Transcript_TaskForceHealth31208

TASK FORCE ON HEALTH PLANNING REFORM

ILLINOIS DEPARTMENT OF PUBLIC HEALTH

Meeting held on March 12th, 2008, at 401 South Spring Street, Room 500 1/2, Springfield, Illinois, scheduled for the hour of 8:00 o'clock A.M.

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PRESENT:

* The asterisk indicates presence via videoconference from Chicago.

Task Force on Health Planning Reform members:

Senator Susan Garrett, Illinois State Senate

Representative Lisa Dugan, Illinois State House of Representatives
Gary Barnett, Sara Bush Lincoln Health Center
Kenneth Robbins, Illinois Hospital Association
*Sister Sheila Lyne, Mercy Hospital and Medical Center
*Travis Stein for Hal Ruddick, SEIU Local #4
Senator Pamela Althoff, Illinois State Senate
Senator Bill Brady, Illinois State Senate
Representative Brent Hassert, Illinois State House of Representatives
William McNary, Citizen Action Illinois
*Heather O'Donnell, Center for Tax and Budget Accountability
Director Barry Maram Illinois Dept. of Healthcare and Family Services
Jeff Mark, Illinois Dept. of Public Health
Ginger Ostro, Governor's Office of Management and Budget
Donna Thompson, Access Community Health Network
*Margie Schaps, Health and Medicine Policy Research Group
*Myrtis Sullivan, Illinois Dept. of Human Services

Staff members:

David Carvalho, Illinois Dept. of Public Health
*Kathy Tipton, Illinois Public Health Institute
Laura McAlpine, Illinois Public Health Institute
Mairita Smiltars, Illinois Public Health Institute
Frank Urso, Illinois Dept. of Public Health
*Kyle Kingsley, Illinois Dept. of Public Health
*Nandita Khanna, Illinois Dept. of Public Health

A G E N D A

SENATOR GARRETT: I'm going to open the meeting, if that's okay, and I'm sure that Representative Dugan is on her way. I'm going to get started. Is there anybody in Chicago that's listening in?

MS. TIPTON: Hi, Senator. This is Kathy Tipton. I'm in the room with Sister Sheila Lyne and Rick Brotsky (phonetic). They're our attendees for this morning.

SENATOR GARRETT: Great. Thank you very much. We're going to get started --

MS. TIPTON: Sorry. We're on audio for now, Senator, until video comes up.

SENATOR GARRETT: Okay. And if you could -- when you need to ask a question, if you could be real loud about it, we won't be offended.

MS. TIPTON: We'll keep it on mute until we have a question here. Thank you.

MR. CARVALHO: They also need to name their names so the court reporter --

SENATOR GARRETT: I'm going to do it. So we can go around the table, and everybody introduce themselves and who you're with, that would be great. I'm State Senator Susan Garrett, co-Chair of the task

force.

SENATOR BRADY: Senator Bill Brady.

MR. MARK: Jeffrey Mark, Health Facilities Planning Board.

MR. BARNETT: Gary Barnett, Sara Bush Lincoln Health Center.

MR. ROBBINS: Ken Robbins, Illinois Hospital Association.

DR. POSHARD: Glenn Poshard, Southern Illinois University.

MR. MCNARY: William McNary with Citizen Action Illinois.

MR. CARVALHO: David Carvalho with the Illinois Department of Public Health.

SENATOR GARRETT: Okay. What we are going to do today is just have a presentation -- I think there's only going to be one, because Director Barry Maram is not going to be testifying. So we will start out with Dr. Glenn Poshard, who is the former Health Facilities Planning Board Chairman from June 2004 to January 2006. And Dr. Poshard, if you would like to begin your presentation and speak as long as you can,

and then we'll, you know, interject and ask questions or else do it afterwards.

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DR. POSHARD: Senator Garrett, thank you for inviting me to be here. I appreciate it. My remarks are going to be very short, and then whatever questions you folks may have. I served, as you indicated, as a Chairman of the Health Facilities Planning Board from June 2004 through January 2006, and during that time period, I found the role of the Board to be extremely valuable in preserving the fabric of healthcare services within the state. I have to tell you, I've been vocal in my support of this Board since I served on it. So I'm coming from a somewhat prejudiced opinion here with respect to my remarks. The -- the things that -- that I see as benefits of the Board include these things: The protection of access to services and facilities in our underserved communities. And I want to particularly talk about some of the rural areas which I'm most familiar.

The promotion of a rational distribution of healthcare services based upon community need versus market forces, which is primarily the two offsetting areas here. The Board's role in providing a public forum for the discussion of community needs and providers that are held

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accountable for their stated commitments to serve their communities in areas of charitable contributions and substantiating projects that are need based for

the community, making these commitments under oath. These are all areas when I was Chairman that we -- we put a great deal of emphasis on in terms of holding people accountable to the commitments that they make when they come in with their CON.

I believe the literature also supports that the CON programs contribute to enhance quality of services, especially with respect to cardiology services, including open heart surgery.

I served on this entirely voluntary board with other members who are dedicated to doing an honest assessment of projects according to the Board's rules, which are very complicated, by the way, and I think we all understand that. I've stated several times that I found my participation on this board to be the most demanding of my time on any voluntary board that I've ever served. Fully two weeks of every month was taken up entirely by this board. My dining room table was piled every month for two weeks full of Certificate of Need applications. It took me endless hours studying those applications, understanding them,

trying to balance out what those applications were presenting in the way of fulfilling community needs against what might have been considered in my mind, at least, a service that maybe wasn't necessary to the community, but would have provided other incentives for healthcare professionals and so on. So it was very, very time demanding. I can't imagine anyone putting in the amount of time that this board takes, frankly, as a voluntary board member and doing a good

job with it. It was overwhelming to me, and I spent a lot of my time on it.

My observations were that the staff, including the Director and his people, and I've consulted with him trying to remember some of the rules and understand what the job of this committee is so that I could present my remarks. They were always professional and objective, I thought, in providing me the technical assistance that I needed to be Chair.

This task force on health planning reform is charged with the examination of the Board and its programs, and to make recommendations for changes to the Act. These are only things that I would suggest for consideration by your committee. The current Act was established in an era of runaway

healthcare inflation and at a time when there was a glut of healthcare facilities, especially hospital beds, within the state. As such, the primary purpose of the Act was to contain healthcare costs by eliminating unnecessary healthcare construction, and secondarily, to assure access to quality services and encourage a comprehensive healthcare system.

And I might say that in making that statement, we struggled a lot with the unnecessary duplication of healthcare services when I was on the Board. It was a major consideration, as I'm sure you're aware, and one of the major issues for me, at least, was to ensure Medicaid and Medicare access for people in the state.

When I was in the United States

Congress, I served in two different Congressional districts at two different times, 41 counties, southernmost counties of the state. During that period of time, the average hospital in my district had a 78 percent Medicare and Medicaid caseload. Only 22 percent of the cases in those hospitals were insured or self pay. So naturally there's a huge cost shift over to the insured people to make up for the lost money on the Medicare and Medicaid patients. But

ensuring Medicaid/Medicare access is very important, I think, in our state, not just in the downstate rural areas, but also in many of the inner city areas and others.

In today's reality, the Board's primary role should be that of protecting access to services and facilities. In addition, the Board should undertake a responsibility for the promotion of needed services within our underserved areas in our cities and rural communities. I would suggest that the Board's mandate include an emphasis on access, both physically and financially, maintenance of quality, and the encouragement of a rational healthcare delivery system based upon community need.

One of the things that was most needed and may be still most needed, I don't know, is comprehensive healthcare planning in the state. This board has a role in that, but that is such a time-consuming enterprise, I don't know how we get there. We attempted to start some planning when I was on the Board, but it was so overwhelming, given the

additional duties that we had of just assessing the CONs and trying to come up with some rational decisions with respect to those, that the planning

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effort never really was undertaken in the way that it should have been.

In order for the program to accomplish this planning effort, based upon community need, I would recommend a proactive role for the Board in comprehensive healthcare planning in terms of resources, facilities, services, clinical professionals and so on. I don't know where you get time to do it, and I don't know how much staff it would take to do it, but that comprehensive healthcare planning I see is a must.

With regards to the workings of the Board, I would strangely encourage the expansion of the number of board members. I would say in the range of nine to eleven members. Maybe seven to nine is also appropriate. But I don't -- five members is too small, particularly when a member has some conflict of interest and has to excuse themselves. There is very seldom more than three or four people at a time attending the Board meetings, and it's just problematic.

Allow the establishment of standing board committees with the larger number of members to examine in depth issues of rules development,

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planning, evolving technologies and practices within

our healthcare industries.

In the selection of Board members, I think emphasis should be on the individual's knowledge of the various areas of healthcare and the wealth of the geographic and socioeconomic diversity within the state. I can't imagine people coming on to this board without having some background in healthcare or healthcare planning or some expertise in one of the professional areas. The decisions are too weighty and too important without -- to be made strictly along the lines of politics. I think the Board members should have increasing qualifications in this area.

The task force may want to consider, however, the relaxation of the disqualification of any member if an immediate family member has a business relationship with a healthcare facility. In an area such as I represented politically, this prohibition would disqualify any otherwise excellent candidate if their spouse, son or daughter is employed as a social worker, therapist, secretary or janitor in any hospital, nursing home, surgery center or dialysis facility. Given the fact that healthcare is the number one employer in downstate Illinois,

particularly the southernmost rural areas of the state, almost anyone who has any expertise in healthcare as a professional is probably going to have some -- somebody, a friend a family member or whatever, working in a hospital or a clinic or a nursing home or somewhere. So that is, I think, an issue that needs to be relaxed with respect to the

people who may be chosen for -- for membership on the Board.

I would encourage the task force to preserve the independence of the Board in protecting it from outside influences on its decision making, protection of the staff and its compilation of findings. I had -- I think the ex parte communication provision is one of the strongest and most needed. When I was on the Board, I came on to the Board, and the specific admonition of the Governor to me as Chairman of the Board was to clean the Board up.

And the Board had just gone through a severe period of -- whatever you want to call it, but one of my main objectives was to make sure that the Board was free from any outside influence. And the ex parte communication protected me in many instances, because there were lots of cases where even casual

friendships went into conversations that were inappropriate about pending applications before the Board. And I had that law and that provision to basically say, no, I can't talk to you about that. I'm not going to talk to you about that.

And so anyway, the -- finally, I would recommend that this task force eliminate the sunset provision within the statute, or minimally extend the repeal to a certain number of years. This would allow for the recruitment and retention of the quality staff and Board members. This amount of time would provide the opportunity for the program to reach its potential and meet the objectives crafted by the legislature.

Since my association with the University and having an outstanding medical school here in Springfield, I've had many members of the staff, several members of the staff, of the Health Facilities Planning Board, contact me inquiring about positions with the medical school, because they were so uncertain of their future with this board with respect to the sunset provisions and so on. So I think you discourage good people from holding these kinds of important staff positions if they have to always be looking elsewhere, not knowing whether they're going to have a job next year.

