

**HEARING DATE: MARCH 6, 2020; JUDGE STERN @ 9:30AM**

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD

VS.

SAMUEL LEE, ET AL.

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C.A. NO. PC-2019-3654

**PROSPECT CHARTERCARE, LLC, PROSPECT MEDICAL HOLDINGS, INC.,  
PROSPECT EAST HOLDINGS, INC., AND PROSPECT EAST HOSPITAL ADVISORY  
SERVICES, LLC'S MEMORANDUM IN SUPPORT OF ITS OBJECTION TO  
PLAN RECEIVER AND LIQUIDATING RECEIVER'S MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS AND OTHER INFORMATION FROM PROSPECT  
CHARTERCARE, LLC AND IN SUPPORT OF ITS OBJECTION TO MOTION FOR  
TEMPORARY AND PERMANENT INJUNCTIVE AND EQUITABLE RELIEF**

NOW COMES Prospect Chartercare, LLC ("PCC"), Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., and Prospect East Hospital Advisory Services, LLC (the "Prospect Entities") and hereby file their Memorandum in Support of its Objection to the Plan Receiver and Liquidating Receiver's Motion to Compel Production of Documents and Other Information From Prospect CharterCare, LLC, and Motion for Temporary and Permanent Injunctive and Equitable Relief. As grounds therefore, the Prospect Entities states as follows:

1. The instant Motion to Compel is an effort to relitigate the very same motion previously filed by CharterCare Community Board ("CCCB") on August 19, 2019, which was ruled upon by this Court by Order dated October 3, 2019 (see paragraph 8 below). The August 19, 2019 motion to compel was entitled *Expedited Motion to Compel Production*.
2. In the August 2019 Expedited Motion to Compel, CCCB sought to enforce the very same April 25, 2019 Stipulation and Consent Order (attached as **Exhibit A** hereto) that is the subject of the current Motion to Compel.

3. In the August 2019 Expedited Motion to Compel, CCCB asserted that its valuation consultant, ECG Management Consultants, had requested information reasonably required in connection with evaluation of PCC so that CCCB could evaluate the “put option.”
4. Attached to the August 2019 Expedited Motion to Compel was an August 1, 2019 e-mail from Attorney Robert Fine to Attorney Preston Halperin with a copy to Richard Land and Stephen DelSesto. The e-mail included a spreadsheet of information sought by ECG which included a column with reference numbers starting with 1.01 and ending with 5.02. A copy of Attorney Fine’s August 1, 2019 e-mail is annexed hereto as **Exhibit B**.
5. On August 23, 2019, PCC filed its Objection to CCCB’s August 19, 2019 Expedited Motion to Compel. In its Objection to the August 2019 Expedited Motion to Compel, a copy of which is annexed hereto as **Exhibit C**, PCC advised the Court that it had already produced all of the financial information required to be produced pursuant to the April 25, 2019 Stipulation and Consent Order, in which PCC agreed to “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.
6. Despite PCC having produced the information sought by the earlier four letters and/or e-mails, CCCB argued in its August 2019 Expedited Motion to Compel that it required additional information as detailed by ECG Management Consultants.
7. At a hearing before the Court on CCCB’s Expedited Motion to Compel, PCC advised the Court that it had fully complied with the requests for information, and that the

- additional information being sought by CCCB's valuation consultant ECG (which is also the Receiver's valuation consultant), included information that did not exist and would need to be created by PCC.
8. As a result of the hearing, on October 3, 2019, this Court entered an Order on Expedited Motion to Compel, a copy of which is annexed hereto as **Exhibit D**, requiring PCC to produce specific financial information identified by reference to ECG's spreadsheet reference numbers, Section 2.02, 2.07 and 3.02. The information ordered to be produced was that which was already in existence; the Court did not require PCC to prepare information or to make its employees available for interviews. PCC was also ordered to produce certain Financial and Clinical Metrics Overview of Roger Williams Medical Center and Our Lady of Fatima Hospital for the period ending December 31, 2018.
  9. PCC produced the documents required by the Court's October 3, 2019 Order.
  10. On December 18, 2019, the Court appointed Attorney Thomas Hemmendinger as Temporary Liquidating Receiver for CCCB.
  11. Upon appointment, Attorney Hemmendinger contacted Attorney Preston Halperin, counsel to Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., and Prospect East Hospital Advisory Services, Inc.
  12. Attorney Hemmendinger advised Halperin that he was in the process of getting up to speed, but that his understanding was that additional financial records of PCC were still outstanding and that such records were needed to evaluate the put option.
  13. Attorney Halperin advised Attorney Hemmendinger that all financial records required by the prior proceedings had in fact been produced. Attorney Hemmendinger told

