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Reviewer: Alexa G.

STATE OF RHODE ISLAND SUPERIOR COURT
PROVIDENCE, S.C.

IN RE: CHARTERCARE COMMUNITY BOARD, ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, and ROGER WILLIAMS HOSPITAL.	: : : :	P.C. 2019-11756

SECOND SUPPLEMENTAL MEMORANDUM OF LAW OF ADLER POLLOCK & SHEEHAN P.C. AND PROSPECT MEDICAL HOLDINGS, INC. (AND ITS AFFILIATED ENTITIES) IN FURTHER SUPPORT OF OBJECTION TO MOTION FOR INJUNCTIVE RELIEF

Adler Pollock & Sheehan P.C. ("AP&S") and Prospect Medical Holdings, Inc. ("PMH") (and its affiliated entities)[1] submit this Second Supplemental Memorandum of Law in support of their Objection to the Liquidating Receiver and Plan Receiver's (collectively, the "Receivers") Motion for Injunctive Relief Against Adler Pollock & Sheehan P.C. (the "Motion") and in response to the Court's request at the hearing on September 17, 2020. For the reasons discussed below, the Motion must be denied.

The Receivers have not and cannot satisfy their well-established "heavy burden" of proving, by clear and convincing evidence, facts supporting disqualification.[2] Specifically, they

[1] Prospect Medical Holdings, Inc.'s affiliated entities include Chamber Inc., Ivy Holdings Inc., Ivy Intermediate Holding Inc., Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE, LLC, Prospect CharterCARE SJHSRI, LLC ("SJHSRI"), Prospect CharterCARE RWMC, LLC ("RWMC"), Prospect Blackstone Valley Surgicare, LLC, and Prospect CharterCARE Home Health and Hospice, LLC (collectively, the "Applicants").

[2] *See Quinn v. Yip*, No. KC-2015-0272, 2018 WL 3613145, at *3 (R.I. Super. Ct. July 20, 2018) (emphasis added) (quoting *Haffenreffer v. Coleman*, No. 06-299T, 2007 WL 2972575, at *2 (D.R.I. 2007)); *see also Fregeau v. Deo*, No. C.A. PC 03-4179, 2005 WL 1837011, at *3 (R.I. Super. Ct. Aug. 2, 2005); *Jacobs v. E. Wire Prods. Co.*, No. Civ. A. PB-03-1402, 2003 WL 21297120, at *2 (R.I. Super. Ct. May 7, 2003). *Cf. Caluori v. Dexter Credit Union*, 79 A.3d 823, 827 (R.I. 2013) (confirming that a "higher burden of proof" means proving by "clear and

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cannot prove any facts showing that the two matters in question are substantially related or that the interests of the Oldco Entities[3] and the Applicants are materially adverse. Significantly, an attorney may represent another client in a matter adverse to a former client as long as the matters are not substantially related and the clients' interests are not "materially adverse."[4] The Receivers' disfavored Motion is nothing more than litigation strategy to gain leverage in pending Federal and State litigation against PMH by inserting themselves as members of the public in the Change in Effective Control ("CEC") and Hospital Conversion Act ("HCA") administrative regulatory review.[5]

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satisfactory evidence"); *Pelletier v. Laureanno*, 46 A.3d 28, 35 (R.I. 2012) (confirming that a "higher burden" means a clear and convincing standard).

[3] As set forth in the Memorandum of Law of AP&S and PMH (and its Affiliated Entities) in Support of Objection to Motion for Injunctive Relief (the "Memorandum") the Oldco Entities are defined as CharterCARE Community Board ("CCCB"), Roger Williams Hospital ("RWH"), and/or St. Joseph Health Services of Rhode Island ("SJHSRI").

[4] *See* R.I. R. Prof. Conduct 1.9 & cmt. 2.

[5] The Receivers' legally deficient argument regarding a conflict of interest in this matter would effectively result in AP&S being barred from representing PMH or any of its subsidiaries in *any* regulatory matters, such as any of the prior matters that AP&S has handled (*e.g.*, 2017 CEC application for the acquisition of Blackstone Valley Surgicare including the same CEC review criteria in the pending administrative review, 2015 Certificate of Need ("CON") application for renovations and expansion of RWMC emergency department, 2016 CON application for a Cardiac Cath Lab, and the 2019 CON Change Order request for the relocation of a clinic located at 21 Peace Street in Providence) or future CON matters because both CEC and CON reviews involve the same criteria in the pending CEC/HCA review. The Oldco Entities did not seek disqualification in the prior matters because there was no legal conflict of interest. Likewise, effectively barring AP&S from any future regulatory representation of the Applicants would be unwarranted and only further highlights the lack of any legal conflict of interest here. In such matters, like here, there is no substantial relationship between the issues (*i.e.*, 2013 Applications and subsequent CEC applications and new institutional health services triggering CON review). Nor is there any material adversity as the Oldco Entities *are not a party* to those administrative proceedings and AP&S is not "switching sides."