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SENATOR GARRETT: Who? I missed that part of it. Who asked you about --

DR. POSHARD: Oh, there are staff people who, since the sunset provisions have come into effect, have applied for positions at our medical school, because they're so uncertain about whether they're going to have a job or not. If the Board ends, you know, where are they going to go. So naturally, with families, with spouses and children, they've got to -- they've got to look out for themselves, and our medical school is sort of a natural area for them to apply for jobs. And I've noticed that, and it's -- it's all because they are not certain that the Board is going to exist, and I think that's not a fair thing for those employees to feel like they're on the edge all the time of being eliminated.

SENATOR GARRETT: By staff, did you mean Jeffrey Mark and Frank Urso and Dave Carvalho?

DR. POSHARD: No, no, I can't get into names of people, but people on staff who don't know whether it's going to continue. I'm not talking about the executive level positions, mainly technical staff and some of those folks.

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SENATOR GARRETT: Okay.

DR. POSHARD: They -- it's a consideration. I mean, I've just witnessed that personally, so I know the direct effect of what the sunset provisions have, the pressure that it's put on people who work for the Department.

SENATOR GARRETT: Okay.

DR. POSHARD: That's all my remarks, Madam Chair.

SENATOR GARRETT: Any questions from committee members?

SENATOR BRADY: Thanks for being here. Several questions, and you start with four key areas that you think the Board assisted in or provided for, and one of them you said was a forum for the healthcare needs of the state. Maybe you can elaborate a little bit, because I frankly haven't seen that. That was something we found that was a shortcoming of the Board, in that it seemed to be -- when I say "we found," we did a task force a couple summers ago, and we seem to continue to find in testimony of that task force that the Board seemed to be always in a position of denying, but never promoting. You said that -- in your remarks that the

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Board did do a good job of providing a forum for proactive needs. Could you elaborate on that?

DR. POSHARD: I think, Senator Brady, what I was referring to was with every application, significant CON application, there was a public hearing that's held. And when I was on the Board, some of those public hearings brought in two or 300 people, and there was an open discussion that went far beyond the individual application itself, but got into peripheral needs of the -- of the campus -- of the community with respect to the whole healthcare delivery system, and those were great forums.

SENATOR BRADY: How many Board members actually attended those forums?

DR. POSHARD: Oh, you can't attend those forums.

SENATOR BRADY: Yeah, that's a major -- I mean, a public concern is that they have to trust that the Board -- and I'm not diminishing your dining room table and your laborious reading of materials, but a major public concern is that, you know, they hold these hearings and the Board members -- and this a perception problem, you and I deal in that, is that the Board members don't bother to attend. And I don't

know what the attendance record is, but that's a reality of --

DR. POSHARD: Senator Brady, there is no way in the world Board members could attend those forums and those hearings. Are you kidding me?

SENATOR BRADY: There is a way.

DR. POSHARD: I'm spending half my time as a volunteer on this board, and now you're wanting me to --

SENATOR BRADY: Wait a minute. You're suggesting, though, that the continuation of a volunteer board is the only opportunity we have.

DR. POSHARD: Yeah.

SENATOR BRADY: We're talking about something that I believe, and others have believed, has stifled, and others believe has controlled, and others believe hundreds of millions of dollars of investments in healthcare facilities in the state doesn't mean that we can't afford to pay people a proper compensation for their time. It would be -- one of my other questions is, it would be better to have real professionals committing real time to these real decisions, and pay them, than use the excuse that they're part-time and they can't go to meetings.

Elaborate on that.

DR. POSHARD: Well, you may very well want to take that position. I don't know. I'm just saying as a volunteer --

SENATOR BRADY: But what I'm trying to get at --

DR. POSHARD: -- I can't --

SENATOR BRADY: -- you alluded to the fact that we don't have time as volunteers to attend the meetings.

DR. POSHARD: We don't.

SENATOR BRADY: You alluded to the fact that

these meetings are public forums and important to the healthcare needs of the State of Illinois, so are you in conclusion saying that we should only have people who can meet the demands, and if we have to pay them, we should pay them?

DR. POSHARD: No. I was quite content to read the transcript of everything that was said in every one of those hearings. And I read it, and I read it in detail, because it was often in those hearings where you got the views of other hospitals in the area and the effect of maybe building a new hospital by one entity would affect others, or

whatever else the community wanted to share. But we had complete transcripts of every one of those hearings, and those transcripts, after I read the initial applications themselves, the transcripts were the first thing that I read, because I wanted to know what went on in those hearings. But for me to physically attend them, I would never have time to do that.

SENATOR BRADY: Do you agree, though, that --

SENATOR GARRETT: I don't see how you wouldn't have time to attend, but you would have time to read.

DR. POSHARD: Well, I can sit at my dining room table --

SENATOR GARRETT: Right.

DR. POSHARD: -- and read the transcript in an hour and a half. If I've got to leave Carbondale,

Illinois and come to a hearing in Chicago, it takes me two days.

SENATOR GARRETT: All right.

SENATOR BRADY: Do you believe there's a problem of public perception when the Board members who make this decision don't attend those hearings?

DR. POSHARD: No.

SENATOR BRADY: You don't think so?

DR. POSHARD: No, I don't, Senator Brady. If we weren't being provided transcripts --

SENATOR BRADY: I didn't ask that. I asked is there a problems with public perception. You never heard a complaint in your whole tenure that the Board members don't show up to these meetings? Jeffrey, have you?

MR. MARK: I've never heard that.

DR. POSHARD: Never.

SENATOR BRADY: I've heard it frequently.

DR. POSHARD: To be honest with you, Senator Brady, I've never thought about it. No one ever said to me why aren't you at one of these meetings. No one ever said that to me.

SENATOR BRADY: Well, I've had several hospitals say it to me, let alone other applicants.

DR. POSHARD: Maybe it's something that folks want. I'm just saying, it was never --

MR. URSO: Senator Brady, I have attended public hearings, numerous public hearings, as well as been a hearing officer in public hearings, and no one has ever approached me and said why aren't the Board

members here. Everyone has an opportunity to speak. There's a complete transcript.

SENATOR BRADY: I understand that.

SENATOR GARRETT: But I think there's -- I mean, back to this because I brought the question up about -- I didn't know that they didn't attend. I assumed that they did. And whether they didn't -- I get it, they don't have time, it's volunteer, but it's such an important job that they should be there, not anybody's fault right now. But I also read that people who -- hospitals that were testifying were afraid to kind of, you know, stir the pot for fear that maybe their application wouldn't be reviewed in a positive light. So I think there's a reason why those kinds of questions weren't asked, because everybody was -- you know, retribution comes to mind, intimidation, not deliberately, but the way this whole thing has been set up.

MR. URSO: Are you saying if a Board member were there, they would --

SENATOR GARRETT: No. To come to staff and say, wait a minute, Hospital A, looking to get approval for their application, why aren't there Board members here, you know. It was such a -- sort of a

precarious situation anyway, and then to challenge the status quo, however those applications were approved or disapproved, I think some of those applicants felt that they couldn't get on the bad side of anybody, and

maybe that would be perceived that way. That's the information I received, so whether or not they asked the questions or didn't ask the question, I think there was that.

MR. MARK: If I may, just one quick response to that. We have found our applicants, especially the larger hospital applicants, are never shy, and they come in with their attorneys and consultants, they will challenge everything, everything we do and the rules and reports. So --

SENATOR BRADY: We have found on the other side of this they're absolutely intimidated. So you can't deny what they're telling us.

SENATOR GARRETT: There are newspaper articles, Jeffrey -- I didn't bring them, but basically to the point I was just make making.

SENATOR BRADY: Well, they wouldn't -- did you have an opinion -- you've been involved in government longer than I have. You know that there are places for volunteers, and there are places for

paid people. You've gone through this experience, you've said how laborious it is and time consuming. Do you believe this is -- if it continues, that this is a job that should be paid or volunteer?

DR. POSHARD: Senator Brady, the only thing I can tell you is this: The expectations that this job has for volunteers is overwhelming. Now, as to whether or not you should go to paid Board members or not, I can't really answer that. I'm just saying that the expectations for a Board member here are

overwhelming. In fact, as Chairman, I felt an extra obligation to be totally -- as Chairman, I felt an extraordinary obligation to be totally prepared for every meeting, which meant that I had to read the entire CONs all the way through. I never had that expectation of the other members, because I knew that some of those people were working full time in jobs that they didn't have the time to sit down --

SENATOR GARRETT: Let me just jump in here real fast. So do you think -- and you were an exceptional Chairman --

DR. POSHARD: I appreciate your saying that.

SENATOR GARRETT: It appears as maybe if that didn't happen in the past. But the way that the

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Board -- the framework is set up now, having volunteers on that Board, it is impossible to do all this stuff. It is impossible to read everything. And so what does the Board members do, they rely on staff. So you could say the staff really controls, basically, you know, what happens.

SENATOR BRADY: Or rely on the Chairman.

SENATOR GARRETT: Or rely on the one Chairman who has read, or other people who have the ability to provide or influence people on how to vote. And so I kind of agree with what -- I actually do agree that if this is reconfigured in such a way that this is more or less a paid position, that they do have to attend the hearings, that they have to make their own decisions and not rely solely on any other outside influence, probably would be a much more

appropriate functioning board.

DR. POSHARD: Yeah. I can just tell you this: Because my tenure is all I know about the Board, essentially.

SENATOR GARRETT: I know.

DR. POSHARD: When I first went on the Board, I spent about a week or two weeks going over all the rules and regulations with respect to what a

board member is supposed to --

SENATOR GARRETT: Did you do that with staff? I was going to ask you about your training.

DR. POSHARD: We had an orientation session with staff that went over everything, even with the appropriate relationships between the Board members and the staff, particularly the executive director. I was told in no uncertain terms in those orientation meetings that the only appropriate relationship between a member of the Board and the executive director of that staff was one of technical expertise and one of helping us understand the tech -- the technical process, et cetera.

It was clearly understood and stated on many occasions that no member of that staff was to try to influence the Board on which way a CON should go, and that never happened while I was on the Board. I never went to Jeff Mark or anybody else and said, what do you think about this. I went to them on many occasions and would say, how does this bed need capacity figure into this or how -- because I don't have the technical expertise to gather that data.

SENATOR GARRETT: That's another question I have.

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DR. POSHARD: Yeah.
SENATOR GARRETT: When you got appointed to the Board -- you know, let me -- and it's Ken's turn. Let me ask just this one question.
DR. POSHARD: Sure.
SENATOR GARRETT: Did you have healthcare -- you know, you talked about the expertise, and I'm assuming you had some sort of --
DR. POSHARD: Yes.
SENATOR GARRETT: Could you say what that was?
DR. POSHARD: Sure. I have a Master's Degree in health education. I served as the co-Chairman of the Rural Healthcare Caucus in the United States Congress, in which we developed a lot of legislation on telemedicine and other kinds of things. I had served on the board of the Illinois Hospital Association for two years, I think, and have just generally been involved, because it's such a major issue in downstate rural Illinois, in healthcare and healthcare delivery. So I had some background, some expertise, but I really didn't know the workings of this Board. I was brought on to the Board frankly more for, I think, dealing with some of the objections

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to the Board than I was for my expertise, but I did -- I think I was qualified.
SENATOR GARRETT: Yes. Thanks. I'm sorry,

Ken has been wanting to jump in.

