

STATE OF RHODE ISLAND  
KENT, SC

SUPERIOR COURT

In re: CHARTERCARE HEALTH :  
PARTNERS FOUNDATION, :  
ROGER WILLIAMS HOSPITAL and :  
ST. JOSEPH HEALTH SERVICES OF :  
RHODE ISLAND, INC. :

C.A. No: KM-2015-0035

**MEMORANDUM IN SUPPORT OF PROPOSED INTERVENORS'  
MOTION FOR LEAVE TO INTERVENE**

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Stephen Del Sesto, in his capacity as Permanent 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, Carol Short, Donna Boutelle, and Eugenia Levesque (collectively “Proposed Intervenors”), submit this memorandum in support of their motion for leave to intervene in the captioned case (“this Proceeding”), pursuant to Rule 24 of the Superior Court Rules of Civil Procedure.

Pursuant to Rule 24(c), Proposed Intervenors attached to their motion their proposed Response, Counter Petition, and Third Party Petition.

#### **THE PROPOSED INTERVENORS**

Proposed Intervenor Attorney Stephen DelSesto was appointed Permanent Receiver of the Plan by the Court in the case captioned *St. Joseph Health Services of Rhode Island, Inc. (Petitioner), v. St. Joseph Health Services of Rhode Island Retirement Plan (Respondent)*, C.A. No: PC-2017-3856 (“the Receivership Proceeding”).

In the Receivership Proceeding, SJHSRI alleged that the Plan was insolvent, and required an immediate benefit reduction of 40% applicable to all Plan participants. With the authorization of the Court, the Receiver retained the firm of Wistow, Sheehan & Loveley (“Special Counsel”) “to investigate potential liability or obligation of any persons or entities to pay damages or funds to the Plan (or to assume responsibility for such plan in the future),” and, if warranted, to bring suit.

The Receiver files this motion to intervene in this Proceeding to enable Special Counsel to pursue claims that such investigation has revealed. The Receiver claims an interest in the funds that are the subject of this Proceeding.

Proposed Intervenors Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque are participants in the Plan. They seek to intervene because they also claim an interest in the funds that are the subject of this Proceeding.

### **THE GENESIS AND TRAVEL OF THE CASE**

This Proceeding was the product of an asset sale that closed on June 20, 2014 (the “2014 Asset Sale”), concerning primarily the ownership and assets of two hospitals, Our Lady of Fatima Hospital (“Fatima Hospital”) and Roger Williams Medical Center (“Roger Williams Hospital”) (collectively referred to as the “Heritage Hospitals”). The primary<sup>1</sup> sellers were St. Joseph Health Services of Rhode Island (“SJHSRI”) and Roger Williams Hospital (“RWH”), who are Petitioners in this proceeding. CharterCare Community Board (“CCCB”) was also a named seller, but CCCB provided virtually no assets since it functioned primarily as a holding company and to manage the operations of SJHSRI and RWH.

The purchasers were a newly formed for-profit limited liability company, Prospect CharterCare, LLC (“Prospect Chartercare”), in which CCCB was given a 15% interest, and a number of entities affiliated with Prospect Chartercare (Prospect Chartercare and

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<sup>1</sup> The sellers in the 2014 Asset Sale also included certain subsidiaries of SJHSRI and RWC, but their assets were much less substantial and are not relevant at this time.

its affiliated entities are herein collectively referred to as the “Prospect Entities”). After the sale, Fatima Hospital and Roger Williams Hospital were owned, operated, and managed by the Prospect Entities.

The participants to the 2014 Asset Sale, consisting primarily of SJHSRI, RWH, CCCB, and the Prospect Entities, were required to obtain approvals from the Rhode Island Attorney General (the “AG”) and the Rhode Island Department of Health (“DOH”) under the Hospital Conversions Act, R.I. Gen. Laws § 23-17.14-1 et seq. See R.I. Gen. Laws § 23-17.14-5(a) (“A conversion<sup>[2]</sup> shall require review and approval from the department of attorney general and from the department of health in accordance with the provisions of this chapter...”). The parties were required to submit their proposed disposition of the assets and expected future income of SJHSRI and RWH, for approval by the Attorney General.

In his Decision approving the 2014 Asset Sale, the AG characterized the situation as follows:

Due to the extent of the Existing Hospitals' liabilities, CCHP proposed that certain RWMC and SJHSRI restricted assets, in addition to unrestricted cash, would remain with the Heritage Hospitals during their wind-down period rather than transferring directly to the CCHP Foundation. Specifically, a total of approximately \$19.6 million dollars in restricted

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<sup>2</sup> See R.I. Gen. Laws § 23-17.14-5(a) (“‘Conversion’ means any transfer by a person or persons of an ownership or membership interest or authority in a hospital, or the assets of a hospital, whether by purchase, merger, consolidation, lease, gift, joint venture, sale, or other disposition which results in a change of ownership or control or possession of twenty percent (20%) or greater of the members or voting rights or interests of the hospital or of the assets of the hospital or pursuant to which, by virtue of the transfer, a person, together with all persons affiliated with the person, holds or owns, in the aggregate, twenty percent (20%) or greater of the membership or voting rights or interests of the hospital or of the assets of the hospital, or the removal, addition or substitution of a partner which results in a new partner gaining or acquiring a controlling interest in the hospital, or any change in membership which results in a new person gaining or acquiring a controlling vote in the hospital;”).

assets would be held by the Foundation (\$7.2 million dollars) and the Heritage Hospitals (\$12.4 million dollars). The revised Cy Pres plan was set forth in an outline of the proposed Cy Pres petition for each of the Heritage Hospitals with accompanying estimated opening summary balance sheets for both the Heritage Hospitals and the CCHP Foundation, provided to the Attorney General, and is described below.

**A multi-year wind-down process is typical in the dissolution of a hospital corporation** due to the time it typically takes to settle government cost reports and the like. It is particularly appropriate where the expected hospital's liabilities are projected to exceed the amount of the unrestricted assets available at the time of closing but where there is also an expectation that additional unrestricted assets will be available in the future, as is the case here. The corporation retains during the wind-down process those restricted charitable assets that provide unrestricted earnings which can be used to address its remaining liabilities, and the corporation remains open until such time as it is concluded that it has completed the winding-down of its affairs.

AG Decision (May 16, 2014) at 24-25 (emphasis supplied), attached hereto at Tab 1.

The 2015 Cy Pres Petition was filed by SJHSRI, RWH, and CharterCare Health Partners Foundation (subsequently renamed CharterCare Foundation but referred to herein as "CCHP Foundation") on January 13, 2015. CCHP Foundation had previously had its own assets and acted as the charitable foundation for Fatima Hospital, but all of its assets had been expended by the time the 2015 *Cy Pres* Petition was filed. Now, in the 2015 *Cy Pres* Petition, Petitioners sought the Court's approval for transferring approximately \$8,200,000 from SJHSRI and RWH to re-capitalize CCHP Foundation, and for SJHSRI and RWH retaining other assets to pay liabilities.

Although CCCB was not a named petitioner in the 2015 *Cy Pres* Petition, it participated indirectly in that it controlled SJHSRI and RWH, and was the sole member of CCHP Foundation.

The 2015 *Cy Pres* Petition stated that it was brought because the Rhode Island Attorney General's approval of the asset sale had conditions. As characterized by Petitioners in the 2015 *Cy Pres* Petition, the AG's decision:

approved the concept of (1) the transfer of certain of the charitable assets to the CCHP Foundation and (2) the use of certain of the charitable assets during the Heritage Hospitals' wind down to satisfy the Outstanding Pre and Post Closing Liabilities subject to *cy pres* approval from this Court. It also required the filing of this Petition to address such disposition of the charitable assets post closing.

Petition ¶ 14.

*Cy Pres* Petitioners in fact sought "cy pres approval from this Court" as required by the AG, but, as discussed below, neglected to inform the Court that because of its unfunded obligations under the Plan, SJHSRI was insolvent and that all of the remaining assets of SJHSRI, RWH, and CCCB were needed to reduce (but were grossly insufficient to satisfy) those unfunded obligations.

They also failed to disclose that the transfer of assets from an insolvent SJHSRI to a foundation (CCHP Foundation) that was controlled by SJHSRI's parent company, out of reach of SJHSRI's creditors such as the Plan participants, was wrongful for many reasons, including but not limited to that it violated 1) the fraudulent transfer statute, and 2) the statutory priorities for the disposition of the assets of a nonprofit corporation in liquidation or voluntary dissolution that are set forth in the Rhode Island Nonprofit Corporation Act.

On April 20, 2015 (the "April 20, 2015 Order"), the Court granted the Petition, with certain conditions, and approximately \$8,200,000 was transferred by SJHSRI and RWH to CCHP Foundation, who in turn deposited most of it with the Rhode Island

Foundation (“RI Foundation”) to invest for them, with CCHP Foundation retaining the right to demand that such funds be returned upon request. As of December 31, 2017, CCHP Foundation’s fund balance at Rhode Island Foundation was \$8,760,556.01. CCHP Foundation continues to receive and transfer to RI Foundation income and capital distributions from third party trusts pursuant to the April 20, 2015 Order.

### **RELATED PROCEEDINGS**

This motion to intervene is being filed at the same time as Proposed Intervenors are filing two complaints (the “Related Proceedings”), which assert many claims against many different parties, including claims against CCHP Foundation for the \$8,200,000 transferred pursuant to the April 20, 2015 Order.

One of the complaints is being filed in the United States District Court for the District of Rhode Island (“Federal Action”), and include one or more ERISA claims over which the federal courts may have exclusive jurisdiction and state law claims over which the plaintiffs ask the court to exercise supplemental jurisdiction. The other complaint is being filed in the Rhode Island Superior Court (“State Action”), and asserts merely state law claims. These complaints are attached as Exhibits 1 & 2 to the Proposed Intervenors’ proposed Response, Counter Petition, and Third Party Petition, that is served herewith.

The State Action is being filed as a protective measure, to ensure that such claims are asserted on a timely basis, in the event that the court in the Federal Action declines to exercise its supplemental jurisdiction over these state law claims. The plaintiffs in the State Action will ask that those proceedings be stayed, at least until the



Federal Court rules on the issue of whether it will exercise supplemental jurisdiction over the state law claims.

If granted leave to intervene in this proceeding, the Proposed Intervenors intend to request that the April 20, 2015 Order be vacated and Counter Respondent CCHP Foundation and Third Party Respondent RI Foundation be ordered to hold the funds that were transferred pursuant to the April 20, 2015 Order, any proceeds thereof, and any subsequent payments received from third party trusts or anyone else pursuant to the April 20, 2015 Order, pending resolution of the Related Proceedings and further order of the Court.

Proposed Intervenors seek this relief from the Court for three reasons: 1) this Proceeding remains open and pending in the Superior Court ; 2) the Proposed Intervenors seek an order vacating or at least staying the Court's April 20, 2015 Order; and 3) the Proposed Intervenors contend that the Court was misled into granting the Petition. The Proposed Intervenors anticipate that based on principles of comity and deference, the courts in the Related Proceedings may be reluctant to adjudicate the rights to the property that is the subject of this Proceeding without this Court having first had the opportunity to address the issues raised by the Proposed Intervenors in a case still open and pending before the Court. Proposed Intervenors also assume that the defendants in the Related Proceedings may improperly contend that the April 20, 2015 Order or other events in this Proceeding should be given preclusive effect in the Related Proceedings.

### PRIOR CY PRES PETITIONS

In November of 2009, SJHSRI, CCCB, and RWH filed a petition with the Rhode Island Superior Court, asking the court to approve certain changes affecting charitable donations pursuant to the statutory and common law doctrine of *cy pres*. The specific purpose of the *cy pres* petition was to inform the court that the original recipients of the charitable gifts had been reconstituted in connection with formation of CCCB and the affiliation of SJHSRI, RWMC, RWH, and CCCB; that such entities as reconstituted would continue to apply the charitable gifts in accordance with those intentions; and to obtain court approval therefor.

Notably, the *cy pres* petition in 2009 did not involve an original recipient of the charitable gift who was insolvent and sought to transfer assets to a related entity to the detriment and in fraud of creditors. To the contrary, in the 2009 petition, essentially the same entities held the assets as had held them originally and creditors were in no way affected or damaged by approval of these transfers.

On December 2, 2011, another *cy pres* petition was filed with the Superior Court, to obtain approval for the St. Joseph Health Care Foundation's member to be changed from SJHSRI to CCCB, for St. Joseph Health Care Foundation's name to be changed to Charter Care Health Partners Foundation, and to permit the charitable gifts held by St. Joseph Health Care Foundation to be distributed to SJHSRI to be used by SJHSRI in accordance with the donors' original intentions. As was the case with the previous *cy pres* petition, this petition did not involve the transfer of assets from an insolvent corporation to a related entity in fraud of creditors. Once again, creditors were in no way affected or damaged by approval of these transfers.

In the 2015 *Cy Pres* Petition, the *Cy Pres* Petitioners referred to these prior proceedings implying that this Proceeding involved the same issues. They failed to note the crucial distinction that those transfers in 2009 and 2011 were not at the expense of creditors.

## **ARGUMENT**

### **I. Summary of the Argument**

The Proposed Intervenors are entitled to intervention as of right, because they claim a direct interest that is “not frivolous on its face” in the funds that are the subject of the 2015 *Cy Pres* Proceeding. The application for intervention is timely, because the Receiver and the Plan participants have acted promptly in investigating and asserting their claim after the unfunded and insolvent status of the Plan was first publically disclosed in August of 2017. Although the interests of the Plan participants and the Plan were known to the *Cy Pres* Petitioners when the 2015 *Cy Pres* Petition was filed, the *Cy Pres* Petitioners chose not to give notice to the Plan participants, or to secure independent representation for the Plan with full disclosure of all of the relevant facts, including the unfunded status of the Plan.

This Proceeding clearly has impaired and impeded the Proposed Intervenors’ ability to protect their interests by enabling SJHSRI and RWH to transfer assets. Just as clearly, the existing parties have not adequately protected the interests of the Proposed Intervenors. Although SJHSRI was the sponsor and administrator of the Plan, and as a result SJHSRI had fiduciary duties to the Plan and the Plan participants, SJHSRI’s own interests conflicted with the interests of the Plan and the Plan

participants, such that SJHSRI and the other Petitioners RWH and CCCB who are related entities could not and did not adequately represent the interests of the Plan or the Plan participants.

Proposed Intervenor make the following specific assertions and arguments:

- The 2015 *Cy Pres* Petition concealed the unfunded status of the Plan and misrepresented that SJHSRI, RWMC, and CCCB had sufficient assets to fund the Plan;
- The Plan Participants and the Plan should have been joined for at least three reasons:
  - they were necessary parties under Super. R. Civ. P. 19;
  - the Rhode Island Nonprofit Corporation Act required that all creditors receive notice before any assets were transferred; and
  - SJHSRI owed the Plan participants the fiduciary duty to give them notice and an accurate account of the unfunded status of the Plan, and to secure independent representation of the Plan, due to SJHSRI's flagrant conflict of interest;
- Proposed Intervenor have stated a claim for the relief they seek;
- the *Cy Pres* Petitioners did not adequately represent the interests of the Plan participants or the Plan;
- the motion to intervene is timely;
- the *Cy Pres* Petitioners will not be unduly prejudiced if the motion to intervene is granted;
- the Plan participants and the Plan will be prejudiced if intervention is not allowed;
- Intervention will not unduly interfere with the orderly processes of the Court; and
- Proposed Intervenor are also entitled to intervene under the standards for permissive intervention.

## II. The Standard for Intervention

### A. As of Right

Intervention of right is controlled by Super. R. Civ. P. 24(a)(2):

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action:

\* \* \*

(2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The determination of whether intervention is as of right is based upon a “four-factor test” as follows:

“Under Rule 24(a)(2), an applicant will be granted intervention as of right if [(1)] the applicant files a timely application \* \* \*, [(2)] the applicant claims an interest relating to the property or transaction which is the subject matter of the action, [(3)] the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, *and* [(4)] the applicant's interest is not adequately represented by current parties to the action \* \* \*”

*Hines Road, LLC v. Hall*, 113 A.3d 924, 928 (R.I. 2013) (quoting *Tonetti Enterprises, LLC v. Mendon Road Leasing Corp.*, 943 A.2d 1063, 1072–73 (R.I.2008) (italicized in *Hines Road, LLC v. Hall*)). Because Rhode Island precedent applying this test is sparse, the Court may look to the federal courts for guidance. *Retirement Board of Employees' Retirement System of City of Providence v. Corrente*, 174 A.3d 1221, 1230 (R.I. 2017) (“Because ‘Rhode Island precedent on this point is sparse,’ this Court ‘may

properly look to the federal courts for guidance.’ ”) (quoting *Tonetti Enterprises, supra*, 943 A.2d at 1073) (applying Rule 24(a)(1)).

The rule dealing with intervention as of right is to be liberally construed, and any doubts are to be resolved in favor of the applicant:

In keeping with the policy of [the rule] to promote judicial economy, the rule dealing with intervention as a matter of right should be liberally construed, and any doubts are to be resolved in favor of the applicant; when evaluating whether the requirements for intervention of right are met, a court normally construes the governing rule broadly in favor of proposed intervenors since a liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.

25 Federal Procedure, Lawyers Edition § 59:298 (June 2018 update) (footnotes omitted).

Moreover, “[t]he applicants’ well pleaded allegations must be accepted as true for purposes of considering a motion to intervene, with no determination made as to the merits of the issues in dispute.” *Herman v. New York Metro Area Postal Union*, 1998 WL 214787 \*1 (S.D.N.Y. 1998) (citation omitted). Thus:

except for allegations frivolous on their face, an application to intervene cannot be resolved by reference to the ultimate merits of the claims which the intervenor wishes to assert following intervention, but rather turns on whether the applicant has demonstrated that its application is timely, that it has an interest in the subject of the action, that disposition of the action might as a practical matter impair its interest, and that representation by existing parties would not adequately protect that interest.

*Brennan v. N.Y.C. Bd. of Educ.*, 260 F.3d 123, 129 (2d Cir. 2001) (quoting *Oneida Indian Nation v. New York*, 732 F.2d 261, 265 (2d Cir. 1984)).

Timeliness of intervention is to be judged by two criteria: (1) the length of time during which the proposed intervenor has known about his interest in the suit without acting and (2) the harm or prejudice that results to the rights of other parties by delay. *Marteg Corp. v. Zoning Bd. of Review of City of Warwick*, 425 A.2d 1240, 1242 (R.I. 1981). A party's failure to provide the intervenor with a required notice of the suit may justify intervention. See *Toti v. Carpenter*, No. CIV.A. PC99-1373, 2004 WL 877636, at \*2 (R.I. Super. Apr. 8, 2004) ("The Plaintiff, therefore, was required to give DHS notice as to any lawsuit or settlement. Accordingly, DHS will not be precluded from intervening in this matter.").

Failure to provide requisite notice may justify intervention even after a settlement has been reached. *Id.* (citing *Atlantic Mutual Ins. Co. v. Northwest Airlines, Inc.*, 24 F.3d 958, 960 (7th Cir. 1994)). As noted by the Seventh Circuit in *Atlantic Mutual*:

Settlement is not conclusive if a third party possessing an interest in the property or transaction which is the subject of the action has been excluded from the negotiations. Intervention permits such an entity to prevent the original litigants from bargaining away its interests. If they beat the intervenor to the punch, the court may annul the settlement in order to give all interested persons adequate opportunity to participate in the negotiations and proceedings.

*Atlantic Mutual Ins. Co. v. Northwest Airlines, Inc.*, *supra*, 24 F.3d at 960. Indeed, intervention in a *cy pres* proceeding has been permitted even after judgment<sup>3</sup> has entered, and notwithstanding that the proposed intervenor was fully aware of the proceeding prior thereto, upon proof that the intervenor had a legally protectable interest

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<sup>3</sup> Notably this proceeding has not culminated in a judgment. Instead, *Cy Pres* Petitioners merely sought and obtained an order granting their Petition. The order includes numerous future reporting requirements, and the case remains open.

in the property that had not been adequately represented by other parties, and would be prejudiced if intervention was denied. See *In re Lease Oil Antitrust Litigation*, 570 F.3d 244, 252 (5th Cir. 2009) (reversing trial court's refusal to allow State of Texas to intervene and assert claims to funds that had been awarded to a third party under the doctrine of *cy pres*) ("The lack of real prejudice to existing parties from intervention, and the significant prejudice to Texas if intervention is not allowed, overcome the fact of the delay...").

## **B. Permissive Intervention**

Although Proposed Intervenors claim they are entitled to intervention as of right, they request that the Court consider their motion as seeking permissive intervention if the Court concludes otherwise.

Permissive intervention is provided for in Super. R. Civ. P. 24(b)(2), which states in pertinent part:

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action:

(1) When a statute of this state confers a conditional right to intervene; or

(2) When an applicant's claim or defense and the main action have a question of law or fact in common.

The rule on permissive intervention does not require a showing of any particular interest, or even that the applicant would have been a proper party with a right to relief if joined in the original proceeding:

The rule does not specify any particular interest that will suffice for permissive intervention and, as the Supreme Court has said, it "plainly



dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation.” Indeed, it appears that a permissive intervenor does not even have to be a person who would have been a proper party at the beginning of the suit, since of the two tests for permissive joinder of parties, a common question of law or fact and some right to relief arising from the same transaction, only the first is stated as a limitation on intervention.

Wright & Miller, et al., 7C Fed. Prac. & Proc. Civ. § 1911 (3d ed.) (quoting *SEC v. U.S. Realty & Improvement Co.*, 1940, 60 S.Ct. 1044, 1055, 310 U.S. 434, 459, 84 L.Ed. 1293). “The rule requires only that the intervenor's claim or defense share a common question of law or fact with the main action.” Wright & Miller, *supra*, 7C Fed. Prac. & Proc. Civ. § 1911.

### III. The Proposed Intervenors have Standing

The Receiver has standing because he has been appointed Receiver of the Plan “and of all the estate, assets, effects, property, and business of Respondent of every name, kind, nature and description, with all the powers conferred upon the Receiver by the Rhode Island General Laws, by this order, or otherwise, and with all powers incidental to the Receiver’s said Office.” Order Appointing Permanent Receiver entered on October 27, 2017 (“Order Appointing Receiver”).

Indeed, the Court gave the Receiver express authority to intervene in pending lawsuits to protect the interests of the Plan. He is expressly authorized:

to collect and receive the debts, property and other assets and effects of said Respondent, with full power to prosecute, defend, adjust and compromise all claims and suits of, by, against or on behalf of said Respondent and to appear, **intervene or become a party in all suits, actions or proceedings relating to said estate, assets, effects and property as may in the judgment of the Receiver be necessary or**

**desirable for the protection, maintenance and preservation of the assets of said Respondent.**

Order Appointing Receiver ¶ 5 (emphasis added). Thus, the Receiver has standing to intervene in this Proceeding to assert the Plan's direct claim in the funds that were the subject of the 2015 *Cy Pres* proceeding.

He also has standing to intervene to assert the Plan's claim that SJHSRI breached its fiduciary duty as Plan Administrator to the Plan in filing the 2015 *Cy Pres* Petition, which was contrary to the interests of the Plan, and by failing to secure independent representation of the Plan's interests.

Proposed Intervenors Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque have standing because they are Plan participants, and depend on the Plan assets to fund their retirement benefits, and, therefore, are entitled to be heard on whether SJHSRI's assets should have been applied to reduce (even if not nearly eliminate) the unfunded status of the Plan, or, instead, placed out of their reach with a foundation controlled by SJHSRI's parent company CCCB.

These Plan participants also have standing to intervene to assert the claim that SJHSRI as Plan Administrator breached its fiduciary duty to the Plan participants and the Plan by filing the 2015 *Cy Pres* Petition, contrary to their interests, and by failing to provide the Plan participants and the Plan with proper notice, so that they could protect their interests.

Although the Receiver was not appointed until more than two years after the funds were transferred pursuant to the April 20, 2015 order, the Plan itself was a

juridical entity entitled to notice and independent representation, and the Receiver has standing to assert the Plan's claims. Indeed, SJHSRI named the Plan as Respondent in the Receivership Proceedings, and having secured the appointment of the Receiver thereby, SJHSRI certainly cannot now be heard to say that the Plan is not a juridical entity.

#### **IV. The Proposed Intervenors are Entitled to Intervention of Right**

##### **A. The Receiver and the Plan Participants Claim an Interest in the Property that is the Subject of this Proceeding**

As noted above, the determination of the Proposed Intervenors' right to intervene does not entail resolution of the merits of their claims. In support of their motion, Proposed Intervenors refer to the merits of those claims only to establish that they are by no means "frivolous on their face," and, therefore, they are entitled to have the *status quo* maintained while they prove their claims in the Related Proceedings.

##### **1. The 2015 Cy Pres Petition concealed the unfunded status of the Plan and misrepresented that SJHSRI, RWMC, and CCCB had sufficient assets to fund the Plan**

The threshold reason why the Proposed Intervenors should be permitted to intervene is that the 2015 *Cy Pres* Petition concealed the unfunded status of the Plan and misrepresented that SJHSRI, RWMC, and CCCB had sufficient assets to fund the Plan.

The 2015 *Cy Pres* Petition sought court approval for "(1) the transfer of certain of the charitable assets to the CCHP Foundation and (2) the use of certain of the charitable assets during the Heritage Hospitals' wind down to satisfy the Outstanding

Pre and Post Closing Liabilities....” However, in seeking court approval for these transfers, *Cy Pres* Petitioners did not inform the Court that the charitable assets *Cy Pres* Petitioners wanted transferred to CCHP Foundation were needed to reduce (but by no means satisfy) *Cy Pres* Petitioners’ unfunded obligations to Plan participants.

*Cy Pres* Petitioners not only failed to disclose that all of their remaining assets were needed to reduce their unfunded obligations to Plan participants, in fact they represented the very opposite, stating in the 2015 *Cy Pres* Petition that the assets it would retain after the transfers to CCHP Foundation would be sufficient to “satisfy” SJHSRI’s and RWMC’s liabilities, including SJHSRI’s pension obligations.

The claims that the retained assets would “satisfy” RWH and SJHSRI’s remaining liabilities, and that those liabilities would be “paid” with those assets, were made and repeated over and over again in the 2015 *Cy Pres* Petition, in statements that sometimes generally referred to liabilities or obligations, and in other instances expressly referred to pension liabilities and obligations. For example, the 2015 *Cy Pres* Petition contains the following statement:

Likewise, SJHSRI seeks approval to use such annual distributions to pay the Outstanding Pre and Post Closing Liabilities (**both non-pension and pension**) on its behalf and **when such liabilities have been paid**, to transfer use of such annual distributions to the CCHP Foundation.

Petition ¶ 27 (emphasis supplied). In this statement, Petitioners referenced both pension and non-pension obligations. Then in the same paragraph they referred generally to “Pre and Post Closing Liabilities” and stated as follows:

RWH and SJHSRI are the beneficiaries of certain perpetual trusts providing annual income or principal distributions as described further herein. RWH seeks approval for the use of such annual distributions to

pay the Outstanding Pre and Post Closing Liabilities on its behalf and after such payments are made in full, RWH seeks cy pres approval to transfer such annual distributions to SJHSRI to **satisfy** the Outstanding Pre and Post Closing Liabilities on its behalf.<sup>7</sup><sup>[4]</sup>

[Emphasis supplied]

Petition ¶ 27.

Similarly the Petition stated:

As set forth in the AG Decision, during the course of the HCA review, the parties recognized that notwithstanding the expected proceeds that would be received by the Heritage Hospitals post-closing, including Medicare settlements, i. e., reconciliation of monies due and paid for the fiscal years 2011, 2012, 2013 and 2014, the liabilities of the Heritage Hospitals would exceed the available funds. Accordingly, Old CharterCARE, subject to Court approval, **proposed that certain RWH and SJ HSRI assets remain with the Heritage Hospitals during their wind-down period to satisfy the Outstanding Pre and Post Closing Liabilities.**

Petition ¶ 18 (emphasis supplied). Again, the Petition stated:

RWH requests that this Court grant approval to use the \$12,288,8486, reflecting unrestricted accumulated earnings from RWH permanently restricted assets subject to UPMIFA, **to satisfy the Outstanding Pre and Post Closing Liabilities as and when due**, as more fully described in Exhibit C.

Petition ¶ 24 (emphasis supplied).

The 2015 *Cy Pres* Petition for a fifth time acknowledged that the charitable assets would be used to “satisfy” SJHSRI’s liabilities:

As set forth in paragraph 29, approval for RWH to use the trust funds that it will receive upon the death of Barbara S. Boyden to pay the Outstanding Pre and Post Closing liabilities. To the extent such obligations have been paid prior to receipt of the trust funds or are fully paid thereafter, cy pres

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<sup>4</sup> Footnote 7 is omitted here, but quoted in full and discussed, *infra*, 22.

approval to transfer the funds to **SJHSRI to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf.**

Petition ¶ 29 (emphasis supplied). And a sixth time:

As set forth in paragraph 28, approval for RWH to use its annual income or principal distributions from the perpetual trusts identified in paragraph 28 to **satisfy the Outstanding Pre and Post Closing Liabilities** on its behalf and cy pres approval to transfer such annual income distributions to SJHSRI **after such RWH liabilities have been satisfied.**

Petition ¶ 6 (emphasis supplied).

