

May 5, 2009

## **Pam Davis' Testimony to Illinois General Assembly Joint Committee on Government Reform**

Good morning, I'm Pam Davis, President & CEO of Edward Hospital & Health Services. Thank you for inviting me to testify this morning to the Joint Committee on Government Reform. I am testifying today in support of House Amendment number four of Senate Bill 1905.

There are two compelling reasons to take strong action and support this amendment.

First and foremost is **accountability to the public**. In order to restore what shred of public trust still remains in the process of health care expansion review and approvals, also known as Certificate of Need, **the General Assembly needs to hit the reset button**. The state officials who hold the two positions specifically mentioned in Amendment Four were directly connected to the Planning Board as the corruption played out more than five years ago. When the scandal broke in 2004, every Planning Board member, regardless of any alleged involvement, was excused. However, two key players in the process mentioned in Amendment Four, for some reason, were kept on. I agree with the criteria that Speaker Madigan put forth in the case of the Teacher's Retirement Fund. Speaker Madigan is quoted in the State Journal Register on April 4 of this year talking about TRS's Jon Bauman...and I quote... "Mr. Bauman was on deck before, during and after the scandal at TRS." While I am certainly not accusing either the Executive Secretary or Deputy Director of illegal behavior, I submit that this General Assembly must act as they did in the TRS case, and remove all remnants from the former Planning Board or risk tainting all of their C-O-N reform efforts.

The second reason to support Amendment Four is to **improve the competency of health care planning in Illinois**. New rules were supposed to have been completed by December 31, 2004 – that's more than four years ago. Under the leadership of these two

public officials, the rules process has been fraught with delays, uncertainty and lack of transparency.

Let's start with accountability.

I have been president at Edward Hospital in Naperville for more than 20 years. We have grown from a small community provider into our region's most preferred hospital. Over the years we have carefully planned and built a medical center with more than 20 locations to keep up with the demand of one of the fastest growing areas in the state, if not the nation.

Back in 2003 we were planning to expand into Plainfield by building an outpatient center and a new hospital. At the time, we were very crowded on our Naperville campus—in fact, we were running at 106% occupancy—mostly because of the growing number of patients coming from south of Naperville including Plainfield. It just made sense to bring services closer to this growing region in Plainfield.

In December 2003 we appeared before the Planning Board with the Edward Plainfield Outpatient Center – not the hospital just yet, but the outpatient center application. To our knowledge, an outpatient center like this had never been turned down by the Planning Board. However, the Planning Board including Chair Tom Beck and Vice Chair Stuart Levine, among others, attacked the project and voted an intent-to-deny. I was stunned. Something was terribly wrong.

I had been approached separately a few days prior to, and immediately after the hearing by Nick Hurtgen of Bear Stearns and Jacob Kiferbaum of Kiferbaum Construction who said they had the clout to get the votes I needed. After how badly the hearing had gone, I felt certain that I, and Edward, were in the process of being extorted.

I went to the FBI with my suspicions.

As you can imagine, the FBI agents had suspicions of their own about my story. They don't get many cold calls like this.

But to their credit, the FBI agreed to take action.

On January 6, 2004, the FBI recorded a meeting I held with Hurtgen who reiterated that he was politically connected to the Illinois state government and could get things done, and that our projects would not be approved unless I went along.

On March 17, 2004, I met with Herbert Franks and Mike Noonan who were assisting Mercy Hospital in seeking to obtain approval of Mercy's Crystal Lakes CON. They told me that I should hire Kiferbaum to construct our hospital in Plainfield because Kiferbaum wielded influence with two or three Planning Board members. They said that for the Mercy project, Board member Levine personally met with Kiferbaum and Mercy's CEO to reassure the Mercy's CEO that Kiferbaum could get things done.

In April of 2004 I met with Jacob Kiferbaum at the Egg Shell Café in Deerfield and he told me point blank that Mercy was going to be approved because it was using his company for construction...and that I had to use Kiferbaum Construction or my project would not be approved. Levine and Hurtgen were seated at another table. Mr. Levine walked over and said that I could trust Kiferbaum and that Kiferbaum's word was good. Of course, the FBI had surveillance of this meeting.

For eight months, I worked undercover with the FBI and wore a recording device for hours at a time including many phone calls and other meetings with the schemers.

This was one of the most stressful times of my life. I couldn't eat properly, my blood pressure shot up, and my finger nails were actually cracking under the stress. In the end, as you know, the investigation led to the conviction of Planning Board Vice Chair Stu Levine, Nick Hurtgen, Jacob Kiferbaum among others. I'm proud of what I did along with Bill Kottmann, a colleague and Vice President at Edward. I'm also proud, and

saddened, that these tapes opened the door into the pay-to-play world of our former Governor.

When all of this was happening in December 2003 and into 2004, where was the executive secretary of the Planning Board along with the deputy director of the Department of Public Health? Sitting right there at the Planning Board meetings watching the corruption play out publicly while doing little if anything to stop it.

The most compelling example of the corruption playing out publicly happened in April 2004 in connection to the Mercy Hospital decision. During the hearing, which played out publicly in front of hundreds of onlookers, the Mercy Hospital project was approved.

Here's how Alice Hohl, the reporter from the Daily Southtown reported the vote on the Mercy Hospital application which won approval 4-3 on April 21, 2004...and I quote from her 2004 story... "Board members spoke of the Board's power to ignore state criteria. They whispered in conferences during the vote, and one member changed his mind after seeing the vote of his peers...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." Unquote.