MR. ROBBINS: You were brought on the Board to restore some integrity to the process, and you did that, and we all appreciate it.

A couple of questions. And it doesn't so much go to the questions of whether you should have a volunteer board or some other full-time type of board, but with respect at least to attendance of Board members at hearings, I can only tell you that having just gone through an exhaustive reexamination of what the hospital association members think about CON, that issue didn't come up in our debates. So it wasn't a question of being afraid to go to the regulator and say why aren't you there. Even within the four walls of the association, that was not a concern that I heard expressed. There may be some who have that concern, I'm just saying it didn't come to our attention.

SENATOR GARRETT: Yeah.

MR. ROBBINS: One of the things I wondered about, you're not unique. I think every person I have

ever known who has sat on the CON board was conscientious about the work they did, talked about this huge stack of paperwork that they had and the amount of time it took to prepare for all of the meetings. And I wonder if, whether or not people are full time or part time, that's the best way to go about making important decisions about how healthcare dollars are spent. I'll give you an example.

You can either reduce the size of the

stack, which I think is not going to happen because we have fairly comprehensive rules about what needs to be done, or perhaps you can narrow the scope of activities that are actually regulated. And where do you get your best bang for the buck? Is it deciding whether you need one more -- this -- I use this as a hypothetical, it's not real -- one more MRI someplace or two more beds someplace, or is it talking about whether you're going to spend a billion dollars to build a brand new hospital someplace.

And I would think that if you would narrow the scope to where the largest amount of dollars are going to be spent, then the burden on the system, part time or full time, would be more manageable. And I just wondered if you have any sense

of that, having gone through the experience that you have.

DR. POSHARD: I don't know if I do or not, Ken. Let me -- I mean, obviously from my own prejudiced perspective, and admittedly so, coming from downstate Illinois particularly in an area where the economic conditions are not as good as they are in the rest of the state, this is what I've observed over my experience. There is basically two institutions in a community that hold the community together in downstate Illinois, and that's the schools and the hospital, if you have a hospital.

Now, naturally from my perspective, anything that's threatening the ability of either one of those two institutions to survive, I have to look

at with -- with circumspect. And that's why in my tenure on the Board, I feel like I -- I did, I weighed in heavily on the protection of the hospitals, because it's the one institution, along with the schools, that holds the community together.

But on the other side, in economically depressed areas, it's the major employer. You know, it -- it -- it is the one thing that employs people. If that is threatened by all kinds of people coming

into the community building, ASTCs or whatever it is they want to build, that hospital is going to go down the tubes, and that community is going to lose at least one of the institutions that's held it together.

So one of the things in my experience that -- that obviously I brought on to the Board was, I want to see hospitals protected, because they mean so much, not just healthcare delivery, but economically where I live, and I think across the state, when you look at all the jobs associated with them and so on.

Now, in my tenure, we didn't turn down ASTCs just arbitrarily, but we had to look at it in balance, because here's a hospital that's required to have all of these specialties available to treat people. They're required to stay open 24 hours a day, seven days a week. They have to hire nursing staffs, everything. ASTCs don't have those kinds of expenses. You know, they're open eight, nine hours. They're not required to do a lot of the charitable care that hospitals -- I mean, there's a lot of differences

here.

So naturally the experience I brought to the Board said to me for lots of different reasons,

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don't do anything to threaten the viability of the hospitals in our areas, because it is killing our quality of life. I admit that freely. If an ASTC wanted to locate in a community where there was a hospital, then I would say go to that hospital and sit down with them and see how you work that combined service out so that it doesn't kill one or the other off, but it works to everyone's benefit. But don't exclude the hospital or go into unnecessary competition with a hospital, because to me that -- you know, well, anyway, that's my experience and the way I came with many of those questions.

MR. ROBBINS: Sure. And maybe by me using the ridiculous extreme of a billion dollar hospital, I created a impression that I didn't intend to.

SENATOR BRADY: Some people wouldn't consider it ridiculous. It is extreme, but --

MR. ROBBINS: What I guess, I wonder if you were just going to look at new facilities rather that changes in existing facilities, if that would be an appropriate limitation that would take into account if an ASTC or even a new hospital were needed in an area.

SENATOR BRADY: To drive it in a way -- you can elaborate on that, how much of the Board's

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decisions do you think should be subjective and how

much do you think should be objective, driven by what you claim is the only input you get from staff is technical and ranking in nature?

DR. POSHARD: I think it's a combination of both, Senator Brady. It's -- serving on this board is certainly not a science. You weigh and balance the objective data that you have. I know in one instance when I was on the Board, we had four different major hospitals that sought to build a new hospital in -- I think it was a southwest suburb of Chicago, and we ended up finding in our deliberations for a hospital to be built in Bolingbrook. Well, we disappointed Plainfield and some other areas because of that. But the area didn't need two or three new hospitals, it needed one, and we were forced to make a choice based upon the objective data we had. But you know, I can't say that there wasn't subjective judgment involved in it.

SENATOR BRADY: How many of the decisions in your tenure were made on objective data and how many were made on subjective?

DR. POSHARD: I think they're all made on objective data. We looked at bed need, we looked at

what was available in terms of the services that were there. We considered everything we could get our hands on. But in the end, like anything else, it comes down to a decision, and you can't say that --

SENATOR BRADY: How many times would you say that the subjective nature of your decisions flew in the face of the objective reasoning?

DR. POSHARD: I -- I don't know -- the staff reasoning to me had nothing to do with trying to influence my decision about where I thought a hospital should be built or whether a hospital should be added on to or whatever else. It did not -- I would not have let the staff tell me how to choose or which direction to go on one of these CONs.

SENATOR BRADY: That's not what I meant. I meant how much did you weigh staff takes on applications?

DR. POSHARD: Yeah.

SENATOR BRADY: They study the application and they tell you and rank the application --

DR. POSHARD: They study the application according to the rules that are in place.

SENATOR BRADY: Exactly, and then based on those rules, they make a report.

DR. POSHARD: But the report, Senator Brady, simply says the application meets this criteria or it doesn't meet this criteria.

SENATOR GARRETT: You know what we should do, we should get a copy or several copies of some of those reports.

MR. MARK: We'll get those to you.

SENATOR GARRETT: I've never seen those.

SENATOR BRADY: Here is what I'm trying to get at. That record comes back, and the staff clearly says in those reports, as I understand them, that this application meets the preponderance of our requirements or not.

DR. POSHARD: Yeah, in these different areas of the rules.

SENATOR BRADY: Of the rules.

DR. POSHARD: Yeah.

SENATOR BRADY: And the rules are supposed to drive what the hospitals or anyone who wants to expand healthcare facilities know when they come in.

DR. POSHARD: Right.

SENATOR BRADY: And staff ranks that according to -- as technically as they want to. And what I'm trying to get at is they come in, and clearly

staff says this report meets or doesn't meet the preponderance of our rankings, correct?

MR. MARK: Yes.

MR. CARVALHO: It never says preponderance. It just says yes or no.

DR. POSHARD: Just yes or no.

MR. CARVALHO: It meets them or it doesn't meet them.

SENATOR BRADY: Is there a general rule about how many of the criteria have to be met to receive approval?

DR. POSHARD: No.

SENATOR BRADY: So when you made a decision as a Chairman on how you were going to vote, you didn't look at, say, okay, they met seven of ten --

DR. POSHARD: No, no.

SENATOR BRADY: -- categories.

DR. POSHARD: No. To be very honest with you, if we had to just accept carte blanche the

staff's evaluation of whether the application met this particular criteria or didn't, we would turn down every application, because every application invariably has one part of those rules or another that was not met.

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SENATOR BRADY: But as a Board member, then, you take that -- did you ever say, okay, if they -- 70 percent of the time, if they meet our requirements under rule, I'm going to lean in favor of that decision? Did you ever set a parameter for yourself?

DR. POSHARD: No, no.

SENATOR BRADY: Did you ever see an application accepted that didn't meet at least half?

DR. POSHARD: Probably not. If the technical staff told us this application does not meet the criteria for this particular area of the rules, then we certainly looked at that, and that may become a major reason that we turn it down. On the other hand, if there's -- if there's 10 or 15 -- and I don't remember how many parts of the rules and regs that the staff says they either meet the criteria or they don't in an application, if they -- if there were a couple of things on there which they did not meet in the criteria, the staff's overall recommendation is they don't meet the CON. And if we just took that recommendation and that was the only thing we considered based upon their failure to meet one part of the overall process, we would have turned down every application.

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If the Board doesn't have the ability to weigh and balance all of those things and to sit there across the table from those applicants and say, okay, well, technically you've come up short in this area, here is what you're going to have to do to meet this or to correct this or to remediate it if you want us to look at the rest of the proposal, or if we're going to approve this thing, here is the commitment that you have to make under oath to get it right. And remember, everybody is under oath, so they can't sit there and make a commitment and just say, okay, we've got this now, we're going to go away. The Board has a right to call them back in to make sure they're staying accountable to that commitment.

SENATOR GARRETT: So did you, then -- I guess following up on what Senator Brady is saying, could you and did you challenge staff when you got their -- their technical guidelines for making a decision, did you say, but wait a minute, that, you know, isn't exactly how I might see it?

DR. POSHARD: Yes.

SENATOR GARRETT: Was there ever that back and forth where publicly those --

DR. POSHARD: Yes.

SENATOR GARRETT: Okay.

DR. POSHARD: Senator Garrett, you will see that in -- many times in my own deliberations publicly at the Board meetings, I challenge the staff to say that I understand just based on pure objective data why you did this, but as Chairman of this Board, I

have to look at the whole picture, and I have to tell you that I wouldn't turn down this application totally because they failed to meet your qualifications in one area.

SENATOR GARRETT: Let me take it one step further. So you would do that, and you're the Chairman that came in to sort of clean everything up, but in the past, and I don't know even how that worked, could it be that past Chairmen would basically take that technical information and assume that that needed to be the direction that the Board should take without challenging?

DR. POSHARD: They could.

SENATOR GARRETT: But we don't know how that happened or if that happened?

DR. POSHARD: I don't know, but --

SENATOR GARRETT: Was it sort of this is it, this is where you need to go. And if somebody didn't

have the expertise they might, you know, be worried about how to challenge that. That's a lot of information, that's a lot of questions.

DR. POSHARD: It is, and that's why I think those -- those applications really have to be studied. I mean, you have to look at the nuances, for instance, in the public hearings of what people are testifying.

SENATOR GARRETT: Right, but you are an exception to the rule. I think that that's what we've been led to believe, and I think that's true. My worry is, and I'm assuming Senator Brady would agree, maybe not, that having somebody of your caliber is one

thing. Having a political appointee who may not have the desire or expertise could be troubling, because they might not look at the whole picture and say wait a minute.

DR. POSHARD: Senator Garrett, that's why I said in my testimony here that I believe the qualifications are the most important consideration for a Board member. I don't think people should be appointed to this Board for political reasons at all unless they've got some considerable qualifications, and I think this committee ought to recommend what those qualifications ought to be. I don't think they

should be on this Board. The decisions are too important.

SENATOR BRADY: You also said that you held yourself to a higher standard than you expected of your fellow Board members.

DR. POSHARD: No, sir, Senator Brady. I didn't mean that in a moral or ethical sense.

