

Task Force on Health Planning Reform
Wednesday, March 12, 2008
8:00am-12:00pm

Stratton Office Building
401 South Spring Street, Rm. 500 1/2
Springfield, Illinois

Bilandic Building- IDPH Director's Office
160 N. LaSalle Street, 7th floor
Chicago, Illinois

Members Present:

- Springfield: Senator Susan Garrett, Representative Lisa Dugan, Senator Pamela Althoff, Senator Bill Brady, Representative Brent Hassert, Ken Robbins, Gary Barnett, William McNary
- Chicago: Heather O'Donnell, Sister Sheila Lyne, Travis Stein
- Via Phone: Margie Schaps, Donna Thompson, Myrtis Sullivan (until 9:30am)

Ex officio:

David Carvalho/IDPH, Jeffery Mark/HFPB, Barry Maram/IHFS

Staff Present:

Illinois Public Health Institute: Kathy Tipton (Chicago), Laura McAlpine, Mairita Smiltars

IDPH: Frank Urso

HFPB: Kyle Kingsley (left early), Nandita Khanna

Court reporter: Christina Riebeling, Golembeck Reporting Services

Call to order- 8:10 am

State Senator Susan Garrett called the meeting to order. Introduction of Task Force members in Springfield and Chicago. The presentation today will be by Dr. Glenn Poshard, President of Southern Illinois University, and former Health Facilities Planning Board Chair, June 2004-January 2006.

Presentation by Dr. Glenn Poshard *(Note: Did not have a PowerPoint or written testimony.)*

- Thanked the Task Force for asking him to present testimony. Gave an outline of his understanding of the role of the Health Facilities Planning Board during his tenure as Chair:
 - Preserving health care services throughout the state
 - Protecting access to healthcare services in underserved communities, including inner-city and rural
 - Rational distribution of healthcare services based on healthcare needs rather than market forces
- Benefits of the CON process
 - Providers are publicly held accountable to serving communities that need charitable services
 - CON contributes to enhanced quality of services, e.g. cardiac.
- Commitment of Health Facilities Planning Board members
 - Found the Board to be doing an honest assessment of the applications
 - All Board members do the work as volunteers and the time commitment is very demanding, requiring significant time commitment two weeks out of each month in application review and Board meetings.
 - Hard to do a good job given the large time commitment as a volunteer

- Experience with the Health Facilities Planning Board staff
 - Staff, including Executive Secretary, were professional and objective in providing technical assistance to me as chair.
- Perspective on context in Illinois for Health Facilities Planning
 - Current act was established when there was a glut of healthcare facilities and as such the primary purpose of the act was to contain cost by preventing unnecessary healthcare facilities and improve access, particularly for inner-city and downstate.
 - Struggled with unnecessary duplication of healthcare services
 - Part of the expertise I brought to the work was my experience as an Illinois legislator and a U.S. Congressman serving districts that were majority Medicaid and Medicare patients, and I wanted to ensure Medicaid and Medicare access. Ensuring Medicaid and Medicare access is important in our state both in rural and urban areas.
- Recommendations regarding emphasis of the mission of the Board as well as changes to the current act that establishes the Health Facilities Planning Board:
 - Promote needed services in underserved communities.
 - Ensure access to care.
 - Maintenance of quality.
 - Ensure a rational healthcare delivery system based on community need.
 - Include comprehensive healthcare planning as part of the work of the Board, which is a time consuming enterprise, so not sure how to get to that, given the large time commitment already in place to review applications.
 - Expansion of the number of Board members, ideally to nine to eleven, but seven to nine may also be a reasonable increase. 5 members is too small, particularly if there is a conflict of interest which reduces the number of potential voters.
 - Larger numbers also allows for establishment of standing board committees for rural, technology, etc.
 - Selection of board members should be based on knowledge of healthcare and where in the state they are from. Need to have background in healthcare or healthcare planning to be on the board.
 - Decisions made by the board are too important and weighty to be made strictly along the lines of politics.
 - Taskforce may want to consider relaxing mandate that board members cannot have immediate family member involved with healthcare center in any way. Healthcare is #1 employer in southern IL so that disqualifies many good potential board members who may have a family member working as a social worker, therapist, secretary or janitor in a hospital or healthcare center.
 - Preserve independence of board.
 - Protection of staff in compiling findings.
 - *Ex parte* provision is good and needed. Governor told me to clean the board up, and one of my main objectives was to keep board free of outside influences.
 - Finally I would recommend that the task force eliminate the sunset statute, or at a minimum, extend the repeal date. Program needs time to reach potential. I think good people are discouraged from being employed in this program right now since they are worried they will not have a job next year if the board ends. By staff, I mean technical staff, not executive staff. People who have families need job security.

