

TABLE OF CONTENTS

BACKGROUND 1

 I. Prospect frustrated all pre-suit efforts to obtain the information2

 II. Plaintiffs’ motion for injunctive relief2

 III. The Stipulation and Consent Order dated April 25, 20192

 IV. The Second and Third Stipulation and Order5

 V. The Attorney General’s document production to the Plan Receiver.....7

 VI. The renewed motion for injunctive relief and the motion to compel production.....9

 VII. The Order dated July 21, 2020 11

 VIII. Prospect’s document production 12

 IX. Plaintiffs’ efforts to secure voluntary compliance..... 13

ARGUMENT 16

 I. Prospect has violated the Order of July 21, 2020..... 16

 A. Concerning Prospect’s obligation to allow inspection of its books and records 16

 B. Prospect failed to provide a privilege log 18

 C. Prospect improperly redacted information21

 D. Prospect improperly claimed that its document production was subject to a confidentiality order that only applied to documents that Prospect had produced voluntarily22

 E. Prospect violated the Order’s provisions obligating it to produce all documents concerning long-term capital contributions25

 1. Prospect shuffled the documents25

 2. Prospect failed to produce all its communications with AMI, including summaries and spreadsheets, and produced some summaries and spreadsheets only in microscopic type26

 II. Plaintiffs are entitled to a further extension of time to exercise the Put option28

 III. Plaintiffs are entitled to sanctions, including an order establishing facts and an award of attorneys’ fees29

 A. The Super. R. Civ. P. 37(b) standard.....29

 B. The Court should establish as fact that the Prospect Entities did not make any of the required long-term capital contributions29

 C. The Court should order Prospect to designate and submit a knowledgeable witness 33

 D. The Court should award Plaintiffs their reasonable attorneys’ fees33

CONCLUSION33

Stephen Del Sesto, as Receiver (“Plan Receiver”) for the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”), and Thomas Hemmendinger, as Liquidating Receiver (“Liquidating Receiver”) of CharterCARE Community Board (“CCCB”), St. Joseph Health Services of Rhode Island (“SJHSRI”), and Roger Williams Hospital (“RWH”), submit this memorandum in support of their motion (a) for an order establishing certain facts as a sanction for repeated and willful violations of court orders; (b) to extend time for the exercise of the Put option; (c) in the alternative, to compel production of documents and other information from Defendant Prospect Chartercare, LLC (“Prospect Chartercare”); (d) to order Prospect Chartercare to designate and submit a knowledgeable witness for deposition; and (e) for an award of attorneys’ fees.

This motion arises out of the Prospect Entities’ failure to comply with the Court’s Order entered on July 21, 2020,¹ which itself arose out of Prospect’s failure to comply with the Stipulation and Consent Order dated April 25, 2019 in this proceeding. This motion also arises out of the Prospect Entities’ obstruction of CCCB’s efforts to obtain this information from the Prospect Entities since September 2018.

BACKGROUND

This motion concerns the Prospect Entities’ failure to comply with the Court’s Order dated July 21, 2020 which granted Plaintiffs’ motion for injunctive and equitable relief and granted (in part) Plaintiffs’ motion to compel production of documents. The history of those motions and of the discovery to date in this proceeding, and the facts

¹ Attached hereto as Exhibit 1 (Order entered July 21, 2020).

concerning the Plan Receiver's receipt of documents from the Rhode Island Attorney General, are relevant to this motion, and, therefore, are briefly addressed.

I. Prospect frustrated all pre-suit efforts to obtain the information

During and since September 2018, and based upon its rights as a member in Prospect Chartercare, CCCB (sometimes joined by the Plan Receiver) requested information on numerous occasions from the Prospect Entities concerning the funding *vel non* of the Prospect Entities' long term capital commitment. See Verified Amended and Supplemental Complaint ¶¶ 55 (reciting the dates of requests in September 2018, October 2018, and January 2019). All of those requests were refused in whole or in part. Id. ¶ 56. In response to those refusals, CCCB filed its Verified Complaint in the instant action on March 11, 2019, seeking *inter alia* the information withheld by the Prospect Entities.

II. Plaintiffs' motion for injunctive relief

On March 18, 2019, CCCB filed its Motion for Temporary and Permanent Injunction and Equitable Relief. That motion sought (*inter alia*) a mandatory injunction ordering Prospect Chartercare to allow CCCB direct access to inspect the books and records of Prospect Chartercare.

III. The Stipulation and Consent Order dated April 25, 2019

Prospect Chartercare did not respond to CCCB's motion at that time. Instead, the parties agreed to a Stipulation and Consent Order which was entered by the Court on April 25, 2019 (the "Stipulation and Consent Order dated April 25, 2019"),² that held

² Exhibit 2 (Stipulation and Consent Order dated April 25, 2019).

CCCB's motion in abeyance while Prospect Chartercare produced documents that CCCB considered necessary to evaluate whether CCCB should seek to be bought out of Prospect Chartercare through the exercise of the Put option granted CCCB in the Amended and Restated Limited Liability Agreement for Prospect CharterCARE, LLC (the "LLC Agreement").

Pursuant to the Stipulation and Consent Order dated April 25, 2019, CCCB was afforded the right to obtain information and documents from the Prospect Entities, and the Prospect Entities were obligated to provide that information and documents, as follows:

On or before May 15, 2019, PCC will provide CCCB with financial information in connection with CCCB's evaluation of the "put option" as requested by CCCB in correspondence dated September 20, 2018, October 2, 2018, October 3, 2018, and November 6, 2018. **Thereafter, CCCB may by email request such additional information as CCCB reasonably requires in connection with the evaluation of the "put option" under the Prospect Chartercare, LLC Agreement (the "LLC Agreement"), and PCC will provide such information within fifteen (15) days of such email(s), provided the information is available.**^[3]

[Emphasis supplied]

The Stipulation and Consent Order dated April 25, 2019 extended "the ninety (90) day period within which the put option created in Section 14.5 of the LLC Agreement can be exercised to the ninety (90) day period commencing September 21, 2019 and ending on December 20, 2019."⁴

The Stipulation and Consent Order dated April 25, 2019 also provided that CCCB reserved the right to have "the already pending injunctive relief motion (filed on March

³ Exhibit 2 (Stipulation and Consent Order dated April 25, 2019) ¶ 2.

⁴ Exhibit 2 (Stipulation and Consent Order dated April 25, 2019) ¶ 3

18, 2019) heard by the Court as soon as reasonably practical; and to ensure the exercise period did not expire while that motion is pending, the option exercise period was extended for an additional period extending for twenty (20) business days following the entry of an order by the Court on the request for a further extension of the option exercise period, provided, however that the extension during the pendency of the motion would not exceed thirty (30) days from the date of the hearing on the request.⁵

Moreover, the relief requested in CCCB's Motion for Temporary and Permanent Injunction and Equitable Relief included "the extension of the deadline within which CCCB must exercise its Put Option for the same amount of time that Prospect Chartercare has withheld the necessary information from CCCB."⁶

Thus, the Stipulation and Consent Order dated April 25, 2019 extended the time to exercise the Put option to December 20, 2019 and provided two different means to further extend that time. That time would be automatically extended if CCCB sought a hearing on its motion for injunctive relief. That extension would expire no later than thirty (30) days after the hearing took place. In addition, CCCB reserved its right to seek an additional extension in connection with the merits of its motion for injunctive relief. That additional extension was requested "for the same amount of time that Prospect Chartercare has withheld the necessary information from CCCB."⁷

⁵ Exhibit 2 (Stipulation and Consent Order dated April 25, 2019) ¶ 3.

⁶ See CCCB's Motion for Temporary and Permanent Injunction and Equitable Relief filed March 3, 2019 at 15.

⁷ Id.

IV. The Second and Third Stipulation and Order

The Stipulation and Consent Order dated April 25, 2019 was twice extended by stipulation and order, on October 3, 2019 (“Second Stipulation and Order”) and then on November 22, 2019 (“Third Stipulation and Order”).

The Second Stipulation and Order states as follows:

1. The parties to the LLC Agreement agree to modify the ninety (90) day period within which the put option created in Section 14.5 of the LLC Agreement can be exercised to the ninety-two (92) day period commencing October 21, 2019 and ending on January 21, 2020. If in the judgment of CCCB and the [Plan] Receiver⁸ (or solely the [Plan] Receiver if the settlement is approved by the Federal Court prior to such date) the option cannot in good faith be appraised and exercised by January 21, 2020 based on the information received, then, prior to the expiration of the period, CCCB (or solely the [Plan] Receiver if the settlement is approved by the Federal Court prior to such date) reserves the right to seek a hearing on the already pending injunctive relief motion (filed on March 18, 2019) heard by the Court as soon as reasonably practical; and to ensure the exercise period does not expire while that motion is pending, the option exercise period shall be extended for an additional period extending for twenty (20) business days following the entry of an order by the Court on the request for a further extension of the option exercise period, provided, however that the extension during the pendency of the motion shall not exceed thirty (30) days from the date of the hearing on the request. The provisions of Section 14.6 of the LLC Agreement regarding the valuation process are not affected by this agreement except as expressly provided herein.
2. All other provisions of the Stipulation and Consent entered on April 25, 2019 remain in full force and effect.

Second Stipulation and Order ¶¶ 1-2. The second paragraph, stating that “[a]ll other provisions of the Stipulation and Consent entered on April 25, 2019 remain in full force and effect,” preserved CCCB’s right pursuant to the Stipulation and Consent Order

⁸ At the time of both the Second Stipulation and Order and the Third Stipulation and Order, the Plan Receiver was the only Receiver. The Liquidating Receiver was not appointed until December 18, 2019.

dated April 25, 2019 to obtain information and documents from the Prospect Entities, and the obligation of the Prospect Entities to provide such information and documents within 15 days of the request.

The Third Stipulation and Order is essentially identical to the Second Stipulation and Order except that it further extended the time. It states as follows:

1. The parties to the LLC Agreement agree to modify the ninety (90) day period within which the put option created in Section 14.5 of the LLC Agreement can be exercised to the ninety-one (91) day period commencing November 11, 2019 and ending on February 10, 2020. If in the judgment of the [Plan] Receiver the option cannot in good faith be appraised and exercised by February 10, 2020 based on the information received, then, prior to the expiration of the period, the [Plan] Receiver reserves the right to seek a hearing on the already pending injunctive relief motion (filed on March 18, 2019) heard by the Court as soon as reasonably practical; and to ensure the exercise period does not expire while that motion is pending, the option exercise period shall be extended for an additional period extending for twenty (20) business days following the entry of an order by the Court on the request for a further extension of the option exercise period, provided, however that the extension during the pendency of the motion shall not exceed thirty (30) days from the date of the hearing on the request. The provisions of Section 14.6 of the LLC Agreement regarding the valuation process are not affected by this agreement except as expressly provided herein.
2. All other provisions of the Stipulation and Consent Order entered on April 25, 2019 remain in full force and effect.

Third Stipulation and Order ¶¶ 1-2. Again, the second paragraph, stating that “[a]ll other provisions of the Stipulation and Consent entered on April 25, 2019 remain in full force and effect,” preserved CCCB’s right pursuant to the Stipulation and Consent Order dated April 25, 2019 to obtain information and documents from the Prospect Entities, and the obligation of the Prospect Entities to provide such information and documents within 15 days of each request.

Accordingly, CCCB retained the right through February 10, 2020 to request additional documents and information, and the Prospect Entities remained obligated under the Stipulation and Consent order dated April 25, 2019 to provide that information.

Similarly, the Plan Receiver retained the right at any time up to and including February 10, 2020 to activate CCCB's motion for injunctive relief, if, in the Plan Receiver's sole judgment, "the option cannot in good faith be appraised and exercised by February 10, 2020 based on the information received."

V. The Attorney General's document production to the Plan Receiver

While CCCB and the Plan Receiver were pursuing their rights here in CCCB v. Lee, counsel for the Plan Receiver were also continuing their efforts to obtain documents from third parties that the Plan Receiver considered necessary to decide whether to exercise the Put option. Those documents included documents that Prospect Chartercare had provided to the Rhode Island Attorney General, and to the monitor appointed by the Attorney General to evaluate Prospect Chartercare's compliance with conditions that the Attorney General had imposed upon Prospect Chartercare in connection with the Attorney General's approval of the 2014 Asset Sale, pursuant to his authority under the Hospital Conversions Act.

The Rhode Island Attorney General's conditions included requiring that Prospect East Holdings, Inc. ("Prospect East") and Prospect Medical Holdings, Inc. ("Prospect Medical") comply with their obligations as to long-term and routine capital.⁹ The

⁹ See Exhibit 3 (Rhode Island Attorney General Opinion, dated May 16, 2014, approving the 2014 Asset Sale). The Attorney General included the following three conditions in his approval of the 2014 Asset Sale:

Attorney General engaged Affiliated Monitors Inc. (“AMI”) to monitor the Prospect Entities’ compliance with these and other conditions.¹⁰

On April 30, 2019, AMI requested information from Prospect Chartercare “to evidence compliance with the capital commitment obligations stemming from the 2014 purchase of Chartercare Health Partners.”¹¹ The Prospect Entities produced responsive documents to the Attorney General on May 13, 2019.¹² The Rhode Island Attorney General produced those documents to counsel for the Plan Receiver on January 28, 2020.¹³

The Attorney General has also provided Plaintiffs with a copy of two reports AMI has prepared to the Attorney General concerning Prospect’s alleged compliance with the conditions to the Attorney General’s approval of the 2014 Asset Sale. The first such report is dated December 20, 2018.¹⁴ The Attorney General provided it to counsel for CharterCARE Community Board in early April 2019, who provided it to counsel for the

17. That PMH [Prospect Medical Holdings, Inc.] guarantee the full amount of Prospect East's financial obligations contained in the Asset Purchase Agreement pursuant to the form of guaranty approved by the Attorney General.

18. Prospect CharterCARE, LLC shall report annually to the Attorney General on the proposed form submitted to the Attorney General concerning the funding of its routine and non-routine capital commitments under the Asset Purchase Agreement until the long term capital commitment as defined in the Asset Purchase Agreement has been satisfied.

19. That Prospect provide information on a timely basis requested by the Attorney General to determine its compliance with the Asset Purchase Agreement and the Conditions of this Decision.

Exhibit 3 (Attorney General Opinion dated May 16, 2014) at 53.

¹⁰ See Exhibit 4 (AMI Retainer Agreement dated as of June 6, 2014) at 10-12.

¹¹ See Exhibit 5 (letter dated April 30, 2019 from AMI to Prospect Chartercare) at 1.

¹² See Exhibit 6 (letter dated May 13, 2019 from Prospect Chartercare to Assistant Attorney General Jessica Rider).

¹³ See Exhibit 7 (letter dated January 28, 2020 from Assistant Attorney General Jessica Rider to counsel for the Plan Receiver).

¹⁴ Exhibit 8 (without exhibits, which are voluminous).

Plan Receiver on April 11, 2019. The second such report is captioned AMI's "Second Interim Report," and is dated as of March 30, 2020.¹⁵ Counsel for the Plan Receiver received it on July 3, 2020.

VI. The renewed motion for injunctive relief and the motion to compel production

On February 7, 2020, CCCB and the Plan Receiver reactivated CCCB's motion for injunctive relief and filed the Plan Receiver and Liquidating Receiver's Memorandum in Support of Motion for Temporary and Permanent Injunction and Equitable Relief. On February 20, 2020, the Plan Receiver and the Liquidating Receiver filed their joint motion to compel production of documents from Prospect Chartercare, based upon Prospect Chartercare's violation of the April 25, 2019 Stipulation and Consent Order by failing to produce documents called for under that order.

On March 3, 2020, Prospect Chartercare filed its opposition to both motions.

The Plaintiffs' two motions were heard together on June 23, 2020.¹⁶ During the hearing, counsel for Prospect Chartercare stated that he was aware that the Attorney General had provided the Plan Receiver with the documents that Prospect Chartercare had provided to AMI.¹⁷ At the end of the hearing the Court reserved on both motions to

¹⁵ Exhibit 9 (without exhibits, which are voluminous). Although various pages of AMI's Second Interim Report bear the date March 30, 2020, the text of the report includes references to events that took place two months later, in May of 2020. See Exhibit 9 (AMI Second Interim Report) at 4 n.3 ("On May 6 and 7, 2020, Prospect sent additional materials to AMI and the Office of the Attorney General; these were not evaluated for the purposes of this report but will be incorporated into the next one.").

¹⁶ See Exhibit 10 (Transcript of Hearing on June 23, 2020) at 1 ("This [hearing] is on for the Plan and Liquidating Receivers' Motion for Temporary and Permanent Injunction and Equitable Relief, and also the Plan and Liquidating Receivers' Motion to Compel Production of Documents and Other Information from Prospect CharterCare, LLC.").

¹⁷ See Exhibit 10 (Transcript of Hearing on June 23, 2020) at 36 ("MR. HALPERIN: On the subject of the \$50 million capital contribution, I should touch on that because we had a lot of discussion on that. Those

allow the Parties to attempt to work out a voluntary resolution.¹⁸ It was agreed that counsel for the parties would attempt to agree upon a list of categories of documents the Plaintiffs were seeking to compel; that Prospect Chartercare would have the option to agree to voluntarily produce documents responsive to those categories; that the parties would return for the Court to decide Plaintiffs' motion to compel with respect to the categories of documents upon which there was no agreement; and that the Court would resolve Plaintiffs Motion for Temporary and Permanent Injunction and Equitable Relief at the same time that the Court decided Plaintiffs' motion to compel.¹⁹

At Plaintiffs' request, the Court ordered that the hearing would be continued so that the thirty (30) days for the exercise of the Put Option Court would not begin to run.²⁰

The next session of the hearing took place on July 8, 2020.²¹ The Court heard argument and reserved decision. The Court ordered that the hearing be further continued until the Court made its decision.²²

documents were submitted to the Attorney General and they were provided to the Receiver in that same format that showed the \$50 million capital contribution and all the backup for it."). Indeed, when Prospect produced documents to Plaintiffs on September 18, 2020, they included at least 994 pages of invoices and requisitions that Prospect was aware Plaintiffs had already received from the Attorney General. As discussed below, however, Prospect failed to provide Plaintiffs with the correspondence, spreadsheets and summaries Plaintiffs (or anyone) would need to understand these documents.

¹⁸ See Exhibit 10 (Transcript of Hearing on June 23, 2020) at 47 ("THE COURT: Is there anything else, counsel? Otherwise, what I'm going to do is continue the current hearing. The Court is going to reserve on both motions with a hope that the parties may be able to work some of these issues through.").

¹⁹ See Exhibit 10 (Transcript of Hearing on June 23, 2020) at 43-47.

²⁰ See Exhibit 10 (Transcript of Hearing on June 23, 2020) at 43-45.

²¹ See Exhibit 11 (Transcript of Hearing on July 8, 2020).

²² See Exhibit 11 (Transcript of Hearing on July 8, 2020) at 32 ("What I'm going to do at this point is we're going to continue the hearing until the Court can issue a decision.").

VII. The Order dated July 21, 2020

The Court rendered its decision on both of Plaintiffs' motions by the Order entered on July 21, 2020.

Of the eleven categories of documents that were at issue, the Court granted Plaintiffs' motion to compel in full for five of the categories (Categories 2-6); the Court granted the Plaintiffs motion in part and denied it in part for two of the categories (Categories 1 & 7); the Court reserved judgment for two of the categories (Categories 8 & 10) until Prospect submitted corrected financial statements; and the Court denied Plaintiffs' motion for the two remaining categories of documents.²³ Prospect was ordered to comply within sixty (60) days of the entry of the Order on July 21, 2020, i.e., on or before September 18, 2020.²⁴

The Court also granted Plaintiffs' motion to inspect the books and records of Prospect Chartercare, as follows:

Books and Records: Pursuant to the LLC Agreement, CCCB is permitted full access to PCC's books and records, and those books and records must be made available for inspection by CCCB and/or its duly authorized representatives. PCC has not objected to CCCB's right to access the books and records and, therefore, PCC is ordered to give CCCB access to the books and records provided, however, that CCCB must make a more specific request regarding what books and records it is seeking so as to allow PCC to search for and produce the appropriate documents. Nothing in this Order is meant to limit the types and scope of the books and records available in accordance with the LLC Agreement.^[25]

²³ Exhibit 1 (Order entered July 21, 2020) ¶¶ 1-11.

²⁴ Exhibit 1 (Order entered July 21, 2020) ¶12.

²⁵ Exhibit 1 (Order entered July 21, 2020) ¶ 12.

The Order also tied the exercise period for the Put option to Prospect's compliance with the Order, stating as follows:

Pursuant to ¶ 3 of the Consent Order, the Court extends the time by which CCCB must exercise the Put Option until PCC complies with this Order and produces the required documents and information provided, however, that PCC must comply in no longer than sixty (60) days. **Once CCCB receives the documents and information from PCC, the time by which CCCB must exercise the Put Option is sixty (60) days from the date thereof.** PCC has a **continuing duty** to disclose and update the documents and information until the Put Option is exercised or lapses.^[26]

[Emphasis supplied]

VIII. Prospect's document production

At 8:37 p.m. on Friday, September 18, 2020, less than four (4) hours before the expiration of Prospect's sixty-day deadline, Prospect electronically delivered 2,428 pages of documents.²⁷ These documents were segregated into four electronic folders: pages bates-numbered 488 to 963^[28] were designated as responsive to Category 1; pages bates-numbered 964 to 2774 were designated as responsive to Category 2; pages bates-numbered 2775 to 2908 were designated as responsive to categories 3-6 and 12;^[29] and pages bates-numbered 2909 to 2915 were designated as responsive to Category 7.

²⁶ Exhibit 1 (Order entered July 21, 2020) ¶ 13.

²⁷ See Exhibit 12 (email from Danielle Smith to counsel for the Plan Receiver dated September 18, 2020).

²⁸ Prospect's document production started at page bates-numbered 488 and continued through the page bates-numbered 2,915, for a total of 2,428 documents.

²⁹ However, the Order dated July 21, 2020 has no Category 12. See Exhibit 1 (Order entered July 21, 2020).

IX. Plaintiffs' efforts to secure voluntary compliance

On September 24, 2020, the following Thursday, the Plan Receiver and the Liquidating Receiver wrote to counsel for the Prospect Entities stating that, although the Receivers were still in the process of reviewing the document production, they “already can address certain deficiencies in Prospect’s document production, concerning Prospect’s designation of documents as confidential, Prospect’s redaction of documents, and Prospect’s failure to provide a privilege log.”³⁰ The letter of the Plan Receiver and the Liquidating Receiver detailed these deficiencies and asked Prospect Chartercare to rectify them.³¹

On October 1, 2020, the Plan Receiver and the Liquidating Receiver wrote a follow-up letter to counsel for the Prospect Entities.³² This letter stated in pertinent part:

[W]e have reviewed Prospect’s document production sufficiently to determine that it is both grossly incomplete and disorganized into a 2,427 page “document dump” that makes it very difficult for Plaintiffs to understand the facts. This is especially so with respect to the documents that concern Prospect’s claim to have satisfied the requirements in the Asset Purchase Agreement (“APA”) and the Amended & Restated Limited Liability Agreement of Prospect CharterCARE LLC (the “LLC Agreement”) for long-term capital contributions and routine capital contributions

Specifically, although Prospect has produced to Plaintiffs thousands of pages of the same invoices and contract documents that Prospect had previously provided to Affiliated Monitors Inc. (“AMI”) and/or the Attorney General, concerning Prospect’s claim to have satisfied the requirements in the APA and the LLC Agreement for long-term capital contributions and routine capital contributions, Prospect did not produce to Plaintiffs its

³⁰ See Exhibit 13 (letter dated September 24, 2020 from counsel for the Plan Receiver and the Liquidating Receiver Thomas Hemmendinger to counsel for the Prospect Entities) at 1.

³¹ See Exhibit 13 (letter dated September 24, 2020 from counsel for the Plan Receiver and the Liquidating Receiver Thomas Hemmendinger to counsel for the Prospect Entities) at 3-4.

³² Exhibit 14 (letter dated October 1, 2020 from counsel to the Plan Receiver and the Liquidating Receiver Thomas Hemmendinger to counsel for the Prospect Entities) at 2-3.

detailed correspondence with AMI or summaries it provided to AMI explaining the significance of those thousands of pages of invoices and contracts. Prospect also did not provide Plaintiffs with the workpapers upon which any journal or general ledger entries or spreadsheets are based, concerning Prospect's claim to have satisfied the requirements in the APA and the LLC Agreement for long-term capital contributions and routine capital contributions. These documents are essential to identify and analyze those expenditures upon which Prospect bases its claim to have satisfied the requirements in the APA and the LLC Agreement for long-term capital contributions and routine capital contributions.

In other words, on September 18, 2020 Prospect provided Plaintiffs with (at least some of) the raw materials upon which its claim to have satisfied these obligations is based, but withheld the documents needed to organize and understand those materials. A fitting analogy would be if Prospect provided the thousands of parts that make up a car as proof that Prospect has designed a car, but refused to provide its manual that show how the car is to be assembled. That is why we refer to Prospect's production as a "document dump."^[33]

The Plan Receiver and the Liquidating Receiver's letter concluded as follows:

Under these circumstances, we intend to ask the Court for the following relief, unless on or before October 5, 2020 Prospect agrees to another stipulation and consent order with the following provisions:

1. Prospect must agree to produce all documents it provided to the Attorney General, either directly or through AMI, concerning Prospect's satisfaction of its obligation to make long-term capital contributions and routine capital contributions as defined in the APA and the LLC Agreement, or which Prospect contends should qualify towards that obligation even if they technically do not fulfill all of the requirements therefor in the APA and the LLC Agreement;
2. Prospect must agree to produce all workpapers supporting any and all journal entries, general ledger entries, or any spreadsheets Prospect has created, either for internal use or external distribution, pertaining to the long term and/or routine capital contributions;
3. Prospect must agree to produce all documents that were requested, regardless of whether the documents could have

³³ Exhibit 14 (letter dated October 1, 2020 from counsel to the Plan Receiver and the Liquidating Receiver Thomas Hemmendinger to counsel for the Prospect Entities) at 2-3.

withheld from production based on privilege if a privilege log had been provided, including but not limited to unredacted documents to replace the redacted documents that were produced;

4. Prospect must agree to designate a representative who will promptly submit to deposition and explain to Plaintiffs' counsel each and every item that Prospect claims qualifies as a long-term or routine capital contribution, and identify and explain the significance of all documents supporting that claim; and
5. Prospect must agree that the sixty-day period to exercise the Put option should not begin until Prospect has satisfied its obligations under 1-4 and Plaintiffs' expert has completed his inspection of Prospect's books and records as discussed below.

In addition, Plaintiffs intend to proceed with the relief Judge Stern granted in his order on July 21, 2020 for an on-premises inspection of Prospect's books and records. Please provide us with the earliest possible dates when our expert can attend at the offices of Prospect where its books and records are kept. Pursuant to paragraph 12 of the Order dated July 21, 2020, we hereby specifically seek to review all documents concerning Prospect's claim to have satisfied the requirements in the APA and the LLC Agreement for both the long-term capital contributions and routine capital contributions, including all documents concerning the expenditures and all ledgers, journal entries, spreadsheets or any other documents explaining and categorizing such expenditures.^[34]

Prospect has never even responded to this letter. Prospect did not produce any additional documents or agree to do so. Prospect at no time offered any dates for Plaintiffs' expert to attend at the offices of Prospect Chartercare to inspect its books and records.

³⁴ Exhibit 14 (letter dated October 1, 2020 from counsel to the Plan Receiver and the Liquidating Receiver Thomas Hemmendinger to counsel for the Prospect Entities) at 3-4.

ARGUMENT

I. Prospect has violated the Order of July 21, 2020

A. Concerning Prospect's obligation to allow inspection of its books and records

Prospect's failure to cooperate with Plaintiffs to arrange the inspection of Prospect's books and records is the simplest case of Prospect's violation of the Order entered on July 21, 2020, because it is beyond dispute that Prospect made no meaningful effort to comply with that provision of the Order. The Order granted Plaintiffs' motion for an order compelling Prospect Chartercare to allow Plaintiffs to inspect Prospect Chartercare's books and records, as follows:

Books and Records: Pursuant to the LLC Agreement, CCCB is permitted full access to PCC's books and records, and those books and records must be made available for inspection by CCCB and/or its duly authorized representatives. PCC has not objected to CCCB's right to access the books and records and, therefore, PCC is ordered to give CCCB access to the books and records provided, however, that CCCB must make a more specific request regarding what books and records it is seeking so as to allow PCC to search for and produce the appropriate documents. Nothing in this Order is meant to limit the types and scope of the books and records available in accordance with the LLC Agreement.^[35]

Pursuant to this Order, Plaintiffs on October 1, 2020 requested as follows:

Plaintiffs intend to proceed with the relief Judge Stern granted in his order on July 21, 2020 for an on-premises inspection of Prospect's books and records. Please provide us with the earliest possible dates when our expert can attend at the offices of Prospect where its books and records are kept. Pursuant to paragraph 12 of the Order dated July 21, 2020, we hereby specifically seek to review all documents concerning Prospect's claim to have satisfied the requirements in the APA and the LLC Agreement for both the long-term capital contributions and routine capital contributions, including all documents concerning the expenditures and all ledgers, journal

³⁵ Exhibit 1 (Order entered July 21, 2020) ¶ 12.

entries, spreadsheets or any other documents explaining and categorizing such expenditures.^[36]

Prospect Chartercare completely ignored this request.

As discussed below, because Prospect has already violated two court orders concerning this very issue, Plaintiffs request that the Court enter an order establishing as a matter of fact that the responsible Prospect Entities failed to make any long-term capital contributions to Prospect Chartercare as defined in the LLC Agreement, in accordance with Rule 37(b)(2)(A)(allowing an “order that the matters regarding which the order was made, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order”). If the Court chooses not to enter such an Order at this time, Plaintiffs request as alternative relief that the Court renew its order that Prospect allow Plaintiffs’ expert to inspect its books and records.

Moreover, Prospect’s failure to cooperate with Plaintiffs means that the time to exercise the Put option is extended, regardless of any other violations of the Order entered on July 21, 2020. Until that inspection is concluded, CCCB will not have “receive[d] the documents and information from PCC,” and, therefore, until that occurs, the sixty (60) day period for CCCB to exercise the put option has not begun. Indeed, even if completion of this inspection were not necessarily required before the sixty (60) day period for CCCB to exercise the put option would begin, the combination of Prospect’s inadequate production of documents on the final day that production was due, together with Prospect’s failure to even respond to Plaintiffs’ request for dates for

³⁶ Exhibit 14 (letter dated October 1, 2020 from counsel to the Plan Receiver and the Liquidating Receiver Thomas Hemmendinger to counsel for the Prospect Entities) at 4.

that inspection, would justify postponing the commencement of the sixty (60) day period for CCCB to exercise the put option until after the inspection takes place.

B. Prospect failed to provide a privilege log

Prospect did not produce any privilege log with its document production.

Accordingly, Plaintiffs have no way of knowing what documents, if any, were withheld from production on grounds of privilege.

Insofar as Prospect withheld any documents or portions of documents on grounds of privilege, Prospect was required to provide a privilege log complying with Super. R. Civ. P. 26(b)(5), i.e. Prospect must “describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.”

The Order entered on July 21, 2020 stated at footnote that “[i]n accordance with the April 25, 2019 Stipulation and Consent Order, any information ordered to be produced pursuant hereto must be available to PCC and shall not include documents that are subject to the attorney-client privilege, joint defense privilege and/or attorney work product doctrine.”³⁷ However, the Order did not purport to modify or relieve Prospect of the obligation to provide a privilege log.

To the contrary, the provision in the Stipulation and Consent Order dated April 25, 2019, to which the Court referred, expressly requires a privilege log:

PCC shall not be required pursuant to this Stipulation and Consent Order to produce documents that are subject to the attorney-client privilege, joint defense privilege and/or attorney work product doctrine, **provided that any**

³⁷ Exhibit 1 (Order entered July 21, 2020) ¶ 1 n. 4.

objections to production of documents pursuant to this Order on the basis of attorney-client privilege, joint defense privilege and/or attorney work product doctrine are noted at the time for production, and any documents withheld from production based on such objections are identified in a privilege log in accordance with the requirements of Super. R. Civ. P. 26(b)(5)&(7).^[38]

[Emphasis supplied]

Accordingly, there can be dispute that Prospect was required to provide a privilege log for any claim of privilege.

Notwithstanding that Plaintiffs have no way of knowing which entire documents, if any, Prospect withheld from production on grounds of privilege, it is absolutely certain that Prospect withheld *portions of documents* on the grounds of privilege, without a privilege log. That is because, as discussed below, Prospect apparently made redactions from various documents in reliance on the attorney client privilege.

The requirements for a privilege log apply to redactions as well as entire documents withheld from production. See In re Marriott Int'l Customer Data Sec. Breach Litig., No. 19-MD-2879, 2020 WL 5525043, at *3 (D. Md. Sept. 14, 2020) (“[F]or each proposed redaction, ‘the party asserting privilege/protection must do so with particularity for each [redaction], for which privilege/protection is claimed.’”) (quoting Victor Stanley, Inc. v. Creative Pipe, Inc., 250 F.R.D. 251, 267 (D. Md. 2008)).

However, with respect to even those redactions which Prospect marked “Attorney Client Privileged,” Prospect did nothing more than recite that phrase. Prospect did not “describe the nature of the documents, communications, or things not produced or

³⁸ Exhibit 2 (Stipulation and Consent Order dated April 25, 2019) ¶ 1.

disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.”

Withholding requested but allegedly privileged documents without providing a privilege log results in the waiver of any privileges.

The operative language is mandatory and, although the rule does not spell out the sufficiency requirement in detail, courts consistently have held that the rule requires a party resisting disclosure to produce a document index or privilege log. See, e.g., *Bregman v. Dist. of Columbia*, 182 F.R.D. 352, 363 (D.D.C.1998); *First American Corp. v. Al-Nahyan*, 2 F.Supp.2d 58, 63 n. 5 (D.D.C.1998); see also *Avery Dennison Corp. v. Four Pillars*, 190 F.R.D. 1, 1 (D.D.C.1999) (describing privilege logs as “the universally accepted means” of asserting privilege claims in the federal courts); cf. *Vaughn v. Rosen*, 484 F.2d 820 D.C.Ct.App.1973) (articulating the justifications for requiring privilege logs in the context of the FOIA). A party that fails to submit a privilege log is deemed to waive the underlying privilege claim. See *Dorf & Stanton Communications, Inc. v. Molson Breweries*, 100 F.3d 919, 923 (Fed.Cir.1996) (holding that failing “to provide a complete privilege log demonstrating sufficient grounds for taking the privilege” waives the privilege). Although most of the reported cases arise in the context of a claim of attorney-client privilege, the “specify or waive” rule applies equally in the context of claims of work product privilege. See, e.g., *Smith v. Conway Org., Inc.*, 154 F.R.D. 73, 76 (S.D.N.Y.1994).

In re Grand Jury Subpoena, 274 F.3d 563, 575-576 (1st Cir. 2001) (construing Fed. R. Civ. P. 45(d)(2) which is virtually identical to Super. R. Civ. P. 26(b)(5)).

Accordingly, if the Court does not wish to enter an order at this time establishing as a matter of fact that the responsible Prospect Entities failed to make any long-term capital contributions to Prospect Chartercare as defined in the LLC Agreement, Prospect should be ordered to produce all documents that were requested, regardless of whether the documents could have withheld from production based on privilege if a privilege log had been provided, including but not limited to the redactions based on attorney-client privilege.

C. Prospect improperly redacted information

Prospect's document production on September 18, 2020 included at least seventy-eight (78) pages of documents from which portions have been apparently blacked-out, and, therefore, redacted.³⁹ However, Prospect did not provide a log or other list of documents from which it had redacted information. Prospect also did not even identify the blanks in the documents as "redacted." Thus, the only way Plaintiffs can determine this is to review all 2,428 pages of Prospect's document production for areas that appear to have been blacked-out. Plaintiffs have found seventy-eight (78) such pages but cannot be sure that they have found them all.

Of the seventy-eight (78) pages with such redactions, only two (2) pages are marked to show that Prospect claimed attorney client privilege for the redacted information, whereas the remaining seventy-six (76) pages simply have areas blacked-out with no explanation whatsoever for the redaction. Accordingly, Plaintiffs have no idea on what grounds Prospect claims it was entitled to make those redactions.

Prospect certainly was not entitled to redact portions of documents because Prospect claims that the redacted information is irrelevant. That practice would turn document production into an exercise in redaction, since virtually every relevant document has portions that are irrelevant:

Redaction is an inappropriate tool for excluding alleged irrelevant information from documents that are otherwise responsive to a discovery request.⁸ It is a rare document that contains only relevant information. And irrelevant information within a document that contains relevant information may be highly useful to providing context for the relevant information.

³⁹ Compare Exhibit 15 (Prospect document production of September 18, 2020 bates-number 2810, with redaction and no explanation) with Exhibit 16 (Prospect document production of September 18, 2020 bates-number 2811 with redaction and reference to attorney client privilege).

Fed.R.Civ.P. 34 concerns the discovery of “documents”; it does not concern the discovery of individual pictures, graphics, paragraphs, sentences, or words within those documents. Thus, courts view “documents” as relevant or irrelevant; courts do not, as a matter of practice, weigh the relevance of particular pictures, graphics, paragraphs, sentences, or words, except to the extent that if one part of a document is relevant then the entire document is relevant for the purposes of Fed.R.Civ.P. 34. This is the only interpretation of Fed.R.Civ.P. 34 that yields “just, speedy, and inexpensive determination[s] of every action and proceeding.” Fed.R.Civ.P. 1.

Bartholomew v. Avalon Capital Grp., Inc., 278 F.R.D. 441, 451–52 (D. Minn. 2011)

Accordingly, if the Court declines to enter an order at this time establishing as a matter of fact that the responsible Prospect Entities failed to make any long-term capital contributions to Prospect Chartercare as defined in the LLC Agreement, Prospect should be ordered to produce unredacted documents.

D. Prospect improperly claimed that its document production was subject to a confidentiality order that only applied to documents that Prospect had produced voluntarily

All 2,430 pages of Prospect’s document production on September 18, 2020 were marked with the legend “PCC – CONFIDENTIAL – SEE STIPULATION AND CONSENT ORDER ENTERED APRIL 25, 2019.” Prospect sought thereby to limit further disclosure of documents pursuant to the protective order specifically referred in the Stipulation and Consent Order dated April 25, 2019. However, Prospect’s document production was required by the Order entered on July 21, 2020. That Order does not allow Prospect to restrict further disclosure, and certainly does not allow such restriction on grounds of confidentiality.

If Prospect had wanted to limit Plaintiffs’ ability to provide “confidential” documents to third parties, Prospect was required to seek a protective order in connection with its objection to Plaintiffs’ motion to compel production (or at least soon

after the entry of the July 21, 2020 order). Prospect chose not to do so, the resulting order compelling production makes no allowance whatsoever for special treatment of documents that are allegedly confidential, and the time for production arrived without a protective order in place.

Prospect clearly understood that need, which is why on Thursday, September 17, 2020, counsel for Prospect sent counsel for the Plan Receiver an email⁴⁰ attaching “a Stipulated Protective Order in the CCCB case,” and asking if counsel for the Plan Receiver “have any problem with this order governing the documents that Prospect Chartercare LLC is getting ready to produce pursuant to Judge Stern’s July 21, 2020 Order?” Without waiting for a response, Prospect went ahead and claimed confidentiality the next day.

However, it is not appropriate to apply the old protective order to the current production. That protective order expressly states that the order only applied to production of documents that was made by stipulation. In fact, it expressly is limited to “documents produced by PCC pursuant to a Stipulation and Consent Order between the Parties....”⁴¹ Moreover, Prospect refused to stipulate to produce the documents that were the subject of Plaintiffs’ motion to compel production that was granted by the Order dated July 21, 2020. Instead, Prospect objected to the motion, and such

⁴⁰ Exhibit 17 (email from counsel for Prospect to counsel for the Plan Receiver, attaching “Stipulated Protective Order Regarding Prospect Chartercare LLC” entered by stipulation on April 25, 2019).

⁴¹ Exhibit 17 (“Stipulated Protective Order Regarding Prospect Chartercare LLC” entered by stipulation on April 25, 2019 and attached to email dated September 17, 2020 from counsel for Prospect to counsel for the Plan Receiver) ¶ 1 (“This Order shall apply to documents produced by PCC pursuant to a Stipulation and Consent Order between the Parties relating to PCC’s production of certain financial information in connection with CCCB’s and/or the Receiver’s evaluation of the ‘put option’ set forth in the Amended & Restated Limited Liability Company Agreement of Prospect Chartercare, LLC (the “PCC Operating Agreement”)”).

documents are to be produced by court order, not stipulation. Accordingly, the earlier protective order is inapplicable to the documents produced in compliance with that Order.

Prospect is not entitled both to object to producing any documents and to obtain the benefit of a protective order that applies only to documents produced by stipulation. Moreover, Plaintiffs agreed to that order by stipulation. Prospect's prior document production was also by stipulation, i.e. the product of negotiation and give and take between the parties. Plaintiffs agreed to a protective order in connection with that production to accommodate Prospect, because Prospect accommodated Plaintiffs by agreeing to produce documents by stipulation, rather than insisting that Plaintiffs obtain an order compelling production. Plaintiffs also insisted, however, that the protective order expressly state that the order only applied to production of documents that was made by stipulation.

The April 25, 2019 Stipulation and Consent Order provided that, if Prospect failed to comply with the stipulation and order by producing the requested documents, Plaintiffs could file a motion for a new order compelling production. However, nothing in the April 25, 2019 Stipulation and Consent Order provided that the resulting order would be subject to a protective order.

Accordingly, Prospect's designation of its most recent document production as "confidential" is a nullity.

E. Prospect violated the Order's provisions obligating it to produce all documents concerning long-term capital contributions

The Order entered on July 21, 2020 granted the Plan Receiver and Liquidating Receiver's Motion to Compel Production of Documents with respect to "Category 2."⁴²

Category 2 states as follows:

Category 2. DOCUMENTS IDENTIFYING ALL OF THE LONG-TERM CAPITAL CONTRIBUTIONS (AS DEFINED IN LLC AGREEMENT)^[43]

In response to this order, Prospect on September 18, 2020 produced 1,810 pages of documents, bates-numbered 964 to 2774, which Prospect designated as responsive to Category 2.

Prospect's production violated the Order entered July 21, 2020 as to Category 2 as follows:

1. Prospect shuffled the documents

The vast majority of the 1,810 pages are a hodgepodge of invoices and requisitions. However, Prospect produced those documents completely out of chronological order and with the invoices not directly followed by the requisitions that pertain to the invoices or *vice versa*. As a result, secretarial staff employed by counsel for the Plan Receiver spent nearly forty (40) hours attempting to organize those documents into proper order and determine which of them were already produced to Plaintiffs by the Attorney General on January 28, 2020. Even after that effort, it is impossible for Plaintiffs to be certain that all related documents have been identified and correlated so that Plaintiffs' expert can evaluate them.

⁴² Exhibit 1 (Order entered July 21, 2020) ¶ 2 n.4.

⁴³ Exhibit 1 (Exhibit A to Order entered July 21, 2020) at 1.

2. Prospect failed to produce all its communications with AMI, including summaries and spreadsheets, and produced some summaries and spreadsheets only in microscopic type

As noted above, both Plaintiffs and AMI are engaged in the same task of attempting to identify and verify all transactions that Prospect claims should count for its obligation to make long-term capital contributions and routine capital contributions. AMI is operating under the authority of the Attorney General to evaluate the extent of Prospect's compliance with the conditions of the Attorney General's approval of Prospect's acquisition of Fatima and Roger Williams Hospital in 2014. Plaintiffs are proceeding pursuant to court order to obtain documents they need to intelligently decide whether to exercise the Put option.

Thus, by definition, Prospect's communications and document exchanges with AMI concerning that subject fall within Category 2 and should have been produced. However, Prospect has failed to produce to Plaintiffs any of its letters or emails with AMI. Such letters exist, as shown by the fact that the documents which Plaintiffs received from the Attorney General on January 28, 2020 includes at least one letter from AMI to Prospect concerning Prospect's "capital commitment obligations,"⁴⁴ and a letter from Prospect to the Attorney General enclosing and explaining documents concerning that commitment.⁴⁵

Moreover, the exhibits to AMI's reports refer to and purport to summarize extensive communications back and forth between AMI and Prospect concerning

⁴⁴ Exhibit 5.

⁴⁵ Exhibit 6.

documents and proofs of payment.⁴⁶ Prospect produced no such documents. These exchanges by their nature would be expected to have been in writing, and also to have resulted in internal notes and memoranda by Prospect employees. Indeed, it appears that AMI and Prospect worked very closely together on numerous occasions over an extended period of time.⁴⁷ However, Prospect has produced no letters between it and AMI, and no notes or internal memoranda concerning those communications.

In addition, it appears from AMI's reports that AMI has required Prospect to provide summaries and spreadsheets concerning the transactions for which Prospect seeks credit as long-term capital contributions.⁴⁸ Prospect's document production to Plaintiffs includes very few such summaries and spreadsheets, and those few are sprinkled through the document production in apparently random order. Moreover, most of those documents are produced in such microscopic type that they are essentially illegible.⁴⁹

In short, Prospect is supposedly cooperating with AMI, at least to a certain extent, but is completely obfuscating the issues when it comes to Plaintiffs. In other words, Prospect is failing to accord the same respect to the Court's Order as it is according to the requests of the Attorney General.

Accordingly, if the Court does not wish to enter an order at this time establishing as a matter of fact that the responsible Prospect Entities failed to make any long-term

⁴⁶ Exhibit 18 (excerpts from Attachment 1 to AMI's Second Interim Report dated as of March 30, 2020).

⁴⁷ See Exhibit 18 (excerpts from Attachment 1 to AMI's Second Interim Report dated as of March 30, 2020).

⁴⁸ See Exhibit 18 (excerpts from Attachment 1 to AMI's Second Interim Report dated as of March 30, 2020).

⁴⁹ See Exhibit 19 (Prospect document production on September 18, 2020) bates-number 1378.

capital contributions to Prospect Chartercare as defined in the LLC Agreement, Prospect should be compelled to produce all documents it provided to or received from AMI, including all summaries and spreadsheets with normal font size, correspondence, notes, internal memoranda, and records of transactions.

II. Plaintiffs are entitled to a further extension of time to exercise the Put option

As noted above, under the terms of the order entered on July 21, 2020, “[o]nce CCCB receives the documents and information from PCC, the time by which CCCB must exercise the Put Option is sixty (60) days from the date thereof.” CCCB has not been permitted to obtain the information it needs by inspecting the books and records of prospect, and Prospect has not produced all of the documents it was ordered to produce and has not submitted a privilege log. Accordingly, the sixty (60) day period has not yet begun.

However, given the enormous consequence if Plaintiffs are unable to exercise the Put option within the time allowed, Plaintiffs ask the Court to confirm that this construction of the order entered on July 21, 2020 is correct, and that, therefore, the sixty (60) day period has not yet begun. In the alternative, assuming (*arguendo*) that the sixty (60) day period has begun, it would expire on November 18, 2020. In an excess of caution, Plaintiffs ask the Court to order a further extension of sixty (60) days from the date of the Court’s Order deciding this motion, or when CCCB receives the documents and information the Court orders Prospect to provide pursuant to this motion, whichever is later.

III. Plaintiffs are entitled to sanctions, including an order establishing facts and an award of attorneys' fees

A. The Super. R. Civ. P. 37(b) standard

Plaintiffs seek an Order compelling the Prospect Entities to produce documents, to allow Plaintiffs' expert to inspect and copy their records, and to provide a privilege log.

However, Plaintiffs' motion is brought pursuant to Super. R. Civ. P. 37(b), for failure to comply with the Court's order. In other words, Plaintiffs are not merely seeking an order compelling discovery under Rule 37(a). Rule 37(b) sets forth a range of consequences for failure to comply with an order, including that the Court may "order that the matters regarding which the order was made, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order." Super. R. Civ. P. 37(b)(2)(A).

B. The Court should establish as fact that the Prospect Entities did not make any of the required long-term capital contributions

The key matter with which the Order entered on July 21, 2020 was concerned was the Prospect Entities' failure to provide discovery concerning whether and the extent to which they made long-term capital contributions as defined in the LLC Agreement, which discovery Prospect was required to provide pursuant to the terms of the April 25, 2019 Stipulation and Consent Order. Thus, the Order entered July 21, 2020 was already an order compelling Prospect to comply with a prior order. Simply ordering them now to produce documents and perform other actions that were already required by the Order entered on July 21, 2020 would impose no consequence on the Prospect Entities for violating both that Order and the Stipulation and Consent Order

dated April 25, 2019. In other words, merely ordering Prospect to comply with a prior order is not sufficient, especially when that prior order was based upon the failure to comply with an earlier order. The Court cannot be expected to have to issue three orders before Prospect complies. Parties must be sanctioned for willfully violating court orders, especially repeat violators.

It is appropriate, therefore, that the Court sanction Prospect for violating the order entered on July 21, 2020 by entering an order establishing as a matter of fact that the responsible Prospect Entities failed to make any long-term capital contributions to Prospect Chartercare as defined in the LLC Agreement, in accordance with Rule 37(b)(2)(A) (allowing an “order that the matters regarding which the order was made, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order”).

In addition to being justified by Prospect’s violation of the Order entered July 21, 2020, that finding is consistent with the documents that Prospect did produce. Section 1 of the LLC Agreement provides in relevant part:

1. DEFINITIONS. As used herein, including Exhibit A attached hereto, the following terms have the following meanings:

* * *

1.26 "Long-Term Capital Commitment" means the Prospect Member's [Prospect East's] obligation to contribute additional capital to the Company [Prospect Chartercare] in the aggregate amount of (i) \$50,000,000 over a four (4)-year period (which shall be in addition to the routine capital investment by the Company [Prospect Chartercare] and the Company Subsidiaries of at least \$10,000,000 per year), less (ii) any amount or amounts with respect to which the Prospect Member exercises its right, from time to time, to an offset pursuant to the provisions of Section 17.2 below and Sections 2.9(e) and 14.8 of the Purchase Agreement.

Section 4.2(b) of the LLC Agreement provides:

4.2 Additional Capital Contributions.

* * *

(b) The Prospect Member [Prospect East] hereby commits to make additional Capital Contributions to the Company [Prospect Chartercare] in an aggregate amount of the Long-Term Capital Commitment, to be made within four (4) years of the date of this Agreement [June 20, 2014] at such times and in such increments as the Board of Directors causes the Manager to request. With respect to each request for a Capital Contribution from the Prospect Member pursuant to the Long-Term Capital Commitment: (i) such request shall be supported by a return-on-investment calculation or a material needs assessment (in each case, acceptable to both Members); and (ii) the Capital Contributions shall neither reduce CCHP's interest or Units in the Company nor increase the Prospect Member's interest or Units in the Company. Subject to the foregoing, and except as otherwise provided in Sections 4.2(c) and (d) below, the Company shall cause the Long-Term Capital Commitment to be used by the Company or the Company Subsidiaries on (x) the development and implementation of physician engagement strategies, and (y) projects related to facilities and equipment ("Capital Projects"). . . .

Thus, to prove that any expenditure qualified as a long-term capital contribution under the LLC Agreement, Prospect must:

- a. prove it was made for either "the development and implementation of physician engagement strategies," or "projects related to facilities and equipment"
- b. Provide the return-on-investment calculation or material needs assessment performed prior to each such contribution;
- c. Document Prospect Chartercare, LLC's board of directors' approval for each such contribution;
- d. Document CharterCARE Community Board's ("CCCB's") approval for each such contribution; and
- e. Document how each such contribution was recorded in the companies' books, including proving that any such contribution was not included in Prospect East's member's account.

The Order entered on July 21, 2020 was tailored to these requirements. The Order granted Plaintiffs' motion and required production of:

Category 2.: DOCUMENTS IDENTIFYING ALL OF THE LONG-TERM CAPITAL CONTRIBUTIONS (AS DEFINED IN LLC AGREEMENT)

Category 3: ALL RETURN-ON-INVESTMENT ANALYSES FOR ANY TRANSACTION CLAIMED TO BE A LONG-TERM CAPITAL CONTRIBUTION

Category 4: ALL CAPITAL NEEDS ASSESSMENTS FOR ANY TRANSACTION CLAIMED TO BE A LONG-TERM CAPITAL CONTRIBUTION

Category 5: ALL DOCUMENTS SHOWING NOTICE TO CCCB OF ##2, 3 OR 4

Category 6: ALL DOCUMENTS SHOWING THAT ##2, 3 OR 4 WERE ACCEPTABLE TO CCCB^[50]

Prospect purported to comply with this order and produced documents on

September 18, 2020. However, Prospect produced:

- no documents showing a return on investment analysis for any of the alleged long-term capital contributions;
- no documents showing a capital needs assessment for any of the alleged long-term capital contributions;
- no documents showing notice to CCCB of any long-term capital contributions, return-on-investment analyses, or capital needs assessments, for any of the alleged long-term capital contributions; and
- no documents showing that any of the alleged long-term capital contributions, return-on-investment analyses, or capital needs assessments were acceptable to CCCB.

Prospect did not seek to excuse its failure to produce such documents; it simply failed to produce any. Thus, it is clear no such documents exist, and, therefore, that these requirements were not met.

⁵⁰ Compare Exhibit 1 (Exhibit A to Order entered July 21, 2020) at 1 with Exhibit 1 (id.) ¶¶ 2-6.

C. The Court should order Prospect to designate and submit a knowledgeable witness

If the Court chooses not to enter an order establishing as a matter of fact that the responsible Prospect Entities failed to make any long-term capital contributions to Prospect Chartercare as defined in the LLC Agreement, the Court should order Prospect to designate and submit for deposition a knowledgeable witness who can explain and address every transaction that Prospect claims should be counted for purposes of its obligation to make long-term and routine capital contributions. It is apparent that Prospect's mere production of documents without a witness explaining Prospect's contentions will not enable Plaintiffs to understand the facts, especially given the lengths that Prospect has gone to make its document production unintelligible.

D. The Court should award Plaintiffs their reasonable attorneys' fees

Super. R. Civ. P. 37(b)(2) expressly provides that the sanctions for violating an order may include the Court requiring "the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure..." Accordingly, Plaintiffs request that the Court award them their reasonable attorneys' fees in connection with the Prospect Entities' violation of the Order entered on July 21, 2020, including the filing of this motion, any reply memorandum, and attendance at the hearing on this motion.

CONCLUSION

The Court should enter an order granting the Plan Receiver and the Liquidating Receiver the relief requested herein.

Respectfully submitted,

Stephen Del Sesto as Receiver,

By his Attorney,

/s/ Stephen P. Sheehan

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by its Liquidating Receiver

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Dated: October 16, 2020

CERTIFICATE OF SERVICE

I hereby certify that, on the 16th day of October, 2020, 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/ Benjamin Ledsham

Exhibit 1

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD :
:
v. :
:
SAMUEL LEE, ET AL. :

C.A. No. PC-2019-3654

ORDER

STERN, J. This matter came to be heard on June 23, 2020, and July 8, 2020,¹ on Stephen Del Sesto, as Receiver (the Plan Receiver) for the St. Joseph Health Services of Rhode Island Retirement Plan (the Plan), and Thomas Hemmendinger's, as Liquidating Receiver (the Liquidating Receiver) of CharterCARE Community Board (CCCB), St Joseph Health Services of Rhode Island (SJHSRI), and Roger Williams Hospital (RWH), motion to compel production of documents and other information from Prospect Chartercare, LLC (PCC)² and motion for injunctive or equitable relief. After considering oral and written arguments, it is hereby

¹ On the morning of the July 8, 2020, hearing, Attorney Sheehan—counsel to the Plan Receiver—sent to the Court a letter signed by five members of Congress concerning Prospect. Counsel requested that the letter be made a part of the hearing record. As the Court indicated during the hearing, after reviewing the letter it would determine whether the letter was relevant to the Court's decision. After review, the Court finds that the letter is not relevant to the instant motion because it does not have any bearing on whether the information requested is reasonably required to evaluate the Put Option.

² CCCB asserts that pursuant to a stipulation and consent order entered by this Court on April 25, 2019 (Consent Order), CCCB is permitted to request additional information as reasonably required in connection with the evaluation of the Put Option. CCCB asserts that on January 21, 2020, and January 30, 2020, it requested answers to 20 questions, access to 10 categories of information, and information regarding the financial condition of Prospect Medical and Prospect East. CCCB asserts that it is entitled to the requested information and it is information necessary for the expert's evaluation of the Put Option. PCC objected to CCCB's request, arguing that it had already complied with the language and spirit of the Consent Order by producing all of the financial information requested by CCCB and complying with the Court's October 3, 2019, Order, which required PCC to produce specific financial information. PCC avers that the information now requested is well beyond the scope of the Consent Order because CCCB requests information to conduct an actual appraisal, not information limited to evaluating whether to begin the Put Option process. PCC also contends that the information requested is not presently available and in existence, and would need to be specifically prepared and would require interviews with multiple PCC employees. PCC also argues that information regarding the financial condition of Prospect Medical and Prospect East are not relevant to the valuation of PCC.

ORDERED, ADJUDGED & DECREED³

1. **Category 1:** PCC shall produce the financial statements for PCC from fiscal year ending 9/30/17 to present, including audited financial at least through 9/30/19 and internally prepared statements to the present.⁴ The remaining information requested is denied.
2. **Category 2:** Granted.
3. **Category 3:** Granted.
4. **Category 4:** Granted.
5. **Category 5:** Granted.
6. **Category 6:** Granted.
7. **Category 7:** PCC shall produce documents showing all liens or encumbrances, whether recorded or unrecorded, on the real or personal property of PCC. The remaining information requested is denied.
8. **Category 8:** The Court reserves on the Plan and Liquidating Receivers' request for documents showing any obligations of the Prospect Entities to third parties outside the usual course of business, including under the 2019 sale-leaseback agreement, in order to allow PCC to update financial statements to clarify that PCC is not a pledger on the sale-leaseback with Medical Properties Trust, Inc.
9. **Category 9:** Denied; the LLC Agreement provides a specific process for the parties to engage in once the election has been made, including hiring of appraisers and furnishing of information to the appraisers, and the Consent Order in no way entitles CCCB to information it would only be allowed access to during a formal appraisal

³ Following the June 23, 2020 hearing, the parties were to meet and confer and determine what categories of information they could not reach an agreement on. On July 7, 2020, the Court received a correspondence from Attorney Sheehan which included eleven categories of information. Accordingly, this Order is limited to those eleven categories of information, which is attached hereto as **Exhibit A**; the Court assumes that any remaining documents or requests sought through the motion to compel filed on February 20, 2020 which are not encompassed within these eleven categories of information have been resolved by the parties.

⁴ In accordance with the April 25, 2019 Stipulation and Consent Order, any information ordered to be produced pursuant hereto must be available to PCC and shall not include documents that are subject to the attorney-client privilege, joint defense privilege and/or attorney work product doctrine.

process. CCCB may not use the Consent Order as a means of foregoing a formal election and collecting information to establish a valuation.

10. **Category 10**: The Court reserves on the Plan and Liquidating Receivers' request for five years of financial statements for all entities that are leasees under or guaranteed the lessees' obligations under the sale-leaseback financing documents in order to allow PCC to update financial statements to clarify that PCC is not a pledger on the sale-leaseback with Medical Properties Trust, Inc.
11. **Category 11**: Denied; the requested information is overly broad and not reasonably required to evaluate whether to exercise the Put Option. Moreover, information regarding any pending transactions involving or affecting PCC may be available via a books and records request in accordance with ¶ 12 of this Order.
12. **Books and Records**: Pursuant to the LLC Agreement, CCCB is permitted full access to PCC's books and records, and those books and records must be made available for inspection by CCCB and/or its duly authorized representatives. PCC has not objected to CCCB's right to access the books and records and, therefore, PCC is ordered to give CCCB access to the books and records provided, however, that CCCB must make a more specific request regarding what books and records it is seeking so as to allow PCC to search for and produce the appropriate documents. Nothing in this Order is meant to limit the types and scope of the books and records available in accordance with the LLC Agreement.
13. **Extension of the Put Option**: Pursuant to ¶ 3 of the Consent Order, the Court extends the time by which CCCB must exercise the Put Option until PCC complies with this Order and produces the required documents and information provided, however, that PCC must comply in no longer than sixty (60) days. Once CCCB receives the documents and information from PCC, the time by which CCCB must exercise the Put Option is sixty (60) days from the date thereof. PCC has a continuing duty to disclose and update the documents and information until the Put Option is exercised or lapses.

ENTER:

Brian P. Stern, J.
Stern, J.
Dated: July 21, 2020

PER ORDER:

/s/ Carin Miley
Deputy Clerk I
July 21, 2020

EXHIBIT A

Category 1: FINANCIAL STATEMENTS FOR PROSPECT MEDICAL HOLDINGS, INC., PROSPECT CHARTERCARE, LLC, PROSPECT CHARTERCARE SJHSRI, LLC, OR PROSPECT CHARTERCARE RWMC, LLC FROM FISCAL YEAR ENDING 9/30/17 TO PRESENT including:

- a. AUDITED FINANCIALS AT LEAST THROUGH 9/30/19[; and]**
- b. INTERNALLY PREPARED STATEMENTS TO THE PRESENT**

Category 2. DOCUMENTS IDENTIFYING ALL OF THE LONG-TERM CAPITAL CONTRIBUTIONS (AS DEFINED IN LLC AGREEMENT)

Category 3: ALL RETURN-ON-INVESTMENT ANALYSES FOR ANY TRANSACTION CLAIMED TO BE A LONG-TERM CAPITAL CONTRIBUTION

Category 4: ALL CAPITAL NEEDS ASSESSMENTS FOR ANY TRANSACTION CLAIMED TO BE A LONG-TERM CAPITAL CONTRIBUTION

Category 5: ALL DOCUMENTS SHOWING NOTICE TO CCCB OF ##2, 3 OR 4

Category 6: ALL DOCUMENTS SHOWING THAT ##2, 3 OR 4 WERE ACCEPTABLE TO CCCB

Category 7: DOCUMENTS SHOWING ALL LIENS OR ENCUMBERANCES ON THE REAL OR PERSONAL PROPERTY OF PROSPECT CHARTERCARE, LLC, PROSPECT CHARTERCARE SJHSRI, LLC, OR PROSPECT CHARTERCARE RWMC, LLC

Category 8: DOCUMENTS SHOWING ANY OBLIGATIONS OF PROSPECT CHARTERCARE, LLC, PROSPECT CHARTERCARE SJHSRI, LLC, OR PROSPECT CHARTERCARE RWMC, LLC TO THIRD PARTIES OUTSIDE THE USUAL COURSE OF BUSINESS, INCLUDING UNDER THE 2019 SALE-LEASEBACK AGREEMENT

Category 9: ANY VALUATIONS OF PROSPECT CHARTERCARE, LLC, PROSPECT CHARTERCARE SJHSRI, LLC, OR PROSPECT CHARTERCARE RWMC, LLC PERFORMED OVER THE LAST 5 YEARS

Category 10: FIVE YEARS OF FINANCIAL STATEMENTS FOR ALL ENTITIES THAT ARE LEASEES UNDER OR GUARANTEED THE LESSEES' OBLIGATIONS UNDER THE SALE-LEASEBACK FINANCING DOCUMENTS

Category 11: ANY PENDING OR CONTEMPLATED TRANSACTIONS INVOLVING OR AFFECTING PROSPECT MEDICAL HOLDINGS, INC., PROSPECT EAST HOLDINGS, INC., PROSPECT CHARTERCARE, LLC, PROSPECT CHARTERCARE SJHSRI, LLC, AND/OR PROSPECT CHARTERCARE RWMC, LLC THAT ARE OR MAY BE IN ANY WAY CONTINGENT UPON OR POSSIBLY AFFECTED BY WHETHER OR NOT THE PUT OPTION IS EXERCISED.

Exhibit 2

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD

:
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:
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:
:

v.

