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and Cathedral Healthcare System, Inc.

IN THE MATTER OF THE APPLICATION OF CATHEDRAL HEALTH SERVICES, INC., a New Jersey Nonprofit Corporation, for Approval of the Proposed Transaction, pursuant to Community Health Care Assets Protection Act, <u>N.J.S.A.</u> § 26:2H-7.10, et seq.	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: GENERAL EQUITY PART, ESSEX COUNTY
	:	DOCKET NO.: ESX-C-101-08
	:	CIVIL ACTION
	:	FINAL ORDER APPROVING PROPOSED TRANSACTION

THIS MATTER having been opened to the Court on application for Order To Show Cause by Drinker Biddle & Reath LLP, attorneys for Plaintiffs, Cathedral Health Services, Inc. and Cathedral Healthcare System, Inc. (collectively "Plaintiffs") (Jack N. Frost, Jr. on the brief, Charles A. Reid, III appearing), seeking judicial approval pursuant to the Community Health Care Assets Protection Act,, N.J.S.A. § 26:2H-7.10, et seq., of the proposed transfer of all of the assets and substantially all liabilities of Cathedral Health Services, Inc., a New Jersey not-for-profit corporation, to Saint Michael's Medical Center, Inc. and Saint James Care, Inc., both New Jersey not-for-profit corporations affiliated with and organized by Catholic Health East ("CHE"), a not-for-profit, tax exempt organization organized under the laws of the Commonwealth of Pennsylvania (the "Proposed Transaction") and the Court having issued an Order To Show Cause dated April 9, 2008 and the Court having considered the Verified Complaint, the Certifications of John S. Grywalski, Jr., and Charles A. Reid , III, the Memorandum of Law in

Support thereof, the April 8, 2008 letter of the Attorney General of the State of New Jersey (hereinafter “the Attorney General”) and the April 7, 2008 letter of the Commissioner of the New Jersey Department of Health and Human Services (“DHSS”) recommending approval of the Proposed Transaction with conditions and notice having been duly given to all persons and entities required by N.J.S.A. § 26:2H-7.11(1) and the Court having held a hearing on April 23, 2008, the return date of the Order To Show Cause, and having considered the submissions of all interested parties, and having made the following findings in support of this application:

1. The Attorney General, upon consultation with the Commissioner of DHSS, approved the Proposed Transaction, and recommends the approval of this application, subject to certain conditions enumerated in the April 8, 2008 letter of the Attorney General and the April 7, 2008 letter from the Commissioner of DHSS ;
2. The Proposed Transaction is in the public interest;
3. The Proposed Transaction maintains, preserves and affords the opportunity to enhance the Plaintiffs’ charitable missions;
4. The Proposed Transaction is not likely to result in the deterioration of the quality, availability or accessibility of health care services in the affected communities; and,
5. The Proposed Transaction complies with all common law and statutory requirements, including those imposed by the Community Health Care Assets Protection Act, N.J.S.A. § 26:2H-7.10 et seq., for the transfer of not-for-profit charitable assets;

and, it further appearing that the Attorney General consents to the entry of this final Order; and for other good cause having been shown,

IT IS on this the ____ day of April, 2008,

ORDERED that, the Proposed Transaction by which Saint Michael’s Medical Center, Inc. and Saint James Care, Inc., both New Jersey not-for-profit corporations affiliated with and organized by Catholic Health East, a not-for-profit, tax exempt organization organized under the laws of the Commonwealth of Pennsylvania, will acquire all assets and substantially all liabilities

of Cathedral Health Services, Inc. be, and the same hereby is **APPROVED** subject to the following Conditions:

1. CHE shall provide six month's prior written notice to the Attorney General in the event that Saint Michael's Medical Center, Inc. (SMMC, Inc.) or any of its subsidiary or successor corporations: (a) becomes a member of CHE's Obligated Group, or (b) becomes a "Designated Affiliate" under CHE's Master Trust Indenture or (c) becomes liable to pay for debt service payments incurred by CHE to finance capital improvements at CHE affiliated hospitals located outside of the Acquired Entities' service areas;
2. CHE shall provide to the Attorney General notice and the opportunity to review any proposed revisions or amendments to governing documents for the Cathedral Foundation, Inc.;
3. Cathedral Foundation, Inc. shall file an application in a separate proceeding, on notice to the Attorney General and the other interested parties to this Court proceeding, seeking judicial application of the Uniform Management of Institutional Funds Act or the *cy pres* doctrine to all of its donor-restricted funds (including, without limitation, those "restricted funds" listed on Schedule 1.12 of the Asset Purchase Agreement); and,
4. CHE or its affiliates shall provide the Attorney General with notice of any disposition of the assets of the former Saint James Hospital division in accordance with the Attorney General's common law duty to protect the public interest in charitable trusts.
5. A license to operate Saint Michael's Medical Center (SMMC) will not be issued to Saint Michael's Medical Center, Inc. or Catholic Health East until a notarized letter indicating the actual date of the transfer has been submitted to the Office of Certificate of Need and Healthcare Facility Licensure. SMMC, Inc./CHE shall apply for a new license and surrender the existing license within ten days of transfer of title.
6. As noted in its Certificate of Need Application SMMC, Inc./CHE shall hire substantially all SMMC employees who are employed at the time of the sale.
7. In accordance with the provisions of N.J.S.A. § 26:2H-18.59h, SMMC, Inc./CHE shall "offer to its employees who were affected by the transfer, health insurance coverage at substantially equivalent levels, terms and conditions to those that were offered to the employees prior to the transfer."
8. As noted in its Certificate of Need Application SMMC, Inc./CHE shall operate Saint Michael's Medical Center (SMMC) as a general hospital; this condition shall be imposed as a contractual condition of any subsequent sale or transfer of SMMC by SMMC, Inc./CHE, subject to appropriate regulatory or legal review.

9. SMMC, Inc./CHE shall continue all clinical services and community health programs currently offered at SMMC by the previous ownership. Any changes in this commitment involving either a reduction or elimination of clinical services or community health programs offered by SMMC's former ownership shall require prior written approval from the Department of Health and Senior Services (DHSS) and shall be subject to all applicable statutory and regulatory requirements.
10. SMMC, Inc./CHE shall continue compliance with N.J.A.C. § 8:43G-5.21(a), which requires that "[a]ll hospitals . . . provide on a regular and continuing basis, out-patient and preventive services, including clinical services for medically indigent patients, for those services provided on an in-patient basis." Documentation of compliance shall be submitted within 30 days of the issuance of the license and quarterly thereafter for a period of five years.
11. SMMC, Inc./CHE shall comply with all DHSS notice requirements regarding emergency department divert status.
12. SMMC, Inc./CHE shall submit a report to DHSS, on an annual basis for the initial five years following the transfer of ownership, detailing:
 - a. The investments it has made during the previous year at the hospital. Such report shall also include a detailed annual accounting of any long or short term debt or other liabilities incurred on the hospital's behalf and reflected on the SMMC's balance sheet; and,
 - b. The transfer of funds from the hospital to any parent, subsidiary corporation, or corporate affiliate and the amount of funds transferred. Transfer of funds shall include, but not be limited to, assessments for corporate services, transfers of cash and investment balances to centrally controlled accounts, management fees, capital assessments, and/or special one-time assessments for any purpose.
13. Within three months of approval of this application, SMMC, Inc./CHE shall develop and participate in a Community Advisory Group ("CAG") to provide on-going community input to the hospital's CEO and the hospital's Board of Trustees on ways that SMMC can most effectively and efficiently meet the primary, preventive, maternal and child health service needs, emergency health, transportation service needs, and any remaining inpatient needs of all residents in its service area. The CAG shall meet at least quarterly during its first year of operation.
 - a. Subject to the provisions below, SMMC, Inc./CHE shall determine the membership, structure, governance, rules, goals, time frames, and the role of the CAG in accordance with the primary objectives set forth above, and shall provide a written report setting forth same to the hospital's Board of Trustees, with a copy to DHSS and subject to DHSS approval, within 60 days from the date of formation of the CAG.

