

HEARING DATE: DECEMBER 18, 2017

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF
RHODE ISLAND, INC.

v.

C.A. No. PC-2017-3856

ST. JOSEPHS HEALTH SERVICES OF
RHODE ISLAND RETIREMENT PLAN,
as amended.

PROSEPECT CHARTERCARE, LLC'S EMERGENCY MOTION TO INTERVENE

Pursuant to Rule 24 of the Rhode Island Superior Court Rules of Civil Procedure, Prospect, CharterCare, LLC ("Prospect") hereby moves to intervene in this action as a matter of right, or alternatively, by permission. Prospect seeks to intervene in this action because the Court has ordered the Rhode Island Department of the Attorney General ("Attorney General") to produce confidential, proprietary information particularly sensitive to Prospect's operations in its possession to Special Counsel for the Respondent ("Special Counsel"). A copy of Prospect's proposed Motion for Entry of Protective Order is attached as Exhibit A hereto.

An applicant will be granted intervention as of right if the applicant files a timely application, claims an interest relating to the property or transaction which is the subject matter of the action, the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, and the applicant's interest is not adequately

represented by current parties to the action. *Tonetti Enterprises v. Mendon Road Leasing Corp.*, 943 A.2d 1063, 1072-73 (R.I. 2008).

Prospect has a keen and vested interest in making sure that its concerns regarding the release of the subject information are addressed. Indeed, Special Counsel has expressly acknowledged that interest and the fact that is inadequately represented by the current parties. *See* Respondent's Memorandum in Support of Motion to Overrule the R.I. Attorney General's Partial Objection to Subpoena and Compel Compliance with Subpoena Duces Tecum, filed Nov. 17, 2017 at 2 (the confidential material "must be produced *unless those parties who designated them as confidential timely obtain a protective order.*") (emphasis supplied). Having received delayed and informal notice of this issue due to its non-party status, Prospect reserved its rights and has diligently worked to identify a limited set of documents for which it seeks protection and that, absent relief, stand to be released imminently by the Attorney General. Thus, the instant motion is timely and Prospect's interests will not be adequately addressed absent intervention. *See Medi-Weightloss Franchising USA, LLC v. Medi-Weightloss Clinic of Boca Raton, LLC*, 8:11-cv-2437-T-30MAP, 2012 U.S. Dist. LEXIS 194594, 2012 WL 12904394, at *1 (M.D. Fla. May 10, 2012) (allowing intervention to protect pricing, cost data, profits, sales statements, board meeting minutes, intranet orders, manufacturer invoices and purchase orders.).¹

Because Prospect will be significantly prejudiced if it cannot protect its interests in this regard, it respectfully asks this Court for leave to intervene as a matter of right in this action under Super. R. Civ. P. 24 (a), or in the alternative, seeks the Court's permission to intervene pursuant to Super. R. Civ. P. 24 (b).

¹ The Rhode Island Supreme Court has held that "where the Federal rule and our state rule are substantially similar, we will look to the Federal courts for guidance or interpretation of our own rule." *Heal v. Heal*, 762 A.2d 463, 466-67 (R.I. 2000).

WHEREFORE, Prospect asks that this Motion be granted.

Prospect CharterCare, LLC,

By its attorneys,

/s/ Joseph V. Cavanagh, III
Joseph V. Cavanagh, Jr. #1139
Joseph V. Cavanagh, III #6907
Blish & Cavanagh LLP
30 Exchange Terrace
Providence, RI 02903
ph: 401-831-8900
fax: 401-751-7542
jvc3@blishcavlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2017, the within document was electronically filed through the Rhode Island Superior Court Case Management System by means of the EFS and is available for downloading by all counsel of record, as follows:

Stephen F. Del Sesto, Esq.
Pierce Atwood LLP
72 Pine Street, 5th Floor
Providence, RI 02903
sdelsesto@pierceatwood.com

Rebecca Tedford Partington, Esq.
Kathryn Enright, Esq.
Jessica D. Rider, Esq.
Office of the Attorney General
150 South Main Street
Providence, RI 02903
rpartington@riag.ri.gov
kenright@riag.ri.gov
jrider@riag.ri.gov

Richard J. Land, Esq.
Chace Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
rland@crflp.com

Christopher Callaci, Esq.
United Nurses & Allied Professionals
375 Branch Avenue
Providence, RI 02903
ccallaci@unap.org

Arlene Violet, Esq.
499 County Road
Barrington, RI 02806
genvio@aol.com

Robert Senville, Esq.
128 Dorrance Street, Suite 400
Providence, RI 02903
robert.senville@gmail.com

