

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

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ST. JOSEPH HEALTH SERVICES )  
OF RHODE ISLAND )  
v. )  
ST. JOSEPH HEALTH SERVICES )  
OF RHODE ISLAND RETIREMENT )  
PLAN, as amended )  
\_\_\_\_\_

C.A. No. PC-2017-3856

**JOINT EMERGENCY MOTION TO INSTRUCT RECEIVER TO CEASE ALL  
EFFORTS TO PROCEED WITH THE PROPOSED SETTLEMENT AGREEMENT  
UNTIL THE COURT RULES ON THE PENDING PETITION FOR SETTLEMENT  
INSTRUCTIONS**

NOW COME Prospect Medical Holdings, Inc. (“Prospect”), Prospect East Medical Holdings, Inc. (“Prospect East”), Prospect Chartercare, LLC (“Prospect Chartercare”), Prospect Chartercare SJHSRI, LLC (“Prospect SJHSRI”), and Prospect Chartercare RWMC, LLC (“Prospect RWMC,” or collectively with Prospect, Prospect East, Prospect Chartercare, and Prospect SJHSRI, “Prospect Entities”), by and through their attorneys, and hereby move this honorable Court for an Order instructing the Receiver to cease all efforts to interfere with the Board of Prospect Chartercare, including, but not limited to, threatening board members based upon their votes, and to otherwise cease all efforts to proceed with the proposed Settlement Agreement until the Court rules on the pending Petition for Settlement Instructions. In support of this motion, the Prospect Entities state as follows:

1. On September 4, 2018, the Receiver filed a Petition for Settlement Instructions (“Settlement Petition”), requesting that the Court approve a settlement agreement (“Settlement Agreement”) that had already been negotiated and executed among the

Receiver, St. Joseph Health Services of Rhode Island (“SJHSRI”), Roger Williams Hospital (“RWH”), and Chartercare Community Board (“CCCB”).

2. Under the terms of the Settlement Agreement, CCCB will hold its 15% interest in Prospect Chartercare (which includes 50% voting authority) “in trust for the Receiver,” and the Receiver “will have the full beneficial interest therein.” *See* Settlement Agreement at ¶ 17.
3. The Prospect Entities believe that such proposed transfer of CCCB’s interest in Prospect Chartercare is in violation of the governing transactional documents that were reviewed, approved, and adopted by reference in the final decisions of the Rhode Island Attorney General and Rhode Island Department of Health under the Rhode Island Conversion Act (“HCA”) and Rhode Island Hospital Licensure Act (“CEC”) issued on May 16 and 19, 2014.
4. On September 7, 2018, pursuant to the terms of the proposed Settlement Agreement, and without Court approval, CCCB granted the Receiver a security interest in all assets of CCCB, and the Receiver filed a UCC-1 financing statement in connection therewith.
5. On October 10, 2018, the Court held a hearing on the Receiver’s Petition for Settlement Instructions and the Prospect Entities’ (and other’s) objections thereto. The Court reserved decision, indicating that a written decision would issue.
6. Notwithstanding the fact that the proposed Settlement Agreement has not been approved by this Court, the Receiver, through counsel, has continued to act as though the Settlement Agreement has been approved.

7. Upon information and belief, the Receiver, through his Special Counsel (as well as counsel for CCCB), has been interfering with Prospect Chartercare by, *inter alia*, contacting its Category A board members concerning the litigation and proposed Settlement Agreement, and threatening to have them removed as board members if they do not comply with their demands.
8. For example, counsel for CCCB contacted the Chairman of the Board and General Counsel for Prospect Chartercare seeking personal contact information of other Board members. Because counsel for CCCB was clearly acting on behalf of the Receiver, who is not a member of Prospect Chartercare, he was advised to refrain from further direct communication with Prospect Chartercare Board members.
9. On or about October 19, 2018,<sup>1</sup> David Hirsch, purportedly as Chairman of the Board of CCCB, RWH, and SJSHRI, sent a letter to the Category A Directors of Prospect Chartercare, requesting that they exercise their rights as board members “to support the Settlement Agreement and to cause Prospect CharterCare[] not to continue in its efforts to object thereto.” *See* Letter dated October 19, 2018 attached hereto as **Exhibit A**.
10. The letter requests that the board members advise “by 5:00PM on Tuesday, October 23, 2018, whether [they] will support our position.” *See id.* The letter further states: “Doing so will require a meeting and vote of the Prospect CharterCare board which we would expect you to pursue in the most expedited manner. Should we not hear from you by such time, *we will assume that you will not support our request of you, and we will then have to pursue our rights, which may include, without limitation,*

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<sup>1</sup> Although the letter is dated October 19, 2018, it was received via e-mail on October 22, 2018.

*your removal, and appointment of new ‘Category A Directors . . .’*” See *id.* (emphasis added).

11. Upon information and belief, the Receiver, through counsel, is seeking to use CCCB’s 15% interest (and 50% voting rights) in Prospect Chartercare (*prior* to obtaining approval from this Court), to unduly influence the Category A Directors of Prospect Chartercare, to the detriment of Prospect Chartercare, to gain an advantage in the litigation.
12. The Receiver’s attempt to exercise 50% of voting authority in Prospect Chartercare constitutes a breach of fiduciary duty, and is clearly a conversion without regulatory approval, among other things, and is intended solely to gain leverage in the litigation without regard to the effects such actions could have on the Hospitals.

