

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

---

ST. JOSEPH HEALTH SERVICES )  
 OF RHODE ISLAND )  
 )  
 v. )  
 )  
 ST. JOSEPH HEALTH SERVICES )  
 OF RHODE ISLAND RETIREMENT )  
 PLAN, as amended )  


---

C.A. No. PC-2017-3856

**OBJECTION OF CHARTERCARE FOUNDATION  
 TO RECEIVER’S PETITION FOR SETTLEMENT INSTRUCTIONS  
 AND  
 EMERGENCY CROSS-MOTION TO POSTPONE SEPTEMBER 13, 2018 HEARING  
 AS IT RELATES TO PROPOSED SETTLEMENT TERMS REGARDING  
 CHARTERCARE COMMUNITY BOARD’S ALLEGED  
MEMBERSHIP INTEREST IN CHARTERCARE FOUNDATION**

CharterCARE Foundation (“CCF”) now files this objection to the Receiver’s Petition for Settlement Instructions (the “Petition”). The Petition attaches a Settlement Agreement (the “Settlement”) between the Receiver and several individually named participants in the St. Joseph’s Health Services of Rhode Island (“SJHSRI”) Retirement Plan (the “Plan”) (collectively, the “Claimants”), on the one hand, and SJHSRI, Roger Williams Hospital (“RWH”), and CharterCARE Community Board (“CCCB”) (collectively, the “Settling Defendants”), on the other hand.

Of great importance to CCF, one of the terms of the Settlement involves a “[t]ransfer to the Receiver of the Settling Defendants’ rights to CharterCARE Foundation.” (Petition, ¶ 14(c)). To effectuate that settlement term, Settling Defendants have agreed to, within five days of judicial approval of the Settlement, execute and deliver to Claimants the “Consent of

CharterCARE Community Board as Sole Member of CharterCARE Foundation” (the “Consent”) attached at Exhibit 12 to the Petition. CCCB purports to be CCF’s sole, controlling member.

The Consent calls for CCCB to immediately: (a) replace the existing CCF Board of Directors currently headed by Donald C. McQueen with a new three-member Board consisting of three attorneys allied with Special Counsel in this litigation; and (b) replace CCCB as sole member with the Receiver himself. (Petition, Ex. 12). If the Settlement receives judicial approval, such that the Receiver becomes CCF’s sole member, CCF anticipates that the Receiver will take steps to transfer to the Plan all of the approximately \$8.2 million in restricted SJHSRI and RWH charitable assets that originally were transferred to CCF pursuant to this Court’s 2015 *Cy Pres* Order in *In re: CharterCare Health Partners Foundation*, C.A. No. KM-2015-0035 (the “2015 *Cy Pres* Action”). That action would essentially euthanize CCF.

This Tuesday’s announcement to end CCF as we know it came as news to CCF. The Settling Defendants who purportedly control CCF gave CCF, its chairman, and its counsel no notice that, in the weeks leading up to the filing, they were negotiating a detailed settlement agreement that would sacrifice CCF and its charitable mission in the interests of present expediency for SJHSRI, RWH, and CCCB. Although CCCB purports to be CCF’s sole controlling member, until now, CCCB has stood by idly over the past year while CCF independently retained its own counsel to represent it in this dispute, and thereafter has taken litigation positions that are quite different from CCCB’s litigation positions.

CCF intends to object to the Settlement on several grounds. **First and foremost, to the extent that the Settlement calls for transferring ownership of CCF to the Receiver, the Settlement is unlawful because CCCB long ago waived or abandoned any of its purported rights as CCF’s sole member.** See 18 C.J.S. Corporations § 390 (Sept. 2018 update)

(“Membership may be terminated by waiver or abandonment, provided there is sufficient proof of those matters. Abandonment of an interest in a membership corporation depends upon an intent to abandon, and that intent must be evidenced by a clear, unequivocal, decisive act by the abandoning party.”) Id.; see also 1 Nonprofit Organizations: Law and Taxation § 3:1 (2d) (June 2018 update) (“[W]aiver or abandonment also terminates a member's interest.”); accord 12A Fletcher Cyc. Corp. § 5687 (Sept. 2018 update).

