

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

In re: CHARTERCARE HEALTH :
PARTNERS FOUNDATION, :
ROGER WILLIAMS HOSPITAL and :
ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND, INC. :

C.A. No: KM-2015-0035

**JOINT MOTION FOR STAY OF ALL PROCEEDINGS
PENDING JUDICIAL APPROVAL OF PROPOSED SETTLEMENT**

CharterCARE Health Partners Foundation n/k/a CharterCARE Foundation (“CCF”), Roger Williams Hospital (“RWH”), and St. Joseph Health Services of Rhode Island (“SJHSRI”) (collectively the “Petitioners”), together with Respondents/Third Party Petitioners, Stephen Del Sesto, as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”), Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque (collectively hereinafter “Counter Petitioners”) now jointly move to stay all proceedings in this action (hereinafter referred to as the “2015 *Cy Pres* Action”) pending the resolution of a recently executed settlement agreement between CCF, RWH, SJHSRI, non-party CharterCARE Community Board, and Counter Petitioners (collectively, the “Settling Parties”), as set forth in more detail below.

1. By way of background, on April 20, 2015, this Court (Stern, J.) entered an Order authorizing *inter alia* a transfer of approximately \$8.2 million in charitable assets (hereinafter the “Transferred Funds”) from RWH and SJHSRI to CCF pursuant to the doctrine of *cy pres* (hereinafter the “2015 *Cy Pres* Order”).

2. Counter Petitioners subsequently were permitted to intervene in this action. On September 24, 2018, Counter Petitioners filed a Counter-Petition seeking to: 1) vacate the 2015 *Cy Pres* Order; and 2) order CCF to hold the Transferred Funds, any proceeds thereof, and any

subsequent payments received from third party trusts or otherwise pursuant to the 2015 *Cy Pres* Order, pending resolution of certain “Related Proceedings.” Those “Related Proceedings” are the two lawsuits known as: 1) *Stephen Del Sesto, as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan v. Prospect CharterCARE, LLC et al.*, No. 1:18-cv-00328 (D.R.I. filed June 18, 2018) (hereinafter, the “Federal Court Action”); and 2) *Stephen Del Sesto, as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan v. Prospect CharterCARE, LLC et al.*, No. PC-2018-4386 (R.I. Super. filed June 18, 2018) (hereinafter, the “State Court Action”).¹

3. The Settling Parties thereafter executed a settlement agreement effective as of November 21, 2018 (hereinafter the “Settlement B Agreement”).² The Settlement B Agreement is intended to resolve all claims that were asserted, or could have been asserted, between and among the Settling Parties in this 2015 *Cy Pres* Action and the two Related Proceedings.

4. The Settlement B Agreement is contingent upon judicial approval in three different actions. First, in the receivership action known as *St. Joseph Health Services of Rhode Island v. St. Joseph Health Services of Rhode Island Retirement Plan*, No. PC-2017-3856 (R.I. Super. filed Aug. 18, 2017) (hereinafter, the “Receivership Proceeding”), the Settling Parties will request that this Court (Stern, J.) enter an Order approving the Settlement B Agreement as being in the best interests of the Plan and the receivership estate. Second, in the Federal Court Action, the Settling Parties will request an Order approving the Settlement B Agreement as 1) fair, reasonable, and adequate, 2) as a good faith settlement under R.I. Gen. Laws § 23-17.14-35, 3)

¹ The State Court Action is presently dormant, as all proceedings therein have been stayed pending the disposition of the proceedings in the Federal Court Action.

² The term “Settlement B” is used to distinguish this new settlement agreement with CCF from the prior “Settlement A Agreement” involving Counter Petitioners, RWH, SJHSRI, and CCCB.

awarding attorneys' fees and costs to Counter Petitioners' counsel, and 4) such other and further relief as the court may direct in the Federal Court Action.

5. Third and finally, in this 2015 *Cy Pres* Action, the Settling Parties will seek 1) an Order from this Court approving an Amended *Cy Pres* Petition that would authorize payment of \$4.5 million by CCF to the Receiver, of which it is anticipated that \$3.9 million will be paid from the Transferred Funds;³ and 2) entry of a final judgment thereon (hereinafter, the "*Cy Pres* Final Judgment"). The factual and legal basis for the payment shall be presented in more detail in the Amended *Cy Pres* Petition. The Settling Parties anticipate that it will take several months before the Amended *Cy Pres* Petition can be filed, because the Settlement B Agreement will first need to receive the necessary approvals in the Receivership Proceeding and the Federal Court Action.

6. Finally, the Settling Parties note that they intend the "Order Preserving Assets Pending Litigation and Setting Schedule for Hearing on Motion to Intervene" entered in this 2015 *Cy Pres* Action on June 29, 2018 (hereinafter, the "Preservation Order") to remain in full force and effect pending entry of the contemplated *Cy Pres* Final Judgment.

7. In view of all the foregoing, and in the interests of judicial economy and efficiency, all parties to this 2015 *Cy Pres* Action now jointly move for a stay of all proceedings herein until such time as the Settling Parties file the Amended *Cy Pres* Petition referenced above, or until such time as either the Court in the Receivership Proceeding or the court in the Federal Court Action declines to approve Settlement B.

WHEREFORE, Petitioners and Counter-Petitioners now jointly move that this Court **GRANT** this motion and issue an order providing that:

³ The balance of \$600,000 is anticipated to be funded by an insurer.

- i. all proceedings in this 2015 *Cy Pres* Action shall be stayed until such time as the Settling Parties file the Amended *Cy Pres* Petition referenced in the Settlement B Agreement, or until such time as either the Court in the Receivership Proceeding or the Federal Court refuses to approve the Settlement B Agreement; and
- ii. the Preservation Order shall remain in full force and effect pending entry of the contemplated *Cy Pres* Final Judgment referenced in the Settlement B Agreement.

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Dated: December 4, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on the 4th day of December, 2018, I filed and served the foregoing document through the electronic filing system on the following users of record:

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