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Hospitals left scratching their heads

Unknown what vote means for Orland plans

Thursday, April 22, 2004

By Alice Hohl
Staff writer

A strange turn of events at the Illinois Health Facilities Planning Board on Wednesday has stoked fears the board — which will decide the fate of two Orland Park hospital plans in June — is being politicized.

On Wednesday, the board narrowly approved Illinois' first new hospital in almost 25 years — a 70-bed hospital to open in 2006 as Mercy Crystal Lake Hospital and Health Center.

The board turned down two hospitals proposed for Plainfield and Bolingbrook, saying they did not meet state criteria.

The Crystal Lake plan, put forth by Mercy Health System, was unanimously rejected in December.

It won approval on a 4-to-3 vote Wednesday, with one pass, after several speeches and developments that left health care professionals in the audience puzzled.

Board members spoke of the board's power to ignore state criteria. They whispered in conferences during the vote, and one board member changed his mind after seeing the votes of his peers.



Those for and against the two proposed hospitals in the Orland Park/Tinley Park

Interstate 80 corridor came to the hearing and watched closely for signs of what to expect in June, when their proposals come before the board.

Stunned by what unfolded, hospital executives did not want to comment on the "irregularities" because many of them have projects pending before the board.



In December, the board denied Mercy's Crystal Lake proposal. Hospital planners had a chance to modify their plans to meet state standards. Those guidelines are intended to keep health care costs down by regulating the number and cost of new facilities.

On Wednesday, some of the board's eight members expressed concern about Mercy's system of hospitals. Mercy Alliance Inc. is the parent company of Mercy Health System, which operates 49 facilities in 21 Illinois communities. Mercy directly employs all the physicians and specialists who practice there.

Others were concerned the hospital didn't propose at least 100 medical-surgical beds — the minimum by state standards for establishing a new full-service hospital in the area. Mercy also proposed a hospital in an area, fast-growing McHenry County, that has too many licensed beds already, according to state calculations.

It appeared the proposal would be turned down again until board chairman Thomas Beck signaled his support.

Also supporting the proposal was Stuart Levine.

Levine and Beck are the only two members who have served on the board before the election of Democratic Gov. Rod Blagojevich.

In the middle of the vote, the roll call was halted as Beck and Levine whispered to each other. Levine then approached Dr. Imad Alamanseer, who had voted "pass" instead of "yes" or "no." After another whispered conversation between Levine and Alamanseer, Alamanseer changed his "pass" to "yes," providing the vote needed to pass the project.

Asked after the meeting about what happened, Alamanseer said, "I was convinced that there was merit to the project; I just wanted to see how the others would view the project."

Another board member, Pamela Orr, who's new to her post, left the meeting during discussion of the Crystal Lake project. When she returned, she decided to pass on the Crystal Lake vote.

The overall vote crystallized competing philosophies on the board.

The board's assistant legal counsel, David Carvalho, has tried to push the new board members toward a strict reading of state regulations, asking the board members to adhere to existing standards and avoid approving projects that do not meet those standards.

Carvalho said approving new facilities in areas where too many licensed beds already exist is unfair to those health care facilities who "sit on the sidelines" waiting to propose

projects until existing beds are filled.

"It makes it difficult for the board going forward," Carvalho said.

Beck and Levine said they disagree and value the board's freedom.

During the meeting, the two joked about "the old days" when they approved projects bearing all negative staff recommendations and turned down projects that met each and every criterion.

"You never know what we're going to do," Beck said.

Sources said parties with projects that come before the board are concerned Beck and Levine — a politically connected member who formerly served on the Illinois Gaming Board — will take control and leave board decisions vulnerable to lobbyists.

Political powerbrokers including Jeff Ladd and David Wilhelm are representing some of the major players with desires to build hospitals in affluent, high-growth areas.

Also Wednesday, Beck announced the board's newest member will be Bernard Weiner, who has previously served on the Health Facilities Planning Board with Beck and Levine. He's been a contributor to the campaigns of Republicans Lee Daniels and George Ryan.

The power balance on the board is particularly crucial because four more hospital proposals are pending and the board is in the midst of rewriting its rules and standards.

Naperville-based Edward Hospital's plan for Plainfield, denied on a 7-to-1 vote, and Adventist Health System's plan for Bolingbrook, denied by unanimous vote, can be brought back to the board for reconsideration.

The proposals by St. Francis Hospital to build a new hospital at LaGrange Road and 171st Street and by Advocate to build a new hospital at LaGrange Road and 179th Street will be considered at the board's June 16 meeting in Chicago.

Southtown health writer

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CERTIFIED DECLARATION OF PAMELA DAVIS

I, PAMELA DAVIS, declare under penalty of perjury under the laws of the United States of America that the following statements of fact are true and correct:

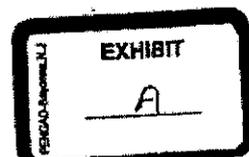
1. I am over eighteen years of age. I have personal knowledge of the facts stated in this declaration and I could testify competently to such facts.

2. Since 1988, I have been the President and Chief Executive Office of the Edward Health Services Corporation (EHSC), the parent of Edward Hospital (EH).

3. In November 2003, Edward Hospital filed a permit application, Certificate of Need (CON), with the Illinois Health Facilities Planning Board to establish a medical office building (MOB) in Plainfield, Illinois.

4. On January 6, 2004, I met with Mr. Hurtgen of Bear Stearns. He said he was politically connected to the Illinois state government and can "get things done." Hurtgen further told us that Stuart Levine and the Illinois State Facilities Planning Board Chairman Thomas Beck would decide the fate of both Edward's application for a permit to construct a new hospital in Plainfield and Mercy's in Crystal Lake. He told us to use Kiferbaum's construction company or the Edward CON would not be approved.

5. I met with Herbert Franks and Mike Noonan on or about March 17, 2004. They were assisting Mercy Hospital in seeking to obtain approval of Mercy's Crystal Lakes hospital construction permit. They told me that I should hire Kiferbaum to construct the new Edward facility, because Kieferbaum wielded influence with 2-3



members of the State Board. They said that for the Mercy project, Board member Levine had personally met with Kiferbaum and Mercy's CEO to reassure the Mercy's CEO that Kiferbaum could "get things done."

6. On or about April 19, 2004, I met with Jacob Kieferbaum at the Egg Shell Café in Deerfield, Illinois. Kieferbaum said that he was good friends with Levine and with five of the existing Board members; that the Mercy construction would be approved at the Board meeting of April 21, 2004; and that if we did not use Kieferbaum's company, the Certificate of Need to build the new Edward Hospital in Plainfield would not be approved by the Board. Stuart Levine and Nicholas Hurtgen were also at the Egg Shell Café although they were seated at another table. Mr. Levine walked over to our table. He said that I could trust Kieferbaum and that Kieferbaum's word was good.



FURTHER THE DECLARANT SAYETH NOT.

Camille Meyer Davis

Executed on March 4, 2005

DATE: 4/21/04
TIME: 8:03 p.m.
ACTIVITY: Home Telephone 1 outgoing to (847) 432-0498
CALL#: 329

SPEAKERS:
LEVINE: Stuart Levine
LOREN: Steven Loren

* * * *

1 LOREN Hi.

2 LEVINE You have no idea.

3 LOREN Let, let me get this on the other phone,
4 one second.

5 (PAUSE)

6 LOREN Hi.

7 LEVINE Uh, from the minute, from the minute I
8 walked in there uh, Beck, Beck, Beck
9 wanted to resign uh, uh, he, and, and,
10 and uh, ih, ih, ih, because see there's,
11 there's much more here than uh, than uh,
12 meets the eye because other people had
13 been promised that this wouldn't happen.

14 LOREN Mm hm.

15 LEVINE And uh, and um, and of course no-,
16 nobody, nobody knows that it's me. And
17 nobody really knows that it's Tony for
18 the reason that it's Tony.

19 LOREN Right.

20 LEVINE And, and um, uh, I kept the whole thing
21 together boy, and Beck's not resigning.

22 LOREN Oh a-, after the hearing itself it
23 wouldn't of been hard for anyone who was
24 present to see that you were the one who
25 moved this.

26 LEVINE Well, but I had no choice.

1 LOREN I, I understand that.

2 LEVINE But I mean, but I mean but all through
3 the whole day and, and, and I took Beck
4 over to Tony's and now Beck's not
5 resigning.

6 LOREN Mm hm.

7 LEVINE I mean I kept the whole, you know uh,
8 but uh, but oh what I fuckin' thing.

9 LOREN Oh, he threatened to resign over this?

10 LEVINE No he was, he, he didn't want it to take
11 place. Tony and I both decided we
12 wanted, I like getting things done. And
13 he, he wanted all the hospitals up in
14 the same time.

15 LOREN Right.

16
17 LEVINE Now, I mean Mercy is not Edward's
18 problem so you know I mean uh, uh, I
19 mean uh, uh, and you know, he thought,
20 he thought it got uh that the Board
21 would look uh, foolish uh, giving it to
22 uh, to uh, uh, uh, Mercy with uh, uh,
23 you know uh, given the uh, the, the
24 staff findings uh and uh, that there was
25 you know no, no chance for real cover.
26 And another problem is that, that
27 there's really no control over the staff
28 because...

29 LOREN (UI).

30 LEVINE The staff doesn't report to the
31 Executive Director. But that's all
32 going to get cured now. Now that I see
33 Tom's problems, I'm gonna get those
34 cured. But um, uh, but uh, tell me do
35 you think the other hospital systems in
36 McHenry could successfully keep you out
37 with litigation?

38 LOREN Well, Centegra approached uh, Javon.



1 LEVINE Mm hm.

2 LOREN And you know the President of Centegra
3 who was there uh, said that he thought
4 his Board was going to bring some kind
5 of challenge and Javon volunteered and
6 they're going to get together one day,
7 not next week but the week after, to try
8 and see if they can work out their
9 differences and Javon was saying you
10 know that this, this market's large
11 enough for both of us and all you're
12 going to do with litigation is alienate
13 yourself from the Board in the future so
14 why would you want to do that. Maybe
15 they can work something out.

16 LEVINE Well that was, that was interesting that
17 uh, that he took it upon himself to say
18 I'm the strong man. Of course he was
19 that day.

20 LOREN Right.

21 LEVINE Uh, but...

22 LOREN But he, he's also, you know the, the guy
23 from Mercy is pretty polished and to the
24 extent he can work something out.

25 LEVINE Well I, I, that, that would be, that
26 would be very smart and very good. Uh,
27 um,...

28 LOREN Now, now the, the other uh, you know
29 Centegra can bring a lawsuit, but the
30 lawsuit wouldn't be against the Board it
31 would be against uh, more, more likely
32 would be against uh, Mercy under the
33 fact that the CON shouldn't of been
34 issued which is kind of screwy
35 procedural issue.

36 LEVINE Well now my, my only point is the, the
37 thing would be delayed in getting built.

38 LOREN Right.

1 LEVINE I don't give a shit about the rest.
2 (laughs)

3 LOREN Well Ja, Ja, Javon knows that he stole,
4 he said he's at second base.

5 LEVINE Ah, he, he understands what we got
6 pulled off for him? The magnitude of
7 it.

8 LOREN Ah, he, he, he's no dummy. You know
9 what he was really upset about?

10 LEVINE Mmmm.

11 LOREN He had been promised up and down the
12 wazoo that he was going to get the
13 support of the uh, those 2 women...on,
14 on the theory that the unions were
15 helping him out. You know both Rice and
16 Orr and uh, Orr, Orr, Orr got up to
17 leave just 'cause she didn't want to be
18 there for the vote.

