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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.		**SUPERIOR COURT**
ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND	:	
v.	:	**C.A. No. PC-2017-3856**
ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, as amended.	:	

REPLY OF THE RHODE ISLAND ATTORNEY GENERAL TO CERTAIN PARTIES' OBJECTIONS TO THE RECEIVER'S PETITION FOR SETTLEMENT INSTRUCTIONS

In reviewing the memoranda and attachments filed by the parties in this action on or about September 27, 2018, the Attorney General noted that certain defendants appear to have assumed that the Attorney General's power of review under the Hospital Conversions Act ("HCA"), R.I. Gen. Laws § 23-17.14-1 *et seq.*, is subject to the requirements of the Administrative Procedures Act ("APA"), R.I. Gen. Laws § 42-35-1 *et seq.* For the reasons stated below, the Attorney General respectfully disagrees.

These defendants have assumed that the Attorney General's actions under the HCA are governed by the APA's criteria, timing, process for judicial review, and related doctrines such as that of administrative finality. For example, in arguing that the CharterCARE Community Board ("CCCB") remains bound by Condition #8 of the Attorney General's 2014 HCA Decision, the CharterCARE Foundation ("the Foundation") contends that Condition #8 is a binding order and relies upon *Pina v. Dos Anjos*, 755 A.2d 838, 839 (R.I. 2000) (*mem.*), which involves the application of § 42-35-15 of the APA. *See* Corrected Objection of CharterCARE Foundation To

Receiver's Petition For Settlement Instructions, at 15 ("Foundation's Corrected Objection, at __").[1]

Similarly, the Prospect Entities[2] have petitioned the Attorney General for a declaratory order pursuant to R.I. Gen. Laws § 42-35-8. *See* Prospect Entities' Memorandum, at 12; Petition for Declaratory Order under R.I. Gen. Laws § 42-35-8 ("Prospect Entities' Petition").[3] In their Petition, the Prospect Entities claim *inter alia* that the Court's approval of the Proposed Settlement Agreement would violate the doctrine of administrative finality. *See* Prospect Entities' Petition, ¶¶ 28, 47(c), 60, and 65. The Prospect Entities further presume that the Attorney General's 2014 decision resulted from a "contested case" subject to APA requirements. Prospect Entities' Petition, ¶¶ 69-70.

Contrary to these defendants' assumptions, the Attorney General is not bound by the requirements of the APA when he exercises his jurisdiction under the HCA. First, as the Attorney General previously indicated in his September 27th filing, the HCA contains its own process for

[1] The Foundation correctly points out that it was not created as a direct result of the application of § 23-17.14-22 of the HCA because the CharterCARE Health Partners Foundation (the Foundation's predecessor in name), already existed at the time of the 2014 hospital conversion. Foundation's Corrected Objection, at 6-7 & n.3; 2014 HCA Decision, at 31-32. Nevertheless, as the Foundation itself recognizes, *see* Foundation Corrected Objection, at 6-7, the Foundation is bound by the applicable conditions of the HCA Decision. The Attorney General has entrusted the Foundation with stewarding the charitable assets transferred to it as part of the conversion process. *See* HCA Decision, Conditions ## 1-2, 8 and 9.

[2] The Attorney General will use the collective term "Prospect Entities" to refer to Prospect Medical Holdings, Inc., Prospect East Medical Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC. *See* Memorandum in Support of Joint Objection of Prospect Medical Holdings, Inc., Prospect East Medical Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC and Prospect Chartercare RWMC, LLC to Receiver's Petition for Settlement Instructions, at 1 ("Prospect Entities' Memorandum, at __").

[3] The Prospect Entities attached a copy of their petition to their Memorandum as Exhibit B, and formally served a copy of the Petition upon the Attorney General on September 27, 2018.

judicial review independent of that in the APA. *Compare* R.I. Gen. Laws § 23-17.14-34 *with* R.I. Gen. Laws § 42-35-15. Unlike the limited judicial review of an administrative ruling available under § 42-35-15, the HCA provides for more thorough and independent "judicial review by original action filed in the superior court." R.I. Gen. Laws § 23-17.14-34(a). *See East Greenwich Yacht Club v. Coastal Res. Mgmt. Council*, 118 R.I. 559, 568, 376 A.2d 682, 686 (1977) (distinguishing between the type of judicial review available under the APA from that available in the context of an "original action").

Yet another clear indication that the APA does not apply to the Attorney General's authority under the HCA lies in the absence of a contested case for this Court to review. R.I. Gen. Laws § 42-35-15(a) provides that "[a]ny person * * * who is aggrieved by a final order in a contested case is entitled to judicial review under [the APA]." A "contested case" is defined by the APA as a "proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a specific party are required by law to be determined by an agency after an opportunity for hearing." R.I. Gen. Laws § 42-35-1(3). A hearing of the sort contemplated under the APA requires providing the parties with an opportunity to present evidence and make legal arguments, and requires the agency to provide a hearing officer whose statutory role is to render factual findings and legal rulings. *See* R.I. Gen. Laws § 42-35-9.