Notably, nowhere in the 2015 *Cy Pres* Petition did *Cy Pres* Petitioners say that the assets they were retaining and the future expected income they were asking to be allowed to retain would only “partially satisfy,” or “partially pay” their pension obligations, or employ similar language that implied or even hinted that the funds would be insufficient to fully satisfy those liabilities.

Another means whereby *Cy Pres* Petitioners indicated to the Court that their retained assets and future income would be sufficient to satisfy SJHSRI’s “non-pension and pension” liabilities was by asking the Court to give CCHP Foundation the remainder interest in those assets and future income after all of SJHSRI and RWH’s liabilities were satisfied. The statement from paragraph thirty-one (31) of the 2015 *Cy Pres* Petition that is already quoted above expressly included pension obligations in the liabilities that would be satisfied, whereupon the remainder interest would go to CCHP Foundation:

SJHSRI seeks approval to use such annual distributions to pay the Outstanding Pre and Post Closing Liabilities (both non-pension and **pension**) on its behalf **and when such liabilities have been paid, to transfer use of such annual distributions to the CCHP Foundation.**

Petition ¶ 27 (emphasis supplied). Notably, the request said “**when** such liabilities have been paid” (emphasis supplied), the transfer to CCHP Foundation would be paid.

Given the scope of SJHSRI’s unfunded pension liabilities, it may be difficult to understand how *Cy Pres* Petitioners could have been acting in good faith when they even suggested that it was possible there would be any funds remaining after SJHSRI’s “non-pension and pension” liabilities had been satisfied. Nevertheless, the Court was entitled to take those statements at face value and conclude that *Cy Pres* Petitioners reasonably believed the representations made to the Court that there either already were more than sufficient assets to satisfy, or that the existing assets in combination with the expected future income would more than satisfy, all of SJHSRI’s “[o]utstanding Pre & Post Closing Liabilities (both non-pension and pension),” such that there was a reason to address what should be done with assets and income remaining after those liabilities were satisfied.

Similarly, in paragraph thirty (30), the 2015 *Cy Pres* Petition sought approval to give CCHP Foundation the remainder of SJHSRI’s annual income after its pension liabilities were paid:

After SJHSRI’s **non-pension and pension** liabilities have been paid, SJHSRI seeks *cy pres* approval to transfer use of its annual income to CCHP Foundation.

Petition ¶ 30. Here SJHSI again referenced both pension and non-pension liabilities, and flat-out represented to the Court that they both would be “paid” by SJHSRI’s retained assets and retained future income.

SJHSRI repeated this claim in paragraph eight (8) of the 2015 *Cy Pres* Petition’s “WHEREFORE” clause, substituting “satisfied” for “paid”:

8. As set forth in paragraph 30, [Cy Pres Petitioners seek Court] approval for SJHSRI to use its annual income or principal distributions from the perpetual trusts identified in paragraph 30 to **satisfy** the Outstanding Pre and Post Closing Liabilities on its behalf and cy pres approval to transfer such annual income distributions to CCHP Foundation after such liabilities have been **satisfied**.

Petition ¶ 2 (emphasis supplied).

The 2015 Cy Pres Petition not only clearly acknowledged that SJHSRI's liabilities included its pension obligation, it went further and represented to the Court that SJHSRI's accrued pension obligations that had existed at the closing of the 2014 Asset Sale had *already been paid*, out of the proceeds of the closing of the asset sale, stating:

As set forth on Exhibit C, at the Joint Venture closing, certain obligations of RWH and SJHSRI were **paid**, i.e., bond, **pension** and account payable liabilities, using sales proceeds from PMH and unrestricted cash.

Petition ¶ 17 (emphasis added). When the Court reviewed Exhibit C, a copy of which is attached hereto at Tab 2, the Court would have seen a section entitled "Closing Uses and Sources" that listed the obligations that were paid, and included "Pension Liability.....[\$]14,000,000." From that statement the Court could only have concluded that the closing proceeds at least paid SJHSRI's then existing pension liability, and that the Cy Pres Petitioners were seeking leave to retain funds to pay pension liabilities that would accrue in the future under SJHSRI's continuing obligation to fund the pension. In fact, Cy Pres Petitioners expressly acknowledged that "[t]he SJHSRI pension funding obligation will continue after the wind-down period." Petition ¶ 17.

In any event, whether they were referring to pension liabilities that had already accrued or merely to funding obligations that would accrue in the future, the Cy Pres Petitioners indisputably included pension liabilities within the "pre and post closing



liabilities” they were seeking court approval to pay with charitable assets and future expected income, and which they claimed would be “satisfied” with those assets and income.

Another way in which the 2015 *Cy Pres* Petition acknowledged that pension obligations were included in its “pre and post closing liabilities” was that the Petition expressly sought the approval of the Court for RWH to transfer unrestricted charitable assets and future income to SJHSRI “to satisfy the Outstanding Pre and Post Closing Liabilities on its [SJHSRI’s] behalf.”<sup>7</sup> Petition ¶ 27. Footnote 7 stated as follows:

Pursuant to the 2009 Old CharterCARE affiliation, RWH and SJ SHRI as affiliates of Old CharterCARE shared the same mission; namely, to foster an environment of collaboration among its partners, medical staff and employees that supported high quality, patient focused and accessible care that was responsive to the needs of the communities they served. In addition, the Old CharterCARE Board had reserved powers to make decisions regarding the sale and/or merger of the assets of both RWH and SJ SHRI. In order to ensure the success of the Joint Venture, **the Old CharterCARE Board approved the use of RWH funds for the benefit of SJ SHRI to be used towards payment of the Outstanding Pre and Post Closing Liabilities.**

Petition at 12 n.7 (emphasis supplied). Although *Cy Pres* Petitioners did not attach the resolution that approved “the use of RWH funds for the benefit of SJ SHRI to be used towards payment of the Outstanding Pre and Post Closing Liabilities,” that resolution in fact expressly directs that those funds should be used to pay SJHSRI’s pension liabilities (as well as other obligations):

WHEREAS As part of its retained assets, RWMC has \$6,666,874 in Board Designated Funds (“the RWMC Board Designated Funds”) that may be used for any purpose at the discretion and direction of the RWMC Board of Trustees;

\* \* \*

RESOLVED The RWMC Board of Trustees approves and directs use of the RWMC Board Designated Funds **to satisfy the SJHSRI liabilities at close and any potential future funding and expenses relating to the SJHSRI pension plan**, and any surplus shall be transferred to the CCHP Foundation.<sup>[5]</sup>

[Emphasis supplied]

Thus, although *Cy Pres* Petitioners did not inform the Court, they knew that the resolution to which they referred in the Petition expressly authorized and required use of RWH's assets to pay SJHSRI's pension obligations.

## 2. The Plan Participants and the Plan were entitled to notice

Notice of this proceeding was provided by *Cy Pres* Petitioners to the Rhode Island Attorney General "pursuant to his statutory and common law responsibilities with respect to the preservation and protection of charitable assets,"<sup>6</sup> and to Bank of America, N.A. as "trustee of certain trusts."<sup>7</sup> However, no notice was provided to Plan participants, or to any other creditors of SJHSRI, RWH, or CCCB. Moreover, although SJHSRI as Plan Administrator certainly had actual knowledge of what SJHSRI was attempting to accomplish in the 2015 *Cy Pres* Proceeding, that knowledge is not imputed to the Plan because SJHSRI had an overwhelming conflict of interest which obligated it to secure independent counsel for the Plan and provide full disclosure to the Plan and to the Plan participants (and the Court), which SJHSRI failed to do.

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<sup>5</sup> This resolution is attached hereto at Tab 3. Petitioners had previously submitted a copy of the resolution to the AG in May 2014 connection with the Hospital Conversions Act Proceedings.

<sup>6</sup> Petition ¶ 6.

<sup>7</sup> Petition ¶ 7.

The Plan participants and the Plan were entitled to proper notice for at least three reasons: a) they were necessary parties under Super. Civ. P. Rule 19; b) they were entitled to notice under R.I. General Laws § 7-6-61(c), which requires that nonprofit corporations in dissolution or liquidation must give notice to all creditors; and c) Petitioner SJHSRI as their fiduciary was obligated to give them notice of the proceeding and fully disclose the unfunded status of the Plan so that they could assert their interests as creditors.

**a. Plan participants and the Plan were necessary parties**

First, *Cy Pres* Petitioners knew or should have known that the Plan and the Plan participants were necessary parties under Super. R. Civ. P. 19(a)(2)(A). Rule 19(a)(2)(A) states in pertinent part as follows:

Rule 19. Joinder of Persons Needed for Just Adjudication

(a) Persons to Be Joined if Feasible. A person who is subject to service of process shall be joined as a party in the action if:

\* \* \*

(2) The person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:

(A) As a practical matter impair or impede the person's ability to protect that interest;

Transfer of \$8,200,000 from SJHSRI to the CCHP Foundation would certainly impair and impede the Plan and the Plan participants' ability to compel SJHSRI to fund the Plan or pay sufficient damages to make up the deficit, since it rendered SJHSRI even more judgment proof, and would require the Plan and the Plan participants to pursue

CCHP Foundation, who in the meantime could be expected to spend some of the money to which the Plan is entitled. Indeed, some of the money already has been disbursed by CCHP Foundation, but Proposed Intervenor are not seeking to recover those funds (although Proposed Intervenor are asking that the Court order that Petitioners provide an accounting).

Not only did *Cy Pres* Petitioners breach their duty under Rule 19(a) to join the Plan and the Plan participants, they also breached their duty under Rule 19(c) to notify the Court of the interests of the Plan and the Plan participants and expressly plead the reason for their non-joinder. Rule 19(c) states as follows:

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1) and (2) hereof who are not joined, and the reasons why they are not joined.

*Cy Pres* Petitioners did neither.

The *Cy Pres* Petitioners were no more forthcoming after the 2015 *Cy Pres* Petition was filed. The Petition was heard on April 6, 2015. Not surprisingly, there was no opposition. Instead, the matter was presented to the Court as an agreed-upon disposition, and all who spoke at the hearing did so either in support of or to register their lack of objection to the Petition. During the hearing, counsel for the Petitioner SJHSRI made an extensive presentation. Transcript of Hearing on April 6, 2015 at 2-9. However, she made no reference to the pension or pension liabilities. The Court was never informed that the remaining assets in the hands of CCCB, SJHSRI, and RWH and their expected future income were insufficient to fund the pension liabilities.

The Court was informed that the parties had agreed upon a proposed order, which the *Cy Pres* Petitioners drafted to make no reference whatsoever to the pension liability. At the conclusion of the hearing the Court stated that the Petition was granted and that the proposed order would be entered. Transcript of Hearing on April 6, 2015 at 14. On April 20, 2015 the Court entered the in the form proposed.

**b. Plan and the Plan participants were entitled to notice under R.I. General Laws § 7-6-50(b)**

As discussed below, R.I. General Laws §§ 7-6-51 & 7-6-61 entitle all creditors of a nonprofit corporation in dissolution or court liquidation to be paid in full before charitable assets are transferred to another charitable entity. R.I. General Laws § 7-6-50 provides that all creditors are entitled to notice of dissolution, so that they may enforce their rights under Section 7-6-51. Such notice is also required in a court liquidation. R.I. Gen. Laws §7-6-61(b). Thus, SJHSRI was obligated to give the Plan participants notice before it distributed the \$8,200,000 to the CCHP Foundation.

Petitioners may attempt to dispute that they were (and are) in the process of dissolution. However, judicial estoppel bars them from even making that argument, because they previously succeeded in obtaining the approvals they were seeking by persuading both the Attorney General and the Court that they were in the process of dissolution.

The doctrine of judicial estoppel prevents a litigant from espousing a position contrary to the position the litigant argued in another proceeding, especially if the litigant was successful in the earlier proceeding:

The invocation of judicial estoppel is “driven by the important motive of promoting truthfulness and fair dealing in court proceedings.” *D & H Therapy Associates v. Murray*, 821 A.2d 691, 693 (R.I.2003). “Unlike equitable estoppel, which focuses on the relationship between the parties, judicial estoppel focuses on the relationship between the litigant and the judicial system as a whole.” *Id.* (citing 28 Am.Jur.2d *Estoppel and Waiver* § 34 (2000)). “The United States Supreme Court has noted that ‘[b]ecause the rule is intended to prevent improper use of judicial machinery, \* \* \* judicial estoppel is an equitable doctrine invoked by a court at its discretion.’ ” *Id.* (quoting *New Hampshire v. Maine*, 532 U.S. 742, 750, 121 S.Ct. 1808, 149 L.Ed.2d 968 (2001)). “One of the primary factors courts typically look to in determining whether to invoke the doctrine in a particular case is whether the ‘party seeking to assert an inconsistent position would derive an unfair advantage \* \* \* if not estopped.’ ” *Id.* at 694 (quoting *New Hampshire*, 532 U.S. at 751, 121 S.Ct. 1808). “Courts often inquire whether the party who has taken an inconsistent position had ‘succeeded in persuading a court to accept that party’s earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled.’ ” *Id.* (quoting *New Hampshire*, 532 U.S. at 750, 121 S.Ct. 1808).

Courts often inquire whether the party who has taken an inconsistent position had “succeeded in persuading a court to accept that party’s earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create ‘the perception that either the first or the second court was misled.’ ” *New Hampshire*, 532 U.S. at 750, 121 S.Ct. at 1815, 149 L.Ed.2d at 978 (quoting *Edwards v. Aetna Life Insurance Co.*, 690 F.2d 595, 599 (6th Cir.1982)); see also *Wabash Grain, Inc. v. Smith*, 700 N.E.2d 234, 237 (Ind.Ct.App.1998).

*State of Rhode Island v. Lead Industries Ass’n, Inc.*, 69 A.3d 1304, 1310 (R.I. 2013).

Cy Pres Petitioners admitted in the 2015 Cy Pres Petition that they had proposed to the Attorney General that SJHSRI and RWH be permitted to retain assets in order to wind-down their affairs. Petition ¶ 18 (“Accordingly, Old CharterCARE, subject to Court approval, proposed [to the Attorney General] that certain RWH and SJ HSRI assets remain with the Heritage Hospitals during their wind-down period to satisfy the

Outstanding Pre and Post Closing Liabilities.”). The Attorney General’s decision documents that the Attorney General accepted that argument, and agreed to SJHSRI’s and RWH’s retention of assets as part of “a multi-year wind-down process’ that was “typical for the dissolution of a hospital corporation.” AG Decision (May 16, 2014) at 24-25 (attached hereto at Tab 1).

Moreover, *Cy Pres* Petitioners then successfully persuaded the Court in this Proceeding to grant the 2015 *Cy Pres* Petition based on the representation that both RWH and SJHSRI were in wind-down.<sup>8</sup> Judicial estoppel normally applies where the litigant asserts contrary positions in separate litigations, but surely the offense is only greater where a litigant obtains a benefit from taking a position and then seeks to take the opposite position in the *same proceeding*.

Accordingly, *Cy Pres* Petitioners are judicially estopped from denying that the \$8,200,000 was transferred to CCHP Foundation in connection with SJHSRI and RWH winding down their affairs and dissolution.

In addition to being bound by their prior positions before the Attorney General and this Court, *Cy Pres* Petitioners are bound by the determinations of the board of trustees for both RWC and SJHSRI that authorized RWC and SJHSRI to proceed with the process of wind-down and dissolution. On December 15, 2014, less than 30 days before the Petition was filed, CCHP as the controlling “member” of both RWH and

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<sup>8</sup> See Petition ¶ 17 (“It is anticipated that the Outstanding Pre and Post Closing Liabilities will be paid during the Wind-down period of RWH and SJHSRI over the next approximately three years.”); Petition ¶ 18 (“Accordingly, Old CharterCARE, subject to Court approval, proposed that certain RWH and SJ HSRI assets remain with the Heritage Hospitals during their wind-down period to satisfy the Outstanding Pre and Post Closing Liabilities.”);

SJHSRI adopted resolutions authorizing dissolution of those entities. The resolution applicable to SJHSRI stated as follows:

Resolved: That the Corporation authorize the dissolution of the Corporation at such time as Daniel Ryan and Richard J. Land deem necessary and appropriate and in connection therewith, to file such final tax returns and other documents and instruments required thereby.<sup>9</sup>

The resolution applicable to RWH stated as follows:

Resolved: That the dissolution of the Corporation at such time as Daniel J. Ryan and Richard J. Land deem necessary and appropriate is hereby approved and in connection therewith, Danial J. Ryan and Richard J. Land are authorized to take any and all actions they deem necessary and appropriate, including filing such final tax returns and other documents and instruments.<sup>10</sup>

Finally, it is absolutely clear that neither SJHSRI nor RWC proposed to conduct any new business.

Given that fact, these resolutions, the statements concerning dissolution in the Attorney General's decision, the statements concerning "wind-down" and payment of "pre and post-closing liabilities" in the Petition, and the general tenor of the Petition, any suggestion that SJHSRI and RWH did not present themselves as in the process of dissolution would be incredible.

Petitioners cannot argue that the 2015 *Cy Pres* Proceeding did not involve the liquidation and/or dissolution of SJHSRI because SJHSRI was not formally liquidated or dissolved in connection with the 2015 *Cy Pres* Proceeding. That argument is foreclosed by the language of the statute concerning voluntary dissolutions, which sets forth the

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<sup>9</sup> Attached hereto at Tab 4.

<sup>10</sup> Attached hereto at Tab 5.



distribution priorities for “[t]he assets of a corporation in the **process of dissolution.**” R.I. Gen. Laws § 7-6-51(emphasis supplied). The term “process” acknowledges the obvious, that dissolution involves various steps and takes time, not merely the instant when formal dissolution finally takes place, by which point there would be no one with authority to dispose of the nonprofit corporations assets. Further, if accepted, that argument would completely vitiate the statutory scheme for payment priorities of nonprofit corporations, by permitting a non-operating nonprofit corporation to completely avoid its obligations to its creditors and transfer its assets to another (and possibly, as here, a related) charity. If the statutes applied only in the context of formal dissolution or liquidation proceedings, such nonprofit corporations would simply not institute formal proceedings. In other words, for purposes of these payment priorities, it is sufficient that the nonprofit corporation is in a *de facto* process of liquidation or dissolution and is seeking to dispose of its assets without proper notice to its creditors.

**c. SJHSRI owed the Plan participants the duty to provide notice and owed the Plan the duty to secure independent representation**

The Plan assets were kept in trust.<sup>11</sup> SJHSRI’s control over those assets made it a trustee and fiduciary under ERISA, or state law if ERISA is not applicable. Under ERISA any entity that exercises control over a plan is by definition a fiduciary. *Varity Corp. v. Howe*, 516 U.S. 489, 498 (1996) (employers who control the plan are ERISA fiduciaries). Under state law, a relationship of trust and confidence imposes fiduciary duties. *A. Teixeira & Co., Inc. v. Texeira*, 699 A.2d 1383, 1387 (R.I. 1997) (“We are of

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<sup>11</sup> The Plan trust is attached hereto at Tab 6.

the opinion that the term ‘fiduciary’ is a broad concept that might correctly be described as ‘anyone in whom another rightfully reposes trust and confidence.’”) (quoting Francis X. Conway, *The New York Fiduciary Concept in Incorporated Partnerships and Joint Ventures*, 30 *Fordham L. Rev.* 297, 312 (1961)). Moreover, even SJHSRI’s board members who administered the Plan acknowledged their “fiduciary responsibility for providing adequate funding.”<sup>12</sup>

As such SJHSRI had the duty not to act adversely to the interests of the trust beneficiaries, to provide them with notice of any conflict of interest, and to secure independent representation for the Plan given SJHSRI’s flagrant conflict of interest. SJHSRI breached all of these duties.

**3. Proposed Intervenors have stated a claim that the transfer of \$8,200,000 was fraudulent as to the Plan participants and the Plan**

Proposed Intervenors intend to prove in the Related Proceedings that the transfers from SJHSRI and RWH to CCHP Foundation violated Rhode Island’s statute prohibiting fraudulent transfers. They were fraudulent transfers under R.I. Gen. Laws § 6-16-4(a)(1) because they were made with the intent to hinder, delay, and defraud the Plan and the Plan participants. They also were fraudulent transfers under R.I. Gen. Laws § 6-16-4(a)(2) because SJHSRI did not receive reasonably equivalent value in return (it received nothing) and was insolvent. Finally, they were fraudulent transfers under R.I. Gen. Laws § 6-16-5(a) because SJHSRI did not receive reasonably equivalent value in return and was engaged or was about to engage in a business or a

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<sup>12</sup> Federal Complaint ¶ 235 and State Complaint ¶ 127.

transaction for which its remaining assets were unreasonably small, and SJHSRI believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due, all concerning SJHSRI's obligations to fully fund the Plan.

As noted above, the determination of the Proposed Intervenors' right to intervene does not entail resolution of the merits of their claims. Proposed Intervenors refer to the merits of those claims only to establish that they are by no means "frivolous on their face," and, therefore, they are entitled to intervene in this Proceeding and have the *status quo* maintained while they prove their claims in the Related Proceedings.

**4. Proposed Intervenors have stated a claim that the transfers violated R.I. Gen. Laws §§ 7-6-50, 7-6-51 & 7-6-61(c)**

Section 7-6-50(b) of the Rhode Island General Laws sets forth the procedure whereby a nonprofit corporation may voluntarily wind up its affairs and dissolve, and directs that assets are to be applied and distributed "as provided in" that chapter:

(b) Upon the adoption of the resolution by the members, or by the board of directors if there are no members or no members entitled to vote on dissolution, the corporation shall cease to conduct its affairs except to the extent necessary for the winding up of its affairs, **shall immediately mail a notice of the proposed dissolution to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter.**

[Emphasis supplied]

Section 7-6-51 of the Rhode Island General Laws sets forth the specific order of application and distribution of assets applicable to voluntary dissolution:

§ 7-6-51. Distribution of assets.

The assets of a corporation in the **process of dissolution** shall be applied and distributed as follows:

**(1) All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made for their payment and discharge;**

(2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with the requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter or as otherwise provided in its articles of incorporation or bylaws;

(4) Any other assets shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

(5) Any remaining assets may be distributed to any persons, societies, organizations, or domestic or foreign corporations, whether for profit or nonprofit, that may be specified in a plan of distribution adopted as provided in this chapter.

[Emphasis supplied]

As discussed below, the order of subsections (1) through (5) establishes an order of payment, and entitles creditors to payment even out of the nonprofit corporation's restricted assets, including assets received with a charitable use restriction, and even assets that were given to the corporation under the condition that they be re-conveyed in the event of dissolution.

The same order of payment applies under the statute for court-approved liquidations of nonprofit corporations, R.I. Gen. Laws § 7-6-61. That statute sets forth the “procedure in liquidation of corporation by court,” and sub-section (c) essentially mirrors the above-quoted payment priorities of R.I. Gen. Laws § 7-6-51.

Thus, whether pursuant to voluntary dissolution or court approved liquidation, the assets of a non-profit corporation must be applied first to satisfy the corporation’s liabilities and obligations, and, until that is accomplished and creditors are paid in full, no assets can be transferred to anyone else, by *cy pres* petition or otherwise.

The argument that restricted charitable assets are not available to satisfy the claims of creditors is contrary to the plain meaning of the statute and has been rejected by the courts. R.I. Gen. Laws §§ 7-6-50 & 7-6-61(c) are based upon the Model Non-Profit Corporation Law, has been adopted across the United States, and the priorities they establish have been judicially construed, most notably in *In re Crossroad Health Ministry, Inc.*, 319 B.R. 778 (D.C. Bank. 2005), *aff’d, sub nom. Bierbower v. McCarthy*, 334 B.R. 478 (D. D. C. 2005) (*de novo* review).

In that case the bankruptcy court addressed that precise issue in construing the District of Columbia’s statute (D.C. Code § 29–301.56(c)) that was identical to R.I. Gen. Laws § 7-6-61(c). That case involved a dispute between a trust that had made a \$60,000 grant to a nonprofit corporation and sought its money back upon the bankruptcy of the nonprofit, on one side of the dispute, and the trustee in bankruptcy who argued that the money must first be used to satisfy any administrative expenses or allowable claims against the bankruptcy estate that remained unpaid, on the other.

First, the bankruptcy court set forth the arguments of the parties:

According to the Trustee, § 29–301.56 directs that a corporation fully satisfy each enumerated portion of the distribution statute before even considering whether subsequent subsections might apply. Thus, before a liquidating non-profit corporation can even reach the question of whether certain corporate assets must be returned or transferred to a different entity pursuant to D.C.Code §§ 29–301.56(c)(2)–(3), the statute first requires that “[a]ll costs and expenses of the court proceedings

and all liabilities and obligations of the corporation [must] be paid, satisfied, and discharged, or adequate provision [ ] made therefor.” D.C.Code § 29–301.56(c)(1). Thus, argues the Trustee, under District of Columbia law, **funds held by a non-profit corporation subject to charitable use limitations are corporate assets available to creditors upon dissolution or liquidation, notwithstanding the restriction placed upon such funds by the donor.**

Stewart Trust interprets the statute differently. According to Stewart Trust, the three enumerated subsections of D.C.Code § 29–301.56(c) can be separately triggered, and subsection (c)(1), calling for the payment of all creditors and expenses, simply does not apply to funds that fall within subsections (c)(2)-(3). **As such, a liquidating nonprofit corporation holding funds subject to a charitable use restriction would be governed solely by subsection (c)(3), and such funds would not be available to satisfy creditors or the payment of expenses under subsection (c) (1), because those funds would be either returned to the donor or distributed to a different charitable organization.**

*In re Crossroad Health Ministry, Inc.*, *supra*, 319 B.R. at 781 (emphasis added).

The bankruptcy court came down on the side of the trustee (and Proposed Intervenor herein), stating as follows:

Basic principles of statutory construction support the Trustee's reading of the statute. The terminology “as follows” suggests that distributions are to proceed in a sequential fashion, with expenses of dissolution and claims of creditors to be paid first as listed first. Moreover, a dissolution will require paying compensation to professionals who are employed to facilitate the dissolution, otherwise such professionals will not be attracted to handle the dissolution. The legislature would not have envisioned such professionals being put to the risk that distributions would be made under

paragraphs (2) and (3) before paying such professionals under paragraph (1). It is thus evident that distributions under paragraph (1) were intended to be made first. Accordingly, the court agrees with the Trustee that District of Columbia law **treats donations held by non-profit corporations subject to charitable use limitations as corporate assets, at least to the extent that such funds are needed to pay creditors and administrative expenses associated with liquidation proceedings.**

*In re Crossroad Health Ministry, Inc.*, *supra*, 319 B.R. at 781 (citations omitted).

The District Court on a *de novo* review agreed:

The Bankruptcy Court's interpretation of the statute is correct. The plain meaning of the language "as follows" suggests that a dissolution or liquidation of a nonprofit corporation under D.C.Code § 29–301.56 should proceed sequentially. **The text of the statute reflects an apparent legislative determination that, upon dissolution of a nonprofit corporation, grant funds in the corporation's possession should be used to satisfy corporate liabilities and obligations, notwithstanding any charitable-use limitations. In other words, the ultimate charitable goals of the grantor are subordinate to the corporation's responsibilities to its creditors.**

*Bierbower v. McCarthy*, *supra*, 334 B.R. at 481 (emphasis added).

The District Court did not rely exclusively on basic rules of statutory construction, but also found the result supported by public policy:

Moreover, this scheme of distribution is supported by several policy rationales. For instance, as appellee asserted during the Bankruptcy Court proceeding, it creates an incentive for bankruptcy specialists to assist in dissolution proceedings because § 29–301.56(c)(1) guarantees them compensation. See *In re Crossroad Health Ministry, Inc.*, 319 B.R. 778, 781 (Bankr.D.D.C.2005) (hereinafter "Opinion"). The Bankruptcy Court suggested an additional justification: that payment of debts is essential to a nonprofit corporation's operation and, therefore, that **the use of grant funds to satisfy debts is not at odds with a grantor's donative intent.** *Id.* at 782 n. 2. The Court therefore affirms the Bankruptcy Court's interpretation of the statute.

*Bierbower v. McCarthy*, supra, 334 B.R. at 481-482 (emphasis supplied).

Accordingly, pursuant to the Nonprofit Corporations Act, the charitable use restrictions that *Cy Pres* Petitioners relied upon to justify *cy pres* transfers of those assets to the CCHP Foundation did not protect those funds from the claims of creditors such as the Proposed Intervenors.

There is no conflict between the provisions of the Nonprofit Corporations Act and any other Rhode Island statutes applicable to the disposition of charitable assets. *Cy Pres* Petitioners purported to file their Petition pursuant to three separate statutes; “pursuant to R.I. General Laws § 18-4-1 et seq. entitled ‘Application of Cy Pres Doctrine’ § 18-9-1 et seq. entitled ‘Division of Charitable Assets’ and § 18-12.1-1 et seq. entitled ‘Uniform Prudent Management of Institutional Funds Act’ (‘UPMIFA’).” Petition ¶¶ 14. However, these three statutes do not contradict the priorities of payment set forth in the Nonprofit Corporations Act.

R.I. Gen. Laws § 18-4-1 applies solely to “trust property” and “where the purpose of the donor cannot be literally carried into effect,” and does not mention either corporate assets or dissolution, whereas Section 7-6-61(c) deals expressly with nonprofit corporations and restricted assets, and expressly sets forth how assets of a non-profit corporation in dissolution are to be applied. Section § 7-6-61(c) is clearly the more specific of the two statutes applicable to this proceeding. Indeed, it expressly concerns dissolution and gives creditors first priority over all “[a]ssets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes,” which are exactly the types of restricted funds that were the subject of this proceeding.