C.A. No.: PC-2019-3654

SAMUEL LEE, ET AL

STIPULATION AND CONSENT ORDER

Prospect Chartercare, LLC ("PCC"), Prospect Chartercare SJHSRI, LLC, Prospect Chartercare RWMC, LLC, Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., and Prospect East Hospital Advisory Services, LLC (all collectively the "Prospect Entities"), and CharterCARE Community Board ("CCCB"), having stipulated and consented to the entry of this Order, it is hereby:

ORDERED:

1. On or before May 15, 2019, PCC will provide CCCB with financial information in connection with CCCB's evaluation of the "put option" as requested by CCCB in correspondence dated September 20, 2018, October 2, 2018, October 3, 2018, and November 6, 2018. Thereafter, CCCB may by email request such additional information as CCCB reasonably requires in connection with the evaluation of the "put option" under the Prospect Chartercare, LLC Agreement (the "LLC Agreement"), and PCC will provide such information within fifteen (15) days of such email(s), provided the information is available. PCC shall not be required pursuant to this Stipulation and Consent Order to produce documents that are subject to the attorney-client privilege, joint defense privilege and/or attorney work product doctrine, provided that any objections to production of documents pursuant to this Order on the basis of attorney-client privilege, joint defense privilege and/or attorney work product doctrine are noted at the time for production, and any documents withheld from production based on such objections are identified in a privilege log in accordance with the requirements of Super. R. Civ. P. 26(b)(5)&(7). If the parties disagree over whether any information that CCCB requests is relevant for the valuation process, or that claims of attorney-client privilege, joint defense privilege and/or attorney work product doctrine should be overruled and production of documents should be compelled, the parties may seek a resolution of such dispute on an expedited basis from Judge Stern.

2. CCCB shall be authorized to share information produced by PCC with Stephen Del Sesto, the Receiver for St. Joseph's Health Services of Rhode Island Retirement Plan ("the Receiver"), and each of their respective attorneys, accountants and experts solely for the purpose of evaluating the "put option" so that the Receiver may participate fully and without restriction in the valuation and exercise of the "put option". All such information that PCC designates as "PCC-CONFIDENTIAL" will remain confidential

Filed in PSC Court
Date 4/25/19
Carin Miley *Deputy* Clerk

pursuant to the provisions of a Protective Order (attached), and such confidentiality shall continue unless CCCB and /or the Receiver obtain a court order in this case or in the federal court litigation filed by the Receiver lifting the confidentiality restriction.

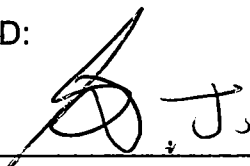
3. The parties to the LLC Agreement agree to modify the ninety (90) day period within which the put option created in Section 14.5 of the LLC Agreement can be exercised to the ninety (90) day period commencing September 21, 2019 and ending on December 20, 2019. If in the judgment of CCCB and the Receiver (or solely the Receiver if the settlement is approved by the Federal Court prior to such date) the option cannot in good faith be appraised and exercised by December 20, 2019 based on the information received, then, prior to the expiration of the period, CCCB (or solely the Receiver if the settlement is approved by the Federal Court prior to such date) reserves the right to seek a hearing on the already pending injunctive relief motion (filed on March 18, 2019) heard by the Court as soon as reasonably practical; and to ensure the exercise period does not expire while that motion is pending, the option exercise period shall be extended for an additional period extending for twenty (20) business days following the entry of an order by the Court on the request for a further extension of the option exercise period, provided, however that the extension during the pendency of the motion shall not exceed thirty (30) days from the date of the hearing on the request. The provisions of Section 14.6 of the LLC Agreement regarding the valuation process are not affected by this agreement except as expressly provided herein.

4. Except as to the motion for injunctive relief addressed above, a motion for relief from the confidentiality provision of the protective order, or a motion to enforce this Stipulation and Consent Order, the pending litigation commenced by CCCB will be stayed until twenty (20) days after any party to this agreement provides written notice to all parties withdrawing agreement to the stay or until December 20, 2019, whichever is later. Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., and PCC shall be free to proceed with their motion for leave to sue CCCB in connection with the LLC Agreement, but in the event that leave is granted, the Prospect Entities agree to stay that litigation until twenty (20) days after any party to this agreement provides written notice to all parties withdrawing agreement to the stay or until December 20, 2019, whichever is later. In the event that the Court denies the stay or does not grant the stay within the period for the defendants to respond to the case, the Prospect Entities agree to dismiss the case without prejudice, all defendants agree not to object to such dismissal without prejudice, and the parties to this agreement agree that the statute of limitations with respect to any claim that in plaintiffs' judgment may be impacted by the dismissal is tolled until twenty (20) days after any party to this agreement gives written notice to all parties withdrawing agreement to the stay or until December 20, 2019, whichever is later. CCCB, Roger Williams Hospital, St. Joseph Health Services of Rhode Island, and the Receiver agree that plaintiffs will not be prejudiced as a result of such voluntary dismissal.

5. The Prospect Entities, CCCB, Roger Williams Hospital and St. Joseph Health Services of Rhode Island agree not to bring any other proceeding against each other, or any of their officers, directors, agents, or attorneys until twenty (20) days after any party to this agreement provides written notice to all parties or until December 20, 2019, whichever is later. Notwithstanding the foregoing, the parties shall be free to assert

claims against each other arising out of future conduct or events that may hereafter arise. In addition, the Prospect Entities shall (a) be free to assert any claims, cross-claims and third-party claims in the pending federal court litigation and in the pending Rhode Island state court litigation filed by the Receiver in the event that the stay of the Superior Court case is lifted and (b) upon leave of the Court in the Receivership action, be free to file and pursue administrative proceedings relating to the hospitals arising out of federal court approval of the Receiver's settlement agreement with CCCB.

ORDERED:

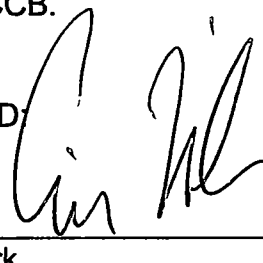


Stern, J.

Dated:

4/25/19

ENTERED:



Dep. Clerk

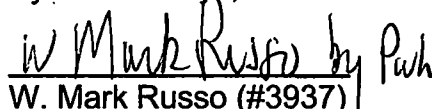
Dated:

4/25/19

Stipulated to and presented by:

PROSPECT CHARTERCARE, LLC
PROSPECT CHARTERCARE SJHSRI, LLC, AND
PROSPECT CHARTERCARE RWMC, LLC,

By its Attorneys,



W. Mark Russo (#3937)

Ferrucci Russo P.C.

55 Pine Street, 3rd Floor

Providence, RI 02903

Tel.: (401) 455-1000

mrusso@frlawri.com

PROSPECT MEDICAL HOLDINGS, INC.,
PROSPECT EAST HOLDINGS, INC., AND
PROSPECT EAST HOSPITAL ADVISORY SERVICES, LLC

By its Attorneys,



Preston W. Halperin, Esq. (#5555)

Dean J. Wagner, Esq. (#5426)

Christopher J. Fragomeni, Esq. (#9476)

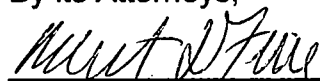
Shechtman Halperin Savage LLP

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Pawtucket, RI 02860

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phalperin@shslawfirm.com
dwagner@shslawfirm.com
cfragomeni@shslawfirm.com

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By its Attorneys,



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STEPHEN DEL SESTO,
RECEIVER FOR THE ST. JOSEPH HEALTH
SERVICES RETIREMENT PLAN

By his Attorneys,



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Stephen P. Sheehan (#4030)
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STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD

:

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v.

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C.A. No.: PC-2019-3654

:

SAMUEL LEE, ET AL

:

STIPULATED PROTECTIVE ORDER
REGARDING PROSPECT CHARTERCARE LLC

Upon agreement of Plaintiff Chartercare Community Board (“CCCB”), Defendant, Prospect Chartercare LLC. (“PCC”) and third-party Stephen Del Sesto, Receiver (“Receiver”) for the St. Joseph Health Services of Rhode Island Retirement Plan (collectively the “Parties”) for Entry of a Stipulated Protective Order regarding the production of confidential and/or proprietary information, and the Court having reviewed and considered the proposed order, and good cause appearing therefor, it is hereby:

ORDERED:

1. **Scope.** This Order shall apply to documents produced by PCC pursuant to a Stipulation and Consent Order between the Parties relating to PCC’s production of certain financial information in connection with CCCB’s and/or the Receiver’s evaluation of the “put option” set forth in the Amended & Restated Limited Liability Company Agreement of Prospect Chartercare, LLC (the “PCC Operating Agreement”).

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 produced by PCC that bears the legend "PCC-CONFIDENTIAL" to signify that it contains information deemed to be confidential by the producing party. It shall not include documents that CCCB or the Receiver obtains from another source.

3. **Duty of PCC in designating Confidential Material.** Documents shall not be designated as Confidential Material unless the documents are not publicly available, or contain personal identifying information (meaning social security numbers or other information of a non-public nature) of third parties.

4. **Permissible Disclosure of Confidential Material.** Notwithstanding Paragraph 2, Confidential Material may be disclosed to (a) to CCCB; (b) to the Receiver; (c) to counsel for the Receiver and/or CCCB; (d) to the associates, secretaries, paralegal assistants and employees of such counsel to the extent reasonably necessary to render professional services; (e) to consultants, experts, or investigators retained for the purpose of assisting such counsel; to (f) persons with prior knowledge of the Confidential Material and their agents; and to (g) 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 (e) above, any party or counsel making Confidential Material available 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 promptly be provided to counsel for PCC.

5. **Confidential Information subpoenaed or requested by a court, administrative or legislative body.** If Confidential Information in the possession of a party or its counsel is subpoenaed or otherwise requested by any court, administrative or legislative body, or any other person purporting to have authority to subpoena or request such information, the party receiving the subpoena shall give written notice of the subpoena or request to counsel for PCC five (5) business days prior to the time when production of the information is required. In the event that the subpoena/request purports to require production of such Confidential Information on less than five (5) business days' notice, the party receiving the subpoena shall give immediate telephonic notice of the receipt of such subpoena or request, and forthwith deliver by hand, email, or facsimile a copy thereof, to counsel for PCC. Absent a further court order to the contrary, the party receiving the subpoena may comply with the subpoena or request.

6. **Declassification.** In the event that CCCB or the Receiver seeks to disclose Confidential Material in a manner outside of what is provided in Paragraph 4 or 5, CCCB or the Receiver 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 counsel for PCC. PCC 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. PCC shall have five (5) days in which to file a reply. Alternatively, CCCB and /or the Receiver may seek to obtain a court order in the federal court litigation filed by the Receiver against PCC lifting the confidentiality restriction.

7. **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 6, 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.

8. **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 PCC sufficiently in advance so as to enable it 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.

9. **No Waiver.**

- (a) Review of Confidential Material by any persons identified in Paragraph 4, 6 or 7 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

PCC inadvertently or unintentionally produces any Confidential Material without marking or designating it as such in accordance with the provisions of this Order, PCC 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.

10. **Inadvertent Production of Privileged Material.** CCCB, the Receiver, counsel to CCCB and/or to the Receiver, PCC, and counsel to PCC 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.

11. **Privilege Log.** PCC shall not be required pursuant to this Order to produce documents that are subject to the attorney-client privilege, joint defense privilege and/or attorney work product doctrine, provided that any objections to production of documents on the basis of attorney-client privilege, joint defense privilege and/or attorney work product doctrine are noted at the time for production, and any documents withheld from production based on such objections are identified in a privilege log in accordance with the requirements of Super. R. Civ. P. 26(b)(5)&(7).

12. **Survival.** The terms of this Order shall survive the conclusion of this matter. Counsel to CCCB and/or to the Receiver and/or to PCC may move the Court for an order addressing the post-conclusion treatment of Confidential Material.

13. **Amendment or Modification of Order.** This Order may be amended or modified by this Court upon notice to CCCB, the Receiver, and PCC.

ORDERED:

ENTERED:

Stern, J.

Dep. Clerk

Dated:

Dated:

EXHIBIT 1

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD :
v. : C.A. No.: PC-2019-3654
SAMUEL LEE, ET AL :

ACKNOWLEDGEMENT

The undersigned declares and states as follows:

1. I have read the attached Order, dated April __, 2019 ("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: _____

Exhibit 3

**STATE OF RHODE ISLAND
DEPARTMENT OF ATTORNEY GENERAL**

May 16, 2014

DECISION

Re: Initial Hospital Conversion Application of Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE, LLC, Prospect CharterCARE RWMC, LLC, Prospect CharterCARE SJHSRI, LLC, and Roger Williams Medical Center, St. Joseph Health Services of Rhode Island, CharterCARE Health Partners

The Department of Attorney General has considered the above-referenced application pursuant to R.I. Gen. Laws §§ 23-17.14-1, *et seq.*, the Hospital Conversions Act. In accordance with the reasons outlined herein, the application is **APPROVED WITH CONDITIONS**.

I. BACKGROUND

The first step in traversing the Hospital Conversions Act is the filing of an initial application with the Department of Attorney General (the “Attorney General”) and Rhode Island Department of Health (“DOH”). The parties filed their initial application (“Initial Application”) on October 18, 2013. The parties (collectively, “Transacting Parties”) to the Initial Application are identified below:

- **Roger Williams Medical Center (“RWMC”)**, a 220-bed acute care, community hospital located in Providence, Rhode Island. RWMC is a wholly-owned subsidiary of CharterCARE Health Partners (“CCHP”).¹
- **St. Joseph Health Services of Rhode Island (“SJHSRI”)**², a 278-bed acute care, community hospital located in North Providence, Rhode Island. SJHSRI’s ownership structure is such that CCHP is the sole Class A Member and the Bishop of Providence is the sole Class B Member.

¹ RWMC and SJHSRI will at times be referred to as the “Existing Hospitals” or “Heritage Hospitals.”

² Commonly known as Our Lady of Fatima Hospital

- **CharterCARE Health Partners**, The Existing Hospitals were converted to the current CCHP structure pursuant to a decision issued by DOH and the Attorney General in July 2009.
- **Prospect Medical Holdings, Inc.** (“PMH”) The Acquiror, pre-conversion, is an organizational structure existing under a parent entity, Prospect Medical Holdings, Inc. PMH is a Delaware corporation with its principal place of business located in Los Angeles, California. PMH is a health care services company that owns and operates hospitals and manages the provision of health care service for managed care enrollees through its network of specialists and primary care physicians.
- **Prospect East Holdings, Inc.** (“Prospect East”) a Delaware corporation which is a wholly-owned subsidiary of PMH. Prospect East will hold PMH’s interest in Prospect CharterCARE, LLC and the Newco Hospitals post-conversion.
- **Prospect East Hospital Advisory Services, LLC** (“Prospect Advisory”), a Delaware limited liability company, which is a wholly-owned subsidiary of PMH. Prospect Advisory will oversee and assist in the management of the day-to-day operations of Prospect CharterCARE, LLC post-conversion.
- **Prospect CharterCARE, LLC**, a Rhode Island limited liability company, which will own the entities that own and operate and hold licensure for the hospitals, post-conversion, the Newco RWMC and Newco Fatima³ (defined below). Prospect CharterCARE, LLC will be owned 85% by Prospect East and 15% by CCHP. However, the governing board of Prospect CharterCARE, LLC will be a 50/50 board as explained herein.
- **Prospect CharterCARE RWMC, LLC** (“Newco RWMC”), is a Rhode Island limited liability company, which will own and hold the licensure for Roger Williams Medical Center post-conversion. Newco RWMC will be wholly-owned by Prospect CharterCARE, LLC.
- **Prospect CharterCARE SJHSRI, LLC** (“Newco Fatima”) is a Rhode Island limited liability company, which will own and hold the licensure for Our Lady of Fatima Hospital post-conversion. Newco Fatima will be wholly-owned by Prospect CharterCARE, LLC.

See Response to Initial Application Question 1 and Exhibits C10A-1 through A-6; C10A-12 through 14; 10A-7 through 11 and 10 B, C and D⁴.

³ Newco RWMC together with Newco Fatima shall collectively hereinafter be referred to as “Newco Hospitals”.

⁴ For the purposes of this Decision, Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE, LLC, and its “Subsidiaries”, Prospect CharterCARE RWMC, LLC, and Prospect CharterCARE SJHSRI, LLC, will be called collectively “Prospect”; Roger Williams Medical Center, St. Joseph

In its simplest form, the structure of the transaction outlined in the Initial Application (the “Proposed Transaction”) is a sale of the assets of CCHP to PMH.

PMH is proposing to form Prospect CharterCARE, LLC. PMH will retain an 85% ownership interest in Prospect CharterCARE, LLC. CCHP will be provided a 15% ownership interest in Prospect CharterCARE, LLC. The governing structure, however, will be such that PMH’s ownership interest will appoint 50% of the membership of the Prospect CharterCARE, LLC board, and CCHP’s ownership interest will appoint 50% of the membership of the Prospect CharterCARE, LLC board. The Transacting Parties refer to this concept as a “50/50 board.”

II. REVIEW CRITERIA

The review criteria utilized by the Attorney General for a hospital conversion involving a conversion of a non-profit hospital to a for-profit hospital⁵ is as follows:

- (1) Whether the proposed conversion will harm the public's interest in trust property given, devised, or bequeathed to the existing hospital for charitable, educational or religious purposes located or administered in this state;
- (2) Whether a trustee or trustees of any charitable trust located or administered in this state will be deemed to have exercised reasonable care, diligence, and prudence in performing as a fiduciary in connection with the proposed conversion;
- (3) Whether the board established appropriate criteria in deciding to pursue a conversion in relation to carrying out its mission and purposes;
- (4) Whether the board formulated and issued appropriate requests for proposals in pursuing a conversion;
- (5) Whether the board considered the proposed conversion as the only alternative or as the best alternative in carrying out its mission and purposes;
- (6) Whether any conflict of interest exists concerning the proposed conversion relative to members of the board, officers, directors, senior management, experts or consultants

Health Service of Rhode Island and CharterCARE Health Partners will be called collectively “CharterCARE” or “CCHP”.

⁵ R.I. Gen. Laws § 23-17.14-7(c). The Attorney General’s responsibility under the Hospital Conversions Act is to review the transaction selected by the Board(s) of Directors.

engaged in connection with the proposed conversion including, but not limited to, attorneys, accountants, investment bankers, actuaries, health care experts, or industry analysts;

(7) Whether individuals described in subdivision (c)(6) were provided with contracts or consulting agreements or arrangements which included pecuniary rewards based in whole, or in part on the contingency of the completion of the conversion;

(8) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions;

(9) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the proposed conversion;

(10) Whether the board exercised due care in assigning a value to the existing hospital and its charitable assets in proceeding to negotiate the proposed conversion;

(11) Whether the board exposed an inappropriate amount of assets by accepting in exchange for the proposed conversion future or contingent value based upon success of the new hospital;

(12) Whether officers, directors, board members or senior management will receive future contracts in existing, new, or affiliated hospital or foundations;

(13) Whether any members of the board will retain any authority in the new hospital;

(14) Whether the board accepted fair consideration and value for any management contracts made part of the proposed conversion;

(15) Whether individual officers, directors, board members or senior management engaged legal counsel to consider their individual rights or duties in acting in their capacity as a fiduciary in connection with the proposed conversion;

(16) Whether the proposed conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the traditional purposes and mission of the existing hospital such that a cy pres proceeding would be necessary;

(17) Whether the proposed conversion contemplates the appropriate and reasonable fair market value;

(18) Whether the proposed conversion was based upon appropriate valuation methods including, but not limited to, market approach, third party report or fairness opinion;

(19) Whether the conversion is proper under the Rhode Island Nonprofit Corporation Act;

(20) Whether the conversion is proper under applicable state tax code provisions;

(21) Whether the proposed conversion jeopardizes the tax status of the existing hospital;

(22) Whether the individuals who represented the existing hospital in negotiations avoided conflicts of interest;

(23) Whether officers, board members, directors, or senior management deliberately acted or failed to act in a manner that impacted negatively on the value or purchase price;

(24) Whether the formula used in determining the value of the existing hospital was appropriate and reasonable which may include, but not be limited to factors such as: the multiple factor applied to the "EBITDA" – earnings before interest, taxes, depreciation, and amortization; the time period of the evaluation; price/earnings multiples; the projected efficiency differences between the existing hospital and the new hospital; and the historic value of any tax exemptions granted to the existing hospital;

(25) Whether the proposed conversion appropriately provides for the disposition of proceeds of the conversion that may include, but not be limited to:

(i) Whether an existing entity or a new entity will receive the proceeds;

(ii) Whether appropriate tax status implications of the entity receiving the proceeds have been considered;

(iii) Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing hospital;

(iv) Whether any conflicts of interest arise in the proposed handling of the conversion's proceeds;

(v) Whether the bylaws and articles of incorporation have been prepared for the new entity;

(vi) Whether the board of any new or continuing entity will be independent from the new hospital;

(vii) Whether the method for selecting board members, staff, and consultants is appropriate;

(viii) Whether the board will comprise an appropriate number of individuals with experience in pertinent areas such as foundations, health care, business, labor, community programs, financial management, legal, accounting, grant making and public members representing diverse ethnic populations of the affected community;

(ix) Whether the size of the board and proposed length of board terms are sufficient;

(26) Whether the transacting parties are in compliance with the Charitable Trust Act, chapter 9 of title 18;

(27) Whether a right of first refusal to repurchase the assets has been retained;

(28) Whether the character, commitment, competence and standing in the community, or any other communities served by the transacting parties are satisfactory;

(29) Whether a control premium is an appropriate component of the proposed conversion; and

(30) Whether the value of assets factored in the conversion is based on past performance or future potential performance.

In addition to reviewing the Initial Application submitted by the Transacting Parties and other publically available information, the Attorney General and DOH (the "Departments") jointly interviewed the following individuals:

CharterCARE

1. Kenneth H. Belcher, President/CEO of CharterCARE Health Partners
2. Michael E. Conklin, Jr., Chief Financial Officer, CharterCARE Health Partners
3. Joan M. Dooley, R.N., Chief Nursing Officer, CharterCARE Health Partners, RWMC
4. Patricia A. Nadle, R.N., Chief Nursing Officer, CharterCARE Health Partners, SJHSRI
5. Edwin J. Santos, Chairman of the CharterCARE Health Partners Board
6. Kathy Moore, Director of Finance, CharterCARE Health Partners
7. Addy Kane, Chief Financial Officer, Roger Williams Medical Center

Prospect

8. Thomas Reardon, President of Prospect Medical Holdings, Inc.
9. Samuel S. Lee, CEO, Prospect Medical Holdings, Inc.
10. Steve Aleman, Chief Financial Officer, Prospect Medical Holdings, Inc.
11. Barbara Giroux, Senior Vice President of Finance and Operations

The Hospital Conversions Act requires a public informational meeting. *See* R.I. Gen. Laws § 23-17.14-7(b)(3)(iv). A public notice was published regarding an informational meeting as well as soliciting written comments regarding the Proposed Transaction. The Attorney General and DOH jointly held this meeting in Providence at Gaige Hall Auditorium on the

campus of Rhode Island College.⁶ It was held on April 28, 2014, from 4 p.m. to 7 p.m. At the beginning of the session, the Transacting Parties were provided an opportunity to give a presentation regarding the Proposed Transaction; afterwards, public comment was taken. Over the course of the meeting, twenty-eight (28) speakers provided public comment. The comments were overwhelmingly in favor of the Proposed Transaction, with one in opposition and another raising concern as to whether Fatima Hospital would retain its Catholic identity. Several written comments were also received, the overwhelming majority of which supported the Proposed Transaction.

The Initial Application, along with the supplemental information provided, information gathered from the investigation, including publically available information and information resulting from interviews and public comment, were all considered in rendering this Decision.

III. PROCEDURAL HISTORY

In 2008 and 2009, the RWMC and SJHSRI systems were losing in excess of \$8 million dollars a year from operations alone.⁷ In an effort to stem those losses, those independent systems agreed to affiliate through the creation of CCHP. The purpose of the affiliation was to realize approximately \$15 million dollars in savings over 5 years, utilizing efficiencies created by the combined hospital systems as well as to preserve and expand health care services to the Existing Hospitals' communities.⁸ In 2009, the affiliation was approved by DOH and the

⁶ The Attorney General would like to thank the staff of Rhode Island College for their hospitality and for assisting us with use of the auditorium.

⁷ Initial Application, Response to Question 1

⁸ Id.

Attorney General.⁹ If the CCHP affiliation had not been approved, the RWMC and SJHSRI systems would have had difficulty in continuing to operate independently.¹⁰

CCHP operates a health care system in the City of Providence and the Town of North Providence which includes Roger Williams Medical Center and St. Joseph's Health System of Rhode Island.¹¹

Roger Williams Medical Center, defined above as RWMC, is a 220-bed acute care, community hospital located in Providence, Rhode Island. St. Joseph Health Services of Rhode Island, defined above as SJHSRI, operates Our Lady of Fatima Hospital, which is a 278-bed acute care, community hospital located in North Providence, Rhode Island.¹²

CCHP also operates a number of non-hospital facilities that will be included in the Proposed Transaction: Elmhurst Extended Care Facilities, Inc., Roger Williams Realty Corporation, RWGH Physician's Office Building, Inc., Roger Williams Medical Associates, Inc., Roger Williams PHO, Inc., Elmhurst Health Associates, Inc., Our Lady of Fatima Ancillary Services, Inc., The Center for Health and Human Services, SJH Energy, LLC, Rosebank Corporation and CharterCARE Health Partners Foundation ("CCHP Foundation").¹³

Significant operating efficiencies have been achieved as a result of the 2009 CCHP affiliation.¹⁴ Based on operating revenue alone, the combined CCHP hospital system reduced operating losses not including pension losses to approximately \$3 million dollars per year.¹⁵ Although a significant improvement, CCHP realized that the losses it was continuing to experience cannot be sustained and still ensure its continued viability. Furthermore, although

⁹ Id.

¹⁰ Id.

¹¹ Initial Application, Response to Question 1

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

capital expenditures have been made, the physical plants at the Existing Hospitals are aging and need upgrading.¹⁶

Of additional concern to CCHP is its pension funding (an issue that is impacting many hospitals throughout the country). If pension losses are taken into consideration, in fiscal year 2012, the CCHP system sustained losses of over \$8 million dollars which are increasing without additional contributions.¹⁷ Such losses cannot be sustained by CCHP. Facing these significant financial concerns, CCHP realized it needed additional capital to ensure its continued viability to fulfill its responsibilities to the citizens of Rhode Island which it serves.

In an effort to ensure the continued viability of the Existing Hospitals, in December of 2011, CCHP issued 22 Requests for Proposals (the "RFP") seeking a partner.¹⁸ In response to its RFP, CCHP received six (6) responses, which it reviewed and considered carefully.¹⁹ Among the responses it received was one from PMH in August of 2012.²⁰ CCHP conducted a vigorous and detailed review of all of the proposals it received.²¹ However, after receiving the response of PMH, CCHP then undertook extensive review of PMH's proposal and engaged in negotiations with PMH. In March of 2013, after a joint meeting of the boards of CCHP and the Existing Hospitals, and an analysis of a number of the different options before CCHP, CCHP chose PMH's proposal.²² In March of 2013, a Letter of Intent was executed by and between PMH and CCHP.²³ During the interval between March 2013 and the execution of the Asset Purchase Agreement on September 24, 2013, the Transacting Parties conducted extensive due diligence of each other. The Transacting Parties subsequently executed a First Amendment to the Asset

¹⁶ Id.

¹⁷ Id.; Report of James P. Carris, CPA.

¹⁸ 4/28/14 Testimony of Kenneth Belcher

¹⁹ Id. Response to Question 55

²⁰ Id.

²¹ Id.

²² Initial Application response to Question 14

²³ Id.

Purchase Agreement on February 27, 2014, to add Prospect CharterCARE Ancillary Services, LLC (“Ancillary”) to hold the licenses for the Prospect CharterCARE laboratories, among other things.²⁴

An Initial Application was submitted by the Transacting Parties on October 18, 2013. On November 18, 2013, the Departments informed the Transacting Parties that there were deficiencies to the Initial Application and requested additional information. On January 2, 2014 the Departments received a letter addressing the deficiencies within the Initial Application. On January 16, 2014, the Departments issued the Transacting Parties a notice of completeness letter.

On January 17, 2014, the Initial Application was deemed complete with the condition that new copies of the Initial Application be filed, incorporating the confidentiality decision made by the Attorney General wherein some documents that were originally requested to be deemed confidential were deemed public.

During the review, six (6) sets of Supplemental Questions consisting of two hundred and thirteen (213) questions were sent to and responded to by the Transacting Parties.

IV. DISCUSSION

As outlined above, the review criteria contained in the Hospital Conversions Act applicable to the Proposed Transaction consist of thirty (30) requirements. For organizational purposes we have addressed them grouped by topic below.

A. BOARD OF DIRECTORS

Numerous provisions of the Hospital Conversions Act involve a review of the actions of the board of directors of the existing hospital.²⁵ In the instant review, the Attorney General provided a review of the action of the board of directors leading to the Proposed Transaction.

²⁴ Response to Supplemental Question 3-15

1. Duties of the Board of Directors

The Hospital Conversion Act requires review of the decisions leading up to a conversion to ascertain whether the directors fulfilled their fiduciary duties to the hospital. The first criteria of the Hospital Conversions Act guiding the review of the actions of the board of directors in pursuing a conversion is governed by R.I. Gen. Laws § 23-17.14-7(c)(3). This section requires review of whether there was “appropriate criteria [used] in deciding to pursue a conversion in relation to carrying out [the hospital’s] mission and purposes.” With regard to this particular provision, the Board of Directors of CCHP (the “CCHP Board”) faced a situation where it was sustaining continued losses, despite its efforts to find and implement efficiencies throughout CCHP and its affiliates.²⁶ CCHP was also faced with aging infrastructure issues that needed to be addressed.²⁷ The need for capital to sustain its continued viability was a driving impetus in locating a partner as CCHP realized it could not address these issues on its own going forward.²⁸ The Attorney General finds that this condition of the Hospital Conversions Act has been satisfied.

The next section, R.I. Gen. Laws § 23-17.14-7(c)(4) requires a review of “[w]hether the board formulated and issued appropriate requests for proposals in pursuing a conversion.” In order to pursue an appropriate partner, CCHP issued twenty-two (22)²⁹ Requests for Proposals to a number of entities, listing a number of criteria.³⁰ These criteria included:

- (a) A commitment to the continued provision of quality health care services for the residents of Greater Providence, Rhode Island and the surrounding communities;

²⁵ See e.g., Hospital Conversions Act, R. I. Gen. Laws §§ 23-17.14-7(c) (3), (4), (5), (8), (9), (10), (11), (13), (14), (15), and (23).

²⁶ Initial Application, Response to Question 1

²⁷ Id.

²⁸ Initial Application, Responses to Questions 1, 13 and 14.

²⁹ 4/28/14 Public Hearing Testimony of Kenneth Belcher

³⁰ Initial Application Response to Question 14 and Exhibit 14A

- (b) A long-term commitment to CCHP, its medical staff and employees;
- (c) A demonstrated cultural fit with CCHP's mission and a shared strategic vision for the future of CCHP;
- (d) An established record of success in the use of various strategies for physician recruiting and assistance developing other ways to expand and enhance CCHP's range of services;
- (e) Access to sufficient capital to allow CCHP to maintain high quality care for its patients and improve its physical facilities;
- (f) Continued commitment to community benefit programs;
- (g) A structure of governance that allows for continued participation of the CCHP Board in the governance of CCHP, preferably a joint venture structure;
- (h) Commitment to maintaining existing services for a period of at least three years;
- (i) Quality and safety expertise to assure that CCHP exceeds quality and safety standards;
- (j) Proven ability to improve clinical outcomes/services as well as provide clinical and administrative support to assure a standard of excellence; and
- (k) Preservation and enhancement of academics.

The condition in the RFP reflecting the CCHP Board's desire for a long-term commitment to CCHP, its medical staff and employees, referenced at (b) above, fit with the Board's desire to engage in a joint venture model of governance that would permit continued CCHP input into the decision making and operations of the Existing Hospitals rather than to be simply acquired.³¹ This intended model of governance was shared by Prospect, as evidenced by the provisions of the Amended and Restated Limited Liability Company Agreement of Prospect CharterCARE, LLC (the "Prospect CharterCARE Operating Agreement"), which contains specific conditions for a 50/50 board representation by CCHP and Prospect, as well as

³¹ See Initial Application Response to Question 55.

establishment of local boards for the Existing Hospitals to provide continued local input into the operations of these facilities.³²

In its RFP, CCHP sought a substantial amount of information from its potential partners,³³ including:

- (a) Mission, Vision, Values;
- (b) Financial Strength;
- (c) Corporate Structure;
- (d) Ability to Pay or Finance Proposal;
- (e) Ability to Fund Capital Needs;
- (f) Desire to Sustain CCHP as a Full Service Acute Care System;
- (g) Commitment to Build CCHP Care Capabilities;
- (h) Desire to Support, Improve and Grow Medical Staff and Physician Alignment;
- (i) Approach to Physician Recruitment and Retention;
- (j) Community Benefit;
- (k) Future Governance Proposal for CCHP;
- (l) Continuing Roles for CCHP Management Team;
- (m) Growth Strategies;
- (n) Existing Affiliations;
- (o) Quality and Safety; and
- (p) Regulatory Impediments to Successful Venture.

The Attorney General finds that the CCHP Board's actions in connection with its issuance of the RFP and criteria employed satisfy the requirements of the Hospital Conversion Act. *See* R.I. Gen. Laws § 23-17.14-7(c)(3)(4).

An additional section requires review of "whether the board exercised due care in assigning a value to the existing hospital and its charitable assets in proceeding to negotiate the proposed conversion." *See* R.I. Gen. Laws § 23-17.14-7(c)(10).

³² *See* Initial Application Response to Question 7, Exhibit 18, Prospect CharterCARE Operating Agreement.

³³ *Id.*

2. Board Use of Consultants

Two criteria in the Hospital Conversions Act deal with a board's use of consultants. *See* R.I. Gen. Laws §§ 23-17.14-7(c)(8) and (9):

(8) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions; and

(9) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the proposed conversion.

As outlined in the Initial Application, the CCHP Board engaged a number of consultants, including Cain Brothers & Company, an investment banking firm, to assist it with evaluation of the proposals made by prospective suitors, as well as in negotiations once a prospective suitor was located.³⁴ It also retained a number of other consultants, including Cambridge Research Institute, The Camden Group, Drinker Biddle & Reath, LLP, Canon Design, Angell Pension Group and Schulte Roth Zubel, LLC to assist it with the process of review of the RFP proposals submitted and negotiation of the Proposed Transaction.³⁵ *See* R.I. Gen. Laws § 23-17.14-7(c)(8)(15).

Prospect also retained a number of consultants, including BDO, Cardno ATC, Lathan & Watkins LLP, Nixon Peabody, LLP, Rutan & Tucker, LLP, Groom Law Group, Chartered, Sills Cummis & Gross P.C. and Ferrucci Russo PC.³⁶

With regard to the care given “in accepting assumptions and conclusions provided by consultants,” the Attorney General is not privy to the advice provided by these consultants other than any documents submitted with the Initial Application process. It is unclear if more than advice regarding the regulatory process was provided by consultants in this portion of the transaction process. Accordingly, the Attorney General has found nothing to refute that the

³⁴ Initial Application, Response to Question 14.

³⁵ Initial Application, Response to Question 60, Exhibit 60B.

³⁶ Initial Application, Response to Question 60, Exhibit 60A.

CCHP Board's decision to accept the assumptions and conclusions provided by the consultants, to the extent there were any, was with due care and that criteria (6), (8), (9) and (15) of the Hospital Conversions Act have been satisfied. *See* R.I. Gen. Laws §23-17.14-7(c).

3. Remaining Board Criteria

Regarding the remaining criteria of this type, the Transacting Parties have disclosed management and operating agreements pertaining to the operations of Prospect CharterCARE, LLC, which entity shall own the Newco Hospitals post transaction. *See* R.I. Gen. Laws § 23-17.14-7(c)(14). The Transacting Parties have provided the Prospect CharterCARE Operating Agreement, which includes provisions for the formation of local boards for each Newco Hospital thereafter.³⁷ This operating agreement also provides for the local boards to consist of at least six individuals, with 50% being physicians and the other 50% being community representatives and the Hospital's CEO, with no board member serving more than a three-year term.³⁸

In addition, the Transacting Parties provided a Management Services Agreement, which will operate between Prospect CharterCARE, LLC and Prospect Advisory.³⁹ Prospect East, as the managing member of Prospect CharterCARE, LLC, has delegated its day-to-day management of the Newco Hospitals to Prospect Advisory under the Management Services Agreement (the "Management Agreement"), which provides for a number of services, including assistance with operational activities, once the Proposed Transaction has closed.⁴⁰ Prospect Advisory will work with senior leadership team members (the "Executive Team") of Prospect CharterCARE, LLC to run the day-to-day operations of the Newco Hospitals. The Executive Team shall be subject to the day-to-day supervision of Prospect Advisory, and together the

³⁷ Initial Application, Response to Questions 1, 18 and Exhibit 18 Article XII.

³⁸ Initial Application Exhibit 18, Article XII, Response to Question 7.

³⁹ Initial Application Exhibit 18.

⁴⁰ *Id.* Response to Question S3-20.

Executive Team and Prospect Advisory will report to Prospect CharterCARE, LLC's board (the "Board") and certain PMH executives. Prospect CharterCARE, LLC's Board will have ultimate power and authority over certain decisions. Since the filing of the Initial Application, the Management Agreement has been subsequently revised to clarify that should any conflicts arise between the Prospect CharterCARE Operating Agreement and the Management Agreement, such conflicts will be resolved in favor of the Prospect CharterCARE Operating Agreement. The Attorney General finds that R.I. Gen. Laws §23-17.14-7(c)(14) of the Hospital Conversions Act has been satisfied.

As part of the Initial Application process, the applicants also indicated that the only agreements they have made regarding future employment or compensated relationships relating to any officer, director, board member or senior manager of CCHP is the assumption by Prospect of the existing employment relationships of the current CCHP CEO, Kenneth Belcher and the other senior leadership team members.⁴¹ In addition, the applicants have stated that board members of the Prospect CharterCARE, LLC and the Newco Hospitals will not be compensated.⁴² As to any agreements between affiliates, DOH has mandatory conditions pursuant to the Hospital Conversions Act addressing this aspect of review. *See* R.I. Gen. Laws § 23-17.14-28.

The Asset Purchase Agreement does not include consideration that is based upon future or contingent value based upon success of the Newco Hospitals. *See* R.I. Gen. Laws § 23-17.14-7(c)(11). In fact, Prospect has confirmed that if the Newco Hospitals do not meet financial expectations, it will provide additional funding to them.⁴³ The terms of the Management Agreement were determined jointly by Prospect and CCHP, both of which were represented by,

⁴¹ Initial Application, Responses to Questions 35 and 36; Asset Purchase Agreement, Article VIII.

⁴² Response to Supplemental Question 3-38.

⁴³ Response to Supplemental Question S4-25.

and consulted with, legal counsel relating to the Proposed Transaction. *See* R.I. Gen. Laws § 23-17.14-7(c)(14),(15). The Attorney General finds that the statutory requirement of R.I. Gen. Laws § 23-17.14-7(c)(23) has been met.

Therefore, the additional miscellaneous Hospital Conversions Act criteria that must be reviewed regarding board actions have been satisfied.

B. CONFLICTS OF INTEREST

Numerous provisions of the Hospital Conversions Act deal with conflicts of interest.⁴⁴ The Attorney General has reviewed the criteria in the Act to determine whether the Transacting Parties and their consultants have avoided conflicts of interest.

1. Conflict of Interest Forms

As part of the Initial Application, certain individuals associated with the Transacting Parties were required to execute conflict of interest forms. These included officers, directors and senior management for Prospect and CCHP. Individuals completing the conflict of interest forms were asked to provide information to determine conflicts of interest such as their affiliation with the Transacting Parties, their relationships with vendors and their future involvement with the Transacting Parties. The Proposed Transaction also provides that the employment contracts of the Executive Team will be assumed by Prospect, without any additional compensation or benefit.⁴⁵ The Attorney General finds no conflict of interest occurred with respect to these agreements that are to be assumed by Prospect.⁴⁶ Further, the applicants have stated that board members of the Prospect CharterCARE, LLC and the Newco Hospitals will not be compensated.⁴⁷ After reviewing the conflict of interest forms, the Attorney

⁴⁴ *See* R.I. Gen. Laws §§ 23-17.14-7(c) (6), (7), (12), (22) and (25) (iv).

⁴⁵ *See* R.I. Gen. Laws §§ 23-17.14-7(c) (6), (7), (12), (22).

⁴⁶ *See* Initial Application, Responses to Questions 1, 15, 35, 36, Exhibit 18 Asset Purchase Agreement Article VIII.

⁴⁷ Response to Supplemental Question 3-38.

General determines that none of the submitted information revealed any conflict of interest.⁴⁸

See R.I. Gen. Laws §23-17.14-7(c)(6).

2. Consultants

The Hospital Conversions Act requires a review of the possibility of conflicts of interests with regard to consultants engaged in connection with the Proposed Transaction. R.I. Gen. Laws §§ 23-17.14-7(c)(6) and (7). The Attorney General notes that CCHP engaged several entities in its pursuit of a potential suitor, including Cain Brothers & Company, an investment banking firm, to assist it with evaluation of the proposals made by prospective suitors, as well as in negotiations once a prospective suitor was located.⁴⁹ It also retained a number of other consultants, including Cambridge Research Institute, The Camden Group, Drinker Biddle & Reath, LLP, Canon Design, Angell Pension Group and Schulte Roth Zubel, LLC to assist it with the process of review of the RFPs submitted and negotiation of the Proposed Transaction.⁵⁰ The Attorney General has determined that the criteria contained in R.I. Gen. Laws §23-17.14-7(c)(6) and (7) of the Hospital Conversions Act have been satisfied as to some, but not all of the consultants engaged because conflict of interest forms were not provided for Cambridge Research Institute, The Camden Group, Dr. Vincent Falanga (who is no longer affiliated with RWMC) and Schulte Roth Zubel, LLC, despite CCHP's efforts to obtain them. One should not be able to avoid providing a conflict form because of change in employment or affiliation. Clearly the forms from these individuals are relevant. These individuals have failed to cooperate with the Attorney General's review. Because no forms have been provided, the Attorney General has made an inference that a conflict of interest exists with regard to these individuals,

⁴⁸ *See* Initial Application, Response to Question 15

⁴⁹ Initial Application, Response to Question 14

⁵⁰ Initial Application, Response to Question 60, Exhibit 60B.

that any future dealings between Prospect and these individuals will be considered suspect, and in the event the Attorney General obtains additional information, further action may be taken.

3. Negotiations And Conflicts

After review of relevant documents obtained during the Attorney General's review, it has been determined that the individuals who represented the Existing Hospitals in negotiations of the Proposed Transaction had no impermissible conflicts of interest.⁵¹

4. Sale Proceeds And Conflicts

As contemplated by the structure of the purchase price outlined in the Asset Purchase Agreement, there will be no proceeds from the Proposed Conversion after the disposition of the liabilities of the Existing Hospitals not assumed by Prospect CharterCARE, LLC. Therefore, there is no need to address whether the Transacting Parties have appropriately provided for the disposition of proceeds.⁵²

5. Prospect Conflicts Of Interest

On behalf of Prospect, several consultants were also engaged including: BDO, Cardno ATC, Lathan & Watkins LLP, Nixon Peabody, LLP, Rutan & Tucker, LLP, Groom Law Group, Chartered, Sills Cummis & Gross P.C. and Ferrucci Russo PC.⁵³ After reviewing the conflict of interest forms submitted by Prospect, the Attorney General finds none of the forms submitted by Prospect revealed any conflict of interest.

In response to various questions, Prospect has indicated that it has identified certain leadership positions within its organization, post transaction.⁵⁴ Under the terms of the Asset Purchase Agreement, Management Agreement and Prospect CharterCARE Operating

⁵¹ R.I. Gen. Laws § 23-17.14-7(c)(22).

⁵² See R.I. Gen. Laws § 23-17.14-7(c)(25)(iv).

⁵³ Initial Application, Response to Question 60, Exhibit 60A.

⁵⁴ See Initial Application, Response to Question 35.

Agreement, Prospect will hold an 85% ownership interest and thus will appoint certain individuals as its representatives, all of whom have provided Conflict of Interest Statements. A review of these documents and the interviews conducted with representatives of Prospect does not indicate that any conflict of interest exists with respect to the Proposed Transaction.⁵⁵ See R.I. Gen. Laws §§ 23-17.14-7 (c)(6),(7).

C. VALUE OF TRANSACTION

The following Hospital Conversions Act criteria deal with valuation of the Proposed Transaction. See R.I Gen. Laws §§ 23-17.14-7 (c)(17), (18) and (24):

(17) Whether the proposed conversion contemplates the appropriate and reasonable fair market value;

(18) Whether the proposed conversion was based upon appropriate valuation methods including, but not limited to, market approach, third party report or fairness opinion; and

(24) Whether the formula used in determining the value of the existing hospital was appropriate and reasonable which may include, but not be limited to factors such as: the multiple factor applied to the "EBITDA" – earnings before interest, taxes, depreciation, and amortization; the time period of the evaluation; price/earnings multiples; the projected efficiency differences between the existing hospital and the new hospital; and the historic value of any tax exemptions granted to the existing hospital.

Given their relevant expertise in this area, the Attorney General consulted with its expert, James P. Carris, CPA, ("Carris"), in making a determination regarding valuation. According to the analysis of Carris:

Is the Purchase Commitment from Prospect Medical Holdings, Inc. Fair and Reasonable?

As described in the Asset Purchase Agreement (APA), Prospect Medical Holdings (Prospect), through a series of subsidiaries, is acquiring substantially all the assets of CharterCARE Health Partners, Inc. (CCHP). The acquisition includes Roger Williams Medical Center (RWMC), a 220-bed acute care teaching hospital and Saint Joseph's Health System of Rhode Island (SJHSRI), which operates Fatima Hospital, a 278-bed acute care community hospital located in North Providence, RI.

⁵⁵ *Id.*, and Exhibit 18 (Asset Purchase Agreement, Prospect CharterCARE Operating Agreement and Management Agreement).

Additionally, there are a number of non-hospital health entities in CCHP, which are also included in the transaction.

At closing, CCHP will receive \$45 million in cash plus a 15% interest in the joint venture (Prospect CharterCARE) that will hold the acquired assets.

The APA requires that the \$45 million in cash proceeds be dispersed at closing as follows:

- \$16,550,000 to be used to fully redeem SJHSRI revenue bonds issued in 1999 by Rhode Island Health and Educational Building Corporation.

- \$11,062,500 to be used to redeem RWMC revenue bonds issued in 1998 by Rhode Island Health and Educational Building Corporation.

- \$3,387,500 to be used to redeem Roger Williams Realty Corporation revenue bonds issued in 1999 by Rhode Island Health and Educational Building Corporation.

- \$14,000,000 to be applied to the St. Joseph Pension Plan.

A detailed sources and uses schedule for the transaction has been provided by the parties.

Prospect has also committed \$50 million over a four year period (in addition to CCHP's routine capital commitment of at least \$10 million per year) to fund expansion and physical plant improvements to the existing entities. During the process, Prospect has agreed to guarantee the \$50 million long-term capital commitment of its subsidiary, Prospect East. This \$50 million may be subject to certain limitations and offsets but for the purposes of this analysis, is included at the full \$50 million.

CCHP's 15% interest in the joint venture is also subject to potential limitations, including a possible capital call. All parties to the transaction have given assurances that no capital call is anticipated in the foreseeable future.

Representatives of management and the Board of CCHP stipulated that if this transaction does not close, they would immediately begin the strategic partnering process again. The system does not have the ability to survive long-term with a "go it alone" strategy. This is borne out by the internal March 2014 consolidated financial statements, which shows a six-month, consolidated operating loss of approximately \$9 million.

A third party valuation analysis or fairness opinion was not completed with regard to the entire transaction. CCHP stated that its board did not undertake an appraisal since any potential valuation would have to be measured against the board's requirement for a joint venture model that included the retention of local ownership and local governance. Prospect stated that it looked at two methods of determining potential value. The first method was a multiple of twelve months trailing EBITDA and the second method was a multiple of enterprise value. Neither of these methods were deemed by the parties to be applicable in this situation. Accordingly, the parties

looked at the existing long-term debt, other outstanding obligations and future capital needs. CCHP in pursuing its joint venture model, as directed by its Board, was looking to resolve approximately \$31 million in long-term debt, to bring the St. Joseph's Pension Plan to a ninety (90%) percent funding level and fund future capital needs of approximately \$50 million. The parties therefore estimate the total consideration to be approximately \$95 million.

The purchase commitment from Prospect is fair and reasonable for the acquisition of CCHP and its affiliates. This is based on the criteria established by the CCHP Board, a review of available documentation, analysis of CCHP's current and historical operating performance as well as interviews and discussions with numerous individuals who participated in the processes and discussions which culminated in this transaction.

Moreover, given the considered and extensive review process employed by the CCHP Board and its finding that the terms of its deal with Prospect "were the best available from the remaining, interested parties," the information provided by Carris, as well as the offers of other bidders, the criteria under the Hospital Conversions Act regarding valuation of the Proposed Transaction has been met.

D. CHARITABLE ASSETS

The Attorney General has the statutory and common law duty to protect charitable assets within the State of Rhode Island.⁵⁶ In addition, the Hospital Conversions Act specifically includes provisions dealing with the disposition of charitable assets in a hospital conversion generally to ensure that the public's interest in the funds is properly safeguarded.⁵⁷ With regard to the charitable assets of CharterCARE, currently they are held by three entities: the CCHP Foundation, Roger Williams Medical Center and St. Joseph Health Services of Rhode Island.⁵⁸

⁵⁶ See e.g., R.I. Gen. Laws § 18-9-1, *et seq.*

⁵⁷ See, R.I. Gen. Laws § 23-17.14-7(c).

⁵⁸ Initial Application, Response to Questions 28 and 29.

1. Disposition of Charitable Assets

In the Initial Application, the Transacting Parties were asked to identify and account for all charitable assets held by the Transacting Parties.⁵⁹ Voluminous detail was provided which will not be detailed herein, but was thoroughly reviewed. Certain information regarding these assets is outlined below. This requirement has been satisfied by the Transacting Parties pursuant to the Hospital Conversions Act. In addition, it was represented that Prospect CharterCARE, LLC has no plans to change or remove the names associated with former gifts to the Existing Hospitals.⁶⁰

In addition, the Transacting Parties were required to provide proposed plans for the creation of the entity where all charitable assets held by the non-profit entities would be transferred.⁶¹ With regard to restricted funds, pursuant to the Hospital Conversions Act, in a hospital conversion involving a not-for-profit corporation and a for-profit corporation, it is required that any endowments, restricted, unrestricted and specific purpose funds be transferred to a charitable foundation.⁶² In furtherance of that requirement, CCHP indicated in the Initial Application that it intends to transfer all currently held specific purpose and restricted funds to the CCHP Foundation,⁶³ which will use the funds in accordance with the designated purposes. At the outset, the only change in the mission and the purpose of the CCHP Foundation will be that charitable assets will not be used for the operations of what would have become the Newco Hospitals due to their for-profit status. The mission and purpose of the CCHP Foundation would be to ensure use of charitable assets consistent with the historical donors' intent and community based needs. It would continue to serve as a community resource to provide accessible,

⁵⁹ Id.

⁶⁰ Response to Supplemental Question S-42

⁶¹ Initial Application, Question 29, R.I. Gen. Laws § 23-17.14-7(c)(25) and §23-17.14-22(a).

⁶² R.I. Gen. Laws § 23-17.14-22(a).

⁶³ See Initial Application, Response to Questions 28 and 29.

affordable and responsive health care and health care related services including disease prevention, education and research, grants, scholarships, clinics and activities within the community to facilitate positive changes in the health care system.⁶⁴ The strategic planning process for CCHP Foundation is ongoing.

Historically, a *Cy Pres* petition to the Rhode Island Superior Court is the legal vehicle to determine whether a donor's intent can be satisfied, and if not, to determine the next best alternative to honor the donor's intent. Because of the change of control of the Existing Hospitals and proposed transfer of their charitable assets to the CCHP Foundation, it was contemplated that a simple *Cy Pres* acknowledging that each Existing Hospital has charitable assets and that post conversion, the CCHP Foundation will honor the intent of the donors, would be the appropriate vehicle. However, as the financial situation of the Existing Hospitals, including with respect to the SJHSRI pension liability, continued to deteriorate during the regulatory review of the Initial Application, CCHP revised its plan as set forth in the Initial Application to reflect a more staggered process with respect to its restricted funds which required some adjustments to the basic form *Cy Pres* described above.

Due to the extent of the Existing Hospitals' liabilities, CCHP proposed that certain RWMC and SJHSRI restricted assets, in addition to unrestricted cash, would remain with the Heritage Hospitals during their wind-down period rather than transferring directly to the CCHP Foundation. Specifically, a total of approximately \$19.6 million dollars in restricted assets would be held by the Foundation (\$7.2 million dollars) and the Heritage Hospitals (\$12.4 million dollars). The revised *Cy Pres* plan was set forth in an outline of the proposed *Cy Pres* petition for each of the Heritage Hospitals with accompanying estimated opening summary balance

⁶⁴ Initial Application Response to Question 28.

sheets for both the Heritage Hospitals and the CCHP Foundation, provided to the Attorney General, and is described below.

A multi-year wind-down process is typical in the dissolution of a hospital corporation due to the time it typically takes to settle government cost reports and the like. It is particularly appropriate where the expected hospital's liabilities are projected to exceed the amount of the unrestricted assets available at the time of closing but where there is also an expectation that additional unrestricted assets will be available in the future, as is the case here. The corporation retains during the wind-down process those restricted charitable assets that provide unrestricted earnings which can be used to address its remaining liabilities, and the corporation remains open until such time as it is concluded that it has completed the winding-down of its affairs.

With respect to the period of time after the close of the Proposed Transaction when the Heritage Hospitals remain open, CCHP proposes to carry out the above-described process as follows:

CCHP Foundation

As a threshold matter, CCHP's *Cy Pres* petition would address any needed change in the CCHP Foundation mission to reflect the broader, community health oriented foundation focus. The *Cy Pres* petition will request approval for the transfer of charitable funds to the CCHP Foundation comprised of approximately \$7.2 million dollars in restricted assets comprised of restricted cash, endowment and earnings on endowment of approximately \$6.9 million dollars from RWMC and \$318,000 from SJHSRI.

The RWMC endowments contained within the sum being transferred to the Foundation total approximately \$4.2 million dollars. The *Cy Pres* petition will address the use of the RWMC endowment income for appropriate charitable purposes. The estimated annual income on such

amount is estimated at approximately \$210,000 annually assuming existing investment policy and allowing for a 5% distribution, within the 7% recommended maximum distribution.

CCHP also will seek *Cy Pres* approval to use approximately \$12.9 million dollars of the total accumulated temporarily restricted earnings on the RWMC endowment of approximately \$15.3 million dollars to satisfy RWMC's liabilities. The balance of approximately \$2.4 million dollars also would be moved to the CCHP Foundation for charitable purposes as it deems appropriate. The estimated annual income from the temporarily restricted endowments is approximately \$118,000 assuming the existing investment policy allowing for a 5% distribution, within the 7% recommended maximum distribution. There are no expected changes in the investment managers during the wind-down period.⁶⁵

RWMC also has a number of temporarily restricted funds whose purpose will not be fully expended before the closing of the Proposed Transaction. It is estimated that approximately \$285,000 in such restricted cash funds will be transferred to the CCHP Foundation. The purposes of these funds will be reviewed and adjusted to meet as close to the original donor intent as possible.

Finally, CCHP intends to request that approximately \$108,000 in SJHSHR temporarily restricted scholarship and endowment funds, and approximately \$209,000 in other temporarily restricted assets be transferred to the CCHP Foundation. The purposes of transferred funds will be similarly reviewed and adjusted to meet as close to the original donor intent as possible.

Heritage Hospitals

CCHP proposes to retain approximately \$24.3 million dollars of assets within the Heritage Hospitals for the time being, including approximately \$12.4 million dollars in restricted

⁶⁵ Response to Supplemental Question 3-30.

assets comprised of perpetual trusts, endowments and scholarships and temporarily restricted assets, as follows:

First, CCHP intends to seek *Cy Pres* approval to change the purpose of the approximately \$1.2 million dollars in SJHSRI's permanently restricted scholarship and endowment funds to be used to partially satisfy SJHSRI's liabilities, including but not limited to potential future funds and expenses relating to the pension plan.

Second, each of the Heritage Hospitals will each retain their respective right to the receive distributions from approximately \$10.8 million dollars in perpetual trusts, which will be used to pay their respective wind-down expenses. In addition, CCHP intends to seek trustee and *Cy Pres* approval to use the perpetual trust income received by RWMC to partially satisfy the payment of SJHSRI expenses, if needed, after all of RWMC's liabilities have been paid.

Finally, the *Cy Pres* petition will include a request that RWMC retain approximately \$421,000 in funds dedicated to expenses unique to RWMC. These include funds restricted for continuing medical education and surgical and oncology academic and research program for which RWMC will seek limited approval to pay only for the costs of such program at Newco RWMC that are over and above the routine, budgeted cost of operating these programs going forward.

To summarize, the *Cy Pres* disposition addressing the transfers to the CCHP Foundation on the one hand and adjustments to funds retained within the Heritage Hospitals on the other, as described above, will ensure that the Existing Hospital charitable assets are used for their intended purposes when that is consistent with law, and will seek court approval for an appropriate, comparable charitable use when the intended use would no longer be consistent with law, for example, because it would require that funds go to a successor, for-profit hospital.

In addition, at one or more future dates, upon confirmation that perpetual trust distributions and endowment earnings are no longer needed to address the liabilities of one or both Heritage Hospitals, one or more additional *Cy Pres* disposition(s) of any remaining restricted and unrestricted charitable assets of the Heritage Hospitals will take place to transfer funds to the CCHP Foundation. Trustee approval also will be required to re-direct future perpetual trust distributions to the CCHP Foundation.

With appropriate agreements with the CCHP Foundation, the Heritage Hospitals and CCHP that are approved by the court in *Cy Pres* proceedings to manage the restricted assets, the Attorney General finds that the Proposed Transaction will not harm the public's interest in the property given, devised or bequeathed to the Existing Hospitals for charitable purposes.⁶⁶

Promptly following the closing of the Proposed Transaction, CCHP will close the books on SJHSRI and RWMC and seek preliminary approval from the Attorney General as to the form and content of the post-closing *Cy Pres* petition described above. Thereafter, the RI Superior Court's consideration of said initial petition will take place within a reasonable period following closing of the Proposed Transaction.

Lastly, inasmuch as none of the existing CCHP entities are trustees for any of the holdings, they are not responsible for completing annual filings as required by R.I. Gen. Laws §18-9-13. *See* R.I. Gen. Laws §23-17.14-7(c)(26).

2. Maintenance of the Mission, Agenda and Purpose of The Existing Hospitals

The Hospital Conversion Act at R.I. Gen. Laws § 23-17.14-7(c)(16) and R.I. Gen. Laws § 23-17.14-7(c)(25)(iii) requires consideration of the following:

- Whether the proposed conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the

⁶⁶ R.I. Gen. Laws § 23-17.14-7(c) (1).

traditional purposes and mission of the existing hospital such that a cy pres proceeding would be necessary; and

- Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing hospital.

RWMC and SJHSRI share the same mission; namely, “as an Affiliate of the System shall be to foster an environment of collaboration among its partners, medical staff and employees that supports high quality, patient focused and accessible care that is responsive to the needs of the communities it serves.”⁶⁷ CCHP “is organized and shall be operated exclusively for the benefit of and to support the charitable purposes of Roger Williams Hospital, St. Joseph Health Services of Rhode Island and Elmhurst Extended Care Services, Inc.....”⁶⁸ CCHP Foundation finds its origins in the SJ Foundation, formed on February 27, 2007 “to hold and administer charitable donations on behalf of SHHSRI.”⁶⁹ In December of 2011, a Petition for Cy Pres, *In Re: CharterCARE Health Partners Foundation, P.B. No. 11-6822*, was filed and granted by the Rhode Island Superior Court (Silverstein, J.) allowing the transfer of the restricted funds that were raised by the SJ Foundation to SJHSRI.”⁷⁰ “Subsequent to and as part of the CCHP affiliation, on August 25, 2011, the organizational documents of SJ Foundation were revised to change its name to CharterCARE Health Partners Foundation and to make CCHP its sole member.”⁷¹ “On September 9, 2011, CCHP Foundation secured from the IRS a determination that it was 1) exempt from tax under section 501(c)(3) of the Internal Revenue Code (IRC), and 2) a public charity under section 509(a)(3) of the IRC.”⁷²

While implied in Prospect’s for-profit status that profit is an issue that will be considered, Prospect has committed that Prospect CharterCARE, LLC “will adopt, maintain and adhere to

⁶⁷ Initial Application, Exhibit 10(C)(D), *See also* Response to Supplemental Question S5-2.

⁶⁸ Initial Application, Exhibit 10(B), *See also* Response to Supplemental Question S5-2.

⁶⁹ Initial Application, Response to Question 29.

⁷⁰ Initial Application, Response to Question 28.

⁷¹ Id.

⁷² Id.

CCHP's policy on charity care and or adopt policies and procedures that are at least as favorable to the indigent, uninsured and underserved as CCHP's existing policies and procedures."⁷³ It has further stated that, should a conflict arise between the charitable purposes of the Existing Hospitals and profit-making that the charitable purposes of the Existing Hospitals shall prevail.⁷⁴ The Attorney General finds that R.I. Gen. Laws §23-17.14-7(c)(16) of the Hospital Conversions Act has been satisfied.

The Attorney General has also considered that Prospect has purchased eight other hospitals over the course of its existence, some of which have included distressed hospitals⁷⁵, and has stated that it has never closed or sold any of its hospitals.⁷⁶ Although there is no evidence that the Proposed Transaction will differ significantly from the stated purposes of the Existing Hospitals, it is necessary that a *Cy Pres* be filed and granted both to ensure the proper utilization of the remaining restricted funds and because this hospital conversion includes the conversion of two non-profit entities' assets for use by for-profit entities.

Further, Rhode Island law requires that all licensed hospitals, whether non-profit or for-profit, provide unreimbursed health care services to patients with an inability to pay.⁷⁷ Therefore, Prospect will be required even as a for-profit hospital to provide a certain amount of charity care and has agreed to do so.⁷⁸

Finally, in consideration of whether the new entity will operate with a similar purpose, pursuant to Section 13.15 of the Asset Purchase Agreement entitled "Essential Services" Prospect has agreed to maintain the Newco Hospitals as acute care hospitals with a "full

⁷³ Initial Application Response to Question 59(c).

⁷⁴ Exhibit 18 to Initial Application, Asset Purchase Agreement, Section 13.14; *see also* Response to S3-14.

⁷⁵ Interview of Thomas Reardon.

⁷⁶ Response to Supplemental Question 4-25.

⁷⁷ R.I. Gen. Laws §§ 23-17.14-15(a)(1), (b) and (d).

⁷⁸ *See* Initial Application Exhibit 18, Asset Purchase Agreement, Article 13.14 and Management Agreement.

complement of essential clinical services for a period of at least five years immediately following the Closing Date.”⁷⁹ In addition, Prospect has stated that there are no current plans to discontinue any CCHP systems services, accreditations, and certifications, including those of the CCHP affiliates.⁸⁰ These include health care and non-healthcare community benefits.⁸¹ As with any acquisition, it is likely that some changes will take place after Prospect takes over the Existing Hospitals. In fact, Prospect has indicated that it will be undertaking strategic initiatives collaboratively to improve services rendered to patients.⁸² Further, as part of its long term capital commitment to CCHP, Prospect has also committed to making improvements of a bricks and mortar nature to the Existing Hospitals.⁸³ Accordingly, the Proposed Transaction does include a potential that some changes will occur at the Existing Hospitals.

3. Foundation for Proceeds

In addition to addressing charitable assets, the Hospital Conversions Act requires an independent foundation to hold and distribute proceeds from a hospital conversion consistent with the acquiree's original purpose.⁸⁴ With regard to the Proposed Transaction, the Asset Purchase Agreement does not include a purchase price that will produce traditional proceeds as it is structured upon payment of certain obligations and commitment to future investments in the hospital. Accordingly, R.I. Gen. Laws § 23-17.14-22 does not require a foundation for receipt of proceeds. Nonetheless, CCHP Foundation is an existing publicly supported foundation which stands ready to receive the restricted funds associated with the Heritage Hospitals in accordance with the plan described above. It is anticipated that the amount of such funds are sufficient for

⁷⁹ See Asset Purchase Agreement Article 13.15; Initial Application Response to Questions 53, 57 and 59.

⁸⁰ Response to Supplemental Question S3-53.

⁸¹ See e.g. Exhibit S3-19; Exhibit S4-20, and Final Supplemental Response 4-20.

⁸² Initial Application, Exhibit 18 Asset Purchase Agreement Article 13.13.

⁸³ Initial Application, Response to Question 1.

⁸⁴ R.I. Gen. Laws § 23-17.14-22(a) and R.I. Gen. Laws § 23-17.14-7(c)(16).

the operation of an independent community health care foundation. However, should the CCHP Foundation board determine in the future that it would be more cost effective to do so, it may seek *Cy Pres* approval to transfer the restricted assets to an independent foundation consistent with the Hospital Conversions Act.

