  
HEALTH FACILITIES AND SERVICES REVIEW BOARD

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 FAX: (217) 785-4111

May 22, 2017

Clare Connor Ranalli, Partner  
McDermott, Will & Emory  
444 West Lake Street  
Chicago, Illinois 60606

Re: NovaMed Surgery Center of Chicago-Northshore, LLC d/b/a Nova  
Med Eye Surgery Center - Northshore

Dear Ms. Ranalli:

We are in receipt of your request for a *Determination of Reviewability* dated May 16, 2017. The request asks the State Board Staff to provide an opinion if the proposed change in the indirect ownership of NovaMed Surgery Center of Chicago-Northshore, LLC requires an application for exemption for a change of ownership under current State Board rule.

The State Board defines "a change of ownership as a change in the person who has operational control of an existing health care facility or a change in the person who has ownership or control of a health care facility's physical plant and capital assets."

From the information provided in your request and reviewed by the State Board Staff, it is our understanding the proposed transaction will result in BCPE Seminole Holdings, LP owning less than a majority interest in NovaMed Surgery Center of Chicago-Northshore, LLC. Additionally the BCPE Seminole Holdings, LP

1. will not have the right or power to approve and remove a controlling portion of the governing body of the licensed facility;
2. does not have the right or power to approve the use of funds or assets of the licensed facility;
3. does not have the right or power to approve, amend, or modify by-laws or other rules of governance for the licensed entity;
4. will not be financially responsible for guaranteeing or making payments on any debt related to the licensed facility; and,
5. will not be involved in the operation or provision of care and control the use of equipment or other capital assets that are components of the licensed entity?

Based upon the above the proposed change will **not** require an application for exemption for a change of ownership.

This opinion is based upon the information contained in your request, the Health Facilities Planning Act, and the current rules of the State Board. This is a staff advisory opinion and does not constitute a determination by the State Board. Should you wish to obtain a determination by the State Board, you may request a declaratory ruling pursuant to the provisions contained in 77 Ill. Adm. Code 1130.810, "Declaratory Rulings." Declaratory ruling requests must be made in writing and should be addressed to Courtney Avery, Administrator.

This opinion relates solely to the applicability of certificate of need requirements and is based upon the applicable statutory requirements, rules and regulations in effect as of this date. In addition you are advised that this opinion does not address the applicability of or need to comply with any other regulations or requirements of other programs or agencies, such as licensing or certification.

If you should have any questions please contact Mike Constantino or George Roate at 217.782.3516 or [Mike.Constantino@illinois.gov](mailto:Mike.Constantino@illinois.gov) or [George.Roate@illinois.gov](mailto:George.Roate@illinois.gov)

Sincerely,



Mike Constantino, Project Reviewer  
Illinois Health Facilities and Services Review Board

**Transcript of Hearing – Project #17-057**



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# **Transcript of Hearing - Project #17- 057**

**Date:** January 18, 2018

**Case:** State of Illinois Health Facilities and Services Review Board

**Planet Depos**

**Phone:** 888.433.3767

**Email:** [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)

**www.planetdepos.com**

Conducted on January 18, 2018

1 ILLINOIS DEPARTMENT OF PUBLIC HEALTH  
 2 HEALTH FACILITIES AND SERVICES REVIEW BOARD  
 3 BEFORE HEARING OFFICER JEANNIE MITCHELL  
 4 IN RE: :  
 5 Public Comments Regarding :  
 6 Discontinuation of an :  
 7 Existing ASTC and Construct : Project #17-057  
 8 A new ASTC in St. Charles, :  
 9 Illinois :  
 10 :  
 11 :  
 12 HEARING in accordance with requirements of the  
 13 Illinois Health Facilities Planning Act  
 14 :  
 15 City of St. Charles  
 16 2 East Main Street  
 17 St. Charles, Illinois 60174  
 18 Thursday, January 18, 2018  
 19 11:15 a.m.  
 20 :  
 21 :  
 22 Job No: 169210  
 23 Pages: 1 - 33  
 24 Reported by: Camille Connell, RPR, CSR