Elizabeth Wiens, Esq.
Gursky Wiens Attorneys at Law
1130 Ten Rod Road, Suite C207
North Kingstown, RI 02852
ewiens@rilaborlaw.com

Jeffrey W. Kasle, Esq.
Olenn & Penza
530 Greenwich Avenue
Warwick, Rhode Island 02886
jwk@olenn-penza.com

Max Wistow, Esq.
Stephen P. Sheehan, Esq.
Benjamin Ledsham, Esq.
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

George E. Lieberman Esq.
Gianfrancesco & Friedemann, LLP
214 Broadway
Providence, RI 02903
george@gianfrancescolaw.com

/s/ Joseph V. Cavanagh, III

HEARING DATE: DECEMBER 18, 2017

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF
RHODE ISLAND, INC.

v.

C.A. No. PC-2017-3856

ST. JOSEPHS HEALTH SERVICES OF
RHODE ISLAND RETIREMENT PLAN,
as amended.

**PROSPECT CHARTERCARE, LLC'S MOTION
FOR ENTRY OF PROTECTIVE ORDER**

For the reasons set forth below, non-party Prospect CharterCare, LLC (“Prospect”), moves, pursuant to Super. R. Civ. P. 45 and 26, for the entry of a protective order precluding the production by the Rhode Island Department of the Attorney General (“Attorney General”) of certain limited confidential, proprietary information to Special Counsel for the Respondent (“Special Counsel”).

BACKGROUND

On November 29, 2017, at the hearing on Respondent’s Motion to Overrule the R.I. Attorney General’s Objection to Subpoena and Compel Compliance With Subpoena Duces Tecum, the Court ordered, among other things, that the Attorney General produce to Special Counsel confidential documents submitted to the Attorney General in connection with its 2014 review of Prospect and other entities (“Transacting Parties”) pursuant to the Hospital Conversions Act, R.I. Gen. Laws, §§ 23-17.14.1, et seq. (“Confidential Material”). Prospect

received informal notice of that hearing, appeared, and reserved all rights to protect its interests with respect to that production.

Counsel for Prospect, the Attorney General and Special Counsel subsequently negotiated and agreed upon the terms of an order governing the treatment of the Confidential Material to be produced even as Prospect continued to reserve its rights to seek additional protection. The Court entered that order on December 14, 2017 (“December 14 Order”). After taking efforts to first retrieve, coordinate its transfer to its representatives in California, and then review in excess of an estimated 17,000 pages of documents, Prospect has identified a narrow set of 336 pages that contain particularly sensitive, confidential and proprietary information related to its business operations wholly unrelated to the St. Joseph’s Health Services of Rhode Island Retirement Plan (“Plan”) such that their transfer to Special Counsel even under the terms of the December 14 Order is unwarranted.

ARGUMENT

Ordinarily, a party does not have standing to move to quash a subpoena served on a third party. Rather, only the person or entity to whom a subpoena is directed has standing to file a motion to quash. *See, e.g., Chemical Bank v. Dana*, 149 F.R.D. 11, 13 (D. Conn. 1993); *see also*, 9A Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2459, at 41 (2d ed. 1995).¹ However, Super. R. Civ. P. 45 (c)(3)(A) provides that “[o]n a timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it . . . (ii) [r]equires disclosure of privileged or other protected matter and no exception or waiver applies.”

¹ The Rhode Island Supreme Court has held that “where the Federal rule and our state rule are substantially similar, we will look to the Federal courts for guidance or interpretation of our own rule.” *Heal v. Heal*, 762 A.2d 463, 466-67 (R.I. 2000).

Further, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Super. R. Civ. P. 26 (b).

In connection with its motion to compel production by the Attorney General, Special Counsel specifically acknowledged the right of parties at whose request the documents were designated confidential to obtain a protective order in recognition of the fact that it is those parties – and not the Attorney General – whose interests are actually at stake. Respondent’s Memorandum in Support of Motion to Overrule the R.I. Attorney General’s Partial Objection to Subpoena and Compel Compliance with Subpoena Duces Tecum, filed Nov. 17, 2017 at 2. Thus, Special Counsel invited the instant motion and this Court’s review of the concerns of the actual parties in interest concerning the Attorney General’s forthcoming production. The instant motion is timely as the Court has entered the December 14 Order and the Attorney General, upon information and belief, stands to imminently produce Confidential Material.