19 LEVINE Uh, well that she, so uh, who's he work
20 with, with the unions?

21 LOREN Balanoff.

22 LEVINE He worked with Balanoff?

23 LOREN Someone did for him.

24 LEVINE Well...

25 LOREN (UI) Victor.

26 LEVINE Oh I see. Well I, I hope that Javon is
27 going to complain loudly.

28 LOREN Uh, he probab-, well, I, I think he also
29 appreciates that the last thing that he
30 and Mercy need is any kind of spotlight.
31 So I don't think he's going to go, I
32 think he's going to try and work
33 something out quietly.

34 LEVINE Oh that's good. Well that's good. But,

1 but he understands the magnitude...

2 LOREN Yeah.

3 LEVINE Of what was done on the, on that Board
4 by me today.

5 LOREN He does. In fact he said he can't
6 believe that you did what you did on
7 their behalf.

8 (PAUSE)

9 LEVINE Uh, I didn't do it on their behalf.
10 (laughs)

11 LOREN Well...

12 LEVINE Why, but why, why, well, he, I'm sh-,
13 that's good, it's good, it's good that
14 he thinks that because he uh, uh, uh, he
15 um, um, uh, thinks that uh, that for
16 some reason I'm just doing it for Jacob.

17 LOREN Pam uh, out did herself.

18 LEVINE She is, what an arrogant bitch.

19 LOREN (UI).

20 LEVINE What an arrogant bitch. Can you imagine
21 walkin' out that she still had to come
22 back. You know what she is absolutely
23 appalled that she didn't get her CON
24 today. I mean she just can't believe
25 it. I mean she came in to get her CON
26 and they didn't give it to her. She is
27 fuckin' nuts.

28 LOREN She is what she is. Now is she going to
29 get hers in June?

30 LEVINE No.

31 LOREN (laughs)

32 LEVINE She's not going to get shit. Because
33 uh, uh, um, the, the Adventist are going

1 push came to shove there it was.

2 LOREN Mm hm. What did you have to tell, say
3 to uh, that one doctor you uh...

4 LEVINE Oh no this was, Beck uh, uh, Beck didn't
5 want to vote for it unless he had to.

6 LOREN Mm hm.

7 LEVINE So he passed. So you had, you had three
8 votes, three passes and three no's. If
9 Beck didn't want to vote, if he voted
10 yes and, and the other guy voted no we
11 would of lost and that would of been it.

12 LOREN Mm hm.

13 LEVINE He wanted to know what he was going to
14 vote uh, um, uh, because if, if, if the
15 other guy was going to vote no, Beck
16 would have made a move to, to have it
17 deferred.

18 LOREN Hasn't Anne Murphy ever said anything to
19 any of you about uh, these side bars?

20 LEVINE Fuck her she thinks she's powerful to
21 stop it? I had a deal to close.

22 LOREN (laughs)

23 LEVINE Please. She, sh-, she tried to help a
24 little bit you noticed.

25 LOREN Oh she definitely did.

26 LEVINE And that other idiot, wait 'til I finish
27 with him. He, he, he hasn't got a clue
28 and all of a sudden he's makin' a speech
29 why they shouldn't expect to get a CON.
30 And I'm sittin' there waiting to vote it
31 in. (laughs) I don't know, I can't
32 imagine what it look like from out there
33 with a, with Beck comin' to talk to me,
34 and my goin' to talk to the other guy.

1 LOREN Well it, it, it looked like there was
2 orchestration going on.

3 LEVINE Looked like there was a shoe hitting
4 somebody over the head. Could you, did,
5 did you ever in your life see a vote
6 stop in the middle?

7 LOREN No, no.

8 LEVINE Neither did I.

9 LOREN Uh, now it, it made no difference, you
10 know the, the, the basis that Mercy put
11 out on the record there was some common
12 sense to what they were saying.

13 LEVINE It is a, it is a legitimate CON.

14 LOREN Right.

15 LEVINE Uh, uh, you know so the uh, the, uh, uh
16 where they getting the physicians from?
17 They bringin' 'em all in from Wisconsin?

18 LOREN I have no idea. They're probably coming
19 from Guadalajara as we speak. (laughs)

20 LEVINE (laughs)

21 LOREN (UI).

22 LEVINE (laughs) Oh Lord.

23 LOREN I, I finally figured out though when I
24 met Herb Frank how the whole thing fell
25 into place.

26 LEVINE When you met who?

27 LOREN Her-, Herb Frank...

28 LEVINE Oh.

29 LOREN Is good friends with Izzy Levy.

30 LEVINE Right.



1 LOREN And Herb Frank represents Harvard
2 Hospital and Harvard got acquired by
3 Mercy.

4 LEVINE I see.

5 LOREN So I, I'm assuming that Mercy probably
6 went to Herb Frank and said can you, can
7 you, can you find out how we can get
8 somebody on the, on the uh,...

9 LEVINE No, no, uh,...

10 LOREN And then the thing with the JUF.

11 LEVINE No, no, that, that's, that's exactly how
12 it happened. They uh, they um, um,
13 with, that that's when it came to Jacob
14 and said...

15 LOREN They got an invitation with Izzy's name
16 on it and they saw you were the honor,
17 the honoree.

18 LEVINE And Massuda was on the dinner committee.

19 LOREN Mm hm.

20 LEVINE Um, did you, were you there this morning
21 with Northwestern and Massuda?

22 LOREN Yeah.

23 LEVINE Could you fuckin' believe it?

24 LOREN I actually thought it was kind of
25 amusing.

26 LEVINE Amusing. If you want our help you, you
27 better let podiatrists in. I said
28 Fortunee, I said you must never do that
29 again. She said well I want Pod...I
30 said, I said, I said you're not here for
31 the podiatrists' interests...you're here
32 for the people of the State of Illinois.

33 LOREN (laughs)

1 LEVINE Okay. (laughs)

2 LOREN Medicine at its best.

3 LEVINE Well she, you know she's not subtle.
4 (laughs) Northwestern called and
5 complained. Meanwhile if I were them...

6 LOREN Called to complain...who, who'd they
7 call?

8 LEVINE They called staff to complain it was a
9 terrible thing she did. Meanwhile when
10 she got those three women to vote
11 against their thing.

12 LOREN Mm hm.

13 LEVINE To me if they have half a brain they
14 would do somethin' with...she could
15 cause them an enormous problem. She,
16 she could cause the situation where
17 sometime they need a vote they can't get
18 it. It would be stupid on her part to
19 do it, but she would do it.

20 LOREN Yeah that's a, none of those hospitals
21 really appreciate that, whether they
22 like the treatment or not, they're at
23 the mercy of that Board, so why would
24 they go and alienate people.

25 LEVINE Um, well first of all Northwestern is
26 Northwestern. They worship, everybody
27 has to be honored that they walked in
28 the room. And I'm telling you that Pam
29 could not believe she didn't get her
30 CON.

31 LOREN Well actually I would have thought it
32 would of been much more entertaining had
33 you given her the CON for the office
34 building.

35 LEVINE That's what I wanted to do.

36 LOREN And not the hospital.

1 LEVINE That's what I wanted to do. Could you
2 imagine she said we bought this land we
3 had no thought of building a hospital.
4 Can you imagine that baldface lying
5 cunt.

6 LOREN Well why don't you let her build the,
7 the office building.

8 LEVINE Huh?

9 LOREN Why don't you let her have her, her cake
10 (UI).

11 LEVINE I suggested, I suggested it to 'em, they
12 don't want to give her anything.

13 LOREN Well, the, they're really in a pickle
14 now 'cause based on what they said
15 today...I think they probably have to
16 take down that option between now and
17 the time, they better get an extension,
18 otherwise they're going to own 60 acres
19 of land in Plainfield with nothin' to do
20 with it.

21 LEVINE Good. (chuckles) Serves 'em right.
22 She's responsible for this, this was a
23 terrible strategy. Of course um, Honey
24 was their lawyer.

25 LOREN Mm hm. (UI).

26 LEVINE She's pissed. Oh, she's pissed at me
27 because uh, um, um, Pam who went around
28 her back all over the place because Pam
29 is such a fucky-doodly, she knows that
30 uh, that um, I'm, I'm sure that Pam said
31 that Nick was talkin' to me. So she's,
32 she's probably um, uh, pissed.

33 LOREN Well I heard, you know I went outside
34 and eavesdropped.

35 LEVINE Mm hm.

36 LOREN On Pam, on Pam and Honey's conversation.

1 LEVINE Mm hm.

2 LOREN I, I was around the corner.

3 LEVINE Mm hm.

4 LOREN And, and Honey was saying you know Pam,
5 you can't do what you just did. She
6 said, you know, you know what I really
7 wanted to tell him. She said no, what
8 did you want to tell him. I wanted to
9 tell him next time I see you you'll be
10 in prison.

11 LEVINE (chuckles) To say to who?

12 LOREN Beck.

13 LEVINE To Beck.

14 LOREN Yeah.

15 LEVINE What'd he do?

16 LOREN Nothing and when she, when she turned,
17 when she walked out and turned her back
18 on the guy.

19 LEVINE He, he'd be in prison?

20 LOREN Yeah, yeah.

21 LEVINE Maybe she knows somethin' we don't.
22 (laughs)

23 LOREN (laughs) But you know she was besides
24 herself because you know it, it was
25 embarrassing to her.

26 LEVINE It was embarrassing to her?

27 LOREN To Honey.

28 LEVINE Oh of course it was embarrassing to her.
29 But you know I mean uh, uh,...

30 LOREN So they clearly, now...look, I was
31 watching the body language.



1 LEVINE Mm hm.

2 LOREN They clearly believe that what Beck was
3 doin' was begging them to defer so he
4 could give them, give them the CON in
5 June.

6 LEVINE Edwards thinks that?

7 LOREN Mm hm.

8 LEVINE No. (chuckles)

9 LOREN Clearly with her, that's the
10 expectation.

11 LEVINE Oh they're so wrong. He was just trying
12 to uh, to be uh, to talk a little bit
13 nice. After the, after the big blow up
14 uh, and, well I mean everybody likes to
15 be a, to a, to, they cannot give it to
16 uh, to the Adventist, then there's only
17 going to be one.

18 LOREN Mm hm.

19 LEVINE And Jeff Ladd represents them.

20 (PAUSE)

21 LOREN Which is the uh, oh Bolingbrook is the
22 Adventist.

23 LEVINE Yeah, the Adventist. Advocate...

24 LOREN I'm surprised you guys gave the
25 Ambulatory Care to Provena uh, today
26 based on what I thought were their
27 problems with the Board. I thought they
28 had a personality issue with uh, with
29 one of their people.

30 LEVINE Uh, apparently (UI).

31 LOREN (UI) Hospital.

32 LEVINE Uh, uh, apparently whatever it was been
33 solved.

1 LOREN You know I and, and some of these CON's
2 that were up today, I asked Herb Frank,
3 who was sitting next to me for part of
4 the hearing.

5 LEVINE Mm hm.

6 LOREN I said you know do, do these people have
7 to come in for a CON when they decide to
8 go from 2-ply to 1-ply toilet paper.