1 PRESENT:  
 2 JEANNIE MITCHELL, Hearing Officer  
 3 MARIANNE MURPHY, State Board Member  
 4 ANN GUILD, IDPH Staff  
 5 :  
 6 :  
 7 City of St. Charles  
 8 Council Chambers  
 9 4 East Main Street  
 10 St. Charles, Illinois 60174  
 11 (630)377-4400  
 12 :  
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1 PROCEEDINGS  
 2 HEARING OFFICER MITCHELL: Good morning.  
 3 Thank you for participating in today's public hearing  
 4 for Valley Ambulatory Surgery Center. I am Jeannie  
 5 Mitchell, General Counsel, and Hearing Officer for the  
 6 Illinois Health Facilities and Services Review Board.  
 7 Present with me today are representatives of HFSRB --  
 8 Board Member Marianne Murphy and the Compliance  
 9 Manager, Ann Guild. On behalf of the HFSRB, thank you  
 10 for attending.  
 11 As per the rules of Illinois Health Planning  
 12 Act, the previously published legal notices have been  
 13 submitted to the court reporter and will be included  
 14 in today's record.  
 15 Please note that in order to ensure that Health  
 16 Facilities and Services Review Board's public hearing  
 17 protects the privacy and maintains the confidentiality  
 18 of an individual's health information, covered  
 19 entities, as defined by the Health Insurance  
 20 Portability and Accountability Act of 1996, such as  
 21 hospital providers, health plans, and healthcare  
 22 clearinghouses submitting oral or written testimony  
 23 disclose protected health information of individuals,  
 24 shall have a valid written authorization of that

1 individual. The authorization shall allow the covered  
 2 entity to share an individual's health information at  
 3 this hearing.  
 4 If you have not signed in yet, please see Ann  
 5 Guild. Ann, please raise your hand.  
 6 I ask you to please limit your testimony to  
 7 three minutes. We have a small crowd today, so I'm  
 8 not going to be as strict as we sometimes can be. But  
 9 please try to be fair to everyone in the room. So,  
 10 please try to limit your comments three minutes. I  
 11 will call your name when it is your time to speak.  
 12 Prior to your remarks, clearly state and spell your  
 13 name, your full name. If you have written copies of  
 14 your remarks, please provide those to me.  
 15 Are there any questions regarding these  
 16 instructions?  
 17 Hearing none, today's proceeding will begin  
 18 with a representative of Valley Ambulatory Surgery  
 19 Center.  
 20 Mr. Tony Taparo, and if you could please just  
 21 come to the podium.  
 22 MR. TAPARO: Thank you. Hello, my name is  
 23 Tony, T-o-n-y, T-a-p-a-r-o. I'm the President of the  
 24 Atlantic Group for Surgery Partners, and I want to

Conducted on January 18, 2018

|   |   |
|---|---|
| <p style="text-align: center;">9</p> <p>1 St. Charles Chamber of Commerce. These formal letters<br/> 2 of support indicate in some detail why Valley Surgery<br/> 3 Center needs a new and modern facility and the strong<br/> 4 merit of his CON application.<br/> 5 In broad summary, after 30 years in the same<br/> 6 location, the current building is no longer suitable<br/> 7 for use as a surgery center. As other witnesses will<br/> 8 testify and elaborate today, there are serious issues<br/> 9 with the roof, foundation, exterior, layout, and the<br/> 10 mechanical systems. The current building is not<br/> 11 handicap accessible. It falls short of modern fire<br/> 12 safety standards and does not comport with current<br/> 13 standards for federal Medicaid service.<br/> 14 Rather than rebuild the current facility, which<br/> 15 would result in a lengthy disruption of all patient<br/> 16 care, Valley plans a seamless transition for a new<br/> 17 facility to be built less than two blocks away from<br/> 18 the current building. The plan will not only avoid<br/> 19 disruption of patient care, but it also would improve<br/> 20 the quality of health care delivery in a truly modern<br/> 21 and compliant facility.<br/> 22 Valley Surgery Center has duly exercised its<br/> 23 right as a tenant, timely giving the landlord of the<br/> 24 current building notice that it will not exercise its</p> | <p style="text-align: right;">11</p> <p>1 of about 8 inches, three copies each, of a number of<br/> 2 documents, back-up material, and other public<br/> 3 documents that will support what I am referring to.<br/> 4 In the interest of saving time this morning, I won't<br/> 5 give you all the citations of all those various<br/> 6 documents, but I will refer to them when it's<br/> 7 appropriate.<br/> 8 In general, I urge the Board and staff to look<br/> 9 further into this application with respect to four<br/> 10 issues which are in need of much further<br/> 11 investigation.<br/> 12 First, with respect to the establishment of<br/> 13 need and utilization, I would refer you to the numbers<br/> 14 presented by the applicant. The applicant projects<br/> 15 8,038 surgeries in year one, and 8,359 surgeries in<br/> 16 year two. But the surgery referral letters add up to<br/> 17 only 6,143. I believe the staff should also consider<br/> 18 whether any of the physician referral letters comply<br/> 19 with Section 1540 D(1), which outlines what<br/> 20 information is supposed to be included in those<br/> 21 letters, and I think there is substantial information<br/> 22 not included in those letters.<br/> 23 Secondly, the Safety Net Impact Statement<br/> 24 appears to be deficient. Section 5.4 of the Planning</p>   |
| <p style="text-align: center;">10</p> <p>1 option to extend the lease after 2019. That is the<br/> 2 right, and I respectfully suggest that the CON process<br/> 3 was never intended to involve state government in<br/> 4 landlord/tenant matters.<br/> 5 I have extensively toured Valley Surgery<br/> 6 Center, and I know many people who have been patients<br/> 7 there. By all accounts, the service has always been<br/> 8 excellent. The physicians and the staff are truly<br/> 9 excellent. The shortcomings of the present building<br/> 10 are numerous and plainly obvious. Approval of this<br/> 11 CON application will preserve and modernize an<br/> 12 important health care delivery business in the<br/> 13 community I have been elected to represent.<br/> 14 For the record, I would like to submit written<br/> 15 comments, a copy of my remarks, and the various<br/> 16 letters of support is that I referenced today. Thank<br/> 17 you very much.<br/> 18 HEARING OFFICER MITCHELL: John Glennon.<br/> 19 MR. GLENNON: Good morning. My name is John<br/> 20 Glennon, G-l-e-n-n-o-n. Good morning, and thank you<br/> 21 for the opportunity to address several concerns<br/> 22 regarding this application. I know time is short and<br/> 23 I will go directly to the basis of my concerns.<br/> 24 This morning I am also submitting a large box</p>  | <p style="text-align: right;">12</p> <p>1 Act requires that the applicant detail the impact on<br/> 2 essential safety net service in the area, and the<br/> 3 impact on safety net providers. The detail for that<br/> 4 estimate is attached -- it's in the box. The<br/> 5 application states that the entity will not have a<br/> 6 negative impact as defined by the statute, despite the<br/> 7 fact that the applicant's own numbers suggest that the<br/> 8 new facility would siphon off approximately 2,600<br/> 9 surgeries from other providers.<br/> 10 Third, with respect to the section dealing with<br/> 11 alternatives, the Board may wish to delve further into<br/> 12 whether the application meets the basic requirements<br/> 13 of Section 12.4 of the Act, regarding the availability<br/> 14 of facilities which may serve as alternatives or a<br/> 15 substitute. It appears that the application<br/> 16 constitutes absolutely zero discussion of a joint<br/> 17 facility that would help safety net providers<br/> 18 subsidize safety net care.<br/> 19 Fourth, and a much more important issue for the<br/> 20 Board and for anyone interested in health care policy,<br/> 21 a review of the public records related to the<br/> 22 application suggest that there have been numerous<br/> 23 corporate transactions by out-of-state equity funds<br/> 24 and others that have resulted in change of ownership</p> |