SENATOR BRADY: You said you didn't think they had the time you had to commit to the process. You didn't expect that of them.

DR. POSHARD: I can only tell you this: I just can't imagine a Board member sticking with this job very long if they had to do what was required to really get it right. That's why I -- as Chairman of the Board, I felt an extraordinary sense of coming into those Board meetings totally prepared in case the other Board members were not up to speed on certain things.

SENATOR BRADY: Was it your experience that they didn't have the time, that they didn't ask the questions that you asked, that they didn't put the time into challenging staff on questions?

DR. POSHARD: No. I thought they -- we went around the Board and everyone had their opportunity to

ask questions, and I thought they did a very good job of that for the most part. But I didn't want to go in there and assume that people knew everything about every application.

SENATOR BRADY: I guess my concern is that -- based on a lot of what I agree with you saying, is that we have a Chairman, and the Chairman should serve a purpose to make sure the meetings are conducted. But it seems to me in this case, this Board, be it due to the number of members and low number or high number, and it's been both ways, has had way too much influence in this Board, because whether you like it or not, they took advantage of the fact that the Chairman would take the time.

And particularly when you get into a board -- I don't know that we have any committees that I sat on in Springfield where the Chairman votes first. I don't know if you had any in Congress, but it just seems to me we're asking an awful lot of these people, and we do that, it gives way too much power to the Chairman in something that's way too important, and I think frankly that's absolutely what's led to the corruption of this Board in past years.

DR. POSHARD: And I can appreciate your

concern about that. What was the point I was going to make?

MR. CARVALHO: Actually, Dr. Poshard, you wouldn't know because you weren't there, but ironically the Board that was corrupt, the Chairman always voted last. So in fact, it was an innovation when Dr. Poshard came on that the Chair voted first.

DR. POSHARD: Senator Brady, the rules on the Board on ex parte and board communication with each other, you have to remember I could not at any time speak to another Board member outside of the confines of that one meeting. I couldn't even go out in the hallway and sit down with a Board member and have lunch because of the --

SENATOR BRADY: Did we go too far?

DR. POSHARD: Yeah, I think you have gone too far.

SENATOR BRADY: How would you --

DR. POSHARD: Honestly.

SENATOR BRADY: I'll tell you this: It doesn't make any sense to me the way we've done this. I mean, I could just as easily decide talk to one of Ken's members who wants to build a facility, and we could come in and influence prior to the application

based on the rules. And I don't disagree with the way you've interpreted those rules, and we discussed this at that last meeting. I think this ex parte gives a false sense of ethics. Because I could come in and

try to influence you, whether it happened or not, prior to an application and there's no ex parte requirement.

DR. POSHARD: If you're a hospital member? I mean, are you talking about a hospital can come in and try to influence me?

SENATOR BRADY: Anybody can come in and talk to you about a project prior to application, according to the testimony we had last week.

DR. POSHARD: No.

SENATOR BRADY: And there's no ex parte requirement.

DR. POSHARD: No, never. I don't know who interpreted that, but I got to tell you that no one -- I was told I couldn't speak to a hospital administrator. I couldn't speak to anyone.

SENATOR BRADY: Maybe I misunderstood what was said.

MR. MARK: Just for clarification, Senator, I believe Mr. Urso went over the other day the change

in the statute, that they had the term "impending and pending applications" prohibition on ex parte. What the Board did in its rules is adopted a Letter of Intent as a definition of impending. A letter of intent for a Certificate of Need application has to be filed 60 days prior to submitting that application. That is, from a legal standpoint, was established as a defining line in the sand.

However, both Chairman Poshard and Chairwoman Lopatka have said publicly on many

occasions that they oppose Board members and staff from engaging in any substantive conversations.

SENATOR BRADY: But the point being is that legal counsel said there's no requirement for ex parte prior to --

MR. MARK: That is correct.

SENATOR BRADY: Which gets to the whole discussion of is this is ex parte worthwhile, does it make the system work or hurt it?

MR. URSO: Can I just make one comment? When we have orientation sessions for all the Board members, as Dr. Poshard mentioned. It happened with Susan Lopatka and every Board member, and we talk about ex parte. When we talk about ex parte, we say

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you should always go to the side of not talking about any applications at any time, and that's the safe way to go and that's --

SENATOR BRADY: I understand -- my question here is what should the law say, and can you over protect this. The same corruption problems we've had in the pension boards exist today. I can go in and influence a member of the pension board today prior to an opening or solicitation, but I can't do it after the solicitation has been offered without being subject to ex parte, and this whole discussion of ex parte needs to be --

DR. POSHARD: It's an area that needs to be clear, because it's not exactly clear. Senator Brady, I can only tell you this: That we did not allow anyone even to come up on the stage when we were in

meetings from the audience, because we don't want to be perceived as a hospital administrator had a pending application coming up and speaking to us publicly, for fear that somebody would say, oh, they're up there trying -- you know, I never spoke, and neither did any member of my Board, as far as I know, ever spoke to any hospital administrator about their pending application at any time. And ex parte protected me,

and I appreciated that, but the frustration I felt was -- and I remember in the orientation somebody pointed this out, I think Ann Murphy, that in the previous Board, it was common for Board members to get up in the meeting and walk over and whisper to another Board member about something in the application.

SENATOR GARRETT: Many newspaper articles have been written about that before votes.

DR. POSHARD: And we were told specifically that can never be allowed, and we never allowed it. But it also meant that I couldn't pick up the phone and call Susan Lopatka or another Board member and say, you know, I'm going over this proposal, and this looks like to me that there's a point they're making here that, you know, et cetera, et cetera, what are your thoughts on this. Because we weren't allowed to do it. And the only thing we could get from the staff was the technical information, so we didn't even bother to call them on that kind of thing. If you can't discuss it among yourselves and you don't even know what the other Board members are thinking until you get to the meeting, it's a difficult situation.

SENATOR BRADY: So what's your recommendation in terms of the corruption problems we've had versus making the system work?

DR. POSHARD: Senator Brady, there's got to be a middle ground somewhere.

SENATOR BRADY: What would you recommend?

DR. POSHARD: Just like you folks, in your committees that you Chair and co-Chair and so on, you're allowed to talk to your other members. You know the bills are coming before your committee. You have some discussion about that. To say that you had to go to your Senate hearing and you could never have discussed a pending bill with anybody on your committee, I think is very unfair. So there's got to be some middle ground here between the ex parte protection for the Board members from people trying to influence their decision, and the honest discussion of a proposal before you get to the actual meeting between Board members. There's got to be some middle ground there.

MR. CARVALHO: Could I clarify something? Ex parte is not what prevents the Board members from talking --

DR. POSHARD: Whatever it is.

MR. CARVALHO: No. What I was going to say, it's the Open Meetings Act, and that actually after you left has been fixed.

DR. POSHARD: I'm sorry.

MR. CARVALHO: Now two Board members can

talk to each other. So for example, the Chair could call one member. The ex parte just prevents a senator or a member of the public from coming to try to influence your vote.

DR. POSHARD: Okay.

MR. CARVALHO: Those are two different things, and I guess, Senator, you're suggesting you think that the ex parte should be relaxed, and you're suggesting that the open meetings restriction should be relaxed.

DR. POSHARD: Well, it sounds to me like you fixed it, and I didn't know that.

SENATOR BRADY: I didn't suggest the ex parte should be relaxed. I think it's a false promise and it doesn't seem to be working.

MR. URSO: And I think Dave's absolutely correct. You have to -- the ex parte deals with third parties, outsiders trying to influence the Board members or Board staff. The Open Meetings Act, since it's been amended, now allows two members out of a five-member board to talk to each other.

SENATOR GARRETT: If it was a larger board, it would be more members?

SENATOR ALTOFF: And that would be -- I apologize, Dr. Poshard. So do you have a comment? Do you have a position on the recommendation made by numerous people, particularly the Lewell report, about expanding the size of the Board?

SENATOR GARRETT: He already mentioned --

SENATOR ALTOFF: Oh, I missed that.

DR. POSHARD: I do. I think the Board should be expanded.

SENATOR ALTOFF: And then that would alleviate some of the problems that you've also talked about with regard to --

DR. POSHARD: Yes.

SENATOR ALTOFF: Can I ask one other question? In regard to this, another recommendation that was made was to have an assumption of approval. As opposed to trying to receive approval, every application that came before the Board would have an assumption of approval, and what the Board would do is come and say why it would be denied if not automatically approved. Would that have any weight on the amount of work and wading through all of those

applications if what you were doing was assuming that every application has merit and met the criteria, if that's what the staff -- you know, I mean, I would assume that they would still review, and if there was a technical fault, they would draw that to your attention. But basically the approach would be every application would receive approval unless there was a significant technical fault or if the Board felt -- would that make it easier?

DR. POSHARD: No. I think it would -- it would irreparably harm the process.

SENATOR ALTOFF: Okay. Can you elaborate a little bit?

SENATOR GARRETT: You know what, I have to go, and so you guys -- I just have one question.

SENATOR ALTOFF: No, please.

SENATOR GARRETT: I have my most important bill coming up at 9:00 o'clock. And this is no -- I don't want Jeffrey or Frank to take this personally, but I met them last night, and it's been bothering me ever since. They said they were going to meet you for breakfast this morning to go over stuff.

DR. POSHARD: Yes.

SENATOR GARRETT: You know, and I woke up,

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I'm thinking, I get it, you're not an official Board member anymore, but I'm just wondering why you had that meeting.

DR. POSHARD: Senator Garrett, I had a conversation with Jeff yesterday. I'm coming before this committee, and I haven't had anything to do with this Board for two solid years. There's been changes that have been made with respect to the rules and regs. I called Jeff and said I don't even know what's going on with the Board right now. Has there been rule changes and regulation changes? These are the things that I think about and that I remember clearly with respect to my concerns, but I don't know what's happened in two and a half years.

SENATOR GARRETT: Did you have the meeting yesterday or this morning?

DR. POSHARD: I'm sorry?

SENATOR GARRETT: Was the meeting yesterday or this morning?

DR. POSHARD: No, no, I had a phone conversation with Jeff yesterday saying help me

understand if there's any new things going on. And we had breakfast this morning before we came over here so I could ask questions about those things, which I did.

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SENATOR BRADY: Jeff, have you been meeting with other people who have testified in front of us before?

MR. MARK: No, I haven't. Dr. Poshard, most of his questions were regarding what was the mandate and purpose of the task force so he could address you responsibly.

DR. POSHARD: I didn't even know what that was. I mean, I'm being invited to come to the committee. I'd never read the charge to the committee or anything. I didn't know who was on the committee, Senator Garrett.

SENATOR GARRETT: And I guess -- and that is spelled out somewhere, either in the legislation --

DR. POSHARD: Sure.

SENATOR GARRETT: -- and I understand wanting to clarify that. You know, maybe if you called either myself or Representative Dugan. I'm not accusing anybody, it's -- you're no longer an official Board member, but there just -- you know, I just woke up in the middle of the night, and I thought, you know, if there are meetings prior to our meetings between staff and those testifying, I have a problem with it. I personally have a problem with it.