“It is a commonplace of statutory construction that the specific governs the general.’ ” *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645, 132 S.Ct. 2065, 2071, 182 L.Ed.2d 967 (2012) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384, 112 S.Ct. 2031, 119 L.Ed.2d 157 (1992)). See also *South County Post & Beam, Inc. v. McMahon*, 116 A.3d 204, 215 (R.I. 2015) (“When a specific statute conflicts with a general statute, our law dictates that precedence must be given to the specific statute.’ ”) (quoting *Warwick Housing Authority v. McLeod*, 913 A.2d 1033, 1036-37 (R.I. 2007)).

Moreover, as noted, R.I. General Laws § 18-4-1 applies solely to “a cy pres application of the **trust** property.” (emphasis supplied). SJHSRI and RWH are nonprofit corporations, not charitable trusts. A nonprofit corporation is governed by corporate law and not trust law. See *Grace v. Grace Institute*, 19 N.Y.2d 307, 226 N.E.2d 531, 279 N.Y.S.2d 721, 724 (N.Y. 1967) (upholding right of charitable corporation to remove trustee based on corporate law, not the law of trusts) (“While the Institute disputes the Appellate Division's interpretation of the law of trusts as it existed at the time the Institute was created, it is clear that a corporation and not a trust was created and, regardless of what the law as to trusts was at the time, corporate law and not trust law should govern.”); *City of Paterson v. Paterson General Hospital*, 235 A.2d 487, 489 (N.J. Ch. 1967) (“In my opinion defendant is not, strictly speaking, a charitable trust. It is, rather, a charitable corporation, governed by the law applicable to charitable corporations.”) (allowing a hospital to move from Paterson, New Jersey to another location, notwithstanding that many of its charitable assets were intended to benefit residents of Patterson).

**B. *Cy Pres* Petitioners Did Not Adequately Represent the Interests of the Plan and the Plan Participants**

In the context of all of their statements concerning payment of their liabilities, *Cy Pres* Petitioners' failure to inform the Court that they knew that the Plan was hopelessly underfunded raises serious questions. However, there is no question concerning the fact that *Cy Pres* Petitioners did not adequately represent the interests of the Plan and Plan participants.

SJHSRI participated under a complete conflict of interest between what it sought to accomplish and what was in the best interests of the Plan and Plan participants to whom SJHSRI owed the duties of a fiduciary. *Cy Pres* Petitioners RWC and CCHP Foundation were related entities to SJHSRI and cannot benefit from SJHSRI's breach of its fiduciary duties, and, in any event, they concealed rather than represented the interests of the Plan and the Plan participants by misrepresenting that SJHSRI, RWH, and CCCB had sufficient assets to pay the pension obligations.

The other parties that Petitioners brought into the 2015 *Cy Pres* Proceeding also did not adequately represent the interests of the Proposed Intervenors. Petitioner Bank of America merely participated in its capacity as trustee under certain trusts and did not act or purport to act on behalf of the Plan or the Plan participants.

The Attorney General also did not represent the interests of the Plan or the Plan participants.

**C. The Motion to Intervene is Timely**

As noted above, the timeliness of the motion is based upon how long the intervenor delayed after learning of his or her interest in the suit. In this case, although

the 2015 *Cy Pres* Petition was granted more than three years ago, the connection between the suit and the rights of the Plan and Plan participants was never disclosed to the Plan or the Plan participants. Even today the Plan participants probably are ignorant of that connection. It is only through the Court's recent appointment of the Receiver (the order appointing the Permanent Receiver was entered on October 27, 2017) and the subsequent investigation conducted on his behalf by Special Counsel that this connection has become known to the Receiver.

**D. *Cy Pres* Petitioners Will Not Be Unduly Prejudiced**

Allowing intervention will not significantly prejudice the *Cy Pres* Petitioners. The Proposed Intervenors are simply seeking to preserve the *status quo* while they are given the opportunity to be heard in the Related Proceedings. The fact that the relief they are seeking will require CCHP Foundation and RI Foundation to hold funds does not constitute prejudice.

Although the interests of third parties are not part of the calculus, they also will not suffer significant prejudice. The Proposed Intervenors are *not* asking the Court to order that funds previously distributed by CCHP Foundation to various third party charitable entities be returned. Thus, at most those third party charitable entities are hoping to obtain future grants, but those interests pale in comparison to the right of Plan participants to receive the pensions they worked for and on which they heavily depend.

**E. The Rights of the Receiver and Plan Participants will be Prejudiced if Intervention is not allowed**

The primary prejudice to the Receiver, the Plan, and Plan participants, if intervention is not allowed and the April 20, 2015 Order that granted the 2015 *Cy Pres* Petition is not vacated, is the real possibility that the courts in the Related Proceedings will be disinclined to adjudicate the rights of the parties to the funds transferred pursuant to that petition, out of deference to the Court, and especially since the proceeding in which the April 20, 2015 Order was entered remains pending and the Order therefore remains subject to revision.<sup>13</sup> If that happens, the Proposed Intervenors may never be heard on the merits of their claims to those funds.

**F. Intervention Will Not Unduly Interfere with the Orderly Processes of the Court**

At most only limited discovery will be required, but it is much more likely that there will be no factual disputes between the Proposed Intervenors and the *Cy Pres* Petitioners in this Proceeding.<sup>14</sup> Moreover, the Court is already administering the Receivership of the Plan. Thus, allowing intervention will not seriously burden the Court.

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<sup>13</sup> Moreover, Petitioners RWH, SJHSRI, CCHP Foundation, and/or Community Board may argue in the federal court action that the Order granting the Petition has some preclusive effect. The Receiver disagrees, but the United States District Court will not be required to decide that issue if the Order is vacated.

<sup>14</sup> Of course, there will be extensive discovery in the Related Proceedings, but it will occur in any event.

**V. Proposed Intervenors are entitled to intervene under the standards for permissive intervention**

In the alternative, Proposed Intervenors are entitled to intervene under the standards for permissive intervention, in that their claims in the Related Proceedings have a great many questions of fact in common with this Proceeding. For example, both the Related Proceedings and this Proceeding are based on the misrepresentations that Petitioners made to the Court in connection with this Proceeding.

Moreover, the ultimate disposition of the funds that SJSHRI and RWH transferred to CCHP Foundation pursuant to the April 20, 2015 Order is part of the Related Proceedings. Although the Court in this Proceeding is not adjudicating the merits of Proposed Intervenors claims to those funds, Proposed Intervenors do rely on the Court concluding that their claims are not frivolous on their fact, to justify ordering that these funds be held pending the disposition of those issues in the Related Proceedings. Thus both the Related Proceedings and this Proceeding are based on the contentions that SJHSRI and RWH brought the 2015 *Cy Pres* Proceeding intending thereby to hinder and delay their creditors and that SJHSRI was insolvent at the time. Both involve the claim that SJHSRI was liable to fully fund the Plan under either ERISA or state law, including the law of contracts, promissory estoppel, and judicial estoppel. Both are based on the claim that the separate corporate statuses of SJHSRI, RWH, CCHP Foundation and CCCB should be disregarded to prevent fraud. There are many more commons questions of law and fact that would justify permissive intervention.

## CONCLUSION

The Proposed Intervenors' motion for leave to intervene in this proceeding should be granted, to assert and protect the interests of the Receiver, the Plan, and the Plan participants.

Presented by  
Stephen Del Sesto, as Permanent  
Receiver for the St. Joseph's Health  
Services of Rhode Island Retirement  
Plan, Gail J. Major, Nancy Zompa,  
Ralph Bryden, Dorothy Willner, Caroll  
Short, Donna Boutelle, and Eugenia  
Levesque,

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Dated: June 18, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 18th day of June, 2018, I filed and served the foregoing document through the electronic filing system on the following users of record:

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

/s/ Max Wistow\_\_\_\_\_

# Tab 1



STATE OF RHODE ISLAND  
DEPARTMENT OF ATTORNEY GENERAL

May 16, 2014

DECISION

**Re: Initial Hospital Conversion Application of Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE, LLC, Prospect CharterCARE RWMC, LLC, Prospect CharterCARE SJHSRI, LLC, and Roger Williams Medical Center, St. Joseph Health Services of Rhode Island, CharterCARE Health Partners**

The Department of Attorney General has considered the above-referenced application pursuant to R.I. Gen. Laws §§ 23-17.14-1, *et seq.*, the Hospital Conversions Act. In accordance with the reasons outlined herein, the application is **APPROVED WITH CONDITIONS**.

**I. BACKGROUND**

The first step in traversing the Hospital Conversions Act is the filing of an initial application with the Department of Attorney General (the “Attorney General”) and Rhode Island Department of Health (“DOH”). The parties filed their initial application (“Initial Application”) on October 18, 2013. The parties (collectively, “Transacting Parties”) to the Initial Application are identified below:

- **Roger Williams Medical Center (“RWMC”)**, a 220-bed acute care, community hospital located in Providence, Rhode Island. RWMC is a wholly-owned subsidiary of CharterCARE Health Partners (“CCHP”).<sup>1</sup>
- **St. Joseph Health Services of Rhode Island (“SJHSRI”)**<sup>2</sup>, a 278-bed acute care, community hospital located in North Providence, Rhode Island. SJHSRI’s ownership structure is such that CCHP is the sole Class A Member and the Bishop of Providence is the sole Class B Member.

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<sup>1</sup> RWMC and SJHSRI will at times be referred to as the “Existing Hospitals” or “Heritage Hospitals.”

<sup>2</sup> Commonly known as Our Lady of Fatima Hospital

- **CharterCARE Health Partners**, The Existing Hospitals were converted to the current CCHP structure pursuant to a decision issued by DOH and the Attorney General in July 2009.
- **Prospect Medical Holdings, Inc.** (“PMH”) The Acquiror, pre-conversion, is an organizational structure existing under a parent entity, Prospect Medical Holdings, Inc. PMH is a Delaware corporation with its principal place of business located in Los Angeles, California. PMH is a health care services company that owns and operates hospitals and manages the provision of health care service for managed care enrollees through its network of specialists and primary care physicians.
- **Prospect East Holdings, Inc.** (“Prospect East”) a Delaware corporation which is a wholly-owned subsidiary of PMH. Prospect East will hold PMH’s interest in Prospect CharterCARE, LLC and the Newco Hospitals post-conversion.
- **Prospect East Hospital Advisory Services, LLC** (“Prospect Advisory”), a Delaware limited liability company, which is a wholly-owned subsidiary of PMH. Prospect Advisory will oversee and assist in the management of the day-to-day operations of Prospect CharterCARE, LLC post-conversion.
- **Prospect CharterCARE, LLC**, a Rhode Island limited liability company, which will own the entities that own and operate and hold licensure for the hospitals, post-conversion, the Newco RWMC and Newco Fatima<sup>3</sup> (defined below). Prospect CharterCARE, LLC will be owned 85% by Prospect East and 15% by CCHP. However, the governing board of Prospect CharterCARE, LLC will be a 50/50 board as explained herein.
- **Prospect CharterCARE RWMC, LLC** (“Newco RWMC”), is a Rhode Island limited liability company, which will own and hold the licensure for Roger Williams Medical Center post-conversion. Newco RWMC will be wholly-owned by Prospect CharterCARE, LLC.
- **Prospect CharterCARE SJHSRI, LLC** (“Newco Fatima”) is a Rhode Island limited liability company, which will own and hold the licensure for Our Lady of Fatima Hospital post-conversion. Newco Fatima will be wholly-owned by Prospect CharterCARE, LLC.

See Response to Initial Application Question 1 and Exhibits C10A-1 through A-6; C10A-12

through 14; 10A-7 through 11 and 10 B, C and D<sup>4</sup>.

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<sup>3</sup> Newco RWMC together with Newco Fatima shall collectively hereinafter be referred to as “Newco Hospitals”.

<sup>4</sup> For the purposes of this Decision, Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE, LLC, and its “Subsidiaries”, Prospect CharterCARE RWMC, LLC, and Prospect CharterCARE SJHSRI, LLC, will be called collectively “Prospect”; Roger Williams Medical Center, St. Joseph

In its simplest form, the structure of the transaction outlined in the Initial Application (the “Proposed Transaction”) is a sale of the assets of CCHP to PMH.

PMH is proposing to form Prospect CharterCARE, LLC. PMH will retain an 85% ownership interest in Prospect CharterCARE, LLC. CCHP will be provided a 15% ownership interest in Prospect CharterCARE, LLC. The governing structure, however, will be such that PMH’s ownership interest will appoint 50% of the membership of the Prospect CharterCARE, LLC board, and CCHP’s ownership interest will appoint 50% of the membership of the Prospect CharterCARE, LLC board. The Transacting Parties refer to this concept as a “50/50 board.”

## **II. REVIEW CRITERIA**

The review criteria utilized by the Attorney General for a hospital conversion involving a conversion of a non-profit hospital to a for-profit hospital<sup>5</sup> is as follows:

- (1) Whether the proposed conversion will harm the public's interest in trust property given, devised, or bequeathed to the existing hospital for charitable, educational or religious purposes located or administered in this state;
- (2) Whether a trustee or trustees of any charitable trust located or administered in this state will be deemed to have exercised reasonable care, diligence, and prudence in performing as a fiduciary in connection with the proposed conversion;
- (3) Whether the board established appropriate criteria in deciding to pursue a conversion in relation to carrying out its mission and purposes;
- (4) Whether the board formulated and issued appropriate requests for proposals in pursuing a conversion;
- (5) Whether the board considered the proposed conversion as the only alternative or as the best alternative in carrying out its mission and purposes;
- (6) Whether any conflict of interest exists concerning the proposed conversion relative to members of the board, officers, directors, senior management, experts or consultants

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Health Service of Rhode Island and CharterCARE Health Partners will be called collectively “CharterCARE” or “CCHP”.

<sup>5</sup> R.I. Gen. Laws § 23-17.14-7(c). The Attorney General’s responsibility under the Hospital Conversions Act is to review the transaction selected by the Board(s) of Directors.

engaged in connection with the proposed conversion including, but not limited to, attorneys, accountants, investment bankers, actuaries, health care experts, or industry analysts;

(7) Whether individuals described in subdivision (c)(6) were provided with contracts or consulting agreements or arrangements which included pecuniary rewards based in whole, or in part on the contingency of the completion of the conversion;

(8) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions;

(9) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the proposed conversion;

(10) Whether the board exercised due care in assigning a value to the existing hospital and its charitable assets in proceeding to negotiate the proposed conversion;

(11) Whether the board exposed an inappropriate amount of assets by accepting in exchange for the proposed conversion future or contingent value based upon success of the new hospital;

(12) Whether officers, directors, board members or senior management will receive future contracts in existing, new, or affiliated hospital or foundations;

(13) Whether any members of the board will retain any authority in the new hospital;

(14) Whether the board accepted fair consideration and value for any management contracts made part of the proposed conversion;

(15) Whether individual officers, directors, board members or senior management engaged legal counsel to consider their individual rights or duties in acting in their capacity as a fiduciary in connection with the proposed conversion;

(16) Whether the proposed conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the traditional purposes and mission of the existing hospital such that a cy pres proceeding would be necessary;

(17) Whether the proposed conversion contemplates the appropriate and reasonable fair market value;

(18) Whether the proposed conversion was based upon appropriate valuation methods including, but not limited to, market approach, third party report or fairness opinion;

(19) Whether the conversion is proper under the Rhode Island Nonprofit Corporation Act;

(20) Whether the conversion is proper under applicable state tax code provisions;

(21) Whether the proposed conversion jeopardizes the tax status of the existing hospital;

(22) Whether the individuals who represented the existing hospital in negotiations avoided conflicts of interest;

(23) Whether officers, board members, directors, or senior management deliberately acted or failed to act in a manner that impacted negatively on the value or purchase price;

(24) Whether the formula used in determining the value of the existing hospital was appropriate and reasonable which may include, but not be limited to factors such as: the multiple factor applied to the "EBITDA" – earnings before interest, taxes, depreciation, and amortization; the time period of the evaluation; price/earnings multiples; the projected efficiency differences between the existing hospital and the new hospital; and the historic value of any tax exemptions granted to the existing hospital;

(25) Whether the proposed conversion appropriately provides for the disposition of proceeds of the conversion that may include, but not be limited to:

(i) Whether an existing entity or a new entity will receive the proceeds;

(ii) Whether appropriate tax status implications of the entity receiving the proceeds have been considered;

(iii) Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing hospital;

(iv) Whether any conflicts of interest arise in the proposed handling of the conversion's proceeds;

(v) Whether the bylaws and articles of incorporation have been prepared for the new entity;

(vi) Whether the board of any new or continuing entity will be independent from the new hospital;

(vii) Whether the method for selecting board members, staff, and consultants is appropriate;

(viii) Whether the board will comprise an appropriate number of individuals with experience in pertinent areas such as foundations, health care, business, labor, community programs, financial management, legal, accounting, grant making and public members representing diverse ethnic populations of the affected community;

(ix) Whether the size of the board and proposed length of board terms are sufficient;

(26) Whether the transacting parties are in compliance with the Charitable Trust Act, chapter 9 of title 18;

(27) Whether a right of first refusal to repurchase the assets has been retained;

(28) Whether the character, commitment, competence and standing in the community, or any other communities served by the transacting parties are satisfactory;

(29) Whether a control premium is an appropriate component of the proposed conversion; and

(30) Whether the value of assets factored in the conversion is based on past performance or future potential performance.

In addition to reviewing the Initial Application submitted by the Transacting Parties and other publically available information, the Attorney General and DOH (the "Departments") jointly interviewed the following individuals:

**CharterCARE**

1. Kenneth H. Belcher, President/CEO of CharterCARE Health Partners
2. Michael E. Conklin, Jr., Chief Financial Officer, CharterCARE Health Partners
3. Joan M. Dooley, R.N., Chief Nursing Officer, CharterCARE Health Partners, RWMC
4. Patricia A. Nadle, R.N., Chief Nursing Officer, CharterCARE Health Partners, SJHSRI
5. Edwin J. Santos, Chairman of the CharterCARE Health Partners Board
6. Kathy Moore, Director of Finance, CharterCARE Health Partners
7. Addy Kane, Chief Financial Officer, Roger Williams Medical Center

**Prospect**

8. Thomas Reardon, President of Prospect Medical Holdings, Inc.
9. Samuel S. Lee, CEO, Prospect Medical Holdings, Inc.
10. Steve Aleman, Chief Financial Officer, Prospect Medical Holdings, Inc.
11. Barbara Giroux, Senior Vice President of Finance and Operations

The Hospital Conversions Act requires a public informational meeting. *See* R.I. Gen. Laws § 23-17.14-7(b)(3)(iv). A public notice was published regarding an informational meeting as well as soliciting written comments regarding the Proposed Transaction. The Attorney General and DOH jointly held this meeting in Providence at Gaige Hall Auditorium on the

campus of Rhode Island College.<sup>6</sup> It was held on April 28, 2014, from 4 p.m. to 7 p.m. At the beginning of the session, the Transacting Parties were provided an opportunity to give a presentation regarding the Proposed Transaction; afterwards, public comment was taken. Over the course of the meeting, twenty-eight (28) speakers provided public comment. The comments were overwhelmingly in favor of the Proposed Transaction, with one in opposition and another raising concern as to whether Fatima Hospital would retain its Catholic identity. Several written comments were also received, the overwhelming majority of which supported the Proposed Transaction.

The Initial Application, along with the supplemental information provided, information gathered from the investigation, including publically available information and information resulting from interviews and public comment, were all considered in rendering this Decision.

### **III. PROCEDURAL HISTORY**

In 2008 and 2009, the RWMC and SJHSRI systems were losing in excess of \$8 million dollars a year from operations alone.<sup>7</sup> In an effort to stem those losses, those independent systems agreed to affiliate through the creation of CCHP. The purpose of the affiliation was to realize approximately \$15 million dollars in savings over 5 years, utilizing efficiencies created by the combined hospital systems as well as to preserve and expand health care services to the Existing Hospitals' communities.<sup>8</sup> In 2009, the affiliation was approved by DOH and the

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<sup>6</sup> The Attorney General would like to thank the staff of Rhode Island College for their hospitality and for assisting us with use of the auditorium.

<sup>7</sup> Initial Application, Response to Question 1

<sup>8</sup> Id.

Attorney General.<sup>9</sup> If the CCHP affiliation had not been approved, the RWMC and SJHSRI systems would have had difficulty in continuing to operate independently.<sup>10</sup>

CCHP operates a health care system in the City of Providence and the Town of North Providence which includes Roger Williams Medical Center and St. Joseph's Health System of Rhode Island.<sup>11</sup>

Roger Williams Medical Center, defined above as RWMC, is a 220-bed acute care, community hospital located in Providence, Rhode Island. St. Joseph Health Services of Rhode Island, defined above as SJHSRI, operates Our Lady of Fatima Hospital, which is a 278-bed acute care, community hospital located in North Providence, Rhode Island.<sup>12</sup>

CCHP also operates a number of non-hospital facilities that will be included in the Proposed Transaction: Elmhurst Extended Care Facilities, Inc., Roger Williams Realty Corporation, RWGH Physician's Office Building, Inc., Roger Williams Medical Associates, Inc., Roger Williams PHO, Inc., Elmhurst Health Associates, Inc., Our Lady of Fatima Ancillary Services, Inc., The Center for Health and Human Services, SJH Energy, LLC, Rosebank Corporation and CharterCARE Health Partners Foundation ("CCHP Foundation").<sup>13</sup>

Significant operating efficiencies have been achieved as a result of the 2009 CCHP affiliation.<sup>14</sup> Based on operating revenue alone, the combined CCHP hospital system reduced operating losses not including pension losses to approximately \$3 million dollars per year.<sup>15</sup> Although a significant improvement, CCHP realized that the losses it was continuing to experience cannot be sustained and still ensure its continued viability. Furthermore, although

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<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Initial Application, Response to Question 1

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.



capital expenditures have been made, the physical plants at the Existing Hospitals are aging and need upgrading.<sup>16</sup>

Of additional concern to CCHP is its pension funding (an issue that is impacting many hospitals throughout the country). If pension losses are taken into consideration, in fiscal year 2012, the CCHP system sustained losses of over \$8 million dollars which are increasing without additional contributions.<sup>17</sup> Such losses cannot be sustained by CCHP. Facing these significant financial concerns, CCHP realized it needed additional capital to ensure its continued viability to fulfill its responsibilities to the citizens of Rhode Island which it serves.

In an effort to ensure the continued viability of the Existing Hospitals, in December of 2011, CCHP issued 22 Requests for Proposals (the "RFP") seeking a partner.<sup>18</sup> In response to its RFP, CCHP received six (6) responses, which it reviewed and considered carefully.<sup>19</sup> Among the responses it received was one from PMH in August of 2012.<sup>20</sup> CCHP conducted a vigorous and detailed review of all of the proposals it received.<sup>21</sup> However, after receiving the response of PMH, CCHP then undertook extensive review of PMH's proposal and engaged in negotiations with PMH. In March of 2013, after a joint meeting of the boards of CCHP and the Existing Hospitals, and an analysis of a number of the different options before CCHP, CCHP chose PMH's proposal.<sup>22</sup> In March of 2013, a Letter of Intent was executed by and between PMH and CCHP.<sup>23</sup> During the interval between March 2013 and the execution of the Asset Purchase Agreement on September 24, 2013, the Transacting Parties conducted extensive due diligence of each other. The Transacting Parties subsequently executed a First Amendment to the Asset

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<sup>16</sup> Id.

<sup>17</sup> Id.; Report of James P. Carris, CPA.

<sup>18</sup> 4/28/14 Testimony of Kenneth Belcher

<sup>19</sup> Id. Response to Question 55

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Initial Application response to Question 14

<sup>23</sup> Id.

Purchase Agreement on February 27, 2014, to add Prospect CharterCARE Ancillary Services, LLC (“Ancillary”) to hold the licenses for the Prospect CharterCARE laboratories, among other things.<sup>24</sup>

An Initial Application was submitted by the Transacting Parties on October 18, 2013. On November 18, 2013, the Departments informed the Transacting Parties that there were deficiencies to the Initial Application and requested additional information. On January 2, 2014 the Departments received a letter addressing the deficiencies within the Initial Application. On January 16, 2014, the Departments issued the Transacting Parties a notice of completeness letter.

On January 17, 2014, the Initial Application was deemed complete with the condition that new copies of the Initial Application be filed, incorporating the confidentiality decision made by the Attorney General wherein some documents that were originally requested to be deemed confidential were deemed public.

During the review, six (6) sets of Supplemental Questions consisting of two hundred and thirteen (213) questions were sent to and responded to by the Transacting Parties.

#### **IV. DISCUSSION**

As outlined above, the review criteria contained in the Hospital Conversions Act applicable to the Proposed Transaction consist of thirty (30) requirements. For organizational purposes we have addressed them grouped by topic below.

##### **A. BOARD OF DIRECTORS**

Numerous provisions of the Hospital Conversions Act involve a review of the actions of the board of directors of the existing hospital.<sup>25</sup> In the instant review, the Attorney General provided a review of the action of the board of directors leading to the Proposed Transaction.

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<sup>24</sup> Response to Supplemental Question 3-15

## **1. Duties of the Board of Directors**

The Hospital Conversion Act requires review of the decisions leading up to a conversion to ascertain whether the directors fulfilled their fiduciary duties to the hospital. The first criteria of the Hospital Conversions Act guiding the review of the actions of the board of directors in pursuing a conversion is governed by R.I. Gen. Laws § 23-17.14-7(c)(3). This section requires review of whether there was “appropriate criteria [used] in deciding to pursue a conversion in relation to carrying out [the hospital’s] mission and purposes.” With regard to this particular provision, the Board of Directors of CCHP (the “CCHP Board”) faced a situation where it was sustaining continued losses, despite its efforts to find and implement efficiencies throughout CCHP and its affiliates.<sup>26</sup> CCHP was also faced with aging infrastructure issues that needed to be addressed.<sup>27</sup> The need for capital to sustain its continued viability was a driving impetus in locating a partner as CCHP realized it could not address these issues on its own going forward.<sup>28</sup> The Attorney General finds that this condition of the Hospital Conversions Act has been satisfied.

The next section, R.I. Gen. Laws § 23-17.14-7(c)(4) requires a review of “[w]hether the board formulated and issued appropriate requests for proposals in pursuing a conversion.” In order to pursue an appropriate partner, CCHP issued twenty-two (22)<sup>29</sup> Requests for Proposals to a number of entities, listing a number of criteria.<sup>30</sup> These criteria included:

- (a) A commitment to the continued provision of quality health care services for the residents of Greater Providence, Rhode Island and the surrounding communities;

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<sup>25</sup> See e.g., Hospital Conversions Act, R. I. Gen. Laws §§ 23-17.14-7(c) (3), (4), (5), (8), (9), (10), (11), (13), (14), (15), and (23).

<sup>26</sup> Initial Application, Response to Question 1

<sup>27</sup> Id.

<sup>28</sup> Initial Application, Responses to Questions 1, 13 and 14.

<sup>29</sup> 4/28/14 Public Hearing Testimony of Kenneth Belcher

<sup>30</sup> Initial Application Response to Question 14 and Exhibit 14A

- (b) A long-term commitment to CCHP, its medical staff and employees;
- (c) A demonstrated cultural fit with CCHP's mission and a shared strategic vision for the future of CCHP;
- (d) An established record of success in the use of various strategies for physician recruiting and assistance developing other ways to expand and enhance CCHP's range of services;
- (e) Access to sufficient capital to allow CCHP to maintain high quality care for its patients and improve its physical facilities;
- (f) Continued commitment to community benefit programs;
- (g) A structure of governance that allows for continued participation of the CCHP Board in the governance of CCHP, preferably a joint venture structure;
- (h) Commitment to maintaining existing services for a period of at least three years;
- (i) Quality and safety expertise to assure that CCHP exceeds quality and safety standards;
- (j) Proven ability to improve clinical outcomes/services as well as provide clinical and administrative support to assure a standard of excellence; and
- (k) Preservation and enhancement of academics.

The condition in the RFP reflecting the CCHP Board's desire for a long-term commitment to CCHP, its medical staff and employees, referenced at (b) above, fit with the Board's desire to engage in a joint venture model of governance that would permit continued CCHP input into the decision making and operations of the Existing Hospitals rather than to be simply acquired.<sup>31</sup> This intended model of governance was shared by Prospect, as evidenced by the provisions of the Amended and Restated Limited Liability Company Agreement of Prospect CharterCARE, LLC (the "Prospect CharterCARE Operating Agreement"), which contains specific conditions for a 50/50 board representation by CCHP and Prospect, as well as

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<sup>31</sup> See Initial Application Response to Question 55.

establishment of local boards for the Existing Hospitals to provide continued local input into the operations of these facilities.<sup>32</sup>

In its RFP, CCHP sought a substantial amount of information from its potential partners,<sup>33</sup> including:

- (a) Mission, Vision, Values;
- (b) Financial Strength;
- (c) Corporate Structure;
- (d) Ability to Pay or Finance Proposal;
- (e) Ability to Fund Capital Needs;
- (f) Desire to Sustain CCHP as a Full Service Acute Care System;
- (g) Commitment to Build CCHP Care Capabilities;
- (h) Desire to Support, Improve and Grow Medical Staff and Physician Alignment;
- (i) Approach to Physician Recruitment and Retention;
- (j) Community Benefit;
- (k) Future Governance Proposal for CCHP;
- (l) Continuing Roles for CCHP Management Team;
- (m) Growth Strategies;
- (n) Existing Affiliations;
- (o) Quality and Safety; and
- (p) Regulatory Impediments to Successful Venture.

