

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD

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:
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v.

C.A. No.: PC-2019-3654

Hearing Date: March 6, 2020

SAMUEL LEE, ET AL

@ 9:30 a.m.

PLAN RECEIVER AND LIQUIDATING RECEIVER’S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL PRODUCTION

Stephen Del Sesto, as Receiver (“Plan Receiver”) for the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”), and Thomas Hemmendinger, as Liquidating Receiver (“Liquidating Receiver”) of CharterCARE Community Board (“CCCB”), St. Joseph Health Services of Rhode Island (“SJHSRI”), and Roger Williams Hospital (“RWH”), submit this memorandum in support of their motion to compel production of documents and other information from Defendant Prospect Chartercare, LLC (“Prospect Chartercare”) pursuant to the Stipulation and Consent Order entered on April 25, 2019 (the “April 25, 2019 Stipulation and Consent Order”).¹

HISTORY AND TRAVEL

I. The Put Option

CCCB presently owns (and holds in trust for the Plan Receiver) a membership interest in Prospect Chartercare.² The Plan Receiver clearly has the right to direct

¹ A copy of the Stipulation and Consent Order is attached hereto as Exhibit 3.

² See Plan Receiver and Liquidating Receiver’s Memorandum in Support of Pending Motion for Injunctive Relief filed on February 7, 2020 at 2-5.

CCCB concerning the exercise of the Put option, and CCCB has the obligation to take direction.³ However, the Plan Receiver has not yet directed CCCB to exercise the Put option.

II. The Petitions for Liquidation and the Liquidating Receivership

The Settlement Agreement between the Plan Receiver and CCCB, SJHSRI, and RWH obligated CCCB, St. Joseph Health Services of Rhode Island (“SJHSRI”), and Roger Williams Hospital (“RWH”) to petition the Superior Court for judicially supervised liquidation upon the direction of the Plan Receiver.⁴ On December 13, 2019 counsel for CCCB, SJHSRI, and RWH filed the Petition for Judicial Dissolution and Liquidation of Assets Pursuant to R.I. Gen. Laws § 7-6-61, in the case captioned In re: CharterCARE Community Board, St. Joseph Health Services of Rhode Island, and Roger Williams Hospital, PC-2019-11756 (the “Liquidation Proceeding”).

On December 18, 2019, the Liquidating Receiver (i.e. Attorney Thomas Hemmendinger) was appointed Temporary Liquidating Receiver of CCCB, SJHSRI, and RWH. Liquidation Proceeding Order dated December 18, 2019. On January 17, 2020 he was appointed Permanent Liquidating Receiver. Liquidation Proceeding Order dated January 17, 2020.

³ See Plan Receiver and Liquidating Receiver’s Memorandum in Support of Pending Motion for Injunctive Relief filed on February 7, 2020 at 5.

⁴ See Plan Receiver and Liquidating Receiver’s Memorandum in Support of Pending Motion for Injunctive Relief filed on February 7, 2020, Exhibit 1 (Settlement Agreement) ¶¶ 21 & 24.

III. The Stipulation and Consent Order

As alleged in the Verified Complaint, CCCB has the absolute and unconditional contractual right to full access to the books and records of Prospect Chartercare. Verified Complaint ¶ 47. Notwithstanding CCCB's clear and unconditional right to such access, Prospect Chartercare repeatedly refused to comply with CCCB's repeated demands therefor. Verified Complaint ¶¶ 45-46. Accordingly, when CCCB commenced this action on March 13, 2019, the Verified Complaint included claims for breach of contract arising out of the refusal to allow such access, and the relief CCCB sought included a prayer for "reformation of the LLC Agreement to allow CCCB sufficient time to determine the value of the put option and whether or not it should be exercised." Verified Complaint at 23. Thereafter, CCCB filed a Motion for Temporary and Permanent Injunction and Equitable Relief (the "Pending Motion for Injunctive Relief") on March 18, 2019, to compel access to the books and records and to preserve CCCB's right to exercise the Put Option until such access was obtained.

After the Verified Complaint and Pending Motion for Injunctive Relief were filed, the Court entered a Stipulation and Consent Order on April 25, 2019 (the "April 25, 2019 Stipulation and Consent Order"). The signatories were the Prospect Entities, CCCB and the Plan Receiver. It contains the following provisions:

1. On or before May 15, 2019, PCC will provide CCCB with financial information in connection with CCCB's evaluation of the "put option" as requested by CCCB in correspondence dated September 20, 2018, October 2, 2018, October 3, 2018, and November 6, 2018. **Thereafter, CCCB may by email request such additional information as CCCB reasonably requires in connection with the evaluation of the "put option" under the Prospect Chartercare, LLC Agreement (the "LLC Agreement"), and PCC will provide such information within fifteen (15) days**

of such email(s), provided the information is available. PCC shall not be required pursuant to this Stipulation and Consent Order to produce documents that are subject to the attorney-client privilege, joint defense privilege and/or attorney work product doctrine, provided that any objections to production of documents pursuant to this Order on the basis of attorney-client privilege, joint defense privilege and/or attorney work product doctrine are noted at the time for production, and any documents withheld from production based on such objections are identified in a privilege log in accordance with the requirements of Super. R. Civ. P. 26(b)(5) & (7). If the parties disagree over whether any information that CCCB requests is relevant for the valuation process, or that claims of attorney-client privilege, joint defense privilege and/or attorney work product doctrine should be overruled and production of documents should be compelled, the parties may seek a resolution of such dispute on an expedited basis from Judge Stern.

April 25, 2019 Stipulation and Consent Order ¶ 1 (emphasis supplied).

Pursuant to the April 25, 2019 Stipulation and Consent Order, the instant action is stayed for most purposes. However, the April 25, 2019 Stipulation and Consent Order expressly provides that notwithstanding that stay, the parties may file motions to enforce the April 25, 2019 Stipulation and Consent Order:

4. **Except as to** the motion for injunctive relief addressed above, a motion for relief from the confidentiality provision of the protective order, **or a motion to enforce this Stipulation and Consent Order, the pending litigation commenced by CCCB will be stayed** until twenty (20) days after any party to this agreement provides written notice to all parties withdrawing agreement to the stay or until December 20, 2019, whichever is later. . . .

[Emphasis supplied]

April 25, 2019 Stipulation and Consent Order.

Following the entry of the April 25, 2019 Stipulation and Consent Order, the Prospect Entities undertook to produce documents. To enable the Plan Receiver to review this production and determine what additional information was required, the parties agreed to, and on November 22, 2019 the Court entered, another Stipulation and Consent Order (the “November 22, 2019 Stipulation and Consent Order”), which further extending the time for exercise of the Put option, to and including February 10, 2020. Again, the signatories were the Prospect Entities, CCCB, and the Plan Receiver. The November 22, 2019 Stipulation and Consent Order expressly provided that “[a]ll other provisions of the Stipulation and Consent Order entered on April 25, 2019 remain in full force and effect.”

IV. Requests for Documents and Other Information

On January 21, 2020, which was two business days after the Liquidating Receiver’s permanent appointment, the Liquidating Receiver and the Plan Receiver jointly emailed counsel for the Prospect Entities requesting further documentation and information that they “reasonably require in connection with the evaluation of the ‘Put option’ under the Prospect Chartercare, LLC Agreement.” This request is attached hereto as Exhibit 1. Consistent with Prospect Chartercare’s undertaking and obligation to provide information, this request both sought documents and asked Prospect Chartercare to provide information in response to questions. Then on January 30, 2020 the Liquidating Receiver and the Plan Receiver jointly emailed counsel with a supplemental document request, which is attached hereto as Exhibit 2. The Prospect Entities have failed to make any response whatsoever to either of these requests, notwithstanding their obligation to do so within fifteen (15) days of the requests.

ARGUMENT

I. Prospect Chartercare Violated the Stipulation and Consent Order

Pursuant to the April 25, 2019 Stipulation and Consent Order, “CCCB may by email request such additional information as CCCB reasonably requires in connection with the evaluation of the ‘put option’ under the Prospect Chartercare, LLC Agreement (the ‘LLC Agreement’), and **PCC will provide such information within fifteen (15) days of such email(s)**, provided the information is available.” April 25, 2019 Stipulation and Consent Order ¶ 1 (emphasis supplied). “Use of the word ‘will’ is commonly recognized as ‘having the mandatory sense of ‘shall’ or ‘must’” Bellucci v. Avedesian, No. C.A. KC 2004-0456, 2006 WL 3293974, at *3 (R.I. Super. Nov. 8, 2006) (quoting Summit Packaging Sys. v. Kenyon & Kenyon, 273 F.3d 9, 12 (1st Cir.2001) (citing Black’s Law Dictionary 1102 (6th ed. 1991))). “Accordingly, like the word ‘shall,’ the word ‘will’ should ‘not be given a permissive meaning where it is used with reference to any right or benefit to anyone, and the right and benefit depends upon giving a mandatory meaning to the word.’” Bellucci, 2006 WL 3293974 (quoting Dunahee v. Chenoa Welding and Fabrication, Inc., 652 N.E.2d 438, 442 (Ill. App. 4th Dist. 1995)). Thus, Prospect Chartercare’s obligation to produce the requested documents and information was mandatory. By failing to provide the documents and information requested in Exhibits 1 and 2, Prospect Chartercare violated the April 25, 2019 Stipulation and Consent Order.