E. TAX IMPLICATIONS

There are three criteria in the Hospitals Conversions Act that deal with the tax implications of the Proposed Transaction.⁸⁵ Currently, CCHP and the Existing Hospitals are non-profit corporations organized pursuant to Rhode Island law. Upon the purchase of their assets by Prospect, the resulting entities will be for-profit entities and no longer immune from certain tax obligations. Clearly, this has an impact on the tax status of these entities.⁸⁶ This transaction represents the second hospital conversion transaction in Rhode Island where nonprofit hospitals are changing to for-profit entities. Review of the Initial Application indicates that this decision to become for-profit entities was made after careful consideration by CCHP that the terms of this transaction were the best available to CCHP among the proposals from the remaining interested parties.⁸⁷ Accordingly, the wisdom of choosing a for-profit company to purchase a non-profit hospital is not a matter that warrants in-depth consideration given the circumstances.

With regard to tax implications, one of Prospect's conditions of closing the transaction with CharterCARE stated in the Initial Application referenced that the closing is contingent upon property tax stabilization/exemption ordinances with the host communities of Providence and

⁸⁵ See R.I. Gen. Laws §§ 23-17.14-7(c)(20), (21) and (25)(ii).

⁸⁶ The question posed by R.I. Gen. Laws § 23-17.14-7(c)(21) is whether the tax status of the existing hospital is jeopardized." This characterization does not apply to the Proposed Transaction as not only is it jeopardized, it is knowingly being changed from non-profit to for-profit.

⁸⁷ See Initial Application, Response to Request 55.

North Providence.⁸⁸ The Transacting Parties have indicated that these negotiations are ongoing with the communities to be affected and are anticipated to be resolved with a potential need for further procedural hearings to occur after May 16, 2014.⁸⁹ The Attorney General is advised by Prospect that they are progressing steadily toward a resolution of this issue. The determination as to whether tax stabilization or exemption will be granted to Prospect for the Existing Hospitals is beyond the Attorney General's jurisdiction and is therefore left to the affected communities to determine.

In addition to real estate taxes, typically Prospect would be required to pay Rhode Island sales and use tax in certain situations. *See* R.I. Gen. Laws § 44-18-1 *et seq.*, and 44-19-1, *et. seq.*

As for the remaining review criteria contained in R.I. Gen. Laws §23-17.14-7(c)(20), regarding "whether the conversion is proper under applicable state tax code provisions," the Transacting Parties are required to obtain a certificate from the State of Rhode Island prior to closing that the Proposed Transaction is proper under applicable state tax code provisions. Accordingly, the Attorney General finds that once the required certificate has been obtained from the State of Rhode Island, which is a requirement of closing of the Proposed Transaction, that this particular criterion under the Hospital Conversions Act will be met.

CCHP also sought legal counsel regarding federal tax implications with respect to CCHP serving as the 15% member of for-profit Prospect CharterCARE, LLC. CCHP has stated that the structure of the Proposed Transaction permits it to act exclusively in furtherance of its exempt purposes and only incidentally for the benefit of PMH. However, because this area of tax law may continue to evolve in the future, should CCHP's tax-exempt status ever be jeopardized due to its participation in the Prospect CharterCARE, LLC, CCHP may cause PMH

⁸⁸ See Initial Application, Response to Question 45.

⁸⁹ Response to Supplemental Question S4-12.

to buy out its interest if there is no other satisfactory resolution. This process and the distribution of the additional proceeds would be subject to Attorney General oversight consistent with this decision.⁹⁰ Finally, CCHP has stated that it will take any reasonable steps to ensure that both it and the CCHP Foundation will preserve their current exempt status following the close of the Proposed Transaction⁹¹.

Regarding the tax status of the entity receiving the proceeds, no proceeds are contemplated and the new entities will be for-profit. *See* R.I. Gen. Laws § 23-17.14-7(c)(25)(ii).

F. NEW ENTITY

The Attorney General must review certain criteria pursuant to the Hospital Conversions Act that deals with the corporate governance of the new hospitals after the completion of the Proposed Transaction.⁹² Below is an outline of the review of such requirements.

1. Bylaws and Articles of Incorporation

One issue that must be examined is whether the new entity has bylaws and articles of incorporation. The new corporate entity that will purchase the assets of CCHP is Prospect Medical Holdings, Inc. (“PMH”). PMH is a Delaware corporation incorporated on May 14, 1999 with its principal place of business in Los Angeles, California. *See* Initial Application Exhibit 10(a). The current bylaws for PMH were provided by the Transacting Parties. *Id.* Therefore, bylaws and articles of incorporation have been provided for PMH.⁹³

PMH is a health care services company that owns and operates hospitals and manages the provision of health care services for managed care enrollees through its network of specialists and primary care physicians. PMH is the parent entity with regard to the eight (8) acute care and

⁹⁰ Response to Question S10

⁹¹ Final Supplemental Responses Miscellaneous p. 6.

⁹² *See e.g.*, Hospital Conversions Act, R.I. Gen. Laws §§ 23-17.14-7(c)(25) (i), (v), (vi), (vii), (viii), and (ix).

⁹³ Initial Application Exhibit 10A-1.

behavioral hospitals located in California and Texas. In total, PMH owns and operates approximately 1,082 licensed beds and a network of specialty and primary care clinics.⁹⁴

PMH is owned by Ivy Intermediate Holdings, Inc. (“IIH”), a Delaware corporation, incorporated on July 23, 2010, with its registered place of business in Wilmington, Delaware.⁹⁵ The current bylaws for IIH were provided by the Transacting Parties. *Id.* Therefore, bylaws and articles of incorporation have been provided for IIH.⁹⁶

Ivy Holdings, Inc. (“IH”), a Delaware corporation, incorporated on December 14, 2010, with its registered place of business in Wilmington, Delaware, owns 100% of the stock of IIH.⁹⁷ IH is a holding company for this stock ownership, having no other assets, liabilities or operations.⁹⁸ Bylaws were provided by the Transacting Parties for IH.⁹⁹

Pursuant to the Asset Purchase Agreement,¹⁰⁰ the ownership interest of PMH will be held by a newly formed LLC, Prospect East Holdings, Inc., (“Prospect East”) a Delaware LLC, formed on August 20, 2013, with its principal place of business located in Wilmington, Delaware.¹⁰¹ Prospect East is structured to be the PMH entity that will hold ownership interest in any health care facilities acquired by PMH on the East Coast. The current bylaws for Prospect East were provided by the Transacting Parties. *Id.* Therefore, bylaws and articles of incorporation have been provided for Prospect East.¹⁰²

Prospect CharterCARE, LLC, a Rhode Island limited liability company, is a joint venture between Prospect East and CCHP and will hold 100% of the ownership interests in the entities

⁹⁴ Initial Application p. 1.

⁹⁵ Initial Application, Exhibit 10A-12.

⁹⁶ Id.

⁹⁷ Initial Application, Exhibit 10A-11.

⁹⁸ Initial Application, p. 2.

⁹⁹ Initial Application, Exhibit 10A-11.

¹⁰⁰ Asset Purchase Agreement, p. 2.

¹⁰¹ Initial Application, p. 2, Ex. 10A-6.

¹⁰² Id.

that will hold the licensure for the Existing Hospitals, post conversion.¹⁰³ Prospect CharterCARE, LLC was formed on August 20, 2013, with its principal place of business in Los Angeles, California and will be owned 85% by Prospect East and 15% by CCHP. Prospect East is the managing member of Prospect CharterCARE, LLC and is responsible for the day-to-day management of the Newco Hospitals with certain decisions subject to Board approval pursuant to Section 8.3 of the Prospect CharterCARE Operating Agreement. Prospect East as the managing member of Prospect CharterCARE, LLC has delegated through the Management Agreement the day-to-day management of the Newco Hospitals to Prospect Advisory Services, LLC (“Prospect Advisory”), an affiliate of PMH. The governing board of Prospect CharterCARE, LLC will be a 50/50 board¹⁰⁴ (the “Board”) with half of its members selected by and through Prospect East’s ownership and the other half of the members selected by and through CCHP’s ownership. The Board shall be the organized, governing body responsible for the management and control of the operations of the licensed hospitals, their conformity with all federal, state and local laws and regulations regarding fire, safety, sanitation, communicable and reportable diseases and other relevant health and safety requirements.¹⁰⁵ The Board shall define the population and communities to be served and the scope of services to be provided.¹⁰⁶ The Board shall also determine policy with regard to the qualifications of personnel, corporate governance, and the policy for selection and appointment of medical staff and granting of clinical privileges.¹⁰⁷ Bylaws were not provided for Prospect CharterCARE, LLC as typically

¹⁰³ Newco Hospitals.

¹⁰⁴ Initial Application, Revised 7(c).

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ Id.

such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties.¹⁰⁸

Prospect Advisory, a Delaware Limited Liability Company was formed on August 20, 2013, with its principal place of business in Los Angeles, California and is solely owned and controlled by PMH.¹⁰⁹ As described above, Prospect East has delegated the day-to-day management of the Newco Hospitals to Prospect Advisory through the Management Agreement and Prospect Advisory will receive a monthly management fee equal to two percent (2%) of the Net Revenues¹¹⁰ of Prospect CharterCARE, LLC. Prospect Advisory will work with the Executive Team of Prospect CharterCARE, LLC to run the day-to-day operations of the Newco Hospitals. The Executive Team shall be subject to the day-to-day supervision of Prospect Advisory, and together the Executive Team and Prospect Advisory will report to Prospect CharterCARE, LLC's Board and certain PMH executives. Prospect CharterCARE, LLC's Board will continue to have ultimate power and authority over certain decisions pursuant to Section 8.3 of Prospect CharterCARE Operating Agreement. The Bylaws were not provided for Prospect Advisory, as typically such organizations do not have Bylaws. It does not have a board of directors.¹¹¹ However, an operating agreement was provided by the Transacting Parties.¹¹²

Prospect CharterCARE RWMC, LLC ("Newco RWMC"), is a Rhode Island limited liability company, which will own and hold the licensure for Roger Williams Medical Center

¹⁰⁸ Initial Application, Ex. 18.

¹⁰⁹ Initial Application, p. 35, Ex. 10A-7.

¹¹⁰ Net Revenues means total operating revenues derived, directly or indirectly, by Prospect CharterCARE, LLC with respect to the Newco Hospitals, whether received on a cash or on a credit basis, paid or unpaid, collected or uncollected, as determined in accordance with generally accepted accounting principles net of (A) allowance for third party contractual adjustments and (B) discounts and charity care amounts (not including any bad debt amounts), in each case as determined in accordance with GAAP. Management Agreement, Section 5.2(b).

¹¹¹ Id.

¹¹² Initial Application, Ex. 10A-7.

post-conversion. Newco RWMC will be wholly-owned by Prospect CharterCARE, LLC¹¹³ and its principal business office will be located in Los Angeles, California. Bylaws were not provided for Newco RWMC, as typically such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties.¹¹⁴ It will be solely operated by Prospect CharterCARE, LLC.¹¹⁵

Prospect CharterCARE SJHSRI, LLC (“Newco Fatima”) is a Rhode Island limited liability company, with its principal business office located in Los Angeles, California.¹¹⁶ It will own¹¹⁷ and hold the licensure for Our Lady of Fatima Hospital post-conversion. Bylaws were not provided for Prospect CharterCARE SJHSRI, LLC, as typically such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties.¹¹⁸ It will be solely operated by Prospect CharterCARE, LLC.¹¹⁹

Prospect CharterCARE Ancillary Services, LLC (“Ancillary Services”) is a Rhode Island limited liability company, with its principal place of business located in Los Angeles, California. It will hold the licensure for Prospect CharterCARE labs.¹²⁰ Bylaws were not provided for Prospect CharterCARE Ancillary Services, LLC, as typically such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties. It will be solely operated by Prospect CharterCARE, LLC.

¹¹³ Initial Application Response to Question 5.

¹¹⁴ Initial Application, Ex. 10A-9.

¹¹⁵ Id.

¹¹⁶ Initial Application Ex. 10-10.

¹¹⁷ Initial Application response to Question 5.

¹¹⁸ Initial Application, Ex. 10A-9.

¹¹⁹ Id.

¹²⁰ First Amendment to Asset Purchase Agreement, Response to Supplemental Question S3-15; Miscellaneous Exhibit 1.

Prospect CharterCARE, LLC, which will hold the ownership of the entities that hold the licensure for the Existing Hospitals, post conversion,¹²¹ will be managed by Prospect East Holdings, Inc, a Delaware corporation, whose registered place of business is Wilmington, Delaware and is wholly-owned by PMH.¹²² Bylaws were provided by the Transacting Parties for Prospect East Holdings.¹²³

Accordingly, R.I. Gen. Laws § 23-17.14-7(c)(25)(v) has been satisfied.

2. Board Composition

In addition to bylaws and articles of incorporation, specific criteria that must be considered regarding the new corporate entities include analysis of the composition of the new boards.

Specifically, the Hospital Conversions Act requires review of:

- (vi) whether the board of any new or continuing entity will be independent from the new hospital;
- (vii) whether the method for selecting board members, staff, and consultants is appropriate;
- (viii) whether the board will comprise an appropriate number of individuals with experience in pertinent areas such as foundations, health care, business, labor, community programs, financial management, legal, accounting, grant making and public members representing diverse ethnic populations of the affected community; and
- (ix) whether the size of the board and proposed length of board terms are sufficient.

See R.I. Gen. Laws §§ 22-17.14-7(c)(25)(vi), (vii), (viii) and (ix).

First, it is important to state that in the Asset Purchase Agreement, PMH and CCHP have proposed a post-conversion structure in which those two entities will form a joint venture, Prospect CharterCARE, LLC, to own and operate all of the health care entities associated with CCHP including, without limitation, the two acute-care, community hospitals that currently operate as Roger Williams Medical Center and Our Lady of Fatima Hospital, as well as an

¹²¹ Newco Hospitals.

¹²² Initial Application p. 2, Exhibit 12A-2, 10A-6.

¹²³ Initial Application, Ex. 10A-6.

extended care facility in Providence known as Elmhurst Extended Care. Prospect CharterCARE, LLC would operate under a 50/50 board composition, which will permit CCHP to retain a significant degree of control in the ongoing ownership and governance of Prospect CharterCARE, LLC to ensure the continuance of its local mission, as well as to provide it with access to the capital and other resources held by PMH to address the challenges of today's health care industry and continue to serve the citizens of Rhode Island.¹²⁴ Given the unique structure of the Proposed Transaction, it is necessary to also discuss the powers that will continue to be held by CCHP to advance these objectives.

Pursuant to the Prospect CharterCARE Operating Agreement, the Transacting Parties have agreed to form a board of directors that has the overall oversight and ultimate authority over the affairs of Prospect CharterCARE, LLC and its Subsidiaries.¹²⁵ As stated above, the Prospect CharterCARE Board will be a 50/50 board with half of its members selected by and through Prospect East's ownership and the other half of the members selected by and through CCHP's ownership.¹²⁶

The Board would be comprised of eight (8) members: four (4) directors appointed by CCHP (including at least one (1) physician) and four directors appointed by Prospect East.¹²⁷ Board members would serve for a term of one to three years, at the discretion of the owner that elected or appointed the individual.¹²⁸ Board members could be removed with or without cause by the owner that elected or appointed the director.¹²⁹ However, if CCHP's ownership interest in Prospect CharterCARE, LLC is reduced to 5%, at any time, because it elects not to or is unable

¹²⁴ Initial Application p. 7, Exhibit 18, Prospect CharterCARE Operating Agreement, Section 8.3.

¹²⁵ The Newco Hospitals, Prospect CharterCARE Elmhurst, LLC, and Prospect CharterCARE Physicians, LLC, p. 1 of Prospect CharterCARE Operating Agreement.

¹²⁶ Exhibit 18, Prospect CharterCARE Operating Agreement, Section 12.1.

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ Id.

to contribute to a capital call then one of the CCHP appointed directors would resign and CCHP would only appoint three (3) directors.¹³⁰ In this case, the Board would be comprised of seven (7) instead of eight (8) directors.¹³¹ Note that Prospect has stated that it does not expect to make any such capital calls within the first three (3) years post-closing.¹³²

As previously described, Prospect East is the managing member of Prospect CharterCARE, LLC and is responsible for the day-to-day management of the Newco Hospitals with certain decisions subject to Board approval pursuant to Section 8.3 of Prospect CharterCARE's Operating Agreement. Prospect East as the managing member of Prospect CharterCARE, LLC has delegated through the Management Agreement the day-to-day management of the Newco Hospitals to Prospect Advisory. Prospect Advisory will work with the Executive Team of Prospect CharterCARE, LLC to run the day-to-day operations of the Newco Hospitals. The Executive Team shall be subject to the day-to-day supervision of Prospect Advisory, and together the Executive Team and Prospect Advisory will report to Prospect CharterCARE, LLC's Board and certain PMH executives. Prospect CharterCARE, LLC's Board will have ultimate power and authority over certain decisions.

Section 8.3 of Prospect CharterCARE's Operating Agreement sets forth the Board's reserved powers including but not limited to: changing the mission or the and purpose of Prospect CharterCARE, LLC or any of its Subsidiaries, decisions involving development and approval of strategic planning, decisions regarding annual operating and capital budgets, changes to the charity policy of Prospect CharterCARE, LLC and its Subsidiaries, approving reduction of essential services at either Newco Hospital, engaging in any merger, consolidation, share exchange or reorganization of Prospect CharterCARE, LLC and its Subsidiaries, and approving a

¹³⁰ Id.

¹³¹ Id.

¹³² Response to Supplemental Question S4-3.

decision to dissolve or liquidate the Prospect CharterCARE, LLC or any of its Subsidiaries.¹³³

Board approval would be exercised by the Board as a body with each owner's directors having a majority vote.¹³⁴ Thus, through this agreement, the leadership of CCHP retains significant decision making input into the continued operations of Prospect CharterCARE, LLC and its Subsidiaries. Meetings of the Board are required to occur at least on a quarterly basis with at least one meeting held in person (face-to-face).¹³⁵ Special meetings of the Board may be called by Prospect Advisory as the manager, the chairman or any three (3) members of the Board.¹³⁶

In addition to the Board, Prospect CharterCARE, LLC will also form a local board for each of the Newco Hospitals.¹³⁷ These local boards would be comprised of at least six (6) individuals.¹³⁸ One half the of the local board members would be physicians from the Newco Hospitals' medical staff, and the other half of the local board members would be the Newco Hospitals' local CEOs and community representatives.¹³⁹ Local board members would be limited to three (3) year terms.¹⁴⁰ The local boards would be responsible for matters such as medical staff credentialing, recommendations regarding strategic and capital plans, providing guidance to the Prospect CharterCARE, LLC board on local market and community concerns, considerations, strategies, issues and politics as well as responding to other requests made by Prospect CharterCARE, LLC's board of directors.¹⁴¹

In Response to Question 7 of the Initial Application, the Transacting Parties state that PMH has yet to determine the identities of the four (4) board members comprising its 50% share

¹³³ Section 8.3 of Prospect CharterCARE's Operating Agreement.

¹³⁴ Id. at Sections 1.6, 11.12, 12.2.

¹³⁵ Id. at Section 12.3.

¹³⁶ Id.

¹³⁷ Id. at Section 12.4.

¹³⁸ Id.

¹³⁹ Id.

¹⁴⁰ Id.

¹⁴¹ Id.

of the Prospect CharterCARE, LLC Board. Meanwhile, CCHP has designated its four (4) board members comprising its share 50% of the Board. The Transacting Parties further state that the members of the Board of Directors of Newco RWMC and Newco Fatima have been determined since the filing of the Initial Application.

Accordingly, the composition of the boards of Prospect CharterCARE, LLC and those of the Newco Hospitals are sufficiently clear to ensure the independence from the hospitals and the diversity of experience required by the Hospital Conversions Act. There is no overlap between and among the boards of the CCHP Foundation, CCHP, the Heritage Hospitals, Prospect CharterCARE, LLC and the Newco Hospitals' boards. *See* R.I. Gen. Laws §22-17.14-7(c)(25)(v)(vi) and (viii).¹⁴² As discussed above, the initial boards have been set and there is a methodology in place for their selection as well as the number and terms of directors. *See* R.I. Gen. Laws §22-17.14-7(c)(25)(vii). Therefore, the Hospital Conversions Act criteria regarding the boards of the new entities has been fully met.

G. CHARACTER, COMMITMENT, COMPETENCE AND STANDING IN THE COMMUNITY

An important and encompassing portion of the Hospital Conversions Act review criteria requires review of “[w]hether the character, commitment, competence and standing in the community, or any other communities served by the transacting parties are satisfactory” *See* R.I. Gen. Laws § 23-17.14-7(c)(28). As stated above, although PMH is the owner/operator of eight (8) other hospitals¹⁴³ through its established chain of command through the various associated limited liability company entities discussed above, PMH will exercise its primary control over CCHP and the Existing Hospitals through its subsidiary Prospect CharterCARE, LLC. As

¹⁴² Response to Supplemental Questions S3-8, S3-12.

¹⁴³ Initial Application, p. 1, Response to Question 4.

described above, Prospect CharterCARE, LLC will be comprised of a 50/50 board, each appointed by PMH and CCHP.¹⁴⁴

1. Character

As stated above, PMH was incorporated on May 14, 1999. *See* Initial Application Exhibit 10A-1. PMH is a health care services company that owns and operates approximately 1,082 licensed beds and a network of specialty and primary care clinics.¹⁴⁵ The central function of operating hospitals is patient care. DOH's review focuses more directly on the topic of character of the acquiring entity and has identical review criteria regarding this topic;¹⁴⁶ therefore, the Attorney General will rely on and defer to DOH's expertise and experience relating to Prospect's character in the communities in which it operates. Nonetheless, the Attorney General did not find any types of complaints against the current owners of Prospect, such as from the Department of Justice or the Office of Inspector General.

2. Commitment

Pursuant to the Asset Purchase Agreement, PMH has agreed to a number of financial commitments, including an up to \$50 million dollar capital commitment to CCHP within four (4) years of the closing of the Proposed Transaction, in addition to normal and routine capital expenditures of at least \$10 million dollars per year.¹⁴⁷ These improvements include investing in technology, equipment, quality improvements, expanded services and physician recruitment.¹⁴⁸ Other than financial commitments, Prospect has promised that the Newco Hospitals will continue to provide a full complement of essential clinical services for the term of

¹⁴⁴ Initial Application, Response to Question 1, Exhibit 18, Asset Purchase Agreement, Section 12.1.

¹⁴⁵ Initial Application, Response to Question 1.

¹⁴⁶ *See* R.I. Gen. Laws § 23-17.14-8 (b)(1).

¹⁴⁷ *See* Asset Purchase Agreement, Section 2.5 and Initial Application Response to Question 1. PMH has since agreed to guarantee Prospect's obligations under the Asset Purchase Agreement regarding this \$50 million dollar commitment.

¹⁴⁸ *See* Responses to Initial Application Questions 1, 57, Asset Purchase Agreement Section 13.17.

five (5) after the closing date.¹⁴⁹ Prospect agrees to maintain the Catholic identity of all legacy SJHSRI locations and ensure that all services at SJHSRI locations are rendered in full compliance with the Ethical and Religious Directives.¹⁵⁰ Prospect has also made a commitment that, should a conflict arise between the charitable purposes of the Existing Hospitals and profit-making that the charitable purposes of the Existing Hospitals shall prevail.¹⁵¹ A commitment has also been made with respect to limitations on a sale of the interests held by PMH and Prospect East for a period of five (5) years. *See* Asset Purchase Agreement Section 13.18(b).¹⁵² In addition, Prospect has asserted that it is committed to preservation of jobs at the Existing Hospitals, post conversion, which will assist in providing continuity in care and leadership under the 50/50 board of Prospect CharterCARE, LLC post conversion.¹⁵³

3. Competence

As stated above, PMH has a track record of operating eight (8) hospitals in other states over the course of 15 years, some of which were financially distressed when acquired.¹⁵⁴ Moreover, Prospect indicates that it has never abandoned or closed a hospital that it has purchased.¹⁵⁵ In addition, Prospect has indicated that, should the Newco Hospitals fail to meet financial expectations that have been projected, Prospect would provide further funding to support them.¹⁵⁶

¹⁴⁹ Initial Application, Response to Question 57; *See* Asset Purchase Agreement Section 13.15.

¹⁵⁰ Ethical and Religious Directives (“ERDs”) promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop of the Roman Catholic Diocese of Providence, RI.; *See* Asset Purchase Agreement Section 13.16.

¹⁵¹ Exhibit 18 to Initial Application, Asset Purchase Agreement, Section 13.14; *see also* Response to S3-14.

¹⁵² Additional options exist to the Transacting Parties, which commence on the fifth anniversary of the closing date. *See* Asset Purchase Agreement, Sections 13.18 (b)(c) and (d) and in the Prospect CharterCARE Operating Agreement.

¹⁵³ *See* Initial Application, response to Question 1, Exhibit 18 Asset Purchase Agreement, Article VIII.

¹⁵⁴ Interview of Thomas Reardon.

¹⁵⁵ Response to Supplemental Question S4-25.

¹⁵⁶ *Id.*

The term competence can have multiple meanings and connotations. The Attorney General reviewed the relevant competence with a focus on the ability to successfully operate the Newco hospitals after the Proposed Transaction. The central function of operating hospitals is patient care. DOH's review focuses more directly on health services and has identical review criteria regarding this topic;¹⁵⁷ therefore, the Attorney General will rely on and defer to DOH's expertise and experience relating to Prospect's track record for quality services in its other hospitals. Prospect has made several representations about patient care and health services. Specifically, it represents that its hospitals are currently accredited by the Joint Commission and in good standing.¹⁵⁸ The other relevant component to competence in this context is the ability to manage the business side of a hospital. In its fifteen (15) year history, Prospect has acquired eight (8) hospitals, many of which were financially-distressed. During interviews conducted pursuant to the Hospital Conversions Act review, the Attorney General found that Prospect's management team has years of experience in operating community hospitals. Further, as outlined hereafter, the Attorney General's expert has found that the finances of Prospect are in line with companies acquiring distressed community hospitals which appears to be a signal of some level of success.

4. Standing in the Community

The issue of standing in the community is interrelated with overlapping inquiries to the question of character. Overall, given the totality of the circumstances, the Attorney General finds that Prospect's character, commitment, competence, and standing in the community meet the threshold and are satisfactory for the purposes of a Hospital Conversions Act review.

¹⁵⁷ See R.I. Gen. Laws § 23-17.14-8 (b)(1).

¹⁵⁸ See Initial Application Response to Question 64.

H. MISCELLANEOUS

In addition to the provisions outlined above, there are also a few additional requirements of the Hospital Conversions Act that do not fit into any of the categories outlined above. They are outlined individually below.

1. Rhode Island Nonprofit Corporations Act

The Hospital Conversions Act requires that a hospital conversion comply with the Rhode Island Nonprofit Corporations Act. R.I. Gen. Laws §§ 7-6-1, *et. seq.* (the "Nonprofit Act").¹⁵⁹ The Nonprofit Act is comprised of 108 sections. Many of these sections discuss the governance requirements of non-profit corporations. First, the Attorney General makes no finding regarding whether the Prospect entities, as they are all for profit entities and the Nonprofit Act does not apply to them. With respect to CCHP, the Proposed Transaction is permissible under the Non-Profit Corporation Act and the Proposed Transaction was approved by the CCHP Board who has been represented by legal counsel throughout these proceedings and during negotiations.¹⁶⁰ Based upon the above, the Attorney General finds that this condition has been satisfied.

2. Right of First Refusal

The Hospital Conversions Act requires review of whether the Proposed Transaction involves a right of first refusal to repurchase the assets. *See* R.I. Gen Laws § 23-17.14-7 (c)(27). The Asset Purchase Agreement contains no such right of first refusal to CCHP to repurchase the assets being acquired by Prospect.

¹⁵⁹ *See* R.I. Gen Laws § 23-17.14-7 (c)(19).

¹⁶⁰ *See* R.I. Gen Laws §§ 7-6-5 and 7-6-49; Initial Application Response to Question 1; Response to Supplemental Question S3-17.

3. Control Premium

With regard to the one remaining review provision of the Hospital Conversions Act, there is no control premium included in the Proposed Transaction. R.I. Gen. Laws § 23-17.14-7(c)(29).

4. Additional Issues

There are four issues that the Attorney General will address in addition to the enumerated review criteria that have come to light during the review process.

a. Prospect's Ability to Fund Transaction

The Attorney General's expert, Carris has reviewed the financial information provided by Prospect and has concluded as follows:

Does Prospect have the Resources to Finance this Transaction as Well as Ongoing Commitments to CCHP?

As reported in Prospect's 2013 audited financial statements, Prospect generated approximately \$80 million in operating income for the year ended September 30, 2013. Operating revenues totaled \$713.6 million and operating expenses totaled \$633.6 million. Earnings before interest, taxes, depreciation and amortization (EBITDA) for 2013 totaled \$98.7 million. Prospect's audited financial statements show consistent growth and profitability from 2010 through 2013.

Prospect's September 2013 balance sheet shows cash & equivalents of \$86.3 million, total current assets of \$241.7 million and total assets of \$578.9 million. For liabilities, the financial statements report current liabilities of \$148.2 million, total liabilities of \$610 million and net equity of (\$32.0) million. The current ratio for 2013 was 1.63.

In 2013, Prospect distributed \$88 million to its primary investor. Prospect's management and representatives have given assurances that this was a one-time event and that there are no plans to make a similar distribution in the foreseeable future.

Prospect will fund this transaction out of existing cash and an available line of credit. Based on the APA, Prospect will fund \$45 million at closing and an additional \$12.5 million in year one (one-fourth of \$50 million), for a total of \$57.5 million in the first 12 months.

During various meetings, representatives of Prospect's senior leadership team made further representations that the financial status of Prospect permits it to fund the closing of the transaction and also meet the ongoing capital commitments. The parties also gave assurances that the \$50 million capital commitment has been disclosed and agreed to by Prospect's board of

directors and lenders. Assurances were also given that the \$50 million is being funded out of available liquidity and will not violate any of Prospect's existing loan covenants.

Based on the financial documentation submitted by Prospect and the representations of its management and other representatives, the company has the financial resources to fund this transaction, including the \$50 million in long-term capital commitments. Prospect capacity to meet future capital commitments could be constrained if the company enters into other transactions that (in total) exceed its available financial resources and/or its ability to access capital. Future commitments could also be constrained by a deterioration of financial performance or a material change in market conditions.

Given the opinion of Carris, absent any exigent circumstances or, as aptly pointed out by Carris, any acquisition plan or other commitments that would over-extend Prospect, it currently appears to have the financial ability to fund the Proposed Transaction.

b. Mandatory Conditions

Among the changes to the Hospital Conversions Act in 2012 was the imposition of mandatory conditions on for-profit acquirors. *See* R.I. Gen. Laws § 23-17.14-28. The Legislature crafted eight (8) such conditions for DOH with a wide variety of topics. *See* R.I. Gen. Laws § 23-17.14-28(b). As for the Attorney General, one such condition was imposed, namely: "the acquiror's adherence to a minimum investment to protect the assets, financial health, and well-being of the new hospital and for community benefit." *See* R.I. Gen. Laws § 23-17.14-28(c). With regard to these pre-determined conditions, if either Department deems them "not appropriate or desirable in a particular conversion," such Department must include rationale for not including the condition. *See* R.I. Gen. Laws § 23-17.14-28(b) and (c). The Attorney General finds that to the extent that such condition is applicable, the Transacting Parties have satisfied it by the obligations contained in the Asset Purchase Agreement and no additional condition will be added other than those already imposed.

c. Use of Monitor

Another change to the Hospital Conversions Act in 2012 was to include a requirement that a for-profit acquiror file reports for a three (3) year period. *See* R.I. Gen. Laws § 23-17.14-28(d)(1). In addition, such section requires that the Attorney General and DOH “monitor, assess and evaluate the acquiror's compliance with all of the conditions of approval.” *See* R.I. Gen. Laws § 23-17.14-28(d)(2). Further, there shall be an annual review of “the impact of the conversion on health care costs and services within the communities served.” *Id.* The costs of these reviews will be paid by the acquiror and placed into escrow during the monitoring period. *See* R.I. Gen. Laws § 23-17.14-28(d)(3). No Initial Application can be approved until an agreement has been executed with the Attorney General and the Director of the DOH for the payment of reasonable costs for such review. *Id.* The Transacting Parties have executed a Reimbursement Agreement dated, January 24, 2014. The Attorney General’s conditions will be monitored by an individual or entity chosen by the Attorney General and paid for by Prospect. An agreement with such monitor and Prospect will be drafted and executed prior to the Closing on the Proposed Transaction.

d. Health Planning

As during the course of any HCA review, there has been some discussion in the health care community about the continuing role of CCHP in the Rhode Island health care system, post-acquisition, particularly since the Existing Hospitals will become for profit entities. The Attorney General notes that the Hospital Conversions Act in its present form is not a health planning tool. Although there has been much talk about creating a so-called state health plan, that goal has not yet been reached. Therefore, it is not the position of the Attorney General to

use the Hospital Conversion Act to effectuate health planning that should be properly done elsewhere with input from a variety of groups. The Hospital Conversion Act contains a set of criteria, it does not allow for the Attorney General to opt for a different model or to suggest a different suitor for CCHP. However, the question to be answered by this review is whether this particular transaction meets the criteria of the Hospital Conversions Act.

V. CONCLUSION

While the Act is no guarantee that a hospital will not be sold to an entity with a different plan in mind than what the surrounding community may value, the Act at the very least provides a minimum framework for review of a hospital transaction. The Attorney General hopes that Prospect CharterCARE, LLC becomes everything it has promised to be for the citizens of Rhode Island. As with all of the Attorney General's reviews pursuant to the Hospital Conversions Act, this Decision represents this Department's best efforts and a careful review of the Proposed Transaction given the information available.

Wherefore, based upon the information provided above in this Decision, the Proposed Transaction is **APPROVED WITH CONDITIONS**. These conditions are outlined below.

VI. CONDITIONS

1. There shall be no board or officer overlap between or among the CCHP Foundation, CCHP, and Heritage Hospitals.
2. There shall be no board or officer overlap between or among the Prospect entities and the CCHP Foundation, CCHP and the Heritage Hospitals.
3. Complete appointment of board members for Prospect CharterCARE, LLC and its Subsidiaries, and for CCHP Foundation, CCHP and Heritage Hospitals, within sixty (60) days after the close of the transaction, and provide final notice to the Attorney General of the identities of such appointees, along with a description of their experience to serve as board members.
4. For the next three (3) years following the close of the transaction, provide the Attorney General the names, addresses and affiliations of all members appointed to any board of

Prospect CharterCARE, LLC and its Subsidiaries, CCHP Foundation, CCHP and the Heritage Hospitals.

5. For the next three (3) years following the close of the transaction, Prospect CharterCARE, LLC and its Subsidiaries, and CCHP Foundation, CCHP and the Heritage Hospitals shall provide corporate documents to the Attorney General to evidence compliance regarding board composition as required by this Decision. In addition, the aforementioned entities shall provide to the Attorney General any proposed amendments to their corporate documents 30 days prior to amendment.
6. For the next three (3) years following the close of the transaction, upon any change in what was represented by the Transacting Parties in the Initial Application and supplemental responses in connection with the approval of this transaction, reasonable prior notice shall be provided to the Attorney General.
7. For the next three (3) years following the close of the transaction, provide reasonable prior notice to the Attorney General identifying any post closing contracts between any of the Transacting Parties and any of the current officers, directors, board members or senior management.
8. That (a) a proposed opening balance sheet for the CCHP Foundation and the Heritage Hospitals as of the close of the transaction identifying the source and detail of all charitable assets to be transferred to the CCHP Foundation be provided to the Attorney General promptly following the close of the transaction; (b) a proposed *Cy Pres* petition satisfactory to the Attorney General be prepared promptly following the close of the transaction allowing certain charitable assets to be transferred to the CCHP Foundation and requesting that other charitable assets remain with the Heritage Hospitals, in each case for disbursement in accordance with donor intent, with such proposed modifications as agreed to by the Attorney General, and (c) the approved *Cy Pres* petition be filed with the Rhode Island Superior Court.
9. That the transaction be implemented as outlined in the Initial Application, including all Exhibits and Supplemental Responses.
10. That all unexecuted agreements provided in support of the Initial Application and Supplemental Responses be executed by the Transacting Parties in the form and substance presented.
11. Promptly after the 180th day following the close of the transaction, brief in an interview with the Attorney General the terms of the final Prospect CharterCARE, LLC's Strategic Plan adopted by the Board. In the event the Attorney General requires a copy of such plan, Prospect CharterCARE, LLC may seek a court order protecting the confidentiality thereof.
12. For the next three (3) years following the close of the transaction, provide the Attorney General with a copy of any notices provided to or received by a party under the Asset

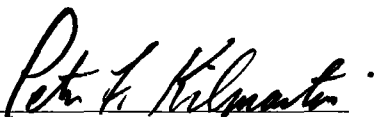
Purchase Agreement.

13. For the next three (3) years following the close of the transaction, provide the Attorney General with a copy of any notice(s) out of the ordinary course; e.g., Office of Inspector General, Securities and Exchange Commission, Internal Revenue Service and Centers for Medicare and Medicare Services, received by the Transacting Parties from any regulatory body.
14. That the Transacting Parties comply with applicable state tax laws.
15. All CCHP entities being acquired (e.g. not CCHP, CCHP Foundation or the Heritage Hospitals) shall be wound down and dissolved and all necessary documents must be filed with applicable state agencies, including, but not limited to the Secretary of State and the Division of Taxation.
16. That all costs and expenses due from the Transacting Parties pursuant to the Reimbursement Agreement dated, January 24, 2014, be paid in full prior to close of the transaction.
17. That PMH guarantee the full amount of Prospect East's financial obligations contained in the Asset Purchase Agreement pursuant to the form of guaranty approved by the Attorney General.
18. Prospect CharterCARE, LLC shall report annually to the Attorney General on the proposed form submitted to the Attorney General concerning the funding of its routine and non-routine capital commitments under the Asset Purchase Agreement until the long term capital commitment as defined in the Asset Purchase Agreement has been satisfied.
19. That Prospect provide information on a timely basis requested by the Attorney General to determine its compliance with the Asset Purchase Agreement and the Conditions of this Decision.
20. The Transacting Parties shall enter into an amendment to the Reimbursement Agreement dated January 24, 2014 for retention by the Attorney General of expert(s) to assist the Attorney General until all matters relating to the approval of the Initial Application are fully and finally resolved.
21. That Prospect complies with the Reimbursement Agreement dated, January 24, 2014, for retention by the Attorney General of an expert to assist the Attorney General with enforcing compliance with these Conditions. Further, Prospect shall enter into an additional agreement outlining the terms of its obligations regarding cooperation with the Attorney General and any expert retained to assist the Attorney General with enforcing compliance with these Conditions.

22. That Prospect CharterCARE, LLC and its affiliates shall provide any transition services to CCHP Foundation, CCHP and the Heritage Hospitals pursuant to separate agreements, terminable by the CCHP affiliate at will and provided by the Prospect affiliate at cost.
23. For the next three (3) years following the close of the transaction, notify the Attorney General of any actions out of the ordinary course taken in connection with the SJHSRI pension or any material changes in its operation and/or structure.
24. For the next three (3) years following the close of the transaction, provide the Attorney General notice of a proposed change of ownership of Prospect East or PMH.
25. For the next three (3) years following the close of the transaction, provide CCHP Foundation, CCHP and the Heritage Hospitals with a right of first refusal to match the price to acquire any asset comprised of a line of business or real estate of Prospect CharterCARE, LLC and its Subsidiaries that it proposes to sell.
26. For the next three (3) years following the close of the transaction to the extent there is a sale of any Purchased Assets comprised of a line of business or real estate, the associated sale proceeds shall remain within Prospect CharterCARE, LLC for the benefit of the operation of the Newco hospitals.
27. The Transacting Parties shall provide a Tax Certificate from the State of Rhode Island that the transaction is proper under state tax laws prior to closing.
28. In connection with a sale of assets as defined in paragraph 26 above, if at the time of such a sale Prospect CharterCARE, LLC's membership interest has been diluted to less than fifteen (15%) percent, then fifteen (15%) of the net sales proceeds from the transaction shall go to CCHP to restore its membership interest up to fifteen (15%) percent. Said monies shall be credited against any future member distributions made to CCHP by Prospect CharterCARE, LLC.
29. Anyone subject to the Ethics Commission shall not be eligible to be a board member.
30. Within three (3) years of the closing of this Transaction, provide notice to the Attorney General of any complaints received from OIG, CMS or state agencies.

All of the above Conditions are directly related to the proposed conversion. The Attorney General's APPROVAL WITH CONDITIONS is contingent upon the satisfaction of the Conditions. The Proposed Transaction shall not take place until Conditions 10, 14, 16, 17, 20, 21 and 27 have been satisfied. The Attorney General shall enforce compliance with these

Conditions pursuant to the Hospital Conversions Act including R.I. Gen. Laws § 23-17.14-30.



Peter F. Kilmartin
Attorney General
State of Rhode Island



Genevieve M. Martin
Assistant Attorney General

NOTICE OF APPELLATE RIGHTS

Under the Hospital Conversions Act, this decision constitutes a final order of the Department of Attorney General. Pursuant to R.I. Gen. Laws § 23-17.14-34, any transacting party aggrieved by a final order of the Attorney General under this chapter may seek judicial review by original action filed in the Superior Court.

CERTIFICATION

I hereby certify that on this 16th day of May, 2014, a true copy of this Decision was sent via electronic and first class mail to counsel for the Transacting Parties:

Patricia K. Rocha, Esq.
Adler Pollack & Sheehan
One Citizens Plaza -8th Floor
Providence, RI 02903

W. Mark Russo, Esq.
Ferrucci Russo, P.C.
55 Pine Street- 4th Floor
Providence, RI 02903

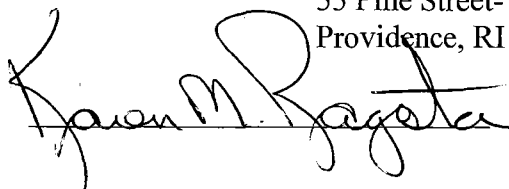


Exhibit 4

RETAINER AGREEMENT

This Agreement is made as of the 6th day, of June, 2014 by and between the **Department of Attorney General**, 150 South Main Street, Providence, RI 02903 ("ATTORNEY GENERAL"), **Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC**, Delaware for-profit corporations, which, together with **Prospect CharterCARE, LLC**, a Rhode Island limited liability corporation with their principal offices located at 10780 Santa Monica Blvd. Suite 400, Los Angeles, CA 90025 (hereafter collectively, "PROSPECT"), and **Affiliated Monitors, Inc.** P.O. Box 961791, Boston, MA, 02196 ("AFFILIATED"),

WHEREAS, on or about October 18, 2013, an initial application for a hospital conversion (hereafter "the Proposed Transaction") was filed with the ATTORNEY GENERAL whereby PROSPECT would purchase certain assets of CharterCARE Health Partners, Roger Williams Medical Center and St. Joseph Health services of Rhode Island, non-profit Rhode island corporations with their principle offices located at 825 Chalkstone Avenue, Providence, RI 02908 (hereafter collectively "CharterCARE") and will form a joint venture to own and operate all of the health care entities associated with CharterCARE Health Partners, (collectively "PROSPECT" and with "CharterCARE", the "Transacting Parties");

WHEREAS, the Proposed Transaction was subject to review by the ATTORNEY GENERAL pursuant to the Hospital Conversions Act, R.I. Gen. Laws § 23-17.14-1, *et seq.*; and the ATTORNEY GENERAL rendered a decision (the "Decision") pursuant to such review on October 28, 2013;

WHEREAS the Decision contained conditions ("the "Conditions") to the approval of the ATTORNEY GENERAL and the ATTORNEY GENERAL may engage experts to monitor conditions of approval pursuant to R.I. Gen. Laws § 23-17.14-13 and R.I. Gen. Laws § 23-17.14-28;

NOW THEREFORE, in consideration of the foregoing and of the agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

I. Commencement and Termination

1. The ATTORNEY GENERAL and AFFILIATED agree that the duties and obligations of the parties pursuant to this Agreement commence as of June 6, 2014. It is expressly understood by AFFILIATED that time is of the essence in the performance of its duties under this Retainer Agreement. AFFILIATED agrees that it shall deliver, at a minimum, an annual report to the ATTORNEY GENERAL no later than June 30 of each year of the Term of this Agreement. In addition, interim reports shall be provided to the ATTORNEY GENERAL monthly for the first three (3) months post closing, quarterly for the remainder of the first year and second year and every six (6) months for the third year and as necessary in the determination of AFFILIATED or as requested by the ATTORNEY GENERAL.

The due date of the annual report will be extended as agreed by ATTORNEY GENERAL and AFFILIATED if after diligent review by AFFILIATED, PROSPECT fails to provide requested information necessary for the annual report in a timely manner.

2. ATTORNEY GENERAL and AFFILIATED agree that this Retainer Agreement shall terminate:

A. At the conclusion of ATTORNEY GENERAL's review of the Conditions and representation of the public's interest, including any resulting court proceedings in connection with the Conditions; or

B. By the ATTORNEY GENERAL, without cause and without penalty, five (5) days after delivery to AFFILIATED of written notice of termination by ATTORNEY GENERAL; or

C. By the ATTORNEY GENERAL, for cause, by providing written notice to AFFILIATED, if AFFILIATED breaches any material term or condition of this Retainer Agreement or if AFFILIATED fails to perform or fulfill any material obligation required pursuant to this Retainer Agreement. The ATTORNEY GENERAL may terminate this Retainer Agreement for cause immediately and with no notice period if AFFILIATED or any of its employees engage in illegal conduct, including, but not limited to, indictment by a grand jury or arrest for or conviction of a felony.

D. The notice of termination by ATTORNEY GENERAL pursuant to Section I(2)(C) shall state the circumstances of termination, identify any alleged breach, and shall set forth a reasonable period to cure any alleged breach, if applicable, and any instructions or restrictions concerning any allowable activities or costs during this notice period.

3. If this Retainer Agreement is terminated by ATTORNEY GENERAL, as provided herein, AFFILIATED will be paid reasonable compensation for appropriate and reasonable services rendered through the date of termination, but in no event shall the compensation exceed the amount set forth in Section IV of this Agreement, such payment to be accepted by AFFILIATED in full satisfaction of all claims and demands against ATTORNEY GENERAL based upon, or arising out of, the performance of this Retainer Agreement.

4. Within five (5) calendar days of the termination of this Retainer Agreement by ATTORNEY GENERAL, AFFILIATED agrees to deliver to ATTORNEY GENERAL all work product of AFFILIATED, including work papers, notes, correspondence and all other documents generated and/or collected by or at the direction of AFFILIATED, along with all reports (prepared or in progress) and conclusions reached by AFFILIATED concerning the subject matter and services, starting from the commencement of this Retainer Agreement, up to and including the date of its termination.

II. Nature and Scope of Services

1. AFFILIATED shall provide expert assistance to ATTORNEY GENERAL to review the Conditions and to provide expert witness testimony if review of the Conditions proceeds to litigation.

2. The expert assistance to be provided to ATTORNEY GENERAL by AFFILIATED to monitor the Conditions shall consist of the Scope of Work attached hereto as Schedule A.

III. Confidentiality

1. AFFILIATED agrees that all communications with the ATTORNEY GENERAL shall remain confidential unless the ATTORNEY GENERAL agrees to disclosure of same.

2. AFFILIATED agrees to review, examine, inspect or obtain such information only for the purposes described above, and to otherwise hold such information confidential pursuant to the terms of this Agreement.

3. AFFILIATED agrees that all information that has been furnished, or shall be furnished by the Transacting Parties to AFFILIATED shall remain confidential, including any inspection of the business of the Transacting Parties and interviewing of employees or representatives of the Transacting Parties, all on the following conditions:

A. AFFILIATED agrees to hold all confidential or proprietary information or trade secrets ("Confidential Information") in trust and confidence and agrees that it shall be used only for the contemplated purpose of this Retainer Agreement and shall not be used for any other purpose or disclosed to any third party.

B. No copies will be made or retained of any Confidential Information supplied.

C. At the conclusion of the review, or upon demand by ATTORNEY GENERAL, all information, including written notes, photographs, memoranda, or notes taken by AFFILIATED shall be returned to the ATTORNEY GENERAL.

D. The information provided to AFFILIATED shall not be disclosed to any employee or consultant unless they agree to execute and be bound by the terms of this Agreement.

4. Confidential Information shall not be deemed proprietary and AFFILIATED shall have no obligation with respect to such information where the information was: (a) known to AFFILIATED prior to receiving any of the Confidential Information; (b) becomes publicly known through no wrongful act of AFFILIATED; (c) received by AFFILIATED without breach of this Agreement from a third party without restriction as to the use and disclosure of the

information; (d) independently developed by AFFILIATED without use of the Confidential Information; or (e) ordered to be publicly released by the requirement of a government agency.

5. AFFILIATED agrees to take all steps reasonably necessary to protect the secrecy of the Confidential Information and to prevent the Confidential Information from falling into the public domain or into the possession of unauthorized persons.

6. The obligations of this Agreement shall be continuing until the Confidential Information disclosed to AFFILIATED is no longer confidential.

IV. Consideration

1. AFFILIATED acknowledges that its fees and expenses are the responsibility of and are paid by PROSPECT. The ATTORNEY GENERAL has entered into an agreement with PROSPECT for the payment of such fees. Hourly rates paid to AFFILIATED shall be as outlined on Schedule B.

The total amount of fees has been estimated as Eighty to One Hundred Twenty Thousand Dollars (\$80,000 to \$120,000) for professional services exclusive of litigation support services for the first year and Sixty to Eighty Thousand Dollars (\$60,000 to \$80,000) for each subsequent year thereafter. The parties acknowledge that this is an estimate only and is subject to change and dependent upon the action of PROSPECT. The ATTORNEY GENERAL must consent to any amount in excess of this estimate. If additional litigation related services are required, they will be billed on an hourly basis with the hourly rates set forth herein. If the total amount is to exceed the estimate, AFFILIATED shall inform the ATTORNEY GENERAL prior to performing any work in excess of this estimate. Clerical work shall not be billed separately, but will be included in professional rates.

2. AFFILIATED shall be reimbursed for its reasonable out-of-pocket expenses by PROSPECT. ATTORNEY GENERAL in its sole discretion will determine if expenses are reasonable. AFFILIATED will submit invoices for any expenses for which it seeks reimbursement pursuant to this Retainer Agreement.

3. AFFILIATED shall submit monthly invoices for services rendered, setting forth the date of the service, who performed the service, the nature of the service, the time expended on the service and the billing rate per hour for the person who performed the service. Payment shall not be due prior to forty (40) working days of the invoice. No interest will be charged without consent of the ATTORNEY GENERAL.

4. AFFILIATED shall submit all invoices for payment to Assistant Attorney General Genevieve M. Martin, Rhode Island Department of Attorney General, 150 South Main Street, Providence, Rhode Island 02903.

V. Assignment

1. AFFILIATED shall not assign, transfer, convey or otherwise dispose of this Retainer Agreement or its right, title or interest therein, or its power to execute such Retainer Agreement, to any other person, company or corporation, without the previous written consent of ATTORNEY GENERAL.

2. It is further understood and agreed by AFFILIATED that ATTORNEY GENERAL's retention of AFFILIATED pursuant to the within Retainer Agreement is made with the understanding and expectation that Donald Stern ("Stern"), Catherine Keyes ("Keyes"), Steve Nemmers ("Nemmers") and Cynthia Owens ("Owens") will be the principal individuals providing assistance to ATTORNEY GENERAL pursuant to this Retainer Agreement. The ATTORNEY GENERAL has the right to accept or reject any employee AFFILIATED assigns to the contractual relationship and to require their replacement at any time.

3. AFFILIATED understands and agrees that Stern, Keyes, Nemmers and Owens are material to the services engaged pursuant to this Retainer Agreement and that Stern, Keyes, Nemmers and Owens will not be replaced without the prior written approval of ATTORNEY GENERAL.

VI. Conflicts of Interest

AFFILIATED covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner with its performance of services pursuant to this Retainer Agreement. AFFILIATED further covenants that, in the performance of its obligations under this Retainer Agreement, it shall not employ any person having such an interest in the Proposed Transaction without notice to and consent of the ATTORNEY GENERAL. Such consent will not be unreasonably withheld.

VII. Recordkeeping and Inspection of Records

AFFILIATED shall maintain books, records and other compilations of data, in such detail as shall properly substantiate claims for payment under this Retainer Agreement. All such records shall be kept for a minimum of the later of one (1) year after the completion of AFFILIATED's services performed pursuant to this Retainer Agreement or any court proceeding resulting therefrom. Upon reasonable notice, AFFILIATED agrees to make the records described herein accessible to ATTORNEY GENERAL for review (including on-site audit) and photocopying.

VIII. Breach

If it becomes necessary for ATTORNEY GENERAL or its representative to enforce the obligations accepted by AFFILIATED pursuant to this Retainer Agreement, AFFILIATED agrees to pay to ATTORNEY GENERAL the costs and expenses of the ATTORNEY GENERAL to enforce this Retainer Agreement, including, but not limited to, reasonable attorneys' fees and any costs incurred to procure substitute or alternative services.

IX. Subcontractors

1. AFFILIATED shall not utilize any subcontracts nor shall collateral agreements be permitted, without ATTORNEY GENERAL's prior written authorization.

2. AFFILIATED understands and agrees that any subcontract authorized by ATTORNEY GENERAL shall not relieve or discharge AFFILIATED from any obligation, responsibility or liability under this Retainer Agreement. Unless provided by law, ATTORNEY GENERAL shall not be obligated or bound by any provisions contained in a subcontract to which ATTORNEY GENERAL is not a party. Upon written request by ATTORNEY GENERAL, AFFILIATED shall provide a copy of any subcontract that is funded by this Retainer Agreement.

3. Further, AFFILIATED agrees to take affirmative steps to utilize certified small businesses, certified minority and women-owned businesses and businesses or firms owned or controlled by socially or economically disadvantaged individuals or individuals with disabilities, as sources of supplies and subcontracted services, if such services are necessary and do not engage subcontractors or constitute collateral agreements without ATTORNEY GENERAL's prior written authorization.

X. Indemnity

AFFILIATED agrees: (a) To hold the State of Rhode Island, ATTORNEY GENERAL and their agents and employees (hereafter collectively "STATE") harmless from, and defend STATE against, any liability imposed upon STATE arising from the actions or negligence of AFFILIATED, or from the use by AFFILIATED, of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this Retainer Agreement of which AFFILIATED is not the patentee, assignee or licensee; and (b) to comply with all laws of the State of Rhode Island.

XI. Prime Responsibilities

PROSPECT agrees with AFFILIATED to the responsibilities outlined on Schedule C.

XII. Notification

Any notice required by this Agreement shall be sent via first class and electronic mail as follows:

to ATTORNEY GENERAL:

Genevieve M. Martin
Assistant Attorney General
150 South Main Street
Providence, RI 02903
gmartin@riag.ri.gov

to **PROSPECT**:

Ellen Shin, Esq.
Prospect Medical Holdings, Inc.
10780 Santa Monica Boulevard, Suite 400
Los Angeles, California 90025
Ellen.Shin@prospectmedical.com

with a copy to:

W. Mark Russo, Esq.
Ferrucci Russo, P.C.
55 Pine Street
Providence, RI 02908
mrusso@frlawri.com

to **AFFILIATED**:

Donald K. Stern, Esq.
Affiliated Monitors, Inc.
PO Box 961791
Boston, MA 02196
dstern@affiliatedmonitors.com

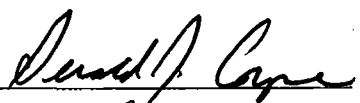
XIII. Miscellaneous

1. Cooperation with Other Experts and Consultants: AFFILIATED agrees to cooperate and work with any other expert or consultant the ATTORNEY GENERAL may engage in this matter.
2. Drug-free Workplace Requirement: AFFILIATED agrees to abide by Rhode Island's drug-free workplace policy.
3. Equal Opportunity Compliance, Handicapped Access and Affirmative Action: AFFILIATED agrees to abide and comply with all federal and state laws and regulations concerning equal opportunity, handicapped access and affirmative action.
4. Forum and Choice of Law: This Agreement shall be governed by the laws of the State of Rhode Island. AFFILIATED and PROSPECT hereby agree to submit to the jurisdiction of the Rhode Island Courts and laws with respect to any dispute arising from, or in connection with, the within Retainer Agreement. AFFILIATE, PROSPECT and ATTORNEY GENERAL agree that any action brought by either AFFILIATED, PROSPECT or ATTORNEY GENERAL in connection with, or arising under, this Retainer Agreement shall be brought in the State of Rhode Island.

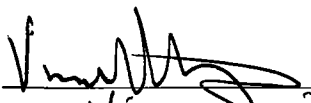
5. Merger: This Retainer Agreement contains the final expression of the parties' agreement, and it is a complete and exclusive statement of the terms of the Retainer Agreement.
6. Continuing Agreement: The parties understand and agree that the duties and obligations contained in this Retainer Agreement shall be binding on and inure to the benefit of the successors, legal representatives and assigns of ATTORNEY GENERAL, AFFILIATED and PROSPECT.
7. Modification: The parties understand and agree that this Retainer Agreement may be modified only by a writing signed by the parties.
8. Waiver: It is understood and agreed that forbearance by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to any party. No waiver by any party shall constitute a waiver of any subsequent default or breach.
9. Force Majeure: No party shall be liable to the other or be deemed to be in breach of this Retainer Agreement for failure or delay in rendering performances arising out of causes factually beyond their control and without their fault or negligence. Such causes may include, but are not limited to: Acts of God or the public enemy, wars, fires, floods, epidemics, quarantine restrictions, strikes, unforeseen freight embargoes or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this Section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.
10. Severability: The parties agree that the invalidity, in whole or in part, of any term contained in this Retainer Agreement does not affect the validity of the remainder of this Retainer Agreement.
11. Headings: The headings used herein are for reference and convenience only and shall not be a factor in the interpretation of this Agreement.

IN WITNESS WHEREOF, the ATTORNEY GENERAL, AFFILIATED and PROSPECT caused this Agreement to be executed as of the day and year set forth herein.

DEPARTMENT OF ATTORNEY GENERAL

By: 
Print Name: GERARD J. COINE
Print Title: Deputy Attorney General
Date: 6/16/14

AFFILIATED MONITORS, INC.

By: 
Print Name: VINCENT P. DICRIMM
Print Title: PRESIDENT
Date: 6.23.14

PROSPECT MEDICAL HOLDINGS, INC.

By: _____
Print Name: *Sam Lee*
Print Title: *CEO*
Date: *6/12/14*

PROSPECT EAST HOLDINGS, INC.

By: _____
Print Name: *Sam Lee*
Print Title: *CEO*
Date: *6/12/14*

**PROSPECT EAST HOSPITAL
ADVISORY SERVICES, LLC**

By: _____
Print Name: *Sam Lee*
Print Title: *CEO*
Date: *6/12/14*

PROSPECT CHARTERCARE, LLC

By: _____
Print Name: *Sam Lee*
Print Title: *CEO*
Date: *6/12/14*

Schedule A

Scope of Work

1. Upon their appointment and update upon any new appointments for the next three (3) years, confirm that there is no board or officer overlap between or among the CCHP Foundation, CCHP, and Heritage Hospitals and obtain attestations from each member that they are not subject to the Rhode Island Code of Ethics.
2. Upon their appointment and update upon any new appointments for the next three (3) years, confirm that there is no board or officer overlap between or among the Prospect entities and the CCHP Foundation, CCHP and the Heritage Hospitals and obtain attestations from each member that they are not subject to the Rhode Island Code of Ethics.
3. Confirm that the parties to this Transaction have completed the appointment of board members for Prospect CharterCARE, LLC and its Subsidiaries, and for CCHP Foundation, CCHP and Heritage Hospitals, within sixty (60) days after the close of the transaction, and that they have provided final notice to the Attorney General of the identities of such appointees, along with a description of their experience to serve as board members. This information should be updated upon the appointment of any new board members.
4. Upon their appointment and for the next three (3) years following the close of the transaction, obtain and provide the Attorney General with the names, addresses and affiliations of all members appointed to any board of Prospect CharterCARE, LLC and its Subsidiaries, CCHP Foundation, CCHP and the Heritage Hospitals.
5. For the next three (3) years following the close of the transaction, Prospect CharterCARE, LLC and its Subsidiaries, and CCHP Foundation, CCHP and the Heritage Hospitals obtain any necessary corporate documents requested by the Attorney General to evidence compliance regarding board composition as required by this Decision.
6. Obtain any proposed amendments to the corporate documents of Prospect CharterCARE, LLC and its Subsidiaries, and CCHP Foundation, CCHP and the Heritage Hospitals thirty (30) days prior to amendment.
7. For the next three (3) years following the close of the transaction, provide reasonable prior notice to the Attorney General identifying any post closing contracts between any of the Transacting Parties and any of the current officers, directors, board members or senior management.
8. Obtain information to confirm that the Transaction is implemented by the parties as outlined in the Initial Application, including, but not limited to, all Exhibits and

Supplemental Responses and:

- (a) obtain annual reports from Prospect CharterCARE, LLC for the Attorney General on the proposed form submitted to the Attorney General concerning the funding of its routine and non-routine capital commitments under the Asset Purchase Agreement until the long term capital commitment as defined in the Asset Purchase Agreement has been satisfied;
 - (b) obtain information confirming that the charitable assets that remain with the Heritage Hospitals are used in accordance with donor intent. It is anticipated that monitoring of this condition should be done through reconciliation of the accounts and uses for the three (3) years following the close of the transaction.
9. Promptly after the 180th day following the close of the transaction, confirm that the parties have briefed, in an interview with the Attorney General, the terms of the final Prospect CharterCARE, LLC's Strategic Plan adopted by the Board.
 10. For the next three (3) years following the close of the transaction, obtain and provide the Attorney General with a copy of any notices provided to, or received by, a party under the Asset Purchase Agreement and Amendment thereto.
 11. For the next three (3) years following the close of the transaction, obtain and provide the Attorney General with a copy of any notice(s) out of the ordinary course; e.g., Office of Inspector General, Securities and Exchange Commission, Internal Revenue Service and Centers for Medicare and Medicare Services, received by the Transacting Parties from any regulatory body.
 12. Confirm that all CCHP entities being acquired but not continuing (e.g. not CCHP, CCHP Foundation or the Heritage Hospitals) are wound down and dissolved and all necessary documents have been filed with applicable state agencies, including, but not limited to the Secretary of State and the Division of Taxation.
 13. Obtain information as requested by the Attorney General that Prospect is acting in compliance with the Asset Purchase Agreement and the Conditions of this Decision.
 14. Confirm that Prospect CharterCARE, LLC and its affiliates are providing any transition services to CCHP Foundation, CCHP and the Heritage Hospitals pursuant to separate agreements, terminable by the CCHP affiliate at will and provided by the Prospect affiliate at cost for the next three (3) years following the close of the transaction.
 15. For the next three (3) years following the close of the transaction, obtain information of any actions out of the ordinary course taken in connection with the SJHSRI pension or any material changes in its operation and/or structure and/or funding and notify the Attorney General.
 16. For the next three (3) years following the close of the transaction, obtain information and provide the Attorney General with notice of a proposed change of ownership of Prospect

East or PMH.

17. Obtain necessary information for the next three (3) years following the close of the transaction, to ensure that CCHP Foundation, CCHP and the Heritage Hospitals are provided with a right of first refusal to match the price to acquire any asset comprised of a line of business or real estate of Prospect CharterCARE, LLC and its Subsidiaries that it proposes to sell.
18. Obtain information to confirm that for the next three (3) years following the close of the transaction, to the extent there is a sale of any Purchased Assets comprised of a line of business or real estate, the associated sale proceeds remain within Prospect CharterCARE, LLC for the benefit of the operation of the Newco hospitals.
19. In connection with a sale of assets as defined in paragraph 18 above, if at the time of such a sale Prospect CharterCARE, LLC's membership interest has been diluted to less than fifteen (15%) percent, then obtain necessary information to confirm that fifteen (15%) of the net sales proceeds from the transaction go to CCHP to restore its membership interest up to fifteen (15%) percent.
20. During the period of within three (3) years of the closing of this Transaction, obtain and provide notice to the Attorney General of any complaints received from OIG, CMS or state agencies against Prospect.