9 LEVINE (laughs)

10 LOREN Do you have any idea of the application
11 fee that these hospitals have to pay?

12 LEVINE No.

13 LOREN It's enormous. How much you think Mercy
14 had to submit for the CON application?

15 LEVINE How much?

16 LOREN \$100,000.

17 LEVINE And you know that the governor's office
18 had taken away from the CON Board. We
19 don't even have an employee.

20 LOREN No.

21 LEVINE Anyway that's, that, I'm going to clean
22 up. I think I'm going to clean up that
23 Board so, 'cause it'll be easier to work
24 for poor Tom. I have to pitch in and be
25 a spokesman.

26 LOREN Well you have two vacancies there.

27 LEVINE No, they're filled. Bernie Weiner.

28 LOREN So why, why were people not there?

29 LEVINE Well he wasn't appointed in time to be
30 at this meeting.

31 LOREN Mm hm.

1 LEVINE And the other, Orr was there.

2 LOREN I thought you only had eight people
3 there today?

4 LEVINE Uh, everybody was there.

5 LOREN Oh the Board's nine.

6 LEVINE The Board's nine, right. (laughs)

7 LOREN What's going on with the other Board
8 appointments, you heard anything?

9 LEVINE No we'll get into that tomorrow. That's
10 enough for one day.

11 LOREN Well, I hope you enjoyed, you know I do
12 not understand how anyone can expect any
13 of you to serve on this Board. You know
14 the, the amount of work that, that, if
15 it's, this is done properly.

16 LEVINE Oh I, I,...

17 LOREN It's a full time job.

18 LEVINE I don't, I don't do a goddamn thing. I
19 don't even, I don't read a goddamn
20 thing. If there's, if there's, if, ,if
21 there's, if there's something I have an
22 interest in it uh, I mean I, I, I don't
23 do anything. I don't read a goddamn
24 thing unless there's a particular thing
25 that I gotta, I gotta bone up on a
26 little.

27 LOREN It's a full-time job.

28 LEVINE Beck has a full-time job.

29 LOREN Then what is it?

30 LEVINE Pardon?

31 LOREN What, what does he do full time?

32 LEVINE No, no, Beck, he uh, Beck he, he's a

1 consultant uh, uh, various, Beck's done
2 very well for himself because he, he was
3 uh, he was in the right place with the
4 right guys at the County and uh, he did
5 what he was supposed to and um, and he
6 came out uh, fine and he's a, he's got
7 some great relationships. He's like
8 Stricklin.

9 LOREN So what did Tony think of the whole
10 thing today?

11 LEVINE He don't give a shit. He wanted to make
12 sure that it got done. He was
13 grateful...

14 LOREN He should be royally upset that these 2
15 union people are, are causing problems.

16 LEVINE He, he needs 5 votes. He has 5 votes.

17 LOREN So he doesn't care.

18 LEVINE And he had to give the union, I mean you
19 know they, they, they have uh, uh, the
20 Service Employees always had a person on
21 that Board.

22 LOREN Mm hm.

23 LEVINE Um,...

24 LOREN Well you know who, who Orr works for?

25 LEVINE Emil, well she comes from Emil Jones
26 doesn't she?

27 LOREN No.

28 LEVINE Who?

29 LOREN She works for Ed Smith.

30 LEVINE Oh she does.

31 LOREN Yeah. She works, she's an organizer for
32 the Laborers.

1 LEVINE Oh.
2 (PAUSE)
3 LEVINE Oh well that's good to know. I'll have
4 to work on that.
5 LOREN That's what Stricklin told me. I asked,
6 you know he, that, that's Ed Smith's
7 person. She didn't get on there by
8 accident.
9 LEVINE I could, see, see, if I would of known,
10 I could of um, uh, I can uh, I can get
11 there. But they were just, Balanoff was
12 supposed to deliver her?
13 LOREN Yeah. Both of 'em, Rice too.
14 LEVINE He failed.
15 LOREN She seems to be quite the uh, unpleasant
16 person.
17 LEVINE Balanoff?
18 LOREN No, Rice.
19 LEVINE The big fat one?
20 LOREN No that's Orr.
21 LEVINE Oh.
22 LOREN Rice is the (UI).
23 LEVINE No, no, Orr, Orr is the new one. Pam
24 Orr is the, is the new Board member.
25 LOREN The black woman.
26 LEVINE Yeah.
27 LOREN Oh no, no, I'm, I'm, I'm thinkin' of the
28 heavy set woman who was sitting next to
29 (UI).
30 LEVINE Yeah she, she's uh, uh, she's a union

DATE: 4/19/04
TIME: 5:25 p.m.
ACTIVITY: Home Telephone 1 outgoing to (847) 486-0805
CALL#: 261

SPEAKERS:
BECK: Thomas Beck
LEVINE: Stuart Levine

* * * *

1 BECK Hello.
2 LEVINE Hi Tom.
3 BECK Hello Stu.
4 LEVINE Good, you know what I, I talked to uh,
5 to uh, to Loren.
6 BECK Yeah.
7 LEVINE He said the staff is absolutely stroking
8 uh, uh, stroking us because, he's
9 dropping off to me tonight the um,
10 statement that the guy would make on, on
11 Wednesday. You know because he, he has
12 in, in his narrative uh, showing all the
13 substantive stuff they put in that um,
14 that um, answers the negative questions
15 including the statistics, hospitals this
16 and that. When I get it, can I call you
17 tonight and uh, go over some of 'em?
18 BECK Yeah.
19 LEVINE Okay we'll do that.
20 BECK Or you wanna fax it to me?
21 LEVINE Well I'm uh, I...
22 BECK Do you have a fax at home?
23 LEVINE Yeah. What's your fax number?
24 BECK 773



1 LEVINE Uh huh.
2 BECK 775
3 LEVINE Uh huh.
4 BECK 6061.
5 LEVINE And that way I can fax it to you and we
6 can talk about it.
7 BECK You could fax it and then we can talk
8 about it tomorrow.
9 LEVINE Oh you know what or not, you don't wanna
10 talk about it?
11 BECK I don't, I don't know why my wife hasn't
12 told me what I'm doing yet.
13 LEVINE I understand completely. That's great.
14 Okay I'll talk to you later.
15 BECK You know how that is.
16 LEVINE I certainly do.
17 BECK Okay.
18 LEVINE Okay. Bye.
19 BECK Bye.

DATE: 4/20/04
TIME: 4:37 p.m.
ACTIVITY: Home Telephone 2 incoming from (847) 657-0507
CALL#: 84

SPEAKERS:
LEVINE: Stuart Levine
BECK: Thomas Beck

* * * *

1 BECK ... (UI).

2 LEVINE Uh, and um, uh, I, is everyone gonna be
3 there tomorrow?

4 BECK Uh, Bernie won't be there we'll have uh,
5 eight of us.

6 LEVINE They'll be eight of us uh, okay. Uh,
7 Jones' new person won't be there?

8 BECK Yes.

9 LEVINE Oh she will be.

10 BECK Yeah.

11 LEVINE And uh, well that's a, that's a, that's
12 good. You know uh, um, um, uh, the
13 Bolingbrook...

14 BECK Should take some heat off of Crystal
15 Lake.

16 LEVINE Yeah. Uh, but now, but see you um, you
17 just...I'll go over the shit. Just let
18 me know if there's something that you
19 wanna make in the argument. The only
20 thing that I've looked at needless to
21 say because I never look at anything.

22 BECK Yeah.

23 LEVINE Unless I need to is I read the
24 supplemental stuff because I had to get
25 it to you.



1 BECK Yeah.

2 LEVINE And so I'm familiar with that but if uh,
3 I suppose I'll just listen to uh, to
4 your lead and then I'll ask questions on
5 Bolingbrook.

6 BECK (UI) Bolingbrook uh, Bolingbrook has the
7 same negatives that Edwards has.

8 LEVINE Mm hm.

9 BECK Okay.

10 LEVINE Mm hm.

11 BECK But Bolingbrook has two things that
12 really sway it towards them.

13 LEVINE Mm hm.

14 BECK Uh, they have more than two they have a
15 lot of 'em. One, they already have a
16 medical office building.

17 LEVINE Aaahhh.

18 BECK Uh, two uh, that Hinsdale Hospital
19 wanted to build a hospital in
20 Bolingbrook back in, in the 80's.

21 LEVINE Mm hm.

22 BECK It was denied by the Board. They went
23 to court and they won in court.

24 LEVINE Mm hm.

25 BECK The court says, "Board you were wrong
26 they should be a hospital there." They
27 went back to the Board but the Board
28 would never increase the dollar amount
29 after four years of litigation.

30 LEVINE Hmm.

31 BECK And Hinsdale though says we can't build
32 it at those numbers.



1 LEVINE Mm hm.
2 BECK So they didn't build it.
3 LEVINE Mm hm.
4 BECK Uh, last year they were designated a
5 medically disadvantaged area by the
6 Federal government and the governor of
7 the State of Illinois.
8 LEVINE Mm hm.
9 BECK So I think, I'm gonna raise those (UI).
10 LEVINE Sure.
11 BECK Explain those things.
12 LEVINE Mm hm.
13 BECK And uh, we go with it.
14 LEVINE Yeah I, I, I, I would agr-, those things
15 that we can get done I think we should.
16 BECK Yeah.
17 LEVINE Um, who, who is, who's, who's um, uh,
18 uh, what hospital system that's in
19 Bolingbrook? Not Edwards but...
20 BECK Hinsdale.
21 LEVINE Hinsdale. Who represents them?
22 BECK Uh, Ladd.
23 LEVINE Oh good.
24 BECK And uh, and they got, they got, Edwards
25 Hospital had everybody against 'em
26 except Cross.
27 LEVINE Mm hm.
28 BECK They had Denny Hastert against 'em. Bob
29 Schillerstrom uh, couple other senators.

1 There isn't one politician against the
2 hospital in Bolingbrook.

3 LEVINE Well frankly I'd like to vote for
4 something for, for uh, for Jeff because
5 he and I sometimes over the years were
6 on opposite sides and I'd really like to
7 do something.

8 BECK Oh listen, we're all on different
9 places.

10 LEVINE Yeah here I ask him if he could get a
11 couple parking spaces uh, in, in
12 Naperville and then I voted against him.
13 But that was only 'cause I was supposed
14 to.

15 BECK Yeah.

16 LEVINE But I can't tell him that. (laughs)

17 BECK No, he knows. No he knew what...

18 LEVINE Oh...

19 BECK He knows what the problem is out there.

20 LEVINE And we're getting it solved for him?

21 BECK He's gotta make, they've gotta make the
22 first move somewhere and...

23 LEVINE Yeah.

24 BECK I don't know if they've done it yet.

25 LEVINE Yeah, yeah.

26 BECK Uh,...

27 LEVINE Uh, where does, the, who's gonna go
28 first Bolingbrook or, or Edwards?

29 BECK Edwards because they have the uh, they
30 (UI).

31 LEVINE You, you, you know remember when they

1 said that uh, she made it very clear
2 because, you know, how we maneuvered
3 her, that she would build the office
4 build, if they're not attached, she
5 would build one or the other.