- Attorney Halperin that he had been told that certain financial records were still outstanding. Halperin told Hemmendinger that was not the case.
14. Attorney Halperin followed up with a call to Stephen DelSesto. Halperin told DelSesto that his understanding was that PCC had fully complied with the prior order to produce financial records. Attorney DelSesto did not disagree with Attorney Halperin and neither DelSesto nor Hemmendinger followed up with information as to what, if any, documents previously ordered by the Court had not been produced.
15. Thereafter, over a period of weeks beginning at the end of December 2019 and continuing to January 9, 2020, Attorney Halperin and Attorney DelSesto communicated regarding the selection of appraisers pursuant to the LLC operating agreement. DelSesto asked if the Prospect Entities would agree to ECG as the Receiver's selected appraiser despite the fact that ECG was not a MAI appraiser as mandated by the operating agreement.
16. Working cooperatively with Attorney DelSesto, the Prospect Entities agreed to accept ECG as CCCB/Receiver's appraiser and suggested that ECG and the appraiser selected by the Prospect Entities agree on one set of additional documents and information that would satisfy both appraisers once CCCB exercised the put option and the formal appraisal process commenced. Attached hereto as **Exhibit E** is a January 9, 2020 e-mail from Attorney Halperin to Attorneys DelSesto and Hemmendinger confirming the various communications that had been taking place between Halperin and DelSesto.
17. By letter dated January 21, 2020, DelSesto and Hemmendinger requested additional documents and information, attaching a revised ECG spreadsheet with reference numbers 1.01, 1.02, 2.01-2.05, 3.01, 4.01-4.02. The letter also includes a list of twenty

questions to be answered by PCC. The January 21, 2020 letter is attached to the Receivers' Memorandum of Law in Support of the instant Motion to Compel as Exhibit 1.

18. The information sought by CCCB/Receivers in the instant Motion to Compel includes in Exhibit 1 to their Memorandum of Law, some of the identical information sought by CCCB when it filed its August 2019 Expedited Motion to Compel, despite the fact that the Court previously ruled on CCCB's requests. In addition, the information sought by CCCB/Receivers would appear to be all information needed in order for ECG to conduct an appraisal, despite the fact that CCCB/Receiver has not yet exercised the put option. Such information goes well beyond that which is presently available and in existence. Much of the information sought would need to be specially prepared and would require interviews with multiple PCC employees. That level of information is well beyond what is reasonably needed for CCCB/Receivers to decide whether to exercise the put option. In addition, the PCC limited liability operating agreement neither permits nor contemplates such information being created and produced in advance of commencement of the formal appraisal process.
19. Incredibly, in its January 30, 2020 request for additional information (Exhibit 2 to Receivers' Memorandum of Law), the Receivers are seeking information relating to the financial condition and assets of Prospect Medical Holdings, Inc. and Prospect East Holdings, Inc., which have nothing whatsoever to do with a valuation of PCC, and whom are not parties to the instant Motion to Compel. The information sought in the January 30, 2020 letter can only be viewed as an effort to secure asset discovery relating

to purported claims and not as a good faith request for information needed to evaluate the put option.

20. Moreover, CCCB (and the Receivers) should be bound by the April 25, 2019 Stipulation and Consent Order (the “April 2019 Order”)(attached as **Exhibit A** hereto) in which the Prospect Entities and CCCB agreed as follows:

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 Charetercare LLC Agreement (the “LLC Agreement”), and PCC will provide such information within fifteen (15) days of such email(s), **provided the information is available.** [emphasis supplied].

21. PCC has supplied the “available” information expressly requested in the letters referenced in the April 25, 2019 Order, and has also supplied the additional “available” financial information ordered by this Court in its October 3, 2019 Order (**Exhibit D** attached hereto).
22. Although the prior motions were filed by CCCB, CCCB has at all times been directed by the Receiver and his counsel, who have openly participated in this matter and discussions relating to production of financial information.
23. Just as PCC previously argued in connection with the August 2019 Expedited Motion to Compel, the voluminous information sought by CCCB’s appraiser should not be required until after CCCB exercises the put option. The information sought is well beyond that which is reasonable at this point and well beyond that which is required by the PCC limited liability operating agreement, the parties’ stipulation, and prior court orders.