Because the applicable statute must require a hearing as a matter of law in order for an administrative matter to constitute a contested case, the availability of a statutory hearing is therefore the linchpin of APA applicability. *See, e.g., Property Advisory Group, Inc. v. Rylant*, 636 A.2d 317, 318 (R.I. 1994). Conversely, when no hearing is required, no contested case exists. In such circumstances the APA simply does not apply. *See, e.g., id*. (review under the APA was improper given "clear absence" of a contested case); *Mosby v. Devine*, 851 A.2d 1031, 1049-50

(R.I. 2004) (Because the applicable firearms statute did not require a hearing, filing an application to carry a concealed weapon under that statute did not create a contested case.); *Bradford Assoc. v. R.I. Div. of Purchases*, 772 A.2d 485, 489 (R.I. 2001) (since no hearing required by statute, § 42-35-15 not applicable).

Because the HCA neither provides for, nor requires, the Attorney General to conduct the hearing described in § 42-35-9 before issuing a decision on a proposed hospital conversion,[4] the defendants in this case cannot invoke the APA in seeking review of any aspect of the HCA Decision.[5] *Bradford Assoc.*, 772 A.2d at 489 (where the APA provision concerning judicial review of contested cases does not apply, "any exercise of jurisdiction predicated" on that section by the superior court is "invalid").

Additionally, the Attorney General observes that the Prospect Entities incorrectly assume that consummation of the Proposed Settlement Agreement is precluded by the doctrine of administrative finality. *See* Prospect Entities' Petition, ¶¶ 28, 47(c), 60, and 65. Under the doctrine of administrative finality, "when an administrative agency receives an application for relief and

[4] The Attorney General's practice in past HCA conversion proceedings with respect to reviewing a condition has been to consider the applicant's written inquiry, gather relevant information, consult with experts as needed, and decide based on such an investigation whether any modification is appropriate.

[5] R.I. Gen. Laws § 23-17.14-30(1) requires that the Attorney General or Department of Health ("DOH") provide notice and a hearing before denying, suspending, or revoking an applicant's license or otherwise "tak[ing] corrective action necessary to secure compliance" under the HCA. The Attorney General does not typically involve himself in the DOH's licensing proceedings under the HCA and has no independent power to revoke an applicant's license.

In any event, the existence of a potential contested case under one section of the HCA does not *ipso facto* impose APA procedures upon the Attorney General in every area of its hospital conversion responsibilities. *See Bonnet Shores Beach Club Condominium Ass'n, Inc. v. R.I. Coastal Res. Mgmt. Council*, No. C.A. PC00-3255, 2003 WL 22790826, at *3-*4 (R.I. Super. Ct. Oct. 28, 2003) (under R.I. Gen. Laws § 42-35-1(c), existence of contested case is defined by the "proceeding" and therefore, while judicial review under the APA did not apply to CRMC's ability to grant permit extensions, it did apply to the CRMC's decision on a declaratory ruling petition).

denies it, a subsequent application for the same relief may not be granted absent a showing of a change in material circumstances during the time between the two applications." *Johnston Ambulatory Surgical Assoc. Ltd. v. Nolan*, 755 A.2d 799, 808 (R.I. 2000).

Despite the Prospect Entities' argument otherwise, the doctrine of administrative finality appears inapplicable to the instant circumstances for at least two reasons. First, the doctrine applies only when circumstances have remained the same, *see Johnston Ambulatory*, 755 A.2d at 808, yet the parties are now in court due to an alleged "change in material circumstances during the time between the two applications." *Id.* Second, although the doctrine requires that the initial application to the administrative agency be *denied*, the Prospect Entities' original application for hospital conversion was *approved*. *deBourgknecht v. Rossi*, 798 A.2d 934, 938 (R.I. 2002) ("The doctrine of administrative finality does not apply to the instant proceeding. The doctrine requires that the initial application for tax relief be denied. In this case, the plaintiff's request for tax relief initially had been granted.").

For the reasons set forth above, the Attorney General does not consider any party's reliance on the APA to be dispositive of the outcome in the pending proceeding because the Attorney General's role in approving a proposed hospital conversion under the HCA is not subject to the requirements of the APA.

Respectfully submitted,

STATE OF RHODE ISLAND
OFFICE OF ATTORNEY GENERAL
PETER F. KILMARTIN

BY ITS ATTORNEYS,

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Dated: October 5, 2018

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 5th day of October 2018, I electronically filed and served this document through the electronic filing system to all on record. The document electronically filed is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Diane B. Milia