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INTRODUCTION

During the September 17, 2020 hearing on the Receivers' motion, the Court directed the parties to file a post-hearing memorandum addressing the criteria applied by the Department of Health and the Attorney General in connection with the pending regulatory proceedings.

Some of these criteria, such as “[w]hether the acquiror has demonstrated that it has satisfactorily met the terms and conditions of approval for any previous conversion pursuant to an application submitted under [the HCA],”¹ indisputably, obviously, and directly implicate the disputes between the Oldcos, APS's former clients, and the Prospect entities, APS's present clients, for whom APS has switched sides. Moreover, numerous criteria demonstrate that the 2020 regulatory proceedings, involve applying the same criteria to the same hospitals and most of the same Prospect entities as in the 2013-2014 regulatory proceedings, and to their request to modify the corporate hierarchy that the regulators approved in 2014.² Therefore, the current regulatory proceedings are substantially related to the prior proceedings, and APS's present representation should be enjoined.

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

² APS's repeated contention in its opposition memorandum and at oral argument that the proposed changes are happening at the top of Prospect's pyramid misses the point. In 2014, APS obtained regulatory approval on behalf of the Oldcos of a corporate structure where Ivy Holdings, Inc. ultimately owned the various hospital subsidiaries (subject only to CharterCARE Community Board's interest in Prospect Chartercare). Now, in the 2020 regulatory proceedings, APS is seeking to obtain approval on behalf of Prospect of a different corporate structure where those hospital entities are ultimately owned by a new corporation, Chamber Inc.

ARGUMENT

I. Overview of the regulatory criteria

The applicable regulatory criteria are set forth in:

- R.I. Gen. Laws § 23-17.14-8(b)(1) through (8) (i.e. criteria applied by the Department of Health to HCA applications involving one or more for-profit corporations);
- R.I. Gen. Laws Ann. § 23-17.14-7(c)(1) through (31) (i.e. criteria applied by the Attorney General to HCA applications involving for-profit acquirors³);
- R.I. Gen. Laws § 23-17-14.3(1) through (4) (i.e. criteria applied by the Department of Health to CEC applications); and
- 216 R.I. Code R. 40-10-4.4.3(E)(1) through (6) (i.e. criteria applied by the Department of Health to CEC applications).

These encompass forty-nine (49) criteria, sometimes overlapping (plus sub-criteria). It is unnecessary to quote each and every criterion. The Receivers believe it to be more than sufficient to quote and address only some of the criteria herein.

In addition to satisfying the applicable criteria, the applicants are required to provide all information that the regulators reasonably require. See R.I. Gen. Laws § 23-17-5 (Department of Health review of CEC applications); 216 R.I. Code R. 40-10-23.5 (Department of Health review of HCA applications); 110 R.I. Code R. 30-00-3.4 (Attorney General review of HCA applications). Thus, the actual scope of the proceedings (and APS's representation of Prospect) inevitably extends beyond the scope of specific review criteria to include all the information that regulators have requested (for whatever reason) or that the applicants have submitted to them.

³ Application of these criteria in the absence of a non-profit acquiree is within the discretion of the regulators.

II. Certain criteria, encompassing live disputes in the regulatory proceedings (as well as judicial proceedings) between the Receivers and Prospect, are dispositive of APS's conflict

Because the criteria are so numerous, the Receivers first focus on certain criteria that, standing alone, are entirely dispositive of APS's conflict. These are criteria that directly relate to, and are a part of, the prior regulatory proceedings (in which APS represented Oldcos) and as to which APS is now, in the present proceedings, asserting positions on behalf of Prospect that are directly adverse to the Oldcos' positions.

A. Whether the terms and conditions of approval for the 2013-2014 proceedings have been met

The most glaring of these dispositive criteria is:

Whether the acquiror has demonstrated that it has satisfactorily met the terms and conditions of approval for any previous conversion pursuant to an application submitted under § 23-17.14-6 [i.e. for a previous HCA application].

R.I. Gen. Laws § 23-17.14-8(b)(8). APS contends in the pending HCA applications, on behalf of the Prospect entities, that Prospect has complied with all prior conditions of approval that were imposed in 2014:

The proposed transaction [i.e. the 2013-2014 acquisition] 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 pursuant to such review on May 16, 2014. **Thereafter, Prospect has performed with regard to the terms and conditions of approval of conversion and each projection, plan, or description submitted as part of the application for any conversion submitted pursuant to the Hospital Conversion Act and made a part of the approval for the conversion pursuant to R.I. Gen. Law §§ 23-17.14-7 or 23-17.14-8.**

[Emphasis supplied]

APS's Exhibit 4 (2020 HCA application) at 29 (discussing the 2013-2014 HCA approvals in response to question # 25 of the application).

The Oldcos and the Reivers contend the opposite, pointing especially to Prospect's failure to perform its obligations concerning the long-term capital commitment and Prospect's obstruction of the attempts to monitor that performance (the monitoring of which was also a condition of the approvals). See, e.g., the Receivers' contentions to the Health Services Council on July 21, 2020:

In addition to the \$31 million in cash to pay off the bonds, the 14 million to go in the pension fund, there was going to be a \$50 million long-term capital contribution. There was a commitment made to do that. And in addition, there were ten million dollar per year promises to put into these hospitals for routine capital expenditures. We have been fighting for two years to find out if they really put the money in. Instead of coming back and showing what they've done -- and I'm talking about Prospect, about fulfilling this commitment -- they have danced all over the place.

The attorney general in 2014 hired a monitoring service to go in and monitor, among other things, whether or not the capital commitments were made. Those \$50 million commitments should have been finished by 2018. It is now 2020. And on July 3, 2020, the Attorney General turned over to me the monitoring report that it received. And the monitor who's supposed to be checking all this and has been checking all this has reported they are unable to say that these requisite capital contributions have been made. They flat out say they can't say it, and they're now two years past the time the money should have gone in.