6 BECK Yeah.

7 LEVINE You could give her the office building.
8 She can't build it without the hospital.
9 Right?

10 BECK I can, I don't know why she would.

11 LEVINE Yeah. You know (UI) give her the, give
12 her, give her the office building and
13 um, uh, then that, that, that's a,
14 that's a, that's, that's that. Uh,
15 what, what good would that do us, if
16 any?

17 BECK Nothin' really. I don't think it'd give
18 us any.

19 LEVINE I mean but, but, you know if we were
20 hard pressed to find a reason not to
21 give it to her we were just

22 * * * * *

23

24 LEVINE One of, of the, of the uh, building
25 because they're not gonna build a
26 building without that.

27 BECK Yeah.

28 LEVINE And, and then otherwise what is our,
29 what, what, what reason do we use to
30 deny it.

31 BECK Uh, that it should have been a combined
32 uh, application...

33 LEVINE Oh, okay.

34 BECK In the first place.

35 LEVINE Oh, okay, that's fine.

1 BECK You know.

2 LEVINE You'll, you know best.

3 BECK We'll play that one by ear and see what
4 happens as the day goes on.

5 LEVINE I think that it's, it's uh, it's uh,
6 important uh, that uh, uh, you
7 communicate to the 5 uh, you know...

8 BECK Yeah.

9 LEVINE That we, you know that we're, that we're
10 doin' it.

11 BECK Mm hm.

12 LEVINE Uh,...

13 BECK I, I hope that uh, Jones and...

14 LEVINE I...

15 BECK I hope Danalynn gets, I hope someone
16 else gets on board.

17 LEVINE You mean on to, on our, what do you
18 mean?

19 BECK On our side.

20 LEVINE Uh, you know, I'll have to ask Fortunee
21 if she can talk to Ann Marie.

22 BECK Yeah.

23 LEVINE Do you think she'll be against it or for
24 it or she doesn't care?

25 BECK I don't, uh, you know I don't think we
26 should because then she may ask, uh,
27 Fortunee

28 LEVINE Oh you're, you're right, you're right,
29 you're right.

30 BECK (UI).

1 LEVINE You're right let's just see if, if, if
2 it goes with the flow.

3 BECK Let's see what happens with Jones' girl
4 uh, Pamela, err, I think that's her
5 name.

6 LEVINE Mm hm.

7 BECK So, and, or uh, Danalynn Rice and see if
8 maybe they get uh, they get on board.

9 LEVINE Mm hm.

10 BECK Uh,...

11 LEVINE Uh, is Mercy gonna be first or after
12 these other 2?

13 BECK They, Mercy would be after the other
14 2...

15 LEVINE Good.

16 BECK Because it was an intent to deny.

17 LEVINE Oh that's good.

18 BECK The others would be first.

19 LEVINE That's good.

20 BECK And uh,...

21 LEVINE You know, you know I gotta tell you a
22 cute story. Uh, T-, Tony says to me
23 once, you know I've got my term is
24 expiring on the, on the uh, Pension
25 Board and they wanna re-up me.

26 BECK Yeah.

27 LEVINE So, so Tony calls it one, one of the,
28 the minions, there are we, are we re-
29 appointing uh, you know we gotta get
30 that going. And the minion said, he
31 voted against the ethics ordinance.

1 BECK (laughs)

2 LEVINE And Tony said, well another thing to get
3 straightened out. Can you (laughs) they
4 was, they thought I was leading a,
5 leading a rebellion.

6 BECK Mm hm.

7 LEVINE (laughs)

8 BECK Oh they're, they are something.

9 LEVINE I think that's great fun.

10 BECK It is, but they, I don't know if this
11 new administ...if they didn't have Tony
12 and a couple others around in the
13 background.

14 LEVINE You know let, let me tell you that they
15 don't know what the fuck they're doing.

16 BECK No.

17 LEVINE And, and, and uh, they, you know if, you
18 can give instructions but if, if it gets
19 fucked up uh, it, it's, listen it takes
20 time.

21 BECK Mm hm.

22 LEVINE They're, they're uh, they're uh, they're
23 new.

24 BECK Yeah but their time is runnin' out
25 they've been there (UI).

26 LEVINE Uh, that's true.

27 BECK You know.

28 LEVINE Yeah.

29 BECK I just keep lookin' we can't get even
30 any employees in this place.

31 LEVINE You know I don't understand wh-, wh-,

1 uh, it, uh, we can't, the, the staff has
2 gotta, Jeff's gotta be able to, to, to,
3 to have people do what he needs.

4 BECK I know it. I know it. I, a long time
5 ago I moved up one. Billie Paige called
6 me and asked me if I could get one of
7 her's up, you know...

8 LEVINE Mm hm.

9 BECK On the, on this month instead of it
10 goin' to the next month.

11 LEVINE Mm hm.

12 BECK So I called staff and I said what do you
13 think and they said oh yeah we can do
14 it. I said fine do it. Oh, they were,
15 they raised hell to the administration.
16 (UI).



17 LEVINE You and I oughta both talk to Tony about
18 that and tell him that it's making life
19 difficult.

20 BECK Oh, he, Tony knows it is.

21 LEVINE Yeah but...

22 BECK I've been telling him.

23 LEVINE You know he's got, he's got so much...

24 BECK Yeah.

25 LEVINE That he can't, he doesn't sometimes know
26 which way to turn.

27 BECK You know I hate to go in with all
28 negative staff reports and then we're
29 gonna go and do it, you know.

30 LEVINE Mm hm. Yeah.

31 BECK That makes us...

32 LEVINE Well in this, these instances the

1 negative staff reports are a result
2 of,...

3 BECK Bad rules.

4 LEVINE Of, of, of rules that are ancient and we
5 all acknowledge that uh, and you know
6 it's like the Mercy thing they've got
7 uh, the statistics this and that and
8 they'll make the record.

9 BECK Mm hm.

10 LEVINE Uh, uh, but, but not being able to, to
11 work with staff in areas that they
12 should be able to do something is...or
13 at least communicate.

14 BECK Yeah. We've had, I've had one that I've
15 been trying to get out of staff.
16 Central DuPage Hospital.

17 LEVINE Mm hm.

18 BECK And they wanna do their financing
19 through Ali Ata, uh, the health finance.
20 Ali Ata is the Director of the Health
21 Finance Authority.

22 LEVINE Uh huh.

23 BECK And they've been calling me for months
24 and I keep sayin' I said I can't get
25 staff to move on it. And Ali's one of
26 uh, Tony's, Tony's guys.

27 LEVINE What about uh, uh, they're all working
28 for Barry Maram right?

29 (PAUSE)

30 LEVINE The staff.

31 BECK Um,...

32 LEVINE They work for Public Aid?

33 BECK No they're all with uh, Dr. Eric



1 Whitaker...Public Health.

2 LEVINE Ooohhh.

3 BECK And he's, he's almost useless as far as
4 I'm concerned.

5 LEVINE Almost useless is useless.

6 BECK I've been, I've been fighting with him
7 since the beginning 'cause they keep
8 taking our money using it for employees
9 that they're putting on and don't do
10 anything for it. And I keep tellin' 'em
11 that they're breakin' the law.

12 (PAUSE)

13 LEVINE Mmmm.

14 BECK And I said, you know and I finally told
15 I says if you're gonna do it tell me
16 you're gonna do that so I can, we can
17 raise the fees so that we have enough
18 money to pay for the people that we do
19 need.

20 LEVINE Mm hm.

21 BECK Oh no they won't be, there'll be enough
22 money.

23 (PAUSE)

24 BECK But that's, they're all amateurs so we
25 just do what, what we can until maybe
26 they'll all realize it.

27 LEVINE Mm hm. Or they need something real bad
28 and we can't move it for 'em.

29 BECK Yeah. Mm hm.

30 LEVINE That'll change quick then. (laughs)

31 BECK (laughs) Maybe it would. Alright but
32 you think, think.



1 LEVINE Absolutely I, I, I, I agree get 'em all
2 out of the way.

3 BECK And then we're down to, we got, then
4 we'll have two hot topics later which
5 was, will be uh, in June we'll have uh,
6 Advocate and St. Francis.

7 LEVINE Mm hm.

8 BECK And that'll be it. That'll be a bad
9 one. That's the one (UI).

10 LEVINE Yeah I know. Yeah but, but, but
11 that'll, one way or another the battle
12 will be not, not in front of us because
13 um, it's, it's either Emil gets the, the
14 governor to go along with him or
15 doesn't.

16 BECK Yeah. Mm hm.

17 LEVINE You know I mean you know I know Emil.
18 I, I, I said to him once can you
19 call...I, I said um, you know I said
20 I'm, the Gov-, Blagojevich appointed me.
21 That's that.

22 BECK Mm hm. That's all we can do.

23 LEVINE Yeah. Well enjoy, enjoy confirmation
24 tonight.

25 BECK (laughs) Yeah I can't wait to drive to
26 LaGrange now in the rain on the toll
27 road.

28 LEVINE (laughs)

29 BECK But it's things...you'll find out when
30 you have grand kids.

31 LEVINE Uh, uh, uh, uh, and it's fine with me
32 but I told my daughter uh, just not now.

33 BECK Yeah that's true.

34 LEVINE Get, just get married.

1 BECK Mm hm. My, my wife just yelled get
2 movin'. Alright we'll see you (UI).
3 LEVINE Alright Tom see you in the morning.
4 Okay. Bye.
5 BECK Bye.

DATE: 4/19/04
TIME: 4:56 p.m.
ACTIVITY: Home Telephone 1 incoming from (847) 486-0805
CALL#: 257

SPEAKERS:
LEVINE: Stuart Levine
BECK: Thomas Beck

* * * *

1 LEVINE Hi Tom.
2 BECK Hello Stu.
3 LEVINE How are you?
4 BECK I'm good. Uh, well we've got two new
5 Board members.
6 LEVINE Oh we do.
7 BECK Yep.
8 LEVINE Who are they?
9 BECK We've got a woman by the name of Pamela
10 Orr from way out south, black. She's
11 uh, works for a uh, nursing home.
12 LEVINE Uh huh.
13 BECK And uh, she's, I don't know, she's not
14 one of Tony's. Tony told me she was
15 from Balanoff.
16 LEVINE Mmm.
17 BECK So when I called the girl the other day
18 to uh, welcome her on board and tell her
19 not to be, you know afraid and all this.
20 You know...
21 LEVINE Mm hm.
22 BECK Just vote the way we tell you to do but.
23 LEVINE Mm hm.

1 BECK Uh, and I says well you from the...

2 LEVINE No you, you said that to her?

3 BECK No.

4 LEVINE Oh. (laughs) Okay.

5 BECK (laughs) I said, I said you're from the
6 union huh. And she says, oh no, she
7 says I just work for a long term nursing
8 home. I says okay.

9 LEVINE Mmmm.

10 (TELEPHONE RINGING)

11 BECK So I mentioned it to our buddy and uh

12 LEVINE Tom, could you hold on a second?

13 BECK Yeah.

14 (PAUSE)

15 LEVINE I'm sorry Tom, go ahead so what'd he
16 say?

17 BECK So I mentioned it to him and he says oh
18 no she's from the union. I says okay.
19 And I says Tony, I said we'd love,
20 they're gonna appoint another one. He
21 says yeah and I said it'd be nice if it
22 was one of yours.

23 LEVINE Mm hm.

24 BECK You know in case someone has to...

25 LEVINE Take a shit.

26 BECK And, and uh, he says okay. I come back
27 to my house and the fax machine and
28 there's a fax from the governor's
29 office, they appointed another person.

