

HEARING DATE: November 21, 2019 at 2:00 p.m.

**STATE OF RHODE ISLAND
KENT, SC.**

SUPERIOR COURT

**In re: CHARTERCARE HEALTH PARTNERS:
FOUNDATION, ROGER WILLIAMS : C.A. KM-2015-0035
HOSPITAL and ST. JOSEPH HEALTH :
SERVICES OF RHODE ISLAND :**

**RESPONSE OF THE RHODE ISLAND ATTORNEY GENERAL TO THE
JOINT PETITION TO MODIFY APRIL 20, 2015 CY PRES ORDER, VACATE JUNE 29,
2018 ORDER CONCERNING PRESERVATION OF CCF ASSETS, AND FOR
ENTRY OF FINAL JUDGMENT**

Now comes Attorney General Peter F. Neronha (“Attorney General”) and hereby responds to the Joint Petition to Modify April 20, 2015 *Cy Pres* Order, Vacate June 29, 2018 Order Concerning Preservation of CCF Assets, and for Entry of Final Judgment (the “Petition”) filed by CharterCARE Health Partners Foundation n/k/a CharterCARE Foundation (“CCF”), Roger Williams Hospital (“RWH”), and St. Joseph Health Services of Rhode Island (“SJHSRI”) (collectively the “Petitioners”), together with Respondents/Third Party Petitioners, Stephen Del Sesto, as Receiver (the “Receiver”) and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”), Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque (collectively hereinafter “Counter Petitioners”) and Third Party Respondent Rhode Island Community Foundation d/b/a Rhode Island Foundation (“RIF”). This Response will address the request to approve a transfer of \$3,900,000 (or up to \$4,500,000) of CCF’s funds to the Receiver to be used (after payment of Counter Petitioners’ counsel fees and expenses) for the benefit of the Plan pursuant to the Proposed

Settlement Agreement dated November 21, 2018 (“PSA” or “Settlement B”), affirm the continued validity and enforceability of the 2015 *Cy Pres* Order, and enter Final Judgment.

I. Attorney General’s Role

The Attorney General files this Response pursuant to his statutory and common law authority to protect charitable assets and charitable trusts within the state. The Attorney General is charged with representing “the interests of beneficiaries and the public under charitable trusts and bequests for charitable uses.” See Israel v. National Bd. Of Young Men’s Christian Ass’n, 369 A.2d 646, 649 (R.I. 1977) (citing Powers v. Home for Aged Women, 179 A. 610, 612 (R.I. 1935)).

II. Background

The Attorney General understands that this Honorable Court is well versed in the facts of this matter, so will be brief. On June 20, 2014, a closing on the transaction that was approved by the Attorney General and the Department of Health¹ occurred in which certain assets of CharterCARE Community Board, formerly known as CharterCARE Health Partners (“CCCB”), RWH, and SJHSRI were transferred to the newly formed for-profit joint venture between CCCB and Prospect Medical Holdings, Inc. (“PMH”) known as Prospect CharterCARE, LLC, and its affiliates (the “Joint Venture”).

As part of the close of the transaction and in accordance with the Attorney General’s HCA Decision, a Petition of Approval of Disposition of Charitable Assets Including Application of Doctrine of *Cy Pres* (“2015 *Cy Pres* Petition”) was filed requesting that certain assets be

¹ The transaction was approved by a Decision of the Attorney General on May 16, 2014 (“Attorney General’s Decision” or “HCA Decision”) and by the Department of Health on May 19, 2014. The approvals followed extensive reviews performed pursuant to the Hospital Conversions Act, R.I. Gen Laws §§ 23-17.14-1, et seq. (“HCA”).

transferred to CCF to be used in accordance with donor intent and the mission of CCF, and that other charitable assets remain with RWH and SJHSRI to satisfy various pre and post-closing liabilities, including SJHSRI's pension liability. On April 20, 2015, this Court entered an Order granting the 2015 *Cy Pres* Petition, approving the transfer of certain assets to CCF, allowing other assets to remain with RWH and SJHSRI, and imposing reporting requirements on CCF to report to the Attorney General for the funds at issue.

Thereafter, in August 2017, SJHSRI filed a petition seeking appointment of a receiver to administer the Plan, which was granted. As a result of an investigation by the Receiver's Special Counsel, a Federal Court Complaint was filed against CCF (and many other defendants). See Stephen Del Sesto, as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan v. Prospect CharterCARE, LLC et al., No. 1:18-cv-00328. In addition to other claims, the Receiver asserts that, as creditors of a dissolving non-profit, the Plan's claims were priority to any transfer of charitable assets pursuant to the doctrine of *cy pres*. Thereafter, the Parties entered into Settlement B, under which CCF agrees to pay the Receiver a total of \$4,500,000 for the benefit of the Plan. Pursuant to the terms of Settlement B, \$3,900,000 will come from CCF's funds and \$600,000 from CCF's insurance policy.²

III. CCF's Transfer of \$3,900,000 in Charitable Assets to the Plan

As more fully explained below, the Attorney General does not object to the transfer of \$3,900,000 of CCF's assets pursuant to the terms of Settlement B.