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Nothing against you, and I think if that's going to

be -- we've got to stop that. And whether it's -- I mean, that information, Doctor, can be found out other ways. And in light of what's happened in the past, I think that was inappropriate.

DR. POSHARD: Well, Senator Garrett, I understand your concern, but let me say to you just eye to eyeball here, that -- that everything represented in my testimony is my opinion, not the opinion of Jeff Mark or anyone else. I've been in public service a long time.

SENATOR GARRETT: I never said it was, and I totally understand. I just would prefer in the future that those kinds of meetings didn't take place.

DR. POSHARD: No, I understand. But I had a need to know about the charge of this committee, about the rules and regulation changes that have been going on over the last two plus years I've been off this board. And that was the only reason that I asked Jeff Mark to help me understand any changes. It wasn't about my opinion.

SENATOR GARRETT: It was Jeff and Frank?

DR. POSHARD: No, I didn't meet with Frank. We picked Frank up at the hotel this morning 2 minutes

before he got over here.

SENATOR GARRETT: Okay.

DR. POSHARD: I got into town last night at 10:30, and I got up this morning at 4:30 to try to go over my statement for this meeting, you know, and what I wanted to say.

SENATOR GARRETT: We appreciate that. I

just -- you know, in the future I think we should limit those prior to testimony. I have to go, and I apologize for that.

DR. POSHARD: Sure. To get back to Pam, do you want me to answer that question?

SENATOR ALTOFF: Please, if you would, thank you.

DR. POSHARD: I'll try to.

SENATOR ALTOFF: To elaborate on why you would think that if we flip the assumption of approval as opposed to the assumption of obtaining it, how that would put more work on it. And I am listening.

DR. POSHARD: One of the things that Jeff related to me was a recent change that I can't even remember what it's called now, but it's the projection of bed need out for the next ten years.

MR. MARK: Yes. For the record, one of the

things Dr. Poshard asked me this morning is what have been the recent amendments to the Act, where does the statute currently stand versus his understanding of it two years ago. So I did go through various amendments that took place last legislative session. I also pointed out that per the good offices of JCAR yesterday, we now have a new bed need methodology in place that will carry out the projections ten years hence versus what we have been doing, and that was a large part of our conversations.

DR. POSHARD: If those projections are going to be carried out ten years now, which I was unaware of, but I now know, the likelihood is that if there's

any comprehensive healthcare planning at all, let's say for the western suburbs as they continue to move out in the city. Let's say you're able to make a fairly accurate projection of bed need over the next ten years. Based on that, you're going to get several large hospital corporations that are going to submit CONs to build new hospitals in those emerging populated areas. Those CONs all may be perfectly legitimate in terms of their technical expertise, so in essence, you could say, well, we're going to assume that all five of these systems can go out there and

build a new hospital, then, because there's nothing here to say that they shouldn't, all right.

But if you go out there and build five new hospitals where only one or two is actually needed, then -- then what you've done is basically waste a lot of the healthcare dollar. And so you've got to have somebody in place still that judges from among those competing proposals, all of which may be technically correct, about which one should be building and which one shouldn't, and that's what the Board does.

SENATOR ALTOFF: Okay.

SENATOR BRADY: Are you through?

SENATOR ALTOFF: Go ahead. I understand.

SENATOR BRADY: The issue I wanted to get into with you today is to pick your mind a little bit. I think a representative of the House filed this. We've drafted legislation that would change the hiring of the secretary to consent of the Senate. Jeff, I

don't even know how you got this job, but what's your perspective on how the secretary should be hired, who should hire him? You talked about politics should be removed. You know, the Governor's involved. How is the executive secretary hired?

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DR. POSHARD: I don't know.

SENATOR BRADY: And how should they be hired?

DR. POSHARD: I assume that they were hired through the Department of Public Health.

MR. MARK: According to the current statute, the executive secretary is appointed by the Governor. In my case, I had my name submitted to the Governor. I was interviewed by the Director of the Department of Public Health, who went over my credentials and background, I believe.

SENATOR BRADY: Which Governor?

MR. MARK: Governor -- Dr. -- Governor Blagojevich, and I was interviewed by Dr. Whitaker. It's my understanding that Dr. Whitaker made the decision to hire me.

SENATOR BRADY: So the Governor has the ability to hire and fire --

MR. MARK: That's the statute.

SENATOR BRADY: -- at their pleasure, as the Governor comes in.

MR. CARVALHO: The statute was changed in 2003. Before that, the statute said that the executive secretary was appointed by the Director with

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the consent of the Board, and then in 2003, the legislation changed it to appointed by the Governor.

SENATOR BRADY: He served on this Board for two years. What do you think?

DR. POSHARD: In terms of how the executive -- is it Director or secretary? I don't know.

MR. MARK: Executive secretary. I've been called worse.

DR. POSHARD: Okay. Anyway, I guess, Senator Brady, my feeling would be that that should be left up to the Department of Public Health.

SENATOR BRADY: So you think it should be under the Governor? Obviously the Governor has the power of who the Director of the Department of Public Health is.

DR. POSHARD: I --

SENATOR BRADY: You talk about the removal of influence.

DR. POSHARD: No, no.

SENATOR BRADY: I'm sorry, you said the politics should be taken out of it. There's no greater political office than the Governor of the State of Illinois.

DR. POSHARD: I think if a potential Director's name is submitted to Dr. -- I can't even --

MR. CARVALHO: Arnold.

DR. POSHARD: Dr. Arnold, it's his responsibility and ability to judge that Director's qualification and criteria, and if he doesn't feel

that they're the most qualified person, to turn it down, period. I don't know how else we should do that.

SENATOR BRADY: We've got a situation where we've got a trial going on in Chicago right now where allegations have been made that a gentleman had great influence, lobbyist, fundraiser, peddler, great influence in the hiring of people in the office, in the Governor's office.

DR. POSHARD: Uh-huh.

SENATOR BRADY: This legislation would hold that to a level that would say at least it would need to be confirmed by the Senate, and you don't -- you're not -- you think --

DR. POSHARD: I can't even comment on that, Senator Brady. I can't judge that.

SENATOR BRADY: At the end of the day, we have to judge it, so we're just kind of asking for

your opinion.

DR. POSHARD: No, I understand, but you could say that about the Chairman of the Board also.

SENATOR BRADY: And he is.

DR. POSHARD: I mean, I was a political appointee to that board. The Governor called me personally and said would you do this.

SENATOR BRADY: And were you confirmed by the Senate?

DR. POSHARD: Was I confirmed by the Senate? If I was -- yeah, I guess I was.

SENATOR ALTOFF: Yeah, he was.

DR. POSHARD: Okay, I'm sorry. But I was a political appointee.

SENATOR BRADY: I voted for you, I think.

DR. POSHARD: I appreciate that. I don't know how to judge that, you know. I just felt like -- I guess I assumed that the Director of Public Health hired and fired the executive secretaries, you know, et cetera, but, you know, that was my assumption.

SENATOR BRADY: Living with that assumption worked fine for you?

DR. POSHARD: It worked fine for me. I found Mr. Mark to be a consummate professional person,

and he was the only Director I knew.

SENATOR BRADY: This isn't about Mr. Mark.

DR. POSHARD: I understand.

SENATOR BRADY: A big issue we have here, whatever we do, I mean we can absolutely guarantee it will be purified by eliminating it, but if we're going to keep it, we have an obligation to keep it free from corruption as best we know how.

DR. POSHARD: Yes.

SENATOR BRADY: And this trial in Chicago is weighing heavily on a lot of people's minds, and you know as well as anybody the Governor of the State of Illinois has as great a power as any Governor of any state. And it's giving a lot of us a great deal of concern right now. And these appointments, allowing people like Mr. Rezko to sit in on meetings and interview people who are going to be appointed really gives -- especially something that's important, and I

value the position that Mr. Mark has, as important as that position is, it has to be as pure. And I'm just asking you if you think that extra layer of confirmation of removing the politics just one little bit by requiring people like me in the Senate to confirm those appointments is appropriate. Do you see

any reason it shouldn't be?

DR. POSHARD: I can't think of any reason why it shouldn't be, but I'm sitting here thinking extemporaneously about your comments, and I can't, you know, I can't conceive of the broad, broad picture about why it is a Governor's appointment. You know, maybe there's some reason for that. I don't know. I honestly don't know.

REPRESENTATIVE HASSERT: We're doing a lot down here in the General Assembly to reflect upon a personality versus what the past has been, so I can suggest that, you know, going the opposite way you could also play politics the other way with the Senate, by holding up a confirmation because you're having a political argument with the Governor. I find that we're getting a little overboard in trying to restructure everything due to a personality in the House, in the Senate. Everybody is -- we're looking at personality versus the underlying -- what historically we've been doing and what's been working and what's not. So I'm not necessarily agreeing that having Senate confirmation is all that great. Typically in the House, we don't think you guys all do that great of a job to begin with, so --

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SENATOR ALTOFF: I'm taking his tag away.
SENATOR BRADY: For the record, I agree with you.
REPRESENTATIVE HASSERT: Saying that, I think we all have to be cautious as we move forward in looking at doing things, because we're judging the guy that's sitting in the office right now. And for us to -- we're doing in the House, the speaker has put out things to bypass JCAR in legislation. We're doing things that I think are asinine. We're judging and doing it for all the wrong reasons. We have to look beyond who's sitting on the second floor right now and make sure that the next person, next person who sits there, that we're not diminishing the office to a point that we're just trying to play -- I don't want to suggest playing politics, but that we're not looking of personality of who's holding that office right now. So I could suggest the other way, that you could have some problems in the Senate messing around with the appointment of the executive secretary. I will call you Director if it makes you feel better, but in doing so, I think you can play both ways. So I mean, my point --
SENATOR BRADY: And I just asked the

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question --
REPRESENTATIVE HASSERT: I understand. My point -- and maybe, Doctor, you can't answer this, but we're passing new rules of JCAR that I think will be

effective -- are we lagging behind maybe from a standpoint in how our rules have been laying out there. Are they antiquated, are they not up to speed. These new rules, is that going to make a dramatic difference in siting of facilities?

Do you have an opinion -- I know you're not up to speed on what's been happening, so I don't want to put you on the spot. But as you've seen, what you're working with staff, and you're saying there's some subjective they give you, basically, you know, they give you here's the pros -- not the pros and cons, they give you yes or nos, and then you have to make the decision based on the public comments and the other things, like the example, five hospitals came out to Plainfield and wanted to build a hospital, you would have to pick, if the criteria is met, you might have to pick and choose.

DR. POSHARD: Right.

REPRESENTATIVE HASSERT: And I just want to know, are we not maybe as a legislative body, do we

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not have the proper underlying statutes or rules in place that would make this process easier.

DR. POSHARD: Representative Hassert, I appreciate that. I don't know about the new JCAR rules that have been passed. With respect, I don't think I had an opportunity --

REPRESENTATIVE HASSERT: Can I go back up on that one, because you have a small board, my understanding why it took so long, because you guys could not get a quorum to --

MR. MARK: That's the current Board.