II. The Plan Receiver and the Liquidating Receiver are Entitled to an Order Compelling Production

Accordingly, the Plan Receiver and the Liquidation Receiver are entitled to an order compelling Prospect Chartercare to provide both the documents and the information requested in Exhibits 1 and 2.

CONCLUSION

The Court should enter an order directing Prospect Chartercare to provide the Plan Receiver and CCCB with both the documents and the information requested in Exhibits 1 and 2.

Respectfully submitted,

Stephen Del Sesto as Receiver,
By his Attorney,

/s/ Max Wistow

Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
WISTOW, SHEEHAN & LOVELEY, PC
61 Weybosset Street
Providence, RI 02903
401-831-2700 (tel.)
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

Plaintiff,
by its Liquidating Receiver

/s/ Thomas S. Hemmendinger

Thomas S. Hemmendinger (#3122)
Brennan, Recupero, Cascione,
Scungio & McAllister, LLP
362 Broadway
Providence, RI 02909
Tel. (401) 453-2300 Fax (401) 453-2345
themmendinger@brscsm.com

Dated: February 20, 2020

CERTIFICATE OF SERVICE

I hereby certify that, on the 20th day of February, 2020, I filed and served the foregoing document through the electronic filing system on the following users of record:

Robert D. Fine, Esq.
Andre S. Digou, Esq.
Chace Rутtenberg & Freedman LLP
One Park Row, Suite 300
Providence, RI 02903
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adigou@crfillp.com

Vincent A. Indeglia, Esq.
Ryan J. Lutrario, Esq.
Indeglia & Associates
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The Summit East, Suite 320
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vincent@indegliawalaw.com
rlutrario@indegliawalaw.com

W. Mark Russo, Esq.
Ferrucci Russo P.C.
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mrusso@frlawri.com

Thomas S. Hemmendinger, Esq.
Sean J. Clough, Esq.
Lisa M. Kresge, Esq.
Ronald F. Cascione, Esq.
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rcascione@brscsm.com

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_____

Exhibit 1

From: [Stephen Del Sesto](#)
To: [Preston Halperin](#); [Mark Russo](#); [Christopher J. Fragomeni](#)
Cc: [Max Wistow](#); [Stephen P. Sheehan](#); [Benjamin Ledsham](#); [Thomas S. Hemmendinger](#); [Lisa M. Kresge](#); [Julie Zaccagnini](#)
Subject: St. Joseph/CCCB - Letter regarding request for additional information
Date: Tuesday, January 21, 2020 12:16:02 PM
Attachments: [012120 ltr to Halperin re additional info to eval put \(from SFD.TSH\).pdf](#)

Dear Preston and Mark:

Please see the attached letter signed jointly by Tom Hemmendinger, Esq., in his capacity as the Liquidating Receiver, and me, in my capacity as the Plan Receiver, requesting additional information. Thank you.

Sincerely,
Stephen Del Sesto, Esq
As and only as Receiver for the
St. Joseph Health Services of RI Retirement Plan

And

Tom Hemmendinger, Esq. (by SFD with permission)
As and only as Liquidating Receiver for CCCB et. al.

Stephen DelSesto	
PIERCE ATWOOD LLP	PH 401.490.3415

PIERCE ATWOOD

January 21, 2020

By E-Mail and Regular Mail

Preston Halperin, Esq.
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860

W. Mark Russo, Esq.
Ferrucci Russo P.C.
55 Pine St, 3rd Fl.
Providence, RI 02903

Re: Determination of value of CharterCARE Community Board's interest in Prospect Chartercare, LLC

Dear Preston and Mark:

In accordance with paragraph 1 of the Stipulation and Consent Order entered on April 25, 2019 in *CharterCARE Community Board v. Samuel Lee, et al.*, C.A. No. PC-2019-3654, we hereby request all of the documents and information described in the enclosed spreadsheet within fifteen (15) days, *i.e.* by Wednesday, February 5, 2020. These are documents and information that we reasonably require in connection with the evaluation of the "Put option" under the Prospect Chartercare, LLC Agreement. If these documents are not received on a timely basis, we reserve the right to request a hearing on the motion for injunctive relief pending in the above-captioned case, which will extend the date for exercise of the Put option, pursuant to the terms of said Stipulation and Consent Order and the subsequent extensions thereof.

If we chose to exercise the Put option, we anticipate there will be further production of documents and other information at the request of the appraisers.

Very truly yours,

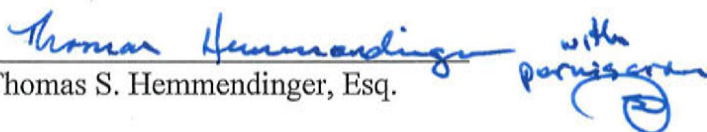


Stephen F. Del Sesto, Esq.