As will be set forth in more detail in CCF’s forthcoming opposition to the Petition, CCCB has not exercised any of its purported membership rights with respect to CCF at all since this Court issued its *Cy Pres* Order in April, 2015. During the past four years, CCCB has not attended any meetings of CCF’s Board of Directors. CCF is not aware of CCCB playing any role in the appointment of CCF’s Board of Directors, which has been independently appointed since 2015. CCCB has played no role in CCF’s operations either. For all intents and purposes, CCF has functioned independently for the past four years.

When subjected to proper scrutiny through discovery, it will become apparent to the Court that CCCB has exercised none, or virtually none, of the “Enumerated Powers” invested to the sole member by Section 2.02 of the supposedly operative five-year old set of “Revised By-Laws” of predecessor entity CharterCARE Health Partners Foundation that is attached at Exhibit 12 to the Petition.<sup>1</sup>

CCF further submits that the clear intent behind the 2014 Asset Sale, and the Attorney General’s approval thereof under the Hospital Conversions Act (“HCA”), was that CCF would separate and become independent of CCCB (because CCCB was acquiring a 15% stake in the new for-profit Prospect entities acquiring the Heritage Hospitals’ assets). Indeed, Condition No. 1 of the Attorney General’s HCA approval decision dated May 16, 2014 was that: “There shall

---

<sup>1</sup> CCF submits that the referenced by-laws are not the operative by-laws for CCF.

be no board or officer overlap between or among the CCHP Foundation [n/k/a CCF], CCHP [n/k/a CCCB], and Heritage Hospitals.” How could the Settling Defendants comply with the letter or spirit of that condition if, all along, CCCB retained a unilateral, springing right to unseat CCF’s entire Board of Directors whenever it wanted? Any attempt by CCCB to unseat CCF’s Board of Directors, or amend its Articles of Incorporation, is unlawful.

Of course, this opposition is no surprise to the Receiver. On the schedule of CCCB assets attached at Exhibit 13, there is an asterisk next to the row labeled “[o]wnership of CharterCare Foundation.” The asterisk denotes “potentially disputed.” Claimants also concede at paragraph 25 of their Petition that “the nature and value of [CCCB’s] interest [in CCF] is disputed.” See also (Petition, ¶ 20) (referring to “CCCB’s alleged membership interest in CharterCARE Foundation”). Claimants’ short notice to CCF of the Petition is a blatant attempt to narrow CCF’s ability to respond substantively to it.

In view of the above, CCF respectfully requests that, with respect to the Settlement terms relating to CCF, this Court continue its currently scheduled September 13, 2018 hearing to consider the Petition (which Claimants marked up on less than the required ten days notice) until a mutually agreeable date during the week of October 8, 2018. Attorney Russell F. Conn, CCF’s lead counsel, has long-standing vacation plans to travel outside of the United States from September 16-30, 2018. This relatively modest continuance is necessary to accommodate this scheduling concern, and also to allow CCF sufficient time to prepare an opposition to the Petition.<sup>2</sup>

---

<sup>2</sup> This Court also already is scheduled to hear oral argument on the morning of September 13, 2018 regarding the Receiver’s motion to intervene in the related 2015 *Cy Pres* Action.

CHARTERCARE FOUNDATION,

By its attorneys,

/s/ Russell F. Conn

/s/ Andrew R. Dennington

Russell F. Conn (*pro hac vice* pending)

Andrew R. Dennington (#7528)

Christopher K. Sweeney (#9689)

CONN KAVANAUGH ROSENTHAL

PEISCH & FORD, LLP

One Federal Street, 15<sup>th</sup> Floor

Boston, MA 02110

Tel. No. 617-482-8200

rconn@ connkavanaugh.com

adennington@connkavanaugh.com

csweeney@connkavanaugh.com

/s/ Scott F. Bielecki, Esq.

Scott F. Bielecki, Esq. (#6171)

Cameron & Mittleman, LLP

301 Promenade Street

Providence, RI 02908

Phone: (401) 331-5700

Fax: (401) 331-5787

sbielecki@cm-law.com

Dated: September 5, 2018

## CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2018, I filed and served this document through the electronic filing system and via e-mail on the following parties:

Stephen F. Del Sesto, Esq.  
Pierce Atwood LLP  
One Financial Plaza, 26th Floor  
Providence, RI 02903  
[sdelsesto@pierceatwood.com](mailto:sdelsesto@pierceatwood.com)