The Receivers' use of this disfavored Motion as a litigation strategy is further highlighted by their September 15, 2020 letter to Attorney General Peter Neronha in which they requested to be made part of the HCA review process (in violation of statutory authority). As discussed *infra*, the RIAG denied the Receivers' request on September 21, 2020. In their September 15, 2020

Specifically, on September 21, 2020, the Office of the Rhode Island Attorney General ("RIAG") rejected the Receivers' attempt to insert themselves into the pending HCA proceeding through participation in the interviews of the parties and document exchanges. *See* Ltr. from Jessica Rider, Esq. to Thomas Hemmendinger, Esq. (the "AG Letter") Attached as Exhibit A. Therein, the RIAG explained that "*[t]he sole statutory provision for third-party participation in that review is through public comment and review of publically available material*." *Id.* at 1 (citing R.I. Gen. Laws § 23-17.14 *et seq.*). The RIAG also informed the Receiver that his statement regarding the amount of PMH long-term capital contributions was wrong despite the correct information being provided to counsel for the Plan Receiver on July 2, 2020. *Id.* The RIAG additionally stated that a final report, separate and apart from the CEC/HCA review, "will be forthcoming after AMI [Affiliated Monitors, Inc. – the RIAG's expert consultant] reviews supplemental information submitted by Prospect in response to AMI's request for further documentation." *Id.*

During the September 17, 2020 hearing on the Motion, the Court inquired specifically as to the 2013 condition requiring PMH to contribute $50 million of long-term capital contribution to the Rhode Island hospitals within four years of the closing of the transaction (the "Capital Condition"). The Receivers argue that their claim in the State Court litigation, *CCCB et al. v. Lee et al.* that Prospect has failed to satisfy the Capital Condition – which Prospect disputes –

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letter, the Receivers also published libelous statements against the Applicants by stating, for example, "the Prospect entities have shown only contempt for their respective obligations to Rhode Island law, courts, and regulators." Their allegations are patently false as the Applicants have been, and will continue to be, open, transparent, and cooperative with RIDOH and the RIAG. These false claims underscore the real (and inappropriate) motivation for the disqualification request, to gain leverage in the litigation matters apparently through any means.

creates a conflict of interest for AP&S in the current 2019 Regulatory Review. The Receivers are wrong.

The Receivers are unable to demonstrate by any *facts* that the matters are substantially related because they cannot prove any *facts* demonstrating that the issues are "*identical*" or "*essentially the same*." Nor have the Receivers identified any categories of confidential information that would have been received in AP&S's prior representation of the Oldco Entities that AP&S could use to advance its current representation of the Applicants. Underscoring that there are no such categories of confidential information, at the September 17, 2020 hearing, counsel for the Plan Receiver simply read myriad unrelated attorney-client communications into the record.

The Capital Condition does not transform the two unrelated matters into substantially related ones:

- *First*, the issues in the 2013 Applications and the current representation are not "identical" or "essentially the same" because the Applicants' presentation of capital expenditures to the Health Services Council ("HSC") (which includes expenditures supporting the Capital Condition) provides evidence of PMH's *post-transaction* capital contributions about which neither the Oldco Entities nor AP&S knew (or could have known during AP&S's prior representation) because such post-transaction conduct had not yet taken place.
- *Second*, as confirmed in the AG Letter,[6] there will be no determination of the satisfaction of the Capital Condition in this proceeding because such decision will occur in a separate

[6] The AG Letter specifically provided that "[a] final report will be forthcoming after AMI reviews supplemental information submitted by Prospect in response to AMI's request for further documentation." The AMI report is separate and apart from the CEC/HCA Review.

matter involving PMH, the RIAG, and its consulting expert (AMI) as set forth in the amended Reimbursement Agreement among the RIAG, AMI and PMH, Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, and PCC dated August 29, 2019, prior to the filing of the CEC and HCA applications. A copy of the agreement is attached as Exhibit B.

- *Third*, even if satisfaction of the Capital Condition were at issue in the 2019 Regulatory Review (which it is not), the matters still would not be "substantially related" because AP&S's representation of the Applicants involves solely *post-transaction* conduct unrelated to the negotiation or regulatory review of the 2013 Applications and APA. The Applicants are not challenging or seeking to modify any part of the 2013 Approval.
- *Finally*, the Receivers have failed to identify *any categories* of confidential information, including related to the Capital Condition, that AP&S would have gained in its prior representation of the Oldco Entities that it could use to materially advance the interests of the Applicants in the 2019 Regulatory Review.

Separately, the Receivers have failed to show that the interests of the Applicants are materially adverse to the interests of the Oldco Entities *in the 2013 Application*.[7] The relevant review regarding material adversity relates to whether the interests of the former client in the former representation and the interests of the current client in the current representation are so

[7] As set forth in its Memorandum, AP&S represented the Oldco Entities in the CEC and HCA review of the September 24, 2013 Asset Purchase Agreement ("2013 APA") transferring ownership of the two licensed not-for-profit hospitals, SJHSRI and RWH, as well as other licensed not-for-profit medical facilities to for-profit PCC (the 2013 CEC and HCA applications will be referred to herein as the "2013 Applications"). AP&S did *not* serve as transaction counsel (transaction counsel was Drinker, Biddle & Reath LLP (now Faegre Drinker Biddle & Reath); however, even if AP&S was transaction counsel for the 2013 APA, the legal analysis regarding a conflict would not change.

diametrically opposed the attorney could be said to have switched sides.[8] The interests of the Applicants in securing regulatory approval for a change at the top of the PMH corporate structure is not the opposite (or even related) to any interest of the Oldco Entities in the 2013 APA and Applications.