Exhibit 13 (7/21/2020 HSC transcript) at 102-103.

In addition, the Oldcos and Receivers contend that Prospect has utterly frustrated the local governance features and structure of Prospect Chartercare's 50/50 board of directors, which were fundamental features of the 2013-2014 transaction and its regulatory approvals. The structure and purpose of the 50/50 board of directors was repeatedly described in the 2013-2014 HCA applications. For example:

The model being proposed, post-conversion, provides for the not-for-profit entity, CCHP, to continue to maintain an ownership position in the acute care, community hospitals. In addition to maintaining an ownership position, CCHP will have equal representation on the governing board post-conversion. In this manner, the local community hospital healthcare network continues with all the

advantages of that model with respect to local leadership, healthcare mission, and positive economic impact on the community. . . .

* * *

. . . CCHP will have significant stake in the continued governance of the Hospitals, as the governing board will be what has been termed above as a 50/50 Board.

After the purchase, the parties will jointly own Prospect CharterCARE, LLC which will own and operate the entities that will hold the licensure for Newco RWMC and Newco Fatima. This will allow the Existing Hospitals to retain their local community mission and leadership, while at the same time receive access to capital and resources (and in particular, expertise in population management through risk contracts) that PMH can provide.

* * *

Prospect CharterCARE, LLC's Board of Directors will be structured as follows: (i) eight (8) members; (ii) fifty (50%) percent of its members will be appointed by PMH; and (iii) fifty (50%) percent of its members will be appointed by CCHP. The purpose of the structure is to ensure a strong local presence and mission.

Exhibit 22 (2014 HCA applications) at 6, 8, 39.

The importance of the 50/50 board for local governance is also reflected in the Attorney General's 2014 opinion approving the transaction. For example:

The condition in the RFP [request for proposal] reflecting the CCHP [CharterCARE Community Board] 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. 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, . . .

* * *

The governing board of Prospect CharterCARE, LLC will be a 50/50 board (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, 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.

May 16, 2014 Attorney General Opinion⁴ at 12, 36.

In conjunction with the 2013-2014 regulatory proceedings, Prospect also engaged in a public relations campaign concerning its promises the hospitals would continue to have real local governance. In a May 12, 2014 Providence Journal op-ed, Prospect executive Thomas Reardon stated:

We are pleased that our proposal will assure preservation of local governance, as our joint venture board will have equal representation from CharterCare and Prospect with a local board chair, with real veto powers.

All of this emphasis on the 50/50 board and local control was to counter concern that local nonprofits would be controlled by the California for-profits.

Ultimately, the 50/50 board was also embodied in the Prospect Chartercare, LLC Amended and Restated Limited Liability Agreement, which (together with implementing the transaction as described in the applications) was incorporated into the conditions of the 2014 regulatory approvals. See May 16, 2014 Attorney General Opinion at 52 (“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.”).

⁴ Available at <http://www.riag.ri.gov/documents/5-16-14AGFinalDecision.pdf>

As shown by correspondence as recently as this today,⁵ Prospect is refusing to provide any information whatsoever about Prospect Chartercare to its four Category A directors (appointed by CharterCARE Community Board) unless they first agree to an unconscionable confidentiality agreement (required nowhere in the LLC Agreement) and promise not to communicate with the Category A member (CharterCARE Community Board) who appointed them. Prospect persists in this refusal despite the Category A Directors good-faith tendering the appropriate conflict of interest disclosures and accepting the only applicable conflict of interest policy. This conflict of interest policy dates form 2011, so it is not tainted by Prospect's efforts to subject Category A Directors to restriction that do not apply to the directors appointed by Prospect.

These acts of noncompliance with the 2014 transaction, as they relate to the liquidating receiver's appointment of Category A members, occurred mainly after the July 21 hearing before the HSC (including as recently as this afternoon). Consequently, a supplemental objection will be filed with the regulators on this issue, so that the regulators will be brought up to date on what the Receivers to be a material issue.

In other words, there is to be a necessary inquiry by the regulators into the operation of the Rhode Island hospitals since 2014 and whether there has been compliance with the conditions established in the 2014 approval.

⁵ See Exhibits 61 to 65 (attached hereto).

B. The applicant's proposed and demonstrated financial commitment to the health care facility

An additional dispositive criterion is:

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

* * *

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

216 R.I. Code R. 40-10-4.4.3(E)(1)(c). APS contends on behalf of the Prospect entities that Sam Lee and David Topper (who intend to be Prospect's sole ultimate shareholders) have excellent character, and that they and Prospect have demonstrated excellent financial commitment to the hospitals.⁶ Pat Rocha, the Oldcos' former counsel, stated at the July 21, 2020 Health Services Council meeting:

We look forward to asking you to approve the CEC applications. All the CEC criteria have been met. And you know me, **I'm an advocate**^[7], I hope I'm a good advocate for my clients. But here, this isn't even a close case. This is hands down. You heard from each of the speakers who deal with the Prospect management team and executive. **And these applications meet each and every one of the criteria.**

So let's take a look on page 24 [of APS's PowerPoint].

And you're all familiar with the criteria. In fact I think it was handed out to you at the beginning of the meeting. Character, Commitment, Competence and Standing in the Community.

Speaker after speaker **affirm Prospect's character, commitment, competence and standing in the community** to allow the hospitals, the Surgicenter, and the

⁶ APS made these same contentions on behalf of the Oldcos in the 2013-2014 regulatory proceedings.

⁷ During the September 17, 2020 hearing (for which the transcript is not yet available), APS took the position that it has not been acting as an advocate in connection with Prospect's regulatory proceedings. That position is obviously wrong and ridiculous.

home health agency to provide quality, cost-effective, needed services to patients in need.

* * *

Prospect, **under the leadership of Sam Lee and David Topper**, will continue to make investments in Rhode Island. You've heard about them, including the renovated ED at Roger Williams, the addition of Spanish speaking primary care physicians, and the licensed entities have a strong licensure track record of providing high quality services to their patients.