*In his capacity as and only as Receiver of the
St. Joseph Health Services of Rhode Island
Retirement Plan*

Pierce Atwood LLP
One Financial Plaza
26th Floor
Providence, RI 02903
sdelsesto@pierceatwood.com

Enclosure



Thomas S. Hemmendinger, Esq.

*In his capacity as and only as Liquidating
Receiver of CharterCARE Community Board,
St. Joseph Health Services of Rhode Island,
and Roger Williams Hospital, only*
Brennan, Recupero, Cascione, Scungio &
McAllister, LLP
362 Broadway
Providence, RI 02909
themmendinger@brscsm.com

CharterCARE Health Partners - Request for Information

Ref. Number	Description	Data Received	Data Not Available	File Name	Notes
1.00	Business and Operational Information				
1.01	Employee register with the following information: » Position or title » Specialty, if a clinical provider » Hourly rate or annual salary » Benefits » Full-time equivalents (FTEs)				
1.02	Facility information, including: » Address of each site » Year occupancy began » Latest property tax bills » Site plan and floor plans for each building » Square footage, indicate how much excess capacity there is at each location » Description including building age, number and type of rooms (ORs, ERs, etc.), number of beds, bed occupancy rate over past 5 years. » Is there any deferred maintenance on the building? If so, what are the estimated costs?				
2.00	Financial Information				
2.01	The following detailed financial statements (income statements and balance sheets): » The most recent fiscal year-end audited financials (October 1, 2018 - September 30, 2019) for Consolidated, RWMCC, and SJHSRI » Southern New England Regional Cancer Center, LLC (SNR) monthly statements for September 30, 2019 » Roger Williams Radiation Therapy, LLC (RWVRT) monthly statements for September 30, 2019				
2.02	Schedule of any unusual, non-recurring, or nonbusiness-related expenses for the same periods as the financial statements for RWMCC, SJHSRI, SNR, and RWVRT (to the extent available). These periods include: » Fiscal years ending September 30: 2015 - 2019				
2.03	Gross charges, net revenue, and admissions by payor for the same periods as the financial statements. These periods include: » Fiscal years ending September 30: 2015 - 2019				
2.04	Fixed asset listing through September 30, 2019 with item descriptions, original cost, date of purchase, remaining useful life and net book value.				
2.05	Documentation sufficient to determine the funding of the Long Term Capital Commitment and all capital contributions referred to in the LLC Agreement, including but not limited to all cash contributed by Prospect Medical Holdings, Prospect East Holdings, and Prospect East Hospital Advisory Services to Prospect Chartercare, LLC				
3.00	Hospital Operating Statistics and Clinical Metrics				
3.01	Hospital schedules and clinical metrics (admissions, patient days, census data, CMI, surgeries, outpatient visits, FTE employees, etc.) for the same periods as the financial statements. These periods include: » Fiscal years ending September 30: 2015 - 2019				
4.00	Other Information about the Business				
4.01	Copies of any previous valuations performed.				
4.02	Answer Questions on the Next Tab				

Question

Overview

- 1 Is it challenging to recruit and hire staff at the Hospital?
- 2 Are there any turnover concerns with staffing?
- 3 Are any contract negotiations in the near term with commercial payors? If so, what is estimated outcome?

Income Statement

- 4 Please discuss the Hospital's recent goodwill impairment charge of \$14.2 million in 2018. What reporting unit(s) carried Goodwill historically? Would it be possible for ECG to request a copy of the ASC 350 valuation performed?
- 5 Why have Taxes and Licenses fluctuated so much between 2015 and 2018?
- 6 Purchased Services have increased steadily YoY? Why is this, and is this trend expected to continue?
- 7 What is included in Other Expenses, and what caused it to increase from \$7.3 million in 2017 to \$11.3 million in 2018?
- 8 What caused the fluctuation in Management Fees between 2015 and 2018?
- 9 Utilities steadily increased from 2015 to 2017, and then dropped in 2018. Why is this?
- 10 Why have Lease and Rental Expenses fluctuated so much between 2015 and 2018?
- 11 Are there any non-recurring or discretionary items that are included in the income statements?

Balance Sheet

- 12 Why are Cash and Cash Equivalents \$0 in 2017 and 2018?
- 13 Why did the amount Due from Government Payors increase from \$0.8 million in 2016 to \$5.0 million in 2017?
- 14 Why did the amount Due to Government Payors increase from \$0.1 million in 2016 to \$4.8 million in 2018?
- 15 What has caused the fluctuations in the amount Due to Affiliates?
- 16 Why have Other Long-Term Liabilities increased substantially year over year since 2014?