30 LEVINE Mm hm.

1 BECK Uh, to take the place of the other one,
2 the girl was taking Gonzales place.

3 LEVINE Uh huh.

4 BECK And this one was taking Balanoff's
5 place. Bernie Weiner.

6 LEVINE No!

7 BECK Yeah.

8 LEVINE Who'd he come from?

9 BECK Balanoff. So Tony must be confused on
10 where this girl came from.

11 LEVINE Oh that, that, that could be. Of course
12 he, he used to write insurance in 73.

13 BECK He, he and Balanoff are real good
14 friends.

15 LEVINE I gotcha.

16 BECK And I, so I called Bernie and I said
17 well welcome on board Bern.

18 LEVINE Mm hm.

19 BECK And he said well I've been talkin' to
20 Tom and he says, you know, he had to get
21 off so he, he was gonna try and get me
22 on there.

23 LEVINE Mmm.

24 BECK So (laughs)

25 LEVINE Well I guess we'll find out. (laughs)

26 BECK Mm hm. Yeah.

27 LEVINE Wow.

28 BECK So, well, he'll, Bernie will be alright.
29 He'll be...

1 LEVINE Yeah.

2 BECK you know, different on a few things
3 where he's gonna write the insurance,
4 but. (laughs)

5 LEVINE (laughs)

6 BECK That's the way it is.

7 LEVINE Mmm.

8 BECK And I think we can get him whenever we
9 need him.

10 LEVINE Yeah.

11 BECK Um, I've got the marching orders.

12 LEVINE Uh huh.

13 BECK And uh, there's one I think you may be
14 able to help us, uh, Mercy Hospital.

15 LEVINE Uh huh.

16 BECK Our boy wants to help him.

17 LEVINE Uh huh.

18 BECK The problem that we have there is they
19 were given the intent to deny in
20 December.

21 LEVINE Right.

22 BECK And the rules say they have to come back
23 within 6 months, which is May.

24 LEVINE Mm hm.

25 BECK I don't wanna have another special
26 meeting just for Mercy.

27 LEVINE No, no, we just got...

28 BECK It will stick out like a...

1 LEVINE No, no.

2 BECK you know what.

3 LEVINE No, no, no.

4 BECK So I'd like to uh, what I had Jeff and
5 Don Jones and Ray Passeri do is make up
6 a list of questions that we ask all
7 these new hospitals.

8 LEVINE Mm hm.

9 BECK And it has to do with how are they gonna
10 do things and how are, why are they
11 better than the other. Where they're
12 gonna get their staff. You know, a lot
13 a...

14 LEVINE Of course Mercy is not one that has,
15 that there's com-, competitors tryin' to
16 build in the same area like there are in
17 the others.

18 BECK No, but they got all the, all their
19 competitors against 'em.

20 LEVINE Uh huh. Well they're fucked. (laughs)

21 BECK (laughs) And they didn't sub-, remember
22 we denied it in December (UI).

23 LEVINE Well we did that, if you remember they
24 hired a new lawyer.

25 BECK Yeah, yeah.

26 LEVINE And then uh, yeah right.

27 BECK And they didn't change anything. They
28 just re-submitted the same thing. It's
29 negative everywhere.

30 LEVINE Well it's negative everywhere because
31 they, we have to, on, on most of these
32 hospital deals we're gonna have to
33 accept uh, uh, the idea of uh, of a
34 future population growth.



1 BECK Yep. I know.

2 LEVINE But I, but that's not just them uh,
3 uh,...

4 BECK No, it's everywhere.

5 LEVINE Yeah and I think that...

6 BECK But...

7 LEVINE Go ahead.

8 BECK The problem that we have is because
9 there's a deadline on the, we either
10 approve it or deny it and they...

11 LEVINE No. Yeah.

12 BECK Want us to help.

13 LEVINE Right.

14 BECK So what I wanna do is uh, maybe you
15 could tell, you got a lawyer there that
16 you know or?

17 LEVINE Yes.

18 BECK Uh, what I'd like to do is when they
19 come and appear I would like uh, us to
20 extend it because we're giving them
21 additional questions that we want them
22 to answer.

23 LEVINE Mm hm.

24 BECK And I think there's some wording
25 somewhere in our laws, our rules that
26 allow us that if the Board wants
27 additional information, they can extend
28 the period of time.

29 LEVINE Mm hm.

30 BECK And that's what I'm gonna, I'd like to
31 give them the questions.

1 LEVINE Why don't, why, why, why, why, why, why
2 don't we try to get it done uh, uh,
3 this, this meeting.

4 BECK Everything, the whole report is
5 negative. Everywhere. And I, if they
6 could clean it up somewhat.

7 LEVINE But, but uh, um, uh,

8 BECK They're bringing 45 doctors in from
9 Wisconsin to, to man this thing and
10 bringing their patients in.

11 LEVINE Well what is it that they're, they're
12 gonna need to, to uh,...

13 BECK Clean it up somewhat. This Eli that
14 wrote it did a terrible job.

15 LEVINE Well, uh, it, would it uh, can they, can
16 they cure it on Tuesday, on Wednesday?

17 BECK No. But if we just extended it

18 LEVINE Mm hm.

19 BECK Uh, they'd at least have some more time
20 to answer these questions and to clear
21 up the stuff.

22 LEVINE Mm hm.

23 BECK Maybe we'd get someone to sit down with
24 'em to

25 LEVINE Well what is it that they uh, I mean um,
26 uh, well,...

27 BECK Everything, if we did something
28 Wednesday everything that they, we have
29 in front of us...

30 LEVINE Mm hm.

31 BECK Says it should be turned down. I mean
32 the negative, it's negative. They want,
33 they wanna open up uh, only 30 beds uh,

1 OB is sub 10. I mean they're way down
2 on everything.

3 LEVINE Mm hm.

4 BECK And uh, why don't they just say they're
5 gonna open 'em all up and they don't.

6 LEVINE Mm hm.

7 BECK You know so what. But you know they're
8 meeting our criteria when they at least
9 say.

10 LEVINE I see. Um, but they uh, what, what,
11 what if they were asked the questions
12 and they, and they had the right answers
13 on Wednesday?

14 BECK That the ques-, I don't think they could
15 do it all by Wednesday with the
16 questions that we have and I was gonna
17 give 'em to all the new hospitals when
18 they come in.

19 LEVINE Mm hm.

20 BECK We were gonna turn down everybody. The
21 first go through.

22 LEVINE Uh huh.

23 BECK Uh, give 'em these questions, let 'em
24 clean up the negatives in the report.
25 Let 'em answer these questions and...

26 LEVINE Can they, can they be uh, you mean the,
27 the, okay, alright. When, when would I
28 have the questions to go over with the
29 uh, uh, I mean I assume that what we'll
30 do, what will you do when they first
31 come in?

32 BECK When they come in I'm gonna say that uh,
33 in order to be fair to them we are gonna
34 be asking questions of all the
35 hospitals.

1 LEVINE Mm hm.

2 BECK New hospitals being proposed.

3 LEVINE Mm hm.

4 BECK We didn't have them when you appeared
5 before us the last time.

6 LEVINE Uh huh.

7 BECK We, our rules say that we should act by
8 May, we're gonna extend that because
9 we're asking you for additional
10 information.

11 LEVINE When is our next meeting after this one?

12 BECK June.

13 LEVINE Uh huh. Okay.

14 BECK Now, Stu I can't promise you it's gonna
15 be done in June either. We got two real
16 bad political ones in June.

17 LEVINE Mm hm.

18 BECK St. Francis and Advocate.

19 LEVINE Yeah. Mm hm.

20 BECK Uh, from what I hear the politics on
21 that is,...

22 LEVINE Yeah, yeah, right.

23 BECK is...

24 LEVINE I know.

25 BECK (laughs) is something.

26 LEVINE 'Cause you got Jones on uh,...

27 BECK Mm hm.

28 LEVINE Mm hm. Mm hm.

1 BECK Uh, I know...

2 LEVINE And, and you don't want, you don't want
3 these all up at the same time?

4 BECK I, I don't know, you know I, well they
5 want Ed-, he wants Edwards down and
6 Bolingbrook up.

7 LEVINE Mm, is uh, Edwards has the, the, their
8 office building up this time.

9 BECK He, he wants both, both that and the
10 hospital, no. And Bolingbrook, yes. I
11 says I can't, we can't do Bolingbrook,
12 yes.

13 LEVINE Well you know who's,...

14 BECK This...

15 LEVINE Who's Bolingbrook?

16 BECK Boling, who is it?

17 LEVINE Yeah.

18 BECK I, I don't know.

19 LEVINE No, when you say Bolingbrook I don't
20 know who that, what that...

21 BECK Hinsdale Hospital in Bolingbrook.

22 LEVINE Uh huh.

23 BECK Um, he wants them yes. I says well,
24 let's give 'em an intent to deny, let
25 'em clean up things, answer the
26 questions and then we approve it in June
27 when they come back. He said fine.

28 LEVINE So he wants uh, uh, Edwards, he wants
29 Edwards to have nothing?

30 BECK Edwards to have nothing.

31 LEVINE And they're gonna have um, uh, and



1 [talking in background] hi I'm, I'm in
2 the middle of something right now. Um,
3 okay, and Mercy?

4 BECK Mercy...

5 LEVINE We gotta get done.

6 BECK He wanted to help, but if they, you know
7 if we can extend it for them so they can
8 clean up things.

9 LEVINE Mm hm.

10 BECK Which we can do.

11 LEVINE Mm hm.

12 BECK And you know we'll give 'em the
13 questions Wednesday and they can spend
14 all the time they want. He wants that
15 approved eventually.

16 LEVINE Now uh,...

17 BECK But he's gotta get somethin' to protect
18 us to...

19 LEVINE Right.

20 BECK To approve it.

21 LEVINE Okay.

22 BECK That's the...

23 LEVINE And uh, but, but Edwards is going to uh,
24 is getting their office building voted
25 down.

26 BECK Yeah.

27 LEVINE And their application for a hospital is
28 when, set...

29 BECK That's uh, they'll get...

30 LEVINE Oh...

1 BECK It Wednesday.

2 LEVINE The hos-, their hospital is up Wednesday
3 also?

4 BECK Yeah.

5 LEVINE Oh, both deals. Oh they're gonna get an
6 intent to deny on the hospital.

7 BECK They'll get an intent to deny on that.

8 LEVINE Mm hm.

9 BECK Yep.

10 LEVINE Um, okay.

11 BECK There's some others but we'll go through
12 'em, but I just wanted, I knew you knew
13 the lawyer or something on that one.

14 LEVINE Right.

15 BECK If you just wanna tell 'em, what we're,
16 what we're, the predicament we're in and
17 what we're trying to do.

18 LEVINE Uh, well no I, I can take care of that.
19 I can communic-...

20 BECK You know so we understand.

21 LEVINE I, I, I can, I can, I can communicate
22 uh, uh, that and um, uh, so there won't
23 have to be a need for testimony, but he
24 has to bring 'em all in anyway I
25 suppose.

26 BECK I don't, I don't think he has to. I
27 wouldn't.

28 LEVINE Uh huh.

29 BECK I mean I, I, I would have no problem
30 sayin' that I told him beforehand that
31 this was what I was gonna, we are gonna
32 do.

