

Health Professionals and Allied Employees, AFT/AFL-CIO

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October 18, 2017

State Health Planning Board
New Jersey Department of Health Office of Legal and Regulatory Compliance
Market & Warren Streets
P.O. Box 360
Trenton, New Jersey 08625-0360
Attention: Jamie Hernandez

Comments on Certificate of Need Application for the Transfer of Ownership of Meadowlands Hospital Medical Center from MHA LLC to NJMHMC LLC.

The Health Professionals and Allied Employees, AFT, AFL-CIO (HPAE) submits these comments regarding the proposed sale of Meadowlands Hospital Medical Center (MHMC) by its current owner, MHA LLC (MHA) to NJMHMC LLC/Yan Moshe (Moshe) on behalf of the 300 nursing and healthcare professionals working at MHMC, members of HPAE Local 5147.

HPAE believes the Department erred in determining that the pending CN application is “Complete” because the applicant has not submitted the audited financial statements requested in Rounds 1 and 2 of the Completeness Questions posed during the CN review process. In addition, MHA continues to refuse to fulfill the financial disclosure conditions the Department imposed in November 2010, when it issued a Certificate of Need (CN) approving the transfer of the hospital’s license from Liberty Healthcare System to MHA. HPAE recommends that the DOH refrain from considering the proposed sale until the application is truly “complete” as contemplated by Rounds 1 and 2 of the Department’s own Completeness Questions.

In the alternative, should the DOH determine that the sale should proceed, HPAE believes the Department of Health must place conditions on the sale to Moshe that will assure the community’s access to safe and effective care and protect the rights and dignity of the hospital’s employees. Furthermore, the Department must insist on any future owner’s timely fulfillment of each of those conditions going forward.

The DOH erred in finding the CN application “Complete”

A profound lack of financial transparency has characterized MHA’s dealings with the DOH. Condition 11c of the CN the DOH granted to MHA in 2010 requires the hospital to submit annual Audited Financial Statements (AFSs) to the Department.

MHMC has never submitted a single AFS on time, and for this repeat violation it has incurred \$443,000 in fines. While the hospital ultimately submitted its 2011, 2012 and 2013 financial statements, it refuses to submit its 2014, 2015 and 2016 statements. For its part, the DOH has enabled MHA's willful violation of CN Conditions by failing to impose the \$1000 *per day* penalty DOH regulations authorize when any licensed healthcare facility violates a CN condition. Refusing to submit its audited financials appears to be just a cost of doing business for MHA.

Section I of the CN application specifically requires the applicant to provide revenue and expense data derived from the hospital's two most recent *audited* financial statements and to project revenues and expenses for the current fiscal year and the two upcoming fiscal years. This information enables the DOH and the NJ Health Care Facilities Financing Authority (NJHCFFA), which participates in the CN review process, to fulfill their responsibility to assess whether the proposed transaction "can be financially accomplished and maintained" NJAC 8:33-4.10(b). In making this determination, the DOH must consider "the adequacy of financial resources and sources of present and future revenues" NJAC 8:33-4.9(a)3.

The DOH and the NJHCFFA tried without success to obtain the information necessary to determine the financial position of the hospital and its future viability. In the Second Round of Completeness Questions, Frank Troy from the NJHCFFA reiterated his earlier request for audited financial statements, writing:

"...audited financial statements should be provided as required by the Department and as requested in the Round 1 questions. In the interim, please provide balance sheets and statements of cash flows for the years ended December 31, 2012 through 2018 to allow further analysis".

In its response to Mr. Troy's question, MHA completely ignored the request for *audited* financial statements, and the summary balance sheet and cash flow figures that were provided are labeled as being derived from *unaudited* financial statements for 2015 and 2016. In fact, it appears from the responses to Round 2 Completeness Question #18 that while MHA allowed Moshe to review an *audited* financial statement for 2014, it only provided Moshe with *unaudited* financials for 2015 and 2016 and it is these unaudited financials that form the basis of the post-sale Operating Projections. How can this Buyer, or any Buyer conduct its due diligence without being able to review the *audited* financial statements for the two most recent fiscal years of hospital operations?

Neither the DOH, nor the community nor our elected officials, nor apparently even the proposed Buyer knows the nature and extent of the hospital's assets, liabilities, revenue sources and expenses. The DOH and the NJHCFFA cannot responsibly or adequately evaluate the Operating Projections set out in the CN Application or the value of Included and Excluded Assets as set out in the Asset Purchase Agreement. To allow such a fundamentally incomplete CN application to proceed to public hearing makes a mockery of the CN review process.

The DOH should not reward MHA's ongoing CN condition violations

Beginning January 23, 2017, subsequent to the currently pending CN application, the Department's penalty letters to the hospital regarding the overdue AFSs for 2014 and 2015 included this bolded threat:

“In addition, MHMC's failure to submit annual audited financial statements for 2014 and 2015 may impact the Department's review of the CN application requesting approval of the sale of MHMC to Yan Moshe.”