The Attorney General finds that the CCHP Board's actions in connection with its issuance of the RFP and criteria employed satisfy the requirements of the Hospital Conversion Act. *See* R.I. Gen. Laws § 23-17.14-7(c)(3)(4).

An additional section requires review of "whether the board exercised due care in assigning a value to the existing hospital and its charitable assets in proceeding to negotiate the proposed conversion." *See* R.I. Gen. Laws § 23-17.14-7(c)(10).

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<sup>32</sup> *See* Initial Application Response to Question 7, Exhibit 18, Prospect CharterCARE Operating Agreement.

<sup>33</sup> *Id.*

## 2. Board Use of Consultants

Two criteria in the Hospital Conversions Act deal with a board's use of consultants. *See* R.I. Gen. Laws §§ 23-17.14-7(c)(8) and (9):

(8) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions; and

(9) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the proposed conversion.

As outlined in the Initial Application, the CCHP Board engaged a number of consultants, including Cain Brothers & Company, an investment banking firm, to assist it with evaluation of the proposals made by prospective suitors, as well as in negotiations once a prospective suitor was located.<sup>34</sup> It also retained a number of other consultants, including Cambridge Research Institute, The Camden Group, Drinker Biddle & Reath, LLP, Canon Design, Angell Pension Group and Schulte Roth Zubel, LLC to assist it with the process of review of the RFP proposals submitted and negotiation of the Proposed Transaction.<sup>35</sup> *See* R.I. Gen. Laws § 23-17.14-7(c)(8)(15).

Prospect also retained a number of consultants, including BDO, Cardno ATC, Lathan & Watkins LLP, Nixon Peabody, LLP, Rutan & Tucker, LLP, Groom Law Group, Chartered, Sills Cummis & Gross P.C. and Ferrucci Russo PC.<sup>36</sup>

With regard to the care given "in accepting assumptions and conclusions provided by consultants," the Attorney General is not privy to the advice provided by these consultants other than any documents submitted with the Initial Application process. It is unclear if more than advice regarding the regulatory process was provided by consultants in this portion of the transaction process. Accordingly, the Attorney General has found nothing to refute that the

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<sup>34</sup> Initial Application, Response to Question 14.

<sup>35</sup> Initial Application, Response to Question 60, Exhibit 60B.

<sup>36</sup> Initial Application, Response to Question 60, Exhibit 60A.

CCHP Board's decision to accept the assumptions and conclusions provided by the consultants, to the extent there were any, was with due care and that criteria (6), (8), (9) and (15) of the Hospital Conversions Act have been satisfied. *See* R.I. Gen. Laws §23-17.14-7(c).

### **3. Remaining Board Criteria**

Regarding the remaining criteria of this type, the Transacting Parties have disclosed management and operating agreements pertaining to the operations of Prospect CharterCARE, LLC, which entity shall own the Newco Hospitals post transaction. *See* R.I. Gen. Laws § 23-17.14-7(c)(14). The Transacting Parties have provided the Prospect CharterCARE Operating Agreement, which includes provisions for the formation of local boards for each Newco Hospital thereafter.<sup>37</sup> This operating agreement also provides for the local boards to consist of at least six individuals, with 50% being physicians and the other 50% being community representatives and the Hospital's CEO, with no board member serving more than a three-year term.<sup>38</sup>

In addition, the Transacting Parties provided a Management Services Agreement, which will operate between Prospect CharterCARE, LLC and Prospect Advisory.<sup>39</sup> Prospect East, as the managing member of Prospect CharterCARE, LLC, has delegated its day-to-day management of the Newco Hospitals to Prospect Advisory under the Management Services Agreement (the "Management Agreement"), which provides for a number of services, including assistance with operational activities, once the Proposed Transaction has closed.<sup>40</sup> Prospect Advisory will work with senior leadership team members (the "Executive Team") of Prospect CharterCARE, LLC to run the day-to-day operations of the Newco Hospitals. The Executive Team shall be subject to the day-to-day supervision of Prospect Advisory, and together the

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<sup>37</sup> Initial Application, Response to Questions 1, 18 and Exhibit 18 Article XII.

<sup>38</sup> Initial Application Exhibit 18, Article XII, Response to Question 7.

<sup>39</sup> Initial Application Exhibit 18.

<sup>40</sup> *Id.*, Response to Question S3-20.

Executive Team and Prospect Advisory will report to Prospect CharterCARE, LLC's board (the "Board") and certain PMH executives. Prospect CharterCARE, LLC's Board will have ultimate power and authority over certain decisions. Since the filing of the Initial Application, the Management Agreement has been subsequently revised to clarify that should any conflicts arise between the Prospect CharterCARE Operating Agreement and the Management Agreement, such conflicts will be resolved in favor of the Prospect CharterCARE Operating Agreement. The Attorney General finds that R.I. Gen. Laws §23-17.14-7(c)(14) of the Hospital Conversions Act has been satisfied.

As part of the Initial Application process, the applicants also indicated that the only agreements they have made regarding future employment or compensated relationships relating to any officer, director, board member or senior manager of CCHP is the assumption by Prospect of the existing employment relationships of the current CCHP CEO, Kenneth Belcher and the other senior leadership team members.<sup>41</sup> In addition, the applicants have stated that board members of the Prospect CharterCARE, LLC and the Newco Hospitals will not be compensated.<sup>42</sup> As to any agreements between affiliates, DOH has mandatory conditions pursuant to the Hospital Conversions Act addressing this aspect of review. *See* R.I. Gen. Laws § 23-17.14-28.

The Asset Purchase Agreement does not include consideration that is based upon future or contingent value based upon success of the Newco Hospitals. *See* R.I. Gen. Laws § 23-17.14-7(c)(11). In fact, Prospect has confirmed that if the Newco Hospitals do not meet financial expectations, it will provide additional funding to them.<sup>43</sup> The terms of the Management Agreement were determined jointly by Prospect and CCHP, both of which were represented by,

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<sup>41</sup> Initial Application, Responses to Questions 35 and 36; Asset Purchase Agreement, Article VIII.

<sup>42</sup> Response to Supplemental Question 3-38.

<sup>43</sup> Response to Supplemental Question S4-25.



and consulted with, legal counsel relating to the Proposed Transaction. *See* R.I. Gen. Laws § 23-17.14-7(c)(14),(15). The Attorney General finds that the statutory requirement of R.I. Gen. Laws § 23-17.14-7(c)(23) has been met.

Therefore, the additional miscellaneous Hospital Conversions Act criteria that must be reviewed regarding board actions have been satisfied.

## **B. CONFLICTS OF INTEREST**

Numerous provisions of the Hospital Conversions Act deal with conflicts of interest.<sup>44</sup> The Attorney General has reviewed the criteria in the Act to determine whether the Transacting Parties and their consultants have avoided conflicts of interest.

### **1. Conflict of Interest Forms**

As part of the Initial Application, certain individuals associated with the Transacting Parties were required to execute conflict of interest forms. These included officers, directors and senior management for Prospect and CCHP. Individuals completing the conflict of interest forms were asked to provide information to determine conflicts of interest such as their affiliation with the Transacting Parties, their relationships with vendors and their future involvement with the Transacting Parties. The Proposed Transaction also provides that the employment contracts of the Executive Team will be assumed by Prospect, without any additional compensation or benefit.<sup>45</sup> The Attorney General finds no conflict of interest occurred with respect to these agreements that are to be assumed by Prospect.<sup>46</sup> Further, the applicants have stated that board members of the Prospect CharterCARE, LLC and the Newco Hospitals will not be compensated.<sup>47</sup> After reviewing the conflict of interest forms, the Attorney

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<sup>44</sup> *See* R.I. Gen. Laws §§ 23-17.14-7(c) (6), (7), (12), (22) and (25) (iv).

<sup>45</sup> *See* R.I. Gen. Laws §§ 23-17.14-7(c) (6), (7), (12), (22).

<sup>46</sup> *See* Initial Application, Responses to Questions 1, 15, 35, 36, Exhibit 18 Asset Purchase Agreement Article VIII.

<sup>47</sup> Response to Supplemental Question 3-38.

General determines that none of the submitted information revealed any conflict of interest.<sup>48</sup>

*See* R.I. Gen. Laws §23-17.14-7(c)(6).

## **2. Consultants**

The Hospital Conversions Act requires a review of the possibility of conflicts of interests with regard to consultants engaged in connection with the Proposed Transaction. R.I. Gen. Laws §§ 23-17.14-7(c)(6) and (7). The Attorney General notes that CCHP engaged several entities in its pursuit of a potential suitor, including Cain Brothers & Company, an investment banking firm, to assist it with evaluation of the proposals made by prospective suitors, as well as in negotiations once a prospective suitor was located.<sup>49</sup> It also retained a number of other consultants, including Cambridge Research Institute, The Camden Group, Drinker Biddle & Reath, LLP, Canon Design, Angell Pension Group and Schulte Roth Zubel, LLC to assist it with the process of review of the RFPs submitted and negotiation of the Proposed Transaction.<sup>50</sup> The Attorney General has determined that the criteria contained in R.I. Gen. Laws §23-17.14-7(c)(6) and (7) of the Hospital Conversions Act have been satisfied as to some, but not all of the consultants engaged because conflict of interest forms were not provided for Cambridge Research Institute, The Camden Group, Dr. Vincent Falanga (who is no longer affiliated with RWMC) and Schulte Roth Zubel, LLC, despite CCHP's efforts to obtain them. One should not be able to avoid providing a conflict form because of change in employment or affiliation. Clearly the forms from these individuals are relevant. These individuals have failed to cooperate with the Attorney General's review. Because no forms have been provided, the Attorney General has made an inference that a conflict of interest exists with regard to these individuals,

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<sup>48</sup> *See* Initial Application, Response to Question 15

<sup>49</sup> Initial Application, Response to Question 14

<sup>50</sup> Initial Application, Response to Question 60, Exhibit 60B.

that any future dealings between Prospect and these individuals will be considered suspect, and in the event the Attorney General obtains additional information, further action may be taken.

### **3. Negotiations And Conflicts**

After review of relevant documents obtained during the Attorney General's review, it has been determined that the individuals who represented the Existing Hospitals in negotiations of the Proposed Transaction had no impermissible conflicts of interest.<sup>51</sup>

### **4. Sale Proceeds And Conflicts**

As contemplated by the structure of the purchase price outlined in the Asset Purchase Agreement, there will be no proceeds from the Proposed Conversion after the disposition of the liabilities of the Existing Hospitals not assumed by Prospect CharterCARE, LLC. Therefore, there is no need to address whether the Transacting Parties have appropriately provided for the disposition of proceeds.<sup>52</sup>

### **5. Prospect Conflicts Of Interest**

On behalf of Prospect, several consultants were also engaged including: BDO, Cardno ATC, Lathan & Watkins LLP, Nixon Peabody, LLP, Rutan & Tucker, LLP, Groom Law Group, Chartered, Sills Cummis & Gross P.C. and Ferrucci Russo PC.<sup>53</sup> After reviewing the conflict of interest forms submitted by Prospect, the Attorney General finds none of the forms submitted by Prospect revealed any conflict of interest.

In response to various questions, Prospect has indicated that it has identified certain leadership positions within its organization, post transaction.<sup>54</sup> Under the terms of the Asset Purchase Agreement, Management Agreement and Prospect CharterCARE Operating

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<sup>51</sup> R.I. Gen. Laws § 23-17.14-7(c)(22).

<sup>52</sup> See R.I. Gen. Laws § 23-17.14-7(c)(25)(iv).

<sup>53</sup> Initial Application, Response to Question 60, Exhibit 60A.

<sup>54</sup> See Initial Application, Response to Question 35.

Agreement, Prospect will hold an 85% ownership interest and thus will appoint certain individuals as its representatives, all of whom have provided Conflict of Interest Statements. A review of these documents and the interviews conducted with representatives of Prospect does not indicate that any conflict of interest exists with respect to the Proposed Transaction.<sup>55</sup> See R.I. Gen. Laws §§ 23-17.14-7 (c)(6),(7).

### **C. VALUE OF TRANSACTION**

The following Hospital Conversions Act criteria deal with valuation of the Proposed Transaction. See R.I Gen. Laws §§ 23-17.14-7 (c)(17), (18) and (24):

(17) Whether the proposed conversion contemplates the appropriate and reasonable fair market value;

(18) Whether the proposed conversion was based upon appropriate valuation methods including, but not limited to, market approach, third party report or fairness opinion; and

(24) Whether the formula used in determining the value of the existing hospital was appropriate and reasonable which may include, but not be limited to factors such as: the multiple factor applied to the "EBITDA" – earnings before interest, taxes, depreciation, and amortization; the time period of the evaluation; price/earnings multiples; the projected efficiency differences between the existing hospital and the new hospital; and the historic value of any tax exemptions granted to the existing hospital.

Given their relevant expertise in this area, the Attorney General consulted with its expert, James P. Carris, CPA, ("Carris"), in making a determination regarding valuation. According to the analysis of Carris:

#### **Is the Purchase Commitment from Prospect Medical Holdings, Inc. Fair and Reasonable?**

As described in the Asset Purchase Agreement (APA), Prospect Medical Holdings (Prospect), through a series of subsidiaries, is acquiring substantially all the assets of CharterCARE Health Partners, Inc. (CCHP). The acquisition includes Roger Williams Medical Center (RWMC), a 220-bed acute care teaching hospital and Saint Joseph's Health System of Rhode Island (SJHSRI), which operates Fatima Hospital, a 278-bed acute care community hospital located in North Providence, RI.

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<sup>55</sup> *Id.*, and Exhibit 18 (Asset Purchase Agreement, Prospect CharterCARE Operating Agreement and Management Agreement).

Additionally, there are a number of non-hospital health entities in CCHP, which are also included in the transaction.

At closing, CCHP will receive \$45 million in cash plus a 15% interest in the joint venture (Prospect CharterCARE) that will hold the acquired assets.

The APA requires that the \$45 million in cash proceeds be dispersed at closing as follows:

- \$16,550,000 to be used to fully redeem SJHSRI revenue bonds issued in 1999 by Rhode Island Health and Educational Building Corporation.

- \$11,062,500 to be used to redeem RWMC revenue bonds issued in 1998 by Rhode Island Health and Educational Building Corporation.

- \$3,387,500 to be used to redeem Roger Williams Realty Corporation revenue bonds issued in 1999 by Rhode Island Health and Educational Building Corporation.

- \$14,000,000 to be applied to the St. Joseph Pension Plan.

A detailed sources and uses schedule for the transaction has been provided by the parties.

Prospect has also committed \$50 million over a four year period (in addition to CCHP's routine capital commitment of at least \$10 million per year) to fund expansion and physical plant improvements to the existing entities. During the process, Prospect has agreed to guarantee the \$50 million long-term capital commitment of its subsidiary, Prospect East. This \$50 million may be subject to certain limitations and offsets but for the purposes of this analysis, is included at the full \$50 million.

CCHP's 15% interest in the joint venture is also subject to potential limitations, including a possible capital call. All parties to the transaction have given assurances that no capital call is anticipated in the foreseeable future.

Representatives of management and the Board of CCHP stipulated that if this transaction does not close, they would immediately begin the strategic partnering process again. The system does not have the ability to survive long-term with a "go it alone" strategy. This is borne out by the internal March 2014 consolidated financial statements, which shows a six-month, consolidated operating loss of approximately \$9 million.

A third party valuation analysis or fairness opinion was not completed with regard to the entire transaction. CCHP stated that its board did not undertake an appraisal since any potential valuation would have to be measured against the board's requirement for a joint venture model that included the retention of local ownership and local governance. Prospect stated that it looked at two methods of determining potential value. The first method was a multiple of twelve months trailing EBITDA and the second method was a multiple of enterprise value. Neither of these methods were deemed by the parties to be applicable in this situation. Accordingly, the parties

looked at the existing long-term debt, other outstanding obligations and future capital needs. CCHP in pursuing its joint venture model, as directed by its Board, was looking to resolve approximately \$31 million in long-term debt, to bring the St. Joseph's Pension Plan to a ninety (90%) percent funding level and fund future capital needs of approximately \$50 million. The parties therefore estimate the total consideration to be approximately \$95 million.

The purchase commitment from Prospect is fair and reasonable for the acquisition of CCHP and its affiliates. This is based on the criteria established by the CCHP Board, a review of available documentation, analysis of CCHP's current and historical operating performance as well as interviews and discussions with numerous individuals who participated in the processes and discussions which culminated in this transaction.

Moreover, given the considered and extensive review process employed by the CCHP Board and its finding that the terms of its deal with Prospect "were the best available from the remaining, interested parties," the information provided by Carris, as well as the offers of other bidders, the criteria under the Hospital Conversions Act regarding valuation of the Proposed Transaction has been met.

#### **D. CHARITABLE ASSETS**

The Attorney General has the statutory and common law duty to protect charitable assets within the State of Rhode Island.<sup>56</sup> In addition, the Hospital Conversions Act specifically includes provisions dealing with the disposition of charitable assets in a hospital conversion generally to ensure that the public's interest in the funds is properly safeguarded.<sup>57</sup> With regard to the charitable assets of CharterCARE, currently they are held by three entities: the CCHP Foundation, Roger Williams Medical Center and St. Joseph Health Services of Rhode Island.<sup>58</sup>

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<sup>56</sup> See e.g., R.I. Gen. Laws § 18-9-1, *et seq.*

<sup>57</sup> See, R.I. Gen. Laws § 23-17.14-7(c).

<sup>58</sup> Initial Application, Response to Questions 28 and 29.

## 1. Disposition of Charitable Assets

In the Initial Application, the Transacting Parties were asked to identify and account for all charitable assets held by the Transacting Parties.<sup>59</sup> Voluminous detail was provided which will not be detailed herein, but was thoroughly reviewed. Certain information regarding these assets is outlined below. This requirement has been satisfied by the Transacting Parties pursuant to the Hospital Conversions Act. In addition, it was represented that Prospect CharterCARE, LLC has no plans to change or remove the names associated with former gifts to the Existing Hospitals.<sup>60</sup>

In addition, the Transacting Parties were required to provide proposed plans for the creation of the entity where all charitable assets held by the non-profit entities would be transferred.<sup>61</sup> With regard to restricted funds, pursuant to the Hospital Conversions Act, in a hospital conversion involving a not-for-profit corporation and a for-profit corporation, it is required that any endowments, restricted, unrestricted and specific purpose funds be transferred to a charitable foundation.<sup>62</sup> In furtherance of that requirement, CCHP indicated in the Initial Application that it intends to transfer all currently held specific purpose and restricted funds to the CCHP Foundation,<sup>63</sup> which will use the funds in accordance with the designated purposes. At the outset, the only change in the mission and the purpose of the CCHP Foundation will be that charitable assets will not be used for the operations of what would have become the Newco Hospitals due to their for-profit status. The mission and purpose of the CCHP Foundation would be to ensure use of charitable assets consistent with the historical donors' intent and community based needs. It would continue to serve as a community resource to provide accessible,

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<sup>59</sup> Id.

<sup>60</sup> Response to Supplemental Question S-42

<sup>61</sup> Initial Application, Question 29, R.I. Gen. Laws § 23-17.14-7(c)(25) and §23-17.14-22(a).

<sup>62</sup> R.I. Gen. Laws § 23-17.14-22(a).

<sup>63</sup> See Initial Application, Response to Questions 28 and 29.

affordable and responsive health care and health care related services including disease prevention, education and research, grants, scholarships, clinics and activities within the community to facilitate positive changes in the health care system.<sup>64</sup> The strategic planning process for CCHP Foundation is ongoing.

Historically, a *Cy Pres* petition to the Rhode Island Superior Court is the legal vehicle to determine whether a donor's intent can be satisfied, and if not, to determine the next best alternative to honor the donor's intent. Because of the change of control of the Existing Hospitals and proposed transfer of their charitable assets to the CCHP Foundation, it was contemplated that a simple *Cy Pres* acknowledging that each Existing Hospital has charitable assets and that post conversion, the CCHP Foundation will honor the intent of the donors, would be the appropriate vehicle. However, as the financial situation of the Existing Hospitals, including with respect to the SJHSRI pension liability, continued to deteriorate during the regulatory review of the Initial Application, CCHP revised its plan as set forth in the Initial Application to reflect a more staggered process with respect to its restricted funds which required some adjustments to the basic form *Cy Pres* described above.

Due to the extent of the Existing Hospitals' liabilities, CCHP proposed that certain RWMC and SJHSRI restricted assets, in addition to unrestricted cash, would remain with the Heritage Hospitals during their wind-down period rather than transferring directly to the CCHP Foundation. Specifically, a total of approximately \$19.6 million dollars in restricted assets would be held by the Foundation (\$7.2 million dollars) and the Heritage Hospitals (\$12.4 million dollars). The revised *Cy Pres* plan was set forth in an outline of the proposed *Cy Pres* petition for each of the Heritage Hospitals with accompanying estimated opening summary balance

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<sup>64</sup> Initial Application Response to Question 28.



sheets for both the Heritage Hospitals and the CCHP Foundation, provided to the Attorney General, and is described below.

A multi-year wind-down process is typical in the dissolution of a hospital corporation due to the time it typically takes to settle government cost reports and the like. It is particularly appropriate where the expected hospital's liabilities are projected to exceed the amount of the unrestricted assets available at the time of closing but where there is also an expectation that additional unrestricted assets will be available in the future, as is the case here. The corporation retains during the wind-down process those restricted charitable assets that provide unrestricted earnings which can be used to address its remaining liabilities, and the corporation remains open until such time as it is concluded that it has completed the winding-down of its affairs.

With respect to the period of time after the close of the Proposed Transaction when the Heritage Hospitals remain open, CCHP proposes to carry out the above-described process as follows:

CCHP Foundation

As a threshold matter, CCHP's *Cy Pres* petition would address any needed change in the CCHP Foundation mission to reflect the broader, community health oriented foundation focus. The *Cy Pres* petition will request approval for the transfer of charitable funds to the CCHP Foundation comprised of approximately \$7.2 million dollars in restricted assets comprised of restricted cash, endowment and earnings on endowment of approximately \$6.9 million dollars from RWMC and \$318,000 from SJHSRI.

The RWMC endowments contained within the sum being transferred to the Foundation total approximately \$4.2 million dollars. The *Cy Pres* petition will address the use of the RWMC endowment income for appropriate charitable purposes. The estimated annual income on such

amount is estimated at approximately \$210,000 annually assuming existing investment policy and allowing for a 5% distribution, within the 7% recommended maximum distribution.

CCHP also will seek *Cy Pres* approval to use approximately \$12.9 million dollars of the total accumulated temporarily restricted earnings on the RWMC endowment of approximately \$15.3 million dollars to satisfy RWMC's liabilities. The balance of approximately \$2.4 million dollars also would be moved to the CCHP Foundation for charitable purposes as it deems appropriate. The estimated annual income from the temporarily restricted endowments is approximately \$118,000 assuming the existing investment policy allowing for a 5% distribution, within the 7% recommended maximum distribution. There are no expected changes in the investment managers during the wind-down period.<sup>65</sup>

RWMC also has a number of temporarily restricted funds whose purpose will not be fully expended before the closing of the Proposed Transaction. It is estimated that approximately \$285,000 in such restricted cash funds will be transferred to the CCHP Foundation. The purposes of these funds will be reviewed and adjusted to meet as close to the original donor intent as possible.

Finally, CCHP intends to request that approximately \$108,000 in SJHSHR temporarily restricted scholarship and endowment funds, and approximately \$209,000 in other temporarily restricted assets be transferred to the CCHP Foundation. The purposes of transferred funds will be similarly reviewed and adjusted to meet as close to the original donor intent as possible.

#### Heritage Hospitals

CCHP proposes to retain approximately \$24.3 million dollars of assets within the Heritage Hospitals for the time being, including approximately \$12.4 million dollars in restricted

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<sup>65</sup> Response to Supplemental Question 3-30.

assets comprised of perpetual trusts, endowments and scholarships and temporarily restricted assets, as follows:

First, CCHP intends to seek *Cy Pres* approval to change the purpose of the approximately \$1.2 million dollars in SJHSRI's permanently restricted scholarship and endowment funds to be used to partially satisfy SJHSRI's liabilities, including but not limited to potential future funds and expenses relating to the pension plan.

Second, each of the Heritage Hospitals will each retain their respective right to the receive distributions from approximately \$10.8 million dollars in perpetual trusts, which will be used to pay their respective wind-down expenses. In addition, CCHP intends to seek trustee and *Cy Pres* approval to use the perpetual trust income received by RWMC to partially satisfy the payment of SJHSRI expenses, if needed, after all of RWMC's liabilities have been paid.

Finally, the *Cy Pres* petition will include a request that RWMC retain approximately \$421,000 in funds dedicated to expenses unique to RWMC. These include funds restricted for continuing medical education and surgical and oncology academic and research program for which RWMC will seek limited approval to pay only for the costs of such program at Newco RWMC that are over and above the routine, budgeted cost of operating these programs going forward.

To summarize, the *Cy Pres* disposition addressing the transfers to the CCHP Foundation on the one hand and adjustments to funds retained within the Heritage Hospitals on the other, as described above, will ensure that the Existing Hospital charitable assets are used for their intended purposes when that is consistent with law, and will seek court approval for an appropriate, comparable charitable use when the intended use would no longer be consistent with law, for example, because it would require that funds go to a successor, for-profit hospital.

In addition, at one or more future dates, upon confirmation that perpetual trust distributions and endowment earnings are no longer needed to address the liabilities of one or both Heritage Hospitals, one or more additional *Cy Pres* disposition(s) of any remaining restricted and unrestricted charitable assets of the Heritage Hospitals will take place to transfer funds to the CCHP Foundation. Trustee approval also will be required to re-direct future perpetual trust distributions to the CCHP Foundation.

With appropriate agreements with the CCHP Foundation, the Heritage Hospitals and CCHP that are approved by the court in *Cy Pres* proceedings to manage the restricted assets, the Attorney General finds that the Proposed Transaction will not harm the public's interest in the property given, devised or bequeathed to the Existing Hospitals for charitable purposes.<sup>66</sup>

Promptly following the closing of the Proposed Transaction, CCHP will close the books on SJHSRI and RWMC and seek preliminary approval from the Attorney General as to the form and content of the post-closing *Cy Pres* petition described above. Thereafter, the RI Superior Court's consideration of said initial petition will take place within a reasonable period following closing of the Proposed Transaction.

Lastly, inasmuch as none of the existing CCHP entities are trustees for any of the holdings, they are not responsible for completing annual filings as required by R.I. Gen. Laws §18-9-13. *See* R.I. Gen. Laws §23-17.14-7(c)(26).

## **2. Maintenance of the Mission, Agenda and Purpose of The Existing Hospitals**

The Hospital Conversion Act at R.I. Gen. Laws § 23-17.14-7(c)(16) and R.I. Gen. Laws § 23-17.14-7(c)(25)(iii) requires consideration of the following:

- Whether the proposed conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the

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<sup>66</sup> R.I. Gen. Laws § 23-17.14-7(c) (1).

traditional purposes and mission of the existing hospital such that a cy pres proceeding would be necessary; and

- Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing hospital.

RWMC and SJHSRI share the same mission; namely, “as an Affiliate of the System shall be to foster an environment of collaboration among its partners, medical staff and employees that supports high quality, patient focused and accessible care that is responsive to the needs of the communities it serves.”<sup>67</sup> CCHP “is organized and shall be operated exclusively for the benefit of and to support the charitable purposes of Roger Williams Hospital, St. Joseph Health Services of Rhode Island and Elmhurst Extended Care Services, Inc.....”<sup>68</sup> CCHP Foundation finds its origins in the SJ Foundation, formed on February 27, 2007 “to hold and administer charitable donations on behalf of SHHSRI.”<sup>69</sup> In December of 2011, a Petition for Cy Pres, *In Re: CharterCARE Health Partners Foundation, P.B. No. 11-6822*, was filed and granted by the Rhode Island Superior Court (Silverstein, J.) allowing the transfer of the restricted funds that were raised by the SJ Foundation to SJHSRI.”<sup>70</sup> “Subsequent to and as part of the CCHP affiliation, on August 25, 2011, the organizational documents of SJ Foundation were revised to change its name to CharterCARE Health Partners Foundation and to make CCHP its sole member.”<sup>71</sup> “On September 9, 2011, CCHP Foundation secured from the IRS a determination that it was 1) exempt from tax under section 501(c)(3) of the Internal Revenue Code (IRC), and 2) a public charity under section 509(a)(3) of the IRC.”<sup>72</sup>

While implied in Prospect’s for-profit status that profit is an issue that will be considered, Prospect has committed that Prospect CharterCARE, LLC “will adopt, maintain and adhere to

<sup>67</sup> Initial Application, Exhibit 10(C)(D), *See also* Response to Supplemental Question S5-2.

<sup>68</sup> Initial Application, Exhibit 10(B), *See also* Response to Supplemental Question S5-2.

<sup>69</sup> Initial Application, Response to Question 29.

<sup>70</sup> Initial Application, Response to Question 28.

<sup>71</sup> Id.