Conducted on January 18, 2018

13

1 and changes in control of this facility, none of which  
 2 have been reported to the Board, and very few of which  
 3 have been approved. An important side note: Most of  
 4 us are familiar with the Securities and Exchange  
 5 Commission and the strict disclosure requirements and  
 6 potentially severe penalties for inadequate  
 7 disclosure, and because of these requirements and  
 8 penalties, it's usually safe to assume that most NSEC  
 9 documents is accurate.  
 10 With this in mind, I want to bring to attention  
 11 several transactions that are detailed in SEC filings,  
 12 by the applicant, and by other parties that have never  
 13 been disclosed to, and have never been approved by the  
 14 Board in connection with the SEC. These transactions  
 15 suggest there have been a series of ownership and  
 16 control changes that should be documented in the Board  
 17 records, but they are not. The list of changes  
 18 includes ownership changes, stock transactions -- it's  
 19 quite complicated and lengthy, and the details of  
 20 which I have provided in those materials, but I can't  
 21 get into it because of time limitations today. But  
 22 the conclusion for my purposes today is quite simple:  
 23 That none of this has been disclosed to or approved by  
 24 the Board.

14

1 First, the application discloses that Surgery  
 2 Partners owns and operates VASC along with three Nova  
 3 Med ASTCs. It's not at all clear from the file when  
 4 Surgery Partners took control of this facility from  
 5 the founders, but it appears to be years ago. The  
 6 file for this project evidenced no approval by the  
 7 Board of takeover of control of this facility by  
 8 Surgery Partners.  
 9 And there is more. As described in those SEC  
 10 filings, copies of which are all here, on May 4th,  
 11 2011, Surgery Partners acquired Nova Med. In April of  
 12 2014, Symbion acquired a minority interest in the  
 13 Surgery Center. On November 3rd, 2014, Surgery  
 14 Partners acquired Symbion. At that time, Symbion was  
 15 owned and controlled by a private equity firm, H.I.G.  
 16 Capital, and Symbion was owned by a private equity  
 17 firm, Crestview Partners. In its December 31st, 2016  
 18 SEC formed 10k, Surgery Partners stated that it was  
 19 owned by H.I.G. Capital; and in May 2017, Bain Capital  
 20 acquired H.I.G. Capital's interest in Surgery  
 21 Partners.  
 22 All these transactions are detailed in those  
 23 SEC filings, the copies of which are there.  
 24 According to the Board's own website, Surgery Partners