DR. POSHARD: That's one thing, but Representative, I think first of all, when I was on the Board, and I've only talked to Jeff for a few minutes about the new rules that have come on, just sort of highlighted. But when I was on the Board, I thought the rules were terribly antiquated. And the reason they were was because we had not done the comprehensive healthcare planning that needed to be done. What we need is a group of professional people who have the ability to sit down and say, okay, based upon these set of demographic criteria, we're going to need a new hospital out here five years down the road. We're going to need this many more kidney dialysis

centers, et cetera, et cetera, and really do a comprehensive planning effort so that you can take away a lot of the subjectivity in the decisions of the Board. We have not had that.

Now, we attempted to get into some of that when I was on the Board, because I really wanted to do that, but there were never enough resources available, enough time for the Board members to actually delve into that. This whole bed need situation, I mean, honestly, we know what is reported back to us from the hospitals in a given period of time, but I don't know that that's accurate all the time. And that's one of the most important considerations on which to approve or disapprove a -- a CON. So, you know, it's very -- until we get comprehensive healthcare planning in place for the

state, I think the rules are always going to be outdated, because we need to -- we need to develop rules that reflect that comprehensive planning, and right now it's "bass ackwards."

REPRESENTATIVE DUGAN: Well, I want to just dovetail off that, because that to me has always seemed to be the issue, it's like we're approving things not knowing whether or not in the state, you

know, the healthcare plan is not there. It kind of reminds me like on a local level when you do zoning and planning for -- in a village, you know, you do your comprehensive plan, and then as developers come in and say we would like to put this up or that up, you have something to look at, say that's not really what way we wanted this to go, the community to go, that I think that's probably one of my biggest concerns, and I haven't been on this as long, but certainly to know that what are we picking from except other than hospitals coming in and telling us they want to put up a new hospital.

SENATOR BRADY: Right, who probably know more than we do.

REPRESENTATIVE DUGAN: Well, I'm not saying they don't --

DR. POSHARD: Representative Dugan, you're absolutely right, because I was never comfortable with the subjectivity part of my job as Chairman. I remember on -- I think it was a Plainfield hospital issue. We have four -- as I remember, four different major hospital organizations come before the Board

wanting to build a hospital in that emerging area. The one we approved was Bolingbrook, and I remember

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one of the large considerations for approval of Bolingbrook was because none of the other hospitals in the area objected to that location. They objected to the Plainfield location, saying this is going to hurt us terribly. That was a subjective thing on my part as Chairman, to look at that and say, okay, that's a good reason for putting it here, or at least it's one good reason.

REPRESENTATIVE HASSERT: Is that reason enough?

DR. POSHARD: See --

REPRESENTATIVE HASSERT: Is that reason enough to understand why -- you know, we all have the political dynamics in our areas. I represent the Bolingbrook area. I also used to represent the Plainfield area. And I was very supportive of both areas' health facilities. And I understand the hospitals. It's just, Ken, no offense, but your hospital guys are -- God, they get very brutal when it's going against each other.

DR. POSHARD: But they're trying to survive.

REPRESENTATIVE HASSERT: I understand that. I totally understand that.

MR. ROBBINS: Which is the reason that the

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association never involves itself in beginning applications.

DR. POSHARD: Exactly.

REPRESENTATIVE HASSERT: But in saying so, you know, I just want to make sure that when we set out -- the subjective of what you just talked about, because nobody opposed the Bolingbrook hospitals, so that means that should be a go.

DR. POSHARD: Well, there were other reasons --

REPRESENTATIVE HASSERT: It doesn't necessarily mean that the Plainfield hospital is a bad idea.

DR. POSHARD: No, it doesn't.

REPRESENTATIVE HASSERT: So -- and that's what I'm trying to get at. Do we need to make sure that the rules and things guiding your decision making are up to snuff, that they make sense, that they -- and I've got to plead ignorance, because I'm doing this from when people beat me up back in my home district, as we all are, and subject to that pressure --

DR. POSHARD: Right.

REPRESENTATIVE HASSERT: -- that you have to

go in there and you want to see things happen.

DR. POSHARD: Yes.

REPRESENTATIVE HASSERT: And obviously I think to some degree the Plainfield hospital was the reason why we introduced some new legislation that reflected something that --

DR. POSHARD: Sure.

REPRESENTATIVE HASSERT: Do we need to do more of that, is my question? Do we --

DR. POSHARD: Yes. Representative Hassert, I think the legislation can perform a sort of a incremental corrective function, but if the Board had -- if I had known coming on to that Board as a Board member, if I had seen a ten-year plan before me that said this geographic area is going to undergo these kinds of demographic changes over the next ten years and therefore these ten professionals who put this together says we're going to have a need for three new hospitals over the next ten years in this area, my job would have been a lot more objective.

But I didn't have that. All I had was -- was competing proposals before me, and I had to weigh and balance -- I remember sitting at my table as a single Board member -- remember, I couldn't discuss

this with anybody else -- and making the balance sheets, you know, the pros and cons for each hospital. And in the end, when it was all said and done, for various reasons the Bolingbrook location had the best balance.

REPRESENTATIVE HASSERT: We're happy for that, believe me.

DR. POSHARD: Well, no, but I'm saying Plainfield wasn't happy, you know, and I understand that I understand that, but I did the best I could in weighing and balancing that situation.

REPRESENTATIVE HASSERT: And I'm not criticizing. We understand the dynamics of the Board. I guess what we're trying -- the task force, I assume, I haven't been here for some of the premeetings, but

we want to make sure that if we continue with the Facility Health Planning Board, that we have the tools in place to make the decisions in a proper way, not in a political way, not on the things that have been done in the past. I know there's been a lot of problems in the past, a lot of bad perceptions about the Board. We want to get beyond that. We want to make sure this thing works.

DR. POSHARD: Yes, sir.

REPRESENTATIVE HASSERT: And as you know, if it's in my back yard, of course you want it to work. If it's in somebody else's back yard, you maybe not want it to work. That's the political nature of this business. But we do have to make sure that we're making --

DR. POSHARD: Sure.

REPRESENTATIVE HASSERT: -- decisions on the right things so when you do go back and say something was denied, you have factual information, and the people are standing up there, like in the Plainfield area is growing like leaps and bounds, going what the hell do we have to do to get a hospital.

DR. POSHARD: I know.

REPRESENTATIVE HASSERT: And there's not -- we can't give them a good answer.

DR. POSHARD: It's tough. It's really tough. If I could just hit on one more thing that's important to me as a Board member when I served on that Board, often I remember when Lutheran General in, for instance -- and it's not Lutheran General anymore,

but --

MR. CARVALHO: It's basically is Advocate.

DR. POSHARD: Advocate, they're the system,

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Advocate. I remember when they came in and wanted to do major expansion for the hospital out in Des Plaines or Park Ridge, I can't remember which one. We, of course, wanted to -- that to happen, because they had a very good reasoned position on that, and we passed it. But they also had hospitals in the inner city that we were afraid that if they expended 3 or $400 million of resources out there, they would have to cut back on their services in the city where the preponderance of their patient load were Medicare Medicaid folks.

And we suggested to them that it would be very good if they gave us assurances and commitments that they were going to -- I don't remember what they were, but things like increase charitable care there in the inner city, they were going to put money into some of those facilities also, et cetera, et cetera. I thought in the end we struck a very good balance of protecting those hospitals in high unemployment areas and so on against the hospital in a fast growing suburban area.

The Board needs that ability, because you need to keep that balance in place. If you don't, then I think we bifurcate our system of healthcare in

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such a way as we cease to serve those people in those

kinds of areas and in the kind of areas that I represented in rural downstate Illinois, where our mining economy is totally played out, you know, we have two and a half times the amount of child abuse the rest of the state has. People are out of work, various issues.

I mean, hospitals are highly valued where I live. They're looked upon as an economic savior as well as a healthcare deliverer. That's not true in the other places of the state because you don't have to --

SENATOR BRADY: Are you saying in that if two people submitted an application equal in ability to meet the needs of an area, you would grant it to an applicant who is going to use some of the money they made off of that to support another facility they have?

DR. POSHARD: No, because, Senator Brady, these hospital groups are large corporations now. Advocate, I don't know how many -- I can't think of, Ken, but -- and they own hospitals in all kinds of locations. And all I'm saying is within their system within -- within what they control and have the right

to control, they ought not to -- to just shelve their hospitals in low income areas.

SENATOR BRADY: Which you don't let them do by law without approval.

DR. POSHARD: Well --

SENATOR BRADY: You can't close a hospital without the Board approving it.

DR. POSHARD: I'm saying within the Board's discretion, it's one of the reasons that the Board --

SENATOR BRADY: It's not -- you have absolute authority that they have to live up to the standards under JCAR.

DR. POSHARD: Sometimes you have to do that.

SENATOR BRADY: No, no, I understand that -- I don't know that -- I mean, I understand that you can be a benevolent dictator, how your logic makes sense, but I'm not sure the government should play that role.

DR. POSHARD: But Senator Brady, if it's left up to market conditions only, you won't have hospitals in the inner city. You won't have them where I live, because they don't make money off of them. They lose money.

REPRESENTATIVE HASSERT: Well, you're saying within the system, what you're afraid of if they build

a new hospital, all the profit and all the motivation will be driven and they might neglect the other areas.

DR. POSHARD: Sure. That's all I'm saying.

REPRESENTATIVE HASSERT: And by your point, you're suggesting that the Board -- one of their challenges is to make sure that you can get some guarantees out of the system that they're not going to --

DR. POSHARD: Desert the hospitals, right.

REPRESENTATIVE HASSERT: -- desert them. I can understand some of that.

DR. POSHARD: Yeah, that's part of what we considered.

SENATOR BRADY: The way I understand it, you have that authority regardless of their expansion.

MR. CARVALHO: They have the authority -- you have to come in for approval to close, but the Board -- if you have economically deprived one of the hospitals in your system and then come in to the Board with an application saying this one is in the toilet, it's losing $10 million a year and its capital plant is falling apart, the Board is very hard pressed not to accept the request to close, because the Board does not have the authority to tell them, no, you have to

spend the money to keep it up.

And in fact, when the Board was faced with just that question with respect to Bethany Hospital, the newspapers all editorialized against the Board, saying what are you doing saying you can't close? You can't make them keep open an unprofitable hospital. So the Board is under great pressure -- yes, they have the theoretical ability to tell somebody who is losing money you've got to keep open and keep losing money, but practically, they don't do that.

REPRESENTATIVE DUGAN: I have a question. When you said like when the corporate entity comes in and wants to build the big hospital in the suburbs and you're worried about the inner city --

DR. POSHARD: Right.

REPRESENTATIVE DUGAN: -- does the Board have the authority to -- I'm not saying make a deal, I don't mean it the wrong way, but to say, hey, we're

willing to allow this because we see the need there, but in exchange for that, we also want you to, like you said, invest the money? Does the Board actually -- is it something that then they have to live by, or is that just something you kind of agree

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to and we hope when they leave they'll do what they said they were going to do?

DR. POSHARD: Well, part of the data that is given to the Board has to do with the financial conditions of the corporation, of the system or whatever. And it's clear -- you can clearly see when you look at the balance sheet for these folks that they're losing a lot of money here. And we don't want to force corporations or anybody else to say you've got to lose money, but if we're going to approve a $400 million expenditure for you to make a lot more money out where 80 percent of the folks are insured, you know, and you're going to be guaranteed a huge profit, is it okay for us to say help us understand how you're going to keep your commitment here. Which is what -- we did that all the time, because frankly, you know, if people only build where they can be assured of a profit, what happens to those areas where they're losing?

