

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND, INC. :

vs. :

C.A. No: PC-2017-3856

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

ORDER

The Receiver, Special Counsel, and the Attorney General having agreed to the entry of an order on the terms set forth below, and the Court having reviewed and considered the proposed order, and good cause appearing therefore, it is hereby:

ORDERED:

1. **Scope.** This Order shall apply to documents produced in connection with the subpoena issued by Special Counsel to the Attorney General, dated November 3, 2017, which were deemed confidential by the Attorney General pursuant to R.I. Gen. Laws § 23-17.14-32.

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 that bears the legend "AG-CONFIDENTIAL" to signify that it contains information deemed to be confidential pursuant to R.I. Gen. Laws § 23-17.14-32.

3. **Permissible Disclosure of Confidential Material.** Notwithstanding Paragraph 2, Confidential Material may be disclosed to (a) the Receiver; (b) to Special Counsel; (c) to the associates, secretaries, paralegal assistants and employees of such counsel to the extent reasonably necessary to render professional services; (d) to consultants, experts, or investigators retained for the purpose of assisting such counsel; to (e) persons with prior knowledge of the Confidential Material and their agents; and to (f) 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 (d) above, Special Counsel 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 be maintained by Special Counsel.

4. **Declassification.** In the event that Special Counsel seeks to disclose Confidential Material in a manner outside of what is provided in Paragraph 3, Special Counsel 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 the Attorney General, Saint Joseph's Health Services of Rhode Island, Inc. ("SJHSRI"), Prospect CharterCARE, LLC ("Prospect"), and to any applicable Third Party. The Attorney

General, SJHSRI, Prospect and Third Party 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. The person challenging the designation shall have five (5) days in which to file a reply.

5. **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 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.

6. **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 the Attorney General, SJHSRI, Prospect, and the Third Party (if known), sufficiently in advance so as to enable them 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.

7. **No Waiver.**

(a) Review of Confidential Material by any persons identified in Paragraphs 3, 5 or 6 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 the Attorney General inadvertently or unintentionally produces any Confidential Material without marking or designating it as such in accordance with the provisions of this Order, the Attorney General 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.

8. **Inadvertent Production of Privileged Material.** The Receiver, Special Counsel, and Attorney General 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.

9. **Survival.** The terms of this Order shall survive the conclusion of this matter. Special Counsel, the Attorney General, SJHSRI, Prospect or any other applicable Third Party may move the Court for an order addressing the post-conclusion treatment of Confidential Material.

10. **Amendment or Modification of Order.** This Order may be amended or modified by the Court upon notice to the Receiver, Special Counsel, the Attorney General, SJHSRI, and Prospect.

ORDERED:


Brian P. Stern
Associate Justice

ENTERED:

/s/ Carin Miley

Stern, J.

Dep. Clerk

Dated: December 14, 2017

Dated: December 14, 2017

Presented by:

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Dated: December 7, 2017

EXHIBIT 1

STATE OF RHODE ISLAND
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SUPERIOR COURT

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RHODE ISLAND, INC. :

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as amended :

ACKNOWLEDGEMENT

The undersigned declares and states as follows:

1. I have read the attached Order, dated December __, 2017 (“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: _____

CERTIFICATE OF SERVICE

I hereby certify that, on the 7th day of December, 2017, I filed and served the foregoing document through the electronic filing system on the following users of record:

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

/s/ Max Wistow