15

1 has not disclosed the Symbion transaction, the  
 2 ownership of Nova Med that was controlled by H.I.G.  
 3 Capital, or its ownership by Bain Capital.  
 4 At this hearing, I don't need to get into a  
 5 discussion of the Board's strict requirements for  
 6 disclosure of control and ownership, but I believe a  
 7 review of those documents that I provided suggests  
 8 it's not at all clear that deeply required disclosure  
 9 and approval of most of these transactions have  
 10 occurred, and it is reasonable to conclude that the  
 11 Board's own records on these matters we have opened  
 12 the really basic question of who owns this facility  
 13 and who controls it.  
 14 Again, thank you for your time this morning. I  
 15 hope the materials I provided will generate a much  
 16 more thorough review of all these points and hopefully  
 17 some answers to these questions. Thank you for your  
 18 time.  
 19 HEARING OFFICER MITCHELL: Thank you.  
 20 DR. GIAMBERDINO: Good morning Review Board  
 21 Member Murphy and General Counsel Mitchell and the  
 22 Staff of the Illinois Health Facilities and Services  
 23 Review Board.  
 24 My name is Anthony, A-n-t-h-o-n-y, Giamberdino,

16

1 G-i-a-m-b-e-r-d-i-n-o, and my perspective on this CON  
 2 application is -- and I believe you would agree with  
 3 anybody in this room, I've been a full-time  
 4 anesthesiologist employed exclusively at the Valley  
 5 Ambulatory Surgery Center for the past 27 years. I  
 6 have also been the Medical Director and Chief of  
 7 Anesthesia Services at Valley Ambulatory for the past  
 8 10 years.  
 9 I would respectfully suggest that there isn't  
 10 anybody who has a better understanding of our physical  
 11 plant, its strengths, and its weaknesses. I also have  
 12 a unique perspective on this question here because not  
 13 only am I the Medical Director at Valley, but I am  
 14 also an investor in the Board who owns the building.  
 15 So, my financial incentive would be to have the Center  
 16 stay in its current building because I am one of the  
 17 landlords.  
 18 However, what I know about the limitations of  
 19 the building and the problems we face -- as a  
 20 physician, I have to put my patient's care and their  
 21 safety first, and so I would advocate a strong support  
 22 for this CON application.  
 23 As stated before, after 30 years of use this  
 24 building is really no longer suitable as an ambulatory