WHEREFORE, the Prospect Entities respectfully request an Order instructing the Receiver to cease all efforts to interfere with the Board of Prospect Chartercare, including, but not limited to, threatening board members based upon their votes, and to otherwise cease all efforts to proceed with the proposed Settlement Agreement until the Court rules on the pending Petition for Settlement Instructions

(signatures on following page)

Respectfully Submitted,

Prospect Medical Holdings, Inc. and  
Prospect East Holdings, Inc.  
By its Attorneys,

/s/ Preston W. Halperin  
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Prospect CharterCare, LLC,  
Prospect CharterCare SJHSRI, and  
Prospect CharterCare RWMC,

By their attorneys,

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Joseph V. Cavanagh, III, Esq. (#6907)  
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October 23, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 23<sup>rd</sup> day of October 2018:

X I filed and served this document through the electronic filing system on the following parties:

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I mailed or  hand-delivered this document to the attorney for the opposing party and/or the opposing party if self-represented, whose name is: \_\_\_\_\_

At the following address \_\_\_\_\_.

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**/s/ Allison Y. Charette** \_\_\_\_\_



October 19, 2018

Edwin Santos (edsanto@cox.net)  
Joseph DiStefano, Esq. (JDiStefano@apslaw.com)  
Edward Quinlan  
Andrea Doyle, M.D.

Re: CharterCare Community Board ("CCCB")  
Roger Williams Hospital ("RWH")  
St. Joseph Health Services of Rhode Island ("SJHSRI")  
Proposed Settlement Agreement with Stephen DeSesto, Receiver  
of the St. Joseph Health Services of Rhode Island Pension Plan, et al  
(the "Settlement Agreement")

Dear Mr. Santos, Mr. DiStefano, Mr. Quinlan and Dr. Doyle:

As you may be aware, I am the Chairman of the Board of each of CCCB, RWH and SJHSRI. I am writing to you in your respective capacities as the "Category A Directors" of Prospect CharterCare, LLC ("Prospect CharterCare"), appointed by CCCB. Attached is a copy of the resolution of CCCB making your respective appointments.

In the summer of 2017, SJHSRI petitioned the St. Joseph Health Services of Rhode Island Pension Plan (the "Pension") into receivership and Stephen DeSesto was appointed Receiver (the "Receiver") by the Rhode Island Superior Court (the "Superior Court"). Following his appointment, the Receiver and his counsel undertook an investigation of potential claims that might be brought by the Receiver for the benefit of the Pension Plan. That investigation resulted in litigation against CCCB, RWH and SJHSRI, among others including Prospect CharterCare and certain of its affiliates.

After careful consideration and negotiations with the Receiver and his counsel, CCCB, RWH and SJHSRI entered into the Settlement Agreement with the Receiver and others. The Receiver thereafter filed a motion with the Rhode Island Superior Court seeking authorization to proceed with the Settlement Agreement. Assuming that the Superior Court authorizes the Receiver to go forward, CCCB, RWH and SJHSRI, together with the Receiver and the other parties to the Settlement Agreement will file a joint motion in the Federal District Court for the District of Rhode Island (the "District Court") to approve the Settlement Agreement.

Without getting into all of the details of the Settlement Agreement, there is one particular agreement among the parties that affects Prospect CharterCare. Specifically, CCCB, as the holder of a 15% interest in Prospect CharterCare (the "CCCB 15% Interest"), has agreed to exercise its right to

require Prospect East Holdings, Inc. ("Prospect East"), the other member of Prospect CharterCare, to purchase the CCCB 15% Interest, and to turn the proceeds therefrom over to the Receiver. Moreover, CCCB has agreed to take instructions from the Receiver relative to the exercise of its rights relating to the CCCB 15% Interest, and to allow the Receiver to sue in the name of CCCB in order to effectuate CCCB's rights relative to the CCCB 15% Interest. I have included the relevant provisions of the Settlement Agreement for your review.

With that background, I am writing to you today to confirm to you that CCCB, together with RWH and SJHSRI, strongly support the Settlement Agreement and want it to proceed. CCCB believes that the Settlement Agreement is in the best interest of CCCB, RWH and SJHSRI and provides significant financial benefit to the Pension Plan, many of whose participants are current employees of Prospect CharterCare entities. Moreover, we believe that allowing the Settlement Agreement to proceed would not have a material adverse interest on Prospect CharterCare as it effectively considerably reduces any potential damages that Prospect CharterCare might suffer should it be held liable to the Pension Plan. In this regard, the vast majority of the assets of CCCB, RWH and SJHSRI will go to the Pension Plan under the Settlement Agreement. In fact, we believe that you should be encouraging Prospect CharterCare to resolve the litigation as in the best interest of Prospect CharterCare, regardless of the interests of its majority owner.

In light of the foregoing, CCCB would like you to exercise your rights as a board member of Prospect CharterCare to support the Settlement Agreement and to cause Prospect CharterCare not to continue in its efforts to object thereto. CCCB recognizes that other Prospect-related entities, including Prospect East as the other member of Prospect CharterCare, may have other interests and/or motivations. Nevertheless, as the board members appointed by CCCB, we hope that you will respect our views and recognize that the Settlement Agreement represents a resolution of claims against CCCB, RWH and SJHSRI that maximizes the value and benefits to the Pension Plan and its participants without materially impacting any rights of Prospect CharterCare.

While we regret asking you to consider this issue in such a short period of time, we hope that you will recognize that allowing the Settlement Agreement to proceed is reasonable and that you will support our request of you. Kindly let me know by 5:00PM on Tuesday, October 23, 2018, whether you will support our position. Doing so will require a meeting and vote of the Prospect CharterCare board which we would expect you to pursue in the most expedited manner. Should we not hear from you by such time, we will assume that you will not support our request of you, and we will then have to pursue our rights, which may include, without limitation, your removal, and appointment of new "Category A Directors." I can be reached by email at [dmhirsch55@gmail.com](mailto:dmhirsch55@gmail.com) or by phone at 401-274-2355. I look forward to hearing from you

Very truly yours,

CharterCare Community Board



David Hirsch  
Chairman and President