At this point, Dr. Poshard began answering questions from the members.

Question by Senator Brady: stated that he felt that a shortcoming of the Board was acting as a forum for healthcare needs of the state, and this was one of the 4 key areas that Dr. Poshard said the board assisted with.

- Dr. Poshard responded that with every application, there was a public hearing and some of those public hearings brought in 200 people. Discussions got into the needs of the community with respect to healthcare delivery system, and those were great forums.
- Senator Brady noted that board members not attending the fora could lead to a perception problem. Asked how many board members attended these fora.
- Dr. Poshard responded that the board members can't attend the fora because they do not have the time to travel and to attend meetings. Dr. Poshard read a transcript of everything that was said at the fora because he didn't have time to travel.
- Senator Brady stated that it was a public concern that board members do not bother to attend public meetings. Though Dr. Poshard suggested continuation of volunteer board, if we can afford to pay people compensation for their time on the board, should we? It is better to have professionals to commit real time and get real money to make these decisions.
- Dr. Poshard responded that as a volunteer there is no time to attend public hearings.
- Senator Garrett asked how Dr. Poshard had time to read but not attend meetings.
- Dr. Poshard responded that the travel time was the difficult part. He could make time but not give up 2 days for the travel back and forth.
- Jeff Marks commented that no one ever complained to him that the board members weren't at the public meetings.
- Dr. Poshard confirmed that no one ever complained to him.
- Frank Urso also stated that he attended some meetings and no one ever approached him to ask where the Board members were.
- Senator Garrett had assumed the board members attended, but she understood why they did not give the time commitment. However, she felt it was important for them to be at these meetings. She thought applicants may have been afraid of retribution so they didn't complain to staff that board members weren't there.
- Jeff Mark responded that in his experience applicants were not shy to complain or assert themselves with staff. They come in with their lawyers and challenge everything.
- Senator Brady responded that he had found the opposite- that applicants were intimidated, and Senator Garrett agreed with this.

Question by Senator Brady: Asked Dr. Poshard if he believed board members should be paid or volunteer if the board continues.

- Dr. Poshard stated that he could only tell the Task Force this: the expectations of work for this board as a volunteer were enormous and overwhelming. He couldn't say whether you should pay the board or not. But as chairman he felt the need to be totally prepared for every meeting.
- Senator Garrett stated that Dr. Poshard may have been an exceptional chairman- however the current framework of having volunteer board members makes it impossible for them to do everything necessary and so they rely on staff. So one could say the staff really controls things. Senator Garrett agreed that if the board is reconfigured as a paid position, the board members would attend hearings and would make their own decisions and not rely on staff.
- Dr. Poshard stated that when he first joined the board, he spent 2 weeks going over rules and regulations with the staff. They covered everything, even appropriate relationships between board and staff. Dr. Poshard stated that he was told the only appropriate relationship between board chair and Executive Secretary was one of technical expertise. It was clearly understood

and stated that no member of the staff was to influence the board. And that never happened when Dr. Poshard was on the board. He did ask technical questions though.

Question by Senator Garrett: What was your health care expertise was you were appointed?

- Dr. Poshard responded that he has a Masters in Health Education, and was chairman of the U.S. Congressional Committee on Rural Healthcare. But he came on more to clean up the board and restore integrity rather than for his expertise.