[Emphasis supplied]

Exhibit 13 (7/21/2020 HSC hearing transcript) at 91-92.

The Oldcos and the Receivers contend the opposite. Indeed, they are contending that Sam Lee and David Topper have personally been looting the Prospect entities, specifically including approximately 40% of more than \$450 million in dividends taken from money borrowed in 2018 by the Prospect entities (and at the time, secured by mortgages on the local hospitals). Further, the Receivers contend that Sam Lee and David Topper have been involved in Prospect's failure to fulfill its financial obligations to the hospitals, including through Prospect's failure to perform its obligations regarding the long-term capital commitment:

By the way, when a congressman wrote and said what about these hundreds of millions of dollars of dividends, which I'll get to in a minute, which I'll betcha very few people, if anybody, on the Council knows even what I'm talking about, with the hundreds of millions of dollars of dividends. **When a congressman wrote complaining that hundreds of millions of dollars was taken out of safety net hospitals, the response to them was, wait a minute, we put money into these places too. Do you know what they referred to? The \$15.1 million emergency room. That's the only thing they referred to.** And those documents are part of your record. I submitted them. I'm sure nobody has seen them yet because of the short notice that we've had to prepare for this.

* * *

If you look at the papers, you'll see that Leonard Green and, and, Dr. [sic] Lee and Mr. Topper all took out hundreds of millions of dollars from the Prospect Medical hospitals. Hundreds of millions of dollars of dividends.

That means it went into their pockets. How did they do that? They borrowed over a billion dollars, and took more than half of it and paid themselves dividends. Guess who got saddled with the obligation to pay the billion dollars. The hospitals.

[Emphasis supplied]

Exhibit 13 (7/21/2020 HSC hearing transcript) at 108-109.

C. Whether the applicants' character, competence, and standing in the community or other communities are satisfactory

A third and overlapping criterion, here dispositive, is:

Whether the [applicants'] **character, commitment**, competence, and standing in the community, or any other communities served by the proposed transacting parties, are satisfactory;

[Emphasis supplied]

R.I. Gen. Laws § 23-17.14-7-(c)(28); R.I. Gen. Laws § 23-17.14-8(a) (same); As noted, APS is making contentions concerning fulfilment of this criterion⁸ on behalf of the Prospect entities that are utterly rejected by the Oldcos and the Receivers, who have so informed the regulators.

The Oldcos and the Receivers also contend that the Prospect entities, in the 2013-2014 regulatory proceedings in which APS represented the Oldcos, made material misrepresentations to the regulators, and that those misrepresentations reflect poorly (to say the least) on the Prospect entities' character. Here too, the 2020 regulatory proceedings are intertwined with (and therefore substantially related to) the 2013-2014 regulatory proceedings.

⁸ Again, APS made these same contentions (vouching for the Prospect entities' character, etc.) on behalf of the Oldcos in the 2013-2014 regulatory proceedings. See Exhibit 31 (5/13/2014 Project Review Committee hearing transcript) at 7 ("So the four criteria, character, competence, commitment and standing in the community of the proposed owners and operators. . . . The uncontroverted, relevant evidence in the record shows that we meet these four criteria.") (Ms. Rocha's contention as advocate).

D. There are inherent conflicts in the transaction among the directors and executives

Another dispositive criterion is:

Whether any conflict of interest exists concerning the proposed conversion relative to members of the board, officers, directors, senior management, experts, or consultants engaged in connection with the proposed conversion including, but not limited to, attorneys, accountants, investment bankers, actuaries, health care experts, or industry analysts;

[Emphasis supplied]

R.I. Gen. Laws § 23-17.14-7(c)(6).

Sam Lee and David Topper, who will personally and directly benefit from the proposed transaction, are both directors and officers of Prospect Chartercare, one of the applicants. Two other directors of Prospect Chartercare (Thomas Reardon and Von Crockett) are employees of the other Prospect entities. Sam Lee, if this transaction is approved, will be the sole officer and director of Chamber Inc., the entity at the top of Prospect's pyramid. There is an enormous conflict of interest between Prospect Chartercare's Category B directors (appointed by Prospect) in comparison to its Category A directors (appointed by CharterCARE Community Board), who are being wrongfully deprived by Prospect of any meaningful role in Prospect Chartercare's governance, in violation of the conditions of the 2013-2014 regulatory approvals.

E. APS's own conflict of interest is itself a criterion

The same criterion discussed immediately above also encompasses APS's conflict:

Whether any conflict of interest exists concerning the proposed conversion relative to members of the board, officers, directors, senior management, experts, or consultants engaged in connection with the proposed conversion including, but not limited to, attorneys, accountants, investment bankers, actuaries, health care experts, or industry analysts;

[Emphasis supplied]

R.I. Gen. Laws § 23-17.14-7(c)(6).

APS contends there is no conflict. The Oldcos and the Receivers contend that attorneys who have been engaged in connection with the pending conversion (i.e. APS itself) have an enormous conflict of interest. See Exhibit 13 (7/21/2020 HSC transcript) at 136 (discussing APS’s “enormous conflict”); the Receivers’ instant motion papers, *passim*.

Whether or not APS has a conflict because of its role as the Oldcos’ counsel in the 2013-2014 proceedings is obviously substantially related to that prior representation. APS’s own objections to the instant motion, and their denial of the same allegations before the regulators, prove the point.

III. Additional criteria, although not yet specifically encompassing disputed issues, demonstrate substantial relation between the present 2020 proceedings and the prior 2013-2014 proceedings

For example, one of the criteria is:

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; . . .