REPRESENTATIVE DUGAN: And I agree with the concept. I like that concept. I'm just -- my question is, is that -- but does it -- does the Board and this agreement that you come to that this hospital says yes, we will put money into, does it hold water

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if they decide they're not going to?

MR. URSO: Maybe I can help here.

DR. POSHARD: Right.

MR. URSO: The Board has the ability to condition permits. So in other words, Lutheran General arm of Advocate wants to do this major remodeling, and as Dr. Poshard said, there's a concern because this is a system, they only have a pot of resources for capital development, so many dollars. And if the majority of those dollars are going to the suburbs, the Board looks at that, and Dr. Poshard and his Board has done that, and so has the current Board. And they're saying, but you can't spend all of your dollars there and forget about, for instance, Bethany. So the Board conditions the permit and they can say, we may approve this permit, for instance, if you increase charity care at Bethany or you retain this prenatal clinic for Medicaid patients or something like that.

And so it's an agreement in open session where the facility would say, okay, we agree to those conditions, and then they have to report back to the Board and staff that they're complying with this. And then the compliance unit looks at those

reports and makes sure that they confirm and verify that these conditions --

DR. POSHARD: And Representative Dugan --

SENATOR BRADY: But the problem becomes, when you come in there --

DR. POSHARD: We never --

SENATOR BRADY: -- you're only approving it because there's a healthcare need, regardless of this side deal. So you're holding hostage this one applicant who may meet all of your criteria, and if two applicants come into the same area, you've got a conflict.

DR. POSHARD: Senator Brady, here is the thing with respect to that issue. In the time that I was on the Board, I never remember, at least, a corporation, a hospital corporation coming before the Board saying, no, we're not going to do that. Most understood that for moral and ethical reasons, they needed to maintain those inner city hospitals or in the rural areas and so on, and they even came to the Board prepared to say, here is what we're going to do to ensure that our services are not depleted in those areas. A lot of times, we didn't even have to ask them.

And for sure they never would have agreed to do it if in fact their commitment to those inner city areas on the balance sheet was going to cause them to lose money even with the additional building out in the suburban areas. We never asked them to go under. We just said how do we -- how do we keep this balance. It's very important unless -- unless you want to go to universal healthcare, where we don't want to worry about, that then we've got to somehow ensure that the folks who live in those kinds of areas also get served, and that's just one of the mechanisms the Board uses.

REPRESENTATIVE DUGAN: Well, what happens if two places, two companies came in to build a hospital in this place, but only one of them had the other hospitals in the inner city that you could do this agreement with. What happened to the other -- what happens --

SENATOR ALTOFF: Does that give them an unfair advantage?

DR. POSHARD: Well, it may, to be very honest with you. I can't tell you that it wouldn't, because those are things before the Board. Now, we would look at the two -- there's a lot -- remember,

though, there's a lot of criteria in the application process which have to be considered. This is only one of those areas. So if someone came in with an extremely strong proposal and another person came in with a much less strong proposal and yet had hospitals in the inner city or something, then we could have conceivably approved this much stronger proposal, but I can't tell you that if they were both equal --

REPRESENTATIVE DUGAN: Both the same?

DR. POSHARD: If they were both the same, that this would not be a consideration in terms of the approval.

SENATOR ALTOFF: So then I thought that one of the situations, though, was for the CON not to deal with, you know, market share, but actually in effect that's just kind of a default position, because you are going to look at a hospital that has made a huge amount of in investment in providing healthcare to a

broad area, like an Advocate, who has many hospitals, but that's going to give them somewhat an unfair advantage and is going to allow them to maintain a bigger, broader market share.

REPRESENTATIVE DUGAN: But then I guess, too, Senator, what I would look at is, though, is that

those particular companies too also have invested in our healthcare system for many years.

SENATOR ALTOFF: I'm not saying it's wrong. It's a comment that continues to come up when we talk about what the Board's mission is, and that it's not to protect market share. But somehow what I'm getting is that because of other considerations, it might be a default and an intangible that does occur.

DR. POSHARD: Oh, I can tell you, Senator Althoff, that it doesn't -- it wouldn't ever enter in. It never occurred while I was on the Board. I'm not saying that it couldn't, and the Board may be -- that may be an influencing factor. I don't know. I just know that trying to maintain some balance within a particular system was important to the Board. I don't ever remember it being -- affecting competition between two major hospitals as a consideration, but I'm not saying it couldn't.

SENATOR ALTOFF: I appreciate that it all was hypothetical somewhat. I was just asking questions.

DR. POSHARD: Sure.

MR. CARVALHO: Chairman Dugan, could I ask Dr. Poshard something?

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REPRESENTATIVE DUGAN: Sure.

MR. CARVALHO: The issue of staff influence has been -- come up. It's come up several times. And since really the two staff people who most interact with the Board are Jeff and me, if it's not Jeff, it must be me, or if it's not me, it must be Jeff who is influencing this conversation. I want to say something on the record. I want to see if it comports with your recollection. I view our role as the Department of Public Health as at the Board meetings to express opinions relating to issues that relate to health.

DR. POSHARD: Yes.

MR. CARVALHO: And I have confined our opinion giving to Board meetings. I don't recall you ever asking me should this application go up or down, because I don't think it was in your nature, and I would never do that anyway, because I would always say that's a Board's discretion. I've maintained the same thing with Chairman Lopatka. But the interesting thing is, it's all on the record. And so one of the things I would invite the task force is at the next meeting of the CON Board, Health Facilities Planning Board is April 8th and April 9th here in Springfield.

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And from our prior conversations about hearings, if you fall in that line where you think Board members should be at hearings, I invite you to come to our Board meeting as a task force member. If

you fall in that line where you think it's okay to reread the transcripts, there are transcripts that are going to be made of these Board meetings, and so we will be happy to share with you the transcript of the Health Facilities Planning Board meeting of April 8th and April 9th. It's going to be a barn -- well, a convention center burner. But the way staff influence -- I mean, Jeff and me, yeah --

DR. POSHARD: Let me address that. Actually, I didn't know that was an issue, but I'm glad you brought it up. I came out of public life, just as you folks serve, and when I was in the Senate here, when I was in Congress, I seldom went to a final vote on any bill without sitting down with my staff and going over it. You know, I wanted to know who we've heard from, you know, were they for it, were they against it, how does it affect my district, how does it affect the state, you know, et cetera, et cetera. And the staff gives you all that to digest.

But before I would sit down with a

calendar, no matter if it was in Washington or here, and look at third readings on a bill. I would always sit down with my chief of staff and legislative director at a minimum and say to them, okay, you've studied this more than I have generally, and most of the time they had, because they had the time to. What's your opinion? What do you think I should do? And I always asked their opinion, because they were pretty bright young people generally, and they gave me good opinions. The final decision was mine.

When I went on this Board and I was told that I couldn't sit down with you or him and ask your opinion, you know, you must remember that I argued with you vociferously, I said this is absolute craziness, and it is crazy. You wouldn't make a decision that way. We had to. You know, you've got professional people surrounding you and you can't even ask them what do you think about this. Help me understand this in terms of the decision I have to make. The only thing you can say to them is how is this data interpreted and what's this rule and what's this regulation. It's ridiculous.

I would never run my business that way. I never ran my offices politically -- or

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governmentally that way. I couldn't. I depended upon my staff for everything, including their valued opinions about how they see this thing playing out and whether they think it's good or bad. You know, I always did that, and I -- I do it at the University. I have three vice presidents. Any major decision I make, I sit down with them and I say what do you think about this? What's your deal on this? If I go this direction, do you think it will be the out -- I mean, we all do this.

SENATOR BRADY: Prior to the current Act, was that allowed?

MR. CARVALHO: Well, today it is allowed in the sense that if -- if -- if we were willing to give opinions, we could share an opinion with the Board member.

SENATOR BRADY: You can give opinions that aren't subject to ex parte, but you don't?

MR. CARVALHO: But what we have always said is our role are not to do that. I mean, if you tackled me in the hallway and asked me after the fact my opinion on something, I could give you my opinion if I chose to. But the same thing here, we have always said in the training that it is our role to do

a technical analysis of this and to say whether it is within the rules or not, or appears to be within the rules or not. But it is the Board member's role to make the decision, and so we --

SENATOR BRADY: So what you told Chairman Poshard is something that you weren't legally bound by, but you just felt --

MR. CARVALHO: We told them these are the right roles, just like -- I used to serve on a school board --

SENATOR BRADY: Did Ray give opinions?

DR. POSHARD: Ray Passeri?

MR. MARK: Ray Passeri? I don't know.

MR. CARVALHO: He's coming.

SENATOR BRADY: But you strongly believe that these two individuals, at least, if not all of staff, should have the right to give you a subjective opinion that you would weigh on whether or not an application should be approved or not?

DR. POSHARD: Senator Brady, unless you feel like you can get enough information and can do as good a job --

SENATOR BRADY: But your answer is yes?
DR. POSHARD: Absolutely, my answer is yes.

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I don't know why the chief staff person to anyone in such a position where decisions have to be made on hundreds of millions of dollars can't consult with the very people who are supposed to be the experts. You know, I don't know. I mean, that was confusing to me, because I literally sat in my house every month at my dining room table and went over stacks of information. I couldn't talk to a fellow board member and I couldn't talk to any of the staff. Now, I have to be a pretty omnipotent person to come out with the best possible decision under those circumstances. And that's the position you've put a Board member in, or the Board member's put in. I'm not saying you. But the rules and regs have put the Board members in, and I don't think that's fair to a Board member.

SENATOR BRADY: One other thing. David had said earlier that prior to you, Chairmen had voted last.

MR. CARVALHO: Tom Beck used to vote last. And by the way, this whole thing about giving information and advice, I've described my relationship with Poshard, I've described my relationship with Lopatka. Beck wouldn't talk to me, so I had no input there, so --

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SENATOR BRADY: Just curious, why did you choose to change that? Why did you choose to go first?

DR. POSHARD: Well, sir, because for one thing, I knew that I had studied the proposals. I always let the Board ask questions, and I was always the last person, generally speaking, I think, to ask questions. I generally did not start out asking questions. I'm not saying there weren't times that I did, but I let everybody else, including the folks from the Department of Public Aid and everybody else, say what they wanted to say. And then, Senator Brady, I'm talking about the whole scope of the discussion now.

What I did was before I ever left my house, I had marked down my particular stance on a proposal, and I had three columns on my paper, yes, no, and question mark. And I would mark yes or no on each application before I would ever leave my house, and then when I got into the committee hearing, I listened to everybody to see if I was going to change that vote or if anything was going to persuade me. And that was my question mark column. And that happened sometimes, by virtue of the questions that

were asked or new information I gathered and so on and so forth. But I generally waited, and at the very end I gave my opinions based upon my study and my rationale and so on and so forth, and I just started the voting. I never -- it wasn't -- it wasn't to --

SENATOR BRADY: I was just curious. I didn't know that earlier.

DR. POSHARD: If you don't -- if you don't have any contact with the Board members, you can't

assume that you're going to influence them in one way or the other. I mean, gosh.