24. The Receivers are also seeking an injunction requiring PCC to make “books and records available” based on CCCB’s status as a member of PCC. This additional request for “books and records” is of little consequence since PCC has already produced extensive financial records including, without limitation, audited Consolidated Financial Statements for 2017 and 2018, unaudited, internally prepared Balance Sheet for the period of October 2018 to March 2019, Cost Report Certifications for 2018, financial records relating to Roger Williams Radiation Therapy LLC through August 2019, financial records of Southern New England Regional Cancer Care, LLC through August 2019, financial statements, and detailed records of the \$50 Million Dollars in capital contributed to PCC. To the extent that CCCB wanted additional “books and records” it has failed to make a specific request beyond the general demand filed back in March 2019 when this case was initiated.
25. With regard to the extension of time for CCCB to exercise the put option, the parties are bound by the November 22, 2019 Consent Order and Stipulation cited on page 11 of the Receiver’s Memorandum in Support of Motion for Temporary and Permanent Injunction and Equitable Relief. Under the terms of that Stipulation and Order, the Receiver had the right to request a hearing on the motion for injunctive relief filed in March 2019. Once a hearing date is established, the Stipulation goes on to provide that the time for exercising the put option shall be extended for an additional period extending twenty (20) business days following entry of an order by the Court on the request for a further extension of time to exercise the put option; provided, however, the Stipulation also provides that the extension of the time to exercise the put option

shall not exceed thirty (30) days from the hearing date. Thus, with a hearing on March 6, 2020, the outside date for the deadline for exercise of the put option is April 5, 2020.

26. The Court should reject the Receivers' request for a 90-day extension of time to exercise the put option on equitable grounds. Not only has PCC already produced more than ample financial records to enable CCCB/Receivers to make the threshold decision of whether or not to exercise the put option, but the parties have contractually agreed in the Stipulation to the dates for a further extension of the deadline for the put option to be exercised.

27. In further support of these Objections, please see Affidavit of Preston W. Halperin, submitted simultaneously herewith.

For all of the foregoing reasons, the Prospect Entities urge the Court to deny the Plan Receiver and Liquidating Receiver's Motion to Compel Production of Documents and Other Information From Prospect CharterCare, LLC, and Motion for Temporary and Permanent Injunctive and Equitable Relief. PCC has fully complied with the language and the spirit of the prior stipulations and orders. Should CCCB/Receivers elect to proceed with the put option, PCC will comply with its obligations to supply information for purposes of formal appraisals.

Respectfully Submitted,

PROSPECT CHARTERCARE, LLC,

/s/ W. Mark Russo  
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PROSPECT MEDICAL HOLDINGS, INC.,  
PROSPECT EAST HOLDINGS, INC., AND  
PROSPECT EAST HOSPITAL ADVISORY  
SERVICES, LLC

By its Attorneys,

/s/ Preston W. Halperin

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Christopher J. Fragomeni, Esq. (#9476)

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[cfragomeni@shslawfirm.com](mailto:cfragomeni@shslawfirm.com)

Dated: March 3, 2020

**Certificate of Service**

I certify that on the 3<sup>rd</sup> day of March 2020, the within document was electronically filed and electronically served through the Rhode Island Judiciary Electronic Filing System, on all counsel of record and those parties registered to receive electronic service in this matter. The document is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/Preston W. Halperin

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STATE OF RHODE ISLAND  
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CHARTERCARE COMMUNITY BOARD

v.

SAMUEL LEE, ET AL

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

**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 I* 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.

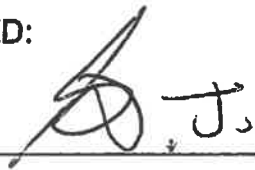
3. The parties to the LLC Agreement agree to modify the ninety (90) day period within which the put option created in Section 14.5 of the LLC Agreement can be exercised to the ninety (90) day period commencing September 21, 2019 and ending on December 20, 2019. If in the judgment of CCCB and the Receiver (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:

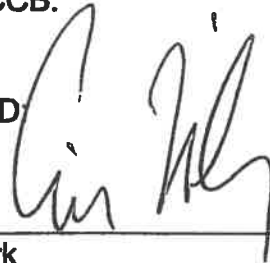


Stern, J.

