



NJ APPLESEED PILC STATEMENT BEFORE THE ATTORNEY GENERAL AND THE DEPARTMENT OF HEALTH REGARDING THE PROPOSED SALE OF EAST ORANGE GENERAL HOSPITAL TO PROSPECT MEDICAL HOLDINGS, INC.

N. J. Appleseed is a nonprofit legal advocacy center and in the case of nonprofit hospital change of control decisions, we seek to protect the interest of the communities within the service area of the hospital in retaining control of their charitable healthcare asset, and ensuring that the services that are actually retained, or newly provided, by the hospital are the very services that are needed by the residents using the hospital; not necessarily those that bring in more revenue, but in the case of a small community based hospital, like East Orange General Hospital (EOGH), those services most needed to ensure well-being of the community, including behavioral health services.

Tonight, I seek to express some of our concerns regarding the sale, which have less to do with the corporate status or business practices of the purchaser or the process employed by EOGH and its Foundation than with certain terms of the conversion, as reflected in the Asset Purchase Agreement, dated May 31, 2014. My comments are more fully expressed in a letter, dated June 3, 2015, which I sent to the Attorney General and which I am resubmitting tonight for the benefit of the Department of Health. I apologize if a modified Asset Purchase Agreement has been submitted since June of this year.

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As fully set forth in our letter, we want to acknowledge publicly that the reorganization/sale process employed by the EOGH – i.e., the retention of experts, the selection criteria developed and applied, the RFP process implement and the involvement of the full Board of Directors –appears on the record to have been exemplary. The community stakeholders appreciate the Board’s efforts; Board members, officers and management seem to have taken their community mission seriously. Notwithstanding, in light of the Navigant Report that was issued in March of this year, we want the Commissioner of Health and the AG to make sure that Prospect’s plans for EOGH are not inconsistent with many of the goals of the Navigant Report , that the Hospital will continue to participate actively in the Greater Newark Healthcare Coalition, and that its new owners will be amenable to coordinating care at the hospital within a broader network of hospitals, with its current specialization and emphasis on Behavioral Health, Forensics and Dialysis.

Moving away from the selection of Prospect Medical Holdings (PMH) , we have some concerns about the structure of the transaction and the amount of money that is being allocated to the conversion foundation. A review of the documents makes it very difficult to figure out what PMH is actually paying for the hospital. An insistence to include a Projected Capital Expenditure Commitment (that will be applied to new capital projects and deferred capital maintenance projects), a Projected Capital Maintenance Commitment and a Working Capital Amount— all of which end up in the hands of the buyer— obscure the consideration that is actually paid.

In addition, we have serious concerns about the proposed governance of the for-profit hospital, as well as the conversion foundation. It appears that the current Board of EOGH wants to retain control over the fate of the Hospital, through the establishment of a “Local Advisory

Board” (“LAB”), whose Chairperson will have a voting, ex officio seat on the six-person board of directors of Prospect. This LAB has the responsibility of making “recommendations and suggestions,” and thus does not retain ultimate authority for the Hospital. We believe that there should be a locally based board that has full authority and the fiduciary responsibilities that accompany that authority. LABs sound good, but are not the same as control. Furthermore, we believe that the placement of the Chairperson of the Board of Trustees of the proposed Foundation on the LAB, the continuing relationship of the Foundation to the hospital (use of hospital space and staff), and the appointment of current Board members of EOGH to the Foundation all pose problems for this transaction. CHAPA has strong prohibitions against maintaining ties between EOGH and the Foundation. Although the prohibition against previous management holding a position in the Foundation can be rebutted, we think that in this case such justification has to be made clearer in the record to ensure the public that competency and expertise is driving the decision rather than other considerations. The Foundation is tasked with monitoring compliance of Prospect with this transaction and is also given a right of first refusal for a period of ten years. Again, we see that current Board members of EOGH are trying to maintain their relationship to the hospital. But CHAPA makes clear the Foundation is supposed to be independent from the new, for-profit hospital and its governance would probably be best in the hands of persons who have had no involvement in the sale to Prospect.

Finally, we also want to make sure that the Foundation trustees understand that the purpose of the Foundation also includes “serv[ing] and support[ing] the charitable health care needs of the community historically serviced by EOGH” and not just to provide certain services to the Supportive Housing Partnership and the Supportive Housing Program.

We trust that in your respective capacities, you will make a transaction that on the whole is good for the community a better one in accord with the requirements set forth in CHAPA, including that law's requirement that approval of the sale is not "likely to result in the deterioration of the quality, availability or accessibility of health care services in the affected community." N.J.S.A. 26:2H-7.11(b).

Thank you for the opportunity to express NJ Appleseed's thoughts on this proposed asset sale to a for-profit.

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Ex. Director