² The Attorney General's response assumes that the amount paid from CCF's charitable assets is limited to \$3,900,000 because CCF's counsel has represented that absent extenuating circumstances, CCF's insurance will make the \$600,000 payment. The Attorney General reserves the right to respond to the transfer of the additional \$600,000 should CCF's insurance company not make the payment as expected.

Unquestionably, it would be the Attorney General's preference that the entirety of CCF's charitable assets stay with CCF to be used to accordance with the charitable mission. In fact, under different circumstances, the Attorney General may have insisted on such an outcome. However, this Office appreciates the unique circumstances presented here – the complexity of the case, novelty of legal issues, and the inherent uncertainty that comes with litigation.

The Attorney General previously commented on the transfer of CCF's charitable assets to the Plan during this Honorable Court's review of Settlement A in the Receivership Proceeding. See Resp. of the Rhode Island Attorney General to the Receiver's Pet. for Instructions, C.A. No. PC-2017-3856, at 10. (Sept. 27, 2018). Specifically, the Attorney General requested that any transfer of charitable assets be limited to those that were identified as "General Use" in the 2015 *Cy Pres* Petition, which was represented as approximately \$3,714,310. Id.³

According to the Petition, CCF has experienced net appreciation of approximately 10.6% since 2015.⁴ See ¶ 18. Given this rate of appreciation since 2105, \$3,900,000 roughly correspond to the \$3,714,310 figure attributed to "General Use" fund is in the 2015 *Cy Pres* Petition. Id. The

³ As was noted in the Statement of CharterCARE Foundation Regarding Paragraph 18 of October 15, 2019 Joint Petition filed on Nov. 8, 2019, the 2015 *Cy Pres* Petition cited to Exhibit G for a breakdown of the "General Use" assets, however, the general use funds identified on the chart amount to only \$1,082,090. This discrepancy was only recently uncovered. CCF asserts the "discrepancy is not significant with respect to the Court's action on the Joint Petition, inasmuch as the Settling Parties would have made the same settlement." Id. at 2. Likewise, the Receiver asserts that the discrepancy is "immaterial to the Court's action on the Joint Petition." See Statement of Resp'ts and Third Party Pet'rs Regarding Paragraph 18 of October 15, 2019 Joint Pet., at 1. (November 18, 2019).

⁴ Even assuming CCF hadn't experienced this level of net appreciation, the Attorney General has identified, at a minimum, approximately \$254,653 that was transferred from SJHSRI to CCF pursuant to the 2015 *Cy Pres* Order that could also be designated as funds for general use. See Hammond Trust, identified in Exhibit H of the 2015 *Cy Pres* Petition.

Attorney General requests that the Order make clear that transfer of \$3,900,000 to the Plan be from those funds designated as “General Use.”⁵

This position is consistent with the Attorney General’s position on general purpose assets in the Joint Venture and 2015 *Cy Pres* Petition. At that time, the Attorney General permitted pre and post-closing liabilities be paid with income from certain charitable assets of RWH and SJHSRI, because the funds being used were income funds that are not restricted and therefore were usable for the general purposes of the operations of the hospitals. See Attorney General’s Resp. to the Pet. of for Disposition of Charitable Assets Including Application of Doctrine of *Cy Pres*, at 3. (April 1, 2015) (citing pp 24-28 of the HCA Decision).⁶

IV. Conclusion

The Attorney General has reviewed the Petition and the affected charitable assets. The Attorney General does not object to the transfer of \$3,900,000 of CCF assets to the Plan, but requests that:

- (1) An order granting the Petition direct the transferred funds come from those designated as “General Use.”
- (2) The order incorporates all other aspects of the 2015 *Cy Pres* Order, including the reporting requirements of CCF to the Attorney General.

⁵ Upon information and belief, CCF commingles the funds for management purposes. While this practice is allowable under UPMIFA, the funds should be considered individually for other purposes of the Act, such as spending requirements. See R.I. Gen. Laws § 18-12.1-3(d); see also Unif. Prudent Mgmt. of Institutional Funds Act § 3(d) Comments (2006). It has been represented to the Office that CCF has not been able to specifically identify which money belongs to which funds. This causes concerns. However, this does not change the Attorney General’s position on the transfer of the \$3,900,000 to the Fund, and for purposes of expediting Settlement B, the Attorney General will reserve any action on this.

⁶ The Attorney General also notes that CCF has represented that notification has been sent to all donor that could be reasonably identified, as well as Band of America, who held the RWH funds prior to the 2015 transfer, and has received no objections.

Respectfully submitted,

STATE OF RHODE ISLAND

BY:

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 20th day of November, I electronically filed and served this document through the electronic filing system to all on record. The document electronically filed is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Karen M. Ragosta