Rebecca Tedford Partington, Esq.  
Jessica D. Rider, Esq.  
Sean Lyness, Esq.  
Neil F.X. Kelly, Esq.  
Office of the Attorney General  
150 South Main Street  
Providence, RI 02903  
[rpartington@riag.ri.gov](mailto:rpartington@riag.ri.gov)  
[jrider@riag.ri.gov](mailto:jrider@riag.ri.gov)  
[slyness@riag.ri.gov](mailto:slyness@riag.ri.gov)  
[nkelly@riag.ri.gov](mailto:nkelly@riag.ri.gov)

Richard J. Land, Esq.  
Chace Ruttenberg & Freedman, LLP  
One Park Row, Suite 300  
Providence, RI 02903  
[rland@crflp.com](mailto:rland@crflp.com)

Christopher Callaci, Esq.  
United Nurses & Allied Professionals  
375 Branch Avenue  
Providence, RI 02903  
[ccallaci@unap.org](mailto:ccallaci@unap.org)

Arlene Violet, Esq.  
499 County Road  
Barrington, RI 02806  
[genvio@aol.com](mailto:genvio@aol.com)

Robert Senville, Esq.  
128 Dorrance Street, Suite 400  
Providence, RI 02903  
[robert.senville@gmail.com](mailto:robert.senville@gmail.com)

Elizabeth Wiens, Esq.  
Gursky Wiens Attorneys at Law  
1130 Ten Rod Road, Suite C207  
North Kingstown, RI 02852  
[ewiens@rilaborlaw.com](mailto:ewiens@rilaborlaw.com)

Jeffrey W. Kastle, Esq.  
Olenn & Penza  
530 Greenwich Avenue  
Warwick, RI 02886  
[jwk@olenn-penza.com](mailto:jwk@olenn-penza.com)

George E. Lieberman, Esq.  
Gianfrancesco & Friedmann  
214 Broadway  
Providence, RI 02903  
[george@gianfrancescolaw.com](mailto:george@gianfrancescolaw.com)

Howard Merten, Esq.  
Partridge Snow & Hahn LLP  
40 Westminster Street, Suite 1100  
Providence, RI 02903  
[hm@psh.com](mailto:hm@psh.com)

Joseph V. Cavanagh, III, Esq.  
Blish & Cavanagh, LLP  
30 Exchange Terrace  
Providence, RI 02903  
[Jvc3@blishcavlaw.com](mailto:Jvc3@blishcavlaw.com)

William M. Dolan, III, Esq.  
Adler Pollock & Sheehan P.C.  
One Citizens Plaza, 8th Floor  
Providence, RI 02903-1345  
[wdolan@apslaw.com](mailto:wdolan@apslaw.com)

David A. Wollin, Esq.  
Hinckley Allen & Snyder, LLP  
100 Westminster Street, Suite 1500  
Providence, RI 02903-2319  
[dwollin@hinckleyallen.com](mailto:dwollin@hinckleyallen.com)

Preston W. Halperin, Esq.  
James G. Atchison, Esq.  
Christopher J. Fragomeni, Esq.  
Shechtman Halperin Savage, LLP  
1080 Main Street  
Pawtucket, RI 02860  
[phalperin@shslawfirm.com](mailto:phalperin@shslawfirm.com)  
[jatchison@shslawfirm.com](mailto:jatchison@shslawfirm.com)  
[jfragomeni@shslawfirm.com](mailto:jfragomeni@shslawfirm.com)

Max H. Wistow, Esq.  
Stephen P. Sheehan, Esq.  
Benjamin G. Ledsham, Esq.  
Wistow Sheehan & Loveley, PC  
61 Weybosset Street  
Providence, RI 02903  
[mwistow@wistbar.com](mailto:mwistow@wistbar.com)  
[spsheehan@wistbar.com](mailto:spsheehan@wistbar.com)  
[bledsham@wistbar.com](mailto:bledsham@wistbar.com)

Scott F. Bielecki, Esq.  
Cameron & Mittleman, LLP  
301 Promenade Street  
Providence, RI 02908  
[sbielecki@cm-law.com](mailto:sbielecki@cm-law.com)

I also hereby certify that on the 5th day of September, 2018, I served this document on the following parties via First Class U.S. Mail:

Stephen Morris, Esq.  
Rhode Island Department of Health  
3 Capitol Hill  
Providence, RI 02908  
[stephen.morris@ohhs.ri.gov](mailto:stephen.morris@ohhs.ri.gov)

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Andrew R. Dennington  
Andrew R. Dennington (#7528)