The Attorney General undertook a comprehensive review of the Transacting Parties pursuant to the HCA in connection with the transaction whereby, among other things, Prospect obtained ownership of certain assets formerly of Petitioner (“Transaction”). That review entailed a comprehensive review of Prospect’s, and its affiliates’, preexisting business operations outside of Rhode Island and wholly unrelated to Petitioner or the Transaction. For example, the document entitled “CharterCARE/Prospect Exhibit A Confidential Exhibits” submitted by Special Counsel in connection with its motion to compel subpoena compliance by the Attorney

General as a purported listing of Confidential Material, includes the following entries: “Listing of Malpractice History Information for Prospect,” “Listing of Claims History Regarding Prospect,” and “Internal Quality Data From Quality Committees For Prospect 2011-2013.” See Respondent’s Reply Memorandum in Support of Motion to Overrule the R.I. Attorney General’s Partial Objection to Subpoena and Compel Compliance with Subpoena Duces Tecum, filed Nov. 28, 2017, Exhibit 5 at 6. Without disclosing the specific contents of these documents, from the headings alone, one can ascertain that they bear no relation to the Plan, but rather were submitted to the Attorney General in furtherance of its assessment of the operations and viability of Prospect as a Transacting Party, and that they contain sensitive, proprietary information about Prospect’s business operations, in addition to confidential patient health information. Their sensitive nature and the absence of information therein related to the Plan warrants their exclusion from production notwithstanding the December 14 Order. See *Bell Atl. Business Sys. Servs. v. Hitachi Data Sys. Corp.*, No. C 93-20079 JW, 1995 U.S. Dist. LEXIS 265 at *3 (S.D.N.Y., Jan. 13, 1995) (“we are satisfied both that the material is indeed of vital importance to [non-party] and that no protective order could possibly be devised which could guarantee security for the material once it has left [non-party’s] hands.”).

Prospect urges the Court to employ a balancing test with respect to this information. A non-party may seek the Court’s protection “via the overlapping and interrelated provisions” of Rule 26 and 45. See *Mannington Mills, Inc. v. Armstrong World Indus., Inc.*, 206 F.R.D. 525, 529 (D. Del. 2002). The application of these provisions calls for the Court to balance several competing factors: (1) relevance, (2) need, (3) confidentiality, and (4) harm. *Id.*

Where Special Counsel has been charged with retrieving and collecting a vast amount of information on an accelerated timetable, the Attorney General is in process of complying with its

discovery obligations, and Prospect is responding to a recently-issued subpoena carrying an extremely aggressive return date of December 18, 2017, Prospect proposed to Special Counsel by email transmitted on December 15, 2017 at 1:45 p.m., that, in lieu of diverting time and resources towards motion practice on this issue, with the Court's approval, Prospect submit under seal to the Court for review *in camera* the 336 pages of documents it seeks to exclude from the Attorney General's production, which proposal had not been part of counsel's prior meet and confer communications on the topic. A copy of that communication is attached hereto as Exhibit 1. Those documents (identified by Bates number and title according to indices of the Confidential Material) are as follows:

<i>Exhibit No.</i>	<i>Title</i>	<i>Bates No.</i>	<i>Pages</i>
S2-2	Listing of Malpractice History Information for Prospect	SC-PHCA00257-00275	19
S2-4	Internal Quality Data From Quality Committees For Prospect 2011-2013	SC-PHCA00276-00566	291
23 (A-B)	List of Pending Litigation and/or Citations and any Investigations by Foreign, Federal, State or Municipal Boards, Agencies or Governments Against the Transacting Parties	C-PHCA04877.1-04878.3	7
38-D	Prospect Severance Agreements	C-PHCA08103.1-08103.7	7
45	Prospect's Environmental Report Prepared by Expert	C-PHCA09398-09409	12

As of the time of this filing, no response has been received from Special Counsel to that communication. Therefore, out of an abundance of caution with the Attorney General's production looming, and in light of the fact that the Court is scheduled to hear the related Attorney General's Emergency Motion to Establish a Procedure for Inadvertent Disclosure of Documents on December 18, 2017, Prospect files and styles as "emergency" its Motion to

Intervene at this time, and has marked it for hearing on December 18, 2017 above the caption. Mindful that the timing of its filing may preclude its being heard at that time, Prospect respectfully requests that the Motion be heard at a time deemed convenient and appropriate by the Court without prejudicing the interests of Prospect as stated in its Motion to Intervene.

CONCLUSION

WHEREFORE, Prospect respectfully requests that the Court exclude the above-identified documents from the Attorney General's forthcoming production to Special Counsel or, alternatively, that it permit Prospect to submit them under seal to the Court for *in camera* review to determine their inclusion or exclusion from that production.