1 LEVINE So just have their lawyer appear?

2 BECK That'd be fine.

3 LEVINE Uh huh.

4 BECK That, you know that uh, we wanna be fair
5 to them. Like we treat them the same as
6 we're treating everybody else. We
7 didn't have these questions.

8 LEVINE Will we know what it is that uh, uh,
9 would it be possible and know what it is
10 that, that uh, that needs to be uh, that
11 I could tell 'em needs to be cleaned up.
12 I assume that the questions are passed
13 in the hospitals.

14 BECK They, they have the uh, well they have
15 the report...

16 LEVINE Mm hm.

17 BECK That they should try and clean that up
18 too. And then this other they should
19 just answer the best they can.

20 LEVINE What, what's the nature of the
21 questions?

22 BECK Ooohhh, some of the questions let's see.

23 (PAUSE)

24 BECK Uh,...

25 (PAUSE)

26 BECK Improve quality. How will your project
27 (UI) promote high quality of care? How
28 will your project result in improving
29 the health status of the community?
30 What health disparities did you identify
31 in the communities the new hospital will
32 serve? And how will the project address
33 those issues?

34 LEVINE Oh so th-, this is, but how, how, how

1 will Mercy clean up the negatives? B-,
2 uh, b- I was under the impression that
3 most of their negatives have to do with,
4 with uh, population.

5 BECK No.

6 LEVINE What else, uh, 30 beds is one.

7 BECK Uh, it had to do with uh, let me see,
8 let me see if I can find it here quick.

9 (PAUSE)

10 BECK Mercy, Mercy, Mercy.

11 (PAUSE)

12 BECK There's 5 hos-, 6 existing hospitals in
13 the same area.

14 LEVINE Mm hm.

15 BECK Uh, 5 of 'em don't even meet the uh,
16 State level. They're un-, they're over,
17 they have excess beds...

18 LEVINE Mm hm.

19 BECK ...in 5 out of the 6 hospitals.

20 LEVINE Mm hm.

21 BECK Um,...

22 LEVINE Well that, that, that, that they, they
23 attempt to cure by saying the pop-,
24 there's gonna be population growth.

25 BECK Yeah. Uh, our rules require uh, 20 beds
26 in OB.

27 LEVINE Mm hm.

28 BECK They're only proposing 10. Uh, and OB
29 is short everywhere else in the state.
30 That's the one thing that is needed
31 around the state are OB beds. Um,...

1 (PAUSE)

2 LEVINE And uh, here, you're saying that uh,
3 okay that's short, okay.

4 BECK The (UI).

5 LEVINE Short in other hospitals too.

6 BECK Yeah.

7 LEVINE Huh.

8 BECK Although it appears the purpose of the
9 facility is to serve the residents of
10 the area, the applicants have not
11 documented that the beds and services
12 will be fully utilized nor have they
13 documented that the establishment of the
14 new hospital will not create a mal-
15 distribution of service. You know I
16 don't know how they do it, but there's
17 gotta be some way they can...

18 LEVINE Mm hm.

19 BECK Talk about it. Uh, it appears the
20 alternative of doing nothing and
21 continuing the use of other planning
22 facilities is the most appropriate.
23 The applicant did not submit any
24 additional material which would change
25 the original state agency findings.
26 Thus the state agency continues to make
27 a negative finding on the criteria.
28 They just didn't do anything. Uh, the
29 applicant (UI)...

30 LEVINE Who can I...go ahead.

31 BECK The applicants also provided a chart
32 identifying patients generated by the
33 proposed 45 physicians based upon their
34 experience at a Janesville, Wisconsin
35 facility. As stated the original state
36 agency report, the state agency cannot
37 identify whether or not these potential
38 patients from Wisconsin will use the new

1 facility. The finding made the
2 official, the original state agency
3 report remains the same. Uh, you know
4 they're just projecting patients that
5 they aren't gonna be getting and they
6 just gotta word it completely different
7 than they did.

8 LEVINE Mm hm. What um, who, it, who, when you,
9 do you tell Jeff that you're gonna,
10 you're gonna try to help somebody?
11 What's, what's the name of our Executive
12 Director?

13 BECK Jeff.

14 LEVINE Jeff. Do you tell him when, when you're
15 gonna try to help somebody or how...

16 BECK I can tell him but when it gets to the
17 others they don't do it they, they don't
18 follow any rules. None of the staff
19 report to Jeff.

20 LEVINE Oh, oh, oh.

21 BECK They all report to David Carvalho.

22 LEVINE Mm hm.

23 BECK Who's a pain in the butt.

24 LEVINE Mm hm. So what we need to do is the
25 Board ultimately regardless what the
26 staff report says we can vote on
27 whatever we want.

28 BECK Yeah, yeah.

29 LEVINE But we want some cover.

30 BECK But we wanna, yeah, to cover ourselves.

31 LEVINE Mm hm.

32 BECK I don't wanna have you or myself or any
33 of these others sitting out there on a
34 limb.



1 LEVINE Mm hm.

2 BECK You know, you know they've gotta clean
3 this up someday or another.

4 LEVINE Mm hm. Uh,

5 BECK Eli that did it, their consultant, he
6 just doesn't know what he's doin'.

7 LEVINE Eli, is he with a law firm?

8 BECK No, he's, he's a, he's a consultant that
9 handles CON. He's an old guy that's
10 always around, gray hair, and a gray
11 beard.

12 LEVINE Yeah I know (UI), I didn't know his
13 name.

14 BECK Yeah. I mean he doesn't know what
15 he,...

16 LEVINE Mm hm.

17 BECK What he's doin'.

18 LEVINE Mm hm.

19 BECK I mean they should get a Mike Copelin or
20 somethin' to sit down and, and help 'em
21 write it.

22 LEVINE We're lookin' for, for uh, for uh, for
23 cover and uh, and um, but, but they
24 can't state the cover in a, in a, at, at
25 the meeting? Like if they had uh, of
26 course if it just says we're opening I
27 mean they can't say well we'll have 20
28 uh, uh,...

29 BECK Yeah.

30 LEVINE They c-, can they do that?

31 BECK No. Well they can do it, but it doesn't
32 give us cover.

1 LEVINE I see.

2 BECK It doesn't, it doesn't really cover our
3 backs for these.

4 LEVINE And,

5 BECK And they're gonna be watchin' us on the
6 new hospitals I think.

7 LEVINE Oh sure.

8 BECK Especially uh, Emil.

9 LEVINE Uh huh. Alright I will get into this.
10 I will communicate with the lawyer and I
11 will talk to you back about how uh,
12 what, what they can do.

13 BECK Yeah.

14 LEVINE When they ultimately do it.

15 BECK Yeah just tell them the problem we have
16 is there's a deadline. We want to
17 extend it.

18 LEVINE Mm hm.

19 BECK So that they can clean up the thing and
20 give us...

21 LEVINE Mm hm.

22 BECK Somethin' to work with.

23 LEVINE Okay.

24 BECK And that uh, it would be, I don't think
25 they all have to come in. If the lawyer
26 and the...well you know if 1 or 2 of
27 'em wanted to come in, not the whole
28 entourage.

29 LEVINE Mm hm.

30 BECK Came in we would hand them the thing and
31 tell them we wanna be fair.

1 LEVINE Mm hm.

2 BECK We've just, we aren't even finished.
3 I'm just proofing the questions right
4 now (UI).

5 LEVINE Mm hm.

6 BECK Uh, and give them the same opportunity
7 we're givin' everyone else.

8 LEVINE Mm hm. Mm hm.

9 BECK And then I think we're covered on giving
10 them the extension, which we aren't
11 allowed to under our rules, but we will.

12 LEVINE Mm hm. Mm hm. Um, I wonder...

13 BECK (UI) I called Don Jones, I said Don, I
14 said, how do we extend this further. He
15 said Tom you can't. I says, yes we can.
16 I said we wanna extend it. We're not
17 being fair to 'em. He goes well, under
18 your rules you can't do it, it has to be
19 done in 6 months. You could hold a
20 special meeting in May. I says I'm not
21 gonna hold a special meeting. And I
22 just...

23 LEVINE So how'd you come up with this one that
24 we can extend it? Oh because...

25 BECK I just made it up. I says well we
26 can...

27 LEVINE Oh because, oh, oh,...

28 BECK The board can do anything.

29 LEVINE I, I see, I see, I see, I see.

30 BECK So I says I wanna be fair to 'em.

31 LEVINE Including the, I mean including just
32 saying I want to give them more time?
33 With, or, I mean we really, we can do
34 whatever we want? Uh,

1 BECK Yeah.
2 LEVINE Mm hm.
3 BECK We can really.
4 LEVINE I know you wouldn't want to, but I'm
5 saying. Mm hm.
6 BECK No, but I'm gonna say we, you know we
7 made these up we wanna, we wanna do it.
8 LEVINE Mm hm.
9 BECK But tell them what. If they can think
10 of somethin' else, you know, get back to
11 me before...
12 LEVINE Mm hm.
13 BECK Wednesday or Wednesday morning but.
14 LEVINE No, no, no, no (chuckles) I don't like
15 waiting 'til Wednesday morning.
16 BECK But tomorrow I'll be...
17 LEVINE Um, uh, okay let me get into it.
18 BECK 773. But you know we wanna help 'em and
19 I'm sure they wanna help us.
20 LEVINE O-, Okay. I'll, I'll, I will, I will
21 get, get into it including um, uh, well,
22 I'll get into it. Alright.
23 BECK Alright.
24 LEVINE I'll talk to you tomorrow.
25 BECK Okay.
26 LEVINE Bye.
27 BECK Bye.

**Joint Statement of the Antitrust Division of the U.S. Department of Justice
and the Federal Trade Commission
Before the Illinois Task Force on Health Planning Reform**

September 15, 2008¹

The Antitrust Division of the U.S. Department of Justice and the Federal Trade Commission appreciate the opportunity to share our views on the impact of Certificate-of-Need ("CON") laws on health care markets.²

The Antitrust Division and the FTC (together, the Agencies) have investigated and litigated antitrust cases in markets across the country involving hospitals, physicians, ambulatory surgery centers, stand-alone radiology programs, medical equipment, pharmaceuticals, and other health care goods and services. In addition to this enforcement, we have conducted hearings and undertaken research on various issues in health care competition. For example, in 2003, we conducted 27 days of hearings on competition and policy concerns in the health care industry, hearing from approximately 250 panelists, eliciting 62 written submissions, and generating almost 6,000 pages of transcripts.³ As a result of that effort, the Agencies jointly published an extensive report in July 2004 entitled, *Improving Health Care: A Dose of Competition*.⁴ We regularly issue informal advisory letters on the application of the antitrust laws to health care markets, and periodically issue reports and general guidance to the health care community. Through this work, we have developed a substantial understanding of the competitive forces that drive innovation, costs, and prices in health care.

The Agencies' experience and expertise has taught us that Certificate-of-Need laws impede the efficient performance of health care markets. By their very nature, CON laws

¹ This statement draws from testimony delivered on behalf of the Antitrust Division to the General Assembly and Senate of the State of Georgia on February 23, 2007; to the Committee on Health of the Alaska House of Representatives on January 31, 2008; and to the Florida Senate Committee on Health and Human Services Appropriations on March 25, 2008. It also draws from testimony delivered on behalf of the Federal Trade Commission to the Committee on Health of the Alaska House of Representatives on February 15, 2008 and to the Florida State Senate on April 2, 2008.

