

**STATE OF ILLINOIS  
DEPARTMENT OF TRANSPORTATION**

In re: The Matter of the Proposed Children's Memorial Hospital Rooftop Heliport to be located in Chicago, Illinois )  
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**MOTION TO BAR TESTIMONY OF REX J. ALEXANDER**

NOW COMES the Streeterville Organization of Active Residents, hereinafter referred to as "SOAR", and as their Motion to Bar the Testimony of Rex J. Alexander at the public evidentiary hearing in connection with the rooftop heliport which has been proposed by the Children's Memorial Hospital to be located in the Streeterville neighborhood, Chicago, Cook County, Illinois, states as follows:

1. The Children's Memorial Hospital (hereinafter "CMH") has filed an Application for Consideration by the Illinois Department of Transportation for a rooftop heliport to be operated in the Streeterville neighborhood, Chicago, Cook County, Illinois.

2. SOAR filed a timely Written Request for Hearing as to the Validity or Reasonableness of IDOT's Order regarding the Proposed CMH's Heliport and Motion for an Evidentiary Hearing at which the safety of the proposed heliport can be fully explored on or about April 29, 2009.

3. A public evidentiary contested hearing has been scheduled in this matter to commence on Wednesday, July 22, 2009.

4. On July 15, 2009, counsel for CMH disclosed to SOAR and to Administrative Law Judge Neville, for the first time, its intent to call as a witness Rex J. Alexander ("Alexander"), who is purportedly an expert on the topic of heliport safety.

5. SOAR has not been afforded the opportunity to depose Alexander, nor has CMH even disclosed the substance of his testimony or any reports he may have drafted.

6. SOAR requested that subpoenas be issued for the depositions of any expert witness that CMH intended to call at the public hearing, as well as for all reports, data, documents, drafts of reports, outlines, notes, communications, studies, computer or electronic documents, which any such expert witness prepared or which were prepared on their behalf regarding the proposed heliport. No such subpoena was ever issued.

7. SOAR also requested that a subpoena be issued to CMH for all reports, data, documents, drafts of reports, outlines, notes, communications, studies, computer or electronic documents, which they prepared or which were prepared on its behalf regarding the proposed heliport. No such subpoena was ever issued.

8. SOAR would be severely prejudiced if Alexander is allowed to testify after only being disclosed at this late date, only one week before the hearing is scheduled to begin, and when SOAR has been prevented from discovering any information about Alexander or his potential testimony as it relates to the proposed heliport.

9. Under Illinois law, the purpose of discovery rules which govern the timely disclosure of expert witnesses, their opinions, and the bases for their opinions is to avoid surprise and to discourage strategic gamesmanship. *Lopez v. Northwestern Memorial Hospital*, 375 Ill.App.3d 637, 873 N.E.2d 420 (1<sup>st</sup> Dist. 2007); *Nedzveckas v. Fung, D.P.M.*, 374 Ill.App.3d 618, 872 N.E.2d 431 (1<sup>st</sup> Dist. 2007). An appropriate sanction for such untimely disclosure is exclusion of the witness. *Id.*

10. SOAR was allowed to depose two of CMH's expert witnesses, Meiring J.H. Beyers and Jeffrey A. Jackson, both of whom are also on CMH's witness list. Both Meyers and Jackson testified at their depositions that they were not hired to perform, and did not perform, a safety analysis with respect to CMH's proposed rooftop heliport (copies of the deposition

safety analysis with respect to CMH's proposed rooftop heliport (copies of the deposition transcripts of Beyers and Jackson were attached to SOAR's Motion for Written Orders and Motion to Reconsider Allowing Cross-Examination). Moreover, neither Meyers nor Jackson knew who had or was going to perform any such safety analysis on behalf of CMH. Now, just seven days before the scheduled hearing at which the safety of CMH's proposal is certain to be a key issue, CMH has for the first time disclosed a purported expert on heliport safety.

11. CMH is operating via surprise and employing strategic gamesmanship by disclosing Alexander in such an untimely fashion. These proceedings must not be tainted, nor SOAR prejudiced, by such tactics. Exclusion of Alexander as a witness is the appropriate sanction.

WHEREFORE, the Streeterville Organization of Active Residents respectfully requests that Administrative Law Judge Neville enter a written Order barring Rex J. Alexander from testifying at the public evidentiary hearing.

Dated: July 16, 2009

Respectfully submitted,

Streeterville Organization of Active Residents

BY: HINSHAW & CULBERTSON LLP

BY:

  
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STATE OF ILLINOIS            )  
  ) SS.  
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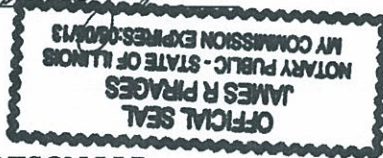
**VERIFICATION**

I have read and am familiar with the contents of the foregoing document and the attached exhibits, if any. I intend and desire that in granting or denying the relief requested, the Division shall place full and complete reliance upon the accuracy of each and every statement made in this document. I have diligently attempted to ascertain the truth of all such statements. Every statement contained in this document is true and not misleading, to the best of my knowledge and belief.

  
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Richard S. Porter

Subscribed and sworn to before me  
this 16th day of July, 2009.

  
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NOTARY PUBLIC



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**AFFIDAVIT OF SERVICE**

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on July 16, 2009, a copy of the foregoing **MOTION TO BAR TESTIMONY OF REX J. ALEXANDER** was served upon:

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