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|    |   |    |  |
|----|---|----|--|
| 25 | <p>1 code. It is a wood construction and isn't as safe as<br/>                 2 current construction materials. This is especially<br/>                 3 true in the event of a fire or a natural disaster.<br/>                 4 The Center was built with a more institutional feel.<br/>                 5 So, patients don't have the privacy that you find in a<br/>                 6 newly-constructed facility. Patient flow is not good,<br/>                 7 as patients are moved from one area to another in a<br/>                 8 criss-cross pattern. Pre-operative and post-operative<br/>                 9 areas are too small and do not meet ADA requirements.<br/>                 10 This is not conducive to good patient experience or<br/>                 11 managing infection control. The OR suites are too<br/>                 12 small, and more intensive surgical procedures and the<br/>                 13 amount of equipment we need to do those procedures --<br/>                 14 sterile processing are not separate and do not meet<br/>                 15 current accreditation standards.<br/>                 16 Valley has provided a superior surgical<br/>                 17 experience for thousands of patients since its<br/>                 18 inception. We pride ourselves on great patient<br/>                 19 outcomes, a less than one percent infection rate, and<br/>                 20 a high patient satisfaction rate. This is evidenced<br/>                 21 by patients returning to us when the need occurs or<br/>                 22 when a family member would require surgical care. As<br/>                 23 we focus on doing one thing and doing it well, our<br/>                 24 patient satisfaction rates are extremely high as</p> | 27 | <p>1 Glennon, on the need utilization, we have demonstrated<br/>                 2 in the application that, based upon our historical<br/>                 3 caseload and our explosive growth recently, we will<br/>                 4 meet the utilization projects that we have identified<br/>                 5 in the application.<br/>                 6 On the safety net impact, we are going to be<br/>                 7 serving our own patients. We are not adding surgical<br/>                 8 capacity. We are not adding new categories of<br/>                 9 service. We will have zero impact on existing<br/>                 10 providers and the safety net. We would note that we<br/>                 11 have sent impact letters out to every provider the<br/>                 12 area. No provider has objected; no provider has<br/>                 13 indicated any impact whatsoever on their safety net,<br/>                 14 and Mr. Glennon has not indicated he represents any of<br/>                 15 those providers.<br/>                 16 On the alternative, we have addressed that<br/>                 17 fully in the application. As you just heard from the<br/>                 18 landlord's own attorney, the building is 30 years old.<br/>                 19 It's no longer suitable; it no longer meets standards<br/>                 20 for Medicaid and Medicare and life safety. So, there<br/>                 21 is no alternative. I think that when somebody has<br/>                 22 made a mistake in the past and has paid their debt to<br/>                 23 society, they should be allowed to live and let live.<br/>                 24 And if Mr. Glennon had limited his testimony to his</p> |
| 26 | <p>1 compared with others across the industry.<br/>                 2 We have a staff of dedicated physicians who<br/>                 3 choose to utilize our facility as a surgical<br/>                 4 alternative to the more hectic hospital systems. Our<br/>                 5 staff is well-trained and capable of handling all<br/>                 6 surgical specialties, including outpatient total joint<br/>                 7 replacement. This facility is now outdated and<br/>                 8 doesn't meet patient expectations. Extensive upgrades<br/>                 9 are needed to bring this facility to new code demands<br/>                 10 and would cause long closures and disruptions to<br/>                 11 patient care. We respectfully request approval of the<br/>                 12 project.<br/>                 13 HEARING OFFICER MITCHELL: Thank you. Brian<br/>                 14 Blankenship.<br/>                 15 MR. BLANKENSHIP: I'm going to pass.<br/>                 16 HEARING OFFICER MITCHELL: Jennifer<br/>                 17 Blankenship.<br/>                 18 MS. BLANKENSHIP: Pass as well.<br/>                 19 HEARING OFFICER MITCHELL: Dan Lawler.<br/>                 20 MR. LAWLER: Thank you, Ms. Mitchell. Ms.<br/>                 21 Mitchell, my name is Dan Lawler. I am an attorney<br/>                 22 with Barnes &amp; Thornburg, and we are CON Counsel to the<br/>                 23 applicant, Valley Ambulatory.<br/>                 24 Regarding the comments by our opponent, Mr.</p>   | 28 | <p>1 critiques on our application, I came here fully<br/>                 2 prepared to do that.<br/>                 3 But then, when he goes on to say that his most<br/>                 4 important point is that my client has concealed<br/>                 5 information from the CON Board, I think then he puts<br/>                 6 his own reputation for integrity and honesty on the<br/>                 7 line. And as an attorney, he knows that. Mr. Glennon<br/>                 8 had his legal license suspended for three years for<br/>                 9 concealing a felony. The reports of the Illinois<br/>                 10 Attorney Registration &amp; Disciplinary Committee stated<br/>                 11 that the administrator charged Mr. Glennon with one<br/>                 12 count of misconduct following his federal conviction<br/>                 13 for misprision, that's m-i-s-p-r-i-s-i-o-n, of a<br/>                 14 felony, as concealing a felony. Mr. Glennon must pay<br/>                 15 \$700,000 from an inflated contract tied to a scheme<br/>                 16 involving Stewart Bain, Jacob Kiferbaum, and the<br/>                 17 Chicago Medical School. Mr. Glennon initially failed<br/>                 18 to report his knowledge of criminal conduct to the<br/>                 19 authorities.<br/>                 20 HEARING OFFICER MITCHELL: Mr. Lawler, I'm<br/>                 21 going to limit your comments to comments about this<br/>                 22 public hearing.<br/>                 23 MR. LAWLER: I will. With regard to the items<br/>                 24 that Mr. Glennon referenced in the SEC documents,</p>   |

Conducted on January 18, 2018

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1 those documents were accurate and correct. I would  
 2 also note that Valley Ambulatory Surgery Center and  
 3 Surgery Partners was not representing them at the  
 4 time, but they were represented by a CON attorney who  
 5 is one of the premier CON consultants in the state  
 6 with over 20 years experience with impeccable legal  
 7 credentials.  
 8 At any rate, we would be happy to respond if  
 9 the Staff decides to pursue this. We will respond. I  
 10 do have some documents supporting my testimony that I  
 11 want to submit into the record. They are publicly  
 12 available documents, and I would like them included.  
 13 They are a report from the ARDC and a newspaper  
 14 article.  
 15 HEARING OFFICER MITCHELL: All right. Thank  
 16 you.  
 17 Is there anyone who wishes to testify who has  
 18 not had an opportunity to do so?  
 19 Please note that this project is tentatively  
 20 scheduled for consideration by the Board at its  
 21 February 27th, 2018 meeting -- sorry, do you wish to  
 22 testify?  
 23 MR. HAMPSON: Could I?  
 24 HEARING OFFICER MITCHELL: Yes.