Question by Ken Robbins: With respect to attendance of board members at hearings, that issue was not raised by members of the Illinois Hospital Association. Given the large amount of time taken to prepare for meetings, is that the best way to make important decisions on healthcare dollar spending? Perhaps we should narrow the scope of activities that are regulated to decrease the stack of paper to review. Narrow the scope to where the most dollars will be spent, and then the workload will be more manageable.

- Dr. Poshard responded that from his perspective as someone from downstate IL with its current economics, there are two institutions in a community that hold it together - the schools and the hospital – and both are major employers. Dr. Poshard looks at anything that threatens the ability of either institution to survive as suspect. That is why during his tenure on the board, he weighed in heavily in the protection of the existing hospitals. It would be a major problem if the viability of that hospital were threatened by Ambulatory Surgical Treatment Centers (ASTC) coming in. We had to review ASTC applications in balance - they have different expenses as hospitals and are not required to do charitable care. He didn't see the necessity of an ASTC going into unnecessary competition with hospitals, and he asked them to work out an arrangement to minimize competition.
- Ken Robbins asked what if you were only looking at new facilities instead of changes to existing facilities.

Question by Senator Brady: How much of the Board's decisions is subjective and how much is objective if the only input they receive from staff is technical?

- Dr. Poshard responded that decisions are a combination of both. Sitting on the board is not a science. You weigh the data you have. For example, 4 major hospitals were vying to build a new hospital in a Chicago suburb. We decided to approve only one in Bolingbrook because the area didn't need 4 new hospitals. Dr. Poshard stated that his decisions were made on objective data and staff reasoning did not influence his choice. The staff studies the application based on rules and then they make a report stating whether or not the applicant met certain criteria.
- Senator Garrett requested a copy of some of these staff reports for the Task Force.
- Senator Brady stated that these rules/criteria are supposed to drive how these hospitals apply. Is there a general rule of how many criteria need to be met to make a decision?
- Dr. Poshard responded no. If we had to accept carte blanche the staff evaluation, then we would turn down every application. Every application has some criteria that are not met.
- Senator Brady asked if Dr. Poshard ever set a parameter for himself.
- Dr. Poshard responded that no, he did not. He does not believe he ever approved an application that met less than 50% of the criteria. The Board weighs and balances the staff report with other data in order to approve. The Board sits down with applicants and can tell them they must improve on certain criteria in order to be approved and this is all done under oath. The Board can make sure applicants stay committed to their oath.

Question by Senator Garrett: Did you ever come into conflict with your vision of an application versus the staff's analysis?

- Dr. Poshard responded that many times at board meetings, he publically challenged staff. Based on pure objective data, he could see why staff would analyze something one way, but based on the whole picture; he couldn't turn down certain applications.
- Senator Garrett asked if in the past, did the board members take technical information from the staff and not challenge it?
- Dr. Poshard responded that they could have done so. The board members receive a lot of information and that is why they must study it.
- Senator Garrett expressed concern that having a political appointee on the HFP board is troubling because that person may not have the desire or expertise to serve and they may not look at the whole picture when making application decisions.
- Dr. Poshard agreed that he did not feel politicians should be on the board at all unless they have expertise. He believed that the Board did a good job for the most part.

Question by Senator Brady: Do you set higher standards for yourself than your fellow board members?

- Dr. Poshard responded that he did not set different ethical standards. He only meant that he took the time to review all the materials because he felt his fellow board members may not always have had the ability to handle the work load. Dr. Poshard felt his board members did a good job of asking questions, but he could not assume that all board members came to meetings fully prepared.
- Senator Brady stated that it seemed that the staff has had way too much influence on the board. Staff took advantage of the fact that the chairman wouldn't have time to fully prepare. Also the Chairman votes first and that doesn't happen anywhere else. Senator Brady felt we are asking the board to do way too much and that too much power is given to the Chairman.
- David Carvalho clarified that when the board was corrupt, the chairman voted last. Dr. Poshard started the practice of voting first.

The Task Force begins to discuss the benefits and drawbacks of *ex parte*.