216 R.I. Code R. 40-10-4.4.3(E)(4). This criterion is not one concerning which the Oldcos and the Receivers have yet⁹ staked a position. Nevertheless, the extent to which Prospect’s hospitals in other states (e.g. in California) were demonstrating a record of access to traditionally underserved populations in 2013-2014 is also relevant to whether that same criterion is satisfied

⁹ Three business days ago, Prospect delivered thousands of pages of additional documents, which the Receivers are presently reviewing.

in 2020. Accordingly, this criterion is still relevant to establishing the substantial relationship between the 2013-2014 proceedings and the 2020 proceedings, regardless of whether there is adversity as to this specific criterion in isolation.

Under Rhode Island's attorney ethics rules, it is only necessary to establish that (1) the present legal matter is substantially related to the prior legal matter; and (2) the non-consenting former client's interests are materially adverse to the present client's interests. See Supreme Court R. Prof. Conduct 1.9(a) and 1.10(a). It is not necessary to establish that those interests are materially adverse as to *each* of the issues that make the matters substantially related.

IV. In addition to satisfying the regulatory criteria, Prospect needed to submit compliant HCA/CEC applications which include additional matters

The scope of APS's present representation of Prospect also includes submission of the HCA/CEC applications. As noted *supra*, the HCA and CEC applications are required to supply information requested by the regulators or required by statute. For example, information concerning Prospect East's ownership percentage in Prospect Chartercare was required to be included in the HCA application:

The transacting parties shall file an initial application in accordance with subsection (b) of this section that shall, at minimum, include the following information with respect to each transacting party and to the proposed new hospital:

* * *

(8) Organizational structure for existing transacting parties and each partner, affiliate, parent, subsidiary or related corporate entity in which the acquiror has a twenty percent (20%) or greater ownership interest;

R.I. Gen. Laws § 23-17.14-6(a)(8). Accordingly, APS included affirmative statements¹⁰ in the

¹⁰ See, e.g., APS Exhibit 4 at 1, 9.

HCA applications concerning the percentages of ownership of Prospect Chartercare, statements that the Oldcos and the Receivers dispute and which they contend relate directly to APS's prior representation of Oldcos.¹¹

The pending HCA/CEC applications, which APS submitted on behalf of Prospect, affirmatively state that CharterCARE Community Board owns only 15% of Prospect Chartercare, notwithstanding that the Oldcos and the Receivers contend that CharterCARE Community Board actually owns more than 15%. The pending HCA/CEC applications also fail to disclose the pending Superior Court lawsuit *CharterCARE Community Board v. Lee*, in which the Receivers are disputing the amount of CharterCARE Community Board's ownership. Prospect and APS failed to disclose that lawsuit notwithstanding that its existence was responsive to this issue and was specifically responsive to another question in the applications (concerning the identification of pending litigation). The Receivers have not asked the regulators to determine who has which percentage, but rather to focus on the dishonesty of Prospect in failing to identify and disclose the disputed issue.

Thus, not only does this issue make the 2013-2014 proceedings and 2020 proceedings substantially related, but there is adversity between the Oldcos and Prospect even as to this specific issue.

¹¹ APS contends throughout the applications and their motion papers that CharterCARE Community Board's ownership interest in Prospect Chartercare is 15%. The Oldcos and the Receivers contend, *inter alia*, that because of Prospect's failure to honor the long term capital contribution, CharterCARE Community Board's true ownership in Prospect Chartercare is more than 15%.

V. Regardless of whether the regulators inquired, Prospect and the Oldcos have put various facts into issue in connection with its applications

Regardless of whether APS's positions were relevant to specific regulatory criteria or were responsive to the regulators' inquiries, APS has taken positions on issues that are adverse to the Oldcos and has done so in a matter that is substantially related to their prior representation, e.g. the percentage ownership in Prospect Chartercare that CharterCARE Community Board acquired in connection with the 2013-2014 regulatory proceedings. That fact standing alone is sufficient to require disqualification of APS regardless of other considerations (including application of any specific regulatory criteria).

Furthermore, even if the regulators were not required to inquire into various concerns, and even if APS not put those concerns into issue, the Oldcos and the Receivers have raised those concerns before the regulators. Thus, even if the 2013-2014 proceedings and the 2020 proceedings were not already substantially related (which they were), they have become substantially related because of the Receivers' objections.

As a practical matter, some of the regulatory criteria (such as whether the transactors are of good character, see *supra* at 8-11) are so broad that it is difficult to imagine how the Oldcos' and Receivers' contentions could actually be irrelevant to the regulatory proceedings.

VI. APS's contention that the regulators will make no findings is plainly incorrect

In its memorandum and at oral argument, APS contended that the regulators will not decide the various issues raised by the Receivers. The Receivers agree that the regulators will not be deciding some of the issues. For example, as discussed *supra*, the Receivers are not asking the regulators to decide the Oldcos' precise ownership interest in Prospect Chartercare, but rather to focus on the dishonesty of Prospect in connection with addressing that issue.

APS's contention is contrary to Prospect's prior contention that the 2013-2014 regulatory proceedings did determine various legal and factual issues and that those determinations were *res judicata* as to the Plan Receiver. See St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, No. PC20173856, 2018 WL 6074195, at *2 (R.I. Super. Nov. 14, 2018) (reciting Prospect's contentions asserted in the 2018¹² administrative proceedings that Prospect Chartercare filed with the Department of Health and the Attorney General, in violation of the Plan Receivership stay). See id. at *2 ("The Receiver's cause of action in the Federal Court Litigation alleging Plan liability as against the Acquiror is barred by the doctrine of *res judicata* and the bar should be enforced in the first instance by the administrative agencies with jurisdiction over the Conversion and CEC Proceedings.").