The Capital Condition in particular does not create any material adversity between the Oldco Entities' interests in the 2013 Approval and the Applicants' current interests. AP&S cannot be said to be "switching sides" regarding the Capital Condition because it is not challenging or seeking modification of that condition. Consistent with the Oldco Entities' interests during AP&S's representation, the Applicants agree that the Capital Condition is required to be satisfied and are not claiming otherwise.

BACKGROUND

As set forth in AP&S's Memorandum, AP&S represents the Applicants with respect to the 2019 Regulatory Review seeking approval for the 2019 Transaction.[9] Not only has AP&S represented the Applicants before the HSC, in numerous meetings with the Rhode Island Department of Health ("RIDOH") and the RIAG, and with respect to the filing of the underlying applications, it has also worked with the Applicants to submit over 7,700 pages of documents

[8] Even if the relevant review involved the *current* interests of the former client and current clients, the Receivers still would be unable to show any material adversity. The Receivers are *not* a party to the proceedings, but rather simply a member of the public desperately trying to insert themselves into the regulatory process for litigation advantages.

[9] Consistent with the Memorandum, the "2019 Regulatory Review" refers to the pending CEC review by RIDOH and HCA review by RIDOH and the RIAG; and "2019 Transaction" refers to the buy-out of private equity investors and minority shareholders pursuant to the Agreement and Plan of Merger by and among Chamber Inc., Chamber Merger Sub, Inc., Ivy Holdings, Inc., Green Equity Investors V, L.P. and Green Equity Investors Side V, L.P. dated October 2, 2019.

and to respond to 140 supplemental questions. The statutory period of review for the HCA application ends on November 5, 2020. In addition, AP&S will represent the Applicants in non-public interviews with the RIAG and RIDOH. As confirmed in the AG Letter (Exhibit A), the Receivers have no "involvement in the investigatory and regulatory process of the HCA review".

To determine whether to approve the Applications, RIDOH and the RIAG consider certain statutory criteria. Specifically, with respect to the CEC Application, the Health Services Council, an advisory body to the RIDOH Director, is required to consider the following;

> (1) The character, commitment, competence, and standing in the community of the proposed owners, operators, or directors of the health care facility;
>
> (2) the extent to which the facility will provide or will continue to provide, without material effect on its viability at the time of the change of owner, safe and adequate treatment for individuals receiving the health care facility's services (viability refers to financial viability);
>
> (3) The extent to which the facility will continue to provide safe and adequate treatment for individuals receiving the health care facility's services; and
>
> (4) The extent to which the facility will continue to provide appropriate access with respect to traditionally underserved populations and in consideration of the proposed continuation or termination of health care services by the health care facility.

R.I. Gen. Laws § 23-17-14.3.[10] The same CEC criteria applies to the RIDOH's review of the HCA application. *See* R.I. Gen. Laws § 23-17.14-12.

[10] During the hearing, the Plan Receiver's counsel cited a regulation regarding the CEC standard of review. That regulation requires that the HSC, in the case of a proposed change in the owner, of a licensed hospital, consider the statutory factors cited above and includes specific factors that an applicant must show. *See* 216-RICR-40-10-4.4(3)(E). For example, it requires that, to show "character, commitment, competence and standing in the community," the applicant demonstrate its "proposed and demonstrated financial commitment to the healthcare facility." *See id.* The regulation in its entirety is included at Exhibit C.

Based on these criteria – including the "character, commitment, competence, and standing in the community" factor – the Applicants presented evidence to the HSC of, for example, steps taken during the COIVD crisis to ensure the health, welfare and safety of all patients and staff, as well as PMH's post-2013 Approval capital contributions. *See* Presentation of Change in Effective Control Applications (July 21, 2020) (Ex. 5 to Memorandum) at 16 (setting forth "Prospect's Commitments: Capital Expenditures to Date"). At that HSC meeting, the Applicants did not offer any evidence or make any argument about the satisfaction of the Capital Condition as that will be decided separately by the RIAG based upon AMI's review of information submitted. Rather, the Applicants explained that there are business disputes between CCCB and PMH that will be decided in the Superior Court litigation, including issues related to the satisfaction of the Capital Contribution. *See* July 21, 2020 Tr. at 139-41 (Ex. 6 to Memorandum).

For purposes of the HCA, the RIAG is required to consider the following criteria establishing the purpose of their review:

> (1) Assure the viability of a safe, accessible and affordable healthcare system that is available to all of the citizens of the state;
>
> (2) To establish a process to review whether for-profit hospitals will maintain, enhance, or disrupt the delivery of healthcare in the state and to monitor hospital performance to assure that standards for community benefits continue to be met;
>
> (3) To establish a review process and criteria for review of hospital conversions;
>
> (4) To clarify the jurisdiction and the authority of the department of health to protect public health and welfare and the department of attorney general to preserve and protect public and charitable assets in reviewing both hospital conversions which involve for-profit corporations and hospital conversions which include only not-for-profit corporations; and

> (5) To provide for independent foundations to hold and distribute proceeds of hospital conversions consistent with the acquiree's original purpose or for the support and promotion of health care and social needs in the affected community.

R.I. Gen. Laws 23-17.14-3.[11]

For HCA review, the Applicants will also demonstrate that they have made significant capital contributions to the hospitals to demonstrate their commitment to safe, accessible and affordable health care. Additionally, the Applicants have represented in response to an RIAG HCA application question that they have "performed with regard to the terms and conditions of conversion and each projection, plan, or description submitted as part of the application . . . ." *See* Receivers' Ex. 24 at 51. Nonetheless, as confirmed in the AG Letter, the determination of the satisfaction of the RIAG conditions will be separately made by AMI.