- Dr. Poshard reported that due to *ex parte* he could not talk to other board members outside of the Board meeting. Dr. Poshard expressed his frustration that he could not talk about applications with any other board member outside of a meeting to honestly review his opinions and thoughts. And board members can only get technical info from staff. It was a difficult situation to not be able to discuss an application with anyone else.
- David Carvalho clarified that the *ex parte* and open meetings rules are separate. The open meetings rule has been amended since Dr. Poshard left the board, and now two board members are allowed to discuss an application.
- Dr. Poshard responded that this appears to have fixed the major problem he was discussing.
- Frank Urso further clarified that *ex parte* deals with third parties or outsiders trying to influence and the Open Meetings Act allow 2 board members out of 5 to have a discussion. Every new board member is given an extensive orientation session that discusses *ex parte* and encourages board members to err on the side of never talking with applicants at any time.
- Jeff Mark clarified that the board adopted the submission of a Letter of Intent (LOI) that is filed 60 days before the application as the cut-off point where applicants could no longer communicate with board and staff.

Question by Senator Althoff: She suggested that the process be changed so that applicants can assume approval, and then the Board would have to state why an application was denied if it was not automatically approved. Would this impact the level of work for each board member if we assume each application has merit and is approved? Would this make it easier for Board members?

- Dr. Poshard replied that implementing that would irreparably harm the process. If you flip to the assumption of approval vs. assumption of non-approval there would be an increased likelihood of wasteful healthcare spending. For instance, if 5 hospitals apply to build a hospital in the western suburbs of Chicago, and there is nothing in the application that prevents the Board from denying them, then 5 hospitals will be built, but in reality only 2 hospitals were actually needed, and that creates wasteful spending.

Question by Senator Garrett: Why was it necessary for you to meet with Jeff Mark and Frank Urso this morning?

- Dr. Poshard replied that he hadn't served on the board in 2 years, and he had no idea what was going on at this point and he wanted an update. He had a phone meeting yesterday and breakfast this morning.
- Senator Brady asked Jeff Mark if he has met with other people before they testify in front of the Task Force, and Jeff Mark replied that he had not.
- Senator Garrett was concerned if staff and testifiers meet before task force meetings as it feels inappropriate after what happened in the past. Senator Garrett stated that Dr. Poshard should have called her or Representative Dugan if he needed information.
- Dr. Poshard responded that everything in his testimony was his opinion, not Jeff Marks'. He needed to know what regulations have changed in past 2 years and that was the only reason he asked to meet with Jeff Mark.

Question by Senator Brady: What is your opinion on how the Executive Secretary should be hired?

- Dr. Poshard responded that the Executive Secretary should be appointed by the IDPH Director.
- Jeff Mark noted that the executive secretary is appointed by the Governor and interviewed by the IDPH Director. Jeff believed that Dr. Whitaker made the final decision but the law states that the IL Governor can hire and fire at will.
- David Carvalho said that the statute changed in 2003, and before that the Director of IDPH was allowed to hire and fire the executive secretary at will.
- Senator Brady asked Dr. Poshard his opinion of Mark's performance during his tenure as Board chair.
- Dr. Poshard responded that it should be the responsibility of the IDPH director to review the qualifications of the executive secretary, so he can't comment or judge on how that person should be hired or fired. He did find Mr. Mark to be a consummate professional.
- Senator Brady responded that, if the Board indeed continues, the Task Force has an obligation to keep it free from corruption. The recent trial in Chicago surrounding governor appointees gives the Task Force a lot to think about. These important positions need to be pure, and there should be an extra layer of confirmation to remove politics by having the Senate confirm all gubernatorial appointees. Senator Brady asked Dr. Poshard if he could think of any reason why that shouldn't happen.
- Dr. Poshard reported that he did not see a problem with it.
- Representative Brent Hassert responded that you can go the other way with politics by having the Senate confirm appointees. For instance the Senate could choose to hold up an appointee.

He recommended caution in moving forward so that the Task Force does not implement things based on judgments of who is sitting in the governor's seat right now.