On another level, APS's contention is also plainly wrong. Regardless of whether such determinations are binding on the Receivers (as Prospect erroneously claimed in 2018), the Department of Health and the Attorney General will be making findings for purposes of the regulatory proceedings, in connection with granting or denying the CEC and HCA applications. See, e.g., R.I. Gen. Laws § 23-17.14-34 (permitting the transacting parties to seek judicial review of the regulators' decisions) ("Any transacting party aggrieved by a final order of the department of health or the attorney general under this chapter may seek judicial review in the superior court in accordance with § 42-35-15."); R.I. Gen. Laws § 42-35-15 (providing judicial review pursuant to the Administrative Procedures Act of, *inter alia*, the agencies' findings).¹³ See also the May

¹² In 2018, after the Plan Receiver publicly filed the Oldcos' proposed settlement with the Plan Receiver and Plan participants, Prospect Chartercare instituted regulatory proceedings to launch a collateral attack, before the Department of Health and the Attorney General, on the settlement and the pending federal suit. See id., 2018 WL 6074195, at *2. The Court ordered Prospect Chartercare to withdraw those 2018 regulatory petitions. See id. at *6.

¹³ The appeals provision of the HCA Statute, R.I. Gen. Laws § 23-17.14-34, was amended in 2019 to provide for appeals taken pursuant to the Administrative Procedures Act instead of the unique procedure previously applicable to HCA decisions.

16, 2014 Attorney General decision,¹⁴ obtained by APS on behalf of its former Oldco clients, which contains numerous findings throughout concerning the various regulatory criteria.

Of overarching significance is the fact that the Oldcos and the Receivers say that the transaction for which Prospect seeks regulatory approval is nothing more than a fraudulent transfer. On its face, PMH is paying approximately \$12 million, plus an undisclosed additional amount, and receiving no reasonably equivalent value, while Lee and Topper acquire Leonard Green's ownership of more than 60% of Prospect at no cost to them. It is inconceivable that the regulators, having been expressly apprised of this question (and Prospect's history of paying dividends from borrowed funds), will not address this question. To approve the transaction without deciding that question, whether binding on the Receivers or not, is impossible.

CONCLUSION

Adler Pollock & Sheehan P.C.'s representation of the Prospect Entities in connection with the pending regulatory proceedings should be enjoined, and Adler Pollock & Sheehan P.C. should be further enjoined from sharing its knowledge or work product with the Prospect Entities or successor counsel. Prospect will suffer no prejudice not of its own making.

Prospect knew of all these issues by the latest in March 2019, when CharterCARE Community Board filed its lawsuit CCCB v. Lee. Thereafter, and despite that knowledge, Prospect and APS sandbagged the Oldcos and the Receivers, as discussed in the Receivers' initial memorandum of law.¹⁵

¹⁴ Available at <http://www.riag.ri.gov/documents/5-16-14AGFinalDecision.pdf>

¹⁵ At oral argument, APS also complained that the Receivers did not object to APS's representation of Prospect in connection with other regulatory proceedings prior to 2020. The existence of those proceedings and APS's representation of Prospect comes as a surprise, inasmuch as there is no evidence that APS or Prospect gave notice of those proceedings (and of APS's representation of Prospect) to the Receivers (and indeed none was given). The Receivers are unfamiliar with those additional proceedings or whether they were a substantially related matter in

Respectfully submitted,

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Dated: September 23, 2020

which the Oldcos' interests were adverse. It is conceivable that the Oldcos might have consented to the representations, if notice had properly been given (which it was not).

CERTIFICATE OF SERVICE

I hereby certify that, on the 23rd day of September, 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 61



Thomas S. Hemmendinger, of counsel
E-mail themmendinger@brcsm.com

By email jeffrey.liebman@chartercare.org

August 25, 2020

Jeffrey H. Liebman. DMD
Chief Executive Officer
Prospect CharterCARE, LLC
825 Chalkstone Avenue
Providence, RI 02908

Re: Prospect CharterCARE, LLC

Dear Dr. Liebman:

I write to you in my capacity as permanent liquidating receiver of CharterCARE Community Board, f/k/a CharterCARE Health Partners and at the request of James H. Aceto, CPA, William J. Lynch, Esq., James P. Riley, and Marc Weinberg, M.D., the four new Category A Directors of Prospect CharterCARE, LLC.

You have kindly reached out to the new directors to arrange initial meetings with them. The new directors appreciate this and look forward to serving the interests of Prospect CharterCARE, LLC and the communities served by its local healthcare facilities, together with you, the rest of management, and their colleagues on the board of directors.

The new directors would be glad to meet with you, and they suggest that you all meet together—probably through Zoom or WebEx for health reasons. Please circulate directly to them some proposed dates and times. They also would like to see the following ahead of time so they can prepare for the meeting:

- ❖ An agenda for the meeting.
- ❖ Year-to-date financial reports on Prospect CharterCARE, LLC and its subsidiaries.

362 Broadway
Providence, RI 02909
401.453.2300

One Church Green
PO Box 488
Taunton, MA 02780
508.822.0178

www.brcsm.com

- ❖ The revised financial statements submitted to the R.I. Attorney General and the R.I. Department of Health on August 11.
- ❖ The documents authorizing and justifying the pending Hospital Conversion Act and Change in Effective Control applications from the perspective of Prospect CharterCARE, LLC and its subsidiaries.

In housekeeping matters, the new directors would like to know the schedule for board meetings, get copies of any policies or codes governing all directors or officers, get confirmation that they are covered by Prospect CharterCARE, LLC's directors and officers liability insurance policy to the same extent as all other directors, and get a copy of the policy.

However, the new directors have grave concerns that Mark Russo's August 6 letters to each of them will impair their ability to do their job as directors.

One point in Mr. Russo's letter is not controversial. The new directors acknowledge that they owe a fiduciary duty to Prospect CharterCARE, LLC. The same is true for the Category B Directors and for all officers.

On the other hand, the new directors read other points in Mr. Russo's letter as an improper attempt to hobble their ability to do their jobs. For example, without justification he demands that the new directors not communicate at all with me, my counsel, the pension plan receiver, or his counsel, except through Mr. Russo himself.

The new directors understand that, subject to applicable law that requires or permits disclosure to protect the interests of the entity, a director may not, on his or her own, disclose information that is covered by a valid (i) privilege held by the entity or (ii) obligation not to disclose confidential information. In particular, a director may not share the entity's litigation strategy with the entity's opponent in litigation.