ARGUMENT

Plaintiffs have failed to meet their heavy burden by proving any facts demonstrating a legal conflict. Pursuant to Rule 1.9, "[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the *same or a substantially related matter* in which that person's interests are *materially adverse* to the interests of the former client unless the former client gives informed consent, confirmed in writing." R.I. R. Prof. Conduct 1.9(a) (emphasis added). *The Receivers must meet their heavy burden on both grounds*. Nonetheless, the Receivers cannot prove facts to show either factor: they have failed to show any facts demonstrating that the 2013 Application and 2019 Regulatory review are substantially related

[11] Review criteria in other statutory sections are not applicable to the pending RIAG HCA review because, here, the Applicants involve only for-profit parties. If deemed applicable, such review criteria includes consideration of conflicts of interest, governance, character, competence and the like. *See, e.g.*, R.I. Gen. Laws § 23-17.14-7 (applicable to a not-for-profit corporation as the acquiree).

and involve materially adverse interests between the Oldco Entities and the Applicants. Their argument regarding the Capital Condition does not change this outcome.

I. The 2019 Regulatory Review Is Not a "Substantially Related Matter."

The Receivers' filings are devoid of any facts demonstrating that the 2013 Application and the 2019 Regulatory Review are the same or substantially related. On this basis alone, the Court should determine that there is no legal conflict. Matters are "substantially related" when "[i] they involve *the same transaction* or *legal dispute* or [ii] if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter." R.I. R. Prof. Conduct 1.9, cmt. 3 (emphasis added). The Receivers cannot meet either standard.

To show that the matters are "substantially related," the Receivers are required to show facts demonstrating that "the relationship between the issues in the prior and present cases is "*patently clear*" or that the issues are "*identical*" or "*essentially the same*."'" *See Brito v. Capone*, 819 A.2d 663, 665 (R.I. 2003) (internal citations omitted); *see also Quinn*, 2018 WL 3613145, at *4 (same); *Fregeau*, 2005 WL 1837011, at *2 (same); *Jacobs*, 2003 WL 21297120, at *2 (same).

Here the 2013 Applications are *not* the "same transaction" or the same "legal dispute" as the 2019 Regulatory Review. The 2013 Applications and APA involved the transfer of ownership of the Rhode Island not-for-profit hospitals and medical facilities to Prospect CharterCARE, LLC ("PCC"), a for-profit entity. In contrast, the 2019 Regulatory Review involves a buy-out of the private equity investors and minority shareholders at the top of the national PMH corporate structure (five entities removed from the licensed Rhode Island hospitals). The Proposed Transaction will not affect the Oldco Entities' ownership interest. Nor

will the transaction impact the 2013 APA, LLC Agreement, or Conditions of Approval. There is no legal relation between the 2013 and 2019 Applications.

The Capital Condition does not cause the issues in the two matters to be "identical" or "essentially the same." *First*, in AP&S's former representation of the Oldco Entities, the Oldco Entities jointly with PMH represented that PMH committed to satisfying the Capital Condition. In the 2019 Regulatory Review, AP&S, on behalf of the Applicants (and the Applicants themselves), are not challenging or seeking to modify that requirement. Rather, in connection with the 2019 Regulatory Review, Prospect has referenced its *post-transaction* capital contributions to show its "character, competence, and standing in the community," as well as its financial commitment to the hospitals. Such references to PMH's capital contributions are not identical or "essentially the same" as the request for approval of the specific Capital Condition.

Second, the determination of whether Prospect satisfied the Capital Condition is separately before the RIAG and AMI. As previously noted, the RIAG, with input from AMI, will ultimately determine compliance. The Oldco Entities are not parties to the AMI monitoring agreement and have no right to participate in a matter between the Prospect entities and the RIAG. Additionally, there is no right to public comment. As noted in the RIAG Letter, a final report will be forthcoming after AMI reviews supplemental information submitted by PMH in response to AMI's request for further documentation. Accordingly, compliance with the Capital Condition will be determined in a separate matter and not in the 2019 Regulatory Review.

Third, to the extent that the satisfaction of the Capital Condition is referenced during the 2019 Regulatory Review through the Applicants' *post-transaction* conduct (and *post-AP&S representation of the Oldco Entities*) that does not, and cannot, make the matters substantially related. The Applicants are not taking issue with the Capital Condition or seeking to modify it in

any way. This conduct is entirely unrelated to the regulatory review of the 2013 APA. Accordingly, the two issues are separate and distinct and certainly not identical or essentially the same.