Schedule B

Affiliated Hourly Rates

Name	Title	Billing Rate
Donald Stern	Executive Program Manager and Monitor	\$450.00
Catherine Keyes	Deputy Program Manager	\$375.00
Mark Passacantando	Monitor	\$375.00
Cynthia Owens	Monitor	\$350.00

Schedule C

Prospect Responsibilities

1. PROSPECT agrees to pay AFFILIATED for its reasonable costs and expenses as outlined in the Reimbursement Agreement by and between the ATTORNEY GENERAL and PROSPECT and CharterCARE dated January 24, 2014 and as amended on May 21, 2014.
2. PROSPECT agrees that it will fully cooperate with the activities of AFFILIATED to fulfill the obligations hereunder and provide full and open access to all information and records necessary to monitor the Condition.
3. PROSPECT agrees that if AFFILIATED determines that PROSPECT is not using reasonable efforts to comply with the terms of this Agreement, or if PROSPECT is acting in a manner that violates such terms, AFFILIATED will report such actions or inactions to the OVERSIGHT AGENCY. In doing so, PROSPECT will have no recourse against AFFILIATED, its principals, directors, officers, agents and employees.
4. It is understood that AFFILIATED is not providing legal services or legal advice to PROSPECT in the services it is rendering under this Agreement. PROSPECT agrees that the work performed by AFFILIATED is not subject to any assertion of the attorney-client privilege (if applicable) or the work product doctrine.
5. AFFILIATED makes no guarantee that its services will protect PROSPECT from further disciplinary or legal action by any federal or state authority or protect it from any civil or criminal liability.
6. PROSPECT agrees to indemnify, hold harmless and defend AFFILIATED MONITORS, its principals, directors, shareholders, agents, servants and employees, and any individuals who provide services under this Agreement for the services rendered.

Exhibit 5



CATHERINE KEYES
CKEYES@AFFILIATEDMONITORS.COM

April 30, 2019

Moshe S. Berman, Esq.
General Counsel
CharterCARE Health Partners
825 Chalkstone Avenue
Providence, RI 02908

Dear Attorney Berman;

The purpose of this letter is to request documentation regarding Prospect CharterCARE's compliance with the Conditions of the *Decision of the Department of the Attorney General* dated May 16, 2014, pursuant to the *Amendment to Retainer Agreement: Schedule A-1 Extended Scope of Work* (the "Extended Scope of Work"). The Amendment was sent to Prospect CharterCARE and Affiliated Monitors, Inc. on March 19, 2019 by Jessica Rider, Health Care Advocate in the Rhode Island Office of the Attorney General.

The terms of the Extended Scope of Work are:

1. *Obtain information to confirm that the Transaction is implemented by the parties as outlined in the Initial Application, including, but not limited to, all Exhibits and Supplemental Responses and:*
 - (a) *obtain annual reports from Prospect CharterCARE, LLC for the Attorney General on the proposed form submitted to the Attorney General concerning the funding of its routine and non-routine capital commitments under the Asset Purchase Agreement and as extended and modified pursuant to the agreement as described in this Amendment to Retainer Agreement, until the Revised Capital Commitment has been satisfied;*
 - (b) *obtain information confirming that the charitable assets that remain with the Heritage Hospitals are used in accordance with donor intent. It is anticipated that monitoring of this condition should be done through reconciliation of the accounts and uses until the Revised Capital Commitment has been met.*
2. *For the period of time from the end of the third reporting year through June 20, 2020, obtain and provide the Attorney General with a copy of any notices provided to, or received by, a party under the Asset Purchase Agreement.*
3. *Obtain information as requested by the Attorney General that Prospect is acting in compliance with the Asset Purchase Agreement and the Conditions of this Decision as set forth in this Extended Scope of Work.*

AFFILIATED MONITORS



Celebrating 15 years
of
Independent Monitoring
& Compliance Services



4. *Obtain information to confirm that the proceeds of the sale of the Elmhurst Extended Care Facility and the Fruit Street property remain within Prospect CharterCARE, LLC of the benefit of the operation of the Newco hospitals.*

As you know, the report dated December 20, 2018 addresses Prospect's funding of capital and routine expenses for May 2014 – September 2016 and Prospect's compliance activities relative to all other Conditions set forth in the Decision for May 2014 – October 2017. At the request of Prospect CharterCARE, the capital expenditure requirements were revised by agreement with the Office of the Attorney General and now comprise the Revised Capital Commitment. They are included in the Extended Scope of Work and are therefore folded into this request for information and documentation.

Extended Scope of Work – Item 1.

Obtain information to confirm that the Transaction is implemented by the parties as outlined in the Initial Application, including, but not limited to, all Exhibits and Supplemental Responses....:

Request 1: Items i – xi below were set forth in the Initial Application. Please provide documentation showing Prospect has complied with these terms for the period of November 2017 – December 2018:

- i. Maintain all essential services for 5 years. The essential services listed in the Asset Purchase Agreement (“APA”) are:
- Medical/Surgical Services and Intensive/Coronary Care Unit
 - Acute Dialysis Services
 - Inpatient and Outpatient Rehabilitation Services, including Sub-acute and Skilled
 - Nursing facility
 - Ambulatory Care Services
 - Emergency Services
 - Inpatient and Outpatient Psychiatric/Mental Health/Addiction Medicine Services
 - Diagnostic Imaging and Interventional/Radiology Services, including diagnostic cardiac catheterization
 - Laboratory/Pathology
 - Inpatient and Outpatient Cancer Services including Blood and Marrow
 - Transplantation/Surgical and Radiation Oncology
 - Sleep Lab
 - Wound Care/Hyperbaric Services
 - Dermatology
 - Health center services (GYN & pediatric clinic, adult and pediatric dentistry, WIC, immunizations)
 - Homecare/Hospice services (Note: Previous information indicated that homecare was offered through the CharterCARE Home Health Services. Hospice care was not offered at the hospitals as of December 2018 – and was not at the time of the conversion – but arrangements for hospice care were facilitated by hospital social workers.)



- ii. Transferred Employees will get their base salaries and wages equal to their base salaries and wages as of the closing date. Transferred Employees will retain seniority for purposes of benefits, salaries, and wages.
- iii. Prospect will provide benefits at benefit levels comparable to benefits provided under the Existing Hospitals' plans, benefits including vacation, sick leave, holiday, health insurance, 401K, life insurance, and continued COBRA coverage.
- iv. Any Transferred Employee who is terminated without cause within the 12-month period following the closing date will be offered a severance package on terms comparable to the severance package in effect with respect to the Existing Hospitals' employees prior to the closing date.
- v. Prospect will continue to provide care through sponsorship and support of community-based health programs, including cooperation with local organizations that sponsor healthcare initiatives to address identified community needs and improve the health status of the elderly, poor and at-risk populations in the community.
- vi. Continue to support nursing and staff education.
- vii. Maintain a Senior Executive Compliance Officer whose responsibilities will include regulatory compliance, organizational compliance and will be responsible for establishing and overseeing an ethics committee to include community board members.
- viii. Adopt the Existing Hospitals' Charity Care Guidelines and continue to provide all medically necessary services to patients regardless of their ability to pay.
- ix. Maintain a ratio of full-time equivalent employees to average occupied bed that is consistent with accepted industry practices.
- x. Post-conversion, the Existing Hospitals will continue to utilize productivity targets to assist with determining appropriate staffing levels.
- xi. Maintain the Catholic identity of all legacy SJHSRI locations and "ensure that all services at SJHSRI locations are rendered in full compliance with the Ethical and Religious Directives for Catholic Health Care Services, as promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop of the Roman Catholic Diocese of Providence, Rhode Island, as the same may be amended from time to time (the ERDs)." (see APA, Exhibit M)

Extended Scope of Work – Item 1 (a).

Obtain annual reports from Prospect CharterCARE, LLC for the Attorney General on the proposed form submitted to the Attorney General concerning the funding of its routine and non-routine capital commitments under the Asset Purchase Agreement and as extended and modified pursuant to the agreement as described in this Amendment to Retainer Agreement, until the Revised Capital Commitment has been satisfied...



Request 1 (a): Please provide an updated, detailed accounting of the routine and non-routine capital commitments for the period of October 2016 – December 2018. Please provide documentation of commitments greater than or equal to \$50,000.

- i) Please provide a break-down of routine capital commitments, indicating which matters have already been paid and which are committed via contractual agreement. Provide copies of checks for matters already paid and copies of contracts for matters committed via contractual agreement.
- ii) Please provide a list and description of practice acquisitions, indicating which matters have already been paid and which are committed via contractual agreement. Provide copies of checks for matters already paid and copies of contracts for matters committed via contractual agreement. Note: AMI has a complete copy of the standard Asset Purchase Agreement used for the practice acquisitions; therefore, only the sheets with personalized data and signatures for each newly acquired physician practice are needed.
- iii) Please provide a breakdown of non-routine capital commitments, indicating which matters have already been paid and which are committed via contractual agreement. Provide copies of checks for matters already paid and copies of contracts for matters committed via contractual agreement.

Extended Scope of Work – Item 1 (b).

Obtain 1(b): Obtain information confirming that the charitable assets that remain with the Heritage Hospitals are used in accordance with donor intent. It is anticipated that monitoring of this condition should be done through reconciliation of the accounts and uses until the Revised Capital Commitment has been met.

Request 1 (b): The *Cy Pres* Order called for “dedicated funds in the aggregate amount of \$300,349.75 . . . to enhance surgical oncology physician and fellow training and education over and above the routine budgeted costs of necessary academic and research programs at RWMC to the extent that RWH is satisfied that such expenditures provide a community benefit.” It also granted *cy pres* approval for RWH to use “[c]ontinuing medical education funds in the amount of \$26,310.29 to support continuing medical education for the medical staff at RWMC over and above the routine budgeted cost of necessary continuing medical education at RWMC to the extent that RWH is satisfied that such expenditure provides a community benefit.”

- i) Please provide:
 - Information as to whether Prospect CharterCARE requested funds from the CCCB to enhance surgical oncology physician and fellow training and education for the period of November 2017 – December 2018;
 - If applicable, whether such requests were granted; and
 - If requests were granted, please provide details of the initiatives, including but not limited to a copy of the fund requests and any other correspondence with the CCCB pertaining to the applications; copies of the relevant check(s) issued by CCCB to the RWMC for the funded



initiatives; and copies of any reports issued to CCCB by RWMC or the grant applicants pertaining to the effectiveness of the grants.

ii) Please provide:

- Information as to whether Prospect CharterCARE requested funds from the CCCB to support continuing medical education (CME) for the medical staff at RWMC for the period of November 2017 – December 2018;
- If applicable, whether such requests were granted;
- If requests were granted, please provide details of the CME programs, including but not limited to a copy of the fund requests and any other correspondence with the CCCB pertaining to the applications; copies of the relevant check(s) issued by CCCB to the RWMC or to other Prospect entities relative to the funded courses; and copies of any attendance lists or other documentation that indicates the programs were presented as planned.

Extended Scope of Work – Item 2.

For the period of time from the end of the third reporting year through June 20, 2020, obtain and provide the Attorney General with a copy of any notices provided to, or received by, a party under the Asset Purchase Agreement.

Request: Please provide a copy of any notices out of the ordinary course provided to or received by a party under the Asset Purchase Agreement in the period from November 2017 – March 2019.

Extended Scope of Work – Item 3.

Obtain information as requested by the Attorney General that Prospect is acting in compliance with the Asset Purchase Agreement and the Conditions of this Decision as set forth in this Extended Scope of Work.

Request: In correspondence dated December 19, 2016 to Assistant Attorney General Kathryn Enright, Prospect CharterCARE had indicated that the Oldco entity's 15% ownership in Prospect CharterCARE has not been diluted. Please confirm if there is any development in this regard.

Scope of Work – Item 4.

Obtain information to confirm that the proceeds of the sale of the Elmhurst Extended Care Facility and the Fruit Street property remain within Prospect CharterCARE, LLC of the benefit of the operation of the Newco hospitals.

Request: Please provide documentation of the sale of the Fruit Street property and the Elmhurst Extended Care Facility. Include evidence of the sale prices, taxes and fees for each, as well as a clear explanation of the net proceeds for each property.

Consider sharing documentation of Prospect's plans for use of these sale proceeds, which may assist in demonstrating Prospect's compliance with this Item.



Moshe Berman, Esq.
April 30, 2019
Page 6

If there are additional materials which were not requested but which would help to demonstrate Prospect's compliance with the terms of the Extended Scope of Work, please include them, as well. Of course, if you have questions about this matter, please do not hesitate to contact me at (617)-784-2154 or by email at ckeyes@affiliatedmonitors.com. Please provide a response to this letter on or before May 15, 2019.

Thank you for your continued cooperation,



Catherine Keyes
Vice President of Operations

Exhibit 6



May 13, 2019

Via hand delivery

Ms. Jessica Rider, Esq.
Assistant Attorney General, Health Care Advocate
Rhode Island Department of Attorney General
150 South Main Street
Providence, RI 02903

Re: Chartercare Health Partners Capital Commitment Support

Dear Ms. Rider:

Enclosed is Prospect Chartercare, LLC d/b/a CharterCARE Health Partners' ("CCHP") documentation, compiled at the request of the Office of the Attorney General, to evidence compliance with the capital commitment obligations stemming from the 2014 purchase of Chartercare Health Partners.

Five binders are being submitted to show compliance with capital commitment obligations through May 13, 2019. The binders are divided by entity as follows:

- Binder 1:** Capital spend summary, general ledger detail, and Prospect Chartercare SJHSRI, LLC d/b/a Our Lady of Fatima Hospital ("OLF") FY17;
- Binder 2:** OLF FY18 and FY19;
- Binder 3:** CCHP FY17, CCHP and Prospect Blackstone Valley Surgicare, LLC FY18 and FY19, Prospect Chartercare RWMC, LLC d/b/a Roger Williams Medical Center ("RWMC") FY17 and FY 18;
- Binder 4:** RWMC FY18; and
- Confidential Binder:** Prospect Chartercare Physicians, LLC FY17 to FY19.

The documentation supplied is extensive, and we are happy to help explain any portion of it as the documents are reviewed.

Please let us know any additional questions that you may have as you review these documents.

Sincerely,



Moshe S. Berman
General Counsel

CC: Catherine Keyes (via email CKeyes@affiliatedmonitors.com)
Jeffery Liebman (via email jeffrey.liebman@chartercare.org)

Exhibit 7



State of Rhode Island and Providence Plantations

OFFICE OF THE ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903

(401) 274-4400

Peter F. Neronha
Attorney General

January 28, 2020

Via Hand-Delivery

Steve Sheehan, Esq.
Wistow, Sheehan & Loveley, PC
61 Weybosset St.
Providence, RI 02903

Re: *St. Joseph Health Services of Rhode Island, Inc. v.*
St. Josephs Health Services of Rhode Island Retirement
Plan, PC-2017-3856

Dear Steve:

Enclosed is a DVD containing documents received by the Office of the Attorney General (“Attorney General”) since January 1, 2019 from the Transacting Parties of the Prospect/CharterCARE Hospital Conversion related to the Attorney General’s monitoring of the May 16, 2014 Hospital Conversions Act Decision. This DVD does not include documents deemed confidential pursuant to R.I.G.L. § 23-17.14-32, which we estimate to be a total of approximately fifty (50) pages. As mentioned in my email to you dated January 23, 2020, we are prepared to provide those documents once a confidentiality order is entered with the Superior Court. We understand you are in agreement with entry of such an order and will coordinate entry of that order with the Court.

Regards,


Jessica Rider
Health Care Advocate
Ext. 2314
jrider@riag.ri.gov

JR/dm
Enclosure

Exhibit 8



First Report on Compliance by Prospect CharterCARE, CharterCARE Community Board, and CharterCARE Foundation with Conditions of Certification Pertaining to the Acquisition of Roger Williams Medical Center, St. Joseph Health Services of Rhode Island, Our Lady of Fatima Hospital and Other Entities.

In the Hospital Conversions Act Decision of the Rhode Island Department of Attorney General dated May 16, 2014 (the “HCA Decision”), Prospect CharterCARE, LLC (“Prospect” or “Prospect CharterCARE”), CharterCARE Community Board (“CCCB,” previously known as CharterCARE Health Partners or “CCHP”), and CharterCARE Foundation (the “Foundation”), (collectively “the Entities”), were required to meet certain conditions relative to Prospect’s acquisition of the facilities now known as Roger Williams Medical Center, Our Lady of Fatima Hospital, Southern New England Rehabilitation Center, St. Joseph Health Center, and other entities.¹ One condition requires Prospect to “enter into an additional agreement outlining the terms of its obligations regarding cooperation with the Attorney General and any expert retained to assist the Attorney General with enforcing compliance with these Conditions.” Affiliated Monitors, Inc. (“AMI”) was engaged to perform the services of the expert that assist the Attorney General with enforcing compliance with the conditions; this report contains Affiliated Monitors’ findings relative to the entities’ compliance activities in the first two and a half years since the acquisition.

This is the first such report generated for the Attorney General relative to this conversion. *See* R.I. Gen. Laws §23-17.14-28(d)(2). The cooperation and input of the Entities’ representatives who participated in discussions and meetings concerning the contents of this report is recognized and appreciated.

METHODOLOGY

The Attorney General and Affiliated Monitors, Inc. agreed upon a Scope of Work to guide the monitoring process. The Scope of Work is set forth in Schedule A of the Retainer Agreement by and between the Attorney General, Affiliated Monitors, Inc., Prospect Medical Holdings, Inc. (“PMH”), Prospect East Holdings, Inc. (“Prospect East”), Prospect East Hospital Advisory Services (“Prospect Advisory”), LLC, and Prospect CharterCARE, LLC. Below is that Scope of Work. The Condition number from the HCA Decision is listed with each description; some Conditions are not subject to the monitorship agreement.

Schedule A

- 1. Upon their appointment and update upon any new appointments for the next three (3) years, confirm that there is no board or officer overlap between or among the CCHP Foundation, CCHP, and Heritage Hospitals² and obtain attestations from each**

¹ The Other Entities are Elmhurst Extended Care Facilities, Inc., Roger Williams Realty Corporation, RWGH Physician’s Office Building, Inc., Roger Williams Medical Associates, Inc., Roger Williams PHO, Inc., Elmhurst Health Associates, Inc., Our Lady of Fatima Ancillary Services, Inc., The Center for Health and Human Services, SJH Energy, LLC, and Rosebank Corporation (see the Decision, p. 8).

² RWH and SJHSRI are at times referred to as the “Heritage Hospitals.” The entity known as CCHP, or CharterCare Health Partners, subsequently changed its name to CharterCare Community Board (CCCB).

- member that they are not subject to the Rhode Island Code of Ethics. (Conditions 1 and 29)**
- 2. Upon their appointment and update upon any new appointments for the next three (3) years, confirm that there is no board or officer overlap between or among the Prospect entities and the CCHP Foundation, CCHP and the Heritage Hospitals and obtain attestations from each member that they are not subject to the Rhode Island Code of Ethics. (Conditions 2 and 29)**
 - 3. Confirm that the parties to this Transaction have completed the appointment of board members for Prospect CharterCARE, LLC³ and its Subsidiaries, and for CCHP Foundation, CCHP and Heritage Hospitals, within sixty (60) days after the close of the transaction, and that they have provided final notice to the Attorney General of the identities of such appointees, along with a description of their experience to serve as board members. This information should be updated upon the appointment of any new board members. (Condition 3)**
 - 4. Upon their appointment and for the next three (3) years following the close of the transaction, obtain and provide the Attorney General with the names, addresses and affiliations of all members appointed to any board of Prospect CharterCARE, LLC and its Subsidiaries, CCHP Foundation, CCHP and the Heritage Hospitals. (Condition 4)**
 - 5. For the next three (3) years following the close of the transaction, Prospect CharterCARE, LLC and its Subsidiaries, and CCHP Foundation, CCHP and the Heritage Hospitals obtain any necessary corporate documents requested by the Attorney General to evidence compliance regarding board composition as required by this Decision. (Condition 5)**
 - 6. Obtain any proposed amendments to the corporate documents of Prospect CharterCARE, LLC and its Subsidiaries, and CCHP Foundation, CCHP and the Heritage Hospitals thirty (30) days prior to amendment. (Condition 5)**
 - 7. For the next three (3) years following the close of the transaction, provide reasonable prior notice to the Attorney General identifying any post-closing contracts between any of the Transacting Parties and any of the current officers, directors, board members or senior management. (Condition 7)**
 - 8. Obtain information to confirm that the Transaction is implemented by the parties as outlined in the Initial Application (Conditions 6 and 9), including, but not limited to, all Exhibits and Supplemental Responses and:**
 - a. obtain annual reports from Prospect CharterCARE, LLC for the Attorney General on the proposed form submitted to the Attorney General concerning the funding of its routine and non-routine capital commitments under the**

³ Subsequent to the conversion, Prospect CharterCARE, LLC has done business as Prospect CharterCARE Health Services.



Asset Purchase Agreement until the long-term capital commitment as defined in the Asset Purchase Agreement has been satisfied; (Condition 18)

- b. obtain information confirming that the charitable assets that remain with the Heritage Hospitals are used in accordance with donor intent. It is anticipated that monitoring of this condition should be done through reconciliation of the accounts and uses for the three (3) years following the close of the transaction. (Condition 8(b))**
- 9. Promptly after the 180th day following the close of the transaction, confirm that the parties have briefed, in an interview with the Attorney General, the terms of the final Prospect CharterCARE, LLC's Strategic Plan adopted by the Board. (Condition 11)**
- 10. For the next three (3) years following the close of the transaction, obtain and provide the Attorney General with a copy of any notices provided to, or received by, a party under the Asset Purchase Agreement and Amendment thereto. (Condition 12)**
- 11. For the next three (3) years following the close of the transaction, obtain and provide the Attorney General with a copy of any notice(s) out of the ordinary course; e.g., Office of Inspector General, Securities and Exchange Commission, Internal Revenue Service and Centers for Medicare and Medicare Services, received by the Transacting Parties from any regulatory body. (Condition 13)**
- 12. Confirm that all CCHP entities being acquired but not continuing (e.g. not CCHP, CCHP Foundation or the Heritage Hospitals) are wound down and dissolved and all necessary documents have been filed with applicable state agencies, including, but not limited to the Secretary of State and the Division of Taxation. (Condition 15)**
- 13. Obtain information as requested by the Attorney General that Prospect is acting in compliance with the Asset Purchase Agreement and the Conditions of this Decision. (Condition 19)**
- 14. Confirm that Prospect CharterCARE, LLC and its affiliates are providing any transition services to CCHP Foundation, CCHP and the Heritage Hospitals pursuant to separate agreements, terminable by the CCHP affiliate at will and provided by the Prospect affiliate at cost for the next three (3) years following the close of the transaction. (Condition 22)**
- 15. For the next three (3) years following the close of the transaction, obtain information of any actions out of the ordinary course taken in connection with the SJHSRI pension or any material changes in its operation and/or structure and/or funding and notify the Attorney General. (Condition 23)**
- 16. For the next three (3) years following the close of the transaction, obtain information and provide the Attorney General with notice of a proposed change of ownership of Prospect East or PMH. (Condition 24)**
- 17. Obtain necessary information for the next three (3) years following the close of the transaction, to ensure that CCHP Foundation, CCHP and the Heritage Hospitals are**

provided with a right of first refusal to match the price to acquire any asset comprised of a line of business or real estate of Prospect CharterCARE, LLC and its Subsidiaries that it proposes to sell. (Condition 25)

18. Obtain information to confirm that for the next three (3) years following the close of the transaction, to the extent there is a sale of any Purchased Assets comprised of a line of business or real estate, the associated sale proceeds remain within Prospect CharterCARE, LLC for the benefit of the operation of the Newco hospitals. (Condition 26)

19. In connection with a sale of assets as defined in paragraph 18 above, if at the time of such a sale Prospect CharterCARE, LLC's membership interest has been diluted to less than fifteen (15%) percent, then obtain necessary information to confirm that fifteen (15%) of the net sales proceeds from the transaction go to CCHP to restore its membership interest up to fifteen (15%) percent. (Condition 28)

20. During the period of within three (3) years of the closing of this Transaction, obtain and provide notice to the Attorney General of any complaints received from OIG, CMS or state agencies against Prospect. (Condition 30)

Prospect, through its attorneys, Moshe S. Berman and Mark Russo of Ferrucci Russo, PC; CCCB, through its attorney, Richard J. Land, of Chace Ruttenberg & Freedman LLP; and the Foundation, through its attorney, Cynthia Warren of Cameron & Mittleman LLP, and its Executive Director, Paula Iacono, have sent materials to AMI pertaining to the conditions. They have also responded to requests for information initiated by AMI. All materials were closely reviewed by AMI.

In addition, Donald Stern and/or Catherine Keyes, both of Affiliated Monitors, Inc., met with representatives of the Entities on the following dates:

June 4, 2014 – Meeting at RI Office of Attorney General with Assistant Attorney General Genevieve Martin; Attorneys Mark Russo and Moshe Berman of Ferrucci Russo, PC for Prospect CharterCARE; Attorney Patricia Rocha of Adler Pollock & Sheehan, PC for the “Oldco”⁴ entities.

September 3, 2015 – Meeting at Roger Williams Medical Center with Addy Kane, Roger Williams Medical Center CFO; Moshe Berman, General Counsel for CharterCARE Health Partners; and Assistant Attorney General, Healthcare Advocate, Kathryn Enright.

October 1, 2015 – Meeting at Rhode Island Office of Attorney General with Attorney Richard Land, representing the CCCB; and Assistant Attorney General, Healthcare Advocate, Kathryn Enright.

October 22, 2015 – Meeting with Cynthia Warren of Cameron & Mittleman LLP, Attorney for the Foundation; Paula Iacono, Executive Director of the Foundation; and Assistant Attorney General, Healthcare Advocate, Kathryn Enright.

November 17, 2016 – Meeting with CharterCARE Health Partners staff: John Holiver, Chief Executive Officer; Lester Schindel, Prospect Medical Holdings Northeast Region Chief Strategy

⁴ CharterCare Community Board, Roger Williams Hospital, and St. Joseph Health Services of Rhode Island may collectively be referred to as “Oldco” or the “Oldco Entities.”

and Development Officer; Addy Kane, Roger Williams Medical Center CFO; Moshe Berman, General Counsel; as well as Deputy Attorney General Gerald Coyne and Assistant Attorney General, Healthcare Advocate, Kathryn Enright.

January 23, 2017 – Tour of Roger Williams Medical Center, St. Joseph Health Center, Our Lady of Fatima Hospital and Southern New England Rehabilitation Center (at Our Lady of Fatima) with Moshe Berman, General Counsel for CharterCARE Health Partners; Assistant Attorney General, Healthcare Advocate Kathryn Enright; and Michael Dexter, RI Department of Health Chief of the Office of Health Systems Development.

September 20, 2017 – Meeting at Roger Williams Medical Center with CharterCARE Health Partners staff: Dan Janicak, Chief Financial Officer; Addy Kane, Senior Vice President, Financial Operations; Dan Ison, Controller; Marina Belogolovsky, Accountant; Moshe Berman, General Counsel; as well as Assistant Attorney General, Healthcare Advocate, Kathryn Enright. This meeting was also attended by Affiliated Monitors' accounting expert, Allan Hahn of DiCicco, Gulman & Co., LLP.

Reporting Process for Prospect – In April 2015, Prospect provided the Attorney General and AMI with documentation on the capital expenditures it had made in accordance with Scope of Work number 8(a). In the meeting of September 2015, however, representatives from Prospect, AMI, and the Attorney General's office determined that a different reporting format would be more helpful. Prospect agreed to re-submit its logs of all expenses, along with supporting documentation (copies of checks and invoices) for line items equal to or greater than \$10,000.

AMI subsequently received spreadsheets, copies of checks and invoices for the expenses covering the period from May 2014 – September 2016. Although most of this report covers compliance up to October 2017, the expenditures documented by Prospect are for this shorter period. The entity will provide additional documentation for the next report.

FINDINGS

AMI has collected information relative to the conditions imposed on the entities through the HCA Decision of the Attorney General since the time of our engagement and in the manner described in the Methodology above. This is the first report by AMI on the status of the Entities' compliance. The Entities have cooperated and complied with all requests by AMI for information, meetings and materials.

- 1. Upon their appointment and update upon any new appointments for the next three (3) years, confirm that there is no board or officer overlap between or among the CCHP Foundation, CCHP, and Heritage Hospitals and obtain attestations from each member that they are not subject to the Rhode Island Code of Ethics.**

Affiliated Monitors understands this condition to mean that no member of the Foundation's Board shall also be a member of the Board of any of the following entities: CCHP (now known as CCCB), Roger Williams Hospital (the remainder entity, as distinct from the new Roger Williams Medical Center), or St. Joseph Health Services of Rhode Island (the remainder entity, not the facility now known as St. Joseph Health Center). In addition, no member of any of



these individual Boards should sit on any of the other Boards named herein. Further, no person may sit on any of those Boards if she/he is subject to the Rhode Island Code of Ethics.

The Foundation

In October 2014, the Foundation sent an attestation by its Board President, Donald McQueen, to Affiliated Monitors that there was no Board or officer overlap among the Foundation, the Prospect Entities, and CCCB. Also, in October 2014, the Chairman attested that no Foundation Board member was subject to the Rhode Island Code of Ethics.

On November 16, 2015, the Foundation provided the list of names, along with short biographic summaries of its Board members. A copy of the list of Board members sent is attached to this report (Attachment A.i.); the contact information of the Board members has been redacted by AMI. In addition, the Foundation notified the Attorney General and AMI that it had verified, through Conflict of Interest Forms, that no Foundation director or officer was also a director or officer of CCHP or the Heritage Hospitals, and that no Foundation director was subject to the Rhode Island Code of Ethics.

On February 23, 2017, the Foundation notified AMI that there were two new Board members, Angella Franklin and Kevin Stiles. Included with that notice were the attestations from each that they are not directors or officers of any Heritage Hospitals or CCHP, and that they are not subject to the Rhode Island Code of Ethics. Affiliated Monitors had not yet received similar attestations from Carolyn Young, MD and Shannon Shallcross, MS, both appointed to the Board in September 2017. A list of the Foundation Board members is included as Attachment A.ii.

CCHP/CCCB and Heritage Hospitals (Oldco)

On August 18, 2014, Daniel Ryan, Chairman of the Board of CCCB, attested that there was no Board member or officer overlap between the Boards of the Oldco entities (CCCB, RWH, SJHSRI) and the Foundation. The names, contact information and backgrounds of each of the six Board members, all of whom served on the Boards of the three Oldco entities, were provided. In a later submission, dated November 30, 2015, the CCCB⁵, through its attorney, Richard Land, confirmed that there was no overlap between the Foundation and the Oldco boards and that no member of the Oldco boards was subject to the Rhode Island Code of Ethics. The list of the six CCCB Board members is included as Attachment B.i. It was noted that three Board members had resigned, and the remaining three individuals comprised the Boards of each of the Oldco entities. The letter further indicated that no recruitment efforts were underway or contemplated for the Boards of CharterCare Community Board, St. Joseph Health Services of RI and Roger Williams Medical Center.

In October 2017, Attorney Land informed AMI that Dr. Joseph Mazza had resigned from the Boards in early 2016 and the former Chair, Daniel Ryan, resigned in February 2017. David Hirsh immediately replaced Daniel Ryan as Chairman, therefore there were at least two Board members at all times. With the addition of Mary (Polly) Daly in July 2017, the Boards have

⁵ CCCB provided responses to the conditions in the Decision on November 30th, 2015 on behalf of CCCB and the Heritage Hospitals, RWH and SJHSRI.

three members again, all of whom sit on the Boards of each of the three Oldco entities. (See Attachment B.ii.)

- 2. Upon their appointment and update upon any new appointments for the next three (3) years, confirm that there is no board or officer overlap between or among the Prospect entities and the CCHP Foundation, CCHP and the Heritage Hospitals and obtain attestations from each member that they are not subject to the Rhode Island Code of Ethics.**

Affiliated Monitors understands this condition to mean that no member of a Prospect CharterCARE Board shall also be a member of the Board of any one of the following entities: the Foundation, CCHP (now known as CCCB), Roger Williams Hospital, or St. Joseph Health Services of Rhode Island.

The Foundation

In October 2014, the Foundation provided an attestation by its Board President, Donald McQueen, that there was no Board or officer overlap between the Foundation and the Prospect entities. On November 16, 2015, the Foundation informed the Attorney General and AMI that it had verified, through Conflict of Interest Forms, that no Foundation director or officer was also a director or officer of any of the Prospect entities. On February 23, 2017, the Foundation provided attestations of two new board members, Kevin P. Stiles and Angella Franklin, confirming that they are not directors or officers of any Prospect entities, CCHP, or the Heritage Hospitals. Affiliated Monitors had not yet received similar attestations from Carolyn Young, MD and Shannon Shallcross, MS, both appointed to the Board in September 2017.

CCHP/CCCB and Heritage Hospitals (Oldco)

In August of 2014, the Chairman of the Board for CCCB, Daniel Ryan, attested there was no Board member or officer overlap between the Oldco entities (CCCB, RWH, SJHSRI) and the Prospect Entities. On November 30, 2015, CCCB again confirmed that there was no overlap of board positions between the Oldco boards and either the Foundation's Board or a Prospect CharterCARE Board. As noted above, the November 30th correspondence indicated that three Board members had resigned from the Boards of the three Oldco entities and the remaining three individuals served on the Boards of each. The notice further indicated that no recruitment efforts were underway or contemplated for the Boards of CharterCare Community Board, St. Joseph Health Services of RI and Roger Williams Medical Center.

CCCB Board members David Hirsh, Mary Daly, and Reverend Timothy Reilly do not sit on the Board of the Foundation or any of the Prospect entities.

Prospect and Prospect Subsidiaries

On August 19, 2014, Mark Russo, attorney for Prospect CharterCARE, submitted the names of the members of the Boards of the Prospect CharterCARE entities (included with this report as Attachment C.i.). In September 2014, Prospect's Interim CEO, Thomas Reardon, attested that there was no Board member or officer overlap between Prospect CharterCARE, PMH, Prospect East, Prospect Advisory, Prospect CharterCARE RWMC, LLC ("Prospect RWMC"), Prospect CharterCARE SJHSRI, LLC ("Prospect SJHSRI"), (collectively, the "Reporting

Parties”) and CCHP Foundation, CCCB, RWH or SJHSRI. Prospect’s Interim CEO also attested that no Board member of the Reporting Parties was subject to the jurisdiction of the Rhode Island Code of Ethics.

Subsequently, in April 2015, Prospect⁶ provided an attestation by its new CEO, Lester Schindel, that there was no Board member or officer overlap between the Reporting Parties and CCHP Foundation, CCCB, RWH or SJHSRI. Prospect’s CEO also attested that no Board member of the Reporting Parties was subject to the jurisdiction of the Rhode Island Code of Ethics.

On June 17, 2015, the Attorney General received a request for leave from the above Condition 2. The Entities proposed a modification to the language of Condition 2 to allow up to two members of the Prospect Board nominated by CCHP (now CCCB), to also serve on the CCHP Board from July 1, 2015 to July 1, 2018. On July 22, 2015, the Attorney General declined to modify Condition 2 for the following reasons:

- i. There was not an extreme circumstance;
- ii. The Attorney General has a duty to protect the charitable funds of the Heritage Hospitals and to ensure that the public’s interest in those funds is properly safeguarded. By preventing board overlap, Condition 2 manages board composition and controls authority over the charitable funds, which is necessary to protect the charitable funds of the Heritage Hospitals and ensure that the public’s interest in those funds is properly safeguarded; and
- iii. The Condition was designed to support the joint venture structure that both CCHP and Prospect Medical Holdings, Inc. were committed to in their pursuit of a conversion. The governance structure was intended to allow CCHP to retain its local, community input through its 50% contribution to the board. During the wind down of the hospitals, it is critical to the projected success of the joint venture that board members remain dedicated to the turnaround of the hospitals. Where retention issues have surfaced, the Attorney General suggests that board members be replaced.

On October 23, 2015, Moshe Berman, General Counsel for CharterCARE Health Partners, requested a variance from the requirement that anyone subject to the Ethics Commission shall not be eligible to serve as a Board member of Prospect CharterCARE. The variance was requested because one Prospect CharterCARE Board member, Mr. Edwin Santos, was both a member of the Board and subject to the Ethics Commission based on his appointment to the I-195 Redevelopment Commission. The Attorney General denied the request on October 29, 2015 on the basis that there was not an extreme circumstance that called for the variance and because Mr. Santos would not be able to serve both without conflict or the potential for conflict. As a result, the Attorney General found Mr. Santos was in violation of this condition and asked that Mr. Santos make a choice between the two within 15 days. Mr. Santos elected to remain

⁶ Prospect CharterCARE, LLC submitted a report on behalf of Prospect CharterCARE, Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE RWMC, LLC, and Prospect CharterCARE SJHSRI, LLC.

on the Prospect CharterCARE Board and resigned from the I-195 Redevelopment Commission.

- 3. Confirm that the parties to this Transaction have completed the appointment of board members for Prospect CharterCARE, LLC and its Subsidiaries, and for CCHP Foundation, CCHP and Heritage Hospitals, within sixty (60) days after the close of the transaction, and that they have provided final notice to the Attorney General of the identities of such appointees, along with a description of their experience to serve as board members. This information should be updated upon the appointment of any new board members.**

The Foundation

On November 16, 2015, Paula Iacono, Executive Director of the Foundation, provided the Attorney General and AMI with the list of the Foundation's Board members and biographical summaries for each.

This information was updated on January 9, 2017, when Kevin P. Stiles became a member of the Board and on February 23, 2017, when Angella Franklin was added to the Board of Directors.

Upon inquiry by Affiliated Monitors, the Foundation confirmed on October 2, 2017 that Carolyn Young, MD and Shannon Shallcross, MS, were appointed to the Board in September 2017.

As noted above, the original list of Foundation Board members is included with this report as Attachment A.i. and the subsequently updated list is Attachment A.ii.

CCHP/CCCB and Heritage Hospitals (Oldco)

As of August 18, 2014, the Boards of CCCB, SJHSRI, and RWH had the same six members. A brief summary of the relevant experience of each member was sent to the Attorney General, along with the list of names.

On November 30, 2015, CCCB updated the information to indicate that three Board members, Ms. Nancy Rogers, Reverend Kenneth Sicard, and Dr. Chihlas, had resigned. The subsequently updated list of Board members is included with this report as Attachment B.

Prospect and Prospect Subsidiaries

On August 19, 2014, the Attorney General and AMI were provided with the identities and relevant experience of the Board members for Prospect, Prospect East, Prospect Advisory, Prospect RWMC, and Prospect SJHSRI. The lists for each are included with this report as Attachment C.i. Prospect informed the Attorney General and AMI that Prospect Advisory has no Board members because it is member-managed by PMH.

In compliance with the requirement to update the information if there are any changes in Board memberships, Prospect notified the Attorney General and AMI on March 15, 2015 that two new Board members, Lester Schindel, the Prospect CharterCARE CEO, and Lisa Ranglin, were added to the Prospect RWMC Board. The notice included a description of the relevant

experience of each appointee. The updated list of Prospect RWMC Board members is included with this report as Attachment C.ii.

Prospect also informed the Attorney General and AMI on March 15, 2015 that Lester Schindel and Deborah Giannini were added to the Prospect SJHSRI Board. The notice included a description of the relevant experience of each. The subsequently updated list of Prospect SJHSRI Board members is included with this report as Attachment C.iii.

In July 2016, Lester Schindel was appointed as Prospect Medical Holdings Northeast Region Chief Strategy and Development Officer and John Holiver was approved by the Prospect CharterCARE, LLC Board of Directors to replace Mr. Schindel as the Chief Executive Officer and President of Prospect CharterCARE, LLC (d/b/a CharterCARE Health Partners). The notice sent on July 22, 2016 to the Attorney General and AMI stated that Mr. Holiver was replacing Mr. Schindel as a member of the Boards of Prospect CharterCARE SJHSRI, LLC (d/b/a Our Lady of Fatima Hospital) and Prospect CharterCARE RWMC, LLC (d/b/a Roger Williams Medical Center). The notice also stated that Reverend Monsignor Paul D. Theroux, JCL, resigned from the Board of Our Lady of Fatima Hospital and that Dr. Joseph Samartano, DDS would assume responsibility as Chairman of that Board. Attachments C.iv. and C.v. reflect these changes.

On November 15, 2016, CEO of Prospect CharterCARE, John Holiver, reported that “Kimberly Lumia has left the position as Interim President of OLF to take a new position within the organization,” effective October 3, 2016. He added that “[s]imultaneously, David Kobis has been appointed President of OLF.” Mr. Holiver stated that “Mr. Kobis brings significant senior-level leadership experience to this position, having served in senior roles⁷ at various hospitals throughout the country.”

On November 15, 2016, it was also reported by CEO John Holiver that Demetra Ouellette was appointed President of RWMC.

- 4. Upon their appointment and for the next three (3) years following the close of the transaction, obtain and provide the Attorney General with the names, addresses and affiliations of all members appointed to any board of Prospect CharterCARE, LLC and its Subsidiaries, CCHP Foundation, CCHP and the Heritage Hospitals.**

The Foundation

On November 16, 2015, the Foundation provided the Attorney General and AMI with a list of the Foundation’s Board of Directors, the addresses and biographical summaries for each Board member. See Attachment A.i. On January 9, 2017, the Foundation provided the Attorney General and AMI with an updated list, noting the addition and background of a new Board member, Kevin P. Stiles. The Foundation’s update of February 23, 2017 again provided the Attorney General and AMI with a list of directors and noted the addition and background of another new Board member, Angella Franklin.

⁷ Mr. Kobis most recently served as Chief Integration Officer and Vice President of Financial Operations for Prospect Medical Holdings. He had been leading the acquisition and pre-integration work at Waterbury Hospital in Connecticut for Prospect.

Upon inquiry by AMI, the Foundation confirmed on October 2, 2017 that Carolyn Young, MD and Shannon Shallcross, MS, were appointed to the Board in September 2017. See Attachment A.ii. AMI expects to receive official notice of these appointments, as well as attestations regarding their eligibility.

CCHP/CCCB and Heritage Hospitals (Oldco)

The August 18, 2014 attestation by Daniel Ryan, Chairman of the CCCB Board, indicated the Boards of CCCB, SJHSRI, and RWH had the same six members. A brief summary of the relevant experience of each member was included with the notice to the Attorney General, along with the list of names.

On November 30, 2015, CCCB updated the information to indicate that three Board members, Ms. Nancy Rogers, Reverend Kenneth Sicard, and Dr. Chihlas, had resigned. The subsequently updated list of Board members is included with this report as Attachment B. Since that time, the Attorney General and AMI have not been notified of any additions to these Boards.

Prospect and Prospect Subsidiaries

On September 3, 2014, Prospect provided the Attorney General and AMI with the names, addresses, and affiliations of all the above-mentioned Prospect, Prospect East, Prospect RWMC and Prospect SJHSRI Board members. As noted above, Prospect informed the Attorney General and AMI that Prospect Advisory has no Board members because it is member-managed by PMH. Updated information with the names, addresses and affiliations of new Board members was sent to the Attorney General and AMI on March 15, 2015 and July 22, 2016, as described above. See Attachment C.

- 5. For the next three (3) years following the close of the transaction, Prospect CharterCARE, LLC and its Subsidiaries, and CCHP Foundation, CCHP and the Heritage Hospitals obtain any necessary corporate documents requested by the Attorney General to evidence compliance regarding board composition as required by this Decision.**

The Attorney General did not request any additional documents. However, as a matter of record, the Foundation provided the Attorney General and AMI its then current Bylaws on November 16, 2015.

- 6. Obtain any proposed amendments to the corporate documents of Prospect CharterCARE, LLC and its Subsidiaries, and CCHP Foundation, CCHP and the Heritage Hospitals thirty (30) days prior to amendment.**

The Foundation

On November 16, 2015, the Foundation notified the Attorney General and AMI that an amendment to the Foundation's Articles of Incorporation, which became effective August 14, 2015, changed the name of the Foundation to CharterCARE Foundation. AMI received a copy of the official filing, which the Foundation made with the Rhode Island Office of the Secretary of State, as well as a copy of the Foundation's Bylaws. Subsequently, on January 9, 2017, the

Foundation timely notified AMI and the Attorney General of its plans to amend the bylaws: (1) to extend membership terms from two consecutive three-year terms to three consecutive three-year terms; and (2) to eliminate the requirement that the Board include representatives of the medical staff of each of the Heritage Hospitals in order to allow participation by physicians and medical professionals from the community at large.

CCHP/CCCB and Heritage Hospitals (Oldco)

On November 30, 2015, CCCB informed AMI that the bylaws of CCCB, SJHSRI, and RWMC were amended to change the number of board members. No date for the change was included, but the notice indicated the amendment had already been adopted. The letter stated that copies of the resolutions (pertaining to the change in Board composition) would be provided, but these were not received by AMI or the Attorney General. It also stated that “[t]here are no current efforts to recruit new board members for the Oldco entities” and “[n]o recruitment efforts are underway or contemplated for the Board of CharterCARE Community Board, St. Joseph Health Services of RI and Roger Williams Medical Center.”

Although the CCCB should have notified the Attorney General 30 days prior to the amendment of its bylaws, the actual change did not violate a condition. That is, the requirements pertaining to the composition of the CCCB address only the possible overlap between CCCB and the Boards of the other post-conversion entities.

Prospect and Prospect Subsidiaries

In October 2014, in response to the question of whether any amendments were proposed to the corporate documents of Prospect, PMH, Prospect East, Prospect Advisory, Prospect RWMC, and Prospect SJHSRI, Prospect replied “N/A.” In a report dated October 23, 2015, Prospect CharterCARE, through its General Counsel, reported that “there have been no proposed amendments to the corporate documents of Prospect CharterCARE, LLC or its subsidiaries.”

- 7. For the next three (3) years following the close of the transaction, provide reasonable prior notice to the Attorney General identifying any post-closing contracts between any of the Transacting Parties and any of the current officers, directors, board members or senior management.**

At a meeting held September 3, 2015 with Prospect CharterCARE’s General Counsel, the representative of the Rhode Island Office of Attorney General, and the representatives of AMI, it was agreed that reporting was required only if a Transacting Party entered into a post-closing contract with an individual who was an officer, director, board member or senior manager as of June 20, 2014. Accordingly, the following reflects what was reported.

The Foundation

This provision does not apply to the Foundation.

CCHP/CCCB and Heritage Hospitals (Oldco)

Although the condition did not explicitly require such notice, CCCB notified AMI on November 30, 2015 that Richard J. Land was engaged as counsel and agent for the Heritage Hospitals and provided AMI with a copy of the engagement letter.



Prospect and Prospect Subsidiaries

On August 1, 2014, Prospect informed the Attorney General and AMI that Kimberly O’Connell assumed the position of President of RWMC. Ms. O’Connell had been with the CharterCARE hospital system since its inception, most recently as general counsel; thus, an Amendment of Employment Agreement was executed and provided to the Attorney General and AMI. In addition, it was disclosed that Joanne Dooley’s employment agreement was amended to name her as Vice President of Patient Services, Chief Nursing Officer of RWMC. This change needed to be made because Ms. Dooley’s existing employment agreement referred to her as Chief Nursing Officer for CharterCARE, and CharterCARE did not operate a hospital facility. A copy of the Amendment of Employment Agreement was submitted.

Prospect entered into contracts with other individuals who were appointed as officers, directors, board members or senior managers, but only those listed above held such a position as of June 20, 2014 and entered into a new or revised contract.

8. Obtain information to confirm that the Transaction is implemented by the parties as outlined in the Initial Application⁸, including, but not limited to, all Exhibits and Supplemental Responses and:

- a. obtain annual reports from Prospect CharterCARE, LLC for the Attorney General on the proposed form submitted to the Attorney General concerning the funding of its routine and non-routine capital commitments under the Asset Purchase Agreement until the long-term capital commitment as defined in the Asset Purchase Agreement has been satisfied;**
- b. obtain information confirming that the charitable assets that remain with the Heritage Hospitals are used in accordance with donor intent. It is anticipated that monitoring of this condition should be done through reconciliation of the accounts and uses for the three (3) years following the close of the transaction.**

The Foundation

Transaction Implemented as Outlined in the Initial Application – An attestation form was created for the Foundation by a representative of the Rhode Island Office of Attorney General to facilitate reporting of certain conditions. Relevant to this matter, the attestation says:

Please provide an attestation that the Transaction as outlined in the initial Application, including Exhibits and Supplemental Responses in the above-entitled action has been implemented in accord with said documents:

This attestation will be completed upon approval of the Cy Pres Petition which will provide the CharterCARE Health Partners Foundation with direction.

⁸ The documents relevant to this report which represent the stages of the application, approval and monitoring processes are the Initial Application, the Asset Purchase Agreement (the “APA”), the HCA Decision, and the Scope of Work. Per our agreement with the Attorney General, AMI has taken its assignment from the Scope of Work, which was derived from the HCA Decision. Because this condition specifically refers back to the Initial Application, however, AMI will clarify, through references, which document is being cited and why.

- a. *I, Donald C. McQueen, holding the position of Chairman of the Board, hereby attest and certify that the transaction as outlined in the initial Application, including Exhibits and Supplemental Responses in the above-entitled action has been and is being implemented in accord with said documents.*

This attestation was signed by Donald C. McQueen on October 6, 2014 and sent to AMI as part of the reporting process.⁹

Charitable Assets Used in Accordance with Donor Intent – A *Cy Pres* petition was filed in Kent County Superior Court on January 13, 2015 (Attachment D.i.) on behalf of CharterCARE Health Partners Foundation, Roger Williams Hospital, and St. Joseph Health Services of Rhode Island, seeking approval for disposition of a) charitable funds which could no longer be used in accordance with original donor intent and b) charitable trust assets from trusts established for the former non-profit hospitals. The Attorney General’s Response was filed with the Court on April 1, 2015 (Attachment D.ii.). The matter was heard on April 6, 2015 and the Superior Court approved the proposed disposition, as well as the stipulated agreement that the Foundation would report on the actual expenditures annually to the Attorney General. The *Cy Pres* Order is included with this report as Attachment D.iii.

The transfers into the Foundation under the *Cy Pres* Order totaled \$8,299,266. Of this amount, unrestricted funds of \$300,000 were transferred from CCCB to the Foundation shortly after the *Cy Pres* Order was issued to be used as the Foundation’s initial and operating funds. The subsequent transfer of \$7,999,266 was sent directly to the Rhode Island Foundation (a different entity), which is acting as the investment manager for the Foundation.

In September 2017, the Foundation sent the Attorney General an accounting of the expenditures for fiscal years 2015 and 2016, including the associated tax filings. (see Attachment D.iv.) An updated list of the sources of income and expenditures (with the funds expended, beneficiaries, purpose and beneficiary contact information) was submitted to AMI on October 13, 2017 and is included with this report as Attachment D.v.

Below is the updated summary:

Fiscal Year 2015 (October 1, 2014 – September 30, 2015)

Expenditures/Grants: \$15,379

Expenditures/Administrative: \$130,943

Fiscal Year 2016 (October 1, 2015 – September 30, 2016)

Expenditures/Grants: \$395,281

Expenditures/Administrative: \$122,745

⁹ The Attorney General was notified by Attorney Cynthia Warren in May 2018 that Donald McQueen is the President of CharterCARE Health Partners Foundation, not Chairman of the Board.

The tax filings were reviewed by an accountant, on behalf of Affiliated Monitors, and were found to be a reasonable reflection of the administrative expense amounts reported by the Foundation for both years. For fiscal year 2015, however, the breakout on Federal Tax Form 990 for grant expenditures was not clear, therefore AMI asked the Foundation for additional documentation of the grant payments made. AMI received copies of checks and, in some cases, invoices, supporting the grant and charitable expenditures in the amount of \$15,379 in fiscal year 2015. For fiscal year 2016, the amount of \$395,281 (listed as Expenditures/Grants) included a transfer of \$200,000 to the Rhode Island Foundation (a different entity), which was not a grant expense. The remaining amount of \$195,281 corresponds appropriately with the amount claimed by the CharterCARE Foundation on its Federal Tax Form 990 for 2016.

The grants were made to programs such as the Walking School Bus, Hope House, Playground/Nutrition Program, Vida Sana Diabetes Program, and Diabetes Camp for Kids. Other grants were awarded to allow specialized dental examinations for children, to support senior rehabilitation needs, and Christmas parties for children. Scholarships were awarded to nurses and physicians for continuing medical education, and to a dentist for specialized cleft palate training. It appears that the grants and scholarships are in the community interest.

CCHP/CCCB and Heritage Hospitals (Oldco)

Transaction Implemented as Outlined in the Initial Application – A representative of the Rhode Island Office of Attorney General also prepared an attestation form for the CCCB. On behalf of the CCCB, Daniel J. Ryan, Board Member, signed the attestation on August 19, 2014 indicating that the “Transaction as outlined in the initial Application, including Exhibits and Supplemental responses in the above-entitled action has been and is being implemented in accord with said documents.” A subsequent but undated attestation said, in full:

- a. I, Daniel J. Ryan, holding the position of Chairman of the Board for CCCB hereby attest and certify that the Transaction as outlined in the initial Application, including Exhibits and Supplemental Responses in the above-entitled action has been and is being implemented in accord with said documents.*

In October of 2017, Attorney Land provided the Attorney General with documentation that the Board of Trustees of CharterCARE Health Partners (Oldco) adopted a resolution on February 27, 2014 pertaining to the manner in which the funds from the purchase would be used (See Attachment D.vi.). This information confirmed that the sellers fulfilled the term of the Asset Purchase Agreement set forth in Article II, Section 2.8, which states, “[s]ellers shall adopt a board resolution specifying the manner in which the Cash Purchase Price shall be used.” Further, Attorney Land confirmed that the \$14 million of the purchase price which was to be set aside for the SJHSRI Plan was wired to the Bank of America for the benefit of the Plan on June 20, 2014. (Attachment D.vi. Note, the copy of the wire transfer order referenced in the letter has not been included by AMI with this Attachment.)

Charitable Funds – On November 30, 2015, in response to 8(b) above, CCCB informed AMI that the Heritage Hospitals had used unrestricted funds to pay accrued operating liabilities together with expenses associated with the wind-down of the institutions. In addition, CCCB notified AMI that pursuant to the *Cy Pres* Order, “the vast majority of funds that were to remain

restricted funds (over \$8.0 million) were transferred to the Foundation; the restricted funds relating to surgical oncology would be used to conduct three studies proposed by the surgical oncologists at the hospital; and funds reserved for continuing medical education are being used for that purpose. CCCB stated that all other funds used by the Oldco Entities are either unrestricted by nature or were designated by the *Cy Pres* Order as unrestricted.”

The *Cy Pres* Order called for “dedicated funds in the aggregate amount of \$300,349.75 . . . to enhance surgical oncology physician and fellow training and education over and above the routine budgeted costs of necessary academic and research programs at RWMC to the extent that RWH is satisfied that such expenditures provide a community benefit.” It also granted *cy pres* approval for RWH to use “[c]ontinuing medical education funds in the amount of \$26,310.29 to support continuing medical education for the medical staff at RWMC over and above the routine budgeted cost of necessary continuing medical education at RWMC to the extent that RWH is satisfied that such expenditure provides a community benefit.” Therefore, with regard to the surgical oncology and continuing medical education funds remaining under the control of the CCCB, AMI asked for additional information in the fall of 2017. CCCB provided documentation that it had established a segregated account for the money for these two areas; the starting amount of the account on June 3, 2015 (after the reallocation of funds per the *Cy Pres* Order) was \$338,165.41. (See Attachment D.vii.)

AMI was provided with a copy of the January 2016 Surgical Oncology Fund Request submitted by Prospect CharterCARE to CCCB for funds in the amount of \$112,483.40¹⁰ to support three initiatives:

- Reducing Cancer Care Disparities in Rhode Island Hispanic Community,
- Improving Treatment Outcomes for Geriatric Oncology Patients, and
- Immunotherapy Research.

The proposal was fully funded by the CCCB; AMI received a copy of the check issued to Roger Williams Medical Center. With regard to complying with the *Cy Pres* Order, the proposal included a provision that “at the completion of each study, a report will be provided for each study detailing how [it] contributed to the goals of the *Cy Pres* Order.” It appears that CCCB is allocating funds in accord with the original intent of the donors and is tracking the expenditures appropriately.

With regard to continuing medical education (CME) for the medical staff at RWMC, CCCB provided documentation and checks indicating that two events were funded:

- October 6, 2015 – CME in collaboration with the Ethics and Patient Rights Committee of OLF for 60 participants from the medical staffs, nursing and allied health professions across the [Prospect] organization, with a net expenditure of \$5,834.50
- October 20, 2016 – CME entitled, “Barriers to Having End of Life Discussions” for 60 participants, net expenditure of \$4,870.85

¹⁰ The fund request was provided to AMI for review but has not been included with the report materials. The line item reflecting this expenditure can be found on Attachment D.vi., “Oncology Fund Request.”

Another CME program was in the planning stages at the time this report was being drafted. An initial deposit of \$900 had been paid to the Crowne Plaza Hotel for use of a meeting room on May 3, 2018.

To date, the total expenditures for continuing medical education costs from the restricted fund have been \$11,605.35. It appears CCCB is appropriately documenting the expenditures, as well as the fact that the CME programs provide a “community benefit.”

Prospect and Prospect Subsidiaries

Transaction Implemented as Outlined in the Initial Application

Leadership Staff – The Initial Application (§ C. 7(a)) asked for the following information:

With regard to the officers, members of the boards of directors, trustees, executives, and senior managers of each of the Transacting Parties and their affiliates, please provide the following for the past 2 years: (a) name; (b) address; (c) phone number; (d) occupation; and (e) tenure.

Prospect provided the requested information for Prospect Medical Holdings, Inc., Alta Hospitals Systems, LLC; Alta Hollywood Hospitals, Inc.; Alta Los Angeles Hospital, Inc.; Nix Community General Hospital, LLC; Nix Hospitals System, LLC; CharterCARE Health Partners - Board of Trustees; CharterCARE Health Partners - Senior Leadership Team; Roger Williams Medical Center - Board of Trustees; and St. Joseph Health Services of Rhode Island - Board of Trustees.

In follow up, the Initial Application (§ C. 7(b)) asked Prospect to:

Provide the (a) name; (b) address; (c) phone number; and (d) occupation of the proposed members of the board of directors, trustees, executives and senior managers after the conversion of the Transacting Parties and their affiliates, identifying any additional members or removal of members.

Prospect’s Response was:

PMH: PMH and its Hospital affiliates do not anticipate any change to their board of directors, officers, executives, and senior managers as a result of the proposed transaction.

See Response No. 7(a).

The HCA Decision (pp. 3 – 7) sets forth the “review criteria utilized by the Attorney General for a hospital conversion involving a conversion of a non-profit hospital to a for-profit hospital,” and the criteria address, among other things, potential conflicts of interest for the entities’ officers, board members, directors and senior management, as well as the experience of the members of the respective boards. Management from both CharterCARE and Prospect were jointly interviewed by the Attorney General and the Department of Health (see p. 6 of HCA Decision for the list of interviewees).

Therefore, changes not only to the boards of directors (listed above), but also to the officers, executives, and senior managers of the post-conversion entities are deemed to be relevant to this condition.

Prospect sent Affiliated Monitors reports of the following changes in Prospect's leadership:

- On August 1, 2014, Prospect sent the Attorney General and AMI notice that Ken Belcher would be resigning as CEO of Prospect and Thomas Reardon would be appointed as Interim CEO.
- September 3, 2014 Prospect sent the Attorney General and AMI notice that Ken Belcher had resigned as CEO of Prospect and Thomas Reardon was Interim CEO. In addition, Michael Conklin left his position as CFO of Prospect and was replaced by Addy Kane. Moreover, Darleen Souza left her position as VP of Human Resources and Cheryl Perry was promoted to Interim VP of Human Resources.
- In January 2015, Prospect sent the Attorney General and AMI notice that Lester Schindel was hired as the CEO.¹¹
- In May 2016, Prospect reported that Richard Gamache resigned as Vice President and Administrator of Elmhurst Extended Care Facility effective March 30, 2016 and that Marc Neustadt¹² was hired as interim Vice President and Administrator of Elmhurst Extended Care Facility effective April 1, 2016.
- Kimberly A. O'Connell left her position as President of RWMC effective May 30, 2016 and John Holiver was named the Interim President of RWMC (notice sent to AMI in December 2016). Demetra Ouellette was appointed President of RWMC in November 2016.
- In July 2016, Lester Schindel was appointed as Prospect Medical Holdings Northeast Region Chief Strategy and Development Officer, and John Holiver¹³ was approved by the Prospect CharterCARE, LLC Board of Directors to replace Mr. Schindel as the Chief Executive Officer and President of Prospect CharterCARE, LLC (d/b/a CharterCARE Health Partners). The notice sent on July 22, 2016 to the Attorney General and AMI stated that Mr. Holiver was replacing Mr. Schindel as a member of

¹¹ Prospect provided the following background information on Mr. Schindel: "[he] is a Massachusetts resident and has had significant experience in the New England healthcare landscape. Most recently, he spent five years as CEO and President of Steward Holy Family and Merrimack Valley Hospital in Massachusetts, a 402-bed, two-campus hospital (one Catholic and one secular) that employs more than 2, 100 health professionals and has a combined medial staff of 650 doctors. Additionally, Mr. Schindel is a Fellow of the American College of Healthcare Executives."

¹² Prospect described Mr. Neustadt is "a licensed nursing home administrator [who] has over thirty years' experience acting as an administrator for skilled nursing facilities."

¹³ Prospect provided the following description of Mr. Holiver's background: "[he] has a respected record of accomplishment in the health care industry, as a senior executive with significant operations and management experience, managing clinical excellence and strategic planning. Previously, Mr. Holiver has held several executive leadership roles/positions for large community-based hospital networks in New England."

the Boards of Prospect CharterCARE SJHSRI, LLC (d/b/a Our Lady of Fatima Hospital) and Prospect CharterCARE RWMC, LLC (d/b/a Roger Williams Medical Center). The notice also stated that Reverend Monsignor Paul D. Theroux, JCL, resigned from the Board of Our Lady of Fatima Hospital and that Dr. Joseph Samartano, DDS would assume responsibility as Chairman of that Board.

- Thomas Hughes resigned as President of Our Lady of Fatima and Kimberly Lumia¹⁴ was appointed Interim President of Our Lady of Fatima; notice was sent to AMI on August 15, 2016.
- David Kobis was appointed President of Our Lady of Fatima, per notice from Prospect CharterCARE CEO, John Holiver, on November 15, 2016.

Representatives of AMI also learned of staff changes through in-person notification. In September 2017 AMI met with Dan Janicak, the new Chief Financial Officer for CharterCARE Health Partners, who started in that position in May 2017. At the same meeting, AMI learned that Addy Kane, former CFO, had been named CharterCARE Health Partners' Senior Vice President, Financial Operations.

In April 2015, Prospect's Board¹⁵ notified the Attorney General and AMI that it intended to consider implementing a policy whereby the regular Board members nominated by CCCB, the 15% owner of Prospect, would each receive a stipend of \$1,000 per month and the Board Chair would receive \$1,500 per month in recognition of their volunteer service to the Board commencing in June 2015. Prospect said its notification regarding compensation of Board members was submitted not because it impacted or related to the Transaction, but because the Reporting Parties were asked about Board member compensation during the conversion process and because the HCA Decision states that the Reporting Parties were not intending to compensate Board members. In later correspondence to AMI, Prospect explained that "the stipends are not connected to attendance at meetings as each of the members perform substantial and valuable services separate and apart from the meetings."

- A. Confidentiality Request for Documents – With regard to 8(a) above, Prospect requested confidential status for certain documents responsive to this condition. The Attorney General rejected Prospect's proposal, noting that some documents are essential to this report on Prospect's compliance and to support conclusions made in this report. The Attorney General also rejected Prospect's proposal as overbroad, because it could cover documents that may not require confidential protection.

The Attorney General directed Prospect to submit all documents responsive to this condition, with a specific request for confidentiality for those documents or classes of documents it wished to protect. Citing RI General Laws § 23-17.14-32, Prospect subsequently requested confidentiality for the documents pertaining to its acquisition of physician practices, and the Attorney General's representative agreed that the information

¹⁴ Prospect provided the following background on Ms. Lumia: "[she] brings both administrative and clinical experience to this interim position, having served as CEO of Sharon Hospital in Connecticut and as chief Operating Officer, Chief Nursing Officer, and Chief Financial Officer at various hospitals in her career."

¹⁵ Prospect's Board is the governing Board of the Hospitals, post-conversion.

would be treated as confidential. For purposes of this report, the acquired physician practices are grouped by Prospect's fiscal year and the numbers are aggregated.

