

Debrief

Practice Area Case Studies

September 2007

Health Care Industry

Preparing Gerber Memorial Health Services for the Addition of a Health and Wellness Center

Health Law Lexicon

Certificate of need: controls hospital growth by requiring that hospitals to prove there is a need for the new service they want to provide.

Bond: a debt security in which the authorized issuer owes the holders a debt and is obliged to pay the principle and interest at a later date.

Phase I Environmental Site Assessment: assesses land and reports on environmental factors that can alter the land's value.

Phase II Environmental Site Assessment: when soil and water samples are required to determine how much of a contaminant exists.

Problem: *Gerber Memorial Health Services in Fremont, MI planned to open a new health and wellness center but lacked the resources to manage the entire project and address legal issues.*

Administrators at Gerber Memorial Health Services—Ned Hughes, President, John Sella, Vice President of Finance, and Sue Nieboer, Vice President of Clinical Operations, envisioned building a wellness center in Fremont. The center would house fitness rooms, nutritional teaching kitchens, a pharmacy, and more. However, the trio was unfamiliar with the legal issues — including financial and property issues — surrounding a large-scale addition.

The potential property for the wellness center previously housed a Wal-Mart. When Wal-Mart purchased the property, they restricted

what could be developed on the site in the future. These restrictions included the building of pharmacies, which was one element of the proposed wellness center.

Another issue Gerber faced was that prior to the land being owned by Wal-Mart, it was a farm that may have used pesticides. This meant that the site could potentially be contaminated.

Gerber also had to determine if they were required to have a certificate of need. The purpose of certificates of need is to control the growth of hospitals and ancillary services by requiring that the institution proves there is a need within the community for the service they want to provide.

Gerber, a long-time client of Smith Haughey, realized that with all the related work they had to do with the project, they did not have time for —



Rendition of Gerber Memorial Health Services' addition, which is called Tamarac: The Center for Health and Well-Being.

Health Law Practice Group

William R. Jewell	P. David Vinocur
R. Jay Hardin	Kirk W. Morgan
Brian J. Kilbane	Cara L. Nieboer
Richard C. Kraus	Shawn Worden
Christopher R. Genther	Joseph E. Belsito
Veronica A. Marsich	Adil A. Daudi



or the understanding of — all the work that needed to be done before breaking ground for the wellness center.

Gerber called Bill Jewell, who then turned to the experts. He assembled a team of Smith Haughey attorneys consisting of T.J. Ackert, Chip Behler, Veronica Marsich, Kirk Morgan, and Robert Parker to serve Gerber by working on bond documents, property acquisition, environmental issues, builder and architect contract reviews, the certificate of need, and other issues that arose.

The Smith Haughey team determined that Gerber was not required to have a certificate of need. Veronica secured documents from the state of Michigan stating that a certificate of need was unnecessary.

Smith Haughey also helped the client with environmental issues. They worked to determine if a Phase I Environmental Site Assessment or a Phase II Environmental Site Assessment was needed.

Our firm determined that a less costly and less time consuming Phase I assessment was

needed, and Gerber benefited from this in two ways. First, they were able to obtain a bond from a bank (banks will not issue bonds without an environmental assessment). Secondly, this assessment ensured that Gerber was purchasing unpolluted land.

The other land issue was that Wal-Mart had put restrictions on what could be built at the site. One restricted element was a pharmacy. Smith Haughey helped the client negotiate a favorable outcome in order to get the property seller and Wal-Mart to agree to let Gerber put a pharmacy on the site. According to Kirk Morgan, this was the biggest legal challenge to overcome.

Smith Haughey's work negotiating the purchase agreement, drafting documents, reviewing financials, and coordinating other services resulted in "Tamarac: The Center for Health and Well-Being" in Fremont.

With the help of Smith Haughey, Gerber's newest center will promote community health in the 45,000 square-foot facility, which is expected to open in the fall of 2007.

Key Take-Aways

- We guide hospitals and other institutions through all elements of expansion, including purchasing property, working through the financials of the purchase, analyzing architect and builder contracts, addressing environmental issues, coordinating site surveys, and ensuring regulatory compliance.
- We are experienced with all of the steps it takes to complete large-scale, health care construction projects.
- Working as a team, SHRR attorneys can assist health care clients with all of their legal needs.