Other

- 17 Has the Hospital acquired any ownership interests in entities other than RWRT and SNERCC?
- 18 What are the largest threats/challenges facing the Hospital today?
- 19 What are the greatest opportunities and growth initiatives for the hospital into the foreseeable future?
- 20 What other items, if any, should we know about the hospital in connection with the valuation?

Exhibit 2



January 30, 2020

By E-Mail and Regular Mail

Preston Halperin, Esq.
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860

W. Mark Russo, Esq.
Ferrucci Russo P.C.
55 Pine St, 3rd Fl.
Providence, RI 02903

Re: Determination of value of CharterCARE Community Board's interest in Prospect Chartercare, LLC

Dear Preston and Mark:

Further to our letter of January 21, 2020, we also request that you provide us with documents concerning the following:

1. The extent to which the real and/or personal property of Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and/or Prospect Chartercare RWMC, LLC is securing any obligations of any other entity or individual;
2. The assets and liabilities of those entities or individuals whose obligations are secured by the assets of Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and/or Prospect Chartercare RWMC, LLC, and the ability of those entities and individuals to repay the secured debt; and
3. Any pending or contemplated transactions involving or affecting Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and/or Prospect Chartercare RWMC, LLC that are or may be in any way contingent upon or possibly affected by whether or not the Put option is exercised.
4. The following financial statements for each of Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC for the 2016, 2017, 2018 and 2019 fiscal years and the most recent fiscal year-to-date statements for 2020: income statements; year-end balance sheets; and statements of cash flows. If any of these

Preston Halperin, Esq.
W. Mark Russo, Esq.
January 30, 2020
Page two

statements were CPA-prepared or audited, even in draft form, we request those versions.

This information is essential for the Receiver to make an informed decision whether to exercise the Put option. We are especially concerned that it appears that such security interests may have been given to enable corporate insiders to improperly siphon off at least 457 million dollars. In that case, rather than exercising the Put option, it may make more economic sense for the Receiver to retain CharterCARE Community Board's interest in Prospect Chartercare, LLC, and to pursue the lawsuit already commenced by CharterCARE Community Board against Samuel Lee, David Topper, and others for breach of contract, breach of fiduciary duty, fraudulent transfers and other corporate wrongdoing.

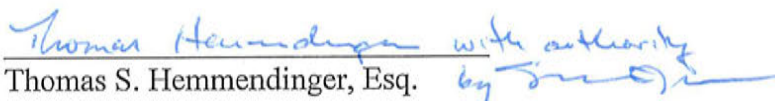
The Consent Order and Stipulation entered on April 25, 2019 expressly obligates your clients to provide "such additional information as CCCB reasonably requires in connection with the evaluation of the 'put option' under the Prospect Chartercare, LLC Agreement..." Accordingly, that Consent Order and Stipulation obligates your clients to comply with this and the earlier request for information.

Very truly yours,



Stephen F. Del Sesto, Esq.

*In his capacity as and only as Receiver of the
St. Joseph Health Services of Rhode Island
Retirement Plan
Pierce Atwood LLP
One Financial Plaza
26th Floor
Providence, RI 02903
sdelsesto@pierceatwood.com*



Thomas S. Hemmendinger, Esq.

*In his capacity as and only as Liquidating
Receiver of CharterCARE Community Board,
St. Joseph Health Services of Rhode Island,
and Roger Williams Hospital, only
Brennan, Recupero, Cascione, Scungio &
McAllister, LLP
362 Broadway
Providence, RI 02909
themmendinger@brasm.com*

Exhibit 3

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD

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:
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v.

C.A. No.: PC-2019-3654

SAMUEL LEE, ET AL

STIPULATION AND CONSENT ORDER

Prospect Chartercare, LLC ("PCC"), Prospect Chartercare SJHSRI, LLC, Prospect Chartercare RWMC, LLC, Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., and Prospect East Hospital Advisory Services, LLC (all collectively the "Prospect Entities"), and CharterCARE Community Board ("CCCB"), having stipulated and consented to the entry of this Order, it is hereby:

ORDERED:

1. On or before May 15, 2019, PCC will provide CCCB with financial information in connection with CCCB's evaluation of the "put option" as requested by CCCB in correspondence dated September 20, 2018, October 2, 2018, October 3, 2018, and November 6, 2018. Thereafter, CCCB may by email request such additional information as CCCB reasonably requires in connection with the evaluation of the "put option" under the Prospect Chartercare, LLC Agreement (the "LLC Agreement"), and PCC will provide such information within fifteen (15) days of such email(s), provided the information is available. PCC shall not be required pursuant to this Stipulation and Consent Order to produce documents that are subject to the attorney-client privilege, joint defense privilege and/or attorney work product doctrine, provided that any objections to production of documents pursuant to this Order on the basis of attorney-client privilege, joint defense privilege and/or attorney work product doctrine are noted at the time for production, and any documents withheld from production based on such objections are identified in a privilege log in accordance with the requirements of Super. R. Civ. P. 26(b)(5)&(7). If the parties disagree over whether any information that CCCB requests is relevant for the valuation process, or that claims of attorney-client privilege, joint defense privilege and/or attorney work product doctrine should be overruled and production of documents should be compelled, the parties may seek a resolution of such dispute on an expedited basis from Judge Stern.