Members of this Joint Committee, I was there. I watched this happening. There was an audible gasp in the room when Alamanseer changed his vote and Mercy was approved. It was apparent to me and many others in the room that the fix was in. If ever there was a smoking gun, this was it. Yet, as the reporter writes in her story, and I quote... "Stunned by what unfolded, hospital executives did not want to comment on the 'irregularities' because many of them have projects pending before the board" endquote.

With Illinois hospitals basically held hostage by the audacity of the corrupt Board members, the Executive Secretary and Deputy Director watched along with the rest of us.

Yet, to the best of my knowledge, they did little or nothing to report the irregularities or to stop the corruption. And there are plenty of other hospital officials who feel as I do about the leadership of the Planning Board, yet they are too afraid to testify.

Even Stu Levine found the whole situation amusing. During a taped conversation on April 21, 2004, which was revealed during the Tony Rezko trial, Mr. Levine refers to the Mercy vote and says, and I quote, “Looked liked there was a shoe hitting somebody over the head. Could you, did, did you ever in your life see a vote stop in the middle?” endquote.

During 2003 and 2004, the Executive Secretary and Deputy Director were also part of closed-door sessions with Levine, Beck and the other Planning Board members – sessions that were not open to the public. We have no idea what exactly was said, or what was concocted during these private sessions. Again, while not pointing to any illegalities by either public official, I can only imagine that the corrupt Board members were emboldened by this lack of transparency.

What we do know is that the tip of the iceberg was clearly on display at the April 20, 2004, hearing regarding Mercy Hospital.

The Mercy Hospital approval was later set aside because of the corruption.

In fact the only new hospital built in the past 20 plus years is Adventist Bolingbrook Hospital. Adventist Bolingbrook was favored by Tony Rezko. We know this from another transcript from the Rezko trial where former Planning Board Chair Tom Beck says of Rezko, and I quote... “he wants Edwards down and Bolingbrook up...he wants them yes...he wants Edwards to have nothing.” End-quote.

Throughout the past five or six years, the Executive Secretary and Deputy Director have also treated Edward disrespectfully during our many appearances before them seeking a hospital in Plainfield. I'd be happy to send this Committee a list of our grievances about

past applications. However, I'd like to focus my support for Amendment Four on the big picture – on accountability and competence.

During the many months of testimony connected to the Illinois Task Force on Health Planning Reform which some of you served on, one thing became abundantly clear: the need for a proactive statewide health plan.

The Executive Secretary and Deputy Director are two of the key public health officials responsible for overseeing the proper execution of the Illinois Health Facilities Planning Act. Section 1100.30 currently states that, and I quote... “This State Plan is...specifically designed to develop a procedure which establishes an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public” and “which promotes through the process of comprehensive health planning the orderly and economic development of health care facilities in the State of Illinois to avoid unnecessary duplication of facilities or services.” End quote.

This section provides a clear direction for public health that has not been followed. The fact that the Task Force recommendations spell out a new structure and process for achieving the stated goals of the Health Facilities Planning Act is evidence that the job has been seriously botched.

Plus, health planning in Illinois will only have integrity if it's supported by rules that make sense, rules that are transparent, and rules that are easy to understand and are applied consistently and in a way that supports such a plan. We are nowhere close to that in Illinois under the current leadership in public health. If the CON process is to continue, it needs to be supported by good rulemaking. Further, someone needs to look at how these rules are implemented.

For instance, Public Act 05-005, which was passed nearly unanimously and intended to ensure high growth areas of the state had adequate access to hospital services, was not

implemented as intended—and it has not had the desired effect. Why? Because, under the Deputy Director’s supervision, inputs into the bed need formula remain outdated, flawed and extremely difficult to understand. And staunch defense of this flawed formula has stymied effective health planning, rational allocation of services, and access to health care.

The IDPH Bed Inventory, which provides information on the supply and future demand for various hospital services across the state, provides clear evidence of the mess that has developed. There are thousands of excess beds in the City of Chicago, and huge excesses in other areas of the State. But then you have some areas where there aren’t enough beds. There is large variation in bed supply and bed need across Planning Areas. There is a strange imbalance of bed supply and bed need within Planning Areas. Obviously, things have not been working as they should.

What we are missing in Illinois is a participative and interactive planning process where we look at this as a whole and say, ‘something’s not right,’ and ‘what are we going to do to fix this?’ Instead, we have a process where we hear ‘this is the way it is,’ and ‘the rules are the rules.’

In conclusion, House Amendment Four of Senate Bill 1905 deserves your support.

All holdovers in a leadership position of public health should not be connected to any reformed planning board or certificate of need process. State officials – especially those appointed by the Governor and/or holding high level state positions – should be held accountable for their actions, and in-action.

One of the primary reasons that health care planning in Illinois needs to be reformed is because leadership has been clearly ineffective in dealing with these issues. We need new blood and new ideas to get what you want done enacted properly.

Ladies and gentlemen, approximately \$5 billion dollars worth of hospital expansion projects were reviewed by the Health Facilities Planning Board last year. That's \$5 billion dollars with a "B". No wonder pay-to-play schemes have been targeted at hospitals. The temptation for corruption is huge. This system needs a complete overhaul including new leadership and ex-officio members. The system is broken. In a joint statement to the Illinois Task Force on Health Planning Reform, the U.S. Department of Justice and Federal Trade Commission said, and I quote, "C-O-N laws can be subject to various types of abuse, creating additional barriers to entry, as well as opportunities for anticompetitive behavior by private parties." End-quote. The report went on to say that, and I quote, "The CON process itself may sometimes be susceptible to corruption." End-quote.

We know that all too well in Illinois.

Please step to your responsibilities and help overhaul this system...or send it to the scrap heap.

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