B. Funding of Routine and Non-routine Capital Commitments

Condition 9 of the HCA Decision says, "[t]hat the transaction be implemented as outlined in the Initial Application, including all Exhibits and Supplemental Responses." Regarding its long-term capital commitments,¹⁶ Prospect included this language in its Initial Application (p. 9):

Long-Term Capital Commitments

In addition to a routine capital investment of at least \$10M per year to be reinvested by Prospect CharterCARE, LLC, PMH has committed to future capital contribution of \$50M within four (4) years of the closing on the transaction ("Long-Term Funding Commitment"). The specific goals of the Long-Term Funding Commitment will be determined, post-conversion, after appropriate studies and analyses are undertaken. However, under the APA, the use of the Long-Term Funding Commitment may include (i) the development and implementation of physician engagement strategies, and (ii) projects related to facilities and equipment, including but not limited to:

- *expansion of the cancer center at RWMC,*
- *expansion of the emergency department at RWMC,*
- *renovation/reconfiguration of the emergency department at Fatima,*
- *renovation of the operating rooms at RWMC,*
- *conversion of all patient rooms to private rooms at both Hospitals,*
- *renovation and expansion of the ambulatory care center at Fatima,*
- *new windows at both Hospitals,*
- *a new generator at Fatima,*
- *a facelift for the facades at both Hospitals,*
- *access for the handicapped at the front entrances of both Hospitals.*

The specific capital projects to be funded will be determined by Prospect CharterCARE, LLC's Board of Directors.

The Asset Purchase Agreement (§13.15) identifies all of the essential services listed above (at Exhibit L), and adds "acute dialysis services," as well.

Prospect has begun many of the long-term capital expenditure projects described in the Application, including:

¹⁶ Long-term capital commitments are referred to as non-routine capital commitments in the HCA Decision.

- Expansion of the Emergency Department at RWMC (in progress, estimated cost \$15 million),
- Renovation and expansion of the ambulatory care center at Our Lady of Fatima (completed, part of new entrance project at OLF, cost \$1.7 million),
- New windows at both hospitals (in progress, part of “curtain wall” project),
- A facelift for the facades at both hospitals (in progress, in curtain wall project, estimated cost at RWMC \$2.2 million),
- Access for the handicapped at the front entrances of both Hospitals (completed, part of RWMC and Our Lady of Fatima new entrance projects),
- Conversion of all patient rooms to private rooms at Our Lady of Fatima (complete, no cost specified),
- Redoing parking facilities (in progress, estimated cost \$1.28 million),
- Main entrance at RWMC (completed, cost \$4 million),
- Main corridor Our Lady of Fatima (completed, cost \$629,000),
- Blackstone Surgery Center purchase (completed, cost \$1.5 million),
- Comprehensive Medication Management System (completed, cost \$3.2 million)

In the course of site visits, AMI has seen the improvements to the facades and entrances of both hospitals, the corridor and ambulatory center at Our Lady of Fatima, and the extensive renovations underway in the Emergency Department at RWMC.

The following projects are in the planning stages:

- Expansion of the cancer center at RWMC (in planning, \$1.5 million),
- Renovation of the operating rooms at RWMC (cost as yet undetermined),
- A new generator at Our Lady of Fatima (cost not specified),
- Renovation/reconfiguration of the emergency department at Fatima (in design, estimated cost \$3.5 million), and
- Pharmacy infrastructure upgrades (in planning, \$1.1 million).

The projects above represent \$35.6 million of long-term capital expenditures. Under Prospect’s accounting method, however, the long-term projects are not recorded as fiscal-year entries, nor submitted to AMI, until they are complete.¹⁷ Only the renovation to the corridor/central registration area at Our Lady of Fatima was complete by September 2016 (the period covered by Prospect’s financial documents for this report). The corridor/central registration area represented \$629,800 in expenses.

With regard to additional long-term capital expenditures proposed by Prospect for its hospital systems, the following Certificate of Need (CON) Applications were submitted, representing approximately \$15 million in planned spending.

¹⁷ It is possible that Prospect may want to amend this method of reporting its expenditures as the reporting period comes closer to the end.



1. The renovation and expansion of the Emergency Department at RWMC – This application was approved by the Rhode Island Department of Health with conditions on November 23, 2015. The “expansion of the emergency department at RWMC” above tracks with this CON.
2. The establishment of a cardiac catheterization and angioplasty program at Our Lady of Fatima Hospital – This application was denied by the Rhode Island Department of Health on June 15, 2016; and
3. The establishment of an obstetrics department at Our Lady of Fatima Hospital – This application was withdrawn by Prospect on February 11, 2016.

Long-term Capital Expenditures – Practice Acquisitions

As of February 2018, Prospect had acquired 15 physician practices. Of those, 13 were acquired in Prospect’s fiscal year 2015, for a total of \$4,117,749 and 2 were in FY 2016, for a total of \$373,777. Total cumulative practice acquisitions to date are \$4,491,526.

Per agreement with the Attorney General’s representative and AMI, Prospect provided a complete copy of the standard Asset Purchase Agreement used for its practice acquisitions, then provided only the sheets with personalized data and signatures for each newly acquired physician practice. AMI did not find any matters which raised concern about the current or future value of the practices purchased. The totals listed above correspond with the cumulative contract amounts.

Routine Capital Expenditures

Prospect provided spreadsheets of routine capital expenditures for the following entities:

- Roger Williams Medical Center
- CharterCARE Health Partners
- CharterCARE Medical Associates
- Elmhurst Extended Care
- Prospect CharterCARE SJHSRI
- New University Medical Group

As explained in the Methodology section of this report, the spreadsheets comprised entries for all expenditures for the period of May 2014 – September 2016, and Prospect provided supporting documentation (copies of checks and invoices) for line items equal to or greater than \$10,000. AMI reviewed all entries and all supporting documents; in the meeting of September 20, 2017, representatives of the RI Office of Attorney General, AMI and Prospect met to discuss any questions, discrepancies or other matters related to the submission.

The discussion resolved most matters. The most common discrepancy found was that a Prospect entity recorded a payment higher than seen on the invoice; it was determined that many vendors did not list the taxes on the invoices, but the entities calculated and included the 7% taxes in the payments. In six cases, AMI found some element of the supplemental documentation was not provided, but the possible discrepancies were negligible:

- Four of these pertained to the Prospect CharterCARE SJHSRI expenditures and the total of these entries was \$37,524, or .35% of the total Prospect CharterCARE SJHSRI expenditures submitted (not including expenses from closed projects);



- One pertained to Elmhurst Extended Care and reflected a difference of \$156 from the amount entered, or .008% of the Elmhurst Extended Care total (not including expenses from closed projects);
- One was an unaccounted-for discrepancy of \$5 on the CharterCARE Medical Associates ledger, or .0003% of that total (again, not including expenses from closed projects).

Routine Expenditures for Prospect CharterCARE Entities

May 2014 – September 2016

	Total Assets (Expenditures)		Total Credits to Asset accts	Total
Roger Williams Medical Center	25,993,230		(14,130,857)	11,862,373
RWMC Closed* CIP**	985,984		(985,984)	0
Prospect CharterCARE SJHSRI	10,873,908		(761,157)	10,112,751
SJHSRI Closed CIP	2,894,131		(2,894,131)	0
Elmhurst Extended Care	3,964,504		(3,511,234)	453,270
EEC Closed CIP	136,169		(136,169)	0
CharterCARE Medical Associates†	1,483,271		(541,505)	941,766
CCMA Closed CIP	85,429		(85,429)	0
CharterCARE Health Partners	1,227,743		(94,241)	1,133,502
CCHP Closed CIP	1,096,743		(1,096,743)	0
New University Medical Group	10,075		0	10,075
	48,751,187		(24,237,450)	24,513,737

* “Closed” is taken from the names of the accounts assigned by Prospect. It indicates the way Prospect booked the expenditures.

** “CIP” refers to Construction in Progress.

† The confidential information has been redacted from the spreadsheet for CharterCARE Medical Associates.

Note: The spreadsheets submitted by Prospect for all of the listed entities are included with this report as Attachments G.i – G.xi.

The Prospect entities have provided documentation of routine capital expenditures of \$24,513,737 in the first 28 months of the monitoring period, and the HCA Decision requires \$10 million per year in this category of spending. In the same period, the entities booked \$5,121,326 in long-term capital expenditures. The HCA Decision requires \$50 million to be spent over four years; at 58% of the way through that period, Prospect had documented spending 10.24% of the required amount on long-term capital projects. Certainly, it takes time to plan, approve, initiate and complete major improvement projects and, therefore, the beginning of a reporting period may reflect that ramp-up period. In Prospect’s case, at least two major investment projects did not get beyond the approval stage: the CON project for establishment of a cardiac catheterization and angioplasty program at Our Lady of Fatima Hospital, and the CON project for establishment of an obstetrics department at Our Lady of Fatima Hospital. However, as noted previously in

this report, under Prospect's accounting method, long-term projects are not recorded as fiscal-year entries, nor submitted to AMI until they are complete, and it is possible that this system may under-represent the actual project expenditures during the reporting period.¹⁸

- C. Other Aspects of the Transaction as Planned - In the Asset Purchase Agreement, several commitments are cited which are not strictly financial. Those tracked by AMI are described below.

Essential Clinical Services Being Provided – The essential clinical services listed in Exhibit L of the Asset Purchase Agreement were:

- Medical/Surgical Services and Intensive/Coronary Care Unit
- Acute Dialysis Services
- Inpatient and Outpatient Rehabilitation Services, including Sub-acute and Skilled Nursing facility
- Ambulatory Care Services
- Emergency Services
- Inpatient and Outpatient Psychiatric/Mental Health/addiction Medicine Services
- Diagnostic Imaging and Interventional/Radiology Services, including diagnostic cardiac catheterization
- Laboratory/Pathology
- Inpatient and Outpatient Cancer Services including Blood and Marrow Transplantation/Surgical and Radiation Oncology
- Sleep Lab
- Wound Care/Hyperbaric Services
- Dermatology
- Health center services (GYN & pediatric clinic, adult and pediatric dentistry, immunizations, WIC)
- Homecare/Hospice services

AMI conducted an online search in October 2017 and determined that all but the last category of services listed above are currently being offered at one or more of the Prospect hospital locations. Homecare is offered through the CharterCARE Home Health Services. Hospice is not offered at the hospitals, but the social work services to facilitate hospice arrangements are, as they were at the time of the conversion.

Maintaining the Catholic Identity – The Asset Purchase Agreement (§13.16) specifies the following with regard to Prospect maintaining the Catholic identity of Prospect

¹⁸ In December 2016, Prospect notified the Attorney General that it was planning to sell its Elmhurst property and requested: a) to add the proceeds from this sale to its capital improvement spending requirement and b) to extend the period for such spending by two years. Both requests were granted, therefore Prospect has until June 20, 2020 to complete such spending. A report of the spending is to be submitted to the Attorney General on or before June 20, 2020.

CharterCARE SJHSRI, the entity which comprises Our Lady of Fatima Hospital and the St. Joseph Health Center:

13.16 Catholic Identity and Covenants. At all times following the Closing Date, Prospect and the Prospect Member shall cause the Company and the Company Subsidiaries to maintain the Catholic identity of all legacy SJHSRI locations and to ensure that all services at SJHSRI locations are rendered in full compliance with the Ethical and Religious Directives for Catholic Health Care Services, as promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop of the Roman Catholic Diocese of Providence, Rhode Island, as the same may be amended from time to time (the ERDs).

The Catholicity standards are further delineated in the APA at Exhibit M, “Catholicity Standards for Legacy SJHSRI Locations.”

Prospect CharterCARE SJHSRI has not indicated that they have varied from this condition, and AMI is aware of no allegation or claim to the contrary by anyone else. Rather, according to the homepage of Our Lady of Fatima Hospital’s website (in October 2017), the hospital mission is “to preserve, restore and enhance the health of individuals and families we serve within our communities guided by our core values of respect, compassion, responsibility, teamwork and patient safety, consistent with the healing ministry of the Catholic Church.” The Prospect CharterCARE webpage on governance says this about the entities:

Our joint venture company embraces Rogers Williams Medical Center’s status as a secular teaching hospital, while Our Lady of Fatima Hospital continues its adherence to the religious and ethical teachings of the Catholic Church as promulgated by the United States Council of Bishops.

Both Roger Williams and Fatima maintain separate hospital licenses and each has an advisory board that monitors patient care and quality, credentialing of medical staff members and related responsibilities.

There is no indication that Our Lady of Fatima Hospital or St. Joseph Health Center have made any changes that would call into question their compliance with this commitment. Affiliated Monitors is willing to probe more deeply into Prospect’s compliance with this condition, at the discretion of the Attorney General.

Preservation of Jobs at the Existing Hospitals – On November 18, 2016, the local affiliate of NBC reported that “United Nurses and Allied Professionals Local 5110 said the owner of Our Lady of Fatima Hospital in North Providence and Roger Williams Medical Center in Providence is in the process of laying off about 30 employees. The union said another 20 vacant positions are being frozen.” In the same piece, it was noted that Prospect Medical Holdings sent a statement on behalf of CharterCARE to NBC 10 News, saying: “The UNAP statement is misleading in that it fails to note the more than 185 new jobs that CharterCARE has created in the past two years.”

AMI sent an inquiry to Prospect in October 2017 and received the following information:

- As of June 1, 2014, and excluding Elmhurst Rehabilitation and Healthcare Center's 300-plus employees, Prospect had 2,715 employees. Elmhurst is excluded from the count to facilitate an appropriate comparison because the Center is still in operation, but the business was sold in December 2016. Although the jobs remain, they are no longer considered Prospect jobs.
- As of October 1, 2017, Prospect had 2,821 employees.
- Additionally, there are 33 employees based in Rhode Island who work for Prospect's Rhode Island Independent Practice Association (IPA) or who provide services on a regional level. They do not work for CharterCare Health Partners, as such, and therefore are not included in Prospect count, but they are Prospect jobs based in Rhode Island.

9. Promptly after the 180th day following the close of the transaction, confirm that the parties have briefed, in an interview with the Attorney General, the terms of the final Prospect CharterCARE, LLC's Strategic Plan adopted by the Board.

By agreement, representatives of the Attorney General and Affiliated Monitors, Inc. met with Lester Schindel, John Holiver and Addy Kane from Prospect CharterCARE, LLC to discuss the terms of the Strategic Plan adopted by the Board. This meeting was held on November 17, 2016.

10. For the next three (3) years following the close of the transaction, obtain and provide the Attorney General with a copy of any notices provided to, or received by, a party under the Asset Purchase Agreement and Amendment thereto.

The Foundation

In October 2014, the Foundation informed the Attorney General and AMI that it had not received any notices. AMI did not receive any further information from the Foundation with regard to this term, but we will follow up for the next report.

CCHP/CCCB and Heritage Hospitals (Oldco)

In October 2014, CCCB provided the Attorney General and AMI with a copy of the notice from PMH containing the Final Working Capital Statement. Then, on November 30, 2015, CCCB provided AMI with a copy of an email notice from Prospect in connection with the proposed sale of a real estate asset, undeveloped land behind Our Lady of Fatima Hospital. The email provided the Oldco Entities and the Foundation with the opportunity to exercise their right of first refusal in the sale of this asset. Note, the Oldco Entities and the Foundation did not exercise their purchasing right.

Prospect and Prospect Subsidiaries

On October 1st, 2014, Prospect provided the Attorney General and AMI with a copy of a notice from Prospect Medical Holdings, Inc. to CCHP that contained the Final Working Capital Statement required under Section 2.9(b) of the Asset Purchase Agreement. In April 2015,

Prospect informed the Attorney General and AMI that it had not received any notices associated with this condition.

- 11. For the next three (3) years following the close of the transaction, obtain and provide the Attorney General with a copy of any notice(s) out of the ordinary course; e.g., Office of Inspector General, Securities and Exchange Commission, Internal Revenue Service and Centers for Medicare and Medicare Services, received by the Transacting Parties from any regulatory body.**

The Foundation

The Foundation reported that it has not received a notice from a regulatory body outside of the ordinary course.

CCHP/CCCB and Heritage Hospitals (Oldco)

On August 1st, 2014, Moshe Berman, who was then an attorney at Ferrucci Russo P.C., informed the Attorney General on behalf of CCCB, RWH, and SJHSRI that these entities had not received a notice from a regulatory body outside of the ordinary course (e.g. OIG, SEC, IRS, or CMS). On November 30, 2015, CCCB provided an update and informed AMI that no notices out of the ordinary course had been received by the Oldco Entities.

Prospect and Prospect Subsidiaries

In October of 2014, in response to the question of whether Prospect, PMH, Prospect East, Prospect Advisory, Prospect RWMC, and Prospect SJHSRI, had received a notice from a regulatory body outside of the ordinary course, Interim CEO Thomas Reardon replied “N/A.”

On October 23, 2015, Prospect sent a response to questions posed by AMI on August 6, 2015. Relative to this Condition, Prospect said “there have been no notices out of the ordinary course received since the last Scheduled Reports.”

On May 6, 2016, Prospect notified AMI and the Attorney General regarding a notice received out of the ordinary course. The contents of the notice were deemed confidential under R.I.G.L. § 23-17.14-32.

- 12. Confirm that all CCHP entities being acquired but not continuing (e.g. not CCHP, CCHP Foundation or the Heritage Hospitals) are wound down and dissolved and all necessary documents have been filed with applicable state agencies, including, but not limited to the Secretary of State and the Division of Taxation.**

In October 2014, CCCB informed the Attorney General and AMI that since closing the focus in the winding down process had been on the financial close-out of the operations for Oldco and that Oldco was still using an accounting firm to assist it with the wind-down. Subsequently, on November 30, 2015, CCCB notified AMI that non-continuing entities had been wound down and would be dissolved informally. CCCB informed AMI that final tax returns would be or had been filed. We note, however, that in the receivership case entitled St. Joseph Health Services of Rhode Island, Inc. vs. St. Joseph Health Services of Rhode Island Retirement Plan, PC-2017-3856, within the Petition for Appointment of Receiver, filed on

August 18, 2017, it is stated that the “wind-down of RWH and SJHSRI is likely to take several years to complete.” See Petition at Attachment H, paragraph 16, page 5.

In October 2017, CCCB provided AMI with a copy of the final tax filing, 2013 Tax Form 1120, submitted in June 2014 for Rosebank Corporation. Rosebank Corporation was described in the filing as a real estate entity of CharterCARE Health Partners. The tax filing is included with this report at Attachment E.

CCCB also provided AMI with a copy of the final tax filing, 2015 Tax Form 990-EZ, submitted on behalf of Elmhurst Extended Care Facility, Inc. The tax filing is included with this report at Attachment F.

13. Obtain information as requested by the Attorney General that Prospect is acting in compliance with the Asset Purchase Agreement and the Conditions of this Decision.

The Attorney General did not request additional information from Prospect about its compliance with the APA and the Conditions of the Decision.

14. Confirm that Prospect CharterCARE, LLC and its affiliates are providing any transition services to CCHP Foundation, CCHP and the Heritage Hospitals pursuant to separate agreements, terminable by the CCHP affiliate at will and provided by the Prospect affiliate at cost for the next three (3) years following the close of the transaction.

The Foundation

In October 2015, AMI received copies of the Transition Services Agreements (TSA) entered into by Prospect and the Foundation. The contract was for six months of services, renewable by mutual agreement, and terminable at will with 30 days’ notice.

In October of 2014, Donald McQueen, President of CharterCARE Health Partners Foundation, submitted an attestation that “the services provided pursuant to the Transition Services Agreement detailed in the Report provided with the October 1st Monitoring Report are accurate and complete.” In November of 2015, the Foundation notified AMI that its Transition Services Agreement (TSA) with Prospect CharterCARE, LLC expired in December of 2014 and that “no further services are required or are being provided.”

CCHP/CCCB and Heritage Hospitals (Oldco)

In October 2015, AMI received copies of the Transition Services Agreements (TSA) entered into by Prospect and CCCB. The contract was for six months of services, renewable by mutual agreement, and terminable at will with 30 days’ notice.

On November 30, 2015, CCCB provided a copy of an amended and executed Transition Service Agreement (“TSA”) entered into with Prospect CharterCARE, LLC effective July 1, 2015 for a term of one year. As with the previous TSA, the amended Agreement was terminable at will by either party with 30 days’ notice. AMI was notified by Attorney Richard Land in October 2017 that the TSA was extended and Prospect CharterCARE continues to provide services to CCCB.

Prospect and Prospect Subsidiaries

Below is a summary of the charges; entries a – d were included in a submission from Prospect to AMI sent by General Counsel, Moshe Berman, on October 23, 2015, along with a breakdown of charges. Entry e below was included in a report submitted by Lester Schindel, CEO of Prospect CharterCARE on April 1, 2017; entries f – h were reported to AMI in response to a request for updated information in October 2017.

- a. Total TSA expenses for 6/20/14 - 7/25/14: \$104,299.
- b. Total TSA expenses for 7/26/14 - 8/25/14: \$37,513.
- c. Total TSA expenses for 8/26/14 - 9/25/14: \$33,856.
- d. Total TSA expenses for 9/26/14 - 12/27/14: \$89,853.
- e. Total TSA expenses for 12/28/14 - 3/28/15: \$49,263.¹⁹
- f. Total TSA expenses for 4/1/15 – 9/30/15: \$11,184.
- g. Total TSA expenses for 10/1/15 – 6/30/16: \$20,764.
- h. Total TSA expenses for 7/1/16 – 3/31/17: \$12,234.

Prospect indicated that additional expenses have been incurred since April 1, 2017, but that the amounts are small and therefore have not yet been billed. Prospect provided copies of the amended and executed Transition Service Agreements entered into with Prospect CharterCARE, LLC effective July 1, 2016 and July 1, 2017, each for a term of one year.

15. For the next three (3) years following the close of the transaction, obtain information of any actions out of the ordinary course taken in connection with the SJHSRI pension or any material changes in its operation and/or structure and/or funding and notify the Attorney General.

Relative to this condition, AMI understood that it was not within AMI’s Scope of Work to affirmatively or actively monitor the operations, structure or funding of the SJHSRI pension, but that the obligation was on CCCB to notify the Attorney General of any actions out of the ordinary course or any material changes.

On November 30, 2015, CCCB notified AMI that no material changes to the SJHSRI pension plan had occurred since the time of the closing and CCCB provided no subsequent communication relative to this condition until August of 2017 when Attorney Land advised the Attorney General that a receivership petition had been prepared for filing.

Following the filing of the receivership petition on August 18, 2017 (see Attachment H), on September 12, 2017, the RI Office of Attorney General sent a letter to Attorney Land “seeking

¹⁹ Daniel J. Ryan, Chairman of the Board of CCCB and Donald C. McQueen, President of CharterCARE Health Partners Foundation, each attested that the services provided pursuant to the TSA through March 28, 2015 were accurate and complete.

to confirm full and complete compliance with Condition 23 of the Attorney General’s Hospital Conversion Act Decision dated May 14, 2014” stating:

For the next three (3) years following the close of the transaction, notify the Attorney General of any actions out of the ordinary course taken in connection with the SJHSRI pension or any material changes in its operation and/or structure.”

In response to this inquiry, Attorney Land sent a letter dated October 11, 2017, with the following statement:

I am not aware of any action that I believe was out of the ordinary course in connection with the above-referenced plan or any material changes in its operation or structure since my involvement in approximately December 2014 through June 20, 2017. To be clear, since that time, the Plan continued to operate in the ordinary course as the ordinary course existed at that time. At some point early on in that period, a decision was made to engage Mercer Investment Advisors (“Mercer”) to provide investment management services. Mercer had previously been engaged as the investment advisor and the expansion of its role was viewed as the natural consequence of the sale of the hospital’s assets.

In October 2017, Attorney Land informed AMI in a telephone conversation that there had been no additional contributions to the SJHSRI plan since 2014.

16. For the next three (3) years following the close of the transaction, obtain information and provide the Attorney General with notice of a proposed change of ownership of Prospect East or PMH.

In October 2014, Prospect informed the Attorney General and AMI that there was no proposed change in ownership with regard to PMH or Prospect East. This statement was reiterated in the report of October 23, 2015 and by correspondence from Prospect’s General Counsel on October 11, 2017.

17. Obtain necessary information for the next three (3) years following the close of the transaction, to ensure that CCHP Foundation, CCHP and the Heritage Hospitals are provided with a right of first refusal to match the price to acquire any asset comprised of a line of business or real estate of Prospect CharterCARE, LLC and its Subsidiaries that it proposes to sell.

The Foundation

On November 16, 2015, the Foundation confirmed that it had been extended a right of first refusal with respect to the sale of property on Fruit Hill Avenue behind Our Lady of Fatima Hospital. The Foundation was also extended a right of first refusal with respect to property at 21 Peace Street in Providence (the former St. Joseph Hospital Campus). Relative to Peach Street, Prospect provided a copy of its December 9, 2016 correspondence with the Foundation’s attorney, Cynthia Warren. The Foundation declined these offers.

CCHP/CCCB and Heritage Hospitals (Oldco)

CCCB provided AMI with a copy of an October 1, 2015 email notice from Prospect regarding the proposed sale of a real estate asset, undeveloped land behind Our Lady of Fatima Hospital.

In this email, Prospect provided the Oldco Entities with the opportunity to exercise the right of first refusal. CCCB informed AMI that the Oldco entities declined to exercise their right of first refusal. In October 2017, AMI sent an inquiry to Attorney Land to determine whether CCCB was offered the right of first refusal relative to the Elmhurst Extended Care Facility and the Former St. Joseph Hospital Campus; Attorney Land indicated that the opportunity was “offered and declined in each instance.” Prospect provided a copy of its January 9, 2017 correspondence with Attorney Land, confirming that CCCB was extended the right of first refusal for the property at 21 Peace Street in Providence, Rhode Island (the former St. Joseph Hospital Campus), and that the Foundation declined the opportunity to purchase the property.

Prospect and Prospect Subsidiaries

As noted above, Prospect provided copies of its correspondence with Attorneys Warren and Land, confirming that the Foundation and CCCB were extended the right of first refusal for the property at 21 Peace Street in Providence, Rhode Island (the former St. Joseph Hospital Campus), and that each entity declined the opportunity to purchase the property.

On August 15, 2016, Prospect CharterCARE Elmhurst, LLC (“Elmhurst”) and Prospect CharterCARE RWMC, LLC (“RWMC”) provided notice to AMI that:

The CCHP Foundation, CharterCARE Community Board, and the Heritage Hospitals have waived their right of first refusal in connection with Elmhurst’s proposed sale of a line of Business and RWMC’s sale of real estate:

Elmhurst and RWMC have entered into a P&S to sell Elmhurst Extended Care Facility and the portion of the building in which it is located. The sale price is \$13,100,000 plus a commitment to put \$5,000,000 of improvements into the facility. The proposed buyer is New Jersey-based Tryko Partners, a recognized and respected development company specializing in long-term, skilled nursing facilities in the Northeast and Mid-Atlantic regions. Tryko, and their healthcare subsidiary Marquis Health Services have a proved commitment to and expertise in operating long-term care facilities.

CCHP Foundation, CharterCARE Community Board, and the Heritage Hospitals have each waived their right of first refusal relative to this proposed purchase.

The notice above was attested to by John Holiver, CEO of Prospect CharterCARE, LLC.

18. Obtain information to confirm that for the next three (3) years following the close of the transaction, to the extent there is a sale of any Purchased Assets comprised of a line of business or real estate, the associated sale proceeds remain within Prospect CharterCARE, LLC for the benefit of the operation of the Newco hospitals.

On December 13, 2016, the Attorney General and AMI received notice from Prospect that the sale of Elmhurst Extended Care Facility was scheduled to close on December 22, 2016,²⁰ and that the final purchase price would be between \$15 million and \$16 million. After taxes and

²⁰ Prospect confirmed via correspondence from General Counsel to AMI on October 11, 2017 that the sale of Elmhurst Extended Care Facility closed on December 22, 2016, as planned.

transaction-related expenses, the final sale proceeds were anticipated to be between \$10 million and \$11 million. Prospect proposed adding the sale proceeds to Prospect Medical Holding's Capital Commitment, which would raise the Capital Commitment to approximately \$60 million to \$61 million ("Revised Capital Commitment"), and extending the time period within which to spend the Revised Capital Commitment by two years, through June 20, 2020. The rationale for the proposed extension was that there was not a present need for the sale proceeds, and further large-scale capital projects would require time for planning, regulatory authorization, and execution.

On December 28, 2016, the Attorney General and AMI were informed that the sale of the Former St. Joseph Hospital Campus ("Campus") would likely not yield any proceeds because Prospect's expenses from the sale would equal or surpass the purchase price of \$100,000.²¹ The sale of the Campus was contingent upon the parties entering into a seven-year lease to Prospect for the portion of the Campus which has been and would continue to be used by Prospect for specialty medical clinics and healthcare, and the buyer would bring the facility into compliance with all applicable building/life safety codes within two years. If there were any proceeds from the sale, Prospect proposed to treat them in the same manner as the sale proceeds from Elmhurst Extended Care Facility, described above.

19. In connection with a sale of assets as defined in paragraph 18 above, if at the time of such a sale Prospect CharterCARE, LLC's membership interest has been diluted to less than fifteen (15%) percent, then obtain necessary information to confirm that fifteen (15%) of the net sales proceeds from the transaction go to CCHP to restore its membership interest up to fifteen (15%) percent.

On November 30, 2015, CCCB's attorney, Richard Land, informed AMI that he was not aware of any transaction that may have diluted CCCB's 15% membership interest in Prospect. In October 2017, he again said that he was not aware of any dilution of CCCB's 15% membership.

On December 19, 2016, the Attorney General and AMI received notification from Prospect CharterCARE's General Counsel, Moshe Berman, that Oldco entity's 15% ownership interest in Prospect had not been diluted; thus, the sale of Elmhurst Extended Care Facility, did not implicate this condition.

Subsequently, on December 28, 2016, Attorney Berman notified the Attorney General and AMI that, because Oldco entity's 15% ownership interest in Prospect had not been diluted, the sale of the Former St. Joseph Hospital Campus did not implicate this condition.

20. During the period of within three (3) years of the closing of this Transaction, obtain and provide notice to the Attorney General of any complaints received from OIG, CMS or state agencies against Prospect.

In August and October 2014, in response to a question about whether they had received any complaints, on behalf of Prospect, PMH, Prospect East, Prospect Advisory, Prospect RWMC,

²¹ Prospect confirmed via correspondence from General Counsel to AMI on October 11, 2017 that the sale of the Former St. Joseph Hospital Campus closed on December 28, 2016, as planned.

and Prospect SJHSRI, Prospect indicated that it had not. This was reiterated in the report of October 23, 2015.

On August 15, 2016 and November 15, 2016, Prospect reported on complaints it had received to AMI and the Attorney General. The contents of the complaints were deemed confidential pursuant to R.I.G.L. § 23-17.14-32.

21. Obtain a proposed balance sheet for the CCHP Foundation and the Heritage Hospitals as of the close of the transaction identifying the source and detail of all charitable assets to be transferred to the CCHP Foundation promptly following the close of the transaction and:

- a. confirm that a proposed *Cy Pres* petition satisfactory to the Attorney General was prepared promptly following the close of the transaction allowing certain charitable assets to be transferred to the CCHP Foundation and requesting that other charitable assets remain with the Heritage Hospitals, in each case for disbursement in accordance with donor intent, with such proposed modifications as agreed to by the Attorney General;**
- b. confirm the approved *Cy Pres* petition be filed with the Rhode Island Superior Court.**

The proposed *Cy Pres* petition was prepared by Attorneys Patricia K. Rocha, Joseph Avanzato, and Leslie D. Parker of Adler Pollock & Sheehan P.C. on behalf of CharterCARE Health Partners Foundation, Roger Williams Hospital, and St. Joseph Health Services of Rhode Island and filed in Kent County Superior Court on January 13, 2015. A copy of the petition is included with this report as Attachment D.i.

The Foundation

On November 16, 2015, the Foundation provided the Attorney General and AMI with the Citizen's Bank June 2015 Statement, which showed the transfer of funds to the Foundation's operating account. The Foundation also submitted a Statement from Rhode Island Foundation, which evidenced three wire transfers to the Rhode Island Foundation from the CharterCARE Foundation Fund totaling \$8,299,266.47. Viewed in conjunction with the Foundation's Summary of Income and Expenses for fiscal years 2015 and 2016 (Attachment D.v.), the transfers can be seen to be from CCCB.

With regard to 21(a) and (b), on November 16, 2015, the Foundation notified AMI that the Attorney General was in possession of the *Cy Pres* petition that had been filed and approved by the Rhode Island Superior Court.

CCHP/CCCB and Heritage Hospitals

The assets of CCCB are set forth in detail in the *Cy Pres* Petition (see Attachment D.i).

On November 30, 2015, CCCB informed AMI that the Heritage Hospitals have used unrestricted funds to pay accrued operating liabilities and other expenses associated with the wind-down of the institutions. In addition, CCCB notified AMI that pursuant to the *Cy Pres*

Order, “the vast majority of funds that were to remain restricted funds (over \$8.0 million) were transferred to the Foundation; the restricted funds relating to surgical oncology would be used to conduct three studies proposed by the surgical oncologists at the hospital; and funds reserved for continuing medical education are being used for that purpose. CCCB stated that all other funds used by the Oldco Entities are either unrestricted by nature or were designated by the *Cy Pres* Order as unrestricted.”

The *Cy Pres* Order called for “dedicated funds in the aggregate amount of \$300,349.75 . . . to enhance surgical oncology physician and fellow training and education over and above the routine budgeted costs of necessary academic and research programs at RWMC to the extent that RWH is satisfied that such expenditures provide a community benefit.” It also granted *cy pres* approval for RWH to use “[c]ontinuing medical education funds in the amount of \$26,310.29 to support continuing medical education for the medical staff at RWMC over and above the routine budgeted cost of necessary continuing medical education at RWMC to the extent that RWH is satisfied that such expenditure provides a community benefit.” Therefore, with regard to the surgical oncology and continuing medical education funds remaining under the control of the CCCB, AMI asked for additional information in the fall of 2017. CCCB provided documentation that it had established a segregated account for the money for these two areas; the starting amount of the account on June 3, 2015 (after the reallocation of funds per the *Cy Pres* Order) was \$338,165.41.

AMI was provided with a copy of the January 2016 Surgical Oncology Fund Request submitted by Prospect CharterCARE to CCCB for funds in the amount of \$112,483.40 to support three initiatives:

- Reducing Cancer Care Disparities in Rhode Island Hispanic Community,
- Improving Treatment Outcomes for Geriatric Oncology Patients, and
- Immunotherapy Research.

The proposal was fully funded by the CCCB; AMI received a copy of the check issued to Roger Williams Medical Center. With regard to complying with the *Cy Pres* Order, the proposal included a provision that “at the completion of each study, a report will be provided for each study detailing how [it] contributed to the goals of the *Cy Pres* Order.” It appears that CCCB is allocating funds in accord with the original intent of the donors and is tracking the expenditures appropriately.

With regard to continuing medical education (CME) for the medical staff at RWMC, CCCB provided documentation and checks indicating that two events were funded:

- October 6, 2015 – CME in collaboration with the Ethics and Patient Rights Committee of OLF for 60 participants from the medical staffs, nursing and allied health professions across the [Prospect] organization, with a net expenditure of \$5,834.50
- October 20, 2016 – CME entitled, “Barriers to Having End of Life Discussions” for 60 participants, net expenditure of \$4,870.85.

Another CME program is in the planning stages. An initial deposit of \$900 has been paid to the Crowne Plaza Hotel for use of a meeting room on May 3, 2018.

To date, the total expenditures for continuing medical education costs from the restricted fund have been \$11,605.35. It appears CCCB is appropriately documenting the expenditures, as well as the fact that the CME programs provide a “community benefit.”

MATTERS FOR FOLLOW-UP

The matters noted below are described in more detail in the body of the report above; they are listed here in summary format only.

Affiliated Monitors will collect the following information from the Foundation for the next report:

- Attestations from Board members Carolyn Young, MD and Shannon Shallcross, MS regarding their eligibility to serve (i.e., that they are not subject to the RI Code of Ethics); and
- A summary of charitable expenditures for fiscal year 2017.

From CCCB, AMI will collect the following information for the next report:

- An accounting of the charitable expenditures from the *Cy Pres* funds managed by CCCB, if it is determined by the Attorney General that such accounting requirements run for three years from the period of the *Cy Pres* Order.

AMI will collect the following information from Prospect for the next report:

- Spreadsheets for long-term and routine capital expenditures after September 30, 2016, along with copies of checks and invoices for expenditures over \$10,000; and
- The ways in which Prospect has maintained the Catholic identity of Our Lady of Fatima and St. Joseph Health Center.

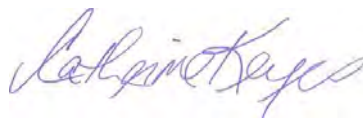
CONCLUSION

Affiliated Monitors has found the CharterCARE Foundation, CCCB, and the Prospect CharterCARE entities to be cooperative and responsive while complying with the HCA Decision. We find them to be in full compliance and have no recommendations for improvement at this time.

Respectfully submitted,



Donald K. Stern
Managing Director, Corporate Monitoring
and Consulting Services



Catherine Keyes
Vice President of Operations

Exhibit 9



Second Interim Report on Compliance by Prospect CharterCARE, CharterCARE Community Board, and CharterCARE Foundation with Conditions of Certification Pertaining to the Acquisition of Roger Williams Medical Center, St. Joseph Health Services of Rhode Island, Our Lady of Fatima Hospital and Other Entities.

In the Hospital Conversions Act Decision of the Rhode Island Office of the Attorney General (“Attorney General”) dated May 16, 2014 (the “HCA Decision”), Prospect CharterCARE, LLC (“Prospect” or “Prospect CharterCARE”), CharterCARE Community Board (“CCCB”), and CharterCARE Foundation (the “Foundation”), (collectively “the Entities”), were required to meet certain conditions relative to Prospect’s acquisition of the facilities now known as Roger Williams Medical Center (RWMC), Our Lady of Fatima Hospital (OLF), Southern New England Rehabilitation Center, St. Joseph Health Center (SJHC), and other entities.¹ One condition requires Prospect to “enter into an additional agreement outlining the terms of its obligations regarding cooperation with the Attorney General and any expert retained to assist the Attorney General with enforcing compliance with these Conditions.” Affiliated Monitors, Inc. (“AMI”) was engaged to perform the services of the expert that assist the Attorney General with enforcing compliance with the conditions.

Subsequent to the execution of the Retainer Agreement, Prospect notified the Attorney General that it had sold Elmhurst Extended Care Facility in Providence, Rhode Island. In order to comply with Condition 26 of the HCA Decision that requires the sale proceeds to remain with Prospect for the benefit of the Newco hospitals, Moshe Berman, General Counsel for CharterCARE Health Partners, sent a letter (Attachment A1 to this report) to the Attorney General on December 13, 2016 requesting the following:

PCC proposes to:

- *Add the Sale Proceeds to the Capital Commitment which will result in a total Capital Commitment from PMH in the amount of approximately \$60 million to \$61 million dollars (“Revised Capital Commitment”).*
- *Extend the time period within which to spend the Revised Capital Commitment by two years, through June 20, 2020.*

The Attorney General approved this request on December 16, 2016; a letter to that effect was sent by Assistant Attorney General, Health Care Advocate, Kathryn Enright (Attachment A2) and a copy was provided to AMI. Attorneys Enright and Berman had a subsequent conversation about the planned sale of the former St. Joseph Hospital property located at 21 Peace Street; on December 28, 2016, Attorney Berman sent a letter to Attorney Enright asking to treat the proceeds of the Peace Street sale in the same manner as the Elmhurst sale (Attachment A3). On June 6, 2018,

¹ The Other Entities are Elmhurst Extended Care Facilities, Inc., Roger Williams Realty Corporation, RWGH Physician’s Office Building, Inc., Roger Williams Medical Associates, Inc., Roger Williams PHO, Inc., Elmhurst Health Associates, Inc., Our Lady of Fatima Ancillary Services, Inc., The Center for Health and Human Services, SJH Energy, LLC, and Rosebank Corporation (see the HCA Decision, p. 8).

Attorney Berman sent an email to Rebecca Partington, Assistant Attorney General, regarding a third property transaction: the sale of property on Fruit Hill Avenue in North Providence (Attachment A4).

Attorney Enright was succeeded by Special Assistant Attorney General, Health Care Advocate, Jessica Rider, who discussed terms of an Amendment to the Retainer Agreement regarding the monitorship of Prospect with Moshe Berman and Catherine Keyes, Vice President of Operations, AMI via conference call on November 1, 2018. Attorney Rider sent a proposed Amendment to the Retainer Agreement to Prospect and AMI on March 19, 2019. The Amendment was signed and returned to the Attorney General by Catherine Keyes on behalf of AMI on March 26, 2019. The Amendment was not executed by Attorney Berman before he left his position at Prospect and Attorney Rider then raised the matter with Leslie Prizant, Associate General Counsel, Prospect Medical Holdings. On August 19, 2019, Attorney Prizant proposed by email (Attachment A5) the following change to the language of the Amendment:

WHEREAS, PROSPECT requested that the time period for the sale proceeds in the amount of \$12,041,117.00 of the aforementioned properties be extended beyond the time period pursuant to Capital Commitment Prospect Medical Holdings, Inc. is obligated to contribute to Prospect CharterCARE, LLC pursuant to Section 2.5(b) of the Asset Purchase Agreement by two years, through June 20, 2020.

The changes were incorporated into the Amendment to the Retainer Agreement and the revised version was signed and submitted by Catherine Keyes on behalf of AMI on September 6, 2019, by Sam Lee, Chief Executive Officer of Prospect Medical Holdings on September 23, 2020, and by Attorney Partington on behalf of the Attorney General, on September 24, 2019 (Attachment A4).²

This is the second report generated for the Attorney General relative to this conversion. See R.I. Gen. Laws §23-17.14-28(d)(2).

METHODOLOGY

The Attorney General, Prospect and AMI agreed upon an Extended Scope of Work to guide the monitoring process. The Extended Scope of Work is set forth in Schedule A-1 of the Amendment to the Retainer Agreement by and between the Attorney General, Affiliated Monitors, Inc., Prospect Medical Holdings, Inc. (“PMH”), Prospect East Holdings, Inc. (“Prospect East”),

² The request for an extension to spend the Revised Capital Commitment, submitted by Attorney Berman on December 13, 2016 and granted by Attorney Enright on behalf of the Attorney General on December 16, 2016, seemed to be intended to extend the deadline for the full long-term, non-routine capital commitment. However, Attorney Prizant’s request to edit the proposed language in the Amended Retainer Agreement – and the language subsequently included in the Amended Retainer Agreement – convey the impression that Prospect wanted only to extend the deadline for expenditure of additional capital earned upon the sale of its Elmhurst and Fruit Hill Avenue properties. It is not possible for AMI to determine whether Prospect has met its spending requirements under the APA and HCA Decision without some consensus about which deadlines pertain.



Prospect East Hospital Advisory Services (“Prospect Advisory”), LLC, and Prospect CharterCARE, LLC. Below is that Extended Scope of Work.

Schedule A-1

- 1. Obtain information to confirm that the Transaction is implemented by the parties as outlined in the Initial Application, including, but not limited to, all Exhibits and Supplemental Responses and:
 - (a) obtain annual reports from Prospect CharterCARE, LLC for the Attorney General on the proposed form submitted to the Attorney General concerning the funding of its routine and non-routine capital commitments under the Asset Purchase Agreement and as extended and modified pursuant to the agreement as described in this Amendment to Retainer Agreement, until the Revised Capital Commitment has been satisfied;**
 - (b) obtain information confirming that the charitable assets that remain with the Heritage Hospitals are used in accordance with donor intent. It is anticipated that monitoring of this condition should be done through reconciliation of the accounts and uses until the Revised Capital Commitment has been met.****
- 2. For the period of time from the end of the third reporting year through June 20, 2020, obtain and provide the Attorney General with a copy of any notices provided to, or received by, a party under the Asset Purchase Agreement.**
- 3. Obtain information as requested by the Attorney General that Prospect is acting in compliance with the Asset Purchase Agreement and the Conditions of this Decision as set forth in this Extended Scope of Work.**
- 4. Obtain information to confirm that the proceeds of the sale of the Elmhurst Extended Care Facility and the Fruit Street property remain within Prospect CharterCARE, LLC for the benefit of the operation of the Newco hospitals.**

In discussions held in March and April 2019, Prospect, the Attorney General and AMI agreed that Prospect would provide supporting documentation for claimed expenditures of \$50,000 and above, with Prospect estimating that this subset would capture approximately 80 percent of its total claimed expenditures. On April 30, 2019, with the approval of the Attorney General, AMI sent a Request for Information (RFI) to Prospect. On May 13, 2019, Prospect sent AMI documentation of its capital expenditures for the period of September 2016 – April 2019 and its expenditures on practice acquisitions for 2017 – 2018. The specific questions submitted via RFI on April 30, 2019 were not addressed in this submission; it was AMI’s understanding that preparation of the financial materials had already been underway for some time by Prospect and that the RFI questions would be addressed separately. AMI did not review the materials in depth until negotiations between the Attorney General and Prospect were complete with regard to the terms of the Amendment to the Retainer Agreement and the Extended Scope of Work.

In October 2019, AMI closely reviewed all of the materials submitted by Prospect and requested (via emails of November 5 and November 11) further information about certain recorded entries, as well as responses to the other areas set forth in the April 30, 2019 RFI (Attachments A7 and A8). On November 13, 2019, a meeting was held at the RWMC facility with the following attendees: Jessica Rider; Leslie Prizant, (via telephone); Jeffrey Liebman, Chief Executive Officer, CharterCARE Health Partners; Dan Ison, Vice President of Financial Operations, CharterCARE Health Partners; David Ragosta, Chief Financial Officer, CharterCARE Health Partners; Catherine Keyes; and Oghenekevwe Odima, Compliance Associate, AMI. In follow-up to that meeting, Prospect CharterCARE submitted additional financial materials on January 15, 2020. AMI and its accounting consultant reviewed the additional materials extensively and raised further questions. Another meeting was held at the RWMC facility on February 13, 2020, attended by Jessica Rider, Leslie Prizant (via telephone), Jeffrey Liebman, Dan Ison, David Ragosta, Catherine Keyes, Oghenekevwe Odima, and Jaclyn Reinhard, CPA (with DiCicco, Gulman & Company, LLP, retained by AMI to assist with this matter). At that meeting, Mr. Ison indicated that Prospect might re-submit figures and documentation relative to its Long-Term Capital Commitment expenditures for 2014 – 2016 in order to reflect the expenses incurred by year, as opposed to its previous practice of submitting documentation only when a Long-Term Capital Commitment project had been completed.

On February 18, 2020, the Attorney General directed Prospect to provide a complete response to the RFI of April 30, 2019 on or before February 21, 2020. On February 21, 2020, Prospect submitted responses to all questions and additional materials, including its capital expenditures for 2014 – 2016.³

FINDINGS

Extended Scope of Work – Item 1

Obtain information to confirm that the Transaction is implemented by the parties as outlined in the Initial Application, including, but not limited to, all Exhibits and Supplemental Responses ...:

AMI sent the following request to Prospect on April 30, 2019:

Items i – xi below were set forth in the Initial Application⁴. Please provide documentation showing Prospect has complied with these terms for the period of November 2017 – December 2018:

- i. Maintain all essential services for 5 years. The essential services listed in the Asset Purchase Agreement (“APA”) are:
 - Medical/Surgical Services and Intensive/Coronary Care Unit*

³ On May 6 and 7, 2020, Prospect sent additional materials to AMI and the Office of the Attorney General; these were not evaluated for the purposes of this report but will be incorporated into the next one.

⁴ Attachments in this section of the Report are numbered i – xi to correspond with the questions sent to Prospect on April 30, 2019 (Attachment B1) and reiterated herein.

- *Acute Dialysis Services*
- *Inpatient and Outpatient Rehabilitation Services, including Sub-acute and Skilled Nursing facility*
- *Ambulatory Care Services*
- *Emergency Services*
- *Inpatient and Outpatient Psychiatric/Mental Health/Addiction Medicine Services*
- *Diagnostic Imaging and Interventional/Radiology Services, including diagnostic cardiac catheterization*
- *Laboratory/Pathology*
- *Inpatient and Outpatient Cancer Services including Blood and Marrow*
- *Transplantation/Surgical and Radiation Oncology*
- *Sleep Lab*
- *Wound Care/Hyperbaric Services*
- *Dermatology*
- *Health center services (GYN & pediatric clinic, adult and pediatric dentistry, WIC, immunizations)*
- *Homecare/Hospice services (Note: Previous information indicated that homecare was offered through the CharterCARE Home Health Services. Hospice care was not offered at the hospitals at any time during the monitorship – and was not at the time of the conversion – but arrangements for hospice care were facilitated by hospital social workers.)*

On February 21, 2020, Prospect responded to the above question as follows⁵:

Answer: *Yes, Prospect has maintained all essential services for 5 years. See “April 2019_Attachment – 1-i” (or Binder Tab 1) for the Directory of Services offered. Please note that with the sale of Elmhurst, the Skilled Nursing Facility no longer applies.⁶ Also note that Hospice services are still facilitated by hospital social workers.*

Prospect submitted a photocopy of its Directory of Services for Winter/Spring 2018 (Attachment B2-i). AMI confirmed that the services included corresponded with those listed on the websites of Our Lady of Fatima Hospital and Roger Williams Medical Center.

⁵ On February 21, 2020 Prospect responded to AMI’s April 30, 2019 RFI, as well as two follow-up requests for clarification of certain items (sent via email on November 11, 2019 and February 7, 2020) in one document (Attachment B1-i).

⁶ On December 16, 2016, the RI Department of Health approved the sale of Elmhurst Extended Care Facility based on the Change in Effective Control regulatory process.

- ii. Transferred Employees will get their base salaries and wages equal to their base salaries and wages as of the closing date. Transferred Employees will retain seniority for purposes of benefits, salaries, and wages.*

Prospect submitted an Excel spreadsheet showing all employees on the payroll as of May 2014 (prior to the June 2014 closing date), their status as of November 2017, and again as of December 2018. Employee names were not included.

The list indicated that 1,230 individuals who worked for Prospect in May 2014 were active on the payroll as of December 2018. Of these, the base pay rate had decreased for 41 (3.33%); AMI was not able to determine which of these individuals, if any, were Transferred Employees. One hundred forty-three individuals (11.62%) had “seniority dates” which were later than they had been in May 2014. Again, AMI could not determine which, if any, in this set were Transferred Employees. Therefore, based on the information submitted with regard to salaries/wages and seniority, AMI could not determine whether Prospect complied with the terms of this condition.

- iii. Prospect will provide benefits at benefit levels comparable to benefits provided under the Existing Hospitals’ plans, benefits including vacation, sick leave, holiday, health insurance, 401K, life insurance, and continued COBRA coverage.*

Prospect submitted a copy of its “Employee Benefits Guide 2018” (“2018 Benefits Guide”) (Attachment B2-iii(a)) and a summary page pertaining to its 2014 CCHP Benefits (Attachment B2-iii(b)). The 2018 Benefits Guide describes the health insurance, life insurance, and continued COBRA coverage offered to employees in 2018; it does not contain information relating to vacation, sick leave, holidays, or 401K benefits. The 2014 CCCHP Benefits summary lists only the cost to employees of health insurance, dental, vision and legal insurance offered, with no further details about the nature and extent of these benefits. AMI was not able to ascertain from the documents submitted the extent of vacation, sick leave, holiday and 401k benefits offered a) at the time of the conversion or b) in 2018. Neither were we able to determine whether the overall benefit levels (that is, including health, dental, vision and legal coverage) were comparable to those provided in 2014. Based on the information submitted with regard to benefits, AMI could not determine whether Prospect complied with the terms of this condition.

- iv. Any Transferred Employee who is terminated without cause within the 12-month period following the closing date will be offered a severance package on terms comparable to the severance package in effect with respect to the Existing Hospitals’ employees prior to the closing date.*

In response to this question, Prospect submitted a copy of its Human Resources Policy on Reduction in Staff with effective date of 1/1/2014. No additional documents were provided to allow for comparison between the pre- and post-closing severance packages. AMI was therefore not able to determine whether the severance package available to transferred employees whose employment was terminated without cause within the 12-month period post-closing was on comparable terms to the severance package in effect with respect to the Existing Hospitals’



employees pre-closing. Based on the information submitted with regard to terminated employees, AMI could not determine whether Prospect complied with the terms of this condition.

- v. *Prospect will continue to provide care through sponsorship and support of community-based health programs, including cooperation with local organizations that sponsor healthcare initiatives to address identified community needs and improve the health status of the elderly, poor and at-risk populations in the community.*

Prospect submitted a list of 56 Community organizations and events it had supported financially and/or partnered with to provide health education and services (Attachment B2-v). Because the list did not include dates of any specific events nor descriptions of any programs, AMI was not able to confirm the information nor determine whether the organizations and events included those intended to identify community needs and improve the health status of the elderly, poor and at-risk populations. Based on the information submitted with regard to sponsorship and support of community-based health programs, AMI could not determine whether Prospect complied with the terms of this condition.

- vi. *Continue to support nursing and staff education.*

Prospect submitted copies of training materials and attendance sheets (Attachment B2-vi)⁷ to demonstrate compliance with this condition. AMI reviewed the materials and determined that Prospect has continued to support nursing and staff education in compliance with this requirement. The materials indicate that this condition has been met.

- vii. *Maintain a Senior Executive Compliance Officer whose responsibilities will include regulatory compliance, organizational compliance and will be responsible for establishing and overseeing an ethics committee to include community board members.*

Prospect identified Timothy Sullivan as the Senior Executive Compliance Officer who has served in this capacity since November 2016 and provided a job description for the position (Attachment B2-vii) which included the qualifications and skills required. AMI viewed Timothy Sullivan's LinkedIn profile, which indicated he that he served as CharterCARE Health Partners Vice President of Compliance and Privacy from November 2016 – January 2020. The materials indicate that this condition has been met.

- viii. *Adopt the Existing Hospitals' Charity Care Guidelines and continue to provide all medically necessary services to patients regardless of their ability to pay.*

⁷ Prospect submitted course materials and attendance sheets for 33 nursing and staff education programs. The materials are on file with the Attorney General and AMI; a list of all programs (prepared by AMI) is included with this report as Attachment B2-vi.

The question sent in the April 30, 2019 RFI and Prospect's response pertaining to this aspect of the condition follow:

Question: *Has Prospect CharterCARE adopted the Existing Hospitals' Charity Care Guidelines and continued to provide all medically necessary services to patients regardless of their ability to pay?*

Answer: *Yes, see "April2019_Attachment-1-viii" (or Binder Tab 8) for the guidelines utilized.*

Prospect submitted a copy of the SJHSRI Financial Assistance Policy (Attachment B2-viii(a)) which states that "(i)t is the policy of St. Joseph Health Services of Rhode Island to provide medically necessary/essential services to any person regardless of his/her ability to pay in full or in part for those services provided by the Hospital." This SJHSRI policy was issued on March 9, 2011 and updated yearly until 2018. In addition, Prospect submitted the Free Care Program Guidelines and sample Financial Aid Application Form (undated) for Roger Williams Hospital (Attachment B2-viii(b)). The materials submitted support the assertion that Prospect met this condition with regard to care rendered through the SJHSRI facility. Because the RWH materials are undated, however, it was not possible for AMI to determine whether Prospect complied with the condition as it pertains to care delivered at RWH.

- ix. *Maintain a ratio of full-time equivalent employees to average occupied beds that is consistent with accepted industry practices.*

The question sent in the April 30, 2019 RFI and Prospect's response follow:

Question: *Has Prospect CharterCARE maintained a ratio of full-time equivalent employees to average occupied bed that is consistent with accepted industry practices?*

Answer: *Yes*

Although Prospect answered this question in the affirmative, it did not provide any data regarding its ratio of full-time equivalent employees to average occupied bed nor any comparative industry data. Based on the material submitted, it was not possible for AMI to determine whether Prospect complied with the terms of this condition.

- x. *Post-conversion, the Existing Hospitals will continue to utilize productivity targets to assist with determining appropriate staffing levels.*

Prospect CharterCARE asserted that it continued to utilize productivity targets in determining appropriate staffing levels. Prospect submitted Excel spreadsheets of the Daily Productivity Model for the month of December 2018 for RWMC and SJHS, which AMI reviewed. The models appear to be valid. From these files alone, however, AMI was not able to verify that Prospect continued to utilize productivity targets for the full period of the condition. Based on the material submitted, AMI could not determine whether Prospect complied with the terms of this condition.

- xi. *Maintain the Catholic identity of all legacy SJHSRI locations and “ensure that all services at SJHSRI locations are rendered in full compliance with the Ethical and Religious Directives for Catholic Health Care Services, as promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop of the Roman Catholic Diocese of Providence, Rhode Island, as the same may be amended from time to time (the ERDs).” (see APA, Exhibit M)*

The question sent in the April 30, 2019 RFI and Prospect’s response follow:

Question: *Has the Catholic identity of all legacy SJHSRI locations been maintained and ensure that all services at SJHSRI locations are rendered in full compliance with the Ethical and Religious Directives for Catholic Health Care Services, as promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop of the Roman Catholic Diocese of Providence, Rhode Island, as the same may be amended from time to time (the ERDs)?*

Answer: *Yes, see “April2019_Attachment-1-xi” (or Binder Tab 10) for supporting documents.*

Prospect submitted a copy of its Priest Compensation Allowances and Benefit Program for the 2017 – 2018 fiscal year (Attachment B2-xi(a)). The first paragraph of the document indicates that the compensation of Priests who work at the SJHSRI locations was updated in December 2015 and again in July 2017. It says:

Approved December, 2015 were changes to the Priest Compensation and Benefit Policy. The changes established a new compensation and Benefit Policy. The changes established a new compensation structure with a base of \$31,000 plus \$250 for each year of ordination. Increase to the base would be determined by using the same percentage adjustment as provided to both lay Employees and Religious. Approved for 7/1/2017 is a 2% increase changing the base from \$31,000 to \$31,620.

Prospect also sent a redacted copy of its Priest Salary Structure for the 2017 – 2018 fiscal year with respect to the Catholic Chaplain of SJHS and OLF (Attachment B2-xi(b)). In addition, AMI noted that as of March 2020, the webpage on CharterCARE Health Partners’ Governance described the Catholic identity of Our Lady of Fatima Hospital in these terms:

Our joint venture company embraces Rogers Williams Medical Center’s status as a secular teaching hospital, while Our Lady of Fatima Hospital continues its adherence to the religious and ethical teachings of the Catholic Church as promulgated by the United States Council of Bishops.

Both Roger Williams and Fatima maintain separate hospital licenses and each has an advisory board that monitors patient care and quality, credentialing of medical staff members and related responsibilities.

As noted in the First Report of Compliance by Prospect CharterCARE, CharterCARE Community Board, and CharterCARE Foundation with Conditions of Certification Pertaining to the Acquisition of Roger Williams Medical Center, St. Joseph Health Services of Rhode Island, Our Lady of Fatima Hospital and Other Entities, dated December 20, 2018 (“the December 20, 2018 Report”), there has been no indication that the SJHSRI locations have deviated from this commitment. The materials submitted support Prospect’s assertion that this condition has been met.

Extended Scope of Work – Item 1 (a)

Obtain annual reports from Prospect CharterCARE, LLC for the Attorney General on the proposed form submitted to the Attorney General concerning the funding of its routine and non-routine capital commitments under the Asset Purchase Agreement and as extended and modified pursuant to the agreement as described in this Amendment to Retainer Agreement, until the Revised Capital Commitment has been satisfied.

AMI made the following request from Prospect CharterCARE on April 30, 2019:

Please provide an updated, detailed accounting of the routine and non-routine capital commitments for the period of October 2016 – December 2018. Please provide documentation of commitments greater than or equal to \$50,000.⁸

- i) Please provide a break-down of routine capital commitments, indicating which matters have already been paid and which are committed via contractual agreement. Provide copies of checks for matters already paid and copies of contracts for matters committed via contractual agreement.*
- ii) Please provide a list and description of practice acquisitions, indicating which matters have already been paid and which are committed via contractual agreement. Provide copies of checks for matters already paid and copies of contracts for matters committed via contractual agreement. Note: AMI has a complete copy of the standard Asset Purchase Agreement used for the practice acquisitions; therefore, only the sheets with personalized data and signatures for each newly acquired physician practice are needed.*
- iii) Please provide a breakdown of non-routine capital commitments, indicating which matters have already been paid and which are committed via contractual agreement. Provide copies of checks for matters already paid and copies of contracts for matters committed via contractual agreement.*

Overview of Materials Received

On May 13, 2019, Prospect sent documentation to the Attorney General and AMI pertaining to expenditures for the period of October 2016 – April 2019. The documentation included

⁸ Attachments from this section of the Report onward are numbered to correspond with the Extended Scope of Work (ESW) questions sent to Prospect on April 30, 2019 (Attachment B1) and reiterated herein.

spreadsheets, copies of checks, invoices, journal entries, equipment schedules, requests to disburse proceeds, and assignment of invoices. AMI reviewed all supporting documents thoroughly and provides its findings for each year below. In addition, a chart summarizing all the submissions and indicating which amounts have been confirmed is included below in the section entitled “Matters for Follow-up.”

Preliminarily, AMI determined that Prospect did not distinguish between routine and non-routine capital expenditures in its submission and AMI was, therefore, unable to determine whether Prospect’s expenditures were in compliance with the HCA Decision. The issue was raised at the November 2019 and February 2020 meetings held at RWMC, and on February 21, 2020 Prospect submitted a revised General Ledger identifying which expenditures were routine and which were non-routine (Attachment ESW 1(a)(i)(a)).⁹ No changes were made pertaining to routine expenditures for 2014 – 2016.

Years 2014 – 2016

In the December 20, 2018 Report, AMI noted that Prospect had commenced many of the Long-Term Capital expenditure projects contained in the HCA Application, while others were at the planning stages. The listed projects represented \$35.6 million of Long-Term Capital expenditures; however, documentation for many projects was not provided to AMI because Prospect’s accounting method did not record the projects as fiscal entries until they were completed. The renovation of the corridor/central registration area at OLF, with a cost of \$629,800, was the only project completed by September 2016 and captured in the December 20, 2018 Report.

After discussions with AMI and Attorney Rider in November 2019 and February 2020, in order to demonstrate its compliance with the terms of the HCA Decision for the current report, Prospect submitted documentation identifying all projects based on the year payments were made. The materials included amended submissions pertaining to Long-Term Capital expenditures for 2014 – 2016. These materials were reviewed by AMI, but there has not been an opportunity for AMI and Prospect to confer about matters requiring clarification. Therefore, the Long-Term Capital expenditures of \$5,075,351 which Prospect has attributed to 2014 – 2016 have not been confirmed by AMI. It is AMI’s assumption that this amount includes the \$629,800 spent on the corridor/central registration area at OLF, but this is one of the matters requiring clarification.

Other Matters

Prospect asserts that its parent company made a capital infusion of \$6,000,000 in working capital to fund the operations of the entity shortly after the conversion (Attachment ESW 1(a)(i)(b)). Prospect provided the following explanation of that infusion on February 21, 2020:

Section 4.2(c) of the Amended and Restated Limited Liability Agreement of Prospect CharterCare, LLC states in part:

⁹ AMI’s review of the material submitted by Prospect indicates that it may be a subset of the full General Ledger, representing only the expenses for Property, Plant and Equipment (PPE).



“In the event that, during the period commencing as of the date hereof and continuing for a period of up to three (3) months following the effective date hereof, the Company (including the Company Subsidiaries, for purposes of this Section 4.2(c)) requires cash to fund operations and the Prospect Member determines to provide such cash, then: (x) such amount shall not exceed Ten Million Dollars (\$10,000,000); (y) the aggregate amount of cash provided by the Prospect Member (Initial Working Capital Amount) shall be treated as partial satisfaction of the Long-Term Capital Commitment...”

In accordance with this section 4.2(c)(ii), within 3 months of the effective of the Amended and Restated Limited Liability Agreement, Prospect provided an Initial Working Capital Amount of Six Million Dollars (\$6,000,000). It should be noted that the Company and Company subsidiaries did not in the four years following the effective date of the Amended and Restated Limited Liability Agreement of Prospect CharterCare, LLC accrue \$6 million in cash above and beyond their collective budgeted operating and capital needs, including Reserves (as such term is defined in the Amended and Restated Liability Agreement of Prospect CharterCare, LLC).

Prospect did not provide any documentation to support this response. Based on the response above, AMI was not able to confirm the capital infusion of \$6,000,000 during the first three (3) months following the effective date of the LLC Agreement, claimed as a non-routine expenditure.