Dated:

4/25/19

ENTERED



Dep. Clerk

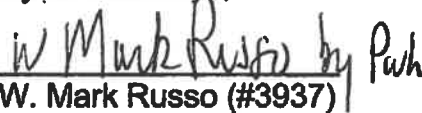
Dated:

4/25/19

Stipulated to and presented by:

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

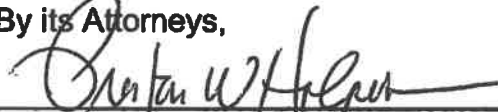
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PROSPECT MEDICAL HOLDINGS, INC.,  
PROSPECT EAST HOLDINGS, INC., AND  
PROSPECT EAST HOSPITAL ADVISORY SERVICES, LLC

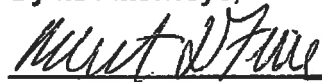
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CHARTERCARE COMMUNITY BOARD  
By its Attorneys,



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STEPHEN DEL SESTO,  
RECEIVER FOR THE ST. JOSEPH HEALTH  
SERVICES RETIREMENT PLAN

By his Attorneys,



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B

**From:** [Robert Fine](#)  
**To:** [Preston Halperin](#)  
**Cc:** [Richard Land](#); [Stephen DelSesto \(sdelsesto@pierceatwood.com\)](mailto:sdelsesto@pierceatwood.com)  
**Bcc:** [kkole@wqmc.com](mailto:kkole@wqmc.com)  
**Subject:** Updated request for information  
**Date:** Thursday, August 1, 2019 3:48:00 PM  
**Attachments:** [Copy of CharterCARE Health Partners - Request for Information.xlsx](#)

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Preston – Our valuation expert has forwarded the attached to us, an updated request for information dated August 1, 2019. In accordance with section 1 of the Stipulation and Consent Order, we ask that Prospect Chartercare produce the requested information. If there is difficulty or objection to any portions of the request, please advise me as soon as possible. As you know, the stipulation provides for Judge Stern to resolve any disputes over what is relevant to the valuation process.

Thank you for your attention.

Bob

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**CharterCARE Health Partners - Request for Information**  
 Submitted on August 1, 2019

This request for information (RFI) is being made in conjunction with ECG Management Consultant's engagement to value Prospect CharterCARE. To provide a complete opinion, we are requesting the specific data elements outlined below from Prospect CharterCARE. *Please do not send any PHI.*



The table below contains the items being requested as part of this engagement. If you have any questions, please contact Karen Koie at 312-837-2522 or [kkoie@ecgmc.com](mailto:kkoie@ecgmc.com).

Ref. Number	Description	Response	Date Not Available	File Name
<b>1.00 Business and Operational Information</b>				
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 • Year occupancy began • Owned or leased and by whom • Square footage, indicate how much excess capacity there is at each location • Number and type of rooms (ORs, ERs, etc.) • Is there any deferred maintenance on the building? if so, what are the estimated costs?			
<b>2.00 Financial Information</b>				
2.01	Financial data, including: • List of factors that could materially impact earnings • List of any nonbusiness-related items that are represented in the financial statements • List of any business-related items that are not represented in the financial statements			
2.02	The following detailed financial statements (income statements, balance sheets and cash flow statements): » The most recent interim period (October 2018 - March 2019) with corresponding prior year interim period (October 2017 - March 2018), for Consolidated, RWMC, and S.JHSRI » Consolidated audited financial statements: October 2017 - September 2018 » RWMC financial statements: October 2016 - September 2017 » Radiation therapy financial statements (audit labels this equity investment) for the last five fiscal years			
2.03	Financial budget and forecast, including estimated capital expenditures and working capital requirements. Please include any strategic planning documents, if available.			
2.04	Description of any contingent assets or liabilities that exist and are not disclosed in the latest annual (October 2017 - September 2018) financial statements (e.g., life insurance proceeds in excess of carrying value).			
2.05	Schedule of amounts due to/from third-party payors in conjunction with any disputes, pending rate appeals or other factors that could affect their ultimate collectability.			
2.06	Schedule of any unusual, non-recurring, or nonbusiness-related expenses for the same periods as the financial statements (to the extent available). These periods include: » Fiscal years 2015 - 2018 » The most recent interim period (October 2018 - March 2019) with corresponding prior year interim period (October 2017 - March 2018)			