2. CCCB shall be authorized to share information produced by PCC with Stephen Del Sesto, the Receiver for St. Joseph's Health Services of Rhode Island Retirement Plan ("the Receiver"), and each of their respective attorneys, accountants and experts solely for the purpose of evaluating the "put option" so that the Receiver may participate fully and without restriction in the valuation and exercise of the "put option". All such information that PCC designates as "PCC-CONFIDENTIAL" will remain confidential

Filed in PSC Court
Date 4/25/19
Carin Miley *Deputy* Clerk

pursuant to the provisions of a Protective Order (attached), and such confidentiality shall continue unless CCCB and /or the Receiver obtain a court order in this case or in the federal court litigation filed by the Receiver lifting the confidentiality restriction.

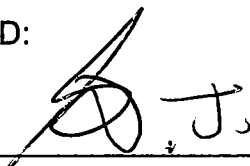
3. The parties to the LLC Agreement agree to modify the ninety (90) day period within which the put option created in Section 14.5 of the LLC Agreement can be exercised to the ninety (90) day period commencing September 21, 2019 and ending on December 20, 2019. If in the judgment of CCCB and the Receiver (or solely the Receiver if the settlement is approved by the Federal Court prior to such date) the option cannot in good faith be appraised and exercised by December 20, 2019 based on the information received, then, prior to the expiration of the period, CCCB (or solely the Receiver if the settlement is approved by the Federal Court prior to such date) reserves the right to seek a hearing on the already pending injunctive relief motion (filed on March 18, 2019) heard by the Court as soon as reasonably practical; and to ensure the exercise period does not expire while that motion is pending, the option exercise period shall be extended for an additional period extending for twenty (20) business days following the entry of an order by the Court on the request for a further extension of the option exercise period, provided, however that the extension during the pendency of the motion shall not exceed thirty (30) days from the date of the hearing on the request. The provisions of Section 14.6 of the LLC Agreement regarding the valuation process are not affected by this agreement except as expressly provided herein.

4. Except as to the motion for injunctive relief addressed above, a motion for relief from the confidentiality provision of the protective order, or a motion to enforce this Stipulation and Consent Order, the pending litigation commenced by CCCB will be stayed until twenty (20) days after any party to this agreement provides written notice to all parties withdrawing agreement to the stay or until December 20, 2019, whichever is later. Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., and PCC shall be free to proceed with their motion for leave to sue CCCB in connection with the LLC Agreement, but in the event that leave is granted, the Prospect Entities agree to stay that litigation until twenty (20) days after any party to this agreement provides written notice to all parties withdrawing agreement to the stay or until December 20, 2019, whichever is later. In the event that the Court denies the stay or does not grant the stay within the period for the defendants to respond to the case, the Prospect Entities agree to dismiss the case without prejudice, all defendants agree not to object to such dismissal without prejudice, and the parties to this agreement agree that the statute of limitations with respect to any claim that in plaintiffs' judgment may be impacted by the dismissal is tolled until twenty (20) days after any party to this agreement gives written notice to all parties withdrawing agreement to the stay or until December 20, 2019, whichever is later. CCCB, Roger Williams Hospital, St. Joseph Health Services of Rhode Island, and the Receiver agree that plaintiffs will not be prejudiced as a result of such voluntary dismissal.

5. The Prospect Entities, CCCB, Roger Williams Hospital and St. Joseph Health Services of Rhode Island agree not to bring any other proceeding against each other, or any of their officers, directors, agents, or attorneys until twenty (20) days after any party to this agreement provides written notice to all parties or until December 20, 2019, whichever is later. Notwithstanding the foregoing, the parties shall be free to assert

claims against each other arising out of future conduct or events that may hereafter arise. In addition, the Prospect Entities shall (a) be free to assert any claims, cross-claims and third-party claims in the pending federal court litigation and in the pending Rhode Island state court litigation filed by the Receiver in the event that the stay of the Superior Court case is lifted and (b) upon leave of the Court in the Receivership action, be free to file and pursue administrative proceedings relating to the hospitals arising out of federal court approval of the Receiver's settlement agreement with CCCB.

ORDERED:

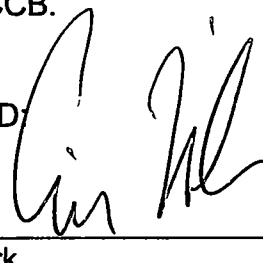


Stern, J.