<sup>72</sup> Id.

CCHP's policy on charity care and or adopt policies and procedures that are at least as favorable to the indigent, uninsured and underserved as CCHP's existing policies and procedures."<sup>73</sup> It has further stated that, should a conflict arise between the charitable purposes of the Existing Hospitals and profit-making that the charitable purposes of the Existing Hospitals shall prevail.<sup>74</sup> The Attorney General finds that R.I. Gen. Laws §23-17.14-7(c)(16) of the Hospital Conversions Act has been satisfied.

The Attorney General has also considered that Prospect has purchased eight other hospitals over the course of its existence, some of which have included distressed hospitals<sup>75</sup>, and has stated that it has never closed or sold any of its hospitals.<sup>76</sup> Although there is no evidence that the Proposed Transaction will differ significantly from the stated purposes of the Existing Hospitals, it is necessary that a *Cy Pres* be filed and granted both to ensure the proper utilization of the remaining restricted funds and because this hospital conversion includes the conversion of two non-profit entities' assets for use by for-profit entities.

Further, Rhode Island law requires that all licensed hospitals, whether non-profit or for-profit, provide unreimbursed health care services to patients with an inability to pay.<sup>77</sup> Therefore, Prospect will be required even as a for-profit hospital to provide a certain amount of charity care and has agreed to do so.<sup>78</sup>

Finally, in consideration of whether the new entity will operate with a similar purpose, pursuant to Section 13.15 of the Asset Purchase Agreement entitled "Essential Services" Prospect has agreed to maintain the Newco Hospitals as acute care hospitals with a "full

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<sup>73</sup> Initial Application Response to Question 59(c).

<sup>74</sup> Exhibit 18 to Initial Application, Asset Purchase Agreement, Section 13.14; *see also* Response to S3-14.

<sup>75</sup> Interview of Thomas Reardon.

<sup>76</sup> Response to Supplemental Question 4-25.

<sup>77</sup> R.I. Gen. Laws §§ 23-17.14-15(a)(1), (b) and (d).

<sup>78</sup> *See* Initial Application Exhibit 18, Asset Purchase Agreement, Article 13.14 and Management Agreement.

complement of essential clinical services for a period of at least five years immediately following the Closing Date.”<sup>79</sup> In addition, Prospect has stated that there are no current plans to discontinue any CCHP systems services, accreditations, and certifications, including those of the CCHP affiliates.<sup>80</sup> These include health care and non-healthcare community benefits.<sup>81</sup> As with any acquisition, it is likely that some changes will take place after Prospect takes over the Existing Hospitals. In fact, Prospect has indicated that it will be undertaking strategic initiatives collaboratively to improve services rendered to patients.<sup>82</sup> Further, as part of its long term capital commitment to CCHP, Prospect has also committed to making improvements of a bricks and mortar nature to the Existing Hospitals.<sup>83</sup> Accordingly, the Proposed Transaction does include a potential that some changes will occur at the Existing Hospitals.

### **3. Foundation for Proceeds**

In addition to addressing charitable assets, the Hospital Conversions Act requires an independent foundation to hold and distribute proceeds from a hospital conversion consistent with the acquiree's original purpose.<sup>84</sup> With regard to the Proposed Transaction, the Asset Purchase Agreement does not include a purchase price that will produce traditional proceeds as it is structured upon payment of certain obligations and commitment to future investments in the hospital. Accordingly, R.I. Gen. Laws § 23-17.14-22 does not require a foundation for receipt of proceeds. Nonetheless, CCHP Foundation is an existing publicly supported foundation which stands ready to receive the restricted funds associated with the Heritage Hospitals in accordance with the plan described above. It is anticipated that the amount of such funds are sufficient for

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<sup>79</sup> See Asset Purchase Agreement Article 13.15; Initial Application Response to Questions 53, 57 and 59.

<sup>80</sup> Response to Supplemental Question S3-53.

<sup>81</sup> See e.g. Exhibit S3-19; Exhibit S4-20, and Final Supplemental Response 4-20.

<sup>82</sup> Initial Application, Exhibit 18 Asset Purchase Agreement Article 13.13.

<sup>83</sup> Initial Application, Response to Question 1.

<sup>84</sup> R.I. Gen. Laws § 23-17.14-22(a) and R.I. Gen. Laws § 23-17.14-7(c)(16).

the operation of an independent community health care foundation. However, should the CCHP Foundation board determine in the future that it would be more cost effective to do so, it may seek *Cy Pres* approval to transfer the restricted assets to an independent foundation consistent with the Hospital Conversions Act.

#### **E. TAX IMPLICATIONS**

There are three criteria in the Hospitals Conversions Act that deal with the tax implications of the Proposed Transaction.<sup>85</sup> Currently, CCHP and the Existing Hospitals are non-profit corporations organized pursuant to Rhode Island law. Upon the purchase of their assets by Prospect, the resulting entities will be for-profit entities and no longer immune from certain tax obligations. Clearly, this has an impact on the tax status of these entities.<sup>86</sup> This transaction represents the second hospital conversion transaction in Rhode Island where nonprofit hospitals are changing to for-profit entities. Review of the Initial Application indicates that this decision to become for-profit entities was made after careful consideration by CCHP that the terms of this transaction were the best available to CCHP among the proposals from the remaining interested parties.<sup>87</sup> Accordingly, the wisdom of choosing a for-profit company to purchase a non-profit hospital is not a matter that warrants in-depth consideration given the circumstances.

With regard to tax implications, one of Prospect's conditions of closing the transaction with CharterCARE stated in the Initial Application referenced that the closing is contingent upon property tax stabilization/exemption ordinances with the host communities of Providence and

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<sup>85</sup> See R.I. Gen. Laws §§ 23-17.14-7(c)(20), (21) and (25)(ii).

<sup>86</sup> The question posed by R.I. Gen. Laws § 23-17.14-7(c)(21) is whether the tax status of the existing hospital is jeopardized." This characterization does not apply to the Proposed Transaction as not only is it jeopardized, it is knowingly being changed from non-profit to for-profit.

<sup>87</sup> See Initial Application, Response to Request 55.



North Providence.<sup>88</sup> The Transacting Parties have indicated that these negotiations are ongoing with the communities to be affected and are anticipated to be resolved with a potential need for further procedural hearings to occur after May 16, 2014.<sup>89</sup> The Attorney General is advised by Prospect that they are progressing steadily toward a resolution of this issue. The determination as to whether tax stabilization or exemption will be granted to Prospect for the Existing Hospitals is beyond the Attorney General's jurisdiction and is therefore left to the affected communities to determine.

In addition to real estate taxes, typically Prospect would be required to pay Rhode Island sales and use tax in certain situations. *See* R.I. Gen. Laws § 44-18-1 *et seq.*, and 44-19-1, *et. seq.*

As for the remaining review criteria contained in R.I. Gen. Laws §23-17.14-7(c)(20), regarding "whether the conversion is proper under applicable state tax code provisions," the Transacting Parties are required to obtain a certificate from the State of Rhode Island prior to closing that the Proposed Transaction is proper under applicable state tax code provisions. Accordingly, the Attorney General finds that once the required certificate has been obtained from the State of Rhode Island, which is a requirement of closing of the Proposed Transaction, that this particular criterion under the Hospital Conversions Act will be met.

CCHP also sought legal counsel regarding federal tax implications with respect to CCHP serving as the 15% member of for-profit Prospect CharterCARE, LLC. CCHP has stated that the structure of the Proposed Transaction permits it to act exclusively in furtherance of its exempt purposes and only incidentally for the benefit of PMH. However, because this area of tax law may continue to evolve in the future, should CCHP's tax-exempt status ever be jeopardized due to its participation in the Prospect CharterCARE, LLC, CCHP may cause PMH

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<sup>88</sup> See Initial Application, Response to Question 45.

<sup>89</sup> Response to Supplemental Question S4-12.

to buy out its interest if there is no other satisfactory resolution. This process and the distribution of the additional proceeds would be subject to Attorney General oversight consistent with this decision.<sup>90</sup> Finally, CCHP has stated that it will take any reasonable steps to ensure that both it and the CCHP Foundation will preserve their current exempt status following the close of the Proposed Transaction<sup>91</sup>.

Regarding the tax status of the entity receiving the proceeds, no proceeds are contemplated and the new entities will be for-profit. *See* R.I. Gen. Laws § 23-17.14-7(c)(25)(ii).

#### **F. NEW ENTITY**

The Attorney General must review certain criteria pursuant to the Hospital Conversions Act that deals with the corporate governance of the new hospitals after the completion of the Proposed Transaction.<sup>92</sup> Below is an outline of the review of such requirements.

##### **1. Bylaws and Articles of Incorporation**

One issue that must be examined is whether the new entity has bylaws and articles of incorporation. The new corporate entity that will purchase the assets of CCHP is Prospect Medical Holdings, Inc. (“PMH”). PMH is a Delaware corporation incorporated on May 14, 1999 with its principal place of business in Los Angeles, California. *See* Initial Application Exhibit 10(a). The current bylaws for PMH were provided by the Transacting Parties. *Id.* Therefore, bylaws and articles of incorporation have been provided for PMH.<sup>93</sup>

PMH is a health care services company that owns and operates hospitals and manages the provision of health care services for managed care enrollees through its network of specialists and primary care physicians. PMH is the parent entity with regard to the eight (8) acute care and

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<sup>90</sup> Response to Question S10

<sup>91</sup> Final Supplemental Responses Miscellaneous p. 6.

<sup>92</sup> *See e.g.*, Hospital Conversions Act, R.I. Gen. Laws §§ 23-17.14-7(c)(25) (i), (v), (vi), (vii), (viii), and (ix).

<sup>93</sup> Initial Application Exhibit 10A-1.

behavioral hospitals located in California and Texas. In total, PMH owns and operates approximately 1,082 licensed beds and a network of specialty and primary care clinics.<sup>94</sup>

PMH is owned by Ivy Intermediate Holdings, Inc. (“IIH”), a Delaware corporation, incorporated on July 23, 2010, with its registered place of business in Wilmington, Delaware.<sup>95</sup> The current bylaws for IIH were provided by the Transacting Parties. *Id.* Therefore, bylaws and articles of incorporation have been provided for IIH.<sup>96</sup>

Ivy Holdings, Inc. (“IH”), a Delaware corporation, incorporated on December 14, 2010, with its registered place of business in Wilmington, Delaware, owns 100% of the stock of IIH.<sup>97</sup> IH is a holding company for this stock ownership, having no other assets, liabilities or operations.<sup>98</sup> Bylaws were provided by the Transacting Parties for IH.<sup>99</sup>

Pursuant to the Asset Purchase Agreement,<sup>100</sup> the ownership interest of PMH will be held by a newly formed LLC, Prospect East Holdings, Inc., (“Prospect East”) a Delaware LLC, formed on August 20, 2013, with its principal place of business located in Wilmington, Delaware.<sup>101</sup> Prospect East is structured to be the PMH entity that will hold ownership interest in any health care facilities acquired by PMH on the East Coast. The current bylaws for Prospect East were provided by the Transacting Parties. *Id.* Therefore, bylaws and articles of incorporation have been provided for Prospect East.<sup>102</sup>

Prospect CharterCARE, LLC, a Rhode Island limited liability company, is a joint venture between Prospect East and CCHP and will hold 100% of the ownership interests in the entities

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<sup>94</sup> Initial Application p. 1.

<sup>95</sup> Initial Application, Exhibit 10A-12.

<sup>96</sup> Id.

<sup>97</sup> Initial Application, Exhibit 10A-11.

<sup>98</sup> Initial Application, p. 2.

<sup>99</sup> Initial Application, Exhibit 10A-11.

<sup>100</sup> Asset Purchase Agreement, p. 2.

<sup>101</sup> Initial Application, p. 2, Ex. 10A-6.

<sup>102</sup> Id.

that will hold the licensure for the Existing Hospitals, post conversion.<sup>103</sup> Prospect CharterCARE, LLC was formed on August 20, 2013, with its principal place of business in Los Angeles, California and will be owned 85% by Prospect East and 15% by CCHP. Prospect East is the managing member of Prospect CharterCARE, LLC and is responsible for the day-to-day management of the Newco Hospitals with certain decisions subject to Board approval pursuant to Section 8.3 of the Prospect CharterCARE Operating Agreement. Prospect East as the managing member of Prospect CharterCARE, LLC has delegated through the Management Agreement the day-to-day management of the Newco Hospitals to Prospect Advisory Services, LLC (“Prospect Advisory”), an affiliate of PMH. The governing board of Prospect CharterCARE, LLC will be a 50/50 board<sup>104</sup> (the “Board”) with half of its members selected by and through Prospect East’s ownership and the other half of the members selected by and through CCHP’s ownership. The Board shall be the organized, governing body responsible for the management and control of the operations of the licensed hospitals, their conformity with all federal, state and local laws and regulations regarding fire, safety, sanitation, communicable and reportable diseases and other relevant health and safety requirements.<sup>105</sup> The Board shall define the population and communities to be served and the scope of services to be provided.<sup>106</sup> The Board shall also determine policy with regard to the qualifications of personnel, corporate governance, and the policy for selection and appointment of medical staff and granting of clinical privileges.<sup>107</sup> Bylaws were not provided for Prospect CharterCARE, LLC as typically

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<sup>103</sup> Newco Hospitals.

<sup>104</sup> Initial Application, Revised 7(c).

<sup>105</sup> Id.

<sup>106</sup> Id.

<sup>107</sup> Id.

such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties.<sup>108</sup>

Prospect Advisory, a Delaware Limited Liability Company was formed on August 20, 2013, with its principal place of business in Los Angeles, California and is solely owned and controlled by PMH.<sup>109</sup> As described above, Prospect East has delegated the day-to-day management of the Newco Hospitals to Prospect Advisory through the Management Agreement and Prospect Advisory will receive a monthly management fee equal to two percent (2%) of the Net Revenues<sup>110</sup> of Prospect CharterCARE, LLC. Prospect Advisory will work with the Executive Team of Prospect CharterCARE, LLC to run the day-to-day operations of the Newco Hospitals. The Executive Team shall be subject to the day-to-day supervision of Prospect Advisory, and together the Executive Team and Prospect Advisory will report to Prospect CharterCARE, LLC's Board and certain PMH executives. Prospect CharterCARE, LLC's Board will continue to have ultimate power and authority over certain decisions pursuant to Section 8.3 of Prospect CharterCARE Operating Agreement. The Bylaws were not provided for Prospect Advisory, as typically such organizations do not have Bylaws. It does not have a board of directors.<sup>111</sup> However, an operating agreement was provided by the Transacting Parties.<sup>112</sup>

Prospect CharterCARE RWMC, LLC ("Newco RWMC"), is a Rhode Island limited liability company, which will own and hold the licensure for Roger Williams Medical Center

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<sup>108</sup> Initial Application, Ex. 18.

<sup>109</sup> Initial Application, p. 35, Ex. 10A-7.

<sup>110</sup> Net Revenues means total operating revenues derived, directly or indirectly, by Prospect CharterCARE, LLC with respect to the Newco Hospitals, whether received on a cash or on a credit basis, paid or unpaid, collected or uncollected, as determined in accordance with generally accepted accounting principles net of (A) allowance for third party contractual adjustments and (B) discounts and charity care amounts (not including any bad debt amounts), in each case as determined in accordance with GAAP. Management Agreement, Section 5.2(b).

<sup>111</sup> Id.

<sup>112</sup> Initial Application, Ex. 10A-7.

post-conversion. Newco RWMC will be wholly-owned by Prospect CharterCARE, LLC<sup>113</sup> and its principal business office will be located in Los Angeles, California. Bylaws were not provided for Newco RWMC, as typically such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties.<sup>114</sup> It will be solely operated by Prospect CharterCARE, LLC.<sup>115</sup>

Prospect CharterCARE SJHSRI, LLC (“Newco Fatima”) is a Rhode Island limited liability company, with its principal business office located in Los Angeles, California.<sup>116</sup> It will own<sup>117</sup> and hold the licensure for Our Lady of Fatima Hospital post-conversion. Bylaws were not provided for Prospect CharterCARE SJHSRI, LLC, as typically such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties.<sup>118</sup> It will be solely operated by Prospect CharterCARE, LLC.<sup>119</sup>

Prospect CharterCARE Ancillary Services, LLC (“Ancillary Services”) is a Rhode Island limited liability company, with its principal place of business located in Los Angeles, California. It will hold the licensure for Prospect CharterCARE labs.<sup>120</sup> Bylaws were not provided for Prospect CharterCARE Ancillary Services, LLC, as typically such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties. It will be solely operated by Prospect CharterCARE, LLC.

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<sup>113</sup> Initial Application Response to Question 5.

<sup>114</sup> Initial Application, Ex. 10A-9.

<sup>115</sup> Id.

<sup>116</sup> Initial Application Ex. 10-10.

<sup>117</sup> Initial Application response to Question 5.

<sup>118</sup> Initial Application, Ex. 10A-9.

<sup>119</sup> Id.

<sup>120</sup> First Amendment to Asset Purchase Agreement, Response to Supplemental Question S3-15; Miscellaneous Exhibit 1.

Prospect CharterCARE, LLC, which will hold the ownership of the entities that hold the licensure for the Existing Hospitals, post conversion,<sup>121</sup> will be managed by Prospect East Holdings, Inc, a Delaware corporation, whose registered place of business is Wilmington, Delaware and is wholly-owned by PMH.<sup>122</sup> Bylaws were provided by the Transacting Parties for Prospect East Holdings.<sup>123</sup>

Accordingly, R.I. Gen. Laws § 23-17.14-7(c)(25)(v) has been satisfied.

## **2. Board Composition**

In addition to bylaws and articles of incorporation, specific criteria that must be considered regarding the new corporate entities include analysis of the composition of the new boards. Specifically, the Hospital Conversions Act requires review of:

- (vi) whether the board of any new or continuing entity will be independent from the new hospital;
- (vii) whether the method for selecting board members, staff, and consultants is appropriate;
- (viii) whether the board will comprise an appropriate number of individuals with experience in pertinent areas such as foundations, health care, business, labor, community programs, financial management, legal, accounting, grant making and public members representing diverse ethnic populations of the affected community; and
- (ix) whether the size of the board and proposed length of board terms are sufficient.

See R.I. Gen. Laws §§ 22-17.14-7(c)(25)(vi), (vii), (viii) and (ix).

First, it is important to state that in the Asset Purchase Agreement, PMH and CCHP have proposed a post-conversion structure in which those two entities will form a joint venture, Prospect CharterCARE, LLC, to own and operate all of the health care entities associated with CCHP including, without limitation, the two acute-care, community hospitals that currently operate as Roger Williams Medical Center and Our Lady of Fatima Hospital, as well as an

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<sup>121</sup> Newco Hospitals.

<sup>122</sup> Initial Application p. 2, Exhibit 12A-2, 10A-6.

<sup>123</sup> Initial Application, Ex. 10A-6.

extended care facility in Providence known as Elmhurst Extended Care. Prospect CharterCARE, LLC would operate under a 50/50 board composition, which will permit CCHP to retain a significant degree of control in the ongoing ownership and governance of Prospect CharterCARE, LLC to ensure the continuance of its local mission, as well as to provide it with access to the capital and other resources held by PMH to address the challenges of today's health care industry and continue to serve the citizens of Rhode Island.<sup>124</sup> Given the unique structure of the Proposed Transaction, it is necessary to also discuss the powers that will continue to be held by CCHP to advance these objectives.

Pursuant to the Prospect CharterCARE Operating Agreement, the Transacting Parties have agreed to form a board of directors that has the overall oversight and ultimate authority over the affairs of Prospect CharterCARE, LLC and its Subsidiaries.<sup>125</sup> As stated above, the Prospect CharterCARE Board will be a 50/50 board with half of its members selected by and through Prospect East's ownership and the other half of the members selected by and through CCHP's ownership.<sup>126</sup>

The Board would be comprised of eight (8) members: four (4) directors appointed by CCHP (including at least one (1) physician) and four directors appointed by Prospect East.<sup>127</sup> Board members would serve for a term of one to three years, at the discretion of the owner that elected or appointed the individual.<sup>128</sup> Board members could be removed with or without cause by the owner that elected or appointed the director.<sup>129</sup> However, if CCHP's ownership interest in Prospect CharterCARE, LLC is reduced to 5%, at any time, because it elects not to or is unable

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<sup>124</sup> Initial Application p. 7, Exhibit 18, Prospect CharterCARE Operating Agreement, Section 8.3.

<sup>125</sup> The Newco Hospitals, Prospect CharterCARE Elmhurst, LLC, and Prospect CharterCARE Physicians, LLC, p. 1 of Prospect CharterCARE Operating Agreement.

<sup>126</sup> Exhibit 18, Prospect CharterCARE Operating Agreement, Section 12.1.

<sup>127</sup> Id.

<sup>128</sup> Id.

<sup>129</sup> Id.



to contribute to a capital call then one of the CCHP appointed directors would resign and CCHP would only appoint three (3) directors.<sup>130</sup> In this case, the Board would be comprised of seven (7) instead of eight (8) directors.<sup>131</sup> Note that Prospect has stated that it does not expect to make any such capital calls within the first three (3) years post-closing.<sup>132</sup>

As previously described, Prospect East is the managing member of Prospect CharterCARE, LLC and is responsible for the day-to-day management of the Newco Hospitals with certain decisions subject to Board approval pursuant to Section 8.3 of Prospect CharterCARE's Operating Agreement. Prospect East as the managing member of Prospect CharterCARE, LLC has delegated through the Management Agreement the day-to-day management of the Newco Hospitals to Prospect Advisory. Prospect Advisory will work with the Executive Team of Prospect CharterCARE, LLC to run the day-to-day operations of the Newco Hospitals. The Executive Team shall be subject to the day-to-day supervision of Prospect Advisory, and together the Executive Team and Prospect Advisory will report to Prospect CharterCARE, LLC's Board and certain PMH executives. Prospect CharterCARE, LLC's Board will have ultimate power and authority over certain decisions.

Section 8.3 of Prospect CharterCARE's Operating Agreement sets forth the Board's reserved powers including but not limited to: changing the mission or the and purpose of Prospect CharterCARE, LLC or any of its Subsidiaries, decisions involving development and approval of strategic planning, decisions regarding annual operating and capital budgets, changes to the charity policy of Prospect CharterCARE, LLC and its Subsidiaries, approving reduction of essential services at either Newco Hospital, engaging in any merger, consolidation, share exchange or reorganization of Prospect CharterCARE, LLC and its Subsidiaries, and approving a

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<sup>130</sup> Id.

<sup>131</sup> Id.

<sup>132</sup> Response to Supplemental Question S4-3.

decision to dissolve or liquidate the Prospect CharterCARE, LLC or any of its Subsidiaries.<sup>133</sup>

Board approval would be exercised by the Board as a body with each owner's directors having a majority vote.<sup>134</sup> Thus, through this agreement, the leadership of CCHP retains significant decision making input into the continued operations of Prospect CharterCARE, LLC and its Subsidiaries. Meetings of the Board are required to occur at least on a quarterly basis with at least one meeting held in person (face-to-face).<sup>135</sup> Special meetings of the Board may be called by Prospect Advisory as the manager, the chairman or any three (3) members of the Board.<sup>136</sup>

In addition to the Board, Prospect CharterCARE, LLC will also form a local board for each of the Newco Hospitals.<sup>137</sup> These local boards would be comprised of at least six (6) individuals.<sup>138</sup> One half the of the local board members would be physicians from the Newco Hospitals' medical staff, and the other half of the local board members would be the Newco Hospitals' local CEOs and community representatives.<sup>139</sup> Local board members would be limited to three (3) year terms.<sup>140</sup> The local boards would be responsible for matters such as medical staff credentialing, recommendations regarding strategic and capital plans, providing guidance to the Prospect CharterCARE, LLC board on local market and community concerns, considerations, strategies, issues and politics as well as responding to other requests made by Prospect CharterCARE, LLC's board of directors.<sup>141</sup>

In Response to Question 7 of the Initial Application, the Transacting Parties state that PMH has yet to determine the identities of the four (4) board members comprising its 50% share

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<sup>133</sup> Section 8.3 of Prospect CharterCARE's Operating Agreement.

<sup>134</sup> Id. at Sections 1.6, 11.12, 12.2.

<sup>135</sup> Id. at Section 12.3.

<sup>136</sup> Id.

<sup>137</sup> Id. at Section 12.4.

<sup>138</sup> Id.

<sup>139</sup> Id.

<sup>140</sup> Id.

<sup>141</sup> Id.

of the Prospect CharterCARE, LLC Board. Meanwhile, CCHP has designated its four (4) board members comprising its share 50% of the Board. The Transacting Parties further state that the members of the Board of Directors of Newco RWMC and Newco Fatima have been determined since the filing of the Initial Application.

Accordingly, the composition of the boards of Prospect CharterCARE, LLC and those of the Newco Hospitals are sufficiently clear to ensure the independence from the hospitals and the diversity of experience required by the Hospital Conversions Act. There is no overlap between and among the boards of the CCHP Foundation, CCHP, the Heritage Hospitals, Prospect CharterCARE, LLC and the Newco Hospitals' boards. *See* R.I. Gen. Laws §22-17.14-7(c)(25)(v)(vi) and (viii).<sup>142</sup> As discussed above, the initial boards have been set and there is a methodology in place for their selection as well as the number and terms of directors. *See* R.I. Gen. Laws §22-17.14-7(c)(25)(vii). Therefore, the Hospital Conversions Act criteria regarding the boards of the new entities has been fully met.

**G. CHARACTER, COMMITMENT, COMPETENCE AND STANDING IN THE COMMUNITY**

An important and encompassing portion of the Hospital Conversions Act review criteria requires review of “[w]hether the character, commitment, competence and standing in the community, or any other communities served by the transacting parties are satisfactory” *See* R.I. Gen. Laws § 23-17.14-7(c)(28). As stated above, although PMH is the owner/operator of eight (8) other hospitals<sup>143</sup> through its established chain of command through the various associated limited liability company entities discussed above, PMH will exercise its primary control over CCHP and the Existing Hospitals through its subsidiary Prospect CharterCARE, LLC. As

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<sup>142</sup> Response to Supplemental Questions S3-8, S3-12.

<sup>143</sup> Initial Application, p. 1, Response to Question 4.

described above, Prospect CharterCARE, LLC will be comprised of a 50/50 board, each appointed by PMH and CCHP.<sup>144</sup>

### **1. Character**

As stated above, PMH was incorporated on May 14, 1999. *See* Initial Application Exhibit 10A-1. PMH is a health care services company that owns and operates approximately 1,082 licensed beds and a network of specialty and primary care clinics.<sup>145</sup> The central function of operating hospitals is patient care. DOH's review focuses more directly on the topic of character of the acquiring entity and has identical review criteria regarding this topic;<sup>146</sup> therefore, the Attorney General will rely on and defer to DOH's expertise and experience relating to Prospect's character in the communities in which it operates. Nonetheless, the Attorney General did not find any types of complaints against the current owners of Prospect, such as from the Department of Justice or the Office of Inspector General.

### **2. Commitment**

Pursuant to the Asset Purchase Agreement, PMH has agreed to a number of financial commitments, including an up to \$50 million dollar capital commitment to CCHP within four (4) years of the closing of the Proposed Transaction, in addition to normal and routine capital expenditures of at least \$10 million dollars per year.<sup>147</sup> These improvements include investing in technology, equipment, quality improvements, expanded services and physician recruitment.<sup>148</sup> Other than financial commitments, Prospect has promised that the Newco Hospitals will continue to provide a full complement of essential clinical services for the term of

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<sup>144</sup> Initial Application, Response to Question 1, Exhibit 18, Asset Purchase Agreement, Section 12.1.

<sup>145</sup> Initial Application, Response to Question 1.

<sup>146</sup> *See* R.I. Gen. Laws § 23-17.14-8 (b)(1).

<sup>147</sup> *See* Asset Purchase Agreement, Section 2.5 and Initial Application Response to Question 1. PMH has since agreed to guarantee Prospect's obligations under the Asset Purchase Agreement regarding this \$50 million dollar commitment.

<sup>148</sup> *See* Responses to Initial Application Questions 1, 57, Asset Purchase Agreement Section 13.17.

five (5) after the closing date.<sup>149</sup> Prospect agrees to maintain the Catholic identity of all legacy SJHSRI locations and ensure that all services at SJHSRI locations are rendered in full compliance with the Ethical and Religious Directives.<sup>150</sup> Prospect has also made a commitment that, should a conflict arise between the charitable purposes of the Existing Hospitals and profit-making that the charitable purposes of the Existing Hospitals shall prevail.<sup>151</sup> A commitment has also been made with respect to limitations on a sale of the interests held by PMH and Prospect East for a period of five (5) years. *See* Asset Purchase Agreement Section 13.18(b).<sup>152</sup> In addition, Prospect has asserted that it is committed to preservation of jobs at the Existing Hospitals, post conversion, which will assist in providing continuity in care and leadership under the 50/50 board of Prospect CharterCARE, LLC post conversion.<sup>153</sup>

### **3. Competence**

As stated above, PMH has a track record of operating eight (8) hospitals in other states over the course of 15 years, some of which were financially distressed when acquired.<sup>154</sup> Moreover, Prospect indicates that it has never abandoned or closed a hospital that it has purchased.<sup>155</sup> In addition, Prospect has indicated that, should the Newco Hospitals fail to meet financial expectations that have been projected, Prospect would provide further funding to support them.<sup>156</sup>

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<sup>149</sup> Initial Application, Response to Question 57; *See* Asset Purchase Agreement Section 13.15.