**CharterCARE Health Partners - Request for Information**

Submitted on August 1, 2019

This request for information (RFI) is being made in conjunction with ECG Management Consultant's engagement to value Prospect CharterCARE. To provide a complete opinion, we are requesting the specific data elements outlined below from Prospect CharterCARE. *Please do not send any PHI.*



The table below contains the items being requested as part of this engagement. If you have any questions, please contact Karen Kole at 312-637-2522 or [kkole@ecgmc.com](mailto:kkole@ecgmc.com).

Ref. Number	Description	Data Received	Data Not Available	File Name	
2.07	Schedule of capital expenditures for the same periods as the financial statements. Please discuss any known deferred capital expenditures or repairs and maintenance. These periods include: » Fiscal years 2015 - 2018 » The most recent interim period (October 2018 - March 2019) with corresponding prior year interim period (October 2017 - March 2018).				
2.08	Gross charges, net revenue, and admissions by payor for the same periods as the financial statements. These periods include: » Fiscal years 2015 - 2018 » The most recent interim period (October 2018 - March 2019) with corresponding prior year interim period (October 2017 - March 2018).				
2.09	A/R aging report as of the most current balance sheet date, in total and by major payor. Please indicate whether the report is based on the date of service or billing date and if it includes credit balances.				
3.00	<b>Assets and Facilities Data</b>				
3.01	List of any of the property or equipment owned that is not presently used in the business.				
3.02	Current fixed asset listing with original cost, purchase date, and asset description.				
4.00	<b>Hospital Operating Statistics and Clinical Metrics</b>				
4.01	Production 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 2015 - 2018 » The most recent interim period (October 2018 - March 2019) with corresponding prior year interim period (October 2017 - March 2018).				
4.02	Volume statistics by referral source for the past two fiscal years (October 2018 - September 2017 and October 2017 - September 2018).				
4.03	Dashboards and/or other key reporting metrics routinely used to assess operations and/or finances of the hospital.				
4.04	Description of any concerns with the current physicians admitting and performing services at the hospital (aging physician staff, high turnover, shortages in any specialties or primary care, recruiting difficulty, etc.).				
4.05	Any available recent planning documents, as well as any recent or projected clinical hires and departures.				
5.00	<b>Other Information about the Business</b>				
5.01	List of any lawsuits, liens, or other legal proceedings to which the organization is currently a party.				
5.02	Copies of any previous valuations performed, to the extent available.				

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STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD

VS.

C.A. NO. PC-2019-3654

SAMUEL LEE, ET AL.

**PROSPECT CHARTERCARE, LLC'S OBJECTION TO  
CHARTERCARE COMMUNITY BOARD'S EXPEDITED MOTION TO COMPEL**

NOW COMES Prospect Chartercare, LLC ("PCC") and hereby files its objection to CharterCare Community Board's ("CCCB") Expedited Motion to Compel Production. CCCB's request for information is unwarranted and untimely – rather than asking for information in order to evaluate whether to begin put option process, it has jumped forward and is asking for information that it believes it needs in order to conduct the actual evaluation. But under the parties' agreement, this information goes far beyond what CCCB would be allowed at this point in the process – as the requests themselves show they are the requests that CCCB's valuation firm wants in order to establish a valuation. That is far beyond what the LLC Agreement, or the parties' stipulation, provides to CCCB at this point in the process.

As grounds therefor, PCC states as follows:

1. PCC and CCCB are parties to an Amended & Restated Limited Liability Company Agreement of Prospect Chartercare, LLC, dated June 20, 2014 (the "LLC Agreement").
2. Pursuant to Section 14.5 of the LLC Agreement, at certain specified times, CCCB has the option to sell its membership interest in PCC (hereafter, the "Put Option") to Prospect East Holdings, Inc. ("Prospect East"), a subsidiary of Prospect Medical Holdings, Inc. ("PMH").