SENATOR ALTOFF: But --

SENATOR BRADY: No, I'm not --

DR. POSHARD: I know, Senator Brady.

SENATOR ALTOFF: What the problem is, is that in the past, we have this Board has experienced significant problems and issues. And the situation that you're describing I think is a reaction to that, but also kind of keeps that availability of influence on somebody pretty much in place, because you can only talk to certain individuals.

DR. POSHARD: Right.

SENATOR ALTOFF: I think my question would be not necessarily how you conducted yourself or how

the Board was conducted under your leadership, or even currently how it's being conducted, but that there was a situation put into place that obviously, continually, regardless of who was involved, led itself to influence, if you will. I won't use all of those bad words. How do we avoid that? I think that's one of the questions. If we keep this Board, which I think has an excellent mission and a purpose, how do we keep that Board in check and in place to do the job it needs to do without being unduly influenced potentially by outside vested interests that have that availability? Is there a way to address that?

DR. POSHARD: If there's a way to completely hold the Board responsible to the ex parte communication rules and the Open Meetings Act, that's

what has to be put in place. If those are violated by Board members, then -- then, you know, obviously it can lead to undue influence. I think you've got to make sure that those two laws are absolutely in place and that somebody is holding the Board accountable and that they understand what those roles are. I don't think you have to take it to the nth degree, though, in the sense that you can't even communicate with another Board member, but you say that's been changed?

I wasn't aware of that. So I think maybe we're getting back toward the middle ground, Senator Althoff, that we need. But those two laws, if any member of the Board violates those, they're subjecting the entire Board to undue influence. And I don't know how you ensure that people do the right thing, you know.

SENATOR ALTOFF: Can I ask, do we currently -- we talked a little bit about this in prior task force meetings. Do we currently have written documentation after a denial has been submitted, do we have written information about why that -- is that handed to somebody, why the denial was made?

MR. CARVALHO: There's two things that exist in writing. One, for example, any prohibited ex parte -- this Board, as I've mentioned before, is different from any other board in that it's not just that ex parte has to be disclosed, it's actually prohibited. In most other settings in state government where there's an ex parte rule, it says if

there's ex parte, you're supposed to disclose it. This one has both a prohibition and a disclosure, because as Dr. Poshard said, he may not want to engage

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in ex parte communication, but if somebody comes up to him at a cocktail party and just starts going on at him before he can cut them off. He's received a communication. Or we get letters in the mail which are ex parte, and you know, you can't not open the mail.

So one thing you have in writing is there's a report to the General Assembly every year that Jeff's staff puts together of any ex parte as it occurred during the course of the year.

With respect to the decision making, one of the things that began under Dr. Poshard and continued under Chairman Lopatka is the Chair, especially when they vote, because the Chair is the leader of the Board, but each individual Board member will indicate, you know, in the ideal world where the application met all of the rules. They will say I vote in favor of this because it met all of the rules.

In the event where it's denied, they will typically say because this met -- failed to meet Rule No. 1, 3, 7 and 9, I'm voting no. And then in the in between, where they say notwithstanding that 1 and 3 were not met, because the cost figure was not met, because of the conditions of the ground that the

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applicant explained, or because the variance on Rule 3

was they were one dollar over the $400 square foot rule and it seems like a very good project, and one dollar over is not -- the Chair would put that all on the record. It's all transcribed, and then each of the other Board members as they vote.

Now, one of the things that has been suggested from time to time, especially the further distance you are from an actual board meeting, is why doesn't the Board do a written decision, you know, similar to the ICC. And historically, the reason has been because one of the things that everyone who is in the regulating community is interested in is speed. And if you know one thing about the ICC, it's -- their decisions are not fast, because if the Board, for example, at a meeting had a 3:1 vote to approve something, they would in effect be saying to the staff, now go back and draft something to reflect that 3:1 vote. The staff would draft it. It would have to come back at the next meeting. The staff would wordsmith it and vote to approve it or say, oh, you know, this doesn't quite reflect it. So you could build in 6 weeks or 12 weeks to get to a written decision if you wanted.

So the middle ground that Dr. Poshard started and Chairman Lopatka has continued is for the Board to elaborate the reasons for approval, denial or --

SENATOR ALTOFF: I guess that's what I'm also asking. Building on that, David, you're correct, but in situations that Dr. Poshard had somewhat

enumerated where there is consideration, it may -- that application may have met every single technical aspect, but because another application had this, you know, possibility of charity care or whatever else that positive approaches, is that documented that I denied Pam Althoff's hospital and approved Lisa Dugan's hospital because Lisa Dugan's hospital also admitted that they would do additional -- that's what I'm looking for.

MR. CARVALHO: I think Dr. Poshard's example was more hypothetical than real.

SENATOR ALTOFF: It might be hypothetical today, but if we go forward, I think it has a real possibility of occurring.

MR. CARVALHO: Well, it has a real possibility -- if you recall, one of the things that was discussed Monday in a prior meeting, does this

Board versus some other states do a comparative analysis where they have three pending. And this Board does not. So in fact, the way that it would come up is that it's the first across the line. If one application is done and ready to be decided before the other one, if that one is approved, it will occupy the space. If there was a need for a hundred bed hospital and it was a hundred bed hospital, there's no longer a need for a hospital. So --

REPRESENTATIVE DUGAN: So if all the process gets through first, this guy gets to the head of the line first.

DR. POSHARD: We had that happen in

Springfield. I remember right here, the hospital that was built here, the very next month we had an equally good application come before us, but we had already approved that application because it got to us first.

MR. URSO: This Board is prohibited from batching or doing comparative reviews. Unless they pass a rule to do that, and there is no rule in place for them to do comparative reviews or batching. So essentially every application is going -- should be looked at independent of any other application.

DIRECTOR MARAM: What was the basic

understanding of why batching -- some states do do batching, some don't. What was Illinois' perspective on not doing batching?

MR. URSO: I think it just was a choice that the Board made --

REPRESENTATIVE DUGAN: You could probably get into more trouble that way.

MR. CARVALHO: We have heard historically that boards were reluctant to do this because they were worried it would become more of a political issue.

REPRESENTATIVE DUGAN: Exactly. More trouble.

MR. CARVALHO: Yeah. Keep in mind, before -- as Dr. Poshard emphasized on ex parte and on Open Meetings Act, it was not always thus. Ex parte, the reason why you have that very strong ex parte is a reaction to prior situations. I can remember -- I've only gone through the CON process once as an

applicant, it was in '94, and you got brought into the back room by the Chairman, and a deal got negotiated where she would say, okay, we'll knock down this number beds here, and I want you to limit this, and here's the kind of contract I want you to use. And it

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was all this back room negotiation of very substantive matters. That ex parte rule, that can't happen. It doesn't happen. And that was your legislative reaction to a problem.

SENATOR ALTOFF: Right.

MR. URSO: Representative --

DR. POSHARD: If I may say one other thing. The great, great majority of proposals that came before the Board when I was there, and I assume still is this way, is not a competition between hospital systems to build a hospital. It's generally a particular system wanting to build a renovation or an addition, or maybe a new hospital, but other hospitals aren't in the area competing and so on and so forth. These illustrations that I was -- were using were just in the case that you did have that kind of competition, because you did have that occasionally in Plainfield, Bolingbrook -- there are a couple other --

SENATOR ALTOFF: All of the suburban area has that. That is, I have been to many, many of the Board meetings and observed, and in the suburban area and those fast growth areas, this is the issue. I mean, it really is.

DR. POSHARD: I understand it is.

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MR. CARVALHO: Parliamentary point. Technically you are now without a Chair. Under your bylaws, you are supposed to elect a temporary Chair, if someone wants to assume that role, and the Board can confirm it.

SENATOR BRADY: Lisa and I just talked. She is not going to come back. We intend to do this -- complete your testimony and questions. Barry, you were on the agenda today, but --

SENATOR ALTOFF: Bill is the Chairman now.

SENATOR BRADY: I think he just elected himself. Let me just come back -- I don't know that we need one. We can adjourn as well. But Barry, we were told that you wouldn't testify today.

DIRECTOR MARAM: Right. I deferred. You can always use me as a resource. But I thought time wise I wouldn't be on today.

SENATOR BRADY: So Lisa suggested that you would come back to another meeting and testify. So under our rules, what do you need to do?

MR. CARVALHO: Oh, just the task force should select somebody as the Chair.

SENATOR BRADY: I nominate Pam Althoff.

SENATOR ALTOFF: You just took it over. I

already nominated you ten seconds ago, and I'm leaving in ten minutes too. So we'll just conclude, Bill, if you want to do that.

SENATOR BRADY: Does anybody have any further questions?

MR. ROBBINS: Yes, I do very quickly, but

more of David.

MR. CARVALHO: Yeah.

MR. ROBBINS: As long as we're in process the Open Meetings Act, my impression is that you said under the recent changes to that, the Chairman could talk to an individual member. Could the Chairman have a daisy chain of conversations with multiple members?

MR. CARVALHO: No.

MR. ROBBINS: That's what I thought, based on my experience in the Adequate Healthcare Task Force, what you told us there.

MR. CARVALHO: Yes, the Open Meetings Act always precludes a daisy chain of conversations, so the Chairman couldn't talk to one person and then talk to another person and talk to another person.

MR. ROBBINS: So it's a very limited exception. If the Chair wanted to talk to one person on the Board, that Chair could do that, but couldn't

then say, I'm going to get the opinion of four or five people.

MR. CARVALHO: I'll defer to Frank if I get this wrong. The Chair could call each member and say what are your issues for Tuesday, but the Chair couldn't say, is call the member on application thus and such, let's have a conversation, and then call the next one. On application, that same number, let's have a conversation, and in effect try to put together a voting coalition, for example. I don't think that you could do. But you could certainly call every Board member and say -- which you could not do

before -- you could call every Board member and say, just going down the agenda, wondering are there any applications that you've got issues on. And then as a result of that conversation say, okay, well, I'll suggest that Jeffrey pull together some more material to get to you or whatever. You could do one at a time.

MR. URSO: Any two members can talk?

SENATOR BRADY: Period.

MR. URSO: Right.

SENATOR ALTOFF: Wouldn't have to be the Chairman, it could be two --

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MR. URSO: Yes, any two members can talk, but you can't go beyond that and solicit how do you feel about Application A, I've talked to Joe, he likes it, but --

REPRESENTATIVE DUGAN: Right.

MR. ROBBINS: You can't do that stuff.

MR. CARVALHO: That you cannot do.

DR. POSHARD: Senator, I have appointments.

SENATOR BRADY: I was just asking to see if there was any last questions from our members in Chicago. We stand adjourned.

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

I, Christina J. Riebeling, do hereby certify that I am a Certified Shorthand Reporter, Certified Court Reporter and Notary Public within and for the County of Sangamon and State of Illinois, and that I reported by stenographic means the proceedings and had on the hearing of the above-entitled cause on March 12, 2008, and that the foregoing is a true and correct transcript of my shorthand notes so taken.

Dated this 25th day of March, A.D., 2008.

_____
Certified Shorthand Reporter
Certified Court Reporter
Notary Public
(CSR # 084-004006)

My commission expires:
November 16, 2010