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JUDGE RIPS HOSPITAL CLOSURE PROCESS

A Brooklyn judge ruled Thursday that the state's regulations for closing hospitals were "unconstitutionally vague," further stymying the closure of Long Island College Hospital and raising broader questions about the state's closure process.

Brooklyn Supreme Court Justice Johnny Lee Baynes said in his ruling that the regulation governing hospital closures didn't provide clear criteria for the state Department of Health to evaluate such closures. The judge said that therefore any approval issued for plans to close LICH is invalid.

"Such vagueness assures that the [health] Commissioner has unfettered discretion under its terms to approve the closure of LICH for any reason, or no reason at all," he wrote. The judge's ruling won't be effective until an order is filed, likely later this month.

The regulatory passage at issue is short and seemingly simple: "No medical facility shall discontinue its operations or surrender its operating certificate unless 90 days' notice of its intention to do so is given to the commissioner [of Health] and his written approval obtained."

In court last month, attorneys for the Department of Health argued that the statute existed for the department's benefit to ensure that patients' health wasn't endangered and that hospitals—not the department—decide whether or not to close.

But Justice Baynes said the state's legal argument didn't take into account the health department's stated mission "to promote and assure the provision of health care in any given neighborhood."

Unions greeted the ruling as a victory, saying it shows the Department of Health needs to take into account broader concerns about the future of health care in a neighborhood.

"The process they've used in every one of these closures has left community after community with nothing, no health-care," said Jill Furillo, executive director of the New York state Nurses Association.

The judge also ruled that the regulation failed to make clear whether a so-called 90-day notice period meant that the Department of Health must wait 90 days after the hospital filed a closure plan to allow the closing to move forward.

Attorneys for unions argued in court that the health department allowed SUNY Downstate, which controls LICH, to move forward with closing the hospital before that period had passed.

A spokesman for SUNY, who said the university's attorneys were reviewing the decision, declined to comment.

The decision stemmed from two, separate lawsuits led by the New York State Nurses Association, 1199 SEIU United Healthcare Workers and Public Advocate Bill de Blasio, who received the most votes in the Democratic primary for mayor. It marked a political victory for Mr. Blasio, but a defeat in his efforts to give the office of public advocate more teeth. The judge said that the public advocate lacked standing to pursue legal action against state agencies, such as the Department of Health.

"We set out to save this hospital. And today, we are closer than ever. Justice Baynes' ruling won't just protect health care in this corner of Brooklyn—it will prevent heedless hospital closures across the city and protect community hospitals from falling prey to luxury condo developers. After years of seeing one hospital close after another, we have finally turned a corner," Mr. de Blasio said.

The LICH closure has been further complicated by another ruling by Brooklyn Supreme Court Justice Carolyn Demarest, who rejected SUNY's 2011 purchase of the hospital and is working with parties about potentially transferring the hospital to a new operator.