- b. SMMC, Inc./CHE shall document the membership, structure, and process of the Newark Health-care Steering Committee and Subcommittees. SMMC Inc./CHE shall use the Subcommittee membership, structure, and process as the bases for establishing North Ward and East Ward CAGs, with the exception that membership shall be expanded to include a representative of the Department of Health and Senior Services, a representative of a local Federally Qualified Health Center, and a representative of the Maternal and Child Health Consortia representing the Saint Michael's Medical Center service area.
- c. SMMC, Inc./CHE shall designate co-chairs of the CAG, one of whom shall be a member of the hospital's Board of Trustees and one of whom shall be a community member who is neither employed nor related to anyone employed by the hospital, its parent, corporate subsidiaries or corporate affiliates.
- d. The co-chairs of the CAG shall jointly submit to the hospital's Board of Trustees, with a copy to the Department, a semi-annual report of the progress toward the goals of the CAG.
- e. The co-chairs of the CAG shall jointly transmit to the hospital's Board of Trustees, with a copy to the Department, a quarterly and any special report relative to the implementation of these conditions.
- f. The CAG shall also examine the need for the continuation of outpatient Prenatal/Obstetric, pediatric, other primary care and emergency services at, the site of Columbus Hospital should the latter be approved for closure.
- g. SMMC,Inc./CHE may petition DHSS to disband the CAG not earlier than three years from the date of CN approval and on showing that all of the above conditions have been satisfied for at least one year.
 - i. In consultation with the CAG, SMMC,Inc./CHE shall maintain current levels of essential out-patient prenatal, primary, and emergency services for the service area including the North Ward currently served by Columbus Hospital..
 - ii. The non-acute services to be provided on the Saint James Campus and the Columbus Campus are expected to continue for five years unless otherwise noted. Should applicant seek to reduce or eliminate any of these services prior to that time, applicant shall provide the Department of Health and Senior Services with a report documenting the reasons for the change in service. Applicant must also document efforts to improve utilization and avoid service reduction and must document that the CAG participated in utilization viability discussions, acknowledged their participation and involvement in developing the strategies to sustain these services and participation in any service transitioning

strategies. Any subsequent reduction must be approved by the Commissioner of DHSS (“Commissioner”).

14. For five years after initial licensure of SMMC under SMMC, Inc./CHE ownership, the hospital's Board Chairperson, President/CEO and other senior hospital management shall meet with the Commissioner at regular intervals on a schedule to be determined by the Commissioner to discuss the hospital's condition and compliance with the terms of the certificate of need.
15. SMMC, Inc./CHE shall develop a patient transportation plan after performing an assessment, in consultation with the CAG, to determine transportation needs. This plan shall be submitted to DHSS within three months of the date of certificate of need approval. This plan shall remain in effect for five years after licensure. Any changes in this plan require DHSS approval and shall require 120-day prior notice. A self-evaluation of the implementation of the plan shall also be conducted on a yearly basis for five years after licensure to measure effectiveness of this initiative and shall be submitted to the Department for review and comment.
16. An outreach effort shall be placed into effect to ensure that all residents of the hospital service areas, especially the medically indigent, have access to the available services at the location. A self-evaluation of this effort shall be conducted six months after the transfer of ownership, for the next six months after that and afterwards on a yearly basis for the next five years to measure service delivery. This self-evaluation shall be submitted to the Department for review and comment.
 - a. By July 1, 2008, SMMC, Inc./CHE shall report to DHSS with a plan documenting the availability of appropriate professional interpretation and translation services at SMMC. SMMC, Inc./CHE shall also prepare outreach and educational materials in the language of patient populations and communities it serves.
17. SMMC, Inc./CHE shall notify DHSS prior to any change of ownership or investment structure of SMMC.
18. SMMC, Inc./CHE shall maintain its current complement of 13 chronic hemodialysis stations and one peritoneal dialysis station and shall present a plan to DHSS for meeting the dialysis needs of the communities it serves by October 1, 2008.
19. SMMC, Inc./CHE shall, at the site of Saint James Hospital, provide the following:
 - a. As part of CHE's commitment to the City of Newark, the outpatient Prenatal/Obstetric and Primary Care Program that has been established at the Saint James Hospital campus shall continue after closure of the facility. As part of its responsibilities, CHE, in consultation with the CAG, shall examine the need for all clinics to expand their hours to determine appropriate hours of operation which may include, but not be limited to, evening hours at least