<sup>150</sup> Ethical and Religious Directives (“ERDs”) promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop of the Roman Catholic Diocese of Providence, RI.; *See* Asset Purchase Agreement Section 13.16.

<sup>151</sup> Exhibit 18 to Initial Application, Asset Purchase Agreement, Section 13.14; *see also* Response to S3-14.

<sup>152</sup> Additional options exist to the Transacting Parties, which commence on the fifth anniversary of the closing date. *See* Asset Purchase Agreement, Sections 13.18 (b)(c) and (d) and in the Prospect CharterCARE Operating Agreement.

<sup>153</sup> *See* Initial Application, response to Question 1, Exhibit 18 Asset Purchase Agreement, Article VIII.

<sup>154</sup> Interview of Thomas Reardon.

<sup>155</sup> Response to Supplemental Question S4-25.

<sup>156</sup> *Id.*

The term competence can have multiple meanings and connotations. The Attorney General reviewed the relevant competence with a focus on the ability to successfully operate the Newco hospitals after the Proposed Transaction. The central function of operating hospitals is patient care. DOH's review focuses more directly on health services and has identical review criteria regarding this topic;<sup>157</sup> therefore, the Attorney General will rely on and defer to DOH's expertise and experience relating to Prospect's track record for quality services in its other hospitals. Prospect has made several representations about patient care and health services. Specifically, it represents that its hospitals are currently accredited by the Joint Commission and in good standing.<sup>158</sup> The other relevant component to competence in this context is the ability to manage the business side of a hospital. In its fifteen (15) year history, Prospect has acquired eight (8) hospitals, many of which were financially-distressed. During interviews conducted pursuant to the Hospital Conversions Act review, the Attorney General found that Prospect's management team has years of experience in operating community hospitals. Further, as outlined hereafter, the Attorney General's expert has found that the finances of Prospect are in line with companies acquiring distressed community hospitals which appears to be a signal of some level of success.

#### **4. Standing in the Community**

The issue of standing in the community is interrelated with overlapping inquiries to the question of character. Overall, given the totality of the circumstances, the Attorney General finds that Prospect's character, commitment, competence, and standing in the community meet the threshold and are satisfactory for the purposes of a Hospital Conversions Act review.

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<sup>157</sup> See R.I. Gen. Laws § 23-17.14-8 (b)(1).

<sup>158</sup> See Initial Application Response to Question 64.

## **H. MISCELLANEOUS**

In addition to the provisions outlined above, there are also a few additional requirements of the Hospital Conversions Act that do not fit into any of the categories outlined above. They are outlined individually below.

### **1. Rhode Island Nonprofit Corporations Act**

The Hospital Conversions Act requires that a hospital conversion comply with the Rhode Island Nonprofit Corporations Act. R.I. Gen. Laws §§ 7-6-1, *et. seq.* (the "Nonprofit Act").<sup>159</sup> The Nonprofit Act is comprised of 108 sections. Many of these sections discuss the governance requirements of non-profit corporations. First, the Attorney General makes no finding regarding whether the Prospect entities, as they are all for profit entities and the Nonprofit Act does not apply to them. With respect to CCHP, the Proposed Transaction is permissible under the Non-Profit Corporation Act and the Proposed Transaction was approved by the CCHP Board who has been represented by legal counsel throughout these proceedings and during negotiations.<sup>160</sup> Based upon the above, the Attorney General finds that this condition has been satisfied.

### **2. Right of First Refusal**

The Hospital Conversions Act requires review of whether the Proposed Transaction involves a right of first refusal to repurchase the assets. *See* R.I. Gen Laws § 23-17.14-7 (c)(27). The Asset Purchase Agreement contains no such right of first refusal to CCHP to repurchase the assets being acquired by Prospect.

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<sup>159</sup> *See* R.I. Gen Laws § 23-17.14-7 (c)(19).

<sup>160</sup> *See* R.I. Gen Laws §§ 7-6-5 and 7-6-49; Initial Application Response to Question 1; Response to Supplemental Question S3-17.

### **3. Control Premium**

With regard to the one remaining review provision of the Hospital Conversions Act, there is no control premium included in the Proposed Transaction. R.I. Gen. Laws § 23-17.14-7(c)(29).

### **4. Additional Issues**

There are four issues that the Attorney General will address in addition to the enumerated review criteria that have come to light during the review process.

#### **a. Prospect's Ability to Fund Transaction**

The Attorney General's expert, Carris has reviewed the financial information provided by Prospect and has concluded as follows:

#### **Does Prospect have the Resources to Finance this Transaction as Well as Ongoing Commitments to CCHP?**

As reported in Prospect's 2013 audited financial statements, Prospect generated approximately \$80 million in operating income for the year ended September 30, 2013. Operating revenues totaled \$713.6 million and operating expenses totaled \$633.6 million. Earnings before interest, taxes, depreciation and amortization (EBITDA) for 2013 totaled \$98.7 million. Prospect's audited financial statements show consistent growth and profitability from 2010 through 2013.

Prospect's September 2013 balance sheet shows cash & equivalents of \$86.3 million, total current assets of \$241.7 million and total assets of \$578.9 million. For liabilities, the financial statements report current liabilities of \$148.2 million, total liabilities of \$610 million and net equity of (\$32.0) million. The current ratio for 2013 was 1.63.

In 2013, Prospect distributed \$88 million to its primary investor. Prospect's management and representatives have given assurances that this was a one-time event and that there are no plans to make a similar distribution in the foreseeable future.

Prospect will fund this transaction out of existing cash and an available line of credit. Based on the APA, Prospect will fund \$45 million at closing and an additional \$12.5 million in year one (one-fourth of \$50 million), for a total of \$57.5 million in the first 12 months.

During various meetings, representatives of Prospect's senior leadership team made further representations that the financial status of Prospect permits it to fund the closing of the transaction and also meet the ongoing capital commitments. The parties also gave assurances that the \$50 million capital commitment has been disclosed and agreed to by Prospect's board of



directors and lenders. Assurances were also given that the \$50 million is being funded out of available liquidity and will not violate any of Prospect's existing loan covenants.

Based on the financial documentation submitted by Prospect and the representations of its management and other representatives, the company has the financial resources to fund this transaction, including the \$50 million in long-term capital commitments. Prospect capacity to meet future capital commitments could be constrained if the company enters into other transactions that (in total) exceed its available financial resources and/or its ability to access capital. Future commitments could also be constrained by a deterioration of financial performance or a material change in market conditions.

Given the opinion of Carris, absent any exigent circumstances or, as aptly pointed out by Carris, any acquisition plan or other commitments that would over-extend Prospect, it currently appears to have the financial ability to fund the Proposed Transaction.

**b. Mandatory Conditions**

Among the changes to the Hospital Conversions Act in 2012 was the imposition of mandatory conditions on for-profit acquirors. *See* R.I. Gen. Laws § 23-17.14-28. The Legislature crafted eight (8) such conditions for DOH with a wide variety of topics. *See* R.I. Gen. Laws § 23-17.14-28(b). As for the Attorney General, one such condition was imposed, namely: "the acquiror's adherence to a minimum investment to protect the assets, financial health, and well-being of the new hospital and for community benefit." *See* R.I. Gen. Laws § 23-17.14-28(c). With regard to these pre-determined conditions, if either Department deems them "not appropriate or desirable in a particular conversion," such Department must include rationale for not including the condition. *See* R.I. Gen. Laws § 23-17.14-28(b) and (c). The Attorney General finds that to the extent that such condition is applicable, the Transacting Parties have satisfied it by the obligations contained in the Asset Purchase Agreement and no additional condition will be added other than those already imposed.

**c. Use of Monitor**

Another change to the Hospital Conversions Act in 2012 was to include a requirement that a for-profit acquiror file reports for a three (3) year period. *See* R.I. Gen. Laws § 23-17.14-28(d)(1). In addition, such section requires that the Attorney General and DOH “monitor, assess and evaluate the acquiror’s compliance with all of the conditions of approval.” *See* R.I. Gen. Laws § 23-17.14-28(d)(2). Further, there shall be an annual review of “the impact of the conversion on health care costs and services within the communities served.” *Id.* The costs of these reviews will be paid by the acquiror and placed into escrow during the monitoring period. *See* R.I. Gen. Laws § 23-17.14-28(d)(3). No Initial Application can be approved until an agreement has been executed with the Attorney General and the Director of the DOH for the payment of reasonable costs for such review. *Id.* The Transacting Parties have executed a Reimbursement Agreement dated, January 24, 2014. The Attorney General’s conditions will be monitored by an individual or entity chosen by the Attorney General and paid for by Prospect. An agreement with such monitor and Prospect will be drafted and executed prior to the Closing on the Proposed Transaction.

**d. Health Planning**

As during the course of any HCA review, there has been some discussion in the health care community about the continuing role of CCHP in the Rhode Island health care system, post-acquisition, particularly since the Existing Hospitals will become for profit entities. The Attorney General notes that the Hospital Conversions Act in its present form is not a health planning tool. Although there has been much talk about creating a so-called state health plan, that goal has not yet been reached. Therefore, it is not the position of the Attorney General to

use the Hospital Conversion Act to effectuate health planning that should be properly done elsewhere with input from a variety of groups. The Hospital Conversion Act contains a set of criteria, it does not allow for the Attorney General to opt for a different model or to suggest a different suitor for CCHP. However, the question to be answered by this review is whether this particular transaction meets the criteria of the Hospital Conversions Act.

## V. CONCLUSION

While the Act is no guarantee that a hospital will not be sold to an entity with a different plan in mind than what the surrounding community may value, the Act at the very least provides a minimum framework for review of a hospital transaction. The Attorney General hopes that Prospect CharterCARE, LLC becomes everything it has promised to be for the citizens of Rhode Island. As with all of the Attorney General's reviews pursuant to the Hospital Conversions Act, this Decision represents this Department's best efforts and a careful review of the Proposed Transaction given the information available.

Wherefore, based upon the information provided above in this Decision, the Proposed Transaction is **APPROVED WITH CONDITIONS**. These conditions are outlined below.

## VI. CONDITIONS

1. There shall be no board or officer overlap between or among the CCHP Foundation, CCHP, and Heritage Hospitals.
2. There shall be no board or officer overlap between or among the Prospect entities and the CCHP Foundation, CCHP and the Heritage Hospitals.
3. Complete appointment of board members for Prospect CharterCARE, LLC and its Subsidiaries, and for CCHP Foundation, CCHP and Heritage Hospitals, within sixty (60) days after the close of the transaction, and provide final notice to the Attorney General of the identities of such appointees, along with a description of their experience to serve as board members.
4. For the next three (3) years following the close of the transaction, provide the Attorney General the names, addresses and affiliations of all members appointed to any board of

Prospect CharterCARE, LLC and its Subsidiaries, CCHP Foundation, CCHP and the Heritage Hospitals.

5. For the next three (3) years following the close of the transaction, Prospect CharterCARE, LLC and its Subsidiaries, and CCHP Foundation, CCHP and the Heritage Hospitals shall provide corporate documents to the Attorney General to evidence compliance regarding board composition as required by this Decision. In addition, the aforementioned entities shall provide to the Attorney General any proposed amendments to their corporate documents 30 days prior to amendment.
6. For the next three (3) years following the close of the transaction, upon any change in what was represented by the Transacting Parties in the Initial Application and supplemental responses in connection with the approval of this transaction, reasonable prior notice shall be provided to the Attorney General.
7. For the next three (3) years following the close of the transaction, provide reasonable prior notice to the Attorney General identifying any post closing contracts between any of the Transacting Parties and any of the current officers, directors, board members or senior management.
8. That (a) a proposed opening balance sheet for the CCHP Foundation and the Heritage Hospitals as of the close of the transaction identifying the source and detail of all charitable assets to be transferred to the CCHP Foundation be provided to the Attorney General promptly following the close of the transaction; (b) a proposed *Cy Pres* petition satisfactory to the Attorney General be prepared promptly following the close of the transaction allowing certain charitable assets to be transferred to the CCHP Foundation and requesting that other charitable assets remain with the Heritage Hospitals, in each case for disbursement in accordance with donor intent, with such proposed modifications as agreed to by the Attorney General, and (c) the approved *Cy Pres* petition be filed with the Rhode Island Superior Court.
9. That the transaction be implemented as outlined in the Initial Application, including all Exhibits and Supplemental Responses.
10. That all unexecuted agreements provided in support of the Initial Application and Supplemental Responses be executed by the Transacting Parties in the form and substance presented.
11. Promptly after the 180<sup>th</sup> day following the close of the transaction, brief in an interview with the Attorney General the terms of the final Prospect CharterCARE, LLC's Strategic Plan adopted by the Board. In the event the Attorney General requires a copy of such plan, Prospect CharterCARE, LLC may seek a court order protecting the confidentiality thereof.
12. For the next three (3) years following the close of the transaction, provide the Attorney General with a copy of any notices provided to or received by a party under the Asset

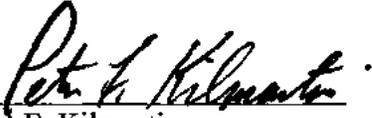
Purchase Agreement.

13. For the next three (3) years following the close of the transaction, provide the Attorney General with a copy of any notice(s) out of the ordinary course; e.g., Office of Inspector General, Securities and Exchange Commission, Internal Revenue Service and Centers for Medicare and Medicare Services, received by the Transacting Parties from any regulatory body.
14. That the Transacting Parties comply with applicable state tax laws.
15. All CCHP entities being acquired (e.g. not CCHP, CCHP Foundation or the Heritage Hospitals) shall be wound down and dissolved and all necessary documents must be filed with applicable state agencies, including, but not limited to the Secretary of State and the Division of Taxation.
16. That all costs and expenses due from the Transacting Parties pursuant to the Reimbursement Agreement dated, January 24, 2014, be paid in full prior to close of the transaction.
17. That PMH guarantee the full amount of Prospect East's financial obligations contained in the Asset Purchase Agreement pursuant to the form of guaranty approved by the Attorney General.
18. Prospect CharterCARE, LLC shall report annually to the Attorney General on the proposed form submitted to the Attorney General concerning the funding of its routine and non-routine capital commitments under the Asset Purchase Agreement until the long term capital commitment as defined in the Asset Purchase Agreement has been satisfied.
19. That Prospect provide information on a timely basis requested by the Attorney General to determine its compliance with the Asset Purchase Agreement and the Conditions of this Decision.
20. The Transacting Parties shall enter into an amendment to the Reimbursement Agreement dated January 24, 2014 for retention by the Attorney General of expert(s) to assist the Attorney General until all matters relating to the approval of the Initial Application are fully and finally resolved.
21. That Prospect complies with the Reimbursement Agreement dated, January 24, 2014, for retention by the Attorney General of an expert to assist the Attorney General with enforcing compliance with these Conditions. Further, Prospect shall enter into an additional agreement outlining the terms of its obligations regarding cooperation with the Attorney General and any expert retained to assist the Attorney General with enforcing compliance with these Conditions.

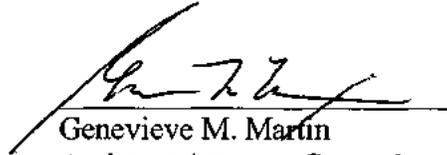
22. That Prospect CharterCARE, LLC and its affiliates shall provide any transition services to CCHP Foundation, CCHP and the Heritage Hospitals pursuant to separate agreements, terminable by the CCHP affiliate at will and provided by the Prospect affiliate at cost.
23. For the next three (3) years following the close of the transaction, notify the Attorney General of any actions out of the ordinary course taken in connection with the SJHSRI pension or any material changes in its operation and/or structure.
24. For the next three (3) years following the close of the transaction, provide the Attorney General notice of a proposed change of ownership of Prospect East or PMH.
25. For the next three (3) years following the close of the transaction, provide CCHP Foundation, CCHP and the Heritage Hospitals with a right of first refusal to match the price to acquire any asset comprised of a line of business or real estate of Prospect CharterCARE, LLC and its Subsidiaries that it proposes to sell.
26. For the next three (3) years following the close of the transaction to the extent there is a sale of any Purchased Assets comprised of a line of business or real estate, the associated sale proceeds shall remain within Prospect CharterCARE, LLC for the benefit of the operation of the Newco hospitals.
27. The Transacting Parties shall provide a Tax Certificate from the State of Rhode Island that the transaction is proper under state tax laws prior to closing.
28. In connection with a sale of assets as defined in paragraph 26 above, if at the time of such a sale Prospect CharterCARE, LLC's membership interest has been diluted to less than fifteen (15%) percent, then fifteen (15%) of the net sales proceeds from the transaction shall go to CCHP to restore its membership interest up to fifteen (15%) percent. Said monies shall be credited against any future member distributions made to CCHP by Prospect CharterCARE, LLC.
29. Anyone subject to the Ethics Commission shall not be eligible to be a board member.
30. Within three (3) years of the closing of this Transaction, provide notice to the Attorney General of any complaints received from OIG, CMS or state agencies.

All of the above Conditions are directly related to the proposed conversion. The Attorney General's APPROVAL WITH CONDITIONS is contingent upon the satisfaction of the Conditions. The Proposed Transaction shall not take place until Conditions 10, 14, 16, 17, 20, 21 and 27 have been satisfied. The Attorney General shall enforce compliance with these

Conditions pursuant to the Hospital Conversions Act including R.I. Gen. Laws § 23-17.14-30.



Peter F. Kilmartin  
Attorney General  
State of Rhode Island



Genevieve M. Martin  
Assistant Attorney General

**NOTICE OF APPELLATE RIGHTS**

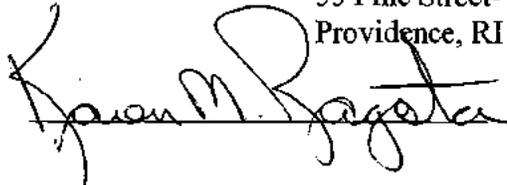
**Under the Hospital Conversions Act, this decision constitutes a final order of the Department of Attorney General. Pursuant to R.I. Gen. Laws § 23-17.14-34, any transacting party aggrieved by a final order of the Attorney General under this chapter may seek judicial review by original action filed in the Superior Court.**

**CERTIFICATION**

I hereby certify that on this 16<sup>th</sup> day of May, 2014, a true copy of this Decision was sent via electronic and first class mail to counsel for the Transacting Parties:

Patricia K. Rocha, Esq.  
Adler Pollack & Sheehan  
One Citizens Plaza -8<sup>th</sup> Floor  
Providence, RI 02903

W. Mark Russo, Esq.  
Ferrucci Russo, P.C.  
55 Pine Street- 4<sup>th</sup> Floor  
Providence, RI 02903



# Tab 2



STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

In re: CHARTERCARE HEALTH :  
PARTNERS FOUNDATION, :  
ROGER WILLIAMS HOSPITAL and :  
ST. JOSEPH HEALTH SERVICES OF :  
RHODE ISLAND :

C.A. No. PC14-\_\_\_\_\_

**PETITION FOR APPROVAL OF DISPOSITION OF CHARITABLE ASSETS  
INCLUDING APPLICATION OF DOCTRINE OF *CY PRES***

**PARTIES**

1. Petitioner, CharterCARE Health Partners Foundation, is a Rhode Island 501(c)(3) non-profit corporation (“CCHP Foundation”). CCHP Foundation’s sole member is CharterCARE Community Board, formerly known as CharterCARE Health Partners (“CCCB”). Prior to June 20, 2014, the CCHP Foundation’s mission included raising funds for the benefit of CCCB and its affiliates, Roger Williams Hospital (“RWH”), formerly known as Roger Williams Medical Center, and St. Joseph Health Services of Rhode Island (“SJHSRI”). RWH and SJHSRI are collectively referred to as the “Heritage Hospitals” herein. On June 20, 2014, a closing on the transaction approved by the Rhode Island Department of Health (“DOH”) and Rhode Island Attorney General’s Office (“AG”) occurred in which certain of the assets of 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”). Subsequent to June 20, 2014 and in recognition that the charitable assets at issue in this Petition cannot be used for the benefit of the for-profit Joint Venture, the CCHP Foundation changed its mission to reflect service as a community resource to provide accessible, affordable and responsive health care and health care related services,

including, without limitation, disease prevention, education and research grants, scholarships, clinics and activities within the communities the Heritage Hospitals previously provided services, to facilitate positive changes in the health care system (the “Foundation Mission”). A copy of the Amendment to CCHP Foundation’s Articles of Incorporation is attached at **Exhibit A**.

2. Petitioner, RWH, formerly known as Roger Williams Medical Center, is a Rhode Island 501(c)(3) non-profit corporation that, prior to the June 20, 2014 Joint Venture closing, owned and operated a 220-bed acute care community hospital located in Providence, Rhode Island.

3. Petitioner, SJHSRI is a Rhode Island 501(c)(3) non-profit corporation that, prior to the June 20, 2014 Joint Venture closing, owned and operated a 278-bed acute care community hospital located in North Providence, Rhode Island, known as Our Lady of Fatima Hospital.

4. CCCB is a Rhode Island 501(c)(3) non-profit corporation and the sole member of the CCHP Foundation, RWH and the controlling member of non-religious matters of SJHSRI, with religious matters in the control of the Roman Catholic Bishop of the Diocese of Providence, or his designee.

### **JURISDICTION**

5. This Petition is brought pursuant to R.I. General Laws § 18-4-1 *et seq.* entitled “Application of Cy Pres Doctrine” § 18-9-1 *et seq.* entitled “Division of Charitable Assets” and § 18-12.1-1 *et seq.* entitled “Uniform Prudent Management of Institutional Funds Act” (“UPMIFA”).

6. Peter F. Kilmartin, in his capacity as Attorney General for the State of Rhode Island, and pursuant to his statutory and common law responsibilities with respect to the preservation and protection of charitable assets, has been given notice of this Petition.

7. Bank of America, N.A., the trustee of certain trusts referenced in paragraphs 27–30 herein, has been given notice of this Petition.

### **BACKGROUND**

8. In 2008 and 2009, RWH and SJHSRI combined were losing in excess of \$8 million a year in operations alone. In an effort to stem those losses, those independent systems agreed to affiliate through the creation of CharterCARE Health Partners (“Old CharterCARE”). The purpose of the affiliation was to realize approximately \$15M in savings over five years, utilizing efficiencies created by the combined hospital systems, as well as to preserve and expand health care services to the existing hospitals’ communities. In 2009, the proposed affiliation was approved by the DOH and the AG. If Old CharterCARE had not been approved, the RWH and SJHSRI systems would have had difficulty operating independently. As part of the Old CharterCARE affiliation and in connection with the approval of a Petition for Cy Pres, In Re: CharterCARE Health Partners Foundation, P.B. No. 11-6822, the organizational documents of St. Joseph Health Services Foundation, Inc., originally created to hold and raise funds for the behalf of SJHSRI, were revised to change the entity’s name to CharterCARE Health Partners Foundation, to make CCCB its sole member and to change the mission to raise funds for the benefit of Old CharterCARE and its affiliates. On September 9, 2011, CCHP Foundation secured from the IRS a determination that it was 1) exempt from tax under section 501 (c) (3) of the Internal Revenue Code (IRC) and 2) a public charity under section 509 (a) (3) of the IRC.

9. As a result of the formation of Old CharterCARE, significant operational efficiencies were achieved based on operating revenue alone. Old CharterCARE reduced operating losses to approximately \$3 million per year. Although a significant improvement, the parties recognized that those continuing losses could not be sustained. Furthermore, although capital expenditures were made, the physical plants at the existing hospitals were aging and in need of upgrading. In addition, there were additional concerns regarding the SJHSRI pension funding. In fiscal year 2012, taking into consideration pension losses, Old CharterCARE sustained losses of over \$8 million. The parties recognized that such level of loss could not be maintained. Notwithstanding Old CharterCARE's laudable efforts to drastically reduce such losses, the parties recognized the need for access to additional capital to ensure that the existing hospitals could continue to provide high-quality, accessible services to the communities they served.

10. In an effort to ensure the continued viability of the existing hospitals, in December 2011, Old CharterCARE issued a Request for Proposal ("RFP") seeking a partner. The RFP process was comprehensive, transparent and evaluated a variety of partners who responded to the RFP, including PMH. In March 2013, after a joint meeting of the boards of Old CharterCARE and the existing hospitals, and with the aid of outside consultants who evaluated the different proposals, Old CharterCARE chose PMH's proposal. In March, 2013, the parties executed a Letter of Intent. After an extended period of due diligence, the parties executed an Asset Purchase Agreement on September 24, 2013 (the "APA").

11. Pursuant to the terms of the APA, PMH and Old CharterCARE would own an 85% and 15% interest, respectively, in the Joint Venture; however, the governing structure would include a "50/50 Board" with PMH and Old CharterCARE each appointing 50% of the

Prospect CharterCARE LLC board membership, ensuring that Old CharterCARE would have a significant stake in the continued governance of the hospitals. Accordingly, the existing hospitals would retain their local community mission and local leadership representation while, at the same time, receiving access to necessary capital and resources that PMH could provide. After the transaction, for tax purposes, Prospect CharterCARE LLC would be classified as a for-profit entity and the CCHP Foundation, CCCB, RWH and SJSHRI would each retain their status as tax-exempt organizations under Section 501(c)(3) of the Tax Code. Accordingly, the charitable assets held by the CCHP Foundation, RWH and SJSHRI, post closing, could not be used for the operations of the existing hospitals due to the change of the entities comprising Prospect CharterCARE, LLC and its affiliates to for-profit status.

12. In order to structure the Joint Venture with PMH (and ensure the continued viability of the hospitals to provide high quality, cost-effective, accessible services to the communities they serve) and to secure PMH's commitment to contribute funds at the closing and on a future basis for growth of the hospitals, it was necessary for each of the Heritage Hospitals at the closing to discharge various pre-existing liabilities incurred during the period the Heritage Hospitals provided services to their patients prior to the closing and satisfy outstanding pre and post closing liabilities during their subsequent wind-down period (the "Outstanding Pre and Post Closing Liabilities") as is more fully set forth in the APA.

13. On October 18, 2013, the transacting parties submitted the required Hospital Conversions Act ("HCA") Application to the DOH and the AG. During the HCA review, the transacting parties responded to numerous inquiries by DOH and the AG, including six sets of AG supplemental questions consisting of 213 questions. In addition, the AG conducted interviews of representatives of both Old CharterCARE and PMH.

14. On May 16, 2014 and May 19, 2014, both the AG and the DOH, respectively, approved the HCA Application with conditions. The AG decision discussed the proposed disposition of charitable assets at pages 23 through 32 having reviewed draft *cy pres* petition outlines submitted during the HCA review. Among other things, it approved the concept of (1) the transfer of certain of the charitable assets to the CCHP Foundation and (2) the use of certain of the charitable assets during the Heritage Hospitals' wind down to satisfy the Outstanding Pre and Post Closing Liabilities subject to *cy pres* approval from this Court. It also required the filing of this Petition to address such disposition of the charitable assets post closing. A copy of the charitable assets section of the Decision is attached as **Exhibit B**<sup>1</sup>.

15. On June 20, 2014, the Joint Venture transaction was consummated. Accordingly, Prospect CharterCARE, LLC, the for-profit joint venture company, doing business as CharterCARE Health Partners, now operates Roger Williams Medical Center and Fatima Hospital. PMH and CCCB equally share seats on the Prospect CharterCARE LLC's eight-member governing board, with Edwin Santos, the former Chair of Old CharterCARE serving as the new Chair of the Board of Directors.

16. During the course of the AG HCA review, Old CharterCARE submitted a proposed Sources and Uses of Funds Analysis (the "Analysis") as of the closing date, and Estimated Opening Summary Balance Sheets for CCHP Foundation and the Heritage Hospitals, as well as outlines for the proposed *cy pres* petitions for RWH and SJHSRI, all of which were reviewed by the AG with the understanding that final Sources and Uses Analysis and Summary Balance Sheets would be submitted after closing. A comparison of the proposed and final

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<sup>1</sup> None of the charitable assets at issue in this Petition are owned by CCCB. They are owned by CCHP Foundation, RWH and SJHSRI. CCCB's assets include its ownership interests in CCHP Foundation, RWH and SJHSRI. Accordingly, the only assets available to satisfy the Outstanding Pre and Post Closing Liabilities are those described in this Petition and identified in Exhibits C, D and E.

Sources and Uses of Funds Analyses as of the June 20, 2014 closing is attached as **Exhibit C**.

The final Summary Balance Sheets for CCHP Foundation and the Heritage Hospitals, respectively, are attached as **Exhibits D<sup>2</sup> and E**.

17. As set forth on Exhibit C, at the Joint Venture closing, certain obligations of RWH and SJHSRI were paid, i.e., bond, pension and account payable liabilities, using sales proceeds from PMH and unrestricted cash. In addition, the Outstanding Pre and Post Closing Liabilities remain to be paid, including, without limitation, malpractice insurance tail policies, third party payor obligations and worker's compensation payments. It is anticipated that the Outstanding Pre and Post Closing Liabilities will be paid during the wind-down period of RWH and SJHSRI over the next approximately three years. The SJHSRI pension funding obligation will continue after the wind-down period concludes.