Year 2017

Prospect submitted the following summary of its routine and non-routine expenditures for 2017:

2017			
Corp & Type	Total Debits	Total Credits	Total Net
SJH PPE	11,169,112.89	5,784,804.97	5,384,307.92
SJH CIP	2,773,501.54	3,298,632.00	(525,130.48)
CCHP PPE	955,776.53	2,452.89	953,323.64
CCHP CIP	680,587.29	733,686.99	(53,099.70)
BVS PPE	814,142.01	-	814,142.01
RWMC PPE	24,935,722.57	21,096,187.70	3,839,534.87
RWMC CIP	3,139,906.95	5,276,499.29	(2,136,592.34)
CCMA PPE	261,765.24	6,755.37	255,009.87
CCMA CIP	177,140.22	198,832.21	(21,691.99)
Total FY2017	44,907,655.24	36,397,851.44	8,509,803.80

In support of this summary, Prospect submitted spreadsheets for each of the entities identified in the table. The expenditures in these spreadsheets covered the period of October 2016 – September



2017 (Prospect FY2017). The following number of line items were included in the spreadsheet for the respective entities:

SJH PPE	–	184
SJH CIP	–	186
CCHP PPE	–	17
CCHP CIP	–	27
BVS PPE	–	3
RWMC PPE	–	160
RWMC CIP	–	221
CCMA PPE	–	14
CCMA CIP	–	50

Long-Term Capital (Non-Routine) Expenditures

On February 21, 2020, Prospect included a Summary Sheet (Attachment ESW 1(a)(i)(a)) with its General Ledger materials that designated \$6,995,265.54 as its non-routine expenditures for FY2017 (non-routine expenditures are also called Splash expenditures by Prospect). Of this amount, supporting documentation was provided to AMI for \$6,826,583.88, representing 98% of the Long-Term Capital expenditures claimed by Prospect for FY2017. The documentation included checks, invoices, equipment schedules, journal entries, assignment of invoices, delivery and acceptance certificates, requests to disburse proceeds, and invoice records for all expenditures equal to or greater than \$50,000. The projects covered by these expenditures include RWMC Upgrade of HVAC System, RWMC Pharmacy Extension, RWMC Pharmacy USP 800 Alterations, RWMC Main Entrance, RWMC Emergency Department expansion, and purchase of Omnicell Equipment.

AMI reviewed the documentation and determined that appropriate documents were provided in most cases. In three instances, AMI had additional questions which were answered in Prospect's subsequent submission. Projects that were financed through leaseback arrangements were appropriately supported by equipment schedules (Attachment ESW 1(a)(i)(c)).

One set of 12 expenditures supported by equipment schedules did not include evidence of payment by check or wire transfer. Of the 12 line-items, only one had an e-mail confirming wire transfer. On January 15, 2020, in response to AMI's November 14, 2019 email, Prospect explained these entries as follows:

At the beginning of the Splash capital construction projects, invoices were paid directly by Prospect CharterCARE (PCC RWMC or PCC SJHSRI) with the understanding that the PCC entities would be reimbursed by PMH. Paid invoices were accumulated and submitted to PMH's financing company, First American (a City National Bank Company). First American would prepare the financing document (sale/leaseback agreement) with PMH as the named lessee on the

agreements. Upon approval and execution of the agreement, PCC RWMC and/or PCC SJHSRI would receive reimbursement funds directly from First American. The offsetting accounting entry would be an entity Member Contribution from PMH. PMH would record the lease liability on its books with an offsetting accounting entry to investments (in PCC). PMH would be responsible for payments on this financing.

Subsequent to this initial period, Splash invoices were not first paid by PCC RWMC or PCC SJHSRI but instead sent directly to First American for payment. First American would prepare the financing in the same way as above, but name the individual vendors as recipients of invoice payments. Upon execution of the financing: 1) PCC RWMC and/or PCC SJHSRI would record the Splash capital project additions (charging Construction In Progress capital accounts) with the same offsetting accounting entry to equity Member Contribution from PMH 2) PMH would record these financing transactions in the same manner above, and 3) vendors would receive direct payments from First American.

Prospect provided the signed copies of most of the equipment schedules and, in some instances, the invoices from the vendors as well. The equipment schedule with respect to a line item for \$120,437.30, described as “171 BOOK 880012-030 CL,” was not signed, but on February 21, 2020, Prospect submitted a signed copy. AMI observed a slight difference between the figure on the spreadsheet/the unsigned equipment schedule and the signed equipment schedule. Specifically, the unsigned spreadsheet listed the expense as \$120,437.30 whereas the signed equipment schedule listed it as \$120,428.44 (see Attachment ESW 1(a)(i)(c), Equipment Schedule 880012-030 Redacted).

Supplemental documentation for two payments to Honeywell International Inc. in the amounts of \$36,000 and \$15,000 respectively indicated that both payments were actually made in FY2018. In fact, one of the invoices was issued in 2018. AMI ascertained, however, that there was no double counting of these sums in the 2018 expenditures and accepted these as recorded expenses for FY2017.

Based on the documentation submitted, Prospect will have demonstrated Long-Term Capital expenditures for FY2017 of **\$6,995,257.00**.

Routine Expenditures

In its January 15, 2020 submission, Prospect indicated that all line items in the 2017 spreadsheet not designated as “Splash” were considered routine expenditures. In its February 21, 2020 submission, Prospect claimed \$1,514,538.26 as its FY2017 routine expenditure. This figure is at variance with the amount contained in the summary sheet attached to the May 13, 2019 submission (\$7,145,868). This difference may be related to the fact that Prospect’s fiscal year runs from October – September, whereas the “monitoring” year runs from June 20 – June 19. It is possible that if the expenditures were aligned with the monitoring year, there would be a different result.



AMI notes, however, that neither figure indicates that Prospect satisfied the requirement to spend \$10,000,000 on routine expenditures.

Supporting documentation was provided to AMI for claimed expenditures of \$50,000 and above. AMI's initial review of the materials identified 31-line items for which no documentation was provided. In its February 21, 2020 submission, Prospect provided satisfactory explanations and documents in response to AMI's observations. The documentation provided consisted of invoices, checks and journal entries.

Prospect has demonstrated routine expenditures of **\$1,514,538.26** for FY2017. AMI notes, however, that the materials submitted do not indicate that Prospect satisfied the requirement to spend \$10 million annually on routine expenditures.

Year 2018

Prospect submitted the following summary as its routine and non-routine capital expenditures for 2018:

2018			
Corp & Type	Total Debits	Total Credits	Total Net
SJH PPE	3,871,025.27	141,636.89	3,729,388.38
SJH CIP	6,196,328.04	2,212,930.32	3,983,397.72
CCHP PPE	1,397,122.86	1,096,106.05	301,016.81
CCHP CIP	362,636.93	-	362,636.93
BVS PPE	178,912.34	5,458.60	173,453.74
CCH PPE	21,527.96	-	21,527.96
RWMC PPE	5,356,677.10	929,422.49	4,427,254.61
RWMC CIP	9,546,380.68	3,536,887.15	6,009,493.53
CCMA PPE	253,102.28	-	253,102.28
CCMA CIP	42,303.85	196,471.67	(154,167.82)
Total FY2018	27,226,017.31	8,118,913.17	19,107,104.14

In support of the figures state above, Prospect submitted spreadsheets for each of the entities identified in the table. (Attachment ESW 1(a)(i)(a)). The expenditures in these spreadsheets covered the period of October 2017 – September 2018 (Prospect FY2018). AMI tallied the figures in the spreadsheets and obtained the same totals as those listed in the summary table. The following number of line items were submitted for the respective entities:

SJH PPE	–	128
SJH CIP	–	384
CCHP PPE	–	48
CCHP CIP	–	21
BVS PPE	–	10
RWMC PPE	–	182



RWMC CIP	–	227
CCMA PPE	–	14
CCMA CIP	–	23

Long-Term Capital (Non-Routine) Expenditures

Prospect asserted Long-Term Capital expenditures of \$10,421,838.08 in FY2018. Prospect submitted supporting documentation, in the form of checks, equipment schedules and invoices, for expenditures of \$50,000 and above. AMI received supporting documentation for \$8,603,976.78, representing 82% of Prospect's claimed total for non-routine expenditures in FY2018.

AMI found a problem with the supporting documentation for two line items:

\$1,300,772.52 described as "80 REC SPLASH CAP DIR PAY FROM FA," and
\$798,486.00 described as "18 CORRECT SEPT SPLASH DIRECT PAY."

For these two line items, the total amount of the corresponding invoices covered by the relevant equipment schedule (880012-038) was only \$328,464.62, leaving a balance of \$1,770,793.9 that was not supported by documentation. This discrepancy represents 17% of Prospect's Long-Term Capital expenditure in this period.

Prospect provided satisfactory responses to the issues raised in AMI's November 11, 2019 email pertaining to FY2018 Long-Term Capital expenditures. AMI determined that sufficient documentation was provided for the remaining line items.

The Long-Term Capital expenditures during this period included SJHC Emergency Department Renovation and Upgrade, OLF HVAC System, SJHC Pharmacy USP Alterations, RWMC Main Entrance, RWMC Emergency Department Expansion, RWMC Curtain Wall Replacement, and RWMC Pharmacy Expansion.

If the outstanding matters described above are resolved satisfactorily, Prospect will have demonstrated Long-Term Capital expenditures of **\$10,421,838.08** for FY2018. Based on the documentation Prospect has provided to date, AMI has confirmed **\$8,651,044.18** of Long-Term Capital expenditures for FY2018.

Routine Expenditures

In its January 15, 2020 submission, Prospect indicated that all line items not designated as "Splash" are considered routine expenditures. In its February 21, 2020 submission, Prospect claimed \$8,685,266.06 in FY2018 routine expenditures. Prospect provided supporting documentation, in the form of checks and invoices, for expenditures of \$50,000 and above. At this threshold, the supporting documentation was provided for expenditures totaling \$5,550,470.06, representing 64% of Prospect's claimed routine expenditures for this period.

AMI reviewed all documents and determined that Prospect provided sufficient documentation to support most of the routine expenditures claimed for FY2018. AMI found that a \$73,038.53 payment to Stryker Instrument/Sales was not sufficiently supported by documentation. On



February 21, 2020, in response to AMI's query about this expenditure, Prospect explained it was a purchase order accrual, and submitted an invoice which totaled \$89,228.53 net of taxes, but did not provide a check or wire transfer indicating when this payment was made.

If the outstanding matter described above is resolved satisfactorily, Prospect will have demonstrated routine expenditures of **\$8,685,266.06** for FY2018. Based on the documentation Prospect has provided to date, AMI has confirmed **\$8,612,227.53** of routine expenses for FY2018. AMI notes, however, that the materials submitted do not indicate that Prospect satisfied the requirement to spend \$10 million annually on routine expenditures.

Year 2019

Prospect submitted the following summary of its 2019 routine¹⁰ and non-routine expenditures:

Corp & Type	Total Debits	Total Credits	Total Net
SJH PPE	892,776.20	33,157.46	859,618.74
SJH CIP	2,800,058.93	13,357.02	2,786,701.91
CCHP PPE	2,071.35	-	2,071.35
CCHP CIP	5,617.50	155,250.00	(149,632.50)
BVS PPE	37,428.38	19,007.61	18,420.77
RWMC PPE	1,351,556.89	104,592.25	1,246,964.64
RWMC CIP	5,759,535.95	112,562.09	5,646,973.86
CCMA PPE	17,081.33	3,493.55	13,587.78
CCMA CIP	179,053.10	-	179,053.10
Total FY2018	11,045,179.63	441,419.98	10,603,759.65

In support of the figures state above, Prospect submitted spreadsheets for each of the entities identified in the table. (Attachment ESW 1(a)(i)(a)). The expenditures in these spreadsheets covered the period of October 2018 – September 2019 (Prospect FY2019). AMI tallied the figures in the spreadsheets and obtained the same totals as those listed in the summary table. The following number of line items were submitted for the respective entities:

SJH PPE	–	47
SJH CIP	–	113
CCHP PPE	–	1
CCHP CIP	–	2
BVS PPE	–	8
RWMC PPE	–	57
RWMC CIP	–	154
CCMA PPE	–	6

¹⁰ There was no indication that Prospect intended to, or received approval to, extend its requirement to spend \$10 million per year on routine expenditures; therefore AMI did not address this aspect of Prospect's submission.

CCMA CIP – 25

The spreadsheet contains Prospect's non-routine and routine expenditures for period of October 2018 – April 2019.

Long-Term Capital (Non-Routine) Expenditures

Prospect identified 159 line items totaling \$7,549,346.15 in Long-Term (non-routine) Capital expenditures for this period of FY2019. As for the previous periods, Prospect submitted invoices, supporting documentation in the form of checks, journal entries, leases and equipment schedules for expenditures of \$50,000 and above. The line items for which documents were provided totaled \$6,436,097.24, representing 85% of Prospect's claimed 2019 Long-Term Capital expenditures.

AMI reviewed the spreadsheets and supporting documents prior to the November 2019 meeting and had some follow-up questions about certain entries, which were noted in the email of November 11, 2019. Prospect provided sufficient explanations and documents in response to all issues raised regarding its 2019 non-routine expenditures. AMI found that sufficient documentation was provided to support all listed expenditures.

Some of the projects executed during this period included SJHC Emergency Department Renovation and Upgrade, OLF HVAC System, SJHC Pharmacy USP Alterations, RWMC Emergency Department Expansion, RWMC Curtain Wall Replacement, and RWMC HVAC system, RWMC Pharmacy Expansion, and RWH Pharmacy USP 800 Alteration.

Based on the documentation Prospect has provided, AMI has confirmed **\$7,549,346.15** of Long-Term Capital expenditures for FY2019.

Long-Term Capital Expenditures – Practice Acquisitions

AMI indicated in its December 20, 2018 Report that Prospect had spent \$4,491,526 on practice acquisitions for 2015 (\$4,117,749) and 2016 (\$373,777). Prospect made the following submission with regards to its Practice Acquisitions for 2017 – 2018.

Physicians A, B, C, D, E: **\$2,056,000**

Prospect provided appropriate documentation to support these acquisitions. The unredacted physician contracts and checks were provided to AMI but are not included in this report, as these documents were deemed confidential pursuant to R.I. Gen Laws § 23-17.14-32 by the Attorney General. AMI determined that the total cumulative practice acquisition expenditure for 2015 – 2018 is **\$6,547,526.00**, which was attributed to Prospect's Long-Term Capital Commitment requirement under the HCA Decision.

In its May 13, 2019 submission, Prospect classified \$3,277,526 of the practice acquisitions as routine expenditures. AMI asked Prospect to explain the rationale for such classification in light of the fact that all other expenditures relating to Business Development were attributed to Long-Term Capital expenditures. In its February 21, 2020 letter, Prospect stated:



Shortly after the joint venture transaction involving CharterCARE entities, Prospect CharterCare, LLC and its affiliates entered into a transaction to purchase two urgent care centers with associated physician practices in order to expand service areas of Roger Williams Medical Center and Our Lady of Fatima hospital. These were the only acquisitions that involved the purchase of urgent care centers as opposed to individual or group physician practices. Given the size of the transaction and purchase of healthcare facilities (i.e. urgent care centers), it was deemed appropriate to include such purchase in Long-Term Capital commitment of Prospect. None of the other practice acquisitions involved the acquisition of urgent care centers.

In its May 13, 2019 submission, Prospect claimed these amounts associated with its acquired practices as Long-Term Capital expenditures:

Radiation Therapy Joint Venture	\$ 367,000
Black Valley Surgicare	\$1,567,000
University Medical Group	<u>\$7,451,602</u>
Total:	\$7,974,000

It was not possible for AMI to evaluate the categorization of these practice expenses without further information.

Practice Acquisition Losses

In its May 13, 2019 submission, Prospect provided a summary sheet attributing \$14,580,133 to Acquired Practice Losses (See Attachment ESW 1(a)(i)(b)). AMI requested documentation to support these losses. On January 15, 2020, Prospect submitted a revised figure of \$14,411,243 as its Physician Acquisition Practice Losses for 2015 – 2018. Prospect also provided Excel spreadsheets detailing the incurred losses for its physician practices. In addition, on February 21, 2020, Prospect submitted its audited Consolidated Financial Statements for 2017 and 2018 (Attachment ESW 1(a)(ii)(a)) as a means of further validating its data.

Prospect stated that the acquired physician practices incurred the following cumulative losses:

2015:	\$1,961,763
2016:	\$5,917,889
2017:	\$4,444,987
2018:	<u>\$2,086,604</u>
Total:	\$14,411,243

AMI tallied the figures in the Excel spreadsheets and confirmed they combined to the stated totals. However, there were no details pertaining to the 2017 incurred loss of \$269,769 by Apple Valley Treatment Center.¹¹

Prospect classified these Acquired Practice Losses as Long-Term Capital expenditures. The Attorney General's February 18, 2020 letter to Prospect requested an "explanation and interpretation for attributing acquisition losses to the Long-Term Capital Commitment requirement identified in Section 2.5(b) of the Asset Purchase Agreement." On February 21, 2020, Prospect responded as follows:

Section 2.5(b) of the APA states that the Long-Term Capital Commitment is to be used for, among other things, development and implementation of physician engagement strategies. Prior to the closing of the joint venture transaction, CharterCARE Health Partners could not effectively engage in physician development or engagement activities because of anticipated losses ensuing from practice acquisitions. Prospect under the APA had an obligation to pursue physician development and implementation activities. Prospect entered into these transactions with the full intention to ultimately support the losses that the joint venture would incur from these practice losses.

The Long-Term Capital Commitment requirement falls upon the corporate parent company, of which CharterCARE Health Partners is a subsidiary. Therefore, in order for Prospect to categorize these expenses as Long-Term Capital Commitments, it must show that its parent company bore these costs. To that end, Prospect explained that the parent company had written off its two percent management fee for five years to offset the practice losses. Prospect did not provide any documentation in support of this assertion. However, AMI found reference to a large, non-cash contribution by the parent company on page 30 of the Consolidated Financial Statements:

In May 2019, Prospect East, which owns 85% of the Company, made a non-cash capital contribution in the amount of approximately \$24.7 million, which consisted of converting unpaid management fees due to PEHAS of approximately \$20.0 million and approximately \$4.7 million of unpaid invoices that Prospect paid on behalf of the Company at April 30, 2019, into equity.

While the audited Consolidated Financial Statement is consistent with Prospect's assertion, it does not fully address all the questions which arise from this claimed expenditure. Based on the information submitted, AMI could not confirm the expenditure by the parent company of \$14,411,243 which Prospect claims as a Long-Term Capital expenditure in the category of Practice Acquisitions.

¹¹ Apple Valley Treatment Center of Smithfield, RI was acquired in 2015.

Extended Scope of Work – Item 1(b)

Obtain information confirming that the charitable assets that remain with the Heritage Hospitals are used in accordance with donor intent. It is anticipated that monitoring of this condition should be done through reconciliation of the accounts and uses until the Revised Capital Commitment has been met.

On April 30, 2019, AMI made the following request to Prospect:

The Cy Pres Order called for “dedicated funds in the aggregate amount of \$300,349.75 . . . to enhance surgical oncology physician and fellow training and education over and above the routine budgeted costs of necessary academic and research programs at RWMC to the extent that RWH is satisfied that such expenditures provide a community benefit.” It also granted cy pres approval for RWH to use “[c]ontinuing medical education funds in the amount of \$26,310.29 to support continuing medical education for the medical staff at RWMC over and above the routine budgeted cost of necessary continuing medical education at RWMC to the extent that RWH is satisfied that such expenditure provides a community benefit.”

i) *Please provide:*

- *Information as to whether Prospect CharterCARE requested funds from the CCCB to enhance surgical oncology physician and fellow training and education for the period of November 2017 – December 2018;*
- *If applicable, whether such requests were granted; and*
 - *If requests were granted, please provide details of the initiatives, including but not limited to a copy of the fund requests and any other correspondence with the CCCB pertaining to the applications; copies of the relevant check(s) issued by CCCB to the RWMC for the funded initiatives; and copies of any reports issued to CCCB by RWMC or the grant applicants pertaining to the effectiveness of the grants.*

In response to the above question, Prospect stated that it did not request any funds to enhance Surgical Oncology or continuing medical education. AMI notes that Prospect may use the funds for this purpose, but is not required to do so in any given period. Therefore, the response was satisfactory.

ii) *Please provide:*

- *Information as to whether Prospect CharterCARE requested funds from the CCCB to support continuing medical education (CME) for the medical staff at RWMC for the period of November 2017 – December 2018;*
- *If applicable, whether such requests were granted;*
- *If requests were granted, please provide details of the CME programs, including but not limited to a copy of the fund requests and any other correspondence with the CCCB pertaining to the applications; copies of the relevant check(s) issued by CCCB to the RWMC or to other Prospect entities relative to the funded courses; and copies of any*

attendance lists or other documentation that indicates the programs were presented as planned.

Prospect's response to this question was, "Not Applicable." AMI was not able to determine whether Prospect is asserting that this fund is not available/ exhausted or that the entity simply did not request any funds for the purpose of supporting continuing medical education for the medical staff "at RWMC over and above the routine budgeted cost of necessary continuing medical education at RWMC to the extent that RWH is satisfied that such expenditure provides a community benefit." Based on the information submitted, AMI was unable to determine whether Prospect satisfied the condition as it pertained to continuing medical education for staff at RWMC for the period of November 2017 – December 2018.

Extended Scope of Work – Item 2

For the period of time from the end of the third reporting year through June 20, 2020, obtain and provide the Attorney General with a copy of any notices provided to, or received by, a party under the Asset Purchase Agreement.

AMI posed the following request to Prospect on April 30, 2019:

Please provide a copy of any notices out of the ordinary course provided to or received by a party under the Asset Purchase Agreement in the period from November 2017 – March 2019.

Prospect's response to this request was:

***Answer:** Copies of notices out of the ordinary course provided to or received by a party under the Asset Purchase Agreement*

It appears that the remainder of the reply was cut off and AMI was, therefore, unable to determine whether Prospect satisfied the terms of this condition.

Extended Scope of Work – Item 3

Obtain information as requested by the Attorney General that Prospect is acting in compliance with the Asset Purchase Agreement and the Conditions of this Decision as set forth in this Extended Scope of Work.

On April 30, 2019, AMI posed the following request to Prospect:

In correspondence dated December 19, 2016 to Assistant Attorney General Kathryn Enright, Prospect CharterCARE had indicated that the Oldco entity's 15% ownership in Prospect CharterCARE has not been diluted. Please confirm if there is any development in this regard.

Prospect stated its February 21, 2020 letter that there is no change in Oldco entity's 15% ownership in Prospect CharterCARE.

Extended Scope of Work – Item 4

Obtain information to confirm that the proceeds of the sale of the Elmhurst Extended Care Facility and the Fruit Street property¹² remain within Prospect CharterCARE, LLC of the benefit of the operation of the Newco hospitals.

AMI posed the following request to Prospect on April 30, 2019:

Please provide documentation of the sale of the Fruit Street property and the Elmhurst Extended Care Facility. Include evidence of the sale prices, taxes and fees for each, as well as a clear explanation of the net proceeds for each property.

Consider sharing documentation of Prospect's plans for use of these sale proceeds, which may assist in demonstrating Prospect's compliance with this Item.

Prospect stated that the total sale proceeds for the Fruit Hill Avenue property were \$434,337.41. The property consists of a building and subdivided land. The net proceeds from the sale of the building were \$207,404.41 and net proceeds from sale of the subdivided land were \$226,933. Prospect submitted the Settlement statements for the building and the subdivided land (Attachment ESW 4(a)). In addition, transactional expenses with respect to the subdivided land were supported with invoices. However, no documents were provided for the transactional costs associated with the building sale.

With respect to the Elmhurst property, on January 15, 2020 Prospect claimed \$12,041,107 as the total net proceeds. In addition, Prospect submitted a breakdown of the transaction expenditures and the Settlement Statement signed by both parties (Attachment ESW 4(b)). AMI reviewed the documents and sought further clarification with regard to the leaseback agreement and the legal expenses. At the meeting of February 13, 2020, AMI raised questions about the particulars of the transactions, and the Attorney General's letter of February 18, 2020 also asked for more information. In response, on February 21, 2020 Prospect explained:

As a result of arms-length-negotiations between unrelated parties, the assets of EEC was sold to a third party. As a part of the negotiations of the transaction, the seller engaged the services of a law firm to negotiate and draft definitive documents. The legal fees are directly related to the transaction.

Also, as part of the transaction, we agreed to lease excess space on the property purchased by the third party for 10 years for Prospect CharterCare LLC's overall operations in Rhode Island. The rent includes payment to the purchaser for deferred maintenance on the premises which would ordinarily reduce the purchase price of the assets. As an accommodation, instead of reducing the purchase price at the time [of the] sale, purchaser agreed to allow seller to pay for such deferred maintenance over time.

¹² The address of the property discussed herein is 577 Fruit Hill Avenue, North Providence, RI.

The Purchase Agreement for the Peace Street property was also provided (Attachment ESW 4(c)). The total sale proceeds for this property were \$100,000.

Prospect asserts that the total proceeds for the sale of Fruit Hill, Elmhurst and Peace Street properties would be calculated as **\$12,575,444.41**. However, AMI does not have enough information to confirm the accuracy of the asserted sales proceeds.

MATTERS FOR FOLLOW-UP

Additional information is needed in order for AMI to determine whether Prospect has fully complied with the HCA Decision. In particular, responses relative to these conditions should be supplemented:

- *Transferred Employees will get their base salaries and wages equal to their base salaries and wages as of the closing date. Transferred Employees will retain seniority for purposes of benefits, salaries, and wages.*
- *Prospect will provide benefits at benefit levels comparable to benefits provided under the Existing Hospitals' plans, benefits including vacation, sick leave, holiday, health insurance, 401K, life insurance, and continued COBRA coverage.*
- *Any Transferred Employee who is terminated without cause within the 12-month period following the closing date will be offered a severance package on terms comparable to the severance package in effect with respect to the Existing Hospitals' employees prior to the closing date.*
- *Prospect will continue to provide care through sponsorship and support of community-based health programs, including cooperation with local organizations that sponsor healthcare initiatives to address identified community needs and improve the health status of the elderly, poor and at-risk populations in the community.*
- *Adopt the Existing Hospitals' Charity Care Guidelines and continue to provide all medically necessary services to patients regardless of their ability to pay.*
- *Maintain a ratio of full-time equivalent employees to average occupied beds that is consistent with accepted industry practices.*
- *Post-conversion, the Existing Hospitals will continue to utilize productivity targets to assist with determining appropriate staffing levels.*

Supplemental information and documentation are also needed with regard to Prospect's Long-Term Capital and Routine expenditures.

- The question of what was intended when Prospect asked for an extension to spend the Revised Capital Commitment bears on the issue of timely compliance and should therefore be resolved. Even if all materials submitted pertaining to routine expenditures are fully



supported, they do not demonstrate that Prospect spent \$10 million per year in FY2016 – 2018. It is possible that Prospect has taken a narrower view of what expenditures qualify under this condition than the HCA Decision intended. This matter too should be resolved.

- Difficulties pertaining to the submissions are described above, leading to AMI's determination that many of the figures provided could not be confirmed. The tables below summarize AMI's findings to date.

Long-Term Capital Expenditures (Projects)

YEAR	SUBMITTED FIGURES	CONFIRMED FIGURES
2014 – 2016	\$ 5,075,351.01	~\$650,000.00
2017	\$ 6,995,265.54	\$ 6,995,256.68
2018	\$10,421,838.08	\$ 8,651,044.18
2019	\$ 7,549,346.15	\$ 7,549,346.15
Total	\$30,041,800.78	\$23,195,647.01

Long-Term Capital (Other Expenditures)

EXPENDITURES	SUBMITTED FIGURES	CONFIRMED FIGURES
Practice Acquisitions 2015 – 2018	\$ 6,547,526.00	\$6,547,526.00
Capital Infusion	\$ 6,000,000.00	-
Practice Losses 2015 – 2018	\$14,411,243.00	-
Radiation Therapy Joint Venture	\$ 367,000.00	-
Black Valley Surgicare	\$ 1,567,000.00	-
University Medical Group	\$ 7,451,602.00	-
Total	\$36,344,371.00	\$6,547,526.00

Routine Expenditures

YEAR	SUBMITTED FIGURES	CONFIRMED FIGURES
2014 – 2016	\$24,513,737.00	\$24,513,737.00
2017	\$ 1,514,538.26	\$ 1,514,538.26
2018	\$ 8,685,266.06	\$ 8,612,227.53
Total	\$37,767,954.82	\$37,694,916.29

With regard to the Extended Scope of Work items, additional information is needed on:

- Permitted use of charitable asset funds for continuing education programs;
- Reporting of notices provided to, or received by, a party under the Asset Purchase Agreement; and
- The sale of the Elmhurst, Peace Street and Fruit Hill Avenue properties.

CONCLUSION

AMI found that, while the individual Prospect employees we spoke with were pleasant and willing to help, the entity did not seem to be focused on collecting and organizing the information necessary to demonstrate its compliance with the conditions set forth in the HCA Decision until pressed by the Attorney General. We noticed a steep drop in reporting activity once Moshe Berman left as General Counsel for CharterCARE Health Partners; it appears that the reporting role was not assigned to someone with both the local knowledge and the corporate leverage to pull together the materials needed.

AMI was not able determine whether Prospect complied with several conditions; we will follow up with a request for clarification in all of these areas so that the final report of Prospect's compliance activities through June 20, 2020 will accurately reflect the extent of the investment Prospect has made in its facilities and services to the community.

Respectfully submitted,



Donald K. Stern
Managing Director of Corporate Monitoring
& Consulting Services



Catherine Keyes
Vice President of Operations

Exhibit 10

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD)

)

)

)

v.

) C.A.: PC-2019-3654

)

)

)

SAMUEL LEE, et al)

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

REMOTELY ON JUNE 23, 2020

APPEARANCES:

STEPHEN SHEEHAN, ESQUIRE.....PLAN RECEIVER
STEPHEN DEL SESTO, ESQUIRE.....PLAN RECEIVER
BENJAMIN LEDSHAM, ESQUIRE.....FOR THE PLAN RECEIVER
THOMAS HEMMENDINGER, ESQUIRE.....LIQUIDATING RECEIVER
ARLENE VIOLET, ESQUIRE.....FOR THE RETIREES
PRESTON HALPERIN, ESQUIRE.....FOR PROSPECT ENTITIES
VINCENT INDEGLIA, ESQUIRE.....FOR THE DEFENDANTS
MARK FREEL, ESQUIRE.....FOR J.P. MORGAN
DAVID GODOFSKY, ESQUIRE.....FOR ANGELL PENSION

GINA GIANFRANCESCO GOMES
COURT REPORTER

C E R T I F I C A T I O N

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 48, inclusive, are a transcript of a hearing done remotely to the best of my ability.

GINA GIANFRANCESCO GOMES
COURT REPORTER

1 TUESDAY, JUNE 23, 2020

2 MORNING SESSION

3 (The following hearing was conducted remotely:)

4 THE COURT: I would ask the clerk to please turn on
5 the public access on the Court's Youtube channel.

6 THE CLERK: Public streaming is on, your Honor.

7 THE COURT: We are going to show a short
8 introductory video and then the clerk will call the case
9 and we will hear the matter before the Court.

10 (The introductory video was played.)

11 THE COURT: Madam Clerk, if you would please call
12 the case.

13 THE CLERK: Your Honor, the matter before the Court
14 is PC-2019-3654, CharterCare Community Board v. Samuel
15 Lee, et al. This on for the Plan and Liquidating
16 Receivers' Motion for Temporary and Permanent Injunction
17 and Equitable Relief, and also the Plan and Liquidating
18 Receivers' Motion to Compel Production of Documents and
19 Other Information from Prospect CharterCare, LLC. Will
20 the Receiver please identify himself for the record?

21 MR. SHEEHAN: This is Stephen Sheehan. I'm
22 appearing for the Plan Receiver. I'm sorry if it's
23 unclear. There are two receivers involved.

24 THE COURT: Yes. So we have Attorney Sheehan, and
25 is there anyone else from your firm that's on the video

1 call this morning?

2 MR. LEDSHAM: Benjamin Ledsham also for the Plan
3 Receiver, Mr. Del Sesto.

4 THE COURT: Thank you.

5 MR. DEL SESTO: Your Honor, Steve Del Sesto, the
6 Plan Receiver.

7 THE COURT: Thank you. And for the Liquidating
8 Receiver. I see Attorney Hemmendinger.

9 MR. HEMMENDINGER: Yes, your Honor. Thomas
10 Hemmendinger, Liquidating Receiver for CharterCare
11 Community Board, St. Joseph's Health Services of Rhode
12 Island, and Roger Williams Hospital.

13 THE COURT: Very good. Also on kind of that side of
14 the V, I see Attorney Violet. If you could enter your
15 appearance and who you present.

16 MS. VIOLET: Arlene Violet for the elder retirees,
17 age 75 years of age or older.

18 THE COURT: With respect to the Prospect and
19 Prospect entities if they could enter their appearance.

20 MR. HALPERIN: Good morning. Preston Halperin for
21 the Prospect entities other than Prospect CharterCare,
22 LLC. So in other words, I've got Prospect Medical
23 Holdings, Prospect East, and Prospect East Advisory.

24 THE COURT: Thank you very much. And Attorney
25 Indeglia, you are here on behalf of some individual

1 directors.

2 MR. INDEGLIA: Yes, your Honor. Attorney Vincent
3 Indeglia from Indeglia Associates. Jacqueline Carter is
4 here with me as well. We represent Samuel Lee, David
5 Topper, or actually all of the individually named
6 directors. In addition, we represent the newly added
7 Defendants, Ivy Holdings, Inc., Ivy Intermediate
8 Holdings, and the David and Alexa Topper Family Trust.

9 THE COURT: I also see a box that says Mark Russo
10 but that doesn't look like Mark Russo. Would counsel
11 enter their appearance.

12 MR. PIMENTEL: Good morning, your Honor. Matthew
13 Pimental for Prospect CharterCare, LLC.

14 THE COURT: Thank you. Attorney Freel, who do you
15 represent in this case?

16 MR. FREEL: Your Honor, Mark Freel for J.P. Morgan
17 Chase Bank.

18 THE COURT: Thank you very much. And Attorney
19 Godofsky, I believe it's the actuarial firm, if you could
20 enter your appearance.

21 MR. GODOFSKY: Yes, representing Angell.

22 THE COURT: Is there anyone that we missed at this
23 point? Okay. Hearing none, I am going to ask the Plan
24 Receiver and the Liquidating Receiver may proceed on
25 their motions. As was said earlier during the video, I

1 have had the opportunity to review the papers in both
2 cases as well as the objections and exhibits. I would
3 ask counsel to please proceed.

4 MR. SHEEHAN: Thank you, your Honor. It's Steve
5 Sheehan. If I may proceed first? Mr. Hemmendinger and I
6 have discussed this and he is in agreement with me going
7 first, I believe.

8 THE COURT: Thank you.

9 MR. SHEEHAN: Your Honor, I understand that the
10 Court is reluctant to interrupt with questions, and
11 that's probably a technical issue, but to the extent that
12 it seems that I am going off on a tangent, I would ask
13 the Court to please interrupt.

14 Anyway, as the Court knows this is a lawsuit between
15 the minority shareholder CCCB, I'm just going to call
16 them Community Board, as one Plaintiff and the Plan
17 Receiver as the other Plaintiff against the majority
18 shareholder and Prospect CharterCare, LLC, and that's
19 Prospect East Holdings and various entities related to
20 those Prospect entities. The lawsuit involves many
21 issues including -- and what is key, I think, to this
22 hearing today, the allegation that the Prospect Group
23 borrowed millions and millions and millions of dollars
24 and gave the borrowed funds to other shareholders that
25 were up the line that don't involve Community Board in

1 the amount of over \$450 million leaving Prospect
2 CharterCare insolvent, and, hence, there is a claim for
3 fraudulent transfer.

4 Now, the motions before the Court today involve
5 Community Board's rights as a minority shareholder to
6 inspect books and records of the corporation. And the
7 context in which that right is being addressed, though
8 not necessarily defining the right, is the need for the
9 minority shareholder and the Plan Receiver to make an
10 informed decision concerning the value of the 15 percent
11 interest in Prospect CharterCare or whatever the proper
12 percentage interest is, as I will get into, and to decide
13 whether to exercise a Put option.

14 I'd say first that this too is independent of the
15 dispute between the Plan Receiver and Prospect that is
16 pending in Federal Court. It concerns Community Board's
17 rights that preexisted and are independent of that
18 litigation. The only connection legally between the two
19 cases is that the Plan Receiver's standing in the case
20 for which we're having this hearing is based on a
21 settlement in the Federal Court litigation that this
22 Court twice approved in which it was agreed that
23 Community Board would hold its interest in Prospect
24 CharterCare in trust for the Plan Receiver, and that is
25 the basis upon which the Plan Receiver has joined through

1 an amended complaint as a Plaintiff in this action and
2 that's the basis in which I'm speaking.

3 Now, with that preliminary done, what we are here on
4 is two independent but related motions. The first is for
5 a writ of mandamus or permanent injunction involving
6 access to books and records, which is coupled with a
7 request for an equitable extension of time to exercise
8 the Put option, and that motion is based on a contractual
9 right of access to the books and records as set forth in
10 the LLC agreement.

11 The second motion, which is related, is to compel
12 production of documents. Now, the document request in
13 this case arose in an unusual context in which the case
14 was otherwise stayed. There is no longer a stay in the
15 case, but at the time there was. And what the parties
16 did is we entered into a stipulation that the Court
17 entered as an order in which Prospect CharterCare agreed
18 that we would provide all documents that the Receivers
19 reasonably required to evaluate and appraise the Put
20 option and their interest in Prospect CharterCare with
21 certain caveats having to do with they don't have to
22 disclose attorney/client documents, they don't have to
23 create documents, but basically they agreed to produce
24 the documents that the Receivers need at the time when
25 the action was otherwise stayed. Now discovery is wide

1 open. Presumably we could proceed, but we have already
2 been well over a over a year planning this initial
3 production so we filed this motion to compel and would
4 like to deal with it.

5 I would like to deal first with the motion for the
6 writ of mandamus or permanent injunction. That motion
7 was first filed in March of 2019, and that motion has
8 been held in abeyance by agreement. Held in abeyance
9 while document production took place, but not subject to
10 the document production being adequate or inadequate.
11 Initially Community Board and then the Liquidating
12 Receiver, now the Liquidating Receiver and the Plan
13 Receiver always had the right to proceed on the motion
14 for a preliminary and permanent injunction and writ of
15 mandamus to obtain access to the books and records.

16 Now, I'm going to just focus on that motion first,
17 if I may, your Honor. There is no dispute that Community
18 Board and by extension the Receivers have a contractual
19 right to direct access to the books and records. It's
20 right in the LLC agreement, and, your Honor, it's
21 unqualified. Unlike various statutory rights to access
22 books and records, which require a showing of cause or a
23 demand that was then denied, this is just an unqualified
24 right of access. And there is no limit or requirement
25 on the motive of the minority shareholder. It's just a

1 straight right of access.

2 Now, there is also no dispute that Prospect
3 CharterCare has refused to permit the Receivers to
4 directly access the books and records of the company. In
5 fact, when we filed the motion for a preliminary
6 injunction, their response was to try to fend this off
7 with a period of document production, but they never gave
8 us access to the books and records.

9 Now, when we went down that route and made document
10 requests, the request included up-to-date financials for
11 Prospect CharterCare. And over a period of time certain
12 production was made, but on a timely basis, specifically
13 on January 21st of 2020, the two Receivers asked for
14 documents that were required under the stipulation and
15 consent order of April 25th that were required to be
16 produced to the extent that they existed. And those
17 documents included updated financials and they included
18 a lot of things, your Honor, but I would like to focus on
19 that because, I think, ultimately, the relief we're going
20 to request is based sufficiently on that one item that we
21 needn't get into all of the specific items that were in
22 the document request.

23 Now, so on January 21st there is a request for
24 updated financials and Prospect completely ignores the
25 request, does not produce any documents, does not respond

1 in writing or otherwise, leaving the Receiver's staff to
2 file a motion to compel. And I know I'm talking about
3 the motion for injunctive relief, and in the context I'm
4 talking about the motion to compel, and I hope it's not
5 being confusing, but they're related because, ultimately,
6 the equities involved in the request for extension of
7 time we're seeking, I think depends somewhat on what
8 happened with the document production. So we had to file
9 a motion to compel, and then for the first time Prospect
10 responded to this document request of January 21st and
11 said that you have all the documents.

12 Now, the document request specifically asked for
13 updated financials through the fiscal year ending
14 September 30, 2019, and we obviously and definitely do
15 not have those documents. There had been some production
16 of financials from earlier years but not those current
17 financials. So in 2020 we're asking for the fiscal year
18 ending 9/30/19. And it's not produced and then they say
19 we already have all the documents. Well, they never
20 produced that.

21 Then, your Honor, we, in the last few weeks through
22 our own investigation, have obtained a copy of an audited
23 financial, audited financials who are Prospect
24 CharterCare and the two subs that own the hospitals.
25 And those financial statements create enormous concern on

1 the part of the Receivers and enormous doubt concerning
2 whether Prospect CharterCare has any value whatsoever
3 other than a potential suit against the shareholders that
4 stripped it of finances through these dividends. What
5 they show, your Honor, is that as of September 30, 2019,
6 Prospect CharterCare and the two subs were pledgees,
7 that's the word that's used, pledgees, on a sale
8 leaseback between Prospect Medical Holdings and certain
9 other Prospect entities and a REIT, a real estate
10 investment trust, called Medical Properties Trust.

11 And the financial statements state that Prospect
12 CharterCare is a pledgee on that obligation. And, your
13 Honor, the current indebtedness on that obligation is
14 \$1.331 billion. And, your Honor, that indebtedness was
15 entered into by Prospect Medical Holdings as a way of
16 paying off the indebtedness that it had entered into to
17 get the funds it used to pay the dividend. So initially
18 it had a straight term loan with a promissory note. It
19 borrows money, it gives the money to certain
20 shareholders, not Community Board, and then it retires
21 that debt with the leaseback arrangement on which
22 Prospect CharterCare is the pledgee for over \$1.33
23 billion.

24 They also state that the same REIT loaned Prospect
25 Medical Holdings another \$112 million based on the value

1 of Prospect CharterCare and the Rhode Island Hospital.
2 If you add those numbers, we're up to over \$1.4 billion
3 in debt that the Prospect CharterCare and the Rhode
4 Island Hospital, that own the Rhode Island Hospital, are
5 on the hook for.

6 Now, I had a discussion with Mr. Halperin yesterday,
7 and I don't want to be in front of your Honor with a
8 dispute about what was said between counsel. So to the
9 extent there is any disagreement between myself and Mr.
10 Halperin, I'm just going to withdraw whatever I have to
11 say, but I don't think there is going to be disagreement.

12 I brought to his attention this situation in which
13 basically the Rhode Island Hospital have been made
14 hostage to the Prospect Group's financing and payment of
15 dividends. By the way, your Honor, the dividends are
16 nearly \$500 million in dividends. And Mr. Halperin got
17 back to me after he spoke to his client and to Attorney
18 Rocha from Adler Pollack and told me that his client
19 informed him that neither Prospect CharterCare nor the
20 two entities that own the Rhode Island Hospital are on
21 the hook for that indebtedness.

22 Well, we, therefore, are in the state of absolute
23 and utter confusion, your Honor, because the financial
24 statements used the term pledgees. And, your Honor, I
25 don't even know if it's possible to download documents,

1 but I'm just going to show the Court, if I can -- well,
2 there's no point to it. Mr. Halperin has these and I
3 have them. And starting with the Prospect CharterCare
4 2019 statement on page 22 there is the statement,
5 "Additionally, as of September 30, 2019, the company,
6 which is defined as Prospect CharterCare, is a pledger
7 for all of the transactions that Prospect Medical
8 Holdings has entered into with affiliates of Medical
9 Properties Trust." So there it is.

10 And then the next page, your Honor -- actually, two
11 pages, on page 24, "Additionally, Prospect Medical
12 Holdings entered into a promissory note under which MP,
13 which is the REIT, has advanced to Prospect Medical \$112
14 million related to the value of the properties in Rhode
15 Island."

16 So here we have these financials that were kept from
17 us, your Honor, that we requested in January, 2020, that
18 we found virtuously by virtue of through the attorney
19 general, your Honor. There was a discussion with the
20 attorney general and we found them through that in the
21 last several weeks that show that this investment that
22 Community Board has, this shareholding it has in Prospect
23 CharterCare may be worth nothing, other than this
24 potential claim for fraudulent transfers.

25 So I focused on that, your Honor, because I really

1 wanted to address the response of Prospect CharterCare
2 that they have given us everything. They haven't given
3 us the big thing, the key thing. We even now in
4 conversations with Mr. Halperin can't get to the bottom
5 of this. If they can satisfy us now that there is no
6 liability of Prospect CharterCare for the two subs for
7 this indebtedness, fine, but they have to do that through
8 some form of document production. We have financial
9 statements. Obviously, Mr. Halperin isn't expecting me
10 to rely on his phone conversation. So there is a
11 situation where our right to direct access to the books
12 and records, which has been frustrated, has prevented us
13 from getting the information we need as shareholders.

14 Now, I would like to address our entitlement,
15 legally why we are entitled to direct access and that has
16 to do with the legal remedy of mandamus. And, typically,
17 mandamus is applied against public entities, but there is
18 a long line of cases in all jurisdictions that I'm aware
19 of across the United States applying it in the private
20 context, specifically in the context of disputes between
21 shareholders over access to books and records, and the
22 elements of mandamus are really simple and are met here.

23 First, you have to show a clear legal right to the
24 relief, and here we have a contract that gave us the
25 right. Second, you have to show that what we're seeking

1 by mandamus, the action that we're asking the mandamus to
2 order is a ministerial duty, which the party being asked
3 to comply has no discretion to refute. And, again, there
4 is no discretion in the LLC to refuse to give direct
5 access to the records. And, third, that there is no
6 other adequate remedy at law, and there certainly is
7 none.

8 The only other possible remedy is the equitable
9 remedy of a mandatory injunction. The problem there is
10 one of the elements of a mandatory injunction is no
11 remedy of law and mandamus is a remedy of law. Plus,
12 mandamus is simpler. And, I think, in this context it
13 fits better. But whether you go under the criteria for
14 mandamus or the criteria for a mandatory injunction, we
15 have met the elements. And I'm not going to recite the
16 elements of mandatory injunction. They're in our papers
17 and we really think they're secondary because I believe
18 the mandamus issue is clear enough that we don't need to
19 go into that.

20 Now, legally, we are also asking for -- not legally
21 I should rephrase that. We're also asking in connection
22 with this motion for writ of mandamus for equitable
23 relief in the form of the court ordering an extension of
24 the time to exercise the Put option until we have the
25 information we need to make an intelligent decision

1 concerning the community board's investment in Prospect
2 CharterCare.

3 And I, in the memo provided to the Court, the
4 supplemental memo back in February, gave the Court the
5 Am Jur citation that notes that an optionor has a duty to
6 provide the optionee with the information the optionee
7 needs. In the cases that say there was a breach of that
8 duty, the Court has the equitable power to extend the
9 period of time to exercise an option. I cited a federal
10 court case out of Mississippi, an older Rhode Island
11 case, actually, 1901 of Gilford v. Mason, a Ten Circuit
12 case, Brown v. Coleman, all saying that equitable relief
13 in this context includes extending the time in which
14 options can be exercised. Of course, equities can always
15 order what needs to -- can fashion a remedy if there is a
16 no remedy heretofore induced by equity, but we're not in
17 that situation. We're within a well-known equitable
18 remedy, which is an extension of time to exercise the
19 option. And we're seeking 90 days from compliance by
20 Prospect CharterCare with either allowing us direct
21 access to the books and records by our accountant, which
22 will entail cooperation by Prospect CharterCare's
23 bookkeeper with our accountant, Mr. Donald Weishart in
24 reviewing the records directly, or alternatively Mr.
25 Halperin and I may be able to work out what documents we

1 need. At least we've tried to. I sent him a list and we
2 have agreed on some of them tentatively. I'm not
3 suggesting Mr. Halperin is bound, but we tried to clear
4 the way a little bit for this hearing by talking about
5 what documents are specifically needed. So 90 days from
6 compliance of either direct access or the production.

7 Now, obviously, there may be a dispute about the
8 adequacy of the production or the adequacy of direct
9 access in which case we would just reserve the right to
10 come back to the Court to ask for additional time on the
11 basis that the 90 days shouldn't start running because we
12 haven't really had direct access. We haven't really had
13 production.

14 So that's the first part of it, the writ of
15 mandamus/mandatory injunction. Your Honor, it is
16 absolutely key and we're in this grotesque situation of
17 being a shareholder in an entity and not being provided
18 with financial information about the entity when we have
19 a clear contractual right to it. And what information
20 we have suggests that there is unbelievable financial
21 strain, to put it mildly, at the time we are being asked
22 to exercise or have an obligation to either exercise or
23 waive a contractual right to a Put option. We were
24 being squeezed, your Honor, with a lack of information.
25 We don't have an informed basis to either exercise the

1 Put to decide not to exercise the Put. And, your Honor,
2 the decision not to exercise the Put should be based on
3 an informed decision, just as the decision to exercise it
4 should be and we have a right to that information.
5 That's motion number one.

6 Motion number two is the motion to compel production
7 of documents. And as I said earlier, the context in
8 which the right to documents arose was a little bit
9 unique because it was at a time there was otherwise a
10 stay. And it was limited to documents that the Receiver
11 is reasonably required to evaluate whether to exercise
12 the Put option and in order to value what the Put option
13 is worth. We sent letters requesting documents on a
14 timely basis under the parameters of the April 25th
15 stipulation and order and they were ignored.

16 So I have sent Mr. Halperin a list. If we are going
17 to get into the nitty-gritty of what actual documents it
18 is we want, it probably makes more sense to work off of
19 that list that I have with Mr. Halperin, but that really
20 depends on him agreeing with that and we will get to that
21 in due course.

22 For the time being, I think I have satisfied my
23 burden of showing my obligation to compel based upon this
24 enormous anomaly of there being a pledgee on \$1.33
25 billion and an obligor on another \$112 million at a time

1 when Prospect CharterCare is telling us they are not on
2 the hook for that at all.

3 So I don't really see the need to get into more
4 specifics than that. I would say, your Honor, that one
5 of the requests that I would like to focus on though
6 specifically is in a letter that the Receiver sent on
7 January 30th. It's an exhibit -- I believe it's attached
8 to the motion to compel production in which the request
9 was made for four categories of documents.

10 And the third category had to do with any pending or
11 contemplated transactions involving Prospect entities
12 that are in any way contingent upon or affected by
13 whether or not the Put option is exercised. What we're
14 focusing on there, your Honor, is there is a lot going on
15 with Prospect but we don't know what it is. We provided
16 your Honor with the letter board members of Congress sent
17 to Prospect Medical Holdings talking about the dire
18 financial circumstances and the stripping of assets to
19 favor Leonard Green.

20 There's also the pending application in front of the
21 Rhode Island Department of Health and the Attorney
22 General for a change in the effective control of the
23 hospitals to enable Prospect East or Prospect Medical
24 Holdings, it's not clear, to buy out Leonard Green for
25 \$12 million plus an unknown amount payable in dividends

1 to unknown unidentified shareholders. And at the same
2 time the current financial statements that I referred to
3 when they talk about this indebtedness of \$112 million
4 that Prospect Medical Holdings entered into based on the
5 value of the Rhode Island facilities say that this was
6 unless and until those facilities are made subject to a
7 sale leaseback agreement.

8 So it appears that there is a plan in the works once
9 Community Board is ironed out of the picture, like a
10 wrinkle, to have the hospitals in Rhode Island enter into
11 sale leaseback, and, in essence, be sold to this REIT and
12 all of that is something that we, as the minority
13 shareholder, and Prospect CharterCare have the right to
14 understand. We're just being completely boxed out.

15 So I would like to just ask the Court if the Court
16 has any questions and then that's where I end.

17 THE COURT: Okay. Counsel, when the Court heard the
18 motion for information, as your side put it, to gather
19 information to be able to make an informed decision of
20 whether or not to exercise the Put, I think Prospect's
21 argument very clearly was, okay, let's look at the
22 agreement between the parties, the LLC agreement. And
23 while there is broad appraisal rights once a decision on
24 the Put is made, if it is, in fact, made, there is
25 sharing of documents, there's appraisal, there's other

1 things, but for good or bad the agreement between the
2 parties is really silent into what information your
3 client or the liquidating Receiver's client is entitled
4 to to make that decision.

5 My recollection is the Court heard a whole list and
6 there was a spread sheet in terms of documents and it
7 issued an order and allowed certain of those documents to
8 be produced. Now, you're coming in asking for other
9 documents, some of which I believe the Court addressed
10 early on that you're saying there has been a change of
11 circumstances here. We have that on one side. On the
12 other side we have an LLC agreement that does have a
13 specific clause with respect to books to records.

14 And I understand Prospect's objection, I will hear
15 from them, that there was a general demand, not a
16 specific demand, and the Court can make a decision on
17 that. But if you're entitled to the books and records,
18 does that alleviate the need for the further motion to
19 compel or the things that you believe you would not get
20 if you had access to the books and records that you're
21 asking for in your motion to compel.

22 MR. SHEEHAN: Let me take the last point first, your
23 Honor.

24 THE COURT: Sure.

25 MR. SHEEHAN: And that is that there are documents

1 that we seek through the motion to compel that may be
2 outside of the actual financial books and records of
3 Prospect CharterCare, but we have a right to those
4 documents based upon a stipulation which the Court
5 entered as an order.

6 Now, let me address your Honor's first point with
7 respect to the prior motion to compel. That was a motion
8 to compel that Mr. Fine filed when Community Board still
9 was in control of its assets before the settlement, and
10 there was certain production of documents that took place
11 pursuant to that request that he made and there was a
12 hearing before your Honor on the motion to compel, and
13 pursuant to that certain additional documents were
14 produced.

15 But what we were proceeding on here today, your
16 Honor, is the right that existed from April 25th of 2019
17 and was carried forward first on October 5th of 2019 and
18 then I want to say on November 20th of 2019 and
19 subsequent stipulations that gave the Receivers the right
20 to request additional documents and to move to compel if
21 those documents were not produced. And that stipulation
22 and order is completely separate from the motion that Mr.
23 Fine handled, completely unrelated to that.

24 And, your Honor, even after the hearing that the
25 Court had on Mr. Fine's motion, that obligation under the

1 stipulation and order of April 25th was continued by
2 further stipulation. And what happened with Mr. Fine's
3 motion, your Honor, is not that it was complied with, but
4 that it was passed. There was never a specific order
5 that the Court entered and there never was an
6 adjudication of whether that order was complied with.

7 So all of that adds to this situation is smoke and
8 confusion. We believe that if Prospect CharterCare did
9 not want to produce all documents the Receivers
10 reasonably required to evaluate the Put option, it
11 shouldn't have entered into the stipulation and order,
12 but, of course, it did that because it didn't want to
13 face the prospect of the injunction. So for a tactical
14 reason it choose to give us that right, and that right is
15 independent of anything Mr. Fine was involved in. So on
16 January 21st -- and unless they can show that was out of
17 time and it wasn't, it's contemplated within the ongoing
18 stipulations that up until the time the option is
19 exercised there will be the right to request additional
20 documents. On January 21st we make a timely request.
21 So this prior hearing on the motion to compel is moot at
22 that point.

23 I don't know if I missed something in which your
24 Honor just said. I just tried to capsulate my
25 recollection of it and answer it. I apologize if I

1 missed a point.

2 THE COURT: No. So it's your position that even if
3 you had access to the books and records, there are things
4 that may not fall within the books and records that are
5 requested in the motion to compel.

6 MR. SHEEHAN: That's true, your Honor. And our
7 right to that is based upon the stipulation. By the way,
8 your Honor, now with the opening of discovery, we could
9 simply request it, you know.

10 THE COURT: You answered my question. I appreciate
11 it. I know you said you had worked through arguments
12 with Attorney Hemmendinger. I don't know if he has
13 anything further on these motions or when we move to
14 defense counsel they can address all the issues or now.
15 Attorney Hemmendinger.

16 MR. HEMMENDINGER: Thank you, your Honor. I adopt
17 all the arguments that Mr. Sheehan has made and support
18 them. I would just like to add an observation, if I
19 might.

20 THE COURT: Sure.

21 MR. HEMMENDINGER: Obviously, one of the concerns is
22 the value of this Put, but there is also potential causes
23 of action, an actual cause of action in the amended
24 complaint where I'm seeking and the Plan Receiver is also
25 seeking relief based on these voidable transactions. And

1 I just wanted to point out that in the financial
2 statements that we do have on Prospect CharterCare,
3 Prospect St. Joseph's Health Services of Rhode Island,
4 and Prospect CharterCare Roger Williams Medical Center
5 that in the years between September 30, 2014 and 2018
6 their cash on hand went to zero, all three entities.

7 And I'm not going to address the intent of the
8 Prospect parties in how they've handled the finances, but
9 the clear effect of everything that Mr. Sheehan pointed
10 out already and the additional information about cash on
11 hand, the effect of all of that is to impair the value
12 and impair the viability of these entities.

13 And I can anticipate that if we do exercise the Put,
14 an argument will be made well, these companies aren't
15 worth very much. Look at how little they have for
16 assets. All of that is because of what Prospect has done
17 and has done, frankly, behind the scenes at a minimum,
18 and the Receiver shouldn't be penalized for that in terms
19 of the ascertaining of the value of the Put. So there is
20 a possibility that we may have to assert causes of action
21 based on these transactions as not impairing what the
22 value of the entities should be. That's another thing we
23 need to be able to explore, and the information we
24 requested goes directly to those points. Thank you.

25 THE COURT: Thank you very much. With respect to

1 the Prospect entities, I don't know if there has been any
2 conversations who is going to respond first to the Plan
3 Receiver and the Liquidating Receiver.

4 MR. HALPERIN: Your Honor, I will start by
5 apologizing for not having a tie. I'm out of town and I
6 was unprepared for the tie. Next time it won't happen.

7 THE COURT: No issue at all. Please proceed.

8 MR. HALPERIN: Your Honor, I feel like we are
9 covering ground that we have covered before and this goes
10 back to the April, 2019 stipulation and order that Mr.
11 Sheehan mentioned. We were before the Court on a motion
12 that was filed on August 19, 2019, which was the
13 expedited motion to compel. It did, in fact, result in
14 an order called order on expedited motion to compel
15 production. It's dated October 3, 2019. And that order
16 followed a hearing in which the Court heard our argument
17 on the spreadsheet request, which is a request that came
18 from ECG Management, the valuation consultant that had
19 been hired by CCCB at the time. In fact, that management
20 consultant is going to be the valuation professional that
21 will perform the valuation if there is an exercise of the
22 Put option.

23 But when we went through that spreadsheet at the
24 time, the position that Prospect took is the exact same
25 position that we are taking today, which is we have no

1 problem producing financial information related to the
2 Prospect CharterCare, LLC, entity whether they be audited
3 financials, updated audited financials, unaudited
4 financial statements for the period that has not yet been
5 audited, and other financial information that is readily
6 available.

7 And the stipulation that was entered into
8 specifically says not only that if the Receiver or CCCB
9 at the time was not satisfied they could reasonably
10 request more documents, but it had to relate to the
11 valuation process. That's in the language.

12 Secondly, the stipulated language says that it had
13 to be documents that were available. So we weren't going
14 to have to bring people forward to answer the litany of
15 questions that would be answered in a full-blown
16 appraisal process about the future of the company, the
17 growth, the predictions, the projections, who are your
18 key employees, what are some of your problems. Those are
19 things that we get to once the Put option is exercised.
20 So we have produced all available financial information.

21 We went further than that and the Court may recall
22 there was a little bit of a back and forth on some
23 Medicare cost reports where we agreed to produce them
24 thinking they were our documents. It turned out they
25 were documents of a third party that issues reports on a

1 website. They weren't available yet, but we eventually
2 got them from the third party because we had mistakenly
3 agreed to produce them thinking they were ours, but they
4 eventually got those documents too.

5 What happened after that, your Honor, is we had
6 supplied the documents. The documents had been
7 referenced originally in correspondence that went back to
8 September 20th of '18, October 2nd of '18, October 3rd of
9 '18, and November 6th of '18. Those were incorporated
10 into the stipulation. We have produced all of that. We
11 produced updated financials. We thought we were in full
12 compliance.

13 By December of 2019 and heading into January of '20,
14 I began having direct conversations with Mr. Del Sesto,
15 and that conversation was about a methodology to agree on
16 the identity of the valuation professionals, so we could
17 sort of streamline the process better than it was laid
18 out in the LLC agreement. We got to the point where
19 Prospect formally accepted the valuation professional
20 ECG, and we notified them of the valuation professional
21 that was going to be selected by Prospect.

22 Then suddenly everything changed, and instead of
23 proceeding that way and the way we were talking about
24 proceeding was to have the two valuation professionals
25 create one list that both would agree upon and all those

1 documents would become the documents for the valuation.
2 We were trying to streamline the process. Suddenly it's
3 January of '21 and we're getting new requests with the
4 same spreadsheet that we had gone through. Many of the
5 things were identical, some were new, but clearly coming
6 from the valuation professional yet again. So I took the
7 position that we had provided everything we were supposed
8 to provide. We were not going to provide the category of
9 documents that were either questions or things that
10 didn't exist and that's where things broke down. That's
11 where we ended up with these new motions and these new
12 memos and mandatory injunctions.

13 Yesterday Mr. Sheehan contacted me and he presented
14 me with the list and we went through the list and there
15 were things that we readily agreed to produce. Because
16 time has past there are now more audited financials,
17 there are more new financials. I said no problem. We
18 will update that which we have already provided, but our
19 position is that the documents need to relate to the
20 valuation of the Put option. This is not discovery for
21 the federal court litigation, nor is it discovery for
22 this case. This is specific, for one purpose only.

23 Now, a lot of statements had been made by Mr.
24 Sheehan that are just flat out incorrect factually. I
25 will just say this so that everyone can hear once: The

1 sale leaseback transaction which generated this billion
2 dollar amount or the parent company that relates to
3 hospitals outside of Rhode Island, excluded Prospect
4 CharterCare, LLC, and excluded the Rhode Island Hospital
5 entities intentionally because of the issues relating to
6 this dispute as well as the fifteen percent interest. It
7 was excluded. So they did not pledge their assets. They
8 did not mortgage their assets. They did not guarantee
9 the obligations under that facility.

10 Now, yesterday Mr. Sheehan pointed to some language
11 in the financial statements for the first time. I got on
12 the phone with Pat Rocha because she is the attorney for
13 Prospect in front of the regulators right now on this
14 effective change of control proceeding. I spoke with my
15 client and I learned from Ms. Rocha that, in fact, a 2019
16 financial had what she referred to as a poor choice of
17 words in it that was, in fact, corrected. There was
18 language that suggested that the hospitals in Rhode
19 Island had provided security for the \$112 million that
20 was a loan. That secured language was removed. It was a
21 mistake and an updated financial was provided.

22 Also, new information, there was a title search done
23 back in May, and this again was in connection with the
24 proceeding before the regulators. There is no mortgage
25 of any kind on any of the Rhode Island entities. So I am

1 advised and I can represent based on what my client has
2 told me, there are no liens, there are no security
3 interests, there are no mortgages or guarantees related
4 to that facility that Mr. Sheehan is concerned about. So
5 that can be cleared up. That's black and white. That's
6 a factual matter, and I am happy to work with him to
7 clear that up so he doesn't have to be concerned about
8 that. If I had been asked about it before yesterday, we
9 might have gotten to that by now.

10 Back to the issue at hand, your Honor, documents
11 that are being sought that are outside of that which is
12 needed to value the Put option. As an example, the LLC
13 agreement has a procedure pursuant to which the \$50
14 million capital contribution is to be made, and there is
15 an allegation being made that the I's weren't dotted, the
16 T's weren't crossed, that the minority member CCCB did
17 not agree to the capital contributions. I would suggest
18 that they can litigate that issue. We can get to that.
19 Aside from the fact that they were all on the board and
20 these were all presented to the board for these capital
21 contributions and there was no objection at any time from
22 anyone. They went through unanimously.

23 That's not before the Court. That doesn't have
24 anything to do with today, the value of these entities.
25 We are providing all the financial information we have

1 that will enable them to reasonably decide do they want
2 to exercise the Put option or not, and if they do, then
3 we get into the full-blown appraisals. And that's what
4 we were prepared to do from the beginning, and I don't
5 know exactly why they decided to come back with a whole
6 new effort to relitigate the issues that we did, you
7 know, a year ago back in August.

8 Books and records generally, I just want to comment
9 on that. They're seeking financial information. We've
10 provided that which we have and that which they have
11 requested previously for financial information. Books
12 and records is a very amorphous term. They haven't told
13 us what they want. We have refused to provide something
14 in the category of books and records that have been
15 identified. So if they were to say we want to see the
16 board's minutes, that's the books and records, we could
17 respond to that. We have been responding to the specific
18 information that has been requested rather than this
19 broad request.