3. In the event that CCCB wishes to exercise the Put Option it “shall give written notice to the Prospect Member [Prospect East].” Section 14.5(b).
4. Once CCCB gives written notice of its election to exercise the Put Option, the LLC Agreement establishes a procedure by which the parties must initially negotiate in good faith to determine the appraised fair market value of PCC. Section 14.6(b).
5. After CCCB makes its election to exercise the Put Option, both CCCB or Prospect East gain the right to initiate a formal “Appraisal Process” whereby each party engages a “Qualified Appraiser” within twenty (20) days after a party initiates the appraisal process. A third Qualified Appraiser is also engaged as set forth in Section 14.6(c).
6. Only when CCCB has made its election and the Appraisal Process has been initiated does Section 14.6(c) contemplate that “performance information respecting the Facilities that is acceptable to the Prospect Member and CCCB” will be supplied to the appraisers.
7. In other words, there is no provision in the LLC Agreement requiring PCC to supply information to an appraiser hired by CCCB to enable it to decide whether to exercise the Put Option. The LLC Agreement only contemplates information being supplied if and when the Put Option is exercised.
8. During the course of this Receivership, CCCB requested that PCC provide it with financial information. PCC and the other Prospect entities initially refused to provide CCCB with PCC’s nonpublic financial information without an assurance that CCCB would maintain the information in confidence. The request for confidentiality was refused as CCCB intended to share PCC’s financial information with the Receiver.

9. On April 25, 2019, the Court entered the Stipulation and Consent Order pursuant to which PCC agreed to “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.” All of the financial information requested in those correspondences has in fact been produced pursuant to the Order.
10. Paragraph 1 of the Order permits CCCB to “request such additional information as CCCB **reasonably requires** in connection **with the evaluation of the “put option”**...”and PCC will provide such information within fifteen (15) days ... provided the information is available.” [emphasis added].
11. The Order further provides in Paragraph 1 that “[I]f the parties disagree over whether any information that CCCB requests is relevant for the valuation process the parties may seek a resolution of such dispute on an expedited basis from Judge Stern.
12. On August 1, 2019, after receiving all of the financial information required to be produced pursuant to the express language in the Order, CCCB forwarded a lengthy list of detailed information prepared by an expert hired to value PCC.
13. The information requested by its expert goes well beyond the information sought in the correspondence and e-mails referenced in Paragraph 1 of the Order. CCCB is now seeking the type and quality of information that is necessary in order to conduct a formal appraisal, not merely information to “evaluate the put option” which was the limited purpose of the Order.
14. Much of the information sought by its expert goes beyond that which is necessary to “evaluate the put option” and information that “is available” as required by Paragraph

1 of the Order. The information now being sought includes voluminous and detailed information necessary for a formal appraisal, including a financial budget and forecast; a “discussion” of deferred capital expenditures, repairs or maintenance; description of concerns with current physicians admitting and performing services at the hospital; projected clinical hires and departures.

15. The information supplied to date by PCC includes all of the financial information requested by CCCB in correspondence and e-mails sent prior to the Order. In stipulating to the order, PCC did not contemplate that its language would encompass information being provided to conduct a formal appraisal.

For all of the foregoing reasons, PCC urges the Court to deny CCCB’s Expedited Motion to Compel. PCC has fully complied with the language and the spirit of the Order. Should CCCB elect to proceed with the Put Option, PCC will comply with its obligations to supply information for purposes of formal appraisals.

Respectfully Submitted,

PROSPECT CHARTERCARE, LLC,

/s/ W. Mark Russo  
W. Mark Russo (#3937)  
Ferrucci Russo P.C.  
55 Pine Street, 3<sup>rd</sup> Floor  
Providence, RI 02903  
Tel.: (401) 455-1000  
[mrusso@frlawri.com](mailto:mrusso@frlawri.com)

Dated: August 23, 2019

**Certificate of Service**

I certify that on the 23<sup>rd</sup> day of August, 2019, the within document was electronically filed and electronically served through the Rhode Island Judiciary Electronic Filing System, on all parties registered to receive electronic service in this matter. The document is available for viewing and/or downloading from the Rhode Island Judiciary’s Electronic Filing System.

/s/W. Mark Russo

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

**SUPERIOR COURT**

CHARTERCARE COMMUNITY BOARD,  
individually and derivatively, as member of  
PROSPECT CHARTERCARE, LLC and as  
trustee of the beneficial interest of its  
membership interest in PROSPECT  
CHARTERCARE, LLC

Plaintiff,

v.