Finally, the Receivers have likewise failed to allege any actual facts demonstrating that there "is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter." Neither the irrelevant documents read into the record during the September 17, 2020 hearing nor the thousands of pages submitted by the Receivers contain facts demonstrating any risk that any confidential factual information concerning the 2013 Applications would materially advance the Prospect Entities' position in this matter. Moreover, the Receivers have never even alleged that AP&S obtained confidential information from the Oldco Entities that is included in, or is relevant to, the 2019 Regulatory Review. *See GEO Spec. Chems., Inc. v. Hussain*, 951 F. Supp. 2d 32, 43-44 (D.D.C. 2013).[12]

The Receivers have also failed to show how any of the Oldco Entities' information received during the prior representation would be at all relevant to the Capital Condition. They are unable to show any category of confidential information that AP&S would have that relates to Prospect's *post-transaction* conduct. In fact, it is temporally impossible that AP&S could have obtained any such confidential information from the Oldco Entities in 2013 that relates to whether PMH fulfilled the Capital Condition long thereafter. For these reasons, the Receivers

[12] Even if the Receivers had been able to allege that AP&S has confidential information from the 2013 Applications that was somehow relevant to the 2019 Regulatory Review, such information cannot serve as the basis for disqualification here because it would have been public or accessible to PMH based on the Common Interest and Joint Defense Agreement between PMH and the Oldco Entities. *See* Rule 1.9 cmt. 3.

have failed to satisfy their heavy burden of proving a conflict of interest. Accordingly, this Court must deny the Motion.

II. The Interests of the Applicants Are Not Materially Adverse to the Oldco Entities' Interests in the 2013 Applications and APA.

The Receivers have likewise failed to show any facts demonstrating that the interests of the Oldco Entities and the Applicants are *materially adverse* either generally or specifically with respect to the Capital Condition. Rule 1.9 prohibits representation if the matters are substantially related and "the second client's interests are materially adverse to those of the former client." *See* Restatement (Third) of the Law Governing Lawyers § 132 cmt. e. The "scope of a client's interests is normally determined by the scope of work the lawyer undertook in the former representation." *Id.* Thus, the "underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a *changing of sides in the matter in question*." R.I. R. Prof. Conduct 1.9, cmt. 2 (emphasis added); *see also State ex rel. Verizon W. Virginia, Inc. v. Matish*, 740 S.E.2d 84, 94 (W. Va. 2013) ("Thus, to constitute 'materially adverse' interests under Rule 1.9(a), the interests of an attorney's former and current clients must be so diametrically opposed as to require the attorney to *adopt adversarial or opposite positions in the two representations*." (internal citations omitted) (emphasis added)). Thus, the material adversity requirement involves a review of the interest of each client *at the time of AP&S's representation*. The fact that the parties presently may have adverse positions is irrelevant (and does not create a legal conflict of interest).

None of the Receivers' oral arguments nor their thousands of pages of disjointed submissions demonstrate any actual facts showing material adversity of interests either generally

or with respect to the Capital Condition.[13] AP&S is not "switching sides" or adopting "opposite" legal positions in the two representations. In AP&S's prior representation of CCCB, its interests involved, in pertinent part, agreement on and approval of the 2013 APA including the Capital Condition. Now, AP&S, on behalf of Prospect, is *not advocating for the opposite position – i.e.*, that such condition is unenforceable or should be modified. Rather, the Applicants' interests involve approval of the 2019 Transaction including demonstrating that they have made substantial capital contributions following the 2013 transaction to show their character, competence, and commitment to the Rhode Island hospitals. Even if AP&S was to advocate that PMH has satisfied the Capital Condition (which will be decided separate and apart from the HCA/CEC review), such an interest is not materially adverse from that of the Oldco Entities in the *2013 Applications and APA* because the Applicants are not contending that the Capital Condition is unenforceable or should be modified. Accordingly, this Court must deny the Motion as the interests of the former and current client are not materially adverse.

CONCLUSION

There is no question that the Receivers and the Prospect Entities are adverse in several matters including the litigation before this Court, *CCCB v. Lee*, the pension litigation pending before Judge Smith in the federal court and the dispute between the parties regarding CCCB's removal of the Class A Directors in PCC and appointment of new Class A Directors. *None* of these matters is before RIDOH or RIAG, *none* of the issues in these matters will be decided by RIDOH and RIAG, and AP&S is *not* counsel to Prospect and the Prospect Entities in any of these matters.

[13] As set forth *supra*, the fact that the Oldco Entities are not parties to the current review and will not be affected by it further underscores that there is no material adversity of interests.

What is clear is that the Receivers are not parties to the CEC/HCA administrative review and, as confirmed by the AG Letter, their only participation "is through public comment and review of publicly available material." The Receivers' attempts to insert themselves in the 2019 Regulatory Review and claim there is a conflict of interest falls far short of demonstrating a "patently clear" conflict. They are unable to meet their high burden of showing any facts supporting both of the factors for disqualification.

For all of the above-referenced reasons and those in AP&S's Memorandum in Support of its Objection to Motion for Injunctive Relief, the Receivers, as members of the public, have not met and cannot satisfy their heavy burden of proving that AP&S has a conflict of interest in representing the Applicants in connection with the 2019 Regulatory Review. Those deficiencies, coupled with the actual prejudice to the Applicants if they had to change counsel at this late stage of the administrative proceedings, make clear that the Court should deny the Receivers' Motion in its entirety.

Respectfully submitted,

ADLER POLLOCK & SHEEHAN P.C.,
PROSPECT MEDICAL HOLDINGS, INC. AND ITS AFFILIATED ENTITIES[14]

By their attorneys:

/s/ John A. Tarantino
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Dated: September 23, 2020

[14] Prospect Medical Holdings, Inc.'s affiliated entities include Chamber Inc., Ivy Holdings Inc., Ivy Intermediate Holding Inc., Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE, LLC, Prospect CharterCARE SJHSRI, LLC, Prospect CharterCARE RWMC, LLC, Prospect Blackstone Valley Surgicare, LLC, and Prospect CharterCARE Home Health and Hospice, LLC.