20 However, I will remind the Court that when the
21 request for books and records was first made, it was made
22 by CCCB, and our position at the time was we will be
23 happy to give them to you as a member of the entity if
24 you agree that these are not going to be used in a way
25 that is adverse to the company. Sign a confidentiality

1 agreement and you can have them. They made it clear that
2 wasn't possible because they were already working with a
3 party that was suing or planning to sue Prospect
4 CharterCare, LLC, the Plan Receiver. That was the
5 holdup.

6 So it wasn't a refusal to provide the documents to
7 the member. It was a refusal to provide them to them in
8 a manner that they were going to then use them in a way
9 that we felt violated their fiduciary duty and not in the
10 best interest of the entity. That wasn't the dispute.
11 However, I believe, we got past that when we provided all
12 of the financial information that we had that they had
13 requested.

14 I also want to just comment that the regulators have
15 in front of them an application for an effective change
16 of control involved in this Leonard Green transaction.
17 As part of that -- and that is a private equity firm that
18 is simply leaving the company for this \$12 million
19 payment. It's not a material financial transaction at
20 all, and the statement that these entities are insolvent
21 is purely ridiculous speculation. They have no idea.
22 They already said they have the current financials and
23 whether or not -- the insolvency of these companies or
24 solvency has nothing whatsoever to do with transactions
25 by Prospect Medical Holdings that relate to other

1 entities, other real estate, other hospitals.

2 They've got to stay focused on what their interest
3 is. They have an interest in these entities. Nothing
4 has been stripped out of these entities. They will find
5 that out and we will produce these records, but a lot of
6 statements are being made here that could suddenly become
7 newspaper articles tomorrow that are just flat out
8 factually incorrect and I just want it to be known by
9 everyone that we should be asked the questions in
10 advance, have the opportunity to show that there is no
11 stripping of assets coming out of Rhode Island. That is
12 just a false allegation.

13 THE COURT: Counsel, just so I can understand, I
14 understand the representation that basically their 15
15 percent interest, or whatever that number is, is not
16 impaired based on other transactions that may have been
17 entered into. And you're saying that you're willing to
18 not only have a conversation but provide the
19 documentation that will demonstrate that there is not.
20 Because what I'm hearing from the Plaintiff is a concern,
21 which will be a concern of anyone without verifying it
22 is, I go ahead and I exercise the Put option and then all
23 of a sudden I find out that there is impairment of my
24 interest, and, you know, I've run into a buzz saw at that
25 point. So you're saying you're willing to spell that

1 with the information, I understand your client or the
2 parent there was an error in the financial statements, to
3 make sure that that issue is taken care of.

4 MR. HALPERIN: Not only that, your Honor, part of
5 what Mr. Sheehan and I discussed yesterday, is that he
6 said if, in fact, there is some connection between these
7 entities and that sale leaseback transaction, can we
8 agree that that contingent or potential liability will be
9 disregarded by the value of these two professionals? The
10 answer to that is also yes. For purposes of valuation,
11 it will be a non-issue. But we don't really need to get
12 there because I am able to represent that the assets have
13 not been pledged. There is no guarantee.

14 THE COURT: And with respect to the books and
15 records, and I understand it's a little tortured in terms
16 of when it was requested and I remember some of these
17 things happening all along, you would agree that there is
18 a specific provision in the LLC agreement that allows
19 them access to or CCCB access to the books and records,
20 which makes sense as a minority shareholder. You're
21 saying that you are looking for more specifics in terms
22 of what their looking for and then deal with it then in
23 terms of their rights under the LLC agreement. There's a
24 difference, at least the Court sees here. Unfortunately
25 on many of the class actions most corporations, as we

1 know in businesses in Delaware, the LLC agreement can
2 modify the statutory books and records request. So what
3 you're saying is you need more specifics in terms of what
4 exactly they're looking for for books and records?

5 MR. HALPERIN: I think we have to because if you
6 think about, records are maintained on computer data
7 bases. So to someone in today's day and age, you can
8 have access to books and records, what does that mean?
9 They would have to come in or get remote access, know how
10 to use your programs, know what they're looking for.
11 It's not really a practical way to simply enter an order.
12 If we had specifics, we could respond to it and provide
13 it, and that's what I think we have been doing. The only
14 only books and records they have been interested in is
15 that which is related to the valuation of the Put option.
16 If they want to go beyond that, they should just spell it
17 out for us.

18 THE COURT: Okay. Thank you. Please continue.

19 MR. HALPERIN: Your Honor, that really does conclude
20 my presentation. The only other thing I can say is that
21 the specific documents that I now have from Mr. Sheehan
22 was a list that included ten items and then one
23 additional item that he mentioned to me yesterday. And,
24 you know, the items that I told him that we were going to
25 be in disagreement on are items that are not related to

1 the valuation question but they're questions that I
2 mentioned earlier about whether they accepted the capital
3 contributions.

4 On the subject of the \$50 million capital
5 contribution, I should touch on that because we had a lot
6 of discussion on that. Those documents were submitted to
7 the Attorney General and they were provided to the
8 Receiver in that same format that showed the \$50 million
9 capital contribution and all the backup for it. If they
10 are unsatisfied with that or they have questions about
11 that, that seems to me to be a subject for another day or
12 another case or another forum. We provided the
13 information. They have asked me, "Will you tell us if
14 there is an additional column for capital contribution
15 since that last date?" And my answer to that yesterday
16 was, "Yes, because we're going to provide you with
17 updated financial information so we can provide you with
18 that information as well." But their dissatisfaction or
19 their challenge to whether or not any of those are truly
20 capital contributions or not, I just don't think that is
21 something we can deal with it in a production
22 environment. That is something that has to come later
23 with allegations and pleadings not a document production.

24 THE COURT: Thank you, counsel. Do you know is
25 there anyone else from Prospect entities or the

1 individuals? I believe the objection was from your firm
2 and Attorney Russo that wished to be heard on the
3 Plaintiff's motion.

4 MR. HALPERIN: Since Mr. Indeglia is here, I guess
5 we should see if he has anything to say. We haven't
6 discussed that.

7 THE COURT: Yes. Mr. Indeglia.

8 MR. INDEGLIA: Your Honor, I have nothing to add
9 other than the fact I think you let Mr. Halperin off easy
10 on the tie issue but that's okay.

11 THE COURT: Thank you very much, counsel. Would
12 either Attorney Sheehan or Attorney Hemmendinger like to
13 respond before we reach the end of the hearing?

14 MR. SHEEHAN: Tom, you started to speak because I
15 was on mute so you go ahead.

16 MR. HEMMENDINGER: Okay. I just wanted to reply to
17 a couple of points that Mr. Halperin made. He was
18 talking about the sale leaseback as not affecting the
19 Rhode Island entities. That's an open question and
20 documents can establish that one way or the other. But
21 he didn't address the fact that the Rhode Island entities
22 are guarantors for hundreds of millions of dollars in
23 debt to financial institutions and that affects the value
24 and those loans were used in large part at least to
25 finance these dividends paid out to the owners of the

1 Prospect entities. Again, I think those are directly
2 relevant to how we evaluate the Put at this point. They
3 are not relevant only after an exercise is made.

4 As far as the \$50 million in capital contributions,
5 that is also directly relevant to the decision the
6 Receivers have to make, because if those contributions
7 were not made under the terms of the LLC agreement,
8 Prospect East's 85 percent interest is diluted and
9 potentially substantially diluted. If hypothetically
10 nothing had been put in for the capital contributions,
11 your Honor, the interest of CCCB would not be 15 percent
12 but would be over 27 percent.

13 The other point I would like to make is that
14 Prospect Medical Holdings is the guarantor of the
15 obligation of Prospect East to put the \$50 million in and
16 it is directly part of all of these other transactions.
17 So to the extent its finances have been impaired, the
18 ability to get this \$50 million contribution into the
19 Rhode Island entities is also impaired. Thank you.

20 THE COURT: Thank you very much. Attorney Sheehan.

21 MR. SHEEHAN: Thank you, your Honor. The
22 predicament that the Receivers found themselves in in
23 late 2019 was that it was becoming more and more apparent
24 that they were potentially buying a pig in the poke by
25 exercising the Put option because there was never any

1 satisfactory explanation of the \$50 million whether it
2 had been put in or not. The issue of dividending money
3 out had surfaced for the first time in fall of 2019, the
4 first time we learned of it in some detail. We had some
5 prior information, but we learned more information then.
6 The predicament that the Receivers have is that if we
7 exercise the Put, ultimately, it's going to end in the
8 number presumably. I don't want to prejudice our rights
9 to argue this point when the time comes, but there is
10 certainly a risk it will end in a number that we have to
11 accept and we are out of the company. And if that's \$5,
12 it's \$5. And giving up our shareholding, we're giving up
13 the right to bring a derivative action by CCCB against
14 the directors and these other entities.

15 So really the evaluation of the Put option by
16 definition involves what are you giving up and what are
17 going to get. The problem we have arises out of a lack
18 of transparency in the financial disclosure from the very
19 outset, and that goes back to the contractual right of
20 access to the books and records. It's not fair to put us
21 in a position where we don't know what the finances are
22 when we have a specific clause that says we are entitled
23 to get them. And, by the way, that is not conditional.
24 There is no right for them to have expected a
25 confidentiality order. There is no condition that is

1 imposed on that right.

2 So it became more and more apparent, and,
3 certainly, since January when Mr. Del Sesto and Mr.
4 Hemmendinger sent the subsequent request, since then it
5 has become even more of an issue whether this company has
6 any value whatsoever, and we cannot close the door on our
7 right to the shareholder by exercising the Put without
8 getting a feel for what that is. We probably would be
9 entitled to that even absent a clause in the contract
10 that entitles us to the books and records. But, given
11 that, it seems to be quite clear to me, your Honor.

12 Now, Mr. Halperin talk about a correction to the
13 financial statements, but the language I read has not
14 been corrected. The statement that the company, meaning
15 Prospect CharterCare and the two subs, are the pledger,
16 that's still in the financials. I'm not relying on some
17 reference to a possible mortgage that was corrected. I
18 am relying on the current and corrected financials that
19 say we are a pledger on a \$1.331 billion sale leaseback.
20 That's the language we're relying on.

21 Now, Mr. Halperin's suggestion that this buyout of
22 Leonard Green is not a material transaction, we don't
23 even know how much it's for. It's for \$11 million plus
24 an undefined amount to be paid for stock options held by
25 undefined individuals concerning an undefined number of

1 options. We have no idea whether Prospect Medical
2 Holdings is paying \$11 million and change or \$111 million
3 and change to Leonard Green in connection with buying
4 them out.

5 And, your Honor, we have to go back to what this
6 case is ultimately is about. It's a lawsuit involving
7 fraudulent transfers. It's devolved and narrowed into
8 this issue of exercise of the Put by virtue of the way
9 the case developed over time. But the core issue in the
10 case is that there has been a taking of assets from
11 Prospect Medical, who is our guarantor at the very least,
12 paid to individual shareholders. So we are going to get
13 those documents one way or the other. To find out about
14 every asset that Prospect Medical transferred or every
15 contract that Prospect entered into, we're going to get
16 it in the lawsuit one way or the other.

17 THE COURT: Counsel, isn't that an issue in terms of
18 what is going on in the case before Judge Smith and here?
19 What I have are two motions, one looking to compel
20 further information so you can make a determination, the
21 Receiver, Liquidating Receiver, can make a determination
22 of whether or not to exercise the Put. That's really
23 kind of the box around it. You raised certain issues
24 about pledges and other things. Can you make a
25 reasonable decision based on full information or as close

1 to as possible whether or not to exercise the Put and
2 you're saying these are the documents I need to do that.

3 And then the second issue is, there is an
4 entitlement to books and records, and what I'm hearing
5 from counsel at least today, I don't know what the
6 conversation was before, is that we need some specificity
7 in terms of what you're looking for and they recognize
8 that there is an obligation under the LLC agreement to
9 make available books and records. And some of those
10 books and records that you are entitled to may be helpful
11 in making your determination whether or not to exercise
12 the Put. Some of these other issues I agree may be
13 concerns in the cases. The question for the Court is
14 going to be if it's not related to Put is that better
15 dealt with, as you said, in discovery?

16 MR. SHEEHAN: I hear your Honor, and what I guess I
17 would say is that the decision whether or not to exercise
18 the Put weighs on the one hand the potential benefit from
19 the valuation process and payment of the Put against the
20 potential value of staying in as a shareholder. That
21 really opens it up, your Honor, to all of these other
22 issues. Now, it may be that Mr. Halperin and I can work
23 out 80 percent of the documents that we need. I'm quite
24 sure that there is going to be significant, hopefully not
25 a majority, but a significant percentage that we can't

1 work out, and it's going to have to do with this broader
2 issue of what is the financial status of the Prospect
3 Group overall and has there been fraudulent transfers
4 that we're essentially giving up the right to pursue by
5 virtue of exercising the Put.

6 THE COURT: But, counsel, from a practical point of
7 view, and now we're talking practically, is it possible
8 for Attorney Halperin and you, the Liquidating Receiver,
9 to agree on whatever list you're working on of these
10 documents and then you can do it over a short period of
11 time and then say, look, we're going to submit to the
12 Court these are the documents we don't agree on and this
13 is the reason why and why not. Then it becomes a very
14 easy exercise for me to go through, rather than talking
15 in much broader strokes, which, unfortunately, as we all
16 know is going to bring you guys back to me probably in
17 the next month or so.

18 MR. SHEEHAN: I agree a hundred percent, your Honor,
19 with one point, which is that the current stipulation and
20 order provides that the time to exercise the Put will
21 expire on one of two dates, by the thirty days after this
22 hearing or a date that the Court determines. And if
23 we're going to go from this hearing to an exercise of
24 document production, I would hope that we get an
25 extension of time to exercise the Put to allow that to

1 work out so we can come back to your Honor. So we need
2 time to do that. Thirty days from today to exercise the
3 Put and to resolve all this is just not enough time,
4 which is why the initial stipulation and order
5 anticipated the filing of the motion for injunctive
6 relief and the possibility of requesting more time.

7 THE COURT: With respect to that, I don't have an
8 issue having the hearing and reserving on the motion and
9 giving the two of you a week or so to see if you can work
10 through the documents and even have a conversation about
11 based on that what the extensions may be. If it can't be
12 agreed to, the Court is certainly willing to take it up.
13 I don't have enough information right now. I want to see
14 what the conversation is to make a determination whether
15 it should be extended and for what period of time. I am
16 absolutely willing to hear that very shortly. What I
17 just want is the opportunity for the two of you to be
18 able to sit down, see what you can agree to. And,
19 certainly, if you're agreeing to things, it may take
20 Prospect a little bit of time to get that over to you.
21 It may require some sort of an extension. It may require
22 long or it may require none. I don't want to make that
23 decision in a vacuum, but I certainly will.

24 MR. SHEEHAN: What I would ask your Honor is if the
25 date that starts the period running is currently the

1 hearing, now is that today or is that hearing going to
2 extend over a number of days and going to be the last day
3 of the hearing?

4 THE COURT: As far as I'm concerned, I am not
5 completing the hearing today because I'm telling the
6 parties to meet and confer and come back to me. The two
7 of you can decide and no longer than ten days and
8 hopefully in a week you can come back and we can see
9 where we were. If that's the case, it's very easy for me
10 to say, look, we're going to continue this hearing for a
11 week or ten days. Like I said, I don't want to pull an
12 artificial number out of the air until I know how the
13 Court is ruling on these requests or whether there is an
14 agreement on some of them.

15 MR. SHEEHAN: That was my only concern, your Honor,
16 and I think that resolves it.

17 MR. HALPERIN: I would like to respond, your Honor,
18 briefly. I'm not going to go back over the issues and
19 the documents. Just dealing with the practical issues,
20 we already had a conversation yesterday about a list, and
21 this is why the Court hasn't kind of given us any
22 indication and it seems like, as an example, we could
23 tell you right now they are asking for us to provide
24 documents that deal with the question of how the capital
25 contribution process unfolded, whether or not there was

1 something called an analysis, a return on investment
2 analysis or not, whether or not there was an acceptance
3 or not. I would suggest that those are not documents
4 that relate to the current valuation issue and we should
5 not be including those. So we have that question here
6 now, and I'm wondering does it make sense to address some
7 of the things we already have discussed and know are in
8 dispute and let the Court give us some sense so we might
9 not have to come back with the same issues we already
10 know are on the table.

11 THE COURT: It sounds like there is a list that is
12 going back and forth. I have no issue with looking at
13 the list. You may be able to today give me that list and
14 say these are in dispute, and very quickly, you know, it
15 could even be the latter part of this week, after I
16 review them, give both sides guidance. It's just
17 difficult for me if you're going to read off this is the
18 issue. I just prefer to be able to look at it and we can
19 have a conversation.

20 MR. HALPERIN: I understand. That makes sense. We
21 can do that.

22 THE COURT: So if you can get me let's say by
23 tomorrow that list and then contact Carin and we can have
24 a conference or a further hearing, like I said, even the
25 latter part of this week. I think that would be a good

1 exercise if I can at least give the parties the
2 indication of my thoughts of where that belongs and
3 whether it should be produced. So why don't we do that.
4 I'm not locking the two of you in in terms of when it
5 comes in but if you can get me something by the end of
6 the day tomorrow, I don't have a problem on Friday kind
7 of getting back together and going through it.

8 Is there anything else, counsel? Otherwise, what
9 I'm going to do is continue the current hearing. The
10 Court is going to reserve on both motions with a hope
11 that the parties may be able to work some of these issues
12 through. As soon as I get the list of what are the
13 things that are in dispute, we will schedule a conference
14 or a hearing as early as this Friday so we can have a
15 discussion and I can give you an indication. If the
16 parties can't work it out, we'll put it on for a
17 hearing/bench decision and we can put a closure on that.
18 And at that point if need be, I will address the issue of
19 whether or not the Put option should be extended.

20 Okay. Very good. We are at almost an hour and a
21 half point. I want to thank everyone and the Court,
22 again, is going to reserve and continue the hearing and
23 in a moment we will be in recess. I just want to ask the
24 court reporter are there any clarifications that you need
25 at this point?

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COURT REPORTER: No, thank you, Judge.

THE COURT: Very good. Madam Clerk, you can turn off the public streaming and the Court will be in recess. Thank you all very much.

(A D J O U R N E D.)

Exhibit 11

APPEARANCES:

STEPHEN P. SHEEHAN, ESQUIRE.....FOR THE RECEIVER
BENJAMIN LEDSHAM, ESQUIRE

PRESTON W. HALPERIN, ESQUIRE....FOR PROSPECT MEDICAL
HOLDINGS/PROSPECT EAST

W. MARK RUSSO, ESQUIRE.....FOR PROSPECT CHARTERCARE

STEVEN BOYAJIAN, ESQUIRE.....FOR ANGEL PENSION GROUP

THOMAS HEMMENDINGER, ESQUIRE....LIQUIDATING RECEIVER

DAVID GODOFSKY, ESQUIREFOR ANGEL PENSION GROUP

LINDA M. CORDEIRO
OFFICIAL COURT REPORTER

C E R T I F I C A T I O N

I, **LINDA M. CORDEIRO**, hereby certify that the succeeding pages **1** through **34**, inclusive, are a true and accurate transcript of my stenographic notes taken at the time of WEBEX hearing, to the best of my ability.

Linda M. Cordeiro

LINDA M. CORDEIRO
Official Court Reporter

1 Wednesday, July 8, 2020

2 AFTERNOON SESSION

3 (The proceedings commenced at 2:02 p.m. via WEBEX
4 connection)

5 THE COURT: Good afternoon. Why don't we get
6 started. I would ask if everyone can put
7 their microphones on mute so we can eliminate the
8 background noise, and I would ask the clerk to please
9 turn on the public streaming.

10 THE CLERK: The public streaming is on, your Honor.

11 THE COURT: Very good.

12 Madam Clerk, would you please call the case?

13 THE CLERK: Your Honor, the matter before the Court
14 is case number PC-2019-3654, CharterCARE Community Board,
15 et al versus Samuel Lee, et al. This is on for the plan
16 receiver and liquidating receiver's motion to compel
17 production of documents. This is a continued hearing.

18 Will counsel for the receiver please identify
19 themselves for the record?

20 MR. SHEEHAN: Good afternoon, your Honor. It's
21 Stephen Sheehan, appearing for the plaintiff receiver,
22 Stephen Del Sesto.

23 MR. LEDSHAM: Also, Benjamin Ledsham appearing.

24 THE COURT: And, Attorney Hemmendinger, why don't we
25 go to you next?

1 MR. HEMMENDINGER: Thank you, your Honor. Thomas
2 Hemmendinger, the liquidating receiver for CharterCARE
3 Community Board, Roger Williams Hospital, and Saint
4 Joseph's Health Services of Rhode Island.

5 THE COURT: Next, why don't we go to Attorney
6 Halperin and any of the related entities?

7 MR. HALPERIN: Good afternoon, your Honor. Preston
8 Halperin, for the Prospect entities: Prospect Medical
9 Holdings, Prospect East.

10 MR. RUSSO: Good afternoon, your Honor. Mark Russo,
11 for the Prospect entities: Prospect Chartercare, LLC,
12 Prospect Chartercare Saint Joe's, and Prospect
13 Chartercare Roger Williams.

14 THE COURT: And, let's see, let's go next to
15 Attorney Boyajian.

16 MR. BOYAJIAN: Good afternoon, your Honor. Steve
17 Boyajian, for the Angel Pension Group.

18 THE COURT: Thank you. And Attorney Godod.

19 MR. GODOFSKY: No. It's me, David Godofsky.

20 THE COURT: I'm sorry.

21 MR. GODOFSKY: For the Angel Pension Group.

22 THE COURT: Thank you very much.

23 Okay. I'm just looking, other than Court staff,
24 have we missed anyone? If not, if everybody didn't go
25 back to mute, please do so.

1 The Court had continued this hearing dealing with a
2 number of issues, including a motion to compel. During
3 that hearing there was some discussion that there was a
4 list being circulated among certain of the parties, and
5 the Court elected to have the parties try to see if they
6 can resolve some of those issues so the Court can deal
7 with the balance.

8 I don't know what number we started with initially,
9 but the Court received a document from the plan
10 receiver's counsel that had both the receivers' arguments
11 as well as Prospect's arguments on different of the
12 issues. The Court will allow the plan receiver, whose
13 motion it is, to proceed.

14 MR. SHEEHAN: Thank you, your Honor. Very briefly,
15 before I get into the list, we on the 23rd of June had
16 asked the Court to extend the time to exercise the put
17 option, and since then the need of that has become even
18 more imperative because we have been deprived of
19 information to which we're entitled based on three
20 grounds. The LLC agreement provides it. And, your
21 Honor, this is a point I neglected to make on the 23rd.
22 The structure of the transaction contemplates it because
23 the capital contribution was to be made over the first
24 four years, and the put option would be exercisable in
25 the fifth year, at which point the capital contribution

1 would be in place. So it was always contemplated by the
2 parties that the capital contribution would be in place
3 by the time the put option became exercisable. So
4 there's a clear connection between the two items.

5 And the third reason why we're entitled to the
6 information is the conditions of the asset sale that the
7 Rhode Island Attorney General, the Department of Health
8 imposed required an annual disclosure by Prospect to the
9 Rhode Island Attorney General on a form prescribed by the
10 Attorney General.

11 Now, since that last hearing, your Honor, I have
12 provided the Court with three additional documents. The
13 first is a report of the independent monitor that the
14 Attorney General, the Department of Health have retained
15 to supervise Prospect's compliance with conditions, which
16 include making the capital -- the long-term capital
17 contribution. That report is dated March 20th, 2020, but
18 in reality it was last amended June 26th, 2020. And you
19 can see from the last line of it what the monitor is
20 seeking is the final information it needs so that it can
21 issue a final report as of sometime in June of 2020.

22 In any case, that report shows an extensive
23 involvement of the monitor with Prospect to attempt to
24 confirm that Prospect has met its obligations to make
25 capital contributions, which the report confirms is not a

1 50 million dollar total, but it's a 60 to 61 million
2 dollar total. And notwithstanding much back and forth
3 and the power of the Attorney General behind it, the
4 monitor has only been able to get documentation of
5 Prospect of less than 30 million dollars in capital
6 contributions, and no documentation whatsoever that any
7 capital contributions were made in accordance with the
8 requirements of the LLC, which required that CharterCARE
9 Community Board approve a capital contribution. So
10 there's no evidence with respect to any capital
11 contributions with that requirement.

12 So we have this situation where Prospect has failed
13 to make required disclosures to us, Community Board, and
14 the Attorney General to the Department of Health.
15 Meanwhile, Prospect Medical has paid out over 650 million
16 dollars in dividends that were financed with debt, and
17 the situation is on the verge of becoming a public
18 scandal, your Honor. There's noncompliance with state
19 reporting requirements and apparent stripping of assets
20 of the corporation, while the receivers are being pushed
21 into blindly exercising the put option, which would
22 eliminate their -- or at least limit their ability to
23 look into what's going on and better conceal what we
24 contend are financial misdeeds.

25 Finally, your Honor -- well, not finally --

1 secondly, we provided the most up-to-date audited
2 financials, which confirm what I represented at the
3 hearing on the last occasion that Prospect Chartercare is
4 listed as a pledger, and there's a reference to
5 112 million dollars being loaned based on the value of
6 the Rhode Island properties.

7 And then, finally, your Honor, we have this
8 incredible letter from the United States Congress, five
9 members of Congress. Dated July 6th. *The Wall Street*
10 *Journal* had written about it on July 6th, and we were
11 able to obtain a copy last night, and we provided it to
12 the Court. Our Congressman David Cicilline is one of the
13 signers, and the letter expressly states that Prospect
14 has not provided adequate documentation fulfilling the
15 50 million dollar capital commitment it made as part of
16 the transaction to acquire its Rhode Island Hospitals.

17 These are enormous red flags, your Honor. Red flags
18 against forcing the receivers to either exercise or waive
19 the option. The case cries out for the put option to be
20 put on hold so that we can get to the bottom of what
21 Prospect is or is not doing. When I said early it's on
22 verge of becoming a public scandal, I did not use that
23 phrase lightly, your Honor. This is a very serious
24 situation, and there is -- it cries out for a deliberate
25 approach.

1 And then we get to the list of documents, your
2 Honor. I provided your Honor with my analysis of the
3 arguments that we have. In addition to what's in the AMI
4 report, the most latest financials, and the congressional
5 letter, I think that this list of documents not only is
6 within the scope of the documents to which the receivers
7 are entitled pursuant to the April 25th stipulation and
8 order, it's actually quite conservative given the
9 seriousness of the situation.

10 It is a rush to judgment to condemn Prospect at this
11 point, but there certainly is plenty of smoke and some
12 fire. And what we're focused on here is information we
13 absolutely need before we can decide whether to exercise
14 the put option.

15 Your Honor, we don't know whether the value of our
16 interest will include money that has been contributed by
17 Prospect Chartercare because we don't know what money has
18 been contributed. We know that there has been no
19 contributions that satisfy the requirements of the LLC,
20 but we don't even know the amount of dollars that they
21 contributed. That is a crucial necessity. We don't know
22 the extent to which the assets of Prospect Chartercare
23 have been pledged, which is a factor in valuation.
24 They're identified as a pledgee. Counsel states in his
25 argument that this will be corrected. So we have a

1 situation where we have audited financials which make a
2 statement, and then an unsworn statement by counsel, for
3 whom I have complete respect, but under the circumstances
4 the audited financials are what they are and say what
5 they say, and Prospect cannot contradict them through an
6 unsworn statement of counsel. That's simply just not
7 satisfactory for purposes of a receiver acting on behalf
8 of the Court in disclosing of assets of an entity in a
9 receivership. It just cannot be done that way.

10 The valuation information, your Honor, we are a
11 minority shareholder in an entity that is contemplating
12 selling all of its assets as soon as we're bought out of
13 the transaction. That's what Mr. Halperin acknowledged
14 at the last hearing. He makes the point there's no
15 binding agreement yet to do that, but, fine, that may be
16 the case, but that's what's intended.

17 So, basically, what we have is a corporate
18 opportunity. We're going to sell the assets of these
19 underlying subsidiaries, but we're not going to tell the
20 minority shareholder what the value is until the minority
21 shareholder is out of the picture, which is an abuse of
22 the minority shareholder at the very least, and certainly
23 affects valuation, your Honor. We want to know the value
24 of the company, and here they have valuations that they
25 don't want to share with us, even though, A, we're the

1 minority shareholder, B, we have a right to look at the
2 books and records by the LLC agreement.

3 So under those circumstances, your Honor, I don't
4 see that any of the requests we made for documents are
5 unreasonable, and I would just ask that the Court order
6 them and provide a reasonable period of time for
7 compliance, extend the period of time to exercise the put
8 option through some short period of time after the
9 expiration of that reasonable period of time, which I
10 would suggest the initial period would be 90 days, or if
11 they can get them sooner, we would like 90 days from when
12 they get them to exercise the put option, and proceed
13 from there.

14 At this point I don't know what's going to happen to
15 Prospect. With the Congress involved, with the Attorney
16 General involved, with the monitor dissatisfied, I don't
17 know what's going to happen with Prospect. But that's a
18 workable framework, and we can return to the Court if
19 over that time period we have to ask for more or if we
20 have to ask for further or different relief.

21 I will just say, your Honor, that the elementary
22 principle that a party with an option who is induced to
23 delay exercising that option through the breach of
24 contract of the other party is entitled to an equitable
25 extension of time. That's a simple basic equity, and

1 that's what we have here, your Honor. We're basically
2 being put in a position of either buying a pig in a poke
3 or waiving the right to buy anything at all, and that's
4 not equitable.

5 That's all I have, your Honor.

6 THE COURT: Counsel, so we've talked about a lot of
7 things. Let's talk about what's before the Court today.

8 We have an LLC agreement that CCCB and Prospect
9 entered into that other than some books and records
10 provisions and certain rights of board members and a
11 minority shareholder, it was just left out of the
12 agreement what type of diligence CCCB can do in terms of
13 determining whether or not they're going to exercise the
14 put option. Although, there is a process in place if the
15 put option is exercised, how that process will work
16 through, and I just want to understand that.

17 Put aside the Court's order right now. I'm just
18 looking at what rights do you believe that CCCB has to
19 this information under the LLC agreement. Is it books
20 and records? Is it something else? Where is the right
21 to obtain this implied exercise in the put?

22 MR. SHEEHAN: Thank you, your Honor. I appreciate
23 putting aside that issue under the April 25th stipulation
24 and order, because that's not part of my argument. So
25 putting that aside, your Honor, the right to access books

1 and records is in the LLC agreement itself, number one.
2 Number two, every contractual undertaking is accompanied
3 by a duty to exercise good faith and fair dealing to
4 allow the party to benefit from that right under the
5 contract, and providing information, financial
6 information, in order to enable an intelligent decision
7 as to whether or not to exercise an option is part of
8 that.

9 Your Honor, we have a situation where one party to
10 the contract, Prospect Chartercare, and Prospect East,
11 the majority shareholder, have the information. They
12 have a -- there's an inequitable relationship with
13 respect to access to information. They have it. We
14 don't. We have a right to take certain measures, but we
15 don't have the information we need to decide whether or
16 not to do that. So I would say it's twofold. It's in
17 the books and records provision and it's the implied
18 obligation of any party to a contract to exercise good
19 faith and fair dealing and do what is necessary to enable
20 the other party to intelligently exercise a right under
21 the contract.

22 THE COURT: So then let's fast forward -- I'm sorry.
23 Go ahead.

24 MR. SHEEHAN: I'm sorry. I apologize.

25 The third point is the structure of the agreement

1 itself, as I pointed out earlier, contemplated that the
2 capital contributions would be done and in the entity by
3 the time the option was exercised. So even the timing
4 for the exercise of the option was after that event
5 occurred. It makes no sense for the minority shareholder
6 to have the right to exercise the option, but not the
7 right to verify that in fact the contributions have been
8 made.

9 Indeed, your Honor, there's a fourth point. The
10 books and records provision is in the contract, but there
11 is also the requirement that for any capital contribution
12 to qualify, the minority shareholder has to accept it,
13 approve it. So we have another level of disclosure of
14 information that was required under the contract that has
15 not been binding.

16 That's it, your Honor.

17 THE COURT: So let's fast forward up to the
18 stipulation and the order that was entered by the Court.
19 My recollection is there were a lot of things that
20 counsel was requesting. We got that down to a number of
21 things that were agreed to. And there was kind of that
22 catch-all phrase in there about other documents,
23 documents that may be required, 15 days, whatever else.

24 It appears that this request is far broader and gets
25 into a lot of other things that we dealt with in the

1 stipulation and the order the Court entered. So is it
2 your position that this is just that the door was opened
3 to anything else you may decide you need after that
4 September order was issued?

5 MR. SHEEHAN: It isn't my position, your Honor, that
6 the expressed language of the stipulation, which Prospect
7 agreed to and therefore became a binding contract, and
8 then was entered by the Court, set forth the standard,
9 any information that the receivers reasonably require in
10 the evaluation of the put option.

11 If Prospect at the time had felt they didn't want to
12 leave an opening, then they shouldn't have agreed to that
13 in the stipulation. I can assure your Honor that we
14 never would have entered into a stipulation that didn't
15 give us that right.

16 Your Honor -- when your Honor says that what we're
17 seeking is broader than what was considered at the time,
18 that's partly true and partly not correct. The part
19 that's not correct is that we've always been trying to
20 get the information on the capital contribution. That's
21 been throughout. These other issues having to do with
22 valuations of the entities, that also was part of the
23 original request that our appraiser had put together in
24 the index. The point having to do with financial
25 statements of other Prospect entities, that's new. But

1 we had no idea, your Honor, that there was a pledging of
2 the local entities to satisfy a 1.3-plus billion dollar
3 indebtedness under a master lease agreement, to say
4 nothing of the additional loan of 112 million.

5 So to the extent that it is broader than what was
6 being considered at the time, it's because it's
7 subsequent events.

8 Your Honor, since then the scrutiny and, as I say,
9 the red flags concerning Prospect have become enormously
10 more significant, and I think -- our impressions, I
11 should say, in putting in a broad allowance in the
12 stipulation with such additional information as we may
13 require, because as events turned out, it is apparent
14 that Prospect is up to something, and we need to get to
15 the bottom of it.

16 THE COURT: Okay. So, just again, the reason that
17 you are looking for the financials of the other entities
18 is because of the sale-leaseback and some other loans?
19 Are these the same ones that counsel at least represented
20 at the last hearing? And I understand you haven't gotten
21 verification that the local entity is not encumbered on,
22 or that there's no issue there.

23 MR. SHEEHAN: There are two reasons, your Honor.
24 One has to do with the liability of the local corporation
25 and entities on the larger indebtedness, and the other is

1 Prospect Medical Holdings is the guarantor of the
2 obligation to make the long-term capital contribution.
3 And the solvency of Prospect Medical Holdings is a
4 factor. We don't know right now whether if the put
5 option is exercised and a value of, let's say, 20 million
6 dollars is placed on CharterCARE Community Board's
7 interest, then there's the money to pay that, whether
8 Prospect East has the money to pay that. According to
9 their current books, they're insolvent, like Prospect
10 Holdings in the sense that their liabilities greatly
11 exceed their assets.

12 So we're entitled to decide whether to exercise the
13 put option to take into account collectability. So it's
14 both the exposure on the overall indebtedness, and then
15 collectability through the guarantor, Prospect.

16 THE COURT: Thank you very much, counsel.
17 Attorney Halperin.

18 MR. HALPERIN: Thank you, your Honor.

19 Your Honor, I think this is a massive overreach by
20 the receiver, and the entire process that we've been
21 engaged in here relating to the stipulation has been
22 aimed at getting them preliminary information so they can
23 decide whether or not to execute -- to exercise the put
24 option. And all of the financial information that has
25 ever been discussed and has previously been agreed to,

1 and all the lists that have previously been exchanged,
2 until this recent round, have properly focused on what an
3 evaluation expert might want in valuing Prospect
4 Chartercare LLC, which is the entity in which the
5 receiver, Mr. Hemmendinger, has the 15 percent
6 interest.

7 What's happening now is there are allegations that
8 are being made that are extremely broad, all kinds of
9 wrongdoing of failure to comply with obligations under
10 the LLC agreement, as well as a host of other obligations
11 that aren't even part of the LLC agreement. And this is
12 an attempt to conduct discovery through this Court using
13 this very narrow question which is before the Court to
14 shortcut a proper discovery process in a case that might
15 actually be ending some place.

16 We do have a case before you, and they can certainly
17 conduct discovery on those allegations, and the Attorney
18 General is going to conduct their procedure, and the
19 monitor is going to conduct their procedure. I do want
20 to say that I disagree with many things that Mr. Sheehan
21 has indicated that the monitor report states. The
22 monitor report, if you read it, actually is asking for
23 more information. There is not a conclusion here that
24 the Prospect entities haven't achieved the capital
25 contribution requirements. There are categories that

1 were submitted that are not confirmed, and they say we
2 need to confirm them. There's an example, capital
3 infusion, and if you look at Page 25 of it, you'll see
4 very clearly there's a chart that shows you submitted
5 figures on Page 25 versus confirmed figures. And then
6 after that chart they say they need additional
7 information. So these are allegations, but this isn't a
8 forum for us or anyone to determine whether or not
9 capital contributions have been properly met. It's not
10 even the forum, this hearing, for whether or not there's
11 been compliance with other provisions of the LLC
12 agreement.

13 I believe we should stay focused on what this has
14 been about. And we've been doing this for a year now.
15 And this is about, do they have enough preliminary
16 information to decide to kick off an actual valuation?
17 If they elect to go forward with the put option, we get
18 into a formal appraisal process. If on the strength of
19 actual experts information comes forth that would suggest
20 that there's some kind of wrongdoing or inadequate
21 information, that would seem to me to be the time where
22 we have evidence that would allow you to decide whether
23 to equitably extend this put option. But, now, this is
24 about allegations that are being made. They want to
25 delay -- I'm not even sure that they merely want to delay

1 the process. What they want to do is litigate
2 allegations while their put option is extended. I
3 wouldn't even have a problem if they said: Your Honor,
4 we're going to pursue all these allegations in the
5 appropriate case in the appropriate forum. We're going
6 to draft them, and we're going to do discovery, but, in
7 the meantime, we would like you to exercise your
8 authority to extend out this put option so we can do this
9 in a proper forum. But they're saying, Give me all of
10 this discovery, whether we have asserted claims or not,
11 whether they belong in this case or not. It's somewhat
12 reminiscent of an early part of this receivership -- the
13 other receivership, I should say, the pension
14 receivership, where there was open-ended discovery
15 without any claims or allegations that eventually
16 resulted in claims being brought. But here we're not
17 dealing with a receivership, we're dealing with an actual
18 case that's been pending.

19 You know, to touch on the some of the specific
20 points. We are fine with the valuation information of
21 Prospect Chartercare LLC. We're fine with
22 audited/unaudited financial statements. We're fine with
23 providing if there's any additional information on the
24 capital contributions. But we said that those have all
25 been provided, and they have that. The fact that the

1 monitor has questions is a different issue. If they want
2 to challenge it, that's got to be in a different forum,
3 because we've given them the information.

4 They're asking for information on Prospect Medical
5 Holdings, the parent company, the entity that is engaged
6 in the transactions that are in these congressional
7 letters and whatnot. Now, it's no secret that the unions
8 have asked the congressional members to get involved in
9 this. They clearly have done no independent
10 investigation. They are putting these things out there
11 for their constituent groups, and we understand that.
12 But there will be a process that we'll get to the bottom
13 of whether there's any fire beneath the alleged smoke,
14 but, again, can we really do that in this forum where
15 we're trying to focus on whether they're going to
16 exercise an option on the 15 percent interest under the
17 LLC agreement?

18 I would suggest to the Court that if we stay
19 focused, the order should be that we -- which we've
20 agreed to -- provide the financial information, updated
21 financial information, unaudited current financial
22 information on the entity that a valuation expert would
23 have to value. And if somewhere down the road they have
24 actual evidence of wrongdoing, as opposed to allegations,
25 they should assert that in an appropriate case, seek an

1 appropriate order at that point in time.

2 Now, they're probably concerned right now that their
3 right to exercise the put option expires based on this
4 hearing concluding within a 30-day period. That's really
5 the only matter of any real urgency here. If you
6 conclude that they're entitled to do something other than
7 receive the financial information relating to this
8 entity, I would think that would be the only conceivable
9 relief that maybe, you know, we go out 60 days so they
10 can do a proper file, whatever case they want to file,
11 seek whatever injunction they want to file. But they're
12 asking for injunctive relief here essentially based upon
13 allegations that are not before the Court. So I would
14 ask that the Court simply require us, which we've offered
15 to do, to provide all the appropriate financial
16 information that is currently available, that being the
17 financial statements audited/unaudited, and not order us
18 to provide financial information on Prospect Medical
19 Holdings.

20 We have agreed and will clear up the errors in the
21 financial statements. I agree with Mr. Sheehan that a
22 statement by counsel should not be considered sufficient.
23 And I brought back to the client the fact these errors
24 exist. They have confirmed these are errors. We have
25 confirmed that -- at least they have told me there's

1 nothing on record, and I'm sure if there was something on
2 record in the form of a UCC, Mr. Sheehan probably would
3 have brought it forth like he's brought forth all these
4 other documents.

5 So I'm confident we're going find out that there's
6 no lien or encumbrance, and what they did is they took
7 the note that exists in the PMH financial, they lifted
8 it, and, you know, in a very unfortunate way took that
9 language and plopped it into the other entities, and it's
10 wrong. They told me that they agreed that they were
11 going to get that cleaned up. But the representation is
12 made, and I believe it to be true, or I wouldn't be
13 making it, and I've confirmed with multiple sources that
14 there is no lien, there is no pledge, the entity is not
15 responsible for sale-leaseback transaction, which is the
16 subject of all the complaints relating to dividends. It
17 goes to the parent entity.

18 The fact that there's a guarantee, I think, again,
19 now we're going down this rabbit hole, they haven't even
20 exercised the option, we haven't got the valuation, there
21 hasn't been a failure to pay, and they want to do
22 discovery on the financial wherewithal of the guarantor.
23 I believe that's going far afield, and we should stay
24 focused on what we're here for.

25 Thank you, your Honor.

1 THE COURT: Counsel, let's talk about the capital
2 contribution, whatever that number is. I read in the
3 papers basically saying that they've been provided, and
4 it somehow has to do with whatever filing with the
5 Attorney General. Could you explain to me in terms of
6 what information they've been given about the capital
7 contribution, which may affect either their percentage
8 interest or the value?

9 MR. HALPERIN: Sure. So the documents that were
10 provided to the Attorney General include the spreadsheet
11 and the back-up for the capital contributions, and those
12 very same documents were provided to Mr. Sheehan's
13 office, and those are the same figures that are
14 identified in this monitor's report.

15 So, as I say, they add up to meeting the capital
16 contribution requirement of the original 50 million
17 dollars. There was an additional 10 million as a result
18 of a sale of some real estate that was added into an
19 extension of time, and I know from reading the report
20 that there's some confusion as a result of an attorney
21 leaving Prospect, Mr. Berman, as to whether or not the
22 extension was intended to cover the original 50 or
23 intended to cover the 60. I'm certainly not in a
24 position to resolve that question. But the long and
25 short of it is, whatever information that has been

1 provided to the Attorney General's Office has been made
2 available to the receiver, and that's all the information
3 that we have.

4 Now, whether or not there's more recent additional
5 capital contributions, I don't know that. That's been
6 asked of me, and I told Mr. Sheehan I'd be happy to find
7 that out, and I don't see any reason why they wouldn't
8 provide that if it's been since the date of the Attorney
9 General, as long as it's something that has been compiled
10 that is readily available.

11 THE COURT: What about the fact -- so, thank you.

12 What about the fact that, it seems like there's
13 agreement at least -- forget about the wording -- but
14 that the monitor for the Attorney General has requested
15 more information to justify or back-up based upon the
16 numbers? So certainly if they're asking for it, that
17 wouldn't be something that Attorney Sheehan has at this
18 time. Is the thought that when that is given to the
19 monitor, that back-up will also be provided to receiver's
20 counsel?

21 MR. HALPERIN: Your Honor, I don't see any problem
22 with it, but I don't know what the monitor had. The
23 letter is dated March 20. So I honestly know where we
24 are in July, who has what. This is something that just
25 came up today, this monitor report from Mr. Sheehan, but

1 I'm happy to provide him with whatever information has
2 been provided to the AG that is public information. I
3 have no problem. If anything is confidential, I'll let
4 him know that, but last time around everything that was
5 provided was made available. I don't perceive that to be
6 a problem. But I don't know where they are in responding
7 to the monitor request.

8 THE COURT: Thank you very much.

9 Anything further, Attorney Sheehan?

10 MR. SHEEHAN: Yes, your Honor. The production
11 documents that was given to us, of documents that
12 Prospect provided to the Attorney General, was in January
13 of 2020. And the report from the monitor indicates that
14 subsequent to then, for example, on February 18th, the
15 Attorney General directed Prospect to provide a complete
16 response, et cetera. On February 21st Prospect submitted
17 responses. This is all after this production, the
18 beginning of the January of 2020.

19 The point that Mr. Halperin makes is a little bit --
20 and there may be a potential resolution in it, or I may
21 be simply not understanding it. At one point he suggests
22 that he has no objection to the Court extending the time
23 for the exercise of the put option and allowing the case
24 to go forward with normal discovery. This case involves,
25 your Honor, allegations of fraudulent transfers, very

1 broad allegations that would fully encompass the
2 658 million dollars that went to Leonard Green.

3 So if that's what is contemplated, our only concern
4 is timing, your Honor. It appears that there are
5 transactions underway to divest Prospect Medical of
6 further funds to Leonard Green, and we're concerned about
7 starting a new round of discovery and finding out that
8 the horse is already out of the barn by the time we get
9 the answers, and then Prospect Medical is further unable
10 to meet its obligation.

11 But if that's the offer, to postpone the exercise of
12 the put option indefinitely pending discovery in this
13 case, that's one thing. On the other hand he says, Go
14 ahead and exercise the put option and then ask for an
15 equitable extension. That is like putting your hand in
16 the trap, and then having it slammed shut on your hand,
17 and then asking someone to come along and please open up
18 the trap so you can take your hand out. That, in my
19 mind, your Honor, makes no sense at all.

20 So I don't know quite where we are, but, in my mind,
21 it's absolutely clear that there has not been proper
22 disclosure by Prospect, and that the receivers really
23 have no way of making a decision.

24 And, by the way, your Honor, the decision not to
25 exercise the put and allow it to expire is as much a

1 decision as the decision to exercise the put. It's
2 giving up a right one way or the other.

3 And we filed this motion for an injunction through
4 Attorney Fine before the receivership in March of 2019.
5 We have been trying for a long time to get this
6 documentation, and we've been asking for the same thing
7 the whole time, an extension of the time to exercise the
8 put to enable us to get the information.

9 MR. HALPERIN: Your Honor, may I respond to that?

10 THE COURT: Absolutely.

11 MR. HALPERIN: Okay. The motion that was filed back
12 in March was followed up with those stipulations and
13 agreements and providing all the documents. To the
14 extent that we provided everything that was currently
15 available the last time we had the order, and we were up
16 to date in January, the fact that additional documents
17 were submitted to the Attorney General after that doesn't
18 put us in default, because we complied at that time. If
19 Mr. Sheehan wants to go to the Attorney General and get
20 those documents, he's free to do that. If he wanted to
21 make a request to us for any subsequent documents, he
22 could have done that. But we're not in default because
23 additional information was submitted -- requested and
24 submitted, and, again, no problem providing that, but
25 this has always been about the financial information.

1 I'd like to clear up what Mr. Sheehan thought I was
2 proposing. I was not proposing that the Court today
3 exercise equitable authority to extend out this put
4 option to some indefinite time period so we can litigate
5 the case. Absolutely not. What I was suggesting is that
6 there's only a 30-day window in our agreement currently,
7 and that currently we're dealing with the financial
8 information. So to the extent the Court orders us, and
9 you don't have to order us because we're willing to do
10 so, to provide the appropriate limited financial
11 information, and additional time is needed for us to
12 produce it and for them to review it, and for them to
13 exercise their option, I'm perfectly fine agreeing to
14 that limited extension of time to go along with the
15 documents. But anything else should be based upon a
16 different set of pleadings and request for injunctive
17 relief to the extent they're trying to go after
18 allegations in a LLC agreement where something unrelated
19 was before you today. And they'll have time to do
20 that and come back to you if they think they can
21 establish a right to that more broader injunctive
22 relief.

23 THE COURT: Thank you for clarifying. I understand
24 a lot better now.

25 MR. SHEEHAN: May I be heard, Judge?

1 THE COURT: Absolutely.

2 MR. SHEEHAN: My point with respect to the document
3 production in January of 2020 was I thought -- addressing
4 the Court's inquiry to Mr. Halperin -- was the subsequent
5 document production. What we know is that the document
6 production in January of 2020 was incomplete. The
7 monitor told us that. So there was not compliance. They
8 have the records internally. They neither gave them to
9 the monitor nor gave them to us in January of 2020.

10 And the second point is, the existing stipulation
11 does not have a 30-day window or extension of time in it.
12 It has two. It has if the Court were to deny the motion
13 for injunctive relief, there's 30 days. If the Court is
14 to grant the motion for injunctive relief, it's what the
15 Court should determine is the appropriate period of
16 time.

17 And, your Honor, Mr. Halperin's suggestion that the
18 injunction was put aside because of the document
19 production is belied by the language in the stipulation
20 that said that the injunctive relief is going to be held
21 in abeyance and can be reinstated, and was reinstated on
22 a timely basis.

23 Your Honor, so I'll come back to what we asked for
24 is that they be ordered to produce the documents in our
25 list, and that they do so -- if Mr. Halperin thinks he

1 can do so in 30 days, fine, and then we have 90 days
2 thereafter to exercise the put option. That's what I'm
3 asking for. And if the Court prefers that we simply turn
4 to the discovery in the actual case, I would ask for an
5 extension of time to exercise the put indefinitely.

6 It makes no sense, your Honor, for us to continue
7 with the case as a whole having exercised the put and
8 essentially been bought out of the entity. I mean, we
9 may have rights, we may not have rights, but they'll
10 certainly be different than the rights we have as an
11 active shareholder. So to force us to essentially be
12 bought out before we can get into the merits of our
13 derivative claim is a trap to prevent that claim from
14 being litigated in a meaningful way.

15 THE COURT: Thank you very much, counsel. I think I
16 have enough at this point.

17 The Court is going to look through -- look through
18 the documents, and I'll issue a decision on the motion.
19 What I'm going to do at this point is we're going to
20 continue the hearing until the Court can issue a
21 decision. I think we should be able to get something out
22 to you on this by the end of next week. And the clerk
23 will be in touch in terms of rescheduling another hearing
24 date for this, just so until the Court makes a decision,
25 we don't have to deal with the expiration that way. I

1 appreciate everybody's candor. I'm focused on what the
2 issues are before this Court, both the LLC agreement and
3 the order, and I've got my arms around it at this time.

4 Is there anything else before we the break?

5 First, the court reporter, if you need any
6 clarifications?

7 THE COURT REPORTER: No, I'm fine. Thank you,
8 Judge.

9 MR. HALPERIN: No, thank you, Judge.

10 MR. SHEEHAN: No, thank you, Judge.

11 THE COURT: Thank you very much.

12 I would ask the receiver or -- actually, either
13 Attorney Hemmendinger or Attorney Sheehan to order an
14 expedited transcript. This way I will have it in front
15 of me, so I certainly can get this out to everyone by the
16 end of next week.

17 With that, the Court will be in recess. Thank you
18 very much.

19 MR. SHEEHAN: Your Honor. It's Steve Sheehan.

20 It occurred to me, may the record include that
21 submission I gave to the Court by e-mail today?

22 THE COURT: The record will certainly -- the Court
23 file will certainly include anything you have sent in. I
24 will deal within the decision what the Court actually can
25 consider in making the decision, and I haven't looked at

1 them at this point.

2 MR. SHEEHAN: Thank you, Judge.

3 THE COURT: Thank you very much. The Court is in
4 recess.

5 (The proceedings concluded at 2:46 p.m.)

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Exhibit 12

From: [Danielle Smith](#)
To: [Benjamin Ledsham](#); [Max Wistow](#); [Stephen P. Sheehan](#); themmendinger@brscsm.com
Cc: [Preston Halperin](#); [Ekwon E. Rhow \(erhow@birdmarella.com\)](mailto:erhow@birdmarella.com); [Christopher J. Lee](#); [Dean Wagner](#); [W. Mark Russo, Esq. \(mrusso@frlawri.com\)](#)
Subject: PCC Document Production Pursuant to July 21, 2020 Court Order
Date: Friday, September 18, 2020 8:36:45 PM
Attachments: [image003.png](#)

Gentlemen: In accordance with the July 21, 2020 Court Order, we are providing you with access to a one-drive file containing responsive documents to Category 1, 2, 3-6, 7, and 12. I am unable to serve these documents on you via the Odyssey system due to the size of the file. Please let me know if you have any difficulty opening or accessing the attachments. You should be receiving the link shortly.

Danielle M. Smith,
Firm Administrator



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Exhibit 13

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E-MAIL
MAIL@WISTBAR.COM

September 24, 2020

By E-Mail and Regular Mail

Preston Halperin, Esq.
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860

Re: Prospect document production

Dear Preston:

We are in the process of reviewing the nearly 2,500 pages of document production your office made on Friday, September 18, 2020 at 8:37 p.m. It is already clear that the document production is missing many documents that should have been included, but it will take time for us to fully address that problem and many other potential problems with the document production, given the quantity of material that needs to be evaluated, as well as the apparent overlap with prior productions. We will try to complete that review by early next week and will advise you then of our additional issues with the document production.

However, we already can address certain deficiencies in Prospect's document production, concerning Prospect's designation of documents as confidential, Prospect's redaction of documents, and Prospect's failure to provide a privilege log. On behalf of both Receivers we are hereby advising you of these matters pursuant to our obligation under Rule 37 to attempt to secure proper discovery without court action.

IMPROPER CLAIMS OF CONFIDENTIALITY

As you know, in this most recent document production, Prospect claimed confidentiality for all or virtually all of the documents it produced, apparently hoping to prevent us from disclosing those documents to third parties, such as the Rhode Island Attorney General and the Rhode Island Department of Health in further support of our objection to the pending HCA and CECA applications. Prospect is seeking thereby to hinder us in asserting valid claims against those applications.

Preston Halperin, Esq.
September 24, 2020

Prospect is not entitled to restrict further disclosure. Prospect's current document production was ordered pursuant to Judge Stern's Decision and Order on July 21, 2020, copy attached. That Decision and Order does not allow Prospect to restrict further disclosure, and certainly does not allow such restriction on grounds of confidentiality. If Prospect wanted to limit Plaintiffs' ability to provide "confidential" documents to third parties, Prospect was required to obtain a new protective order, but did not do so. You clearly understood that, which is why on Thursday, September 17, 2020 you sent us the attached email attaching "a Stipulated Protective Order in the CCCB case," and asked us if we "have any problem with this order governing the documents that Prospect Chartercare LLC is getting ready to produce pursuant to Judge Stern's July 21, 2020 Order?" Without waiting for our response, you went ahead and claimed confidentiality the next day.

Your email on September 17th attached the Stipulated Protective Order Regarding Prospect Chartercare LLC entered on April 25, 2019. We certainly do not agree to applying that protective order to Prospect's current document production. We do not believe that any protective order is appropriate, given the overlap between the issues in this case and the issues in the HCA and CECA applications.

Moreover, that protective order is inapplicable on its face. The Stipulated Protective Order has the following scope:

1. **Scope.** This Order shall apply to documents produced by PCC pursuant to a Stipulation and Consent Order between the Parties relating to PCC's production of certain financial information in connection with CCCB's and/or the Receiver's evaluation of the "put option" set forth in the Amended & Restated Limited Liability Company Agreement of Prospect Chartercare, LLC (the "PCC Operating Agreement").

Prospect's current document production is pursuant to Judge Stern's Decision and Order on July 21, 2020, not the prior Stipulation and Consent Order. Accordingly, the Stipulated Protective Order does not apply to the current document production.

Prospect could not unilaterally restrict further disclosure simply by marking each document with the legend "PCC CONFIDENTIAL – SEE STIPULATION AND CONSENT ORDER DATED APRIL 25, 2019." Those legends are a nullity. We intend to share those documents with any third parties we choose. If you object, the burden is on you to get a protective order. We will oppose any such motion, given the public

Preston Halperin, Esq.
September 24, 2020

interest in these documents, and the fact that many of them have already been produced without any claim of confidentiality.

Moreover, the Stipulation and Consent Order dated April 25, 2019 does not entitle Prospect to restrict further disclosure of the current production. Although Judge Stern in his Decision and Order on July 21, 2020 referred to the April 25, 2019 Stipulation and Consent Order, that Decision and Order does not incorporate the confidentiality provision from the April 25, 2019 Stipulation and Consent Order. To the contrary, the only reference in the Decision and Order to the April 25, 2019 Stipulation and Consent Order was in footnote 4, stating that “[i]n accordance with the April 25, 2019 Stipulation and Consent Order, any information ordered to be produced pursuant hereto must be available to PCC and shall not include documents that are subject to the attorney-client privilege, joint defense privilege and/or attorney work product doctrine.” Those provisions have nothing whatsoever to do with confidentiality.

Indeed, it would have made no sense for the Decision and Order on July 21, 2020 to have incorporated the confidentiality provision of the April 25, 2019 Stipulation and Consent Order, since that provision in turn merely referred to the Stipulated Protective Order Regarding Prospect Chartercare LLC entered on April 25, 2019, which, as discussed above, by its express terms applied only to documents produced pursuant to stipulation and consent order. Judge Stern’s Decision and Order on July 21, 2020 was neither a stipulation nor a consent order.

Finally, although not relevant here because Prospect had no such right, even if Prospect had a right to restrict further disclosure of documents by simply labeling them confidential, that would not have permitted Prospect to label as “confidential” documents that are publicly available and have been previously produced without any claim they were confidential. However, it is already clear from our preliminary review of the documents that Prospect has done precisely that.

FAILURE TO PRODUCE A PRIVILEGE LOG

Insofar as Prospect has withheld any documents or portions of documents on grounds of privilege, Prospect has to provide a privilege log complying with Rule 26(b)(5), i.e., Prospect must “describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.”

Preston Halperin, Esq.
September 24, 2020

Large sections in hundreds of pages of the current production have been redacted, and some of those redactions are labeled attorney-client privilege. The requirements for a privilege log apply to redactions as well as entire documents withheld from production. See In re Marriott International Customer Data Security Breach Litigation, 2020 WL 5525043 *3 (D. Mary. 2020) (“[F]or each proposed redaction, ‘the party asserting privilege/protection must do so with particularity for each [redaction], for which privilege/protection is claimed.’” (quoting Victor Stanley, Inc. v. Creative Pipe, Inc., 250 F.R.D. 251, 267 (D. Md. 2008))). Please provide us with a privilege log listing each item that was redacted on grounds of privilege and proving the necessary information with respect to each item.

Obviously, we have no way of knowing how many, if any, entire documents were withheld based on claims of privilege. Please advise whether any documents were withheld, and please provide a privilege log listing and providing the required information for any documents that have been withheld on grounds of privilege.

IMPROPER REDACTION OF DOCUMENTS

Prospect has produced many documents with blacked-out areas which are not marked to show they were redacted under claims of privilege. Prospect provides no grounds whatsoever to justify those redactions. Thus, we have no idea why those sections were redacted.

Prospect certainly is not entitled to redact portions of documents because Prospect claims that the redacted information is irrelevant. That would turn document production into an exercise in redaction since virtually every relevant document has portions that are irrelevant. See Bartholomew v. Avalon Capital Group, Inc., 278 F.R.D. 441, 451-452 (D. Minn. 2011) (“Redaction is an inappropriate tool for excluding alleged irrelevant information from documents that are otherwise responsive to a discovery request. It is a rare document that contains only relevant information. And irrelevant information within a document that contains relevant information may be highly useful to providing context for the relevant information. Fed.R.Civ.P. 34 concerns the discovery of ‘documents’; it does not concern the discovery of individual pictures, graphics, paragraphs, sentences, or words within those documents. Thus, courts view ‘documents’ as relevant or irrelevant; courts do not, as a matter of practice, weigh the relevance of particular pictures, graphics, paragraphs, sentences, or words, except to the extent that if one part of a document is relevant then the entire document is relevant for the purposes of Fed.R.Civ.P. 34. This is the only interpretation of Fed.R.Civ.P. 34

Preston Halperin, Esq.
September 24, 2020


that yields 'just, speedy, and inexpensive determination[s] of every action and proceeding.' Fed.R.Civ.P. 1.").

Accordingly, please provide us with unredacted copies.

CONCLUSION

Please let us hear from you concerning whether or not we need to file a motion to compel production of any documents withheld under claim of privilege without a privilege log, and/or production of unredacted documents. Also, please confirm that you acknowledge that Plaintiffs' sixty days to exercise the put option has not begun to run because prospect's document production is incomplete.

Finally, as noted above, we believe it to be your burden to seek a protective order in order to limit further disclosure of the documents delivered to us on Friday.



Stephen P. Sheehan, Esq.

Very truly yours,



Thomas S. Hemmendinger, Esq. *per jbs*

Enclosures

Exhibit 14

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SHAD M. MILLER
KENNETH J. SYLVIA

October 1, 2020

By E-Mail and Regular Mail

Preston Halperin, Esq.
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860

Re: Prospect document production

Dear Preston:

In our letter of September 24, 2020, we addressed certain deficiencies in Prospect's document production that Prospect provided electronically at 8:37 p.m. on Friday, September 18, 2020. We also expressly deferred addressing the completeness of that production until we had completed our review of the materials

Since then we have reviewed Prospect's document production sufficiently to determine that it is both grossly incomplete and disorganized into a 2,427 page "document dump" that makes it very difficult for Plaintiffs to understand the facts. This is especially so with respect to the documents that concern Prospect's claim to have satisfied the requirements in the Asset Purchase Agreement ("APA") and the Amended & Restated Limited Liability Agreement of Prospect CharterCARE LLC (the "LLC Agreement") for long-term capital contributions and routine capital contributions

Specifically, although Prospect has produced to Plaintiffs thousands of pages of the same invoices and contract documents that Prospect had previously provided to Affiliated Monitors Inc. ("AMI") and/or the Attorney General, concerning Prospect's claim to have satisfied the requirements in the APA and the LLC Agreement for long-term capital contributions and routine capital contributions, Prospect did not produce to Plaintiffs its detailed correspondence with AMI or summaries it provided to AMI explaining the significance of those thousands of pages of invoices and contracts. Prospect also did not provide Plaintiffs with the workpapers upon which any journal or general ledger entries or spreadsheets are based, concerning Prospect's claim to have satisfied the requirements in the APA and the LLC Agreement for long-term capital contributions and routine capital

Preston Halperin, Esq.
October 1, 2020

contributions. These documents are essential to identify and analyze those expenditures upon which Prospect bases its claim to have satisfied the requirements in the APA and the LLC Agreement for long-term capital contributions and routine capital contributions

In other words, on September 18, 2020 Prospect provided Plaintiffs with (at least some of) the raw materials upon which its claim to have satisfied these obligations is based, but withheld the documents needed to organize and understand those materials. A fitting analogy would be if Prospect provided the thousands of parts that make up a car as proof that Prospect has designed a car, but refused to provide its manual that show how the car is to be assembled. That is why we refer to Prospect's production as a "document dump."

Although AMI attached to AMI's report some of its correspondence with Prospect, and Plaintiffs, with no assistance from Prospect, were able to obtain AMI's report from the Attorney General's website, that does not excuse Prospect from providing Plaintiffs with that correspondence directly. The Court's order called for production of all documents identifying all the long-term capital contributions, not merely those documents that Plaintiffs were unable to obtain from third parties, such as the Attorney General's website. The Order is clear, and Prospect knew it was required to produce all documents concerning these obligations, not merely the documents Plaintiffs were unable to obtain elsewhere. In fact, Prospect's production on September 18, 2020 pursuant to the Order dated July 21, 2020 included thousands of pages of invoices and contracts that Prospect knew Plaintiffs had already obtained from the Attorney General after Prospect supplied them to the Attorney General. Prospect would not have produced those documents if it believed that it was not required to produce documents that Plaintiffs had already obtained from third parties. Prospect apparently was happy to see Plaintiffs buried under those documents for a second time, and certainly deliberately failed to produce the shovels needed to dig out.

Moreover, Plaintiffs have no way of knowing whether AMI attached to its report all, or merely selective, correspondence and summaries it received from Prospect. Plaintiffs cannot and certainly should not be expected to rely on the extremely unlikely possibility that AMI attached to its report all the materials it received from Prospect.