three times a week and operate at least a half-day on Saturdays. If recommended by the CAG, a plan for both implementing the increased hours and to advise the public of same shall be submitted to DHSS prior to implementation for review and placement in the facility's permanent records on file at DHSS.

- i. The outpatient Prenatal/Obstetric and Primary Care Program shall be operated and licensed in accordance with DHSS regulations for such services at N.J.A.C. § 8:43A, the Standards for Licensure of Ambulatory Care Facilities.
 - ii. The outpatient Prenatal/Obstetric and Primary Care Program shall remain in operation for a minimum of five years and CHE must provide 120 days notice and receive written approval from DHSS prior to ceasing or reducing services or hours of operation.
- b. Under the licensure of the SMMC facility, CHE shall maintain a Satellite Emergency Department (“SED”) at the Saint James Hospital campus and initiate operation of the SED concurrent with the closure of the Saint James Hospital facility.
 - i. The SED shall be operated and licensed in accordance with the DHSS regulations for such services at N.J.A.C. § 8:43G-36, the Hospital Licensure Standards.
 - ii. The SED shall remain in operation for a minimum of five years and CHE must provide 120 days notice and receive written approval from DHSS prior to ceasing or reducing services or hours of operation.
- c. The transportation services for patients and their families from the Saint James Hospital campus shall remain in place and operating after closure of the Saint James Hospital facility for a minimum of five years; CHE must provide 120 days notice and receive written approval from DHSS prior to ceasing or reducing services. The plan for the transportation system shall be submitted within thirty days from the date of this approval to DHSS for review and placement in the facility's permanent records on file at DHSS. The CAG shall review the effectiveness of transportation services as part of its responsibilities and recommend modifications as appropriate. Any modifications shall be reported to DHSS prior to their implementation.
- d. Under the licensure of SMMC facility, CHE shall maintain the behavioral health unit, which includes 21 psychiatric beds from the SMMC facility and 20 psychiatric beds from Saint James Hospital, at the Saint James Hospital campus.
 - i. The behavioral health unit at the Saint James Hospital campus shall be operated and licensed in accordance with DHSS

regulations for such services at N.J.A.C. § 8:43G-26, the Hospital Licensure Standards.

- ii. The behavioral health unit at the Saint James Hospital campus shall remain in operation for a minimum of five years. Closure or subsequent deduction in services shall follow applicable rules and processes in N.J.A.C. § 8:33.
20. Within 6 months of the transfer of ownership, SMMC, Inc./CHE shall conduct a Community Healthcare Needs assessment in consultation with the CAG involving community constituents, elected officials, stakeholders and health care colleagues and providers. The results of the Community Healthcare Needs Assessment shall be integrated into the Strategic Plans for SMMC and focus on those areas of direct care to improve the health status of the community, including the Ironbound Community. SMMC, Inc./CHE shall appoint a specific individual or position to be in charge of coordinating and completing the Community Healthcare Needs Assessment.
21. All the above conditions shall also apply to any successor organization to SMMC, Inc./CHE that acquires SMMC within five years from the date of the CN approval.

It is **FURTHER ORDERED** that the above conditions may be modified upon the written consent of the Attorney General, DHSS and SMMC, Inc. and/or Catholic Health East; and it is

FURTHER ORDERED that those parties consenting hereto waive their right to appeal from this Order; and it is

FURTHER ORDERED that a copy of this Order shall be served upon all parties within
____ days hereof.

Harriet Farber Klein, J.S.C.

The undersigned consent to the form and entry hereof:

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