18. As set forth in the AG Decision, during the course of the HCA review, the parties recognized that notwithstanding the expected proceeds that would be received by the Heritage Hospitals post-closing, including Medicare settlements, i.e., reconciliation of monies due and paid for the fiscal years 2011, 2012, 2013 and 2014, the liabilities of the Heritage Hospitals would exceed the available funds. Accordingly, Old CharterCARE, subject to Court approval, proposed that certain RWH and SJHSRI assets remain with the Heritage Hospitals during their wind-down period to satisfy the Outstanding Pre and Post Closing Liabilities.

19. The Petitioners bring this Petition for approval of the disposition of charitable assets including the application of the doctrine of *cy pres* because the charitable assets cannot be used for the benefit of the for-profit Joint Venture.

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<sup>2</sup> As set forth further herein, the proposed \$8,410,287.66 transfer to CCHP Foundation exceeds the projected transfer of \$7,200,000 identified during the HCA review process.

**CCHP FOUNDATION**

20. CCHP Foundation requests that this Court grant *cy pres* approval for the use of the following remaining funds in the amount of \$17,465.79, at the discretion of the CCHP Foundation's Board of Directors to serve the Foundation Mission<sup>3</sup>:

Account No.	Description	Amount
11.2900.3076	Dental School Graduation Fund	\$2,888.00
11.2900.4007	Fatima Annual Campaign	\$75.00
11.2900.4008	2014 Golf Tournament	\$13,467.79
11.2900.4009	RWMC Campaign	\$1,000.00
11.2900.4018	Elmhurst Extended Care Campaign	\$35.00
	<b>Total:</b>	<b>\$17,465.79</b>

The underlying documentation for such accounts is included at **Tab 1** of the disk to be provided to the Court.

**ROGER WILLIAMS HOSPITAL**  
**TRANSFER TO CCHP FOUNDATION**

21. RWH requests that this Court grant *cy pres* approval for the transfer of the temporarily restricted funds in the total amount of \$284,710.34 to CCHP Foundation to be used as close to the original donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors to serve the Foundation Mission. A breakdown of such funds is attached as **Exhibit F** and the underlying documentation is included at **Tabs F1-F23** of the disk to be provided to the Court<sup>4</sup>.

22. RWH requests that this Court grant *cy pres* approval for the transfer of permanently restricted assets in the amount of \$4,209,523 to CCHP Foundation with annual

<sup>3</sup> The \$17,465.79 was raised to provide direct support for the Heritage Hospitals. As a result of the Joint Venture for-profit status, the funds cannot be used for the existing hospitals.

<sup>4</sup> By way of example, and without limitation, such funds may be used for cancer and arthritis research and support.



income therefrom, to be used as close to the original donors' intent as possible<sup>5</sup>, at the discretion of the CCHP Foundation's Board of Directors' to serve the Foundation Mission as follows:

Wanebo Surgical Oncology	\$ 146,791
Free Care	\$ 348,421
General Use	<u>\$3,714,310</u>
Total:	\$4,209,522

A breakdown of the permanently restricted assets is attached as **Exhibit G** and the underlying documentation is included at **Tabs G1-G47** of the disk to be provided to the Court. The average annual income from the permanently restricted assets referenced above is \$210,000.

23. RWH requests that this Court grant *cy pres* approval for the transfer of \$2,242,366 reflecting unrestricted accumulated earnings from RWH permanently restricted assets subject to UPMIFA, to be used at the discretion of the CCHP Foundation's Board of Directors to serve the Foundation Mission.

#### **TO REMAIN WITH RWH**

24. RWH requests that this Court grant approval to use the \$12,288,848<sup>6</sup>, reflecting unrestricted accumulated earnings from RWH permanently restricted assets subject to UPMIFA, to satisfy the Outstanding Pre and Post Closing Liabilities as and when due, as more fully described in Exhibit C.

25. RWH requests that this Court grant *cy pres* approval to use \$326,660.04 in temporarily restricted funds, including Continuing Medical Education ("CME") funds in the amount of \$26,310.29 and Dedicated Funds in the aggregate amount of \$300,349.75 as follows:

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<sup>5</sup> By way of example, and without limitation, income from permanently restricted assets designated for free care at the Heritage Hospitals may be used for free health care services to those in need and funds designated for scholarships to the former St. Joseph School of Nursing may be used for scholarships for community nursing school students.

<sup>6</sup> Although the \$12,288,848 exceeds the seven percent calculation set forth in RIGL §18-12.1-4(d), it is prudent under the circumstances to use such funds to satisfy the Outstanding Pre and Post Closing Liabilities.

A) The CME Funds, with a balance of \$26,310.29, maintained annual registration fees and a variety of program expenses for CME programs for medical staff at RWMC. RWH requests that this Court grant *cy pres* approval to use these funds to support CME for the medical staff at RWMC over and above the routine, budgeted costs of necessary CME at RWMC to the extent that RWH is satisfied that such expenditure provides a community benefit.

B) The Dedicated Funds identified below, in the aggregate amount of \$300,349.75, were established to provide surgical oncology training and academic and research programs for on-staff physicians and fellows at RWMC. RWH requests that this Court grant *cy pres* approval to use these funds to enhance surgical oncology training and academic and research programs over and above the routine, budgeted cost of necessary training and academic and research programs for on-staff physicians and fellows at RWMC to the extent that RWH is satisfied that such expenditures provide a community benefit.

- Account No. 24.2750.1801  
Name: Dedicated Fund Somasundar  
Balance: \$43,485.60
- Account No. 24.2750.1802  
Name: Dedicated Fund Katz  
Balance: \$8,486.50
- Account No. 24.2750.1803  
Name: Dedicated Fund Koness  
Balance: \$51,060.66
- Account No. 24.2750.1806  
Name: Dedicated Fund Dr. Espat  
Balance: \$193,618.40
- Account No. 24.2750.1807  
Name: Dedicated Fund Baldwin  
Balance: \$3,698.59

The underlying documentation for the CME and Dedicated Funds is included at **Tabs F24-F28** of the disk, to be provided to the Court.

**SJHSRI**  
**TRANSFER TO CCHP FOUNDATION**

26. SJHSRI requests that this Court grant *cy pres* approval for the transfer of the following funds to CCHP Foundation to be used as close to the original donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation Mission.

- 1) \$258,961.61 in restricted cash,
- 2) \$196,496 in endowment investment earnings (temporarily restricted scholarship funds in the amount of \$76,254 and temporarily restricted endowment interest in the amount of \$120,242) and
- 3) \$1,200,765 in permanently restricted scholarship and endowment funds (\$134,484.00 in scholarships and \$1,066,281.00 in endowments)

A breakdown of such funds is attached as **Exhibit H** and the underlying documentation is included at **Tabs H1-H82** of the disk to be provided to the Court.

**TRUST INSTRUMENTS**

27. RWH and SJHSRI are the beneficiaries of certain perpetual trusts providing annual income or principal distributions as described further herein. RWH seeks approval for the use of such annual distributions to pay the Outstanding Pre and Post Closing Liabilities on its behalf and after such payments are made in full, RWH seeks *cy pres* approval to transfer such annual distributions to SJHSRI to satisfy the Outstanding Pre and Post Closing Liabilities on its

behalf.<sup>7</sup> Likewise, SJHSRI seeks approval to use such annual distributions to pay the Outstanding Pre and Post Closing Liabilities (both non-pension and pension) on its behalf and when such liabilities have been paid, to transfer use of such annual distributions to the CCHP Foundation. The underlying documentation for the trusts identified in paragraphs 28-30 herein is included at **Tabs G48-G54** of the disk to be provided to the Court.

### RWH

28. RWH, consistent with the trusts' language, requests approval for the continued use of the annual income or principal distributions from the five trusts identified below to pay the Outstanding Pre and Post Closing Liabilities on its behalf. The average annual income or principal distributions is \$160,000 with trust corpus value of \$4,410,154<sup>8</sup>.

- The Trust under Will of Sarah S. Brown dated June 21, 1911  
Beneficiary: RWH – 9.5% of total trust's funds

Pursuant to Article Tenth of the Will and a subsequent Superior Court order dated June 20, 1972, the trustee is to distribute all income in equal shares to Rhode Island Hospital and RWH (originally Homeopathic Hospital) for the use of these two organizations in carrying out the work for which they were incorporated and organized. The trust language includes provision to:

distribute...said net income in quarterly payments, share and share alike, equally between the Rhode Island Hospital in Providence and the Homeopathic Hospital of Rhode Island in Providence, both being corporations organized under the laws of Rhode Island, *for the use of said corporations in carrying on the work for which they were created and organized.*  
(emphasis added)

- The Trust under Will of C. Prescott Knight dated November 14, 1932

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<sup>7</sup> Pursuant to the 2009 Old CharterCARE affiliation, RWH and SJSHRI as affiliates of Old CharterCARE shared the same mission; namely, to foster an environment of collaboration among its partners, medical staff and employees that supported high quality, patient focused and accessible care that was responsive to the needs of the communities they served. In addition, the Old CharterCARE Board had reserved powers to make decisions regarding the sale and/or merger of the assets of both RWH and SJSHRI. In order to ensure the success of the Joint Venture, the Old CharterCARE Board approved the use of RWH funds for the benefit of SJSHRI to be used towards payment of the Outstanding Pre and Post Closing Liabilities.

<sup>8</sup> The total trust corpus value including the value of the Boyden trusts described in paragraph 29 is \$4,493,495.

Beneficiary: RWH – 3.3% of total trust’s funds

Pursuant to Article Twelfth, paragraph 1 of the Will, the trustee is to pay all income of the trust share set aside for RWH (originally Homeopathic Hospital) for its general uses and purposes. The trust language provides:

...the net income from said trust fund to be paid over by said trustee to said Homeopathic Hospital of Rhode Island and to be used by it *for the general charitable uses and purposes of said corporation.* (emphasis added)

- The Trust under Will of George Luther Flint dated June 25, 1935  
Beneficiary: RWH – 4.9% of total trust’s funds

Pursuant to the Article SECOND of the Will, the trustee is to split the net income between Rhode Island Hospital and RWH (originally Homeopathic Hospital) for the general uses and purposes of each. The trust language provides:

...to pay the income...in equal parts, one-half (1/2) part to Rhode Island Hospital located in the City and County of Providence, in the State of Rhode Island, such income to be used for the general uses and purposes of said Hospital, and the other one-half (1/2) part paid to Homeopathic Hospital located in said Providence, *for the general uses and purposes of said Hospital.* (emphasis added)

- The Miriam C. Horton Trust dated August 9, 1948, as amended by its entirety and restated on June 12, 1963 and modified by a Memorandum of Understanding dated June 24, 2004 between Fleet National Bank (now Bank of America, N.A.), RWH and Brown University  
Beneficiary: RWH – 22.3% of total trust’s funds

Pursuant to Article FIFTH, Paragraph C, a sum of up to Five Thousand Dollars (\$5,000) of the net income is to be paid, every third year, to RWH for the upkeep and maintenance of a memorial room in the memory of Harry M. Horton, the husband of Miriam C. Horton. Pursuant to Article FIFTH, Paragraph D of the trust, the balance of the net income is to be distributed in such manner as a committee may determine for the use and benefit of such public, charitable, educational and religious purposes which would be deductible from the gross estate of a decedent under §2055 of the Internal Revenue Code. Section 2055 allows for a deduction for any bequest, legacy or devise to a 501(c)(3) organization. Pursuant to Article FIFTH, Paragraph E of the trust, the committee consists of the Superintendent of RWH, the President of Brown University, and the President of Bank of America, N.A. (formerly Industrial National Bank of Providence). Pursuant to Article FIFTH, Paragraph F of the trust, if the

committee does not make a decision three (3) months after the close of the calendar year, the trustee can direct a distribution that is consistent with the terms of the trust. The language of the trust provides:

...the net income of the fund...shall be expended annually by the Trustee in such manner as said committee shall direct *for the use and benefit of such public, charitable, educational and religious purposes* as, under the provisions of Section 2055 of the Internal Revenue Code...would be the kind or type of public, charitable, educational or religious purpose to which devises, bequests, or legacies are deductible from the gross estate of a decedent; (emphasis added)

On June 24, 2004, the committee agreed by Memorandum of Understanding that beginning in 2005, the trustee would submit to the committee a proposal for distribution of net trust income on an annual basis. Absent the written objection of two or more committee members, the trustee may commence the income distributions as outlined in such proposal. In the event that two or more committee members object, the committee shall meet to determine the income distributes for that year.

- The Trust under Will of Albert K. Steinert dated July 11, 1927  
Beneficiary: RWH – 0.5% of total trust’s funds

Pursuant to Article THIRTEENTH of the Will, the trustee is to pay income as follows:

one-sixth to Rhode Island Hospital, one-sixth to Miriam Hospital, one-sixth to SJHSRI, one-sixth to RWH (originally Homeopathic Hospital) one-sixth to Lying-In Hospital and one-sixth to be split between Wellesley College for a scholarship and Brown University for a scholarship.

RWH seeks approval to use its annual income or principal distributions identified above to pay the Outstanding Pre and Post Closing Liabilities on its behalf consistent with the language in the respective trust documents. After RWH’s liabilities have been paid, RWH seeks *cy pres* approval to transfer the annual income or principal distributions to SJHSRI to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf. Copies of the underlying documentation are included in **Tabs G48-G52** of the disk to be provided to the Court.

29. RWH, consistent with the language of the trusts under the wills of George E. Boyden and Lydia M. Boyden, described below, requests approval to use the trust funds it will receive upon the death of Barbara S. Boyden, currently valued at \$83,341.02, to pay the Pre and Post Closing Outstanding Liabilities on its behalf. To the extent such obligations have been paid prior to receipt of the trust funds or are fully paid thereafter, RWH seeks *cy pres* approval to transfer the funds to SJHSRI to satisfy the Pre and Post Closing Outstanding Liabilities on its behalf. Copies of the underlying documentation are included in **Tab G53** of the disk to be provided to the Court.

- The trusts under the Will of George E. Boyden dated April 12, 1932, as amended by codicils dated February 10, 1933 and June 13, 1934, and under the Will of Lydia M. Boyden, dated September 25, 1930, as amended by codicil dated June 13, 1934.

Article THIRD, Paragraph 4 of George Boyden's Will provides, *inter alia*, that upon the death of his great-granddaughter, Barbara S. Boyden, 20% of the balance of the trust goes to RWH (originally, Homeopathic Hospital of Rhode Island) for its "general purposes." Article SECOND and FIFTH of Lydia Boyden's Will provides, *inter alia*, that upon the death of her great-granddaughter, Barbara S. Boyden, 25% of the balance of the trust goes to RWH (formerly, Homeopathic Hospital of Rhode Island) for its "general purposes."

### SJHSRI

30. SJHSRI, consistent with the trust language described below, requests approval for the continued use of the annual income from the following trusts to pay outstanding liabilities. The average annual income is \$284,000 with trust corpus value of \$6,473,365.

- Herbert G. Townsend Trust dated January 2, 1929, as restated on June 14, 1949, as amended on October 6, 1955, and as modified by agreement dated November 18, 1971  
Beneficiary: St. Joseph's Health Services of Rhode Island – 59% of combined trusts' funds

Pursuant to Article 1 of the trust and the agreement dated November 18, 1971 between Industrial National Bank of Rhode Island (now Bank of

America, N.A.), as trustee, and Rhode Island Hospital, Providence Lying-in Hospital, and SJHSRI, as beneficiaries, the trustee is to distribute to the beneficiaries, on an annual basis, a sufficient amount of income and principal to avoid taxes and penalties under § 4942 of the Internal Revenue Code. Such distributions shall be made in equal shares to the foregoing beneficiaries to support the charitable work carried on by them.

- The Trust under Will of Albert K. Steinert dated July 11, 1927  
Beneficiary: SJHSRI – 0.5% of combined trusts' funds

Pursuant to Article THIRTEENTH of the Will, the trustee is to pay income as follows:

one-sixth to Rhode Island Hospital, one-sixth to Miriam Hospital, one-sixth to SJHSRI, one-sixth to RWH (originally Homeopathic Hospital) one-sixth to Lying-In Hospital and one-sixth to be split between Wellesley College for a scholarship and to Brown University for a scholarship.

After SJHSRI's non-pension and pension liabilities have been paid, SJHSRI seeks *cy pres* approval to transfer use of its annual income to CCHP Foundation. Copies of the underlying documentation are included in **Tabs G54** and **G52**, respectively, of the disk to be provided to the Court.

#### **UNKNOWN AND FUTURE CHARITABLE GIFTS**

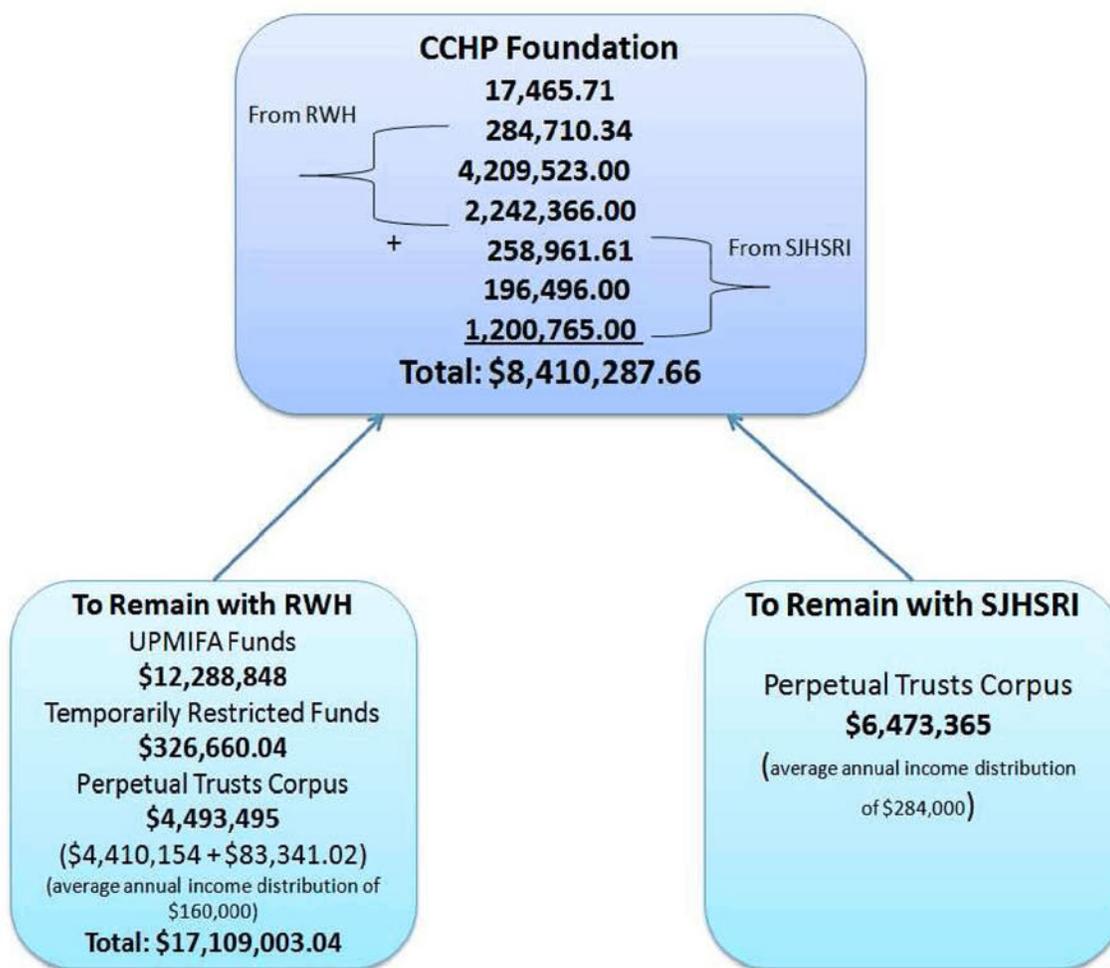
31. RWH and SJHSRI seek *cy pres* approval for any unknown charitable gifts and future charitable gifts that have been or may become known after the June 20, 2014 closing date. At this time, charitable bequests may have already been made naming RWH or SJHSRI as the beneficiary. However, due to the fact that, at times, during the administration of a trust or estate a charity may not be contacted until distributions are ready to be made, RWH or SJHSRI may not be aware of these donations. Also there may be documents already in existence that name RWH or SJHSRI as a charitable beneficiary, but the gift will not vest until the occurrence of some future event. In addition, charitable gifts could be made in the future. RWH and SJHSRI seek *cy pres* approval for the transfer of these unknown and future charitable gifts to CCHP Foundation, if in the discretion of either RWH, SJHSRI or CCCB the gift cannot be used for its



stated purpose, to be used as close to the donors' intent as possible, in the discretion of CCHP Foundation's Board of Directors, to serve the Foundation Mission at such time any bequest becomes known by either RWH, SJHSRI or CCCB.

**CONCLUSION**

32. Accordingly, the Petitioners seek approval from this Court for use of the charitable assets as described in paragraphs 16 through 31 above and illustrated in the chart<sup>9</sup> below:



<sup>9</sup> This chart includes only the charitable assets identified in this Petition and does not include the other assets identified in Exhibit E, the disposition of which does not require Court approval, i.e., operating cash, board designated funds and funds held for collateral. As set forth in Exhibit E, the total assets for RWH and SJHSRI are \$23,322,597 and \$12,102,083, respectively.

WHEREFORE, the Petitioners respectfully request that this Court grant this Petition including the following relief:

1. As set forth in paragraph 20, *cy pres* approval for CCHP Foundation to use the remaining funds identified therein, at the discretion of the CCHP Foundation's Board of Directors, to serve the Foundation Mission.

2. As set forth in paragraphs 21, 22 and 23, *cy pres* approval for the transfer of the following RWH funds to CCHP Foundation to be used as close to the original donors' intent as possible, at the discretion of the CCHP Foundation's Board of Directors, to serve the Foundation Mission:

- Temporarily restricted funds in the amount of \$284,710.34
- Permanently restricted funds in the amount of \$4,209,522.00
- Temporarily restricted UPMIFA earnings in the amount of \$2,242,366.00 reflecting unrestricted accumulated earnings from RWH permanently restricted assets.

3. As set forth in paragraph 24, approval for RWH to use the following funds as follows:

- \$12,288,848.00 reflecting unrestricted accumulated earnings from RWH permanently restricted assets subject to UPMIFA to satisfy the Outstanding Pre and Post Closing Liabilities as and when due.

4. As set forth in paragraph 25, *cy pres* approval for RWH to use the following funds as follows:

- Continuing medical education funds in the amount of \$26,310.29 to support continuing medical education for the medical staff at RWMC over and above the routine budgeted cost of necessary continuing medical education at RWMC to the extent that RWH is satisfied that such expenditure provides a community benefit.

- Dedicated funds in the aggregate amount of \$300,349.75 as more fully identified in paragraph 25B to enhance surgical oncology physician and fellow training and education over and above the routine budgeted costs of necessary academic and research programs at RWMC to the extent that RWH is satisfied that such expenditures provide a community benefit.

5. As set forth in paragraph 26, *cy pres* approval for the transfer of the following SJHSRI funds to CCHP Foundation to be used as close to the original donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation Mission:

- \$258,961.61 in restricted cash
- \$196,496.00 in endowment investment earnings (temporarily restricted scholarship funds in the amount of \$76,254.00 and temporarily restricted endowment interest in the amount of \$120,241.00)
- \$1,200,765.00 in permanently restricted scholarships and endowments (\$1,066,281.00 in endowments and \$134,484.00 in scholarships)

6. As set forth in paragraph 28, approval for RWH to use its annual income or principal distributions from the perpetual trusts identified in paragraph 28 to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf and *cy pres* approval to transfer such annual income distributions to SJHSRI after such RWH liabilities have been satisfied.

7. As set forth in paragraph 29, approval for RWH to use the trust funds that it will receive upon the death of Barbara S. Boyden to pay the Outstanding Pre and Post Closing Liabilities. To the extent such obligations have been paid prior to receipt of the trust funds or are fully paid thereafter, *cy pres* approval to transfer the funds to SJSHRI to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf.

8. As set forth in paragraph 30, approval for SJHSRI to use its annual income or principal distributions from the perpetual trusts identified in paragraph 30 to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf and *cy pres* approval to transfer such annual income distributions to CCHP Foundation after such liabilities have been satisfied.

9. As set forth in paragraph 31, *cy pres* approval to transfer any unknown charitable gifts and future charitable gifts that may become known at a later date on behalf of RWH and SJHSRI to CCHP Foundation to be used as close to the donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation Mission.

10. Such other and further relief as this Court deems appropriate.

Dated: January 13, 2015

CharterCARE Health Partners Foundation  
Roger Williams Hospital  
St. Joseph Health Services of Rhode Island

By their attorneys,

/s/ Patricia K. Rocha  
PATRICIA K. ROCHA (#2793)  
JOSEPH AVANZATO (#4774)  
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[procha@apslaw.com](mailto:procha@apslaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that, on January 13, 2015:

I electronically filed and served this document through the electronic filing system on the following parties:

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

I served this document through the electronic filing system on the following parties:

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

I mailed or  hand-delivered this document to the attorney for the opposing party and/or the opposing party if self-represented, whose name and address are:

Genevieve Martin, Esq.  
Chrisianne Wyrzykowski, Esq.  
Office of the Rhode Island Attorney General  
150 South Main Street  
Providence, RI 02903

Paul A. Silver, Esq.  
James Nagelberg, Esq.  
Hinckley, Allen & Snyder LLP  
50 Kennedy Plaza, #1500  
Providence, RI 02903

/s/ Patricia K. Rocha

# Tab 3

## ROGER WILLIAMS MEDICAL CENTER BOARD OF TRUSTEES RESOLUTION

May 8, 2014

- WHEREAS CharterCARE Health Partners (“CCHP”) and its affiliates, including Roger Williams Medical Center (“RWMC”) and Saint Joseph’s Health Services of Rhode Island (“SJHSRI”), among others (collectively referred to as “CCHP”) have entered into an Asset Purchase Agreement with Prospect Medical Holdings Inc., et als. (“PMH”), in which PMH and CCHP will form a joint venture to own and operate all of the healthcare entities associated with CCHP, including, without limitation RWMC and SJHSRI;
- WHEREAS The anticipated closing date for the joint venture is June 1, 2014, at which time, the entirety of CCHP’s long term debt will be extinguished and \$14 Million will be contributed to the SJHSRI pension plan which will be frozen as of the closing date (“closing”);
- WHEREAS Post –closing, CCHP will retain various liabilities, some of which will be satisfied upon closing, and some of which will be satisfied over time;
- WHEREAS The amount of SJHSRI assets that will be available to CCHP upon closing is insufficient to satisfy the SJHSRI liabilities, including but not limited to, potential future funding and expenses relating to the SJHSRI pension plan;
- WHEREAS SJHSRI currently has \$1,200,514 in endowment investments (SJHSRI Endowment Investments);
- WHEREAS CCHP intends to seek permission from the Rhode Island Superior Court to change the purpose of the SJHSRI Endowment Investments to be used to partially satisfy the SJHSRI liabilities, including but not limited to, potential future funding and expenses relating to the SJHSRI pension plan; however, it is unknown at this time whether the Rhode Island Superior Court will grant said permission;
- WHEREAS As part of its retained assets, RWMC has \$6,666,874 in Board Designated Funds (“the RWMC Board Designated Funds”) that may be used for any purpose at the discretion and direction of the RWMC Board of Trustees;
- WHEREAS The RWMC Board of Trustees desires to use the RWMC Board Designated Funds to satisfy the SJHSRI liabilities at close and any potential future funding and expenses relating to the SJHSRI pension plan with the understanding that if and when the RI Superior Court grants permission to use the SJHSRI Endowment Funds, that amount will be applied immediately to satisfy the SJHSRI liabilities at close and any potential future funding and expenses relating to the SJHSRI pension plan, and the RWMC Board Endowments Funds will be utilized to fund the remaining SJHSRI liabilities and pension plan expenses ;
- RESOLVED The RWMC Board of Trustees approves and directs use of the RWMC Board Designated Funds to satisfy the SJHSRI liabilities at close and any potential future funding and expenses relating to the SJHSRI pension plan, and any surplus shall be transferred to the CCHP Foundation.

# Tab 4



**WRITTEN CONSENT OF THE CLASS A MEMBER OF  
ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND  
AS OF DECEMBER 15, 2014**

The undersigned, being the Class A Member of St. Joseph Health Services of Rhode Island, a Rhode Island nonprofit corporation (the "Corporation") hereby takes the following action by written consent and adopts the following resolutions in accordance with Section 15 of the Bylaws of the Corporation:

Resolved: That Paragraph 4.2 of the Bylaws of the Corporation be, and it hereby is, deleted in its entirety and the following substituted therefor:

"4.2 Number and Election. The Board of Trustees shall consist of no less than three (3) and no more than seven (7) members. At each Annual Meeting or a special meeting in lieu thereof, the Board shall elect their successors, each to serve until the third (3<sup>rd</sup>) Annual Meeting of the Trustees following such election and until such Trustee's successors have been duly elected and qualified. Any special or regular meeting, the Board of Trustees may elect Trustees to fill vacancies. The Board of Trustees shall have and may exercise all of its powers notwithstanding the existence of one (1) or more vacancies in its number."

Resolved: That Paragraph 6.1 of the Bylaws of the Corporation be, and it hereby is, deleted in its entirety and the following substituted therefor:

"6.1 Number and Qualification. The officers of the Corporation shall be a President, Secretary and Treasurer. An officer may, but need not be a Trustee. Any two (2) or more offices may be held by the same person. Officers shall be appointed by the Class A Member to two (2) year terms and shall be eligible for re-election or reappointment."