Dated:

4/25/19

ENTERED:



Dep. Clerk

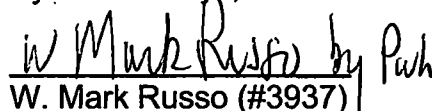
Dated:

4/25/19

Stipulated to and presented by:

PROSPECT CHARTERCARE, LLC
PROSPECT CHARTERCARE SJHSRI, LLC, AND
PROSPECT CHARTERCARE RWMC, LLC,

By its Attorneys,



W. Mark Russo (#3937)
Ferrucci Russo P.C.
55 Pine Street, 3rd Floor
Providence, RI 02903
Tel.: (401) 455-1000
mrusso@frlawri.com

PROSPECT MEDICAL HOLDINGS, INC.,
PROSPECT EAST HOLDINGS, INC., AND
PROSPECT EAST HOSPITAL ADVISORY SERVICES, LLC

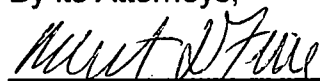
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STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD

:

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v.

:

C.A. No.: PC-2019-3654

:

SAMUEL LEE, ET AL

:

STIPULATED PROTECTIVE ORDER
REGARDING PROSPECT CHARTERCARE LLC

Upon agreement of Plaintiff Chartercare Community Board (“CCCB”), Defendant, Prospect Chartercare LLC. (“PCC”) and third-party Stephen Del Sesto, Receiver (“Receiver”) for the St. Joseph Health Services of Rhode Island Retirement Plan (collectively the “Parties”) for Entry of a Stipulated Protective Order regarding the production of confidential and/or proprietary information, and the Court having reviewed and considered the proposed order, and good cause appearing therefor, it is hereby:

ORDERED:

1. **Scope.** This Order shall apply to documents produced by PCC pursuant to a Stipulation and Consent Order between the Parties relating to PCC’s production of certain financial information in connection with CCCB’s and/or the Receiver’s evaluation of the “put option” set forth in the Amended & Restated Limited Liability Company Agreement of Prospect Chartercare, LLC (the “PCC Operating Agreement”).

2. **Non-Disclosure of Confidential Material.** Except as hereinafter provided under this Order or subsequent Court Order, no Confidential Material may be

disclosed to any person except as provided in Paragraph 4 below. "Confidential Material" means any document produced by PCC that bears the legend "PCC-CONFIDENTIAL" to signify that it contains information deemed to be confidential by the producing party. It shall not include documents that CCCB or the Receiver obtains from another source.

3. **Duty of PCC in designating Confidential Material.** Documents shall not be designated as Confidential Material unless the documents are not publicly available, or contain personal identifying information (meaning social security numbers or other information of a non-public nature) of third parties.

4. **Permissible Disclosure of Confidential Material.** Notwithstanding Paragraph 2, Confidential Material may be disclosed to (a) to CCCB; (b) to the Receiver; (c) to counsel for the Receiver and/or CCCB; (d) to the associates, secretaries, paralegal assistants and employees of such counsel to the extent reasonably necessary to render professional services; (e) to consultants, experts, or investigators retained for the purpose of assisting such counsel; to (f) persons with prior knowledge of the Confidential Material and their agents; and to (g) court officials (including, without limitation: court reporters and any special master or mediator appointed by the Court). Such Confidential Material may also be disclosed to any additional person as the Court may order. This Order shall apply to and be binding upon any individual or entity to whom Confidential Material is disclosed. Prior to sharing Confidential Material with any person in category (e) above, any party or counsel making Confidential Material available shall provide that person with a copy of this Order and explain its terms and the Court's determination that anyone viewing Confidential Material is bound by this Order. All such persons in category (d) above will

read a copy of this Order and shall execute an Acknowledgment in the form of Exhibit 1 hereto, which copy shall promptly be provided to counsel for PCC.

5. **Confidential Information subpoenaed or requested by a court, administrative or legislative body.** If Confidential Information in the possession of a party or its counsel is subpoenaed or otherwise requested by any court, administrative or legislative body, or any other person purporting to have authority to subpoena or request such information, the party receiving the subpoena shall give written notice of the subpoena or request to counsel for PCC five (5) business days prior to the time when production of the information is required. In the event that the subpoena/request purports to require production of such Confidential Information on less than five (5) business days' notice, the party receiving the subpoena shall give immediate telephonic notice of the receipt of such subpoena or request, and forthwith deliver by hand, email, or facsimile a copy thereof, to counsel for PCC. Absent a further court order to the contrary, the party receiving the subpoena may comply with the subpoena or request.