But outside of those limited situations, there is no basis for Mr. Russo's demand. A director must otherwise have the freedom to communicate with the minority member who appointed him or her and with the beneficial owner of the minority member's interest. This is especially important where the majority member and the directors appointed by the majority member have been accused of breaching their own duties to the entity and to the minority member.

Therefore, the Category A Directors have asked me to convey to you their request that Mr. Russo retract his letter or clarify it consistent with the law.

Cordially,

/s/ Thomas S. Hemmendinger

Thomas S. Hemmendinger, permanent
liquidating receiver of CharterCARE
Community Board, f/k/a CharterCARE Health
Partners, both individually and as trustee for
the Plan Receiver

TSH:jl

Encl.

cc: James H. Aceto, CPA (by email)
William J . Lynch, Esq. (by email)
James P. Riley (by email)
Marc Weinberg, M.D. (by email)
Mark Russo, Esq. (by email)

Exhibit 62

WJ Lynch Law
320 Newport Avenue
Rumford, RI 02916
401.648.2100 (Office) / 401.648.2103 (Fax)
bill@wjlynchlaw.com / www.wjlynchlaw.com

September 8, 2020

Dr. Jeffrey H. Liebman
CEO
Prospect CharterCARE, LLC
825 Chalkstone Avenue
Providence, RI 02908

Ms. Miriam G. Cauley
Hospital Operations Counsel RI
Prospect CharterCARE, LLC
825 Chalkstone Avenue
Providence, RI 02908

Re: CharterCARE Category A Directors

Dear Jeff and Mimsey:

I hope that this letter finds you well.

On August 25, 2020, at the request of myself and the other three Category A Directors, Tom Hemmendinger wrote Jeff to ask for certain information and documents that we wish to receive and review. Two weeks have now passed, and we have received a Conflict of Interest Policy dated September 11, 2019, including a Disclosure Form, but not the information and documents requested.

Therefore, I have been instructed by the Category A Directors to again request that we be provided with all of the information and items previously requested in Tom's letter and that we receive all such information and documents no later than Friday, September 11, 2020.

Interestingly enough, we (the Category A Directors) did receive one item that had not previously been requested and which came as somewhat of a surprise to all of us: the Rhode Island Attorney's General Conflict of Interest Statement Form apparently regarding the proposed pending transaction for which Prospect seeks regulatory approvals. Obviously, without the necessary documents we (the Category A Directors) have no ability to comment on, support or oppose the pending proposed transaction. If required, we are going to submit our Conflict of Interest Statement Forms to the Attorney General's Office. However, without the requested information and documents, we do not intend to do anything that would give the regulators the impression that we approve, ratify or support the proposed transaction. We will, of course, make clear to the Attorney General in our submissions, that we are presently without sufficient documents and information to approve, ratify or support the proposed transaction so that it is

Dr. Jeffrey H. Liebman
Ms. Miriam G. Cauley
September 8, 2020
Page 2

abundantly clear that the act of submitting the completed Attorney General's Conflict of Interest Statement Forms does not in any way suggest that we (the Category A Directors) approve, ratify or support the proposed transaction.

Therefore, we urge you in the strongest terms possible to provide us with all of the requested information immediately and in any case, no later than Friday, September 11, 2020.

In addition to the requested items previously listed in Mr. Hemmendinger's letter, we are also requesting copies of the minutes of all Prospect CharterCARE, LLC Board of Directors meetings since June 20, 2014 to the present, including all minutes of any and all Executive Committee sessions during that same time period. We understand and appreciate that you may need to redact any discussion of litigation strategy with either Steve DelSesto or Tom Hemmendinger. We also appreciate that, since this is a new request, you may not be able to provide the additional requested documentation by this Friday, so please provide the minutes to us by next Tuesday, September 15, 2020.

As Category A Directors, we all intend to fulfill our fiduciary obligation to Prospect CharterCARE, LLC. However, we cannot do so without access to all of the information previously requested which we consider relevant to our review.

If necessary, we will need to inform the Attorney General that we have not received the information we have requested and consequently, we will have no choice but to advise the Attorney General that the proposed transaction should not be approved at least until such time as we have received and reviewed the requested documentation.

Thank you very much.

Very truly yours,

Category A Directors
By and through Director,
William J. Lynch



William J. Lynch

WJL/djc

cc: Tom Hemmendinger

Exhibit 63

WJ Lynch Law
320 Newport Avenue
Rumford, RI 02916
401.648.2100 (Office) / 401.648.2103 (Fax)
bill@wjlynchlaw.com / www.wjlynchlaw.com

September 14, 2020

Dr. Jeffrey H. Liebman
CEO
Prospect CharterCARE, LLC
825 Chalkstone Avenue
Providence, RI 02908

Re: Prospect CharterCARE Board of Directors

Dear Dr. Liebman:

As one of the four recently appointed Category A Board members, I have been asked to send this follow-up letter to you.

On July 22, 2020, the four of us were appointed to the Board by the permanent liquidating receiver, Thomas Hemmendinger. Subsequent to our appointment, we have conferred with Mr. Hemmendinger in our concerted attempts to be able to best perform our fiduciary duties as Category A Board Members.

In this regard, we were (and remain) very concerned at Prospect CharterCARE's (PCC's) apparent refusal to provide the permanent liquidating receiver with documentation he requested previous to our appointment.

On September 8, 2020 (by agreement of all four Category A Board members), I wrote to you to expressly inform PCC of our concerns regarding PCC's refusal to provide the previously requested documentation and to reiterate our (the new Board members) desire to receive this documentation by September 11, 2020.

As the writing of this letter (September 14, 2020), we have not even received an acknowledgement of our September 8, 2020 letter much less received the requested information.