Prospect CharterCare, LLC,

By its attorneys,

/s/ Joseph V. Cavanagh, III
Joseph V. Cavanagh, Jr. #1139
Joseph V. Cavanagh, III #6907
Blish & Cavanagh LLP
30 Exchange Terrace
Providence, RI 02903
ph: 401-831-8900
fax: 401-751-7542
jvc3@blishcavlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2017, the within document was electronically filed through the Rhode Island Superior Court Case Management System by means of the EFS and is available for downloading by all counsel of record, as follows:

Stephen F. Del Sesto, Esq.
Pierce Atwood LLP
72 Pine Street, 5th Floor
Providence, RI 02903
sdelsesto@pierceatwood.com

Rebecca Tedford Partington, Esq.
Kathryn Enright, Esq.
Jessica D. Rider, Esq.
Office of the Attorney General
150 South Main Street
Providence, RI 02903
rpartington@riag.ri.gov
kenright@riag.ri.gov
jrider@riag.ri.gov

Richard J. Land, Esq.
Chace Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
rland@crflp.com

Christopher Callaci, Esq.
United Nurses & Allied Professionals
375 Branch Avenue
Providence, RI 02903
ccallaci@unap.org

Arlene Violet, Esq.
499 County Road
Barrington, RI 02806
genvio@aol.com

Robert Senville, Esq.
128 Dorrance Street, Suite 400
Providence, RI 02903
robert.senville@gmail.com

Elizabeth Wiens, Esq.
Gursky Wiens Attorneys at Law
1130 Ten Rod Road, Suite C207
North Kingstown, RI 02852
ewiens@rilaborlaw.com

Jeffrey W. Kasle, Esq.
Olenn & Penza
530 Greenwich Avenue
Warwick, Rhode Island 02886
jwk@olenn-penza.com

Max Wistow, Esq.
Stephen P. Sheehan, Esq.
Benjamin Ledsham, Esq.
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

George E. Lieberman Esq.
Gianfrancesco & Friedemann, LLP
214 Broadway
Providence, RI 02903
george@gianfrancescolaw.com

/s/ Joseph V. Cavanagh, III

EXHIBIT 1

From: Joseph V. Cavanagh III [mailto:jvc3@blishcavlaw.com]
Sent: Friday, December 15, 2017 1:45 PM
To: 'Max Wistow'
Cc: 'Kathryn Enright'; JRider@riag.ri.gov; 'Stephen P. Sheehan'; 'Benjamin Ledsham'
Subject: St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan, PC-2017-3856

Max,

I write further to Prospect CharterCare, LLC's reservation of rights with respect to Confidential Material in the possession of the A.G. submitted by transacting parties to the 2014 sale of assets formerly of St. Joseph's Health Services of Rhode Island, Inc. to Prospect.

As you know, the impending production of Confidential Material was brought to my attention through informal channels just prior to the hearing on your motion to compel production by the A.G. Since being notified that confidential information relating to Prospect's operations stood to be released, my client and I have reviewed many thousands of pages of submitted material. Mindful of the tight time frame for your review and not looking to unnecessarily divert our collective attention to motion practice, we have identified a narrow set of documents wholly unrelated to the Pension plan and particularly sensitive to Prospect's operations for which it seeks protection from release by the A.G. Those documents are identified on the below table:

<i>Exhibit No.</i>	<i>Title</i>	<i>Bates No.</i>	<i>Pages</i>
S2-2	Listing of Malpractice History Information for Prospect	SC-PHCA00257-00275	19
S2-4	Internal Quality Data From Quality Committees For Prospect 2011-2013	SC-PHCA00276-00566	291
23 (A-B)	List of Pending Litigation and/or Citations and any Investigations by Foreign, Federal, State or Municipal Boards, Agencies or Governments Against the Transacting Parties	C-PHCA04877.1-04878.3	7
38-D	Prospect Severance Agreements	C-PHCA08103.1-08103.7	7
45	Prospect's Environmental Report Prepared by Expert	C-PHCA09398-09409	12

This list amounts to 336 of an estimated 17,000+ pages submitted by the transacting parties.

While we invite your agreement that these documents can be withheld from the A.G.'s production, failing that, we propose that, with his approval, they be submitted under seal to Judge Stern for in-camera review to determine whether they are to be withheld or produced. Please advise.

-Joe

Joseph V. Cavanagh, III
Blish & Cavanagh LLP
30 Exchange Terrace
Providence, RI 02903
ph: 401-831-8900
fax: 401-751-7542
jvc3@blishcavlaw.com