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2020:

☑ I electronically served this document through the electronic filing system on the following parties:

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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/ John A. Tarantino

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Exhibit A

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Peter F. Neronha
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September 21, 2020

Via Electronic Mail Only

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Re: Hospital Conversion Initial Application of Chamber Inc.; Ivy Holdings Inc.; Ivy Intermediate Holdings, Inc.; Prospect Medical Holdings, Inc.; Prospect East Holdings, Inc.; Prospect East Hospital Advisory Services, LLC; Prospect CharterCARE, LLC; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC (the "Transacting Parties")

Dear Attorney Hemmendinger:

The Office of the Attorney General ("Attorney General") is in receipt of your letter dated September 15, 2020 regarding the above-referenced matter. The Attorney General is conducting a robust review of the Proposed Transaction pursuant to the Hospital Conversions Act ("HCA"), Rhode Island General Laws § 23-17.14, *et seq*. To date, subsequent to receiving responses to questions contained in the comprehensive initial application, the Attorney General has requested three sets of questions from the parties and has been reviewing the several thousand pages received in response.

For the reasons set out below, the Attorney General will not grant your request to allow the Liquidating Receiver and Plan Receiver (collectively, the "Receivers") to be involved with the investigatory and regulatory process of this HCA review through participation in interviews and document exchanges. The HCA gives explicit and exclusive regulatory authority to the Attorney General and the Department of Health to approve, disapprove, or modify a proposed hospital conversion upon completion of review. The sole statutory provision for third-party participation in that review is through public comment and review of publicly available material. *See R.I. Gen. Laws § 23-17.14, et seq*.

While the Receivers will not have involvement in the investigatory and regulatory process of the HCA review, there are several ways in which the Receivers can stay informed and engaged in the HCA process for this Proposed Transaction. It is likely that the Attorney General and the Department of Health will interview at least one of the newly appointed Category A Prospect CharterCARE board members. This will give the Category A board representative an opportunity to speak under oath about the transaction and to answer questions about his appointment, background, and understanding of fiduciary duty to the local hospitals, among other topics. Any stakeholder can and is encouraged to provide public comment, both in written form and at the public meeting. We also suggest that you periodically check our website for updated information and invite you to request copies of documents or information provided by the Transacting Parties. To the extent documents provided to the Attorney General in connection with the HCA review are public and not prevented from being disclosed for another reason, these documents will be provided to the Receivers upon request.

Historically, interviews were conducted between the regulators and the parties in closed sessions in an effort to obtain candid information, while maintaining confidentiality. In an effort to create transparency around the interview process, the previous Attorney General supported a 2018 amendment to the HCA which has since become law that now requires interviews to be conducted under oath and in the presence of a stenographer. *See R.I. Gen. Laws § 23-17.14-14(a).* The Transacting Parties have an opportunity to review the interview transcript and request confidentiality for some or all of the information contained therein. To the extent a transcript is not deemed confidential in whole or in part, any non-confidential portions of a transcript would be available for public review assuming no other prohibition on disclosure. The Attorney General is empowered to make all confidentiality determinations which are binding on all parties and the Department of Health. *See R.I. Gen. Laws § 23-17.14-32(a).*

Finally, one point of clarification. On page two of your September 15th letter, you state that "earlier this year Affiliated Monitors, Inc. [AMI] has concluded that Prospect has documented less than $6.6 million in improvements, a mere fraction of the total requirement." This statement is incorrect and does not reflect the most recent findings by AMI in its interim report dated March 20, 2020 (made public June 26, 2020) which confirms that close to $30 million in long-term capital commitment has been spent by Prospect to date. *See enclosed AMI interim report, p. 25.* A copy of that interim report is attached for your reference and was previously provided upon request to the Plan Receiver though his legal counsel, Attorney Max Wistow, on July 2, 2020. A final report will be forthcoming after AMI reviews

supplemental information submitted by Prospect in response to AMI's request for further documentation.

Thank you for your interest in our Office's HCA regulatory process.

Regards,

Jessica Rider

Jessica Rider
Special Assistant Attorney General
Health Care Advocate
jrider@riag.ri.gov
Ext. 2314

Enclosures

JDR/dbm

cc: Via Email Only
Nicole Alexander-Scott, M.D., MPH, Director, RIDOH
Miriam Weizenbaum, Chief, Civil Division, Office of the Attorney General
Maria Lenz, Asst. Attorney General, Office of Attorney General
Adi Goldstein Deputy Attorney General, Office of the Attorney General
Jacqueline Kelley, Esq. Legal Counsel, RIDOH
Fernanda Lopes, MPH, Chief, RIDOH
Michael Dexter, Chief, RIDOH
Stephen Del Sesto, Esq. Pierce, Atwood, LLC
Preston Halperin, Esq., Shectman, Halperin & Savage LLP
Patricia Rocha, Esq. Adler Pollock & Sheehan P.C.
W. Mark Russo, Esq. Ferrucci Russo Law

Exhibit B

AMENDMENT TO RETAINER AGREEMENT

This Agreement is made as of the 29th day of August, 2019 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, together with **Prospect CharterCARE, LLC,** a Rhode Island Limited liability corporation, with their principal offices located at 3415 South Sepulveda Boulevard, 9th Floor, Los Angeles, CA 90034 (hereafter collectively, "PROSPECT"), and **Affiliated Monitors, Inc.** P.O. Box 961791, Boston, MA, 02196 ("AFFILIATED" and hereafter, collectively, the ATTORNEY GENERAL, PROSPECT and AFFILIATED are the "Parties").