Question by Representative Hassert: My question is about JCAR (Joint Committee on Administrative Rules) – are we lagging behind with respect to our rules?

- Dr. Poshard responded that he does not know enough about the JCAR rules. He did think the rules were terribly antiquated when he was on the board mostly because they were not doing comprehensive healthcare planning. We need healthcare professionals to help with planning to let us look five years ahead. The board attempted to have it when Dr. Poshard was on the board but there were never enough resources or time to do it well. Dr. Poshard was not sure that bed planning is accurate all the time, but the board uses that as an important piece of information to approve a CON. Until we get comprehensive healthcare planning, the rules will always be antiquated.

Question by Representative Dugan: She commented that the board was approving applications without knowing the real need because there is no comprehensive planning there, and that is a real concern. What information does the Board use to make decisions other than what hospitals are saying?

- Dr. Poshard replied that he was never comfortable with the subjectivity part of his job. For instance, approval of the Bolingbrook hospital happened because no other hospitals in the area objected.
- Rep. Hassert asked if that was reason enough. Do the guidelines need to change so that they make sense? He hears from his constituents when things don't happen.
- Dr. Poshard thought the legislation could do incremental correction, but if the board can see a 10-year plan that says "this geographic area will undergo these demographic changes, and therefore this report says we will need x number of new hospitals in this area", the job of a board member would be far more objective.
- Rep. Hassert stated that the board needs good tools in place to help them make the best decision uninfluenced by politics. They need factual information to present to constituents when something is denied. Right now constituents don't get that.
- Dr. Poshard gave an example of Lutheran General/Advocate that wanted to expand their hospital in DesPlaines or Park Ridge. The board wanted to allow the expansion because Advocate had a good reason. However, Advocate also has hospitals in the inner city, and the board was afraid that if Advocate spent dollars on suburban hospitals, they would cut back in the city where they had the most charitable cases. Advocate needed to give the board assurances and commitments that they would increase charitable care in the city in order to be approved for their suburban expansion. Dr. Poshard thought they struck a good medium between preserving urban care and growing suburban care and the board needs to continue to strike that balance going forward. Asked them to keep commitment to low-income communities where they had services when agreeing to expand the facility that was in a profitable area.

Question by Senator Brady: If two people submitted equal applications, would the Board approve the applicant that would invest some money in low-income areas?

- Dr. Poshard responded no, but hospitals should not be allowed to shelve their facilities in low-income areas.
- Senator Brady stated that he wasn't sure the government should have the ability to make those decisions.

- Dr. Poshard responded that if left to the market, hospital systems would abandon their hospitals in low income and rural areas. The Board doesn't want to force hospitals to stay open if they are losing money. But if a hospital system stands to make a large profit in a certain geographic area, he thinks we should mandate that they use some profit to help their unprofitable charitable areas.

Question by Representative Dugan: Do the Board decisions hold if the hospital systems actually do not put money into their charity care facilities?

- Frank Urso stated that these agreements are made in open session and the facilities have to report back to board and staff on how they are moving forward on those agreements.
- Senator Brady stated that it sounded like the Board is holding hostage this one applicant because they won't put money into charity care.
- Dr. Poshard stated that in most cases, the hospitals knew they needed to keep their inner city hospitals open. In most cases, the Board didn't even have to ask them to keep those hospitals open or to funnel money to them. The Board never asked hospital systems to take a huge financial hit to keep those hospitals open-they just asked for balance.
- Rep. Dugan asked that if there are two applicants but only one applicant has inner city hospitals, does that give that applicant an unfair advantage?
- Dr. Poshard responded that it may give them an advantage, but the Board gives approval based on many criteria.
- Senator Althoff stated that she thought CON wasn't supposed to deal with market share, but in actuality it seems that the CON approval process does deal with that/protect it.
- Dr. Poshard responded that he didn't know how we could completely eliminate that. Trying to maintain balance was important.