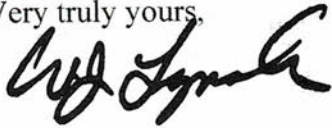
This is not acceptable to us and in our estimation, prevents us from adequately fulfilling our fiduciary duties.

Consequently, we have enclosed herein a copy of the letter that we intend to send to the RI Attorney General and the RI Department of Health if we do not receive all of the documentation previously requested by Friday, September 18, 2020. PCC's ongoing refusal to comply with what we consider to be a very reasonable request for crucial documents leaves us no alternative.

Dr. Jeffrey H. Liebman
September 14, 2020
Page 2

It is our understanding that as Category A Directors, we make up fifty percent (50%) of the Board for the express purpose of having local control of these hospitals and yet we are unable to even get the requested documents without which we are unable to protect the future viability of these hospitals.

Very truly yours,



William J. Lynch (on behalf of the
Category A Board Members)

Enclosure
WJL/djc

cc: Tom Hemmendinger
James Riley
James Aceto
Dr. Marc Weinberg
Mark Russo, Esq.
Preston Halperin, Esq.

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September __, 2020

The Honorable Peter Neronha
RI Attorney General
150 South Main Street
Providence, RI 02903

Re: Prospect CharterCARE, LLC

Dear General Neronha:

On July 22, 2020, the permanent liquidating receiver appointed by the RI Superior Court appointed four new Category A Directors to the Board of Prospect CharterCARE, LLC ("PCC"). The four new directors are myself, Dr. Marc Weinberg, James Riley and James Aceto.

I write to you today on behalf of all four directors regarding certain grave concerns that we have with PCC and more particularly with the application for a change of effective control presently pending before the RI Department of Health.

Since our appointment, we have learned that the permanent receiver previously requested certain documentation from PCC which PCC has either refused or been unable to provide. As new Board members, we consider the requested documentation to be both reasonable in scope and critical to our ability to perform our fiduciary duty to PCC.

Because we consider the requested documentation to be of vital importance, we (the four Board Members) addressed our concerns to PCC in a letter dated September 8, 2020 (copy attached).

Despite our reiterated request for this documentation from PCC, we have received none of the requested documentation. We believe that the refusal to provide the requested documents makes it impossible for us to perform our fiduciary duty and, actually threatens the future viability of these hospitals.

Since our appointment in July, Mr. Hemmendinger (the permanent liquidating receiver) has made a determined effort to educate us as to all issues within our purview as Category A Directors. Despite his best efforts to do so, we are absolutely unable to adequately perform our fiduciary duties without being able to receive and review the long requested documentation from PCC.

The Honorable Peter Neronha
September __, 2020
Page 2

Our preliminary discussions with the Mr. Hemmendinger have in many instances resulted in questions from us that cannot be answered without the requested documents:

- a) Why is almost \$12 million dollars proposed to be paid from Prospect Medical Holdings, Inc. (our guarantor) to Leonard Green & Partners (Leonard Green) to purchase Leonard Green's sixty percent (60%) ownership interest in all of Prospect's hospitals when that sixty percent (60%) ownership interest will actually be owned by two (2) private individuals (David Topper and Sam Lee)?
- b) Why is the amount of \$12 million dollars now being paid for sixty percent (60%) of all of the hospitals owned by Prospect? It is our understanding that Prospect presently owns twenty (20) hospitals and that when Leonard Green purchased Prospect in December 2010, for \$363 million dollars Prospect owned by five (5) hospitals.
- c) Why is Leonard Green now poised to sell its majority interest in Prospect to Mr. Topper and Mr. Lee for \$12 million dollars (to be paid by Prospect Medical Holdings, Inc. and not by Mr. Topper and/or Mr. Lee individually) when the Wall Street Journal in 2016 valued the same ownership interest at \$1 billion dollars?
- d) What is the actual status of the required \$50 million dollar capital contribution that was to be invested in Prospect CharterCARE?

These are but a few of the many questions that remain unanswered and the reason that we (in addition to Mr. Hemmendinger) have requested the aforementioned documentations from PCC.

As you know, we (the four (4) new Category A Directors) have received a conflict of interest statement from your office with a request that each of us fill in the form and return it to your office. These conflict of interest forms are entitled "In re: Proposed Affiliation of Chamber, Inc. and Ivy Holding, Inc." As previously set forth herein, we (the four Category A Directors) have very limited information with respect to this application as a result of PCC's refusal to provide us (and the receiver) with the requested documents.

It is, of course, our intention to complete your office's Conflict of Interest forms and submit them to you accordingly. However, we do want to expressly state that our completion and filing of the Conflict of Interest forms does not imply that we endorse, support or in any way ratify the pending application before the Health Department.

To the contrary, as Category A Directors, it is our confirmed position that the pending application should not be approved but rather opposed at least until such time as PCC provides us with the requested documentation and sufficient time to diligently review the same.

The Honorable Peter Neronha
September __, 2020
Page 2

Please feel free to contact us at any time.

Best regards,

William J. Lynch (on behalf of
The Category A Directors)

Enclosure
WJL/djc

*cc: Thomas Hemmendinger
Dr. Marc Weinberg
James Aceto
James Riley
Mark Russo, Esq.
Preston Halperin, Esq.*

Exhibit 64



55 PINE STREET, PROVIDENCE, RI 02903
401.455.1000 WWW.FRLAWRI.COM

W. Mark Russo
mrusso@frlawri.com

September 15, 2020

Via e-mail

Thomas S. Hemmendinger
Brennan, Recupero, Cascione, Scungio & McAllister, LLP
362 Broadway
Providence, RI 02909

RE: Prospect CharterCARE, LLC

Dear Tom:

I am responding to your August 25, 2020 correspondence to my client with copy to the Category A Director nominees and Bill Lynch's most recent correspondence dated September 14, 2020 .

You state in your correspondence dated August 25, 2020, that you are writing in your capacity as Permanent Liquidating Receiver of the Chartercare Community Board. In addition, you acknowledge the fiduciary duty due and owing by the Category A nominees to Prospect CharterCARE, LLC.