Resolved: That Paragraphs 6.2, 6.7 and 6.8 of the Bylaws of the Corporation be, and they hereby are, deleted in their entireties.

Resolved: That the following individuals be, and they each hereby are, elected to the Board of Trustees to serve in their said capacities until their successors have been duly elected and have qualified or until their earlier death, resignation or removal:

Daniel J. Ryan  
Reverend Timothy Reilly  
Nancy E. Rogers  
Christopher N. Chihlas, M.D.  
Reverend Kenneth Sicard  
Joseph P. Mazza, M.D.

Resolved: That the following persons be, and they each hereby are, elected to the offices of the Corporation set opposite their names, to serve in their said capacities

until their successors have been duly elected and have qualified or until their earlier death, resignation or removal:

President and Treasurer	-	Daniel J. Ryan
Secretary	-	Daniel J. Ryan

Resolved: That the Corporation hereby authorizes and approves the engagement of Richard J. Land and Chace Ruttenberg & Freedman, LLP pursuant to the terms of the engagement letter provided to the Directors at the meeting (“CRF Engagement Letter”).

Resolved: That the officers of the Corporation and Richard J. Land, as agent for the Corporation, and each of them, acting singly, be, and hereby is, authorized, empowered and directed to approve for payment all ordinary and necessary expenses of the Corporation, such approval to be conclusive evidence that the same are hereby authorized.

Resolved: That the Corporation shall indemnify its trustees, directors, officers and agents, including Richard J. Land, acting on behalf of the Corporation, to the fullest extent permitted by law, including without limitation, advance of attorney’s fees and other costs of defense.

Resolved: That Daniel J. Ryan, President of the Corporation, and Richard J. Land, each acting alone, be, and each hereby is, authorized to take such actions as we deem necessary and appropriate in connection with the administration, management and potential wind-down of the Corporation’s pension plan (including, without limitation, negotiation with participants and their representatives).

Resolved: That the Corporation hereby authorizes and approves the engagement of Kahn, Litwin, Renza & Co., Ltd. to perform such accounting services as the officers of the Corporation and Richard J. Land, and each individually, deem necessary and appropriate.

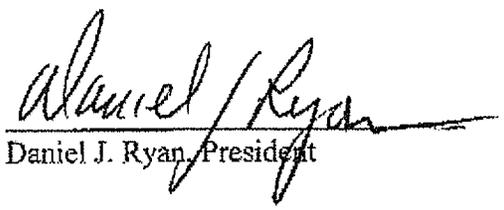
Resolved: That the Corporation authorize the dissolution of the Corporation at such time as Daniel Ryan and Richard J. Land deem necessary and appropriate and in connection therewith, to file such final tax returns and other documents and instruments required thereby.

Resolved: That the Corporation hereby ratifies all actions previously taken by the Board, including actions taken by Daniel J. Ryan, as Chairman of the Board, and Richard J. Land, as Counsel to and agent of the Board, and the actions hereby taken shall have the same effect for all purposes as if such actions had been taken at an annual meeting.

Resolved: That the officers of the Corporation and Richard J. Land, as Counsel to and agent for the Corporation, and each of them, acting singly, be, and each hereby is, authorized, empowered and directed to execute any and all documents, instruments, certificates or other writings which each of them in the exercise of his sole discretion shall deem necessary or desirable in order to effectuate the intent of the foregoing resolutions, and the wind-down of the Corporation.

Resolved: That this written consent may be executed in counterparts.

CharterCARE Community Board, Class A Member

By:   
Daniel J. Ryan, President

# Tab 5

**WRITTEN CONSENT OF THE MEMBER OF**  
**ROGER WILLIAMS HOSPITAL**  
**AS OF DECEMBER 15, 2014**

The undersigned, being the sole Member of Roger Williams Hospital (formerly Roger Williams Medical Center), a Rhode Island nonprofit corporation (the "Corporation") hereby takes the following action by written consent and adopts the following resolutions in accordance with Section 15 of the Bylaws of the Corporation:

Resolved: That Paragraph 4.2 of the Bylaws of the Corporation be, and it hereby is, deleted in its entirety and the following substituted therefor:

"4.2 Number and Election. The Board of Trustees shall consist of no less than three (3) and no more than seven (7) members. At each Annual Meeting or a special meeting in lieu thereof, the Board shall elect their successors, each to serve until the third (3<sup>rd</sup>) Annual Meeting of the Trustees following such election and until such Trustee's successors have been duly elected and qualified. Any special or regular meeting, the Board of Trustees may elect Trustees to fill vacancies. The Board of Trustees shall have and may exercise all of its powers notwithstanding the existence of one (1) or more vacancies in its number."

Resolved: That Paragraph 6.1 of the Bylaws of the Corporation be, and it hereby is, deleted in its entirety and the following substituted therefor:

"6.1 Number and Qualification. The officers of the Corporation shall be a President, Secretary and Treasurer. An officer may, but need not be a Trustee. Any two (2) or more offices may be held by the same person. Officers shall be appointed by the Member to two (2) year terms and shall be eligible for re-election or reappointment."

Resolved: That Paragraphs 6.2, 6.7 and 6.8 of the Bylaws of the Corporation be, and they hereby are, deleted in their entireties.

Resolved: That the following individuals be, and they each hereby are, elected to the Board of Trustees to serve in their said capacities until their successors have been duly elected and have qualified or until their earlier death, resignation or removal:

Daniel J. Ryan  
Reverend Timothy Reilly  
Nancy E. Rogers  
Christopher N. Chihlas, M.D.  
Reverend Kenneth Sicard  
Joseph P. Mazza, M.D.

Resolved: That the following persons be, and they each hereby are, elected to the offices of the Corporation set opposite their names, to serve in their said capacities until their successors have been duly elected and have qualified or until their earlier

death, resignation or removal:

President and Treasurer	-	Daniel J. Ryan
Secretary	-	Daniel J. Ryan

Resolved: That the Corporation hereby authorizes and approves the engagement of Richard J. Land and Chace Ruttenberg & Freedman, LLP pursuant to the terms of the engagement letter provided to the Directors at the meeting (“CRF Engagement Letter”).

Resolved: That the officers of the Corporation and Richard J. Land, as agent for the Corporation, and each of them, acting singly, be, and hereby is, authorized, empowered and directed to approve for payment all ordinary and necessary expenses of the Corporation, such approval to be conclusive evidence that the same are hereby authorized.

Resolved: That the Corporation shall indemnify its trustees, directors, officers and agents, including Richard J. Land, acting on behalf of the Corporation, to the fullest extent permitted by law, including without limitation, advance of attorney’s fees and other costs of defense.

Resolved: That the Corporation hereby authorizes and approves the engagement of Kahn, Litwin, Renza & Co., Ltd. to perform such accounting services as the officers of the Corporation and Richard J. Land, and each individually, deem necessary and appropriate.

Resolved: That the dissolution of the Corporation at such time as Daniel J. Ryan and Richard J. Land deem necessary and appropriate is hereby approved and in connection therewith, Daniel J. Ryan and Richard J. Land are authorized to take any and all actions they deem necessary and appropriate, including filing such final tax returns and other documents and instruments.

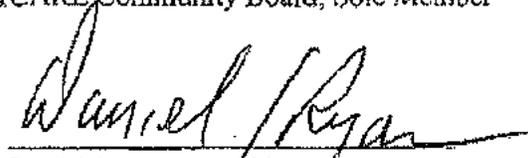
Resolved: That the Corporation hereby ratifies all actions previously taken by the Board, including actions taken by Daniel J. Ryan, as Chairman of the Board, and Richard J. Land, as Counsel to and agent of the Board, and the actions hereby taken shall have the same effect for all purposes as if such actions had been taken at an annual meeting.

Resolved: That the officers of the Corporation and Richard J. Land, as Counsel to and agent for the Corporation, and each of them, acting singly, be, and each hereby is, authorized, empowered and directed to execute any and all documents, instruments, certificates or other writings which each of them in the exercise of his sole discretion shall deem necessary or desirable in order to effectuate the intent of the foregoing resolutions and the wind-down of the Corporation.

Resolved: That this written consent may be executed in counterparts.

CharterCARE Community Board, Sole Member

By:

  
Daniel J. Ryan, President

# Tab 6



ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN

TRUST AGREEMENT

## TRUST AGREEMENT

This Agreement is made by and between St. Joseph Health Services of Rhode Island (hereinafter St. Joseph Health Services of Rhode Island), and the undersigned banking institution, as Trustee (hereinafter referred to as the "Trustee").

### WITNESSETH:

WHEREAS, St. Joseph Health Services of Rhode Island established the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") for certain of its employees; and

WHEREAS, the Plan provides for contributions to a trustee to be held in trust, for the exclusive benefit of participants in the Plan and their beneficiaries after the payment of the reasonable expenses of administering the Plan and Trust; and

WHEREAS, the Trustee has consented to act as trustee of the trust fund and to hold and distribute the assets transferred to the trustee and accumulated in respect of the Plan on the terms and conditions hereinafter set forth;

WHEREAS, the Plan and Trust are intended to qualify under Section 401(c) of the Code as a non-electing church plan within the meaning of Section 414(e) of the Code and Section 3(33) of the Employees Retirement Income Security Act of 1974;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth, St. Joseph Health Services of Rhode Island and the Trustee hereby agree as set forth below.

## ARTICLE I

### Establishment of Trust

The Trust Fund shall consist of such sums of money or other property, in a form acceptable to the Trustee, as shall from time to time be paid or delivered to the Trustee pursuant to the Plan which, together with all earnings, profits, increments and accruals thereon, without distinction between principal and income, shall constitute the Trust Fund hereby created and established. The Trust Fund shall be held in trust and dealt with in accordance with the provisions of this Trust Agreement. St. Joseph Health Services of Rhode Island intends by this Trust Agreement to create a Trust forming a part of the Plan which shall qualify under Sections 401 and 501 of the Code as a non-electing church plan within the meaning of Section 414(e) of the Code and Section 3(33) of the Employees Retirement Income Security Act of 1974.

## Article II -- Duties and Powers of St. Joseph Health Services of Rhode Island and the Retirement Board.

2.1 St. Joseph Health Services Of Rhode Island shall provide the Trustee with a certified copy of the Plan and all amendments thereto and of the resolutions of the Board of Directors of St. Joseph Health Services of Rhode Island approving the Plan and all amendments thereto, promptly upon their adoption. After the execution of this Trust Agreement, St. Joseph Health Services of Rhode Island shall promptly file with the Trustee a certified list of names, specimen signatures and titles of any persons properly designated and authorized, and a certified copy of the resolutions or other actions of the Most Reverend Bishop of the Diocese of Providence so designating and authorizing such persons, to exercise any discretionary authority, responsibility or control in the management or administration of the Plan or the Trust Fund or to render any investment advice for a fee or other compensation, including, without limitation, the person or persons (hereinafter the "Retirement Board") designated under the Plan and so empowered, and any member thereof authorized to act for it. The Most Reverend Bishop of the Diocese of Providence shall promptly notify the Trustee of the addition or deletion of any person's name to or from such list, respectively. Until receipt by the Trustee of notice that any person is no longer authorized so to act, the Trustee may continue to rely on the authority of such person. All certifications, notices and directions by any such person or persons to the Trustee shall be in writing signed by such person or persons, and the trustee may rely on any such certification, notice or direction purporting to have been signed by or on behalf of such person or persons that the Trustee believes to have been signed thereby. The Trustee may rely on any certification, notice or direction of St. Joseph Health Services of Rhode Island that the Trustee reasonably believes to have been signed by a duly authorized officer or agent of St. Joseph Health Services of Rhode Island.

2.2 The Retirement Board or its agents shall be responsible for keeping accurate books and records with respect to the employees of St. Joseph Health Services of Rhode Island, their compensation and their rights and interests in the Trust Fund.

2.3 St. Joseph Health Services of Rhode Island may from time to time direct the Trustee to invest in specified assets including a specific insurance contracts or arrangements. Except as otherwise provided by any applicable law or under the terms of any agreement between the banking institution serving as Trustee and St. Joseph Health Services of Rhode Island, including without limitation the Investment Management Agreement, the Trustee shall not be liable for the making, retaining, or selling of any investment or reinvestment upon direction of St. Joseph Health Services of Rhode Island or for any loss to or diminution of the Trust Fund resulting from such making, retaining or selling, except such as are due to its own negligence.

### Article III -- Duties and Powers of the Trustee

3.1 The Trustee shall discharge its duties hereunder with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

3.2 Except as provided in paragraph 2.3 and 3.3 hereof, the Trustee shall have the power in investing and reinvesting the Trust Fund in its sole discretion:

(a) To purchase or subscribe for and invest in any securities, but not including any securities of the Trustee or any affiliate of the Trustee, and to retain any such securities in the Trust Fund. Without in any way intending to limit the generality of the foregoing, the said term "securities" shall be deemed to include common and preferred stocks, mortgages, debentures, bonds, notes or other evidences of indebtedness, and other forms of securities, including those issued by St. Joseph Health Services of Rhode Island or employees participating under the Plan; provided, however, that no stock, securities or evidence of indebtedness of said Company or employees shall be acquired by or held in the Trust Fund unless such acquisition or investment would constitute a permissible transaction into which the Trust Fund may enter under the terms of the Plan or of the laws of the State of Rhode Island, as the same may be amended from time to time.

(b) To deal with all or any part of the Trust Fund; to acquire any property by purchase, subscription, lease, or other means; to sell for cash or on credit, convey, lease for long or short terms, or convert, redeem, or exchange all or any part of the Trust Fund; to hold part of the Trust Fund uninvested or in savings accounts or certificates of deposit offered by the Trustee or in money market funds managed by the Trustee or an affiliate of the Trustee, including the Fleet Money Market Fund.

(c) To vote, or give proxies to vote, any stock or other security, and to waive notice of meetings, to oppose, participate in, and consent to the reorganization, merger, consolidation, or readjustment of the finances of any enterprise, to pay assessments and expenses in connection therewith and to deposit securities under deposit agreements and to accept instructions from the Retirement Board to vote Company securities.

(d) To register any investment held in the Trust in its own name or in the name of its nominee, or to hold any investment in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust.

(e) To make, execute, acknowledge and deliver any and all documents, deeds and conveyance, and any and all other instruments necessary or appropriate to carry out the powers herein granted.

(f) To enforce by suit or otherwise, or to waive, its rights on behalf of the Trust Fund, and to defend claims asserted against it or the Trust Fund; to compromise, adjust and settle any and all claims against or in favor of it or the Trust Fund.

(g) To renew, extend, or foreclose any mortgage or other security; to bid in property on foreclosure; to take deeds in lieu of foreclosure, with or without paying a consideration therefor.

(h) To employ agents necessary for the operation of the Trust and to request the advice and assistance of counsel, including counsel for St. Joseph Health Services of Rhode Island, or other counsel designated by the Retirement Board or by the Trustee with the approval of the Retirement Board.

(i) In the event that St. Joseph Health Services of Rhode Island authorizes the transfer of all or a portion of the assets of the Trust to an insurance company, to enter into and execute on behalf of the Trust all such documents and instruments necessary or appropriate to carry out such transfer as directed by the Retirement Board or Company in writing.

(j) To do all such other acts, execute all such other instruments and take such other proceedings and exercise all such other privileges and rights with relation to any asset constituting a part of the Trust as are necessary to carry out the purpose of the Trust.

3.3 If (i) a registered investment adviser under the Investment Advisers Act of 1940, (ii) a bank, as defined in that Act, or (iii) an insurance company qualified to perform investment management services under the laws of more than one state is duly appointed an "Investment Manager" with respect to the Plan, as that term is defined in Section 3(38) of ERISA, with the power to direct the investment and reinvestment of all or part of the Trust Fund, the Investment Manager shall, unless its appointment provides otherwise, have the power to direct the Trustee in the exercise of the powers described in paragraph 3.2 hereof with respect to all or part of the Trust Fund, as the case may be, and the Trustee shall, upon receipt of a copy of the Investment Manager's appointment and written acknowledgment of such appointment, satisfactory in form to the Trustee, exercise such powers as directed in writing by the Investment Manager. The Trustee shall not be liable for any diminution in the value of the Trust Fund as a result of following any such direction or as a result of not exercising any such powers in the absence of any such direction.

3.4 No persons dealing with the Trustee shall be under any obligation to see to the proper application of any money paid or property delivered to the Trustee or to inquire into the Trustee's authority as to any transaction.

3.5 The Trustee shall distribute cash or property (and shall stop distributions) from the Trust Fund at such time or times, to such person or persons, including the Retirement Board as paying agent or a paying agent or agents designated by the Retirement Board, as the Retirement Board shall direct in writing. Any cash or property so distributed to any paying agent shall be held in trust by such payee until disbursed in accordance with the applicable Plan. Upon written direction by the Retirement Board, the Trustee shall distribute that part of the Trust Fund specified in such direction to any other trust established for the purpose of funding benefits under the applicable Plan or under any other plan, qualifying under Section 401 of the Code, established for the benefit

of the participants in the Plan or their beneficiaries by St. Joseph Health Services of Rhode Island or any successor or transferee thereof.

3.6 In directing the Trustee to make any distribution, the Retirement Board shall follow the provisions of the applicable Plan, and, except as provided by Paragraph 8.2, shall not direct that any payment be made, either during the existence or upon the discontinuance of the Plan, that would cause any part of the equitable share of the Plan in the Trust Fund to be used for or diverted to purposes other than the exclusive benefit of the participants in the Plan and their beneficiaries after defraying reasonable expenses of administering the Plan, pursuant to the provisions of the Plan. The preceding sentence shall not prohibit the return to St. Joseph Health Services of Rhode Island, at the written direction of the Retirement Board, of (1) a contribution to a Plan that is made by St. Joseph Health Services of Rhode Island under a mistake of fact, within one year after the payment of the contribution, or (2) a contribution to a Plan by St. Joseph Health Services of Rhode Island which is conditioned upon the deductibility of the contribution under Section 404 of the Code, to the extent that such deduction if disallowed or would be disallowed if St. Joseph's were a tax-paying entity, within one year after the disallowance of the deduction. Any written direction of the Retirement Board shall constitute a certification that the distribution so directed is one that the Retirement Board is authorized to direct, and the Trustee need not make any further investigation if it reasonably believes the direction is authentic. The Trustee shall not be liable for the proper application of any part of the Trust Fund if payments are made in accordance with the written directions of the Retirement Board as herein provided, nor shall the Trustee be responsible for the adequacy of the Trust Fund to meet and discharge any and all payments and liabilities under the Plan.

3.7 The Trustee may make any distribution required hereunder by mailing its check for the specified amount, or delivering the specified property, to the person to whom such distribution or payment is to be made, at such address as may have been last furnished to the Trustee by the Retirement Board, or if no such address shall have been furnished, to such person in care of St. Joseph Health Services of Rhode Island, or to the Retirement Board or (if so directed by the Retirement Board) by crediting the account of such person or by transferring the funds to such person's account by bank or wire transfer as directed in writing by the Retirement Board.

The Trustee shall be responsible for all reporting and/or withholding obligations with respect to any distribution or payment.

3.8 Notwithstanding any other provisions of this agreement, the Trustee shall not invest in Companies whose products, services, or goods are in conflict with the basic tenets of the Roman Catholic Doctrine.

#### Article IV -- Limitation of the Trustee's Liability

4.1 The Trustee shall be accountable only for funds actually received by it hereunder and shall have no duty or liability to determine that the amount of the funds received by it comply with the provisions of the Plan. If the appointment of an Investment Manager or Managers is in effect, the Trustee shall not be liable for the acts or omissions of such Investment Manager or Managers, or be under an obligation to invest or otherwise manage the portion of Trust Fund which is subject to the management of such Investment Manager. If St. Joseph Health Services of Rhode Island has established a contract with an insurance company to carry out the purposes of the Plan, the Trustee shall not be liable for the acts or omissions of such insurance company, or be under an obligation to invest or otherwise manage the portion of the Trust Fund which is subject to the management of such insurance company.

4.2 Whenever the Trustee is required or authorized to take any action hereunder pursuant to any written direction or notice of the Retirement Board or St. Joseph Health Services of Rhode Island, the Trustee, acting in accordance with such direction or notice, shall not be responsible for the administration of such Plan or Trust, for the correctness of any payments or disbursements from the Trust, or for any other action taken by the Trustee in accordance with such written direction or notice if it reasonably believes such direction is authentic. Such direction or notice shall be sufficient protection to the Trustee if contained in a writing signed by the Retirement Board or such other person authorized to execute documents on behalf of the Retirement Board, in the case of direction or notice required to be given by the Retirement Board; or by the Most Reverend Bishop of the Diocese of Providence or the President of St. Joseph's, in the case of direction or notice required to be given by St. Joseph Health Services of Rhode Island.

4.3 St. Joseph Health Services of Rhode Island shall indemnify and hold the Trustee harmless for any liability, or reasonable expenses, including, without limitation, reasonable attorneys' fees, incurred by the Trustee with respect to holding, managing, investing, or otherwise administering the Trust Fund, other than liabilities resulting over expenses from Trustee's negligence or willful misconduct.

4.4 No bond, surety or other security shall be required of the Trustee unless required according to the provisions of the law of the State of Rhode Island, in which case the cost of such bond, surety or other security shall be an expense chargeable to the Trust if it reasonably believes such direction is authentic.



## Article V -- Expenses and Compensation

5.1 The Trustee shall be paid such reasonable compensation as shall from time to time be agreed upon by the Trustee and St. Joseph Health Services of Rhode Island.

5.2 The Trustee shall notify St. Joseph Health Services of Rhode Island of all charges, taxes, assessments and expenses incurred in connection with the administration of the Trust. Unless paid by St. Joseph Health Services of Rhode Island, the compensation of the Trustee and all charges, taxes, assessments and expenses incurred in connection with the administration of the Trust shall be paid out of the Trust Fund and until paid shall constitute a charge upon said Fund.

5.3 This Trust is intended to constitute a Trust forming a part of a plan for the exclusive benefit of the eligible employees of St. Joseph Health Services of Rhode Island in accordance with the provisions of the Code applying to exempt employees' trust, and until advised to the contrary, the Trustee may assume that this Trust is not taxable. The Trustee shall promptly give notice to the Retirement Board of any assessment of taxes or intention to assess taxes with respect to the Trust or its income. The Trustee may, however, assume that any taxes assessed on or in respect of the Trust or its income are lawfully assessed unless the Retirement Board shall within 30 days after receiving notice pursuant to the previous sentence in writing advise the Trustee that in the opinion of counsel such taxes are or may be unlawfully assessed. In the event that the Retirement Board shall so advise the Trustee, the Retirement Board will contest the validity of such taxes in any manner deemed appropriate by the Retirement Board or its counsel but at the expense of St. Joseph Health Services of Rhode Island; and the Trustee agrees to execute any documents, instruments, claims and petitions required of the Trustee in the opinion of the Retirement Board or its counsel for the refund, abatement, reduction or elimination of any such taxes.

## Article VI -- Substitution and Succession of the Trustee

6.1 The Trustee may resign at any time by giving written notice to the Retirement Board. Such resignation shall become effective thirty (30) days thereafter or upon the appointment of a successor Trustee, whichever occurs first. In the event a successor Trustee is not appointed within thirty (30) days, the Trustee may turn over the assets of the Trust to the Retirement Board as successor Trustee. St. Joseph Health Services of Rhode Island may remove the Trustee by giving thirty (30) days written notice to the Trustee of such intent to remove, and by then giving written notice of the appointment of a successor Trustee. The removal shall become effective upon acceptance of the trusteeship by the successor Trustee. Each successor Trustee under this Trust shall be appointed in writing by St. Joseph Health Services of Rhode Island and shall accept the Trust in writing. Such successor Trustee shall become vested with any estate, property, right, power and duty of the predecessor Trustee hereunder with like effect, as if originally named Trustee. No successor Trustee shall be liable for any act or failure of any predecessor Trustee, and with the approval of the Retirement Board, a successor Trustee may accept the account rendered and the property delivered to it by the predecessor Trustee without in so doing incurring any liability or responsibility with respect to acts of default, if any, of the predecessor Trustee.

6.2 Any corporation into which the Trustee may merge or with which it may consolidate, or any corporation resulting from any merger or consolidation to which the Trustee may be a party, shall be the successor of the Trustee hereunder, without the execution or filing of any additional instrument or the performance of any further act. The Trustee shall promptly give notice to the Retirement Board of any such merger or consolidation.

## Article VII -- Accounting Provisions

7.1 The Trustee shall keep books of account that show all its receipts and disbursements hereunder. The books of account of the Trustee with respect to the Trust Fund shall be open to inspection by the Retirement Board or St. Joseph Health Services of Rhode Island, or their representatives, at all reasonable times during normal business course of the trustee and may be audited not more frequently than once each fiscal year by an independent certified public accountant engaged by the Retirement Board.

7.2 Within a reasonable time after the close of each fiscal year, or of any termination of the duties of the Trustee hereunder, the Trustee shall prepare and deliver to the Retirement Board an account of its acts and transactions as Trustee during such fiscal year or during such period from the close of the last fiscal year to the termination of the Trustee's duties, respectively, including a statement of the then current market value of the Trust Fund. Any such account shall be deemed accepted and approved by the Retirement Board, and the Trustee shall be relieved and discharged, as if such account had been settled and allowed by a judgment or decree of a court of competent jurisdiction, unless protested by written notice to the Trustee within sixty (60) days of receipt thereof by the Retirement Board.

7.3 The Trustee or the Retirement Board shall have the right to apply at any time to a court of competent jurisdiction for judicial settlement of any account of the Trustee not previously settled as herein provided or for the determination of any question of construction or for instructions. In any such action or proceeding it shall be necessary to join as parties only the Trustee and the Retirement Board (although the Trustee or the Retirement Board may also join such other parties as it may deem appropriate), and any judgment or decree entered therein shall be conclusive.

Article VIII -- Amendment and Termination

8.1. St. Joseph Health Services of Rhode Island has the right to amend, modify or terminate this Trust without the consent of any other persons at any time or from time to time, upon notice thereof in writing delivered to the Trustee; provided however that no alteration or amendment which affects the rights, duties or responsibilities of the Trustee may be made without the Trustee's written consent.

8.2 In the event of the termination of the Trust, the Trustee shall distribute the assets of the Trust in the manner directed by the Retirement Board in writing.

Article IX -- Impossibility of Diversion of Fund

Except as otherwise specifically provided in the Plan, St. Joseph Health Services of Rhode Island shall have no beneficial interest in the Trust or any part thereunder, and notwithstanding anything to the contrary herein contained, it shall be impossible at any time prior to satisfaction of all liabilities with respect to eligible Employees or their beneficiaries, for any part of the Trust to be used for or directed to purposes other than for the exclusive benefit of the eligible Employees under the Plan or their beneficiaries or for the payment of administration expenses or taxes upon the Trust in accordance with Article V -- Expenses and Compensation.

Article X -- Successor Company

Unless this Trust be sooner terminated, a successor to the business of St. Joseph Health Services of Rhode Island, by whatever form or manner resulting, which succeeds said Company under the Plan as therein provided shall, upon notice in writing from the Retirement Board that all action required by the Plan to effect such succession has been taken, also succeed to all the rights, powers and duties of such Company hereunder.

## Article XI -- Construction and Payment

11.1 The Trust shall be construed and administered according to the laws of the State of Rhode Island. In any question of interpretation or other matter of doubt, the Trustee may rely upon the opinion of counsel for St. Joseph Health Services of Rhode Island or Retirement Board or any other attorney at law designated by St. Joseph Health Services of Rhode Island with approval of the Trustee.

11.2 No person having any present or future interest in the Trust shall have any right to assign, transfer, encumber, commute or anticipate his payment under this Trust and such payment shall not in any way be subject to any legal process or levy of execution upon, or attachment or garnishment proceeding against, the same for the payment of any claim against St. Joseph Health Services of Rhode Island and any person having an interest hereunder, nor shall such payment be subject to the jurisdiction of any bankruptcy court or insolvency proceedings; provided, however, that the rule just stated shall not apply in the case of a "qualified domestic relations order" as defined in Section 414(p) of the Code.

Article XII -- Miscellaneous

12.1 The titles to the Articles in this Trust Agreement are included for convenience of reference only and are not to be used in interpreting this Trust Agreement

12.2 Neither the gender nor the number (singular or plural) of any word shall be construed to exclude another gender or number when a different gender or number would be appropriate.

12.3 This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall together constitute only one Trust Agreement.

12.4 Communications to the Trustee shall be sent to the Trustee's principal office or to such other address as the Trustee may specify in writing. No communication shall be binding upon the trustee until it is received by the Trustee. Communications to the Retirement Board or St. Joseph Health Services of Rhode Island shall be sent to St. Joseph Health Services of Rhode Island's principal office or to such other address as St. Joseph Health Services of Rhode Island may specify in writing.

IN WITNESS WHEREOF, St. Joseph Health Services of Rhode Island and the Trustee have caused this instrument to be executed this 27th day of September, 1995.

Company:

ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND

By: + Louis E. Holman  
Most Reverend Bishop of the  
Diocese of Providence

By: H. John Keimig  
H. John Keimig

Trustee:

FLEET NATIONAL BANK

By: Paul P. Drukker  
Signature of Officer

Paul P. DRUKKER  
(Type Name of Officer)