6. **Declassification.** In the event that CCCB or the Receiver seeks to disclose Confidential Material in a manner outside of what is provided in Paragraph 4 or 5, CCCB or the Receiver may file a motion with the Court for a ruling that the document designated as Confidential Material is not or should not be entitled to such status and protection. Such motion may be heard upon no less than fourteen (14) days' notice to counsel for PCC. PCC shall have ten (10) days from the date such petition is filed to file an opposition to the petition defending the designation as Confidential Material. PCC shall have five (5) days in which to file a reply. Alternatively, CCCB and /or the Receiver may seek to obtain a court order in the federal court litigation filed by the Receiver against PCC lifting the confidentiality restriction.

7. **Filing of Confidential Material with the Court.** Confidential Material shall not be filed with the Court except under seal, when required in connection with motions as provided for in Paragraph 4 or 6, or any other reason or in connection with other matters pending before the Court for which such materials may be relevant. Any pleadings, motions, or other papers filed under seal shall be filed in accordance with the Rhode Island Superior Court Rules of Civil Procedure and any other applicable court rules or standing orders.

8. **Confidential Material at Trial or Other Court Proceeding.** Subject to the Superior Court Rules of Civil Procedure and any other applicable rules and standing orders, Confidential Material may be offered in evidence at trial or other court proceeding, provided that the proponent of the evidence gives notice to counsel for PCC sufficiently in advance so as to enable it to move the Court for an order that the evidence be received in camera or under other conditions to prevent unnecessary disclosures. The Court will then determine whether the proffered evidence should continue to be treated as Confidential Material and, if so, what protection, if any, may be afforded to such information at the trial or other court proceeding.

9. **No Waiver.**

- (a) Review of Confidential Material by any persons identified in Paragraph 4, 6 or 7 shall not waive the protections provided herein, or any objections to production of Confidential Material.
- (b) The inadvertent, unintentional, or in camera disclosure of Confidential Material shall not, under any circumstances, be deemed a waiver, in whole or in part, of claims of confidentiality. If

PCC inadvertently or unintentionally produces any Confidential Material without marking or designating it as such in accordance with the provisions of this Order, PCC may, promptly on discovery, furnish a substitute copy properly marked, along with written notice to the other persons that such document is deemed confidential and should be treated as such in accordance with the provisions of this Order. Each receiving person must treat such document as Confidential Material from the date such notice is received.

10. **Inadvertent Production of Privileged Material.** CCCB, the Receiver, counsel to CCCB and/or to the Receiver, PCC, and counsel to PCC shall adhere to the obligations imposed by the Superior Court Rules of Civil Procedure regarding privileged material. However, the inadvertent failure of any of them to designate and/or withhold any document as subject to the attorney-client privilege, the attorney work-product doctrine or any other applicable protection or exemption from discovery will not be deemed to waive a later claim as to its appropriate privileged or protected nature, or to stop the producing person from designating such document as privileged or protected from discovery at a later date in writing and with particularity.

11. **Privilege Log.** PCC shall not be required pursuant to this Order to produce documents that are subject to the attorney-client privilege, joint defense privilege and/or attorney work product doctrine, provided that any objections to production of documents on the basis of attorney-client privilege, joint defense privilege and/or attorney work product doctrine are noted at the time for production, and any documents withheld from production based on such objections are identified in a privilege log in accordance with the requirements of Super. R. Civ. P. 26(b)(5)&(7).

12. **Survival.** The terms of this Order shall survive the conclusion of this matter. Counsel to CCCB and/or to the Receiver and/or to PCC may move the Court for an order addressing the post-conclusion treatment of Confidential Material.

13. **Amendment or Modification of Order.** This Order may be amended or modified by this Court upon notice to CCCB, the Receiver, and PCC.

ORDERED:

ENTERED:

Stern, J.

Dep. Clerk

Dated:

Dated:

EXHIBIT 1

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD :

v. :

C.A. No.: PC-2019-3654

SAMUEL LEE, ET AL :

ACKNOWLEDGEMENT

The undersigned declares and states as follows:

1. I have read the attached Order, dated April __, 2019 ("Order"), understand its contents and hereby agree to comply therewith and to be bound thereby. In addition, I consent to the jurisdiction of the Rhode Island Superior Court for the purposes of enforcement of the Order.

2. I agree to use Confidential Material only for purposes of assisting in the matters for which I have been retained, and for no other purpose.

3. I agree to retain all Confidential Material in a secure manner and in accordance with the terms of the Order. I also agree not to distribute any Confidential Material except in accordance with the Order. I further agree not to communicate Confidential Material to any person or entity not qualified to receive it under the terms of the Order.

4. I agree to comply with all other provisions of the Order.

5. I acknowledge that failure on my part to comply with the provisions of the Order may be punishable by contempt of court and may render me liable to any Party, person, or entity damaged thereby.

I declare under the penalties of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____.

Name: _____ (print or type)

Signature: _____