Task Force discusses staff influence of Board members:

- David Carvalho brought up the issue of staff influence. He and Jeff interact the most with the board. Carvalho wanted to say on the record that he views his role as an IDPH presence at the board meeting to express opinions on issues that deal with health. He did not recall Dr. Poshard ever asking him about his opinion about applications. Mr. Carvalho further invites the Task Force to attend the next CON hearing on April 8-9 in Springfield. Transcripts can also be shared.
- Dr. Poshard stated that when he was in the U.S. Congress, he seldom came to any decision on any bill without talking with his staff and getting their opinions to digest. His Chief of Staff and Policy Director generally had more time to study the issues and Dr. Poshard got their opinions when making his decisions. When he joined the Board and was told he couldn't ask any other professionals about their opinions, it was ridiculous. He would never run his office that way.
- Senator Brady asked if prior to the current act, Board members were allowed to ask staff their opinions.
- David Carvalho responded that technically staff can give opinions to board members, but that he and his staff have determined not to do so, seeing that as not being their role. His opinions about issues are expressed in open meetings, but never include a recommendation that an application be approved or denied.
- Dr. Poshard stated that yes, he did think the chief staff person (i.e. board) should be able to consult with the experts (i.e. staff). He would have had to be omnipotent to come up with the best decision without being able to talk with staff or other board members. It is not fair to board members to have them make their decisions this way.

Question by Senator Brady: Prior to Dr. Poshard, the Board Chairman voted last. Why did Dr. Poshard choose to vote first?

- Dr. Poshard stated he voted first because he knew he had studied the proposals. He always first let the board ask questions and say what they wanted to say before he cast the first vote. Prior to each Board meeting, he marked his stance on each application with a yes, no, or question mark. When he was at the hearing, his decision may have changed based on what he heard.

Question by Senator Althoff: In the past the board had significant problems. The question is not how the board was conducted under Dr. Poshard's leadership. Previously there was a situation in place that lent itself to "influence". If we keep the HFPB, which she thinks has an important purpose, how do we keep the board in check and in place to do the job without being unduly influenced by outside vested influences?

- Dr. Poshard responded that this could be done by keeping board members accountable to *ex parte* and open meetings act. Those two laws need to be in place, the board needs to understand them, and someone needs to hold the board accountable. But he did not know how you ensure people do the right thing.
- Senator Althoff asked if there is written information of why denials of applications are made.
- David Carvalho responded that prohibition and disclosure of *ex parte* for this board is different than for most boards. Here, *ex parte* is flat out prohibited. With respect to decision making, the board will generally state an application was denied because it did not meet x, y, and z, and those reasons are included in the written transcription. There are no written opinions because of the slowness of that process- it would require that first the board votes, then staff writes up the decision, then the board will have to review the write-up and wordsmith it, etc. This would build in at least 6 weeks of delay.
- Senator Althoff asked if there is documentation of when an application meets every technical aspect but is denied because another applicant has charitable hospitals.
- David Carvalho interjected that Dr. Poshard's example was hypothetical, but Senator Althoff stated that it might be real in the future.
- Mr. Carvalho stated that the board approves on a first come, first serve basis.
- Frank Urso stated that Illinois does not use batching or comparative reviews. Each application is looked at independently.
- David Carvalho stated that IL does not do batching because the board is worried that that could become a more political process.
- Dr. Poshard stated that most applications are not between hospital systems in competition. Most application are for expansion or to build where there are no existing hospitals. The illustrations he used in his testimony today were very occasional.

David Carvalho stated that since Senator Garrett and Representative Dugan have left, the Task Force is technically without a chair person. Senator Bill Brady assumed chairmanship.

David Carvalho clarified that the open meetings rule allows one board member to call every board member and have 2-person conversations, but not in a serial fashion that has the effect of a 5 person conversation. Frank Urso stated that any two board members can talk- not just chairman and a board member.

Presentation by Barry Maram, HFS

Barry Maram offered himself as a resource to the Task Force and can come back if needed.

Senator Brady accepted a motion to adjourn. ***Motion passed.***

Adjournment 10:05am.

Minutes respectfully submitted by Mairita Smiltars.