30

1 MR. HAMPSON: My name is Christopher  
 2 H-a-m-p-s-o-n. I'm an ear, nose, and throat -- ear  
 3 surgeon. I've been practicing the area for 15 years,  
 4 and I've been on staff at Valley Ambulatory for  
 5 15 years. I do probably, on average, about 200 to 300  
 6 cases a year at the Surgery Center, and I just want to  
 7 say it's been my honor and very satisfying experience  
 8 operating at the surgery center. It's been a very  
 9 great experience being part of the spirit of the  
 10 center and what it brings to the community and for our  
 11 patients in the community.  
 12 But as a surgeon that works there every week,  
 13 we have -- medicine has evolved, our need to take care  
 14 of our surgical patients has evolved, and we cannot  
 15 continue to operate at the center with the physical  
 16 limitations. I will just give you one small example.  
 17 I operate on kids, and we do not have private recovery  
 18 areas. So, there will be one room with, like, three  
 19 families waiting in the same room. I will bring out  
 20 a child who just had their tonsils out, and they are  
 21 crying and coughing and upset. So, the other family  
 22 has to sit there and watch that and wait for their  
 23 child to get out of surgery while one child is  
 24 recovering.

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1 It's just not acceptable anymore, and medicine  
 2 has evolved, and the needs of how we use this surgery  
 3 center has evolved.  
 4 So, I would really love to continue providing  
 5 care there and keeping it in the Fox Valley community,  
 6 because medicine has changed a lot -- everything has  
 7 become more corporate, and it's really special what we  
 8 have there. We really need a new physical plant.  
 9 HEARING OFFICER MITCHELL: Can I ask you to to  
 10 please see Ann Guild and fill out a speaking form?  
 11 Please note that this project is tentatively  
 12 scheduled for consideration by the Board at its  
 13 February 27, 2018, meeting. The meeting will be held  
 14 at the Bolingbrook Golf Club, located at 2001 Rodco  
 15 Drive, Bolingbrook, Illinois. Please refer to the  
 16 HFSRB website at [www.hfsrb.illinois.gov](http://www.hfsrb.illinois.gov) for more  
 17 details and possible location changes.  
 18 I ask that you please prepare to take note of  
 19 the following dates and times: Written comments  
 20 regarding Project 17-057 must be received by 9:00 a.m.  
 21 on Wednesday, February 7th. The State Board Staff  
 22 Report will be posted online at [www.hfsrb.illinois.gov](http://www.hfsrb.illinois.gov)  
 23 on February 13th.  
 24 The deadline to submit a written response to

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1 the State Board Staff Report is 9 a.m., Monday,  
 2 February 19th.  
 3 Written comment and responses should be sent to  
 4 the Illinois Health Facilities and Services Review  
 5 Board, Attention: Courtney Avery, A-v-e-r-y,  
 6 Administrator, 525 West Jefferson Street, 2nd Floor.  
 7 Are there any additional questions or comments?  
 8 Hearing none, the public hearing is adjourned.  
 9 (The hearing concluded at 11:53 a.m.)  
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1 CERTIFICATE OF SHORTHAND REPORTER

2 I, Camille S. Connell, the officer before  
3 whom the foregoing deposition was taken, do hereby  
4 certify that the foregoing transcript is a true and  
5 correct record of the testimony given; that said  
6 testimony was taken by me stenographically and  
7 thereafter reduced to typewriting under my direction;  
8 and that I am neither counsel for, related to, nor  
9 employed by any of the parties to this case and have  
10 no interest, financial or otherwise, in its outcome.

11  
12 IN WITNESS WHEREOF, I have hereunto set my  
13 hand and affixed my notarial seal this 22nd day of  
14 January, 2018.

15 My commission expires:

16

17 *Camille Connell*

18 \_\_\_\_\_  
19 Camille S. Connell, CSR, RPR

20

21

22

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24

## **Synopsis of ARDC Review Board Report and Recommendation**

***Rules and Decisions***

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**DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH**

*Filed June 21, 2013*

**In re John Edward Glennon**  
Respondent-Appellee

Commission No. 2009PR00137

**Synopsis of Review Board Report and Recommendation**  
(June 2013)

The Administrator charged Respondent with one count of misconduct following Respondent's federal conviction for misprision of a felony. Respondent was paid \$700,000 from an inflated contract tied to a scheme involving Stuart Levine, Jacob Kiferbaum and the Chicago Medical School. Respondent initially failed to report his knowledge of criminal conduct to the federal authorities. Respondent later cooperated with the federal authorities, pled guilty to misprision of a felony, and was sentenced to probation.

The Hearing Board found Respondent engaged in a criminal act that reflected adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(a)(3) of the 1990 Illinois Rules of Professional Conduct; failed to report another lawyer's misconduct in violation of Rule 8.3(a); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4); and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(a)(5). The Hearing Board considered various factors aggravating and mitigating his misconduct, and recommended that Respondent be suspended for three years.