² This statement responds to an invitation from Illinois State Senator Susan Garrett, co-chair of the Illinois Task Force on Health Planning Reform, dated June 30, 2008.

³ This extensive hearing record is largely available at <http://www.ftc.gov/bc/healthcare/research/healthcarehearing.htm>.

⁴ FEDERAL TRADE COMMISSION AND THE DEPARTMENT OF JUSTICE, *IMPROVING HEALTH CARE: A DOSE OF COMPETITION* (July 2004), available at http://www.usdoj.gov/atr/public/health_care/204694.htm (hereinafter *A DOSE OF COMPETITION*).

create barriers to entry and expansion to the detriment of health care competition and consumers. They undercut consumer choice, stifle innovation, and weaken markets' ability to contain health care costs. Together, we support the repeal of such laws, as well as steps that reduce their scope.

We have also examined historical and current arguments for CON laws, and conclude that such arguments provide inadequate economic justification for depriving health care consumers of the benefits of competition. To the extent that CONs are used to further non-economic goals, they impose substantial costs, and such goals can likely be more efficiently achieved through other mechanisms. We hope you will carefully consider the substantial costs that CON laws may impose on consumers as you consider eliminating or otherwise amending Illinois's CON requirements.

I. Scope of Remarks

Although we do not intend to focus on specific aspects of the CON program in Illinois, we are generally familiar with the issues before you and recognize them as issues that CON laws present in other states and markets. Also, please note that it is not the intent of the Agencies to "favor any particular procompetitive organization or structure of health care delivery over other forms that consumers may desire. Rather, [our] goal is to ensure a competitive marketplace in which consumers will have the benefit of high quality, cost-effective health care and a wide range of choices . . ." ⁵ Our mission is to preserve and promote consumer access to the benefits of competition, rather than any particular marketplace rival or group of rivals.

II. Importance of Competition and the Harm Caused by Regulatory Barriers to Entry

A. The Benefits of Competition in Health Care

Our concerns about the harm from CON laws are informed by one fundamental principle: market forces tend to improve the quality and lower the costs of health care goods and services. They drive innovation and ultimately lead to the delivery of better health care. In contrast, over-restrictive government intervention can undermine market forces to the detriment of health care consumers and may facilitate anticompetitive private behavior.

In our antitrust investigations we often hear the argument that health care is "different" and that competition principles do not apply to the provision of health care services. However, the proposition that competition cannot work in health care is not

⁵ U.S. Department of Justice and Federal Trade Commission, Statements of Antitrust Enforcement Policy in Health Care, August 1996, Introduction, at 3, *available at* <http://www.usdoj.gov/atr/public/guidelines/1791.htm>.

supported by the evidence or the law. Similar arguments made by engineers and lawyers – that competition fundamentally does not work and, in fact is harmful to public policy goals – have been rejected by the courts, and private restraints on competition have long been condemned.⁶ Beginning with the seminal 1943 decision in *American Medical Association v. United States*, the Supreme Court has come to recognize the importance of competition and the application of antitrust principles to health care.⁷ The Antitrust Division and the Federal Trade Commission have worked diligently to make sure that barriers to that competition do not arise.

During our extensive health care hearings in 2003, we obtained substantial evidence about the role of competition in our health care delivery system and reached the conclusion that vigorous competition among health care providers “promotes the delivery of high-quality, cost-effective health care.”⁸ Specifically, competition results in lower prices and broader access to health care and health insurance, while non-price competition can promote higher quality.⁹

Competition has also brought consumers important innovations in health care delivery. For example, health plan demand for lower costs and “patient demand for a non-institutional, friendly, convenient setting for their surgical care” drove the growth of Ambulatory Surgery Centers.¹⁰ Ambulatory Surgery Centers offered patients more convenient locations, shorter wait times, and lower coinsurance than hospital departments.¹¹ Technological innovations, such as endoscopic surgery and advanced anesthetic agents, were a central factor in this success.¹² Many traditional acute care hospitals have responded to these market innovations by improving the quality, variety, and value of their own surgical services, often developing on- or off-site ambulatory surgery centers of their own.

⁶ See, e.g., *F.T.C. v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411 (1990); *National Society of Professional Engineers v. U.S.*, 435 U.S. 679 (1978).

⁷ 317 U.S. 519, 528, 536 (1943) (holding that a group of physicians and a medical association were not exempted by the Clayton Act and the Norris-LaGuardia Acts from the operation of the Sherman Act, although declining to reach the question whether a physician's practice of his or her profession constitutes “trade” under the meaning of Section 3 of the Sherman Act).

⁸ A DOSE OF COMPETITION, Executive Summary, at 4.

⁹ *Id.*; see also *id.*, Ch. 3, §VIII.

¹⁰ *Id.*, Ch. 3 at 25.

¹¹ MEDICARE PAYMENT ADVISORY COMMISSION, REPORT TO THE CONGRESS: MEDICARE PAYMENT POLICY § 2F, at 140 (2003), available at http://www.medpac.gov/publications/congressional_reports/Mar03_Entire_report.pdf.

¹² A DOSE OF COMPETITION, Ch. 3 at 24.

This type of competitive success story has occurred often in health care in the areas of pharmaceuticals, urgent care centers, limited service or “retail” clinics, and the development of elective surgeries such as LASIK, to name just a few. Without private or governmental impediments to their performance, we can expect health care markets to continue to deliver such benefits.

B. CON Laws Create Barriers to Beneficial Competition

CON laws are a regulatory barrier to entry, which, by their nature, are an impediment to health care competition. Accordingly, in *A Dose of Competition*, we urged states to rethink their CON laws.¹³



1. Original Cost-Control Reasons For CON Laws No Longer Apply

We made that recommendation in part because the original reason for the adoption of CON laws is no longer valid. Many CON programs trace their origin to a repealed federal mandate, the National Health Planning and Resources Development Act of 1974, which offered incentives for states to implement CON programs. At that time, the federal government and private insurance reimbursed health care charges predominantly on a “cost-plus” basis, which provided incentives for over-investment. There was concern that, because patients are usually not price-sensitive, providers engaged in a “medical arms race” by unnecessarily expanding their services to offer the perceived highest-quality services, allegedly driving up health care costs.¹⁴ The hope was that CON laws would provide a counterweight against that skewed incentive.

Thus, it is important to note that:

- CON laws were not adopted as a means of cross-subsidizing care;
- CON laws were not adopted to have centralized planning of health care markets as an end in itself;
- CON laws were not adopted to supplant or augment state-law licensing regulations designed to protect the health and safety of the population from poor-quality health care.

Since the 1970s, the reimbursement methodologies that may in theory have justified CON laws initially have significantly changed. The federal government, as well as private third-party payors, no longer reimburse on a cost-plus basis. In 1986, Congress repealed the

¹³ A DOSE OF COMPETITION, Executive Summary at 22.

¹⁴ See A DOSE OF COMPETITION, Ch. 8 at 1-2.

National Health Planning and Resources Development Act of 1974. And health plans and other purchasers now routinely bargain with health care providers over prices. Essentially, government regulations have changed in a way that eliminates the original justification for CON programs.¹⁵

CON laws also appear to have generally failed in their intended purpose of containing costs. Numerous studies have examined the effects of CON laws on health care costs,¹⁶ and the best empirical evidence shows that “on balance . . . CON has no effect or actually increases both hospital spending per capita and total spending per capita.”¹⁷ A recent study conducted by the Lewin Group for the state of Illinois confirms this finding, concluding that “the evidence on cost containment is weak,” and that using “the CON process to reduce overall expenditures is unrealistic.”¹⁸

2. CON Laws Impose Additional Costs and May Facilitate Anti-Competitive Behavior

Not only have CON laws been generally unsuccessful at reducing health care costs, but they also impose additional costs of their own. First, like any barrier to entry, CON laws interfere with the entry of firms that could otherwise provide higher-quality services than

¹⁵ A DOSE OF COMPETITION, Ch. 8 at 1-6.

¹⁶ A DOSE OF COMPETITION, Ch. 8 at 1-6; CHRISTOPHER J. CONOVER & FRANK A. SLOAN, EVALUATION OF CERTIFICATE OF NEED IN MICHIGAN, CENTER FOR HEALTH POLICY, LAW AND MANAGEMENT, TERRY SANFORD INSTITUTE OF PUBLIC POLICY, DUKE UNIVERSITY, A REPORT TO THE MICHIGAN DEPT. OF COMMUNITY HEALTH, 30 (May 2003); David S. Salkever, *Regulation of Prices and Investment in Hospital in the United States*, in 1B Handbook of Health Economics, 1489-90 (A.J. Culyer & J.P. Newhouse eds., 2000) (“there is little evidence that [1970's era] investment controls reduced the rate of cost growth.”); Washington State Joint Legislative Audit and Review Committee (JLARC), *Effects of Certificate of Need and Its Possible Repeal, I* (Jan. 8, 1999) (“CON has not controlled overall health care spending or hospital costs.”); DANIEL SHERMAN, FEDERAL TRADE COMMISSION, THE EFFECT OF STATE CERTIFICATE-OF-NEED LAWS ON HOSPITAL COSTS: AN ECONOMIC POLICY ANALYSIS, iv, 58-60 (1988) (concluding, after empirical study of CON programs’ effects on hospital costs using 1983-84 data on 3,708 hospitals, that strong CON programs do not lead to lower costs but may actually increase costs); MONICA NOETHER, FEDERAL TRADE COMMISSION, COMPETITION AMONG HOSPITALS 82 (1987) (empirical study concluding that CON regulation led to higher prices and expenditures); KEITH B. ANDERSON & DAVID I. KASS, FEDERAL TRADE COMMISSION, CERTIFICATE OF NEED REGULATION OF ENTRY INTO HOME HEALTH CARE: A MULTI-PRODUCT COST FUNCTION ANALYSIS (1986) (economic study finding that CON regulation led to higher costs, and that CON regulation did little to further economies of scale).

¹⁷ See CONOVER & SLOAN, REPORT TO MICHIGAN, *supra* note 15, at 30.

¹⁸ The Lewin Group, *An Evaluation of Illinois’ Certificate of Need Program*, prepared for the Illinois Commission on Government Forecasting and Accountability (February 15, 2007), at 31 (hereinafter Lewin Group).

those offered by incumbents.¹⁹ This may tend to depress consumer choice between different types of treatment options or settings,²⁰ and it may reduce the pressure on incumbents to improve their own offerings.²¹

Second, CON laws can be subject to various types of abuse, creating additional barriers to entry, as well as opportunities for anticompetitive behavior by private parties. In some instances, existing competitors have exploited the CON process to thwart or delay new competition to protect their own supra-competitive revenues. Such behavior, commonly called “rent seeking,” is a well-recognized consequence of certain regulatory interventions in the market.²² For example, incumbent providers may use the hearing and appeals process to cause substantial delays in the development of new health care services and facilities. Such delays can lead both the incumbent providers and potential competitors to divert substantial funds from investments in such facilities and services to legal, consulting, and lobbying expenditures; and such expenditures, in turn, have the potential to raise costs, delay, or – in some instances – prevent the establishment of new facilities and programs.²³



¹⁹ A DOSE OF COMPETITION, Ch. 8 at 4 (citing *Hosp. Corp. of Am.*, 106 F.T.C. 361, 495 (1985) (Opinion of the Commission) (stating that “CON laws pose a very substantial obstacle to both new entry and expansion of bed capacity in the Chattanooga market” and that “the very purpose of the CON laws is to restrict entry”)).