You do not represent the Category A nominees and to do so would be a clear conflict of interest. Furthermore, it is a clear conflict of interest to be requesting documents on behalf of the Category A nominees based upon the fact that we are currently involved in litigation with you in your capacity as Permanent Liquidating Receiver and also with the Receiver for the St. Joseph's Pension Plan.

In turn, it would be a violation of the acknowledged fiduciary duties, if directors were seeking documents and/or financial information to pass on to you in your position as Permanent Liquidating Receiver of Chartercare Community Board in light of such litigation and your relationship to the Receiver for the St. Joseph's Pension Plan.

However, based upon Bill's correspondence dated September 14, 2020, it appears that this is exactly what is taking place and it is a conflict. In order to try and work with the Category A Director nominees, Conflict of Interest and Disclosure Policy documents were delivered on August 31 to the nominees for completion and filing. I do not believe that we have received any completed responses. Upon receipt of completed responses, we were prepared to provide the nominees with requested documents. However, in light of Bill's correspondence, we are also going to require all Directors, including the nominees to execute Confidentiality and Non-Disclosure Agreements in the form attached hereto. Again, once we have these forms completed, we will produce the requested documents.

Thomas S. Hemmendinger

September 15, 2020

Page 2

Sincerely,

A handwritten signature in blue ink, appearing to read "W. Mark Russo".

W. MARK RUSSO

WMR/was

Enclosure

Cc: Dr. Jeffrey H. Liebman, CEO (via e-mail jeffrey.liebman@chartercare.org)

Exhibit 65

Thomas S. Hemmendinger

From: Mark Russo <mrusso@frlawri.com>
Sent: Wednesday, September 23, 2020 4:56 PM
To: Thomas S. Hemmendinger
Subject: [External] RE: Prospect CharterCARE, LLC

Dear Tom:

It is unfortunate that you decided to forego talking through these issues and instead sent me this type of e-mail.

I do note in your e-mail that you say you are responding on behalf of the Liquidating Receiver for the minority owner of Prospect CharterCARE, LLC and the Category A Director nominees. This is different than your previous correspondence. You are now purporting to represent the Category A Director nominees and you have litigation pending against my client, Prospect CharterCARE, LLC.

In turn, you are working in conjunction with the Plan Receiver, who also has litigation pending against Prospect CharterCARE LLC.

In your e-mail, you say that the Category A Director nominees have requested certain documentation, which would provide them with the ability to do their jobs. My client is not proposing to stop them from doing their jobs. Rather, my client is taking the completely reasonable position that they do not want what would otherwise be confidential information that is being distributed to purportedly assist the Category A Director nominees "in doing their jobs" to then, be provided to persons or entities who have active litigation pending against Prospect CharterCARE, LLC.

Accordingly, if we can get the appropriate Conflict of Interest documents and Confidentiality Agreements executed, we have no problem providing the documentation and the Category A Director nominees can utilize that in carrying out their duties to Prospect CharterCARE, LLC. I am not interested in having my client provide the documentation merely as a conduit for a form of discovery in the ongoing litigation matters.

In turn, I would suggest that rather than filing some form of contempt motion that you seek specific instructions from the appointing Court in this regard.

W. Mark Russo

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Please visit our website at: www.frlawri.com



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From: Thomas S. Hemmendinger <themmendinger@brcsm.com>
Sent: Tuesday, September 22, 2020 3:10 PM
To: Mark Russo <mrusso@frlawri.com>
Cc: Preston Halperin (phalperin@shslawfirm.com) <phalperin@shslawfirm.com>; bill@wjlynchlaw.com; James Aceto (jaceto@wardfisher.com) <jaceto@wardfisher.com>; James Riley (jimriley011150@gmail.com) <jimriley011150@gmail.com>; Marc Weinberg (mweinberg@marcweinbergmd.com) <mweinberg@marcweinbergmd.com>
Subject: Prospect CharterCARE, LLC

Mark, this letter is my response to your client Prospect CharterCARE, LLC's actions against the Category A Directors, both on behalf of those directors and on my own behalf as liquidating receiver for the minority owner of Prospect.

Prospect has issued an unwarranted demand that they sign both a conflict of interest form based on Prospect's 2019 conflict policy and a separate, unconscionable confidentiality agreement.

As you well know, the 2019 policy by its own terms does not even apply to directors, and Prospect asserts that it is the only conflict of interest policy that it has. The only operative conflict of interest policy is the 2011 policy attached to the June 20, 2014 amended and restated LLC agreement. Under the terms of the LLC agreement, Prospect committed to adopt that policy. Prospect has not been able to identify any other applicable conflict policy, nor has it identified any confidentiality requirement other than what is contained in the 2011 policy.

Therefore, each Category A Director is in the process of completing and submitting to Prospect the conflict of interest disclosure form that is contained in the 2011 policy. They anticipate that these will be in Prospect's hands by tomorrow. This will satisfy all legitimate requests that have been made on the Category A Directors *and leaves no basis for Prospect to withhold the information and documents the directors have requested or to impair or impede the Category A Directors ability to do their jobs.*

The Category A Directors and I each demand that Prospect do the following:

- 1) Give the Category A Directors all of the information and documents they have previously requested.
- 2) Give me a complete copy of the directors and officers liability insurance policy.
- 3) Clean up the mess that Prospect created with the directors and officers insurance broker, as well as any similar mess its actions may have created with the insurance carrier.

Prospect's failure to comply with this demand by Thursday September 24, 2020 at 5:00 p.m., time being of the essence, will constitute not only a breach of Prospect's and its management's duties to the directors, but also management's fiduciary duties to me as minority owner and violation of the stay contained in the order appointing me permanent receiver.



Thomas S. Hemmendinger
Brennan, Recupero, Cascione, Scungio & McAllister, LLP
362 Broadway | Providence, RI 02909

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