On review, the Administrator requested that the Review Board recommend that Respondent be disbarred. The Review Board found substantial evidence of mitigation. Respondent's knowledge of Levine's misdeeds appeared to have been limited to the transaction with Chicago Medical School. Respondent has never been disciplined, and offered character testimony. He expressed remorse for his misconduct. He cooperated with the government resulting in the federal government's acknowledgment that Respondent should be permitted a downward departure of the federal sentencing guideline. His misconduct was not the result of his representation of a client; he did not counsel a client to engage in illegal activity nor did he assist a client in doing so. Accordingly, the Review Board recommended that Respondent be suspended for three years.

**BEFORE THE REVIEW BOARD  
OF THE  
ILLINOIS ATTORNEY REGISTRATION  
AND  
DISCIPLINARY COMMISSION**

*In re John Glennon, 2009pr0137* (Review Board)

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Respondent-Appellee,

No. 971154.

### REPORT AND RECOMMENDATION OF THE REVIEW BOARD

The Administrator charged Respondent with one count of misconduct following Respondent's federal conviction for misprision of a felony. Respondent's conviction arose out of the Operation Board Games federal corruption probe, after the federal authorities discovered Respondent was paid \$700,000 from an inflated contract tied to a scheme involving Stuart Levine, Jacob Kiferbaum and the Chicago Medical School. Respondent initially failed to report the criminal conduct to the federal authorities. Respondent later cooperated with the federal authorities, pled guilty to misprision of a felony, and was sentenced to probation. The Hearing Board heard the testimony of the Respondent, considered various factors aggravating and mitigating his misconduct, and recommended that Respondent be suspended for three years.

On review, the Administrator challenges the sanction recommendation and seeks a recommendation of disbarment. We conclude that a three year suspension will adequately serve the purposes of the disciplinary process.

### RESPONDENT'S CRIMINAL MISCONDUCT

Respondent was involved in a scheme with Stuart Levine and Jacob Kiferbaum whereby the parties engaged in a misapplication of Chicago Medical School's bond money

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resulting in at least \$700,000 of an intended \$1,000,000 of restricted bond funds being paid to Respondent's company. The facts surrounding Respondent's involvement are set out in greater detail in the Hearing Board's Report. However, the following facts were elicited at the hearing and during Respondent's criminal proceedings.

Respondent owned a company, North American Capital Opportunities (NACO) The company advised business clients on financing strategies. Respondent had a background in and was familiar with bond transactions and the use of tax exempt bonds for financing.

Respondent knew Stuart Levine and Jacob Kiferbaum. Both men sat on the Board of Trustees of the Chicago Medical School. Levine was also an attorney. In 1999, Respondent began to provide business related services to Chicago Medical School, which at the time was located in North Chicago in Lake County. Respondent and NACO initially acted as consultants in the consideration of the development of an additional parcel of property for the school on the west side of Chicago. Respondent testified that he spent a great deal of time in discussions about this development, for which he did not believe he received full compensation.

Ultimately, CMS decided to finance construction of an administration building on the Lake County property by the issuance of tax exempt bonds through the Illinois Health Finance Authority. Respondent was hired as the school's financial adviser in connection with the bond transaction. Respondent understood, given his background, that the bond proceeds were restricted funds and could only be used for certain specified costs

*In re* John Glennon, 2009pr0137 (Review Board)

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for construction. Prior to submission of the proposal, Kiferbaum, Levine, and a person identified in the federal indictment as unindicted Individual A, reached an

PAGE 3:

agreement whereby Kiferbaum would secretly inflate his contract proposal to the Chicago Medical School to include an extra \$1,000,000 in the proposed cost. Kiferbaum then agreed to pay NACO the \$1,000,000. The parties agreed that this \$1,000,000 would be paid to Respondent out of the restricted bond proceeds of the tax exempt restricted bonds. When Respondent learned of this agreement, Respondent knew the payment to him was a misapplication of the proceeds of the tax exempt bonds. He knew that Kiferbaum should not pay the bond proceeds to him for work unrelated to the construction project. Nevertheless, he then entered into a contract with Kiferbaum's construction company to be paid 36 monthly payments of \$28,000 per month for services to Kiferbaum Construction Company. However, Respondent never provided services to Kiferbaum Construction Company; the contract was a sham contract to cover up the use of the bond proceeds to pay Respondent for his alleged past services rendered at the request of Levine. Kiferbaum did not disclose these payments to CMS. Respondent knew again that this was a misapplication of bond funds and that it was a felony offense to misapply the bond proceeds in this manner. Following the execution of this contract, Kiferbaum submitted construction invoices to CMS deliberately hiding the fact that money was being paid to Respondent out of bond proceeds. Kiferbaum's company paid Respondent \$700,000 pursuant to the terms of this contract.