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 May 16, 2014;

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;

WHEREAS, on or about June 6, 2014, the ATTORNEY GENERAL, PROSPECT and AFFILIATED executed a Retainer Agreement;

WHEREAS, 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, with proceeds totaling $12,041,117.00, and property on Fruit Hill Avenue in North Providence, Rhode Island, with proceeds totaling $446,388 (collectively, the "Sale Proceeds"), and pursuant to Condition #26 of the Decision, the sale proceeds shall remain with Prospect CharterCARE, LLC for the benefit of operation of the Newco hospitals[1];

WHEREAS, PROSPECT requested that the time period to spend the Sale Proceeds in the amount of $12,487,505.00 of the aforementioned properties be extended by two years, or June 20, 2020, beyond the time period Prospect is obligated to contribute to Prospect CharterCARE, LLC pursuant to Section 2.5 (b) of the Asset Purchase Agreement ("Capital Commitment");

[1] Newco hospitals is defined as Prospect CharterCARE RWMC, LLC and Prospect CharterCARE SJHSRI, LLC.

WHEREAS, the ATTORNEY GENERAL approved the aforementioned request conditioned on PROSPECT's commitment to report on the expenditures of the Sale Proceeds, with a final report to be submitted to the ATTORNEY GENERAL on or before June 20, 2020;

WHEREAS, PROSPECT also agrees to extend reporting of the Capital Commitment through June 20, 2018;

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 to add the following to Section II to the Retainer Agreement:

> 3. The expert assistance to be provide to ATTORNEY GENERAL by AFFILIATED to monitor the Conditions for the period of time from the end of the third reporting year through June 20, 2020, with reporting on or before June 20, 2020, shall consist of the Scope of Work attached hereto as Schedule A-1.

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

OFFICE OF ATTORNEY GENERAL

By: Rebecca Partington

Print Name: Rebecca Partington

Print Title: Assistant Attorney General

Date: September 24, 2019

AFFILIATED MONITORS, INC.

By: _____

Print Name:

Print Title:

Date:

WHEREAS, the ATTORNEY GENERAL approved the aforementioned request conditioned on PROSPECT's commitment to report on the expenditures of the Sale Proceeds, with a final report to be submitted to the ATTORNEY GENERAL on or before June 20, 2020;

WHEREAS, PROSPECT also agrees to extend reporting of the Capital Commitment through June 20, 2018;

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 to add the following to Section II to the Retainer Agreement:

> 3. The expert assistance to be provide to ATTORNEY GENERAL by AFFILIATED to monitor the Conditions for the period of time from the end of the third reporting year through June 20, 2020, with reporting on or before June 20, 2020, shall consist of the Scope of Work attached hereto as Schedule A-1.

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:

Print Title:

Date:

AFFILIATED MONITORS, INC.

By: _____

Print Name: CATHERINE KEYES

Print Title: VICE PRESIDENT OF OPERATIONS

Date: 9/6/19

PROSPECT MEDICAL HOLDINGS, INC.
PROSPECT EAST HOLDINGS, INC.
PROSEPCT EAST HOSPITAL ADVISORY SERVICES, LLC
PROSPECT CHARTERCARE, LLC

By: _____

Print Name: Sam Lee

Print Title: CEO

Date: Sept 23, 2019

Schedule A-1

Extended Scope of Work

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 through June 20, 2018

   (b) obtain annual reports from Prospect CharterCARE, LLC for the Attorney General on the proposed form submitted to the Attorney General concerning expenditures of the Sale Proceeds until such date as all Sale Proceeds have been expended or June 20, 2020, whichever is sooner;

   (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 Capital Commitment has been met and the Sale Proceeds have been expended.

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.

Exhibit C

agency; and a separate application for a change in effective control shall be filed containing all information required under the provisions of R.I. Gen. Laws Chapter 23-17 and § 4.4.2 of this Part. Twenty-five (25) copies of the change in effective control application are required to be provided.

1. Each application filed pursuant the provisions of this section shall be accompanied by a non-refundable, non-returnable application fee, as set forth in the Rules and Regulations Pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health (Part 10-05-2 of this Title).

4.4.3 Issuance & Renewal of License

A. Upon receipt of an application for a license, the licensing agency shall issue a license or renewal thereof for a period of no more than one (1) year if the applicant meets the requirements of R.I. Gen. Laws Chapter 23-17 and these regulations. Said license, unless sooner suspended or revoked, shall expire by limitation on the 31st day of December following its issuance and may be renewed from year to year after inspection and approval by the licensing agency.

1. All renewal applications shall be accompanied by a non-refundable, non-returnable annual inspection fee as set forth in the Rules and Regulations Pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health (Part 10-05-2 of this Title).

B. A license shall be issued to a specific licensee for a specific location(s) and shall not be transferable. The license shall be issued only for the premises and the individual owner, operator or lessee, or to the corporate entity responsible for its governance, as identified in the application.