SAMUEL LEE; DAVID TOPPER; THOMAS  
REARDON; VON CROCKETT; EDWIN  
SANTOS; EDWARD QUINLAN; JOSEPH  
DISTEFANO; ANDREA DOYLE; PROSPECT  
EAST HOSPITAL ADVISORY SERVICES, LLC;  
PROSPECT CHARTERCARE, LLC;  
PROSPECT EAST HOLDINGS, INC.;  
PROSPECT MEDICAL HOLDINGS, INC.,  
JOHN DOE 1 - 10, AND JANE DOE 1 - 10

Defendants,

PC2019-3654

**ORDER ON EXPEDITED MOTION TO COMPEL PRODUCTION**

By agreement of the parties, the motion of Chartercare Community Board ("CCCB") for an Order compelling production of documents from Prospect Chartercare, LLC, and related entities may be continued nisi and will pass upon compliance set forth herein.

By further agreement of the parties, Prospect Chartercare, LLC will supply the Financial and Clinical Metrics Overview of Roger Williams Medical Center and Our Lady of Fatima Hospital for the period ending December 31, 2018 to CCCB by

October 4, 2019, and shall supply existing financial documents previously requested in Sections 2.02, 2.07 and 3.02 of CCCB's attachment to its motion by 10:30 am, October 11, 2019.

ENTER



J. Stern

PER ORDER



Clerk of Court 10/3/19

Presented by  
/s/ Robert D. Fine

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Robert D. Fine (#2447)  
Chace Ruttenberg & Freedman, LLP  
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Providence, RI 02903  
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Email: [rfine@crflp.com](mailto:rfine@crflp.com)

### CERTIFICATION

I hereby certify that on October 2, 2019, I caused a copy of this document to be filed and served through the Rhode Island Judiciary's electronic filing system. A copy of this document is available for downloading/viewing on the Rhode Island Judiciary's electronic filing system.

/s/ Robert D. Fine

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## **Preston Halperin**

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**From:** Preston Halperin  
**Sent:** Thursday, January 9, 2020 4:14 PM  
**To:** Stephen Del Sesto  
**Cc:** Thomas Hemmendinger  
**Subject:** appraisals

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Hi Steve,

I wanted to confirm my understanding of our conversations and texts this week. I notified you that Prospect consents to ECG as CCCB's appraiser, despite the provision in the LLC agreement that calls for the appraiser to be an investment bank or MAI appraiser. ECG is acceptable based on its representation that its designated appraiser will have the experience set forth in the Section 14.6(c) of the Prospect CharterCare LLC Agreement, which requires that the appraiser be an independent, third party who has substantial experience in the valuation of health care entities comparable to Prospect Charter Care LLC; and who has within the 24 month period preceding your put election date, delivered appraisals and/or fairness opinions, on a going concern basis, in connection with at least three (3) other transactions involving the sales of hospitals. Similarly, although Prospect has not yet proposed an appraiser, you agreed that Prospect's designated appraiser need not be an investment bank or MAI appraisal, so long as it too satisfies the experience criteria set forth in the LLC agreement.

Although not presently a formal agreement, I also suggested to you that once CCCB sends the Put Election Notice (Section 14.5(b), that we both hold off on initiating the formal Appraisal Process (Section 14.6(c)) until we have attempted to agree on all three appraisers and we attempt to have all appraisers agree on one set of documents and information requests to Prospect Charter Care LLC. As of now, the only agreed modification to the process set forth in the LLC Agreement (that has not previously been the subject of a stipulation or Court order) is with respect to the qualifications of the appraisers as set forth in the first paragraph of this e-mail. Hopefully, we can document other ways to simplify or move this along by confirming other agreements or modifications. However, I want to avoid any miscommunications, so until we have something agreed in writing or a Court enters an order, the LLC Agreement will be the controlling document.

Regarding Prospect's selection of an appraiser, I am advised that Prospect is considering Valuation Research Corporation (VRC) <https://www.valuationresearch.com/> as its appraiser. Before I formally notify you of that selection, I am contacting them to confirm that they are available and that they have the necessary experience set forth in the LLC Agreement.

I have not copied Max's team on this as it is my understanding that you are dealing with me directly on this. I included Tom Hemmendinger although it is my understanding that you plan to keep Tom fully informed. Let me know if I should add other recipients to our communications in the future.

***Preston W. Halperin,***  
***Managing Partner***



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