In addition, there is an entire category of documents concerning Prospect's claim to have satisfied the requirements in the APA and the LLC Agreement for long-term capital contributions and routine capital contributions which Prospect

Preston Halperin, Esq.
October 1, 2020

provided to AMI but which AMI did not include in its report and which Prospect has completely failed to produce to Plaintiffs. We are referring to the documents Prospect gave AMI on May 6 and 7, 2020, as referenced in AMI's Second Interim Report at 4 n.3. These were expressly not addressed in or attached to AMI's report, but, according to AMI, they are to be addressed in AMI's next report, whenever that may be filed. Prospect must produce those documents to Plaintiffs now.

It should be noted that both Plaintiffs and AMI are engaged in the same task of attempting to verify Prospect's claim to have satisfied the requirements in the APA and the LLC Agreement for long-term capital contributions and routine capital contributions. AMI is operating under the authority of the Attorney General and the Department of Health, to evaluate the extent of Prospect's compliance with the conditions of the Attorney General's approval of Prospect's acquisition of Fatima and Roger Williams Hospital in 2014. Plaintiffs are proceeding pursuant to court order to obtain documents they need to intelligently decide whether to exercise the Put option. Prospect is supposedly cooperating with AMI, at least to a certain extent, but is completely obfuscating the issues when it comes to Plaintiffs. In other words, Prospect is failing to accord the same respect to Judge Stern's Order as it is according to the requests of the Attorney General and the Department of Health.

Under these circumstances, we intend to ask the Court for the following relief, unless on or before October 5, 2020 Prospect agrees to another stipulation and consent order with the following provisions:

1. Prospect must agree to produce all documents it provided to the Attorney General, either directly or through AMI, concerning Prospect's satisfaction of its obligation to make long-term capital contributions and routine capital contributions as defined in the APA and the LLC Agreement, or which Prospect contends should qualify towards that obligation even if they technically do not fulfill all of the requirements therefor in the APA and the LLC Agreement;¹

¹ For example, the APA and the LLC Agreement each require Prospect to secure CCCB's approval for any long-term capital contributions. Insofar as Prospect claims that a particular expenditure qualified as a long-term capital contribution even though CCCB's approval was not obtained, Prospect must produce all of the documents concerning that expenditure.

Preston Halperin, Esq.
October 1, 2020

2. Prospect must agree to produce all workpapers supporting any and all journal entries, general ledger entries, or any spreadsheets Prospect has created, either for internal use or external distribution, pertaining to the long term and/or routine capital contributions;
3. Prospect must agree to produce all documents that were requested, regardless of whether the documents could have withheld from production based on privilege if a privilege log had been provided, including but not limited to unredacted documents to replace the redacted documents that were produced;
4. Prospect must agree to designate a representative who will promptly submit to deposition and explain to Plaintiffs' counsel each and every item that Prospect claims qualifies as a long-term or routine capital contribution, and identify and explain the significance of all documents supporting that claim; and
5. Prospect must agree that the sixty-day period to exercise the Put option should not begin until Prospect has satisfied its obligations under 1-4 and Plaintiffs' expert has completed his inspection of Prospect's books and records as discussed below.

In addition, Plaintiffs intend to proceed with the relief Judge Stern granted in his order on July 21, 2020 for an on-premises inspection of Prospect's books and records. Please provide us with the earliest possible dates when our expert can attend at the offices of Prospect where its books and records are kept. Pursuant to paragraph 12 of the Order dated July 21, 2020, we hereby specifically seek to review all documents concerning Prospect's claim to have satisfied the requirements in the APA and the LLC Agreement for both the long-term capital contributions and routine capital contributions, including all documents concerning the expenditures and all ledgers, journal entries, spreadsheets or any other documents explaining and categorizing such expenditures.

We are making these demands pursuant to our obligation under Rule 26 to attempt to informally resolve discovery disputes without court intervention.

In response to our letter of September 24, 2020, you sent us an email on September 28, 2020, requesting that Prospect's document production under Judge Stern's order dated July 21, 2020 be treated by agreement as subject to the confidentiality order that applied to Prospect's prior document production. As we

Preston Halperin, Esq.
October 1, 2020

told you in our letter of September 24, 2020, in response to the same request, we do not agree. If Prospect wanted a confidentiality order in connection with any documents that Judge Stern ordered Prospect to produce, Prospect was required to request it in connection with its objection to our motion to compel production (or at least soon after the entry of the July 21, 2020 order, not belatedly broaching the subject for the first time the afternoon before the 60 day deadline for Prospect's compliance). Prospect chose not to do so, the resulting order compelling production makes no allowance whatsoever for special treatment of documents that are allegedly confidential, and the time for production arrived without a confidentiality order in place.

Moreover, it is not appropriate to apply the old confidentiality order to the current production. We agreed to that order by stipulation. Prospect's prior document production was also by stipulation, i.e., the product of negotiation and give and take between the parties. We agreed to a confidentiality order in connection with that production to accommodate Prospect because Prospect accommodated us by agreeing to produce documents by stipulation, rather than insisting we obtain an order compelling production. We insisted, however, that the confidentiality order expressly state that the order only applied to production of documents that was made by stipulation. In fact, it expressly is limited to "documents produced by PCC pursuant to a Stipulation and Consent Order between the Parties...."

However, Prospect refused to stipulate to produce the documents that were the subject of Plaintiffs' motion to compel production that was granted by Judge Stern's order dated July 21, 2020. Instead, Prospect objected to the motion, and such documents are to be produced by court order, not stipulation. Accordingly, the confidentiality order is inapplicable to the documents produced in compliance with that Order, and we are not willing to stipulate to its applicability.

As you note, our motion to compel was pursuant to the provisions in the April 19, 2019 Stipulation and Order that expressly gave Plaintiffs the right to file a motion to compel production if Prospect failed to produce the documents it stipulated it would produce. However, nothing in the April 19, 2019 Stipulation and Order provided that, if Plaintiffs' motions to compel were granted and Prospect was ordered to produce documents, then Prospect's production would be subject a confidentiality order. To the contrary, the April 19, 2019 Stipulation and Order expressly provided for confidentiality only pursuant to the confidentiality order, which on its face applies only to documents that were produced by stipulation.

Preston Halperin, Esq.
October 1, 2020

Finally, circumstances have changed since April 19, 2019, when Plaintiffs agreed to the confidentiality order that applied to document production by stipulation, such that it now would be contrary to public policy and the rights of the Plan participants for Prospect to use claims of confidentiality to shield from third parties Prospect's failure to make the required long-term capital contributions and routine capital contributions as defined in the APA and the LLC Agreement.

As you know, Prospect Medical guaranteed Prospect East's performance of those obligations. As you also know, there are administrative proceedings currently pending before the Department of Health and the Attorney General in which Prospect Medical is seeking leave to transfer over \$12 million to shareholders at a time when Prospect Medical is insolvent, for the apparent sole benefit of Messrs. Lee and Topper, which will hinder and possibly frustrate Plaintiffs' ability to collect on any judgment it obtains against Prospect Medical for breach of that guaranty. It was not until March of 2020 that there was public disclosure of these applications. This was not on the horizon in April of 2019.

Moreover, approval of these applications is conditioned upon proof that Prospect East and Prospect Medical have complied with their obligations under the APA and the LLC Agreement. Plaintiffs are objecting to Prospect's applications in those administrative proceedings. Plaintiffs should be entitled to use any materials they obtain from Prospect to demonstrate in those administrative proceedings that Prospect Medical and Prospect East are in default of their obligation to make the required long-term capital contributions and routine capital contributions as defined in the APA and the LLC Agreement.

In a phone call Monday, September 28, 2020, you took the position that no privilege logs are required for documents produced pursuant to the Order dated July 21, 2020. Presumably, you recognized that is incorrect, since you did not reiterate that position in your email later that day. In any event, as we noted in our letter dated September 24, 2020, there is no provision in that Order excusing Prospect from complying with its obligation under Rule 26(b)(5) to provide a privilege log.

As you know, there is extensive caselaw holding that withholding requested but allegedly privileged documents without providing a privilege log results in the waiver of any privileges. Under that caselaw, Prospect has already waived the privilege. Accordingly, we demand that Prospect produce all documents that were requested, regardless of whether the documents could have withheld from production based on privilege if a privilege log had been provided, including but

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ATTORNEYS AT LAW


7

Preston Halperin, Esq.
October 1, 2020

not limited to the redactions based on attorney-client privilege. Of course, redactions for which no privilege was even claimed were improper and unredacted documents must be produced.

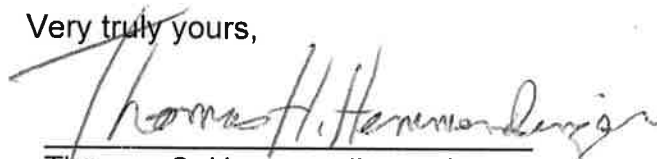
Also, please confirm that that Prospect agrees that Plaintiffs' sixty days to exercise the put option has not begun to run because Prospect's document production is incomplete.

Finally, as noted in our letter of September 24, 2020, it is Prospect's burden to seek a protective order if Prospect wishes to limit further disclosure of the documents delivered to us on September 18, 2020.



Stephen P. Sheehan, Esq.

Very truly yours,

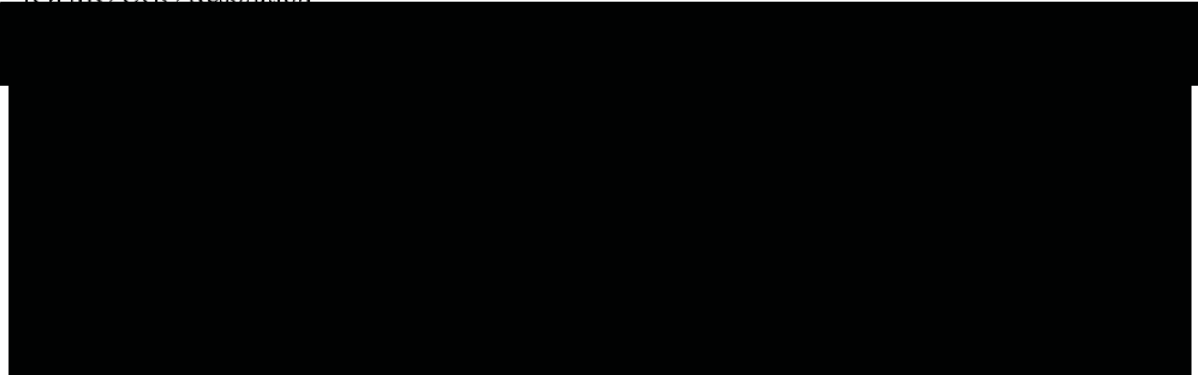


Thomas S. Hemmendinger, Esq.
per SPS

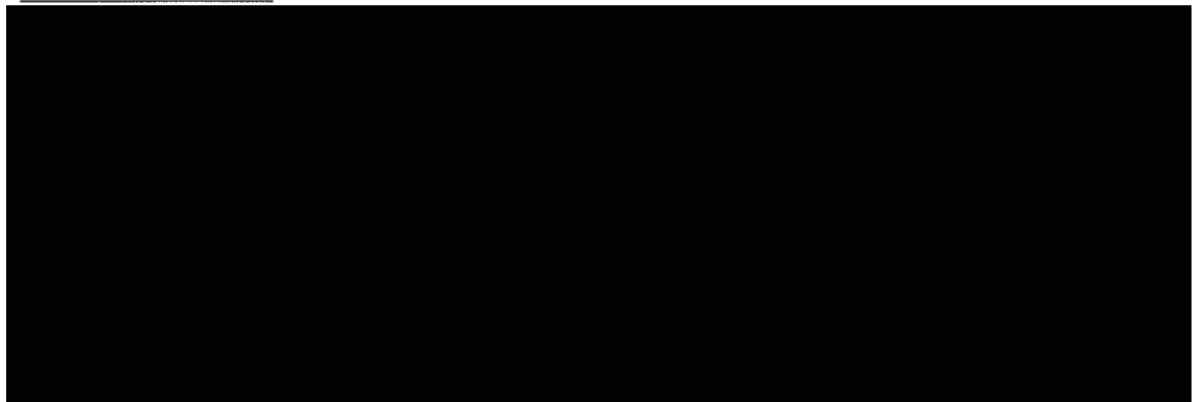
SPS/lh

Exhibit 15

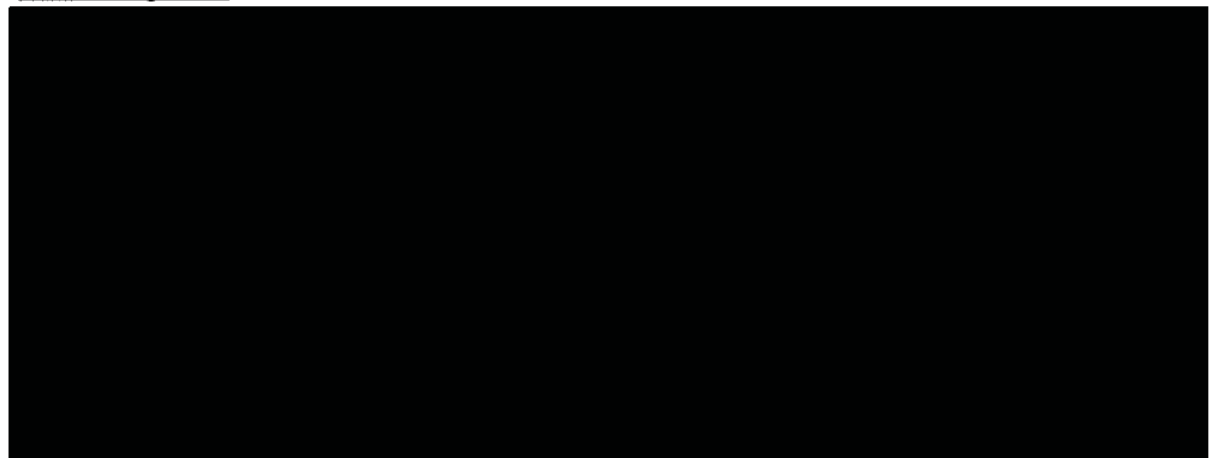
RWMC CGC Resolution

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OLF CGC Resolution

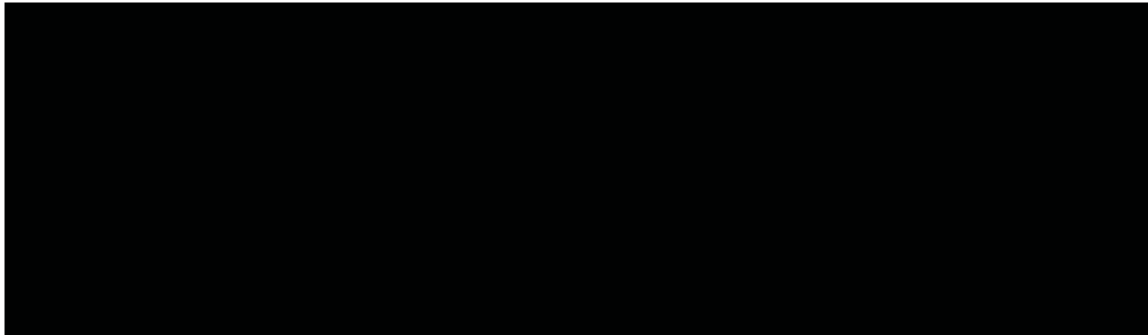
A large black rectangular redaction box covering the entire content of the 'OLF CGC Resolution' section.

Risk Management

A large black rectangular redaction box covering the entire content of the 'Risk Management' section.

¹ CMS Cop 482.13(a)(2)
TJC Standard RI 01.07.01 EP 20
² CMS Cop 482.13(a)(2)
TJC Standard RI 01.07.01 EP 20

Exhibit 16



Resolutions

Medical Staff Bylaw Changes

Mr. Berman **Attorney-Client Privileged**



Delegated Governing Body Committee

Mr. Berman **Attorney-Client Privileged**



Exhibit 17

Stephen P. Sheehan

From: Preston Halperin <phalperin@shslawfirm.com>
Sent: Thursday, September 17, 2020 4:03 PM
To: Stephen P. Sheehan; themmendinger@brccsm.com
Cc: Danielle Smith
Subject: document production
Attachments: PC-2019-3654 - Stipulated Protective Order Entered.pdf

Hi Steve and Tom,

Attached is a Stipulated Protective Order in the CCCB case. Do you have any problem with this order governing the documents that Prospect Chartercare LLC is getting ready to produce pursuant to Judge Stern's July 21, 2020 Order?

*Preston W. Halperin,
Managing Partner*



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STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD

:

:

v.

:

C.A. No.: PC-2019-3654

:

SAMUEL LEE, ET AL

:

STIPULATED PROTECTIVE ORDER
REGARDING PROSPECT CHARTERCARE LLC

Upon agreement of Plaintiff Chartercare Community Board ("CCCB"), Defendant, Prospect Chartercare LLC. ("PCC") and third-party Stephen Del Sesto, Receiver ("Receiver") for the St. Joseph Health Services of Rhode Island Retirement Plan (collectively the "Parties") for Entry of a Stipulated Protective Order regarding the production of confidential and/or proprietary information, and the Court having reviewed and considered the proposed order, and good cause appearing therefor, it is hereby:

ORDERED:

1. **Scope.** This Order shall apply to documents produced by PCC pursuant to a Stipulation and Consent Order between the Parties relating to PCC's production of certain financial information in connection with CCCB's and/or the Receiver's evaluation of the "put option" set forth in the Amended & Restated Limited Liability Company Agreement of Prospect Chartercare, LLC (the "PCC Operating Agreement").
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 produced by PCC that bears the legend "PCC-CONFIDENTIAL" to signify that it contains information deemed to be confidential by the producing party. It shall not include documents that CCCB or the Receiver obtains from another source.

3. **Duty of PCC in designating Confidential Material.** Documents shall not be designated as Confidential Material unless the documents are not publicly available, or contain personal identifying information (meaning social security numbers or other information of a non-public nature) of third parties.

4. **Permissible Disclosure of Confidential Material.** Notwithstanding Paragraph 2, Confidential Material may be disclosed to (a) to CCCB; (b) to the Receiver; (c) to counsel for the Receiver and/or CCCB; (d) to the associates, secretaries, paralegal assistants and employees of such counsel to the extent reasonably necessary to render professional services; (e) to consultants, experts, or investigators retained for the purpose of assisting such counsel; to (f) persons with prior knowledge of the Confidential Material and their agents; and to (g) 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 (e) above, any party or counsel making Confidential Material available 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 promptly be provided to counsel for PCC.

5. Confidential Information subpoenaed or requested by a court, administrative or legislative body. If Confidential Information in the possession of a party or its counsel is subpoenaed or otherwise requested by any court, administrative or legislative body, or any other person purporting to have authority to subpoena or request such information, the party receiving the subpoena shall give written notice of the subpoena or request to counsel for PCC five (5) business days prior to the time when production of the information is required. In the event that the subpoena/request purports to require production of such Confidential Information on less than five (5) business days' notice, the party receiving the subpoena shall give immediate telephonic notice of the receipt of such subpoena or request, and forthwith deliver by hand, email, or facsimile a copy thereof, to counsel for PCC. Absent a further court order to the contrary, the party receiving the subpoena may comply with the subpoena or request.

6. Declassification. In the event that CCCB or the Receiver seeks to disclose Confidential Material in a manner outside of what is provided in Paragraph 4 or 5, CCCB or the Receiver 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 counsel for PCC. PCC 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. PCC shall have five (5) days in which to file a reply. Alternatively, CCCB and /or the Receiver may seek to obtain a court order in the federal court litigation filed by the Receiver against PCC lifting the confidentiality restriction.

7. **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 6, 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.

8. **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 PCC sufficiently in advance so as to enable it 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.

9. **No Waiver.**

- (a) Review of Confidential Material by any persons identified in Paragraph 4, 6 or 7 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

PCC inadvertently or unintentionally produces any Confidential Material without marking or designating it as such in accordance with the provisions of this Order, PCC 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.

10. **Inadvertent Production of Privileged Material.** CCCB, the Receiver, counsel to CCCB and/or to the Receiver, PCC, and counsel to PCC 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.

11. **Privilege Log.** PCC shall not be required pursuant to this Order to produce documents that are subject to the attorney-client privilege, joint defense privilege and/or attorney work product doctrine, provided that any objections to production of documents on the basis of attorney-client privilege, joint defense privilege and/or attorney work product doctrine are noted at the time for production, and any documents withheld from production based on such objections are identified in a privilege log in accordance with the requirements of Super. R. Civ. P. 26(b)(5)&(7).

12. **Survival.** The terms of this Order shall survive the conclusion of this matter. Counsel to CCCB and/or to the Receiver and/or to PCC may move the Court for an order addressing the post-conclusion treatment of Confidential Material.

13. **Amendment or Modification of Order.** This Order may be amended or modified by this Court upon notice to CCCB, the Receiver, and PCC.

ORDERED:

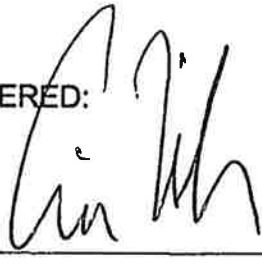


Stern, J.

Dated:

4/25/19

ENTERED:



Dep. Clerk

Dated:

4/25/19

EXHIBIT 1

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD :

v. :

C.A. No.: PC-2019-3654

SAMUEL LEE, ET AL :

ACKNOWLEDGEMENT

The undersigned declares and states as follows:

1. I have read the attached Order, dated April __, 2019 ("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: _____

Exhibit 18

Responses to April 30, 2019 Correspondence
Question and Answers in regards to the Extended Scope of Work

Extended Scope of Work – Item 1

- i. **Question:** Has Prospect CharterCARE maintained all essential services for 5 years?
The essential services listed in the Asset Purchase Agreement (“APA”) are:
- Medical/Surgical Services and Intensive/Coronary Care Unit
 - Acute Dialysis Services
 - Inpatient and Outpatient Rehabilitation Services, including Sub-acute and Skilled Nursing facility
 - Ambulatory Care Services
 - Emergency Services
 - Inpatient and Outpatient Psychiatric/Mental Health/Addiction Medicine Services-Diagnostic Imaging and Interventional/Radiology Services, including diagnostic cardiac catheterization
 - Laboratory/Pathology
 - Inpatient and Outpatient Cancer Services including Blood and Marrow
 - Transplantation/Surgical and Radiation Oncology
 - Sleep Lab
 - Wound Care/Hyperbaric Services-Dermatology
 - Health center services (GYN & pediatric clinic, adult and pediatric dentistry, WIC, immunizations)
 - Homecare/Hospice services (Note: Previous information indicated that homecare was offered through the CharterCARE Home Health Services. Hospice care was not offered at the hospitals as of December 2018 –and was not at the time of the conversion –but arrangements for hospice care were facilitated by hospital social workers).

Answer: Yes, Prospect CharterCARE has maintained all essential services for 5 years. See “April2019_Attachment-1-i” (or Binder Tab 1) for the Directory of Services offered. Please note that with the sale of Elmhurst, the Skilled Nursing Facility no longer applies. Also note that Hospice services are still facilitated by hospital social workers.

- ii. **Question:** Have Transferred Employees received their base salaries and wages equal to their base salaries and wages as of the closing date? Have Transferred Employees retained seniority for purposes of benefits, salaries, and wages?
Answer: Yes, see attached report (“April2019_Attachment-1-ii” or Binder Tab 2) comparing employees on the payroll as of May 2014 (prior to the June 2014 closing date) and their status through November 2017 and December 2018. The data includes base rate and seniority status.

- iii. **Question:** Has Prospect provided benefits comparable to benefits provided under the existing Hospitals' plans, benefits including vacation, sick leave, holiday, health insurance, 401K, life insurance, and continued COBRA coverage?
Answer: Attached are the 2014 Benefits and the 2018 Benefits (“April2019_Attachment-1-iii” or Binder Tab 3).

- iv. **Question:** Have Transferred Employees who have been terminated without cause within the 12-month period following the closing date be offered a severance package on terms comparable to the severance package in effect with respect to the Existing Hospitals' employees prior to the closing date?
Answer: Yes, see attached policy ("April2019_Attachment-1-iv" or Binder Tab 4) for terms.
- v. **Question:** Has Prospect CharterCARE continued to provide care through sponsorship and support of community-based health programs, including cooperation with local organizations that sponsor healthcare initiatives to address identified community needs and improve the health status of the elderly, poor and at-risk populations in the community?
Answer: Yes, Prospect CharterCARE has continued to provide care through sponsorship and support of community-based health programs. See "April2019_Attachment-1-v"(or Binder Tab 5) for the community organizations Prospect CharterCARE have supported financially and partnered with.
- vi. **Question:** Has Prospect CharterCARE continued to support nursing and staff education?
Answer: Yes, Prospect CharterCARE has continued to support nursing and staff education. See "April2019_Attachment-1-vi" (or Binder Tab 6) for supporting documents of education that was provided.
- vii. **Question:** Has Prospect maintained a Senior Executive Compliance Officer whose responsibilities include regulatory compliance, organizational compliance and is responsible for establishing and overseeing an ethics committee to include community board members?
Answer: Yes, Prospect CharterCARE has maintained a Senior Executive Compliance Officer. During this time period Timothy Sullivan served in this capacity. See "April2019_Attachment-1-vii" (or Binder Tab 7) for the position's job description.
- viii. **Question:** Has Prospect CharterCARE adopted the Existing Hospitals' Charity Care Guidelines and continue to provide all medically necessary services to patients regardless of their ability to pay?
Answer: Yes, see "April2019_Attachment-1-viii" (or Binder Tab 8) for the guidelines utilized.
- ix. **Question:** Has Prospect CharterCARE maintained a ratio of full-time equivalent employees to average occupied bed that is consistent with accepted industry practices?
Answer: Yes
- x. **Question:** Post-conversion, has Prospect CharterCARE continued to utilize productivity targets to assist with determining appropriate staffing levels?
Answer: Yes, see "April2019_Attachment-1-x" (or Binder Tab 9) for productivity dashboard utilized.

- xi. **Question:** Has the Catholic identity of all legacy SJHSRI locations been maintained and "ensure that all services at SJHSRI locations are rendered in full compliance with the Ethical and Religious Directives for Catholic Health Care Services, as promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop of the Roman Catholic Diocese of Providence, Rhode Island, as the same may be amended from time to time (the ERDs)."

Answer: Yes, see "April2019_Attachment-1-xi" (or Binder Tab 10) for supporting documents.

Extended Scope of Work – Item 1(a)

Note: This section has been previously answered (November 11, 2019 request did not include this section).

Extended Scope of Work – Item 1(b).

- i. **Question:** Did Prospect CharterCARE requested funds from the CCCB to enhance surgical oncology physician and fellow training and education for the period of November 2017 –December 2018?

Answer: No. This is not applicable. We are not aware of any funds requested to enhance Surgical Oncology or continuing medical education.

- ii. **Question:** Did Prospect CharterCARE request funds from the CCCB to support continuing medical education (CME) for the medical staff at RWMC for the period of November 2017 –December 2018?

Answer: Not Applicable

Extended Scope of Work – Item 2.

Question: Are there any notices out of the ordinary course provided to or received by a party under the Asset Purchase Agreement in the period from November 2017 – March 2019?

Answer: Copies of notices out of the ordinary course provided to or received by a party under the Asset Purchase Agreement

Extended Scope of Work – Item 3.

Question: Has there been any development with Oldco entity's 15% ownership in Prospect CharterCARE which was indicated in a correspondence dated December 19, 2016 to Assistant Attorney General Kathryn Enright.

Answer: No change in Oldco's 15% ownership in Prospect CharterCARE

Extended Scope of Work – Item 4.

Question: What are the details of the sale of the Fruit Street property and the Elmhurst Extended Care Facility? (Include evidence of the sale prices, taxes and fees for each, as well as a clear explanation of the net proceeds for each property).

Answer: The reinvestment of the EEC sale proceeds were included in the Capital Spend Summary provided on May 19, 2019. The use of the Fruit Hill sale proceeds were not specifically identified on that schedule. However, the excess spend of \$2,763,656

identified on that schedule more than exceeds the proceeds from the property sales.
Documentation of the sale of the Fruit Street property and the Elmhurst Extended Care Facility: See attachment (“April2019_Attachment-4” or Binder Tab 11).

Responses to November 11, 2019 Correspondence

- a. Prospect did not distinguish between its routine and non-routine capital expenditures. This distinction is necessary for AMI to track Prospect’s compliance with its financial commitment under the Decision. GL descriptions
Response: See Worksheet 01, Worksheet 02, Worksheet 03, Worksheet 04, and Worksheet 05. (or Binder Tab 29)
- b. Documentation was not provided for projects which were designated as being in the planning stages in the December 2018 report (This report was based on documentation covering the period of May 2014 – September 2016). Prospect had indicated that documentation will be provided at the conclusion of each of the identified projects. For AMI to confirm Prospect’s compliance with its non-routine (long term) capital commitment, we are looking for Prospect to provide documentation for those projects which were estimated to meet Prospect’s non-routine (long term) capital expenditure.
Response: Many of these projects have been completed and closed into fixed assets. \$28.8M in total has been identified as Splash/Non-routine capital and these amounts are incorporated in the GL and are included in the population for which items > \$50,000 have been supported. Please see Worksheet 01, Worksheet 02, Worksheet 03, Worksheet 04, Worksheet 05 for the supporting documentation. (or Binder Tab 29)
- c. AMI observed the following from Prospect’s 2017 submission –
- Prospect identified 43 items in its 2017 submission for expenditures of \$50,000 and above for which Prospect is required to provide supporting documentation. However, Prospect did not provide documentation for 3 line items. The items are:
 1. \$50,000 described as payment to Northeast Firestopping,
Response: This was a Sept 2017 PO accrual. It reversed in FY18 and is included as a FY18 addition. See below.
 2. \$452,222.10 described as “237 RECORD SPLASH REIMB 01/24/17”
Response: Multiple Invoices paid through 880012-028. (“Nov2019_Attachment-c” or Binder Tab 12), and
 3. \$870,210.10 described as “260 SPLASH REIMB, SPLASH DIRECT PAY FRO”.
Response: Multiple invoices paid through 880012-032. (“Nov2019_Attachment-c” or Binder Tab 12)

- AMI identified the following line items from the spreadsheet for which Prospect did not provide any documentation. The items are arranged in the order of their entry in the 2017 spreadsheet.

Pg. 3

\$800,000 described as "221 PEACE STR SALE ADJ"

\$4,000,000 described as "221 PEACE STR SALE ADJ"

Response: These adjustments (both \$800,000 and \$4,000,000) bring back balances written off in the prior month (see credit adjustments a few lines above the debits)

Pg. 5

\$77,980.35 described as "SJHS ACCRUAL" PO Accrual

Response: Reversed in FY18, pg 4. 2 Honeywell invoices included in the FY18 test selections.

Note: "CLOSE" = Close CIP Projects – not incl to avoid duplicate

\$1,425,992.07 described as "59 CLOSE MAIN ENTRANCE PROJECTS"

Response: Cr pg. 6

\$565,881.03 described as "58 CLOSE CT SCAN ROOM REN"

Response: Plus \$701.57 offset by Cr pg. 7

\$456,252.12 described as "56 CLOSE ROOF REPAIR PROJECT"

Response: Cr pg. 7

\$197,201.29 described as "54 CLOSE CIP"

Response: Attachment 01 ("Nov2019_Attachment-c(b)" or Binder Tab 13), offsetting CIP Nov

\$121,010.58 described as "55 CLOSE CIP"

Response: Attachment 01 ("Nov2019_Attachment-c(b)" or Binder Tab 13), offsetting CIP Dec

\$88,725 described as "60 CLOSE IT 2016-2017 PROJECTS"

Response: Cr pg. 6

\$58,945.60 described as "55 CLOSE CIP"

Response: Attachment 01 ("Nov2019_Attachment-c(b)" or or Binder Tab 13), offsetting CIP Dec

\$77,980.35 described as "197 RECLASS ASSET TO CORRECT CLASS"

Response: Offsetting adjustments (reclass from proj 1620 to 1630) Net \$0

\$246,680 described as "258 CLOSE MAIN ENTRANCE CIP"

Response: Cr. pg. 6 (already a test selection as a CIP addition > \$50,000)

Pg. 11

\$613,993.55 described as "28 CLOSE CIP"

Response: Cr. pg. 12

\$150,030.36 described as "123 ACCRUE CAPITAL ADDITIONS"

Response: Attachment 02 ("Nov2019_Attachment-c(b)" or or Binder Tab 14), reversal

Pg. 13

\$440,481.39 described as "6 TO RECORD ADDIT OPENING BS ITEMS"

Response: Corp 15 BVS Acquisition see Attachment 03 ("Nov2019_Attachment-c(b)" or Binder Tab 15)

\$361,754.62 described as "6 TO RECORD ADDIT OPENING BS ITEMS"

Response: Corp 15 BVS Acquisition see Attachment 03 ("Nov2019_Attachment-c(b)" or Binder Tab 15)

Pg. 14

\$290,590.28 described as "212 REVERSE JE 180"

\$1,086,163.91 described as "212 REVERSE JE 180"

\$9,148,017.39 described as "212 REVERSE JE 180"

Response: EEC Sale Adj – Reverses Cr. adjustments a few lines above

Pg. 15

\$203,412 described as "214 RECORD EEC SALE"

\$2,360,490 described as "214 RECORD EEC SALE"

\$2,360,490 described as "214 RECORD EEC SALE"

\$334,579.02 described as "PPA 233 TRANS EEC LAND & BUILD ACCT"

Response: EEC Sale Adj – Reverses Cr. adjustments on Pg. 14

Pg. 16

\$4,149,554.67 described as "49 CLOSE SPLASH MAIN ENTRANCE PROJECT"

Response: Cr. pg. 18

\$650,343.07 described as "47 CLOSE PHARMACY CHEMO HVAC UPGRADE"

Response: Cr. pg. 20

\$121,834.38 described as "42 CLOSE BEHAV BUILD-UP PROJECT"

Response: Cr. pg. 19

\$73,470.07 described as "48 CLOSE IT 2017 PROJECT"

Response: Cr. pg. 21

\$53,975.26 described as "42 CLOSE BEHAV BUILD-UP PROJECT"

Response: Cr. pg. 19

Pg. 17

\$416,644.89 described as "227 ACCRUE FIXED ASSET ADDITION"

Response: Attachment 04 ("Nov2019_Attachment-c(b)" or Binder Tab 16), reversal

Pg. 23

\$86,652.33 described as "15 CLOSE DERM RENOVATION PROJECT"

\$102,300 described as "15 CLOSE DERM RENOVATION PROJECT"

Response: Attachment 05 ("Nov2019_Attachment-c(b)" or Binder Tab 17), CIP Offset

- The documentation provided in support of some expenditures did not tally with the amount claimed. Specifically, the invoices provided in support of the journal entry of \$96,838 described as "Reclassified Sales Taxes Capital Purchases" did not cover the amount claimed. Also, documentation is lacking for the journal entry of \$87,126.67. Is Prospect able to provide a copy of a check or wire transfer to support both expenditures?

Response: These Journal Entries were reversed. Attachment 06 ("Nov2019_Attachment-c(b)" or Binder Tab 18).

- The line items supported by request to disburse proceeds made pursuant to equipment schedules were not supported by check or wire transfer documentation. Please provide documentation to allow AMI to confirm that the payments have been made. AMI identified 12 line-items under this category. In addition, some of the documentation provided in support of these 12 line items were unsigned. Specifically, AMI identified such instances where the supporting documents were unsigned. They are:

\$107,197 described as "118 REC SPLASH CAP GILBANE"

\$205,109 described as "30 RECORD CONTRIBUTED CAPITAL"

Response: OLF Main Entrance, 880012-029

\$120,437.30 described as "171 BOOK 880012-030 CL"

\$247,268.08 described as "115 REC SPLASH CAP RG"

\$1,924,043.42 described as "50 TO RECORD OMNICELL CL"

\$60,561 described as "237 RECORD SPLASH REIMB 01/24/17"

\$170,911 described as "27 TO RECORD SPLASH CAPITAL DIRECT PAY"

Response: Signed lease copies were provided January 2020. First American; Contacted First American for proof of payment. See FY17 CIP in Worksheet 04. (or Binder Tab 29)

- The payment of \$50,000 to Northeast Firestopping is also claimed in the 2018 capital expenditures.
Response: Per above this was an FY17 PO accrual. The accrual reversed when paid in FY18.

d. AMI observed the following from Prospect's 2018 submission:

- Prospect identified 51 line items for which it was required to provide supporting documentation. However, no documentation was provided for \$1,300,772.52 described as "80 REC SPLASH CAP DIR PAY FROM FA". In addition, AMI identified 16 line items from the spreadsheet for which no supporting

documentation was provided. The items are provided below in the order they are entered in the 2018 spreadsheet.

Response: Multiple invoices paid through 880012-038 (“Nov2019_Attachment-d” or Binder Tab 19)

Pg. 2

Response: CIP’s closed out to Fixed Assets

\$1,025,323.02 described as “220 RCLS FYTD SEP18 CIP’S TO IN-SVC PP”

Response: Cr. pg. 11

\$591,246.50 described as “220 RCLS FYTD SEP18 CIP’S TO IN-SVC PP”

Response: Cr. pg. 10

\$165,246.47 described as “220 RCLS FYTD SEP18 CIP’S TO IN-SVC PP”

Response: Cr. pg. 12

\$125,577.67 described as “220 RCLS FYTD SEP18 CIP’S TO IN-SVC PP”

Response: Cr. pg. 8

\$103,341.00 described as “220 RCLS FYTD SEP18 CIP’S TO IN-SVC PP”

Response: Cr. pg. 12

\$73,038.53 described as payment to Stryker Instrument/Sales

Response: This is a PO accrual, PO Accrual reversal Attachment 07, (“Nov2019_Attachment-d” or Binder Tab 19)

Pg. 4

\$440,583.75 described as “181 SJHS RCLS PP & E FROM RWMC TO SJHS”

Response: Cr. pg. 20 (RW= Corp 21)

Pg. 15

\$155,250 described as payment to Provation Medical Inc.

Response: Cr. in FY19, pg. 8

Pg. 18

Response: Close out CIP to Fixed Assets

\$2,178,609.82 described as “226 RCLS FYTD SEP 18 CIP’S TO IN SVC PP”

Response: Cr. pg. 23

\$204,032.45 described as “226 RCLS FYTD SEP 18 CIP’S TO IN SVC PP”

Response: Cr. pg. 25

\$121,884.75 described as “226 RCLS FYTD SEP 18 CIP’S TO IN SVC PP”

Response: Cr. pg. 24

\$84,455.28 described as “226 RCLS FYTD SEP 18 CIP’S TO IN SVC PP”

Response: Cr. pg. 22

Pg. 20

\$410,125 described as “206 RWMC RCLS PP & E FROM CCHP TO RWMC”

Response: Cr. pg. 14 (CCHP=10)

Pg. 21

\$399,144.89 described as “7 RECLASS PP & E FROM CCHP TO RWMC”

Response: Cr. pg. 14 (CCHP=10)

Pg. 26

\$70,052 described as payment to Goldense Building Products

Response: Attachment 08 “Nov2019_Attachment-d” or Binder Tab 20)

Pg. 28

\$153,654.02 described as “174 RCLS FYTD SEP 18 CIPS TO IN-SVC PP”

Response: Cr. pg. 29

- The supporting invoice for the payment of \$58,189.91 to Stryker Medical indicates \$54,553.04.
Response: This excludes taxes \$3,838.71. Total payment support is \$58,371.75. Attachment 09 (“Nov2019_Attachment-d” or Binder Tab 21)
Also, the supporting invoice and check for the payment of \$64,200 to Orthoscan Inc indicates \$60,000 as the amount actually paid.
Response: BVS - \$4,200 was 7% sales tax accrued.
In addition, the supporting documentation for the payment of \$85,264.60 described as payment to Communications Systems Limited indicates that the transaction was cancelled. Need invoice payment support or transactions
Response: The offsetting credit is in FY19 – See FY19 GL, RWMC CIP, second transaction (See Worksheet 02 or Binder Tab 29).
- The line items supported by request to disburse proceeds made pursuant to equipment schedules were not supported by check or wire transfer documentation. AMI will require documentation to confirm that the payments have been made. AMI identified 12 line-items under this category. In addition, some of the documentation provided in support of these 12 line items were unsigned.
Response: This information for verification has been requested from First American for proof of payment. Signed lease copies were provided January 2020. See FY18 CIP (Worksheet 03 or Binder Tab 29).

Specifically, AMI identified 8 of such instances where the documentation were unsigned. They are:

\$725,749.90	described as “90 REC SPLASH CAP DIR PAY FROM FA”
\$343,811.71	described as “97 REC SPLASH CAP DIR PAY FROM FA”
\$798,486	described as “18 CORRECT SEPT SPLASH DIRECT PAY”
\$154,138	described as “80 REC SPLASH CAP DIR PAY FROM FA”
\$519,472.08	described as “149 REC SPLASH CAP DIR PAY FROM FA”
\$915,446	described as “97 REC SPLASH CAP DIR PAY FROM FA”
\$1,709,880.64	described as “211 REC SPLASH CAP DIR PAY FROM FA ADD”
\$757,286.27	described as “136 REC SPLASH CAP DIR PAY FROM FA”
\$685,083.22	described as “89 REC SPLASH CAP DIR PAY FROM FA”

e. AMI determined the following from Prospect’s 2019 submission:

- Documentation was not provided for \$80,000 described as payment to Fuji Medical Systems USA Inc (Pg. 11 of spreadsheet) and \$556,881.58 paid to Gilbane Building Co. (Pg. 13 of spreadsheet).
Response: Attachment 10 (“Nov2019_Attachment-e” or Binder Tab 22)
- Documentation in support of some line items indicates partial payment as against the full amount claimed. Prospect did not provide copies of capital leases or any similar documentation. Specifically, the following line items fall under this category:
 - \$122,287.20 described as payment to AZ Corporation. Check and Prospect’s invoice record shows payment of \$30,000.
Response: AZ Invoice 205333 additional payments made on this invoice can be found in Attachment 11 (“Nov2019_Attachment-e” or Binder Tab 23)
 - \$231,228.66 described as payment to Gilbane Building Co. Check and Prospect’s invoice record shows payment of \$18,691.29.
Response: OLF ED Req 13 additional payments made on this invoice can be found in Attachment 11 (“Nov2019_Attachment-e” or Binder Tab 23)
 - \$80,160 described as payment to Masimo America’s Inc. Check and Prospect’s invoice record shows payment of \$33,000.
Response: Invoice 2267787 additional payments made on this invoice can be found in Attachment 11 (“Nov2019_Attachment-e” or Binder Tab 23)
 - \$107,250 described as payment to Stryker Medical. Checks attached to the invoice totaled \$64,757.50
Response: Invoice 2512924M additional payments made on this invoice can be found in Attachment 11 (“Nov2019_Attachment-e” or Binder Tab 23)
 - \$82,862.39 described as “GJ 125 RECLASS CHILLER REPAIR TO PP&E”. Journal entry form, PO inquiry sheet, Prospect’s February 2019 detail trial balance sheet, invoice record shows the payment of \$50,000.
Response: Trane - All except tax was reclassified to FA.

- \$113,444 described as payment to Wildfire Group Inc. Check shows payment of \$56,722.
Response: Invoice 3406 505 paid. Additional payments made on this invoice can be found in Attachment 11 (“Nov2019_Attachment-e” or Binder Tab 23)
- The payment of \$52,565 to Eagle Roof Services, \$65,000 to Pevco Systems Internationa, and \$123,580 to Masimo America’s Inc were only supported by invoices. Is there a check or wire transfer documentation?
Response: Attachment 12 (“Nov2019_Attachment-e” or Binder Tab 24)
- The documentation provided for the payment of \$69,994.43 to Labrepco, Inc showed that the actual sum paid is \$65,546.20.
Response: \$4,448.23 of the \$69,994.43 was use tax accrued
- The line items supported by requests to disburse proceeds made pursuant to equipment schedules were not supported by copies of checks or wire transfer documentation. AMI identified 7 line-items under this category. In addition, some of the documents provided in support of these 7 line items were unsigned. Specifically, AMI identified 3 of such instances where the documents were unsigned. They are:

\$477,840.61 described as “GJ 120 REC SPLASH CAP DIR PAY FROM FA”
Response: First American paid
\$331,527.30 paid to Gilbane Building Co
Response: RWMC Emergency Dept 02/28/19; Attachment 13 (“Nov2019_Attachment-e” or Binder Tab 25)
\$570, 798.23 described as “GJ 118 REC SPLASH CAP DIR PAY FROM FA”
Response: First American paid

Responses to February 7, 2020 Correspondence

1. We await the response in Q & A format to the Request for Information sent April 30, 2019 (copy attached).
Response: Response in Q&A format for April 30, 2019 Request for Information addressed in April 30,2019 responses..

2. Prospect has claimed \$14,411,243 as Practice Losses for the acquired physician practices from 2015 – 2018. AMI received an Excel spreadsheet pertaining to these expenses, but no documents to support the claimed losses. We request documentation of the practice expenses, as well as identification of them (individually) as either Routine or Non-routine.
Response: Worksheets were provided which include acquired practice P&L's that support the \$14.4M in total practice losses. These are operational expenses. The distinction between Routine or Non-routine relates to capital expenses only. See "Feb072020_Attachment-2" (or Binder Tab 26)
 - a. Note, we have the physician contracts; these do not need to be provided again.
 - b. It is possible that we will need to adjust the "\$50,000 rule" in order for AMI to view documentation of $\geq 80\%$ of Prospect's expenditures.

3. Prospect is claiming \$28,835,781 in Non-Routine (Splash) Expenditures for 2015 – 2019. AMI will need documentation of these expenditures.
Response: Previously provided the Splash Matrix AG.xls file that totals \$28,854,841 (variance of \$19,060, diff of 0.1%). Included in the file is an example of one original FY17 selection for \$246,680 that ties back into the \$28.8M population within the matrix.
 - a. In the December 20, 2018 report, the renovation of the corridor/central registration area at Our Lady of Fatima with a cost of \$629,800 was the only project Prospect previously claimed/ documented as an expenditure. All other projects were noted with the understanding that Prospect would provide appropriate documentation when the projects were completed.
Response: In the time period since the December 20, 2018 report the project costs submitted to the AG have grown to \$28.8M. Support was provided for individual expenses >\$50,000.
 - b. In the most recent meeting with AMI and the RIAG, Prospect acknowledged that it may want to put forth the Splash expenditures *before* they are completed as a means of demonstrating that it has spent the required amounts during the period set in the Agreement with RIAG.
Response: \$28M of additional project costs have been submitted since the original submission.

4. AMI was not able to confirm the amounts claimed as Routine Expenditures for the reporting years because the General Ledger submitted by Prospect on May 13, 2019 did not distinguish between Routine and Non-routine Expenditures.
Response: See Worksheet 01, Worksheet 02, Worksheet 03, Worksheet 04, Worksheet 05. (or Binder Tab 29)

The test selections from the original selection were resubmitted with the Routine expenses distinguished from the Non-routine expenses. Also, a number of line items which were expenditures of \$50,000 and above were not supported with documentation. AMI's November 11, 2019 email listed items for which no documentation was provided and also contained observations which should be addressed.

- a. AMI's November 11, 2019 email listed items for which no documentation was provided and also contained observations which should be addressed. (a copy of that email is attached)

Response: See above for responses.

- b. The line items identified as Non-routine (Splash) expenditures by Prospect in its January 15, 2020 submission do not add up to \$28M. An explanation/ discussion is needed for this.

Response: Previously provided the Splash Matrix AG.xls file that total \$28,854,841 (variance of \$19,060, diff of 0.1%).

- c. To assist AMI with an efficient review of the financial expenditures, AMI requests that Prospect either: See option ii below
 - i. Create separate spreadsheets for its Non-routine and Routine Expenditures, with the totals for each reporting year. The spreadsheets, if created should include all expenditures in their respective categories – Non-routine and Routine.
 - ii. Or, mark up the General Ledger submitted to AMI on May 13, 2019 to reflect which items are Routine and which are Non-routine

Response: See Worksheet 01, Worksheet 02, Worksheet 03, Worksheet 04, Worksheet 05. (or Binder Tab 29)

- d. Expenditures of \$50,000 and above, whether Non-routine or Routine, should be supported with appropriate documentation.
- e. Prospect does not need to submit documents it had previously provided to AMI (unless it is more convenient to prepare and resubmit as a complete package).

5. AMI acknowledges receipt of the Financing Equipment Schedules.

- a. Note: Equipment Schedule Nos. 880012-053, 880012-045, and 880012-030 are not signed copies. Please provide signed copies or a further explanation.

Response: A copy of 880012-053 was requested. 880012-045, and 880012-030 are attached. ("Feb072020_Attachment-5-a" or Binder Tab 27)

- b. In addition, we request that Prospect clarify if it is claiming the full amount on each Equipment Schedule or just a fraction. This clarification is necessary because the line items in the submitted spreadsheet and the invoices attached to a significant number of the Equipment Schedules covers only a portion of the total amount.

Response: In most cases the full amount of the financing is being submitted as a portion of the total \$28M of Splash (Non-routine) capital costs. See the previous file Splash Matrix AG.xls. The equipment schedule (lease) numbers are referenced the bottom of the applicable columns. About \$22M of the \$28.8M in Splash (Non-Routine) capital is financed through these equipment leases.

February 18, 2020 Correspondence:

Physician Acquisition/ Business Development

1. Provide an explanation and interpretation for attributing acquisition losses to the Long-Term Capital Commitment requirement identified in Section 2.5(b) of the Asset Purchase Agreement

Response: Section 2.5(b) of the APA states that the Long-Term Capital Commitment is to be used for, among other things, development and implementation of physician engagement strategies. Prior to the closing of the joint venture transaction, CharterCARE Health Partners could not effectively engage in physician development or engagement activities because of anticipated losses ensuing from practice acquisitions. Prospect under the APA had an obligation to pursue physician development and implementation activities. Prospect entered into these transactions with the full intention to ultimately support the losses that the joint venture would incur from these practice acquisitions.

2. Provide independently verifiable documentation to support the \$14,580,133 booked for acquired practice losses. This documentation must include revenue so that the net losses can be tracked. Potential supporting documents discussed at the February 13, 2020 meeting included salaries, leases, insurance, management fees and audited financial statements.

Response: See Roger Williams Medical Center, Our Lady of Fatima Hospital, CCMA and Blackstone income statement. See Financial Statements. (Feb072020_Attachment-2 or Binder Tab 26)

3. Provide an explanation and supporting documentation that links the \$14,580,133 in acquisition losses to the Prospect Member.

Response: Due to the \$14,580,133 acquisition loss, Prospect forgave the 2% management fee across 5 years.

4. Provide an explanation for attributing \$3,277,526 of Physician Practice Acquisitions to routine spending when all other expenditures related to Business Development, including other Physician Practice Acquisitions, are attributed to Long-Term Capital Commitment.

Response: Shortly after the joint venture transaction involving CharterCARE entities, Prospect CharterCare, LLC and its affiliates entered into a transaction to purchase two urgent care centers with associated physician practices in order to expand service areas of Roger Williams Medical Center and Our Lady of Fatima hospital. These were the only acquisitions that involved the purchase of urgent care centers as opposed to individual or group physician practices. Given the size of the transaction and purchase of healthcare facilities (i.e. urgent care centers), it was deemed appropriate to include such purchase in Long-Term Capital commitment of Prospect. None of the other practice acquisitions involved the acquisition of urgent care centers.

5. Please explain and provide supporting documentation for the expenditure of \$6,000,000 for "Capital Infusion."

Response: Section 4.2(c) of the Amended and Restated Limited Liability Agreement of Prospect CharterCare, LLC states in part:

“In the event that, during the period commencing as of the date hereof and continuing for a period of up to three (3) months following the effective date hereof, the Company (including the Company Subsidiaries, for purposes of this Section 4.2(c)) requires cash to fund operations and the Prospect Member determines to provide such cash, then: (x) such amount shall not exceed Ten Million Dollars (\$10,000,000); (y) the aggregate amount of cash provided by the Prospect Member (Initial Working Capital Amount) shall be treated as partial satisfaction of the Long-Term Capital Commitment...”

In accordance with this section 4.2(c)(ii), within 3 months of the effective of the Amended and Restated Limited Liability Agreement, Prospect provided an Initial Working Capital Amount of Six Million Dollars (\$6,000,000). It should be noted that the Company and Company subsidiaries did not in the four years following the effective date of the Amended and Restated Limited Liability Agreement of Prospect CharterCare, LLC accrue \$6 million in cash above and beyond their collective budgeted operating and capital needs, including Reserves (as such term is defined in the Amended and Restated Limited Liability Agreement of Prospect CharterCare, LLC).

Property Valuations

6. Explain how the sales proceeds for Elmhurst Extended Care Facility ("EEC") were arrived at, specifically addressing the lease-back obligations and legal expenses.

Response: As a result of arms-length-negotiations between unrelated parties, the assets of EEC was sold to a third party. As a part of the negotiations of the transaction, the seller engaged the services of a law firm to negotiate and draft definitive documents. The legal fees are directly related to the transaction.

Also, as part of the transaction, we agreed to lease excess space on the property purchased by the third party for 10 years for Prospect CharterCare LLC's overall operations in Rhode Island. The rent includes payment to the purchaser for deferred maintenance on the premises which would ordinarily reduce the purchase price of the assets. As an accommodation, instead of reducing the purchase price at the time sale, purchaser agreed to allow seller to pay for such deferred maintenance over time. ("April2019_Attachment-4" or Binder Tab 11)

7. Provide documentation of the sale of the Peace Street property. Include evidence of sales prices, taxes and fees, as well as a clear explanation of the sales proceeds for the property.

Response: Providing document as provided before. \$100,000 Provided. See Attachment ("Feb182020_Attachment-7" or Binder Tab 28)

8. Pursuant to the Attorney General's approval of Prospect's request in December 2016, the sales proceeds for EEC, Fruit Hill and Peace Street should be included in the Long-Term Capital Commitment reporting.

Response: The reinvestment of the EEC sale proceeds was included in the Capital Spend Summary provided on May 19, 2019. The use of the Fruit Hill sale proceeds was not specifically identified on that schedule. However, the excess spend of \$2,763,656 identified on that schedule more than exceeds the proceeds from the property sales. Documentation of the sale of the Fruit Street property and the Elmhurst Extended Care Facility: See attachment ("April2019_Attachment-4" or Binder Tab 11)

Capital Commitment Tracking

9. Prospect documented capital commitment expenditures by projects completed for the first report on compliance. It is our understanding that for the next report Prospect will document capital commitment expenditures either by year or by projects completed. With Prospect's updated submission of the capital commitment expenditures, provide appropriate support of expenditures to evidence that there was no double-counting. Additionally, with the updated submission, either resubmit the supporting documentation or clearly explain where the documentation for the specific expenditures can be found in the documents previously provided. AIM should be able to easily link the supporting documents to the line item on the General Ledger.

Response: See Worksheet 01, Worksheet 02, Worksheet 03, Worksheet 04, and Worksheet 05. (or Binder Tab 29)

Exhibit 19

PCC-CONFIDENTIAL-SEE STIPULATION AND CONSENT ORDER ENTERED APRIL 25, 2019

Project #	Campus	Project	Project Header	Scope	Vendor/Awardee	PO	PO Amount	Comments	Invoice Number	Invoice Date	Amount Billed	Amount Approved	Dee Sent to Purchasing	PAID?	AP notes	P.O. Status	Amount Approved per Project On 2/28/17
21.1660.0723	RWAC	EP Renovation	21.1660.0723 RWAC ED Renovation	Y	Vertical Inspection	Y			89720	0/29/18	\$1,033.00	\$1,033.00	0/29/18	PAID BY FA#8	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Vehicle Parking Expense	Y		Hourly Contract Rate	R004	0/3/18	\$7,320.50	\$7,320.50	0/29/18	PAID BY FA#8	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Vehicle Parking Expense	Y		Hourly Contract Rate	R003	12/3/18	\$7,694.00	\$7,694.00	0/29/18	PAID BY FA#8			
21.1660.0743	RWAC	RWAC Center/Pharmacy Design	21.1660.0743 RWAC Center/Pharmacy US#800	Y	Design	Y		Design	1702	01/06/18	\$2,568.56	\$2,568.56	0/29/18	PAID BY FA#8	Sent to Dir. Ism		
21.1660.0744	RWAC	RWAC Main Pharmacy Upgrade	21.1660.0744 RWAC Main Pharmacy US#800	Y	Design	Y		Design	1703	06/18/18	\$1,338.90	\$1,338.90	0/29/18	PAID BY FA#8	Sent to Dir. Ism		
03.1670.0237	O.F.	Pharmacy USP 400 Alterations	03.1670.0237 O.F Pharmacy USP 400 Alterations	Y	Design	Y		Design	1705	06/18/18	\$1,528.53	\$1,528.53	0/29/18	PAID BY FA#8	Sent to Dir. Ism		
21.1660.0744	RWAC	RWAC Main Pharmacy Upgrade	21.1660.0744 RWAC Main Pharmacy US#800	Y	Design	Y		Design	1704	01/18	\$41,411.36	\$41,411.36	0/29/18	PAID BY FA#8	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Vertical Inspection	Y		Testing and Inspection	8985	02/06/18	\$453.80	\$453.80	0/29/18	PAID BY FA#8	Sent to Dir. Ism		
03.1670.0213	O.F.	ED Cosmetic Upgrades Design Master Planning/CT Scan	03.1670.0213 O.F ED Cosmetic Upgrades Design Master Planning/CT Scan	Y	Architectural & Engineering	Y		McKenzie Roofing	4	07/05/18	\$326.54	\$326.54	02/15/18	PAID BY FA#8	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Architectural & Engineering	Y		Design	6182	2/3/18	\$15,019.77	\$15,019.77	0/29/18	PAID BY FA#8	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Architectural & Engineering	Y		Construction Progress	Reqs 5	0/7/18	\$207,721.99	\$207,721.99	03/18/18	PAID BY FA#9	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Vertical Inspection	Y		Testing and Inspection	9071	0/2/18	\$	\$	\$	0/29/18	PAID BY FA#9	Sent to Dir. Ism	
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Owner Expense - relocate nurse call for temp conditions	Y		Owner Expense	7183	0/19/18	\$2,414.75	\$2,414.75	03/26/18	PAID BY FA#9	Sent to Dir. Ism		
21.1660.0723	RWAC	Curtain Wall Replacement	21.1660.0723 RWAC Curtain Wall Replacement	Y	Architectural & Engineering	Y		Curtain wall labor	2888	07/20/17	\$1,400.00	\$1,400.00	03/29/18	PAID BY FA#9	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Architectural & Engineering	Y		BMU Testing	3048	09/19/17	\$970.00	\$970.00	03/29/18	PAID BY FA#9	Sent to Dir. Ism		
21.1660.0723	RWAC	Curtain Wall Replacement	21.1660.0723 RWAC Curtain Wall Replacement	Y	Architectural & Engineering	Y		Curtain Wall monitoring	3059	10/0/17	\$1,315.00	\$1,315.00	03/29/18	PAID BY FA#9	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Architectural & Engineering	Y		Abatement Pin	3055	09/25/18	\$600.00	\$600.00	03/29/18	PAID BY FA#9	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Architectural & Engineering	Y		BMU Testing	3121	1/1/17	\$370.00	\$370.00	03/29/18	PAID BY FA#9	Sent to Dir. Ism		
21.1660.0723	RWAC	Curtain Wall Replacement	21.1660.0723 RWAC Curtain Wall Replacement	Y	Architectural & Engineering	Y		BMU Testing	Reqs 8	04/05/18	\$139,559.00	\$139,559.00	04/06/18	PAID BY FA#9	Sent to Dir. Ism		
03.1670.0233	O.F.	Upgrade OR HVAC System	03.1670.0233 O.F Upgrade OR HVAC System	Y	Architectural & Engineering	Y		Design	2022	01/27/18	\$5,704.50	\$5,704.50	04/06/18	PAID BY FA#15			
21.1660.0741	RWAC	Upgrade OR HVAC System	21.1660.0741 RWAC Upgrade OR HVAC System	Y	Architectural & Engineering	Y		Design	2022	02/18/18	\$8,680.00	\$8,680.00	04/06/18	PAID BY FA#15			
03.1670.0233	O.F.	Upgrade OR HVAC System	03.1670.0233 O.F Upgrade OR HVAC System	Y	Architectural & Engineering	Y		Design	2022	02/21/18	\$13,430.53	\$13,430.53	04/06/18	PAID BY FA#15			
21.1660.0741	RWAC	Upgrade OR HVAC System	21.1660.0741 RWAC Upgrade OR HVAC System	Y	Architectural & Engineering	Y		Design	2022	03/21/18	\$19,797.17	\$19,797.17	04/06/18	PAID BY FA#15			
21.1660.0744	RWAC	RWAC Main Pharmacy Upgrade	21.1660.0744 RWAC Main Pharmacy US#800	Y	Design	Y		Design	1709	05/18/18	\$2,833.16	\$2,833.16	04/06/18	PAID BY FA#10			
03.1670.0213	O.F.	ED Cosmetic Upgrades Design Master Planning/CT Scan	03.1670.0213 O.F ED Cosmetic Upgrades Design Master Planning/CT Scan	Y	Architectural & Engineering	Y		Design	1504	06/11/18	\$2,689.00	\$2,689.00	04/06/18	PAID BY FA#9			
21.1660.0723	RWAC	EP Renovation	21.1660.0723 RWAC ED Renovation	Y	Swing Plus Scope Items	Y		ASU area work	1107	04/09/18	\$14,956.00	\$14,956.00	04/18/18	PAID BY FA#10	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Architectural & Engineering	Y		Construction Progress	Reqs 6	04/09/18	\$742,792.52	\$742,792.52	04/16/18	PAID BY FA#10	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Vehicle Parking Expense	Y		Hourly Contract Rate	R005	02/28/18	\$7,842.50	\$7,842.50	04/16/18	PAID BY FA#10	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Vehicle Parking Expense	Y		Hourly Contract Rate	R007	04/20/18	\$9,507.50	\$9,507.50	05/09/18	PAID BY FA#10	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Owner expense - swing plan and temp conditions ASU phase	Y		painting	3955	04/29/18	\$818.00	\$818.00	05/09/18	PAID BY FA#10	Sent to Dir. Ism		
03.1670.0233	O.F.	Upgrade OR HVAC System	03.1670.0233 O.F Upgrade OR HVAC System	Y	Architectural & Engineering	Y		Design	2022	04/2/18	\$17,891.74	\$17,891.74	05/09/18	PAID BY FA#10	Sent to Dir. Ism		
21.1660.0741	RWAC	Upgrade OR HVAC System	21.1660.0741 RWAC Upgrade OR HVAC System	Y	Architectural & Engineering	Y		Design	2022	04/2/18	\$26,040.00	\$26,040.00	05/09/18	PAID BY FA#10	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Architectural & Engineering	Y		Design	6186	30/1/18	\$8,777.54	\$8,777.54	03/29/18	PAID BY FA#10	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Architectural & Engineering	Y		Construction Progress	Reqs 7	05/09/18	\$925,686.58	\$925,686.58	05/09/18	PAID BY FA#10	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Architectural & Engineering	Y		Hourly Contract Rate	R006	0/3/18	\$3,316.18	\$3,316.18	05/21/18	PAID BY FA#11	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Architectural & Engineering	Y		Construction Progress	Reqs 8	06/05/18	\$85,339.01	\$85,339.01	06/09/18	PAID BY FA#11	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Swing Plus Scope Items	Y		ASU area work to new west boiler - East entrance milkwork glass cabinets; paint to match future west boiler - 1 of 2	1107	06/29/18	\$6,280.00	\$6,280.00	06/09/18	PAID BY FA#11	Sent to Dir. Ism		
21.1660.0723	RWAC	ED Renovation	21.1660.0723 RWAC ED Renovation	Y	Vehicle Parking Expense	Y		Hourly Contract Rate	R008	05/3/18	\$8,175.50	\$8,175.50	06/09/18	PAID BY FA#11	Sent to Dir. Ism		
03.1670.0213	O.F.	ED Cosmetic Upgrades Design Master Planning/CT Scan	03.1670.0213 O.F ED Cosmetic Upgrades Design Master Planning/CT Scan	Y	Architectural & Engineering	Y		Design	Reqs 7	04/1/18	\$17,875.81	\$17,875.81	06/18/18	PAID BY FA#11	Sent to Dir. Ism		
03.1670.0233	O.F.	Upgrade OR HVAC System	03.1670.0233 O.F Upgrade OR HVAC System	Y	Architectural & Engineering	Y		Design	2022	05/18/18	\$4,527.64	\$4,527.64	06/09/18	PAID BY FA#11	Sent to Dir. Ism		