1. Any change in owner, operator, or lessee of a licensed hospital shall require prior advisory review by the Health Services Council and approval of the licensing agency as provided in §§ 4.4.3(D) through 4.4.3(E) of this Part as a condition precedent to the transfer, assignment or issuance of a new license.

2. Any conversion of a licensed hospital shall require prior approval of the licensing agency as provided in the “Rules and Regulations Pertaining to Hospital Conversions.”

3. Any change or addition in premises shall require prior review and approval by the Department of Health and amendment of the hospital license.

C. A license issued hereunder shall be the property of the State of Rhode Island and loaned to such licensee and it shall be kept posted in a conspicuous place on the licensed premises.

D. Reviews of applications for changes in the owner, operator, or lessee of licensed hospitals shall be conducted according to the following procedures:

1. Within ten (10) working days of receipt, in acceptable form, of an application for a license in connection with a change in the owner, operator or lessee of an existing hospital, the licensing agency will notify and afford the public thirty (30) days to comment on such application.

2. The decision of the licensing agency will be rendered within ninety (90) days from acceptance of the application.

3. The Health Services Council shall transmit its advisory to the state agency in writing. The decision of the licensing agency shall be based upon the findings and recommendations of the Health Services Council unless the licensing agency shall afford written justification for variance therefrom.

4. All applications reviewed by the licensing agency and all written materials pertinent to licensing agency review, including minutes of all Health Services Council meetings, shall be accessible to the public upon request.

E. Except as otherwise provided in these regulations, a review by the Health Services Council of an application for a license, in the case of a proposed change in the owner, operator, or lessee of a licensed hospital, shall specifically consider and it shall be the applicant's burden of proof to demonstrate:

1. The character, commitment, competence and standing in the community of the proposed owners, operators or directors of the hospital as evidenced by:

a. In cases where the proposed owners, operators, or directors of the health care facility currently own, operate, or direct a health care facility, or in the past five years owned, operated or directed a health care facility, whether within or outside Rhode Island, the demonstrated commitment and record of that (those) person(s):

(1) in providing safe and adequate treatment to the individuals receiving the health care facility's services;

(2) in encouraging, promoting and effecting quality improvement in all aspects of health care facility services; and

(3) in providing appropriate access to health care facility services;

b. A complete disclosure of all individuals and entities comprising the applicant; and

c. The applicant’s proposed and demonstrated financial commitment to the health care facility.

2. The extent to which the facility will continue, without material effect on its viability at the time of change of owner, operator, or lessee, to provide safe and adequate treatment for individual's receiving the facility's services as evidenced by:

a. The immediate and long term financial feasibility of the proposed financing plan;

(1) The proposed amount and sources of owner's equity to be provided by the applicant;

(2) The proposed financial plan for operating and capital expenses and income for the period immediately prior to, during and after the implementation of the change in owner, operator or lessee of the health care facility;

(3) The relative availability of funds for capital and operating needs;

(4) The applicant's demonstrated financial capability;

(5) Such other financial indicators as may be requested by the state agency;

3. The extent to which the facility will continue to provide safe and adequate treatment for individuals receiving the facility's services and the extent to which the facility will encourage quality improvement in all aspects of the operation of the health care facility as evidenced by:

a. The applicant’s demonstrated record in providing safe and adequate treatment to individuals receiving services at facilities owned, operated, or directed by the applicant; and

b. The credibility and demonstrated or potential effectiveness of the applicant’s proposed quality assurance programs.

4. The extent to which the facility will continue to provide appropriate access with respect to traditionally underserved populations as evidenced by:

    a. In cases where the proposed owners, operators, or directors of the health care facility currently own, operate, or direct a health care facility, or in the past five years owned, operated or directed a health care facility, both within and outside of Rhode Island, the demonstrated record of that person(s) with respect to access of traditionally underserved populations to its health care facilities; and

    b. The proposed immediate and long term plans of the applicant to ensure adequate and appropriate access to the programs and health care services to be provided by the health care facility.

5. In consideration of the proposed continuation or termination of emergency, primary care and/or other core health care services by the facility:

    a. The effect(s) of such continuation or termination on access to safe and adequate treatment of individuals, including but not limited to traditionally underserved populations.

6. And in cases where the application involves a merger, consolidation or otherwise legal affiliation of two or more health care facilities, the proposed immediate and long term plans of such health care facilities with respect to the health care programs to be offered and health care services to be provided by such health care facilities as a result of the merger, consolidation or otherwise legal affiliation.

F. Subsequent to reviews conducted under §§ 4.4.3(D) through 4.4.3(E) of this Part, the issuance of a license by the licensing agency may be made subject to any condition, provided that no condition may be made unless it directly relates to the statutory purpose expressed in R.I. Gen. Laws § 23-17-3, or to the review criteria set forth in § 4.4.3(E) of this Part. This shall not limit the authority of the licensing agency to require correction of conditions or defects which existed prior to the proposed change of owner, operator, or lessee and of which notice had been given to the facility by the licensing agency.

G. Any new hospital licensee shall meet the statewide community standard for the provision of charity care as a condition of initial and continued licensure, pursuant to § 4.5.2 of this Part.

H. Those entities engaged in a hospital conversion shall be subject to the provisions of the “Rules and Regulations Pertaining to Hospital Conversions” promulgated by the Department. Nothing in these regulations should be construed to be inconsistent with the “Rules and Regulations Pertaining to Hospital Conversions.”