²⁰ With regard to hospital markets, *see, e.g.*, UNITED STATES DEPT. OF HEALTH AND HUMAN SERVICES, FINAL REPORT TO THE CONGRESS AND STRATEGIC IMPLEMENTING PLAN REQUIRED UNDER SECTION 5006 OF THE DEFICIT REDUCTION ACT OF 2005 (2006), available at http://www.cms.hhs.gov/PhysicianSelfReferral/06a_DRA_Reports.asp (reporting at specialty hospitals a “quality of care at least as good as, and in some cases better than, care provided at local competitor hospitals” for cardiac care, as well as “very high” patient satisfaction in cardiac hospitals and orthopedic specialty hospitals) (citations omitted). In addition, specialty hospitals appear to offer shorter lengths of stay, per procedure, than peer hospitals. *See also* MEDICARE PAYMENT ADVISORY COMMISSION, REPORT TO THE CONGRESS: PHYSICIAN-OWNED SPECIALTY HOSPITALS, vii (Mar. 2005), available at http://www.medpac.gov/documents/Mar05_SpecHospitals.pdf (hereinafter MEDPAC).

²¹ *See, e.g.*, MEDPAC, *supra* note 19, at 10 (observing both administrative improvements – “Some community hospital administrators admit that competition with specialty hospitals has had some positive effects on community hospitals’ operations” – and other qualitative improvements – “We heard several examples of constructive improvements sparked by the entrance of a specialty hospital into a market, including extending service hours, improving operating room scheduling, standardizing the supplies in the operating room, and upgrading equipment.”).

²² Paul Joskow and Nancy Rose, *The Effects of Economic Regulation*, in 2 HANDBOOK OF INDUSTRIAL ORGANIZATION (Schmalensee and Willig, eds., 1989).

²³ *See, e.g.*, *Armstrong Surgical Ctr., Inc. v. Armstrong County Mem’l Hosp.*, 185 F.3d 154, 158 (3rd Cir. 1999) (an ambulatory surgery center alleged that a competing hospital had conspired with nineteen of its physicians to make factual misrepresentations as well as boycott threats to the state board, allegedly causing the board to deny the center its CON); *St. Joseph’s Hosp., Inc. v. Hosp. Corp. of America*, 795 F.2d 948 (11th Cir. 1986) (a new hospital applying for a CON alleged that an existing competitor submitted false information to the CON board; that the board relied on that information in denying the CON; and that the

Moreover, much of this conduct, even if exclusionary and anticompetitive, may be shielded from federal antitrust scrutiny, because it involves protected petitioning of the state government.²⁴ During our hearings, we gathered evidence of the widespread recognition that existing competitors use the CON process “to forestall competitors from entering an incumbent’s market.”²⁵

In addition, incumbent providers have sometimes entered into anticompetitive agreements that were facilitated by the CON process, if outside the CON laws themselves. For example:

- In 2006, the Antitrust Division alleged that a hospital in Charleston, West Virginia used the threat of objection during the CON process, and the potential ensuing delay and cost, to induce another hospital seeking a CON for an open heart surgery program not to apply for it at a location that would have well served Charleston consumers.²⁶ The hospital eventually entered into a consent decree with the Antitrust Division (without a trial on the merits) which prohibited the hospital from taking actions that would restrict other health care facilities from developing cardiac surgery services.²⁷
- In another case from West Virginia, the Antitrust Division alleged that two closely competing hospitals agreed to allocate certain health care services among themselves.²⁸ The informal urging of state CON officials led the hospitals to agree that just one of the hospitals would seek approval for an open heart surgery program, while the other would seek approval to provide cancer treatment services.²⁹ These hospitals also entered into a consent

defendants also acted in bad faith to obstruct, delay, and prevent the hospital from obtaining a hearing and later a review of the adverse decision).

²⁴ *Eastern Rail. Pres. Conf. v. Noerr Motor Frgt., Inc.*, 365 U.S. 127 (1961).

²⁵ A DOSE OF COMPETITION, Executive Summary at 22.

²⁶ *U.S. v. Charleston Area Med. Ctr., Inc.*, Civil Action 2:06 -0091 (S.D.W.Va. 2006), available at <http://www.usdoj.gov/atr/cases/f214400/214477.htm>.

²⁷ Justice Department Requires West Virginia Medical Center to End Illegal Agreement (Feb. 6, 2006), available at <http://home.atrnet.gov/subdocs/214463.htm>.

²⁸ *U.S. v. Bluefield Regional Medical Center, Inc.*, 2005-2 Trade Cases ¶ 74,916 (S.D. W.Va. 2005).

²⁹ *See id.* at 2-3 (referring to the prohibited conduct).

decree with the Antitrust Division (without a trial on the merits) that prohibited the hospitals from enforcing the agreement between them.³⁰

- In Vermont, two home health agencies entered into anticompetitive territorial market allocations, facilitated by the state regulatory program, to give each other exclusive geographic markets.³¹ Without the state's CON laws, competitive entry into these markets normally might have disciplined such cartel behavior. The Antitrust Division found that as a result, Vermont consumers were paying higher prices than were consumers in states where home health agencies competed against each other.³²

Finally, the CON process itself may sometimes be susceptible to corruption. For example, as the task force is probably aware, in 2004, a member of the Illinois Health Facilities Planning Board was convicted for using his position on the Board to secure the approval of a CON application for Mercy Hospital. In exchange for his help, the Board member agreed to accept a kickback from the owner of the construction company that had been hired to work on the new hospital.³³



3. Protecting Revenues of Incumbents Does Not Justify CON Laws

Incumbent hospitals often argue that they should be protected against additional competition so that they can continue to cross-subsidize care provided to uninsured or under-insured patients. Under this rationale, CON laws should impede the entry of new health care providers that consumers might enjoy (such as independent ambulatory surgery centers, free-standing radiology or radiation-therapy providers, and single- or multi-specialty physician-owned hospitals) for the express purpose of preserving the market power of incumbent providers. The providers argue that without CON laws, they would be deprived of revenue that otherwise could be put to charitable use.³⁴

We fully appreciate the laudatory public-policy goal of providing sufficient funding for the provision of important health care services – at community hospitals and elsewhere

³⁰ *Id.*

³¹ Department of Justice Statement on the Closing of the Vermont Home Health Investigation (Nov. 23, 2005), available at http://www.usdoj.gov/atr/public/press_releases/2005/213248.htm.

³² *Id.*

³³ Plea Agreement at 20-23, *U.S. v. Levine* (D. Ill. 2005) (No. 05-691).

³⁴ There is an ironic element to this argument: What started as laws intended to control costs have become laws intended to inflate costs. Proponents of CON laws now would use these barriers to entry to stifle competition, protect incumbent market power, frustrate consumer choice, and keep prices and profits high.

– to those who cannot afford them, and for whom government payments are either unavailable or too low to cover the cost of care. But at the same time, we want to be clear that the imposition of regulatory barriers to entry as an indirect means of funding indigent care may impose significant costs on all health care consumers – consumers who might otherwise benefit from additional competition in health care markets.

First, as noted above, CON laws stifle new competition that might otherwise encourage community hospitals to improve their performance. For example, in studying the effects of new single-specialty hospitals, the Medicare Payment Advisory Committee (MedPAC) found that certain community hospitals responded to competition by improving efficiency, adjusting their pricing, and expanding profitable lines of business.³⁵ In addition to administrative and operational efficiencies, the MedPAC Report identified several examples of improvements sparked by the entrance of a specialty hospital into a market, including extended service hours, improved operating room scheduling, standardized supplies in the operating room, and upgraded equipment.³⁶

Second, we note that general CON requirements such as those imposed under Illinois law sweep very broadly, instead of targeting specific, documented social needs (such as indigent care). Although the Agencies do not suggest to Illinois policy makers any particular mechanism for funding indigent care, we note that solutions more narrowly tailored to the state's recognized policy goals may be substantially less costly to Illinois consumers than the current CON regime, and that the Lewin Group report commissioned by the state identifies various alternatives that may be more efficient in advancing such goals.³⁷

Third, it is possible that CON laws do not actually advance the goal of maintaining indigent care at general community hospitals. Recently the federal government studied just this issue in connection with the emergence of single-specialty hospitals around the country. That study found that, for several reasons, specialty hospitals did not undercut the financial

³⁵ See, e.g., MEDPAC, *supra* note 19, at 10 (“Some community hospital administrators admit that competition with specialty hospitals has had some positive effects on community hospitals’ operations”). Other studies have found that the presence of for-profit competitors leads to increased efficiency at nonprofit hospitals. Kessler, D. and McClellan M., “The Effects of Hospital Ownership on Medical Productivity,” *RAND Journal of Economics* 33 (3), 488-506 (2002).

³⁶ MEDPAC, *supra* note 19, at 10; see also Greenwald, L. et al., “Specialty Versus Community Hospitals: Referrals, Quality, and Community Benefits,” *Health Affairs* 25, no. 1 (2006): 116-117; Stensland J. and Winter A., “Do Physician-Owned Cardiac Hospitals Increase Utilization?” *Health Affairs* 25, no. 1 (2006): 128 (some community hospitals have responded to the presence of specialty hospitals by recruiting physicians and adding new cardiac catheterization labs).

³⁷ See Lewin Group, at 29 (discussing various financing options for charity care in Illinois).

viability of rival community hospitals.³⁸ One substantial reason for this was that specialty hospitals generally locate in areas that have above-average population growth. Thus, they are competing for a new and growing patient population, not just siphoning off the existing customer base of the community hospitals. This is consistent with the Lewin Group study showing that safety-net hospitals in non-CON states actually had higher profit margins than safety-net hospitals in CON states.³⁹

III. Conclusion

The Agencies believe that CON laws impose substantial costs on consumers and health care markets and that their costs as well as their purported benefits ought to be considered with care. CON laws were adopted in most states under particular market and regulatory conditions substantially different from those that predominate today. They were intended to help contain health care spending, but the best available research does not support the conclusion that CON laws reduce such expenditures. As the Agencies have said, “[O]n balance, CON programs are not successful in containing health care costs, and . . . they pose serious anticompetitive risks that usually outweigh their purported economic benefits.”⁴⁰ CON laws tend to create barriers to entry for health care providers who may otherwise contribute to competition and provide consumers with important choices in the market, but they do not, on balance, tend to suppress health care spending. Moreover, CON laws may be especially subject to abuse by incumbent providers, who can seek to exploit a state’s CON process to forestall the entry of competitors in their markets. For these reasons, the Agencies encourage the task force to seriously consider whether Illinois’s CON law does more harm than good.

³⁸ MEDPAC, *supra* note 19, at 23-24; *see also* MedPAC, REPORT TO THE CONGRESS: PHYSICIAN-OWNED SPECIALTY HOSPITALS REVISITED, at 21-25 (August 2006), *available at* http://www.medpac.gov/documents/Aug06_specialtyhospital_mandated_report.pdf.

³⁹ Lewin Group, at 28.

⁴⁰A DOSE OF COMPETITION, Executive Summary at 22.