The Department repeated this warning to the hospital in penalty letters dated April 4, 2017 and July 21, 2017. Allowing the sale to proceed despite MHA's repeated and ongoing violations of CN condition 11c and despite these warnings would undermine the Department's credibility and would invite disrespect for the DOH's oversight and enforcement authority. In combination with its confusing decision to deem an application “Complete” despite the applicant's failure to provide requested financials, the DOH risks being perceived as an enabler of a regulated entity's repeated flouting of legal requirements. The clear message to New Jersey's hospitals would be: as long as you can afford the penalties, you can violate your CN with impunity.

The financial underpinning of the transaction requires further clarification

Responding to Question 6 of the Second Round of Completeness Questions the Applicant wrote:

“Also attached is a commitment to a ‘Working Capital Sweep Line of Credit’ from Bank Financial dated June 30th 2017. This Agreement provides for a loan amount of up to \$17.5 million. This clearly demonstrates the Applicant's ability to meet the balance of the Purchase price at closing which is \$4.0 million”

The relevant attachment is actually a “Working Capital Sweep Line Proposal” and states:

“This proposal is not an agreement, offer or commitment to extend credit. The loan transaction described herein requires approval of BankFinancial's Board of Directors.”

The Proposal Expiration Date is listed as July 24, 2017. Has this Proposal been finalized as an Agreement? Does the DOH have the loan documentation? If not, how can we be certain the Buyer has the Working Capital needed to consummate the transaction?

Review of the proposed balance sheet for December 31, 2018 adds to the confusion because the balance sheet does not include any reference to either the working capital loan or to the \$7M loan from MHA. This leaves in question who the borrower for these loans is. How can the community or the employees feel any confidence that the DOH and the HCFFA have determined that the proposed transaction “can be financially accomplished and maintained”?

Further concern arises from the Applicant's response to Question 9, Round Two of the Completeness Questions regarding the Buyer's planned purchase of the real

property on which the hospital sits from RosDev Development Inc. The Applicant states that it:

“has the financing in place for this acquisition. Attached is a letter from Easternunion Healthcare Group dated July 17, 2017 indicating that they have ‘received interest from several lenders to provide the acquisition financing with a Loan amount not to exceed \$18,000,000 (80% of Cost).”

According to the Applicant’s response, the closing was to have occurred on September 15, 2017 but no later than December 31, 2017. Has the closing occurred? If not, has the Buyer secured the necessary \$18M loan? Has the Department obtained and reviewed the loan documents?

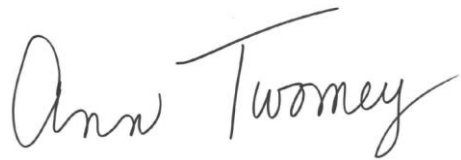
Conditions are Needed to Protect the Community, Patients and Employees
Should the DOH allow the sale to proceed, HPAE believes the Department must place and enforce conditions on the sale that will preserve access to care, promote safe patient care and working conditions, foster financial transparency and oversight, and protect the workplace rights of employees. These proposed conditions are similar to conditions the Department has placed on other Certificates of Need for hospital license transfers. These conditions should include at a minimum:

1. Buyer shall continue to operate MHMC as a general acute care hospital for a period of no less than seven years.
2. Buyer shall continue all inpatient and clinical services and all community health programs currently offered at MHMC for seven years. Any reduction, relocation or elimination of these services and programs shall require prior written approval from the DOH. This condition shall be imposed as a contractual condition of any subsequent sale or transfer within the seven-year period.
3. Buyer shall agree to retain all of the current employees at MHMC. Six months after licensure, and then annually thereafter, Buyer shall document to the DOH the number of employees retained and provide the rationale for any workforce reductions. Buyers should be mindful of the impact of this sale on the staff of nurses, technicians and service workers who have consistently provided care to the patients and community. This is the second change of ownership. Contractual workplace standards and recognition of seniority as was established at the commencement of the first sale should be provided.
4. As required by NJSA 26:2H-18.59h, Buyer 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 employees prior to the transfer” – as per condition 3.
5. Buyer shall continue compliance with NJAC 8:43G-5.21a which requires that “all hospitals...provide, on a regular and continuing basis, outpatient and preventive services, including clinical services for medically indigent patients, in those services provided on an inpatient basis”. Buyer shall provide documentation every six months for seven years.

6. Buyer shall comply with federal EMTALA requirements and NJ hospital licensing requirements regarding the provision of care to all presenting patients regardless of their ability to pay or source of payment.
7. Buyer shall submit annual reports to the DOH for seven years detailing investments at the hospital; an accounting of any long- or short-term debt or other liabilities incurred on the hospital's behalf; any transfers of funds from the hospital to any parent, subsidiary or affiliate, and all financial data and measures required by hospital licensing standards.
8. Buyer shall provide its Audited Financial Statements to the DOH and post them to its website within 180 days of the end of its fiscal year.

We believe that strict DOH oversight of any Buyer's adherence with these and any additional conditions is essential to protect our community, our patients and the hospital's employees.

Sincerely,

A handwritten signature in cursive script that reads "Ann Twomey". The signature is written in black ink and is positioned above the typed name and title.

Ann Twomey
President