When the federal government learned of the transaction during its investigation, the federal government charged Respondent with misprision of a felony. Respondent cooperated with the federal government. As a result of his cooperation, the government recommended a downward departure from the federal sentencing guidelines. Judge Grady sentenced Respondent to probation, imposed a \$20,000 fine and sentenced Respondent to 320 hours of community service. Kiferbaum paid restitution of \$1,000,000 to CMS.

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At the time of the disciplinary hearing Respondent was still on probation. He conceded he should have reported the crimes. He also testified at length and offered documents as to the alleged extent of his services to CMS regarding both the property in North Chicago and the property on the west side of Chicago.

Respondent's conviction of misprision of a felony is conclusive evidence of his guilt of the crime. *See*, Supreme Court Rule 761(f); *In re Ciardelli*, 118 Ill.2d 233, 514 N.E.2d 1006 (1987). The Hearing Board found, and the parties do not dispute, that Respondent engaged in a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(a)(3); failed to report another lawyer (Levine) for engaging in criminal and fraudulent conduct in violation of Rule 8.3(a); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4); and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(a)(5).

### SANCTION RECOMMENDATION

The purpose of the attorney disciplinary system is not to punish the attorney for his misconduct, but "to protect the public, maintain the integrity of the legal profession, and protect the administration of justice from reproach." *In re Winthrop*, 219 Ill. 2d 526, 559, 848 N.E.2d 961, 981(2006). In determining the appropriate sanction, this Board considers the nature of the misconduct charged and proved, and any

*In re John Glennon*, 2009pr0137 (Review Board)

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Like the Hearing Board, we find that the cases relied upon by the Administrator in support of disbarment are distinguishable as they either involve more egregious misconduct or contain less mitigating evidence than the present case. *See, e.g., In re Vavrick*, 117 Ill.2d 408,

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512 N.E.2d 1226 (1987) (disbarment for deliberate conversion of a client's money and conviction of grand theft; little evidence offered in mitigation).

There is no question that Respondent's misconduct is serious and warrants a substantial sanction. As noted by the Hearing Board, Respondent purposely concealed the illegal activity of Levine and Kiferbaum because he personally benefitted from the illegal activity. Yet, while his misconduct was ongoing and was not the result of an isolated lack of judgment, his knowledge of Levine's illegal activities appears to have been limited to the transactions with CMS.

Respondent offered evidence mitigating his misconduct. He has not been previously disciplined and he offered character testimony. Respondent expressed remorse for his misdeeds. The Hearing Board was in the best position to judge Respondent's expressions of remorse and weigh his contrition and we give deference to their conclusions. *See, In re Topper*, 135 Ill.2d 331, 350-51, 553 N.E.2d 306 (1990) (candor at disciplinary hearing and expressions of remorse proper factors to consider in mitigation).

Respondent offered additional significant, and we believe persuasive, evidence that mitigates his misconduct. He cooperated in the criminal proceedings and in the federal probe, resulting in the federal government's acknowledgment that Respondent should be permitted a downward departure of the federal sentencing guideline. Judge Grady also acknowledged Respondent's cooperation at his sentencing hearing. *See, In re Cetwinski*, 143 Ill.2d 396, 406, 574 N.E. 2d 645 (1991) (respondent's substantial cooperation in a federal investigation noted as mitigation, contributing in a reduction of the sanction from disbarment to a three year suspension).

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His misconduct was not the result of his representation of a client. He did not counsel a client to engage in illegal activity nor did he assist a client in doing so. *Cf., In re Rosenthal*, 73 Ill. 2d 46, 382 N.E.2d 257 (1978) (disbarment warranted for respondent's participation in and concealment of an extortion scheme perpetuated against a client by a public official); *In re Goulding*, 91 CH 208, *petitions for leave to file exceptions denied*, No. M.R. 13055 (Mar. 21, 1997) (four year suspension for an attorney who assisted a client in hiding funds from the IRS).

Rather, Respondent's misconduct arose out of his consulting activities, activities that he has continued engaging in since the time of his misconduct without incident. He has accepted responsibility for his wrongdoings and he presents no present danger to the public. We agree with the Hearing Board that a three year suspension is consistent with the purpose of the disciplinary system.

We recommend to the Court that Respondent, John Edward Glennon, be suspended for a period of three years.

Respectfully Submitted.

*In re John Glennon*, 2009pr0137 (Review Board)

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Keith E. Roberts, Jr.

### CERTIFICATION

I, Kenneth G. Jablonski, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on June 21, 2013.

Kenneth G. Jablonski, Clerk of the  
Attorney Registration and Disciplinary  
Commission of the Supreme Court of Illinois

*In re* John Glennon, 2009pr0137 (Review Board)

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