

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
DOCKET NO. 2011-0410

MORTON HOSPITAL AND MEDICAL CENTER, INC.

vs.

MARTHA COAKLEY,

as she is the Attorney General of the
Commonwealth of Massachusetts

MEMORANDUM AND JUDGMENT

A complaint (the "Complaint") has been brought by Morton Hospital and Medical Center, Inc. ("Morton"), for itself and on behalf of its affiliate, Morton Physician Associates, Inc. ("MPA"), against the Attorney General of the Commonwealth of Massachusetts, consistent with G. L. c. 180, § 8A(d), pursuant to this court's equity jurisdiction (G. L. c. 215, § 6), and its jurisdiction to enter declaratory judgments (G. L. c. 231, § 1), seeking a declaratory judgment that Morton and MPA may sell substantially all of their assets and operations (together with the assets and operations of Morton Property, Inc., the "Purchased Assets") to one or more affiliates of Steward Health Care System LLC (individually and together, "Steward"), on the terms and conditions set forth in that certain Asset Purchase Agreement, dated March 29, 2011, as amended by Amendment No. 1 to the Asset Purchase Agreement, dated September 6, 2011, each by and among Morton, MPA, Morton Property, Inc. ("MPI" which is a for profit affiliate of Morton), Steward Medical Holdings Subsidiary Three, Inc., (which is an affiliate of Steward and is now known as Morton Hospital, A Steward Family Hospital, Inc.), and, with respect to the assets of MPA only, Steward Medical Group, Inc. (which is also an affiliate of Steward) (the Asset Purchase Agreement, as so amended, hereinafter referred to as the "APA"). Such sale is hereinafter referred to as the "Transaction."

The Attorney General conducted a review of the Transaction, pursuant to G. L. c. 180, § 8A(d), and made detailed findings that are set forth in her Statement of the Attorney General as to the Morton Hospital and Medical Center, Inc. Transaction (the "Attorney General's Statement"), dated September 7, 2011. Her findings as to the factors set forth in § 8A(d) (i-v) are as follows:

(i) “As a threshold matter, the Attorney General finds that the Board was educated appropriately by its consultants and advisors concerning the ‘impossible or impracticable’ standard under applicable general non-profit and charities law. Applying that standard, based on the facts and circumstances of this case, the Board determined that: (a) [Morton] could not continue to survive in its current charitable form as a stand-alone community hospital, and (b) the sole bid from a non-profit health care system was not a reasonably viable proposal for continuing [Morton]’s charitable mission of operating a full-service, acute care hospital for the residents of Taunton and its surrounding communities over the long term.”

“The Board based its determination in large part upon its findings that, under the non-profit proposal, [Morton] would not remain a full-service acute care community hospital over the long term, but rather, would become a fourth campus or branch of a regional community hospital system that developed ‘signature’ services at the respective facilities to service, collectively, the health care needs of residents of the entire region, and further, that the non-profit proposal did not commit to the expansion and delivery of local (as opposed to regional) clinical services at [Morton]. In the Board’s judgment, the non-profit bid was not a viable proposal for the continuation of [Morton]’s continued operations and charitable mission, which the Board viewed as maintaining a full-service hospital in Taunton for the residents of that community. This judgment was based in part on the Board’s belief that residents of Taunton would be unlikely to travel to Fall River, New Bedford or Wareham for services not available at [Morton], and further, the Board believed that the core mission of [Morton] was to retain the full array of services as an acute care community hospital for Taunton.”¹

“The Board’s determination that [Morton] would not remain over the long term a full-service acute care hospital under the non-profit proposal was supplemented by its other findings, including that Steward’s proposal (unlike the non-profit proposal) had a long-term commitment to maintain a local governing board, that it had a larger, more front-loaded, and more specific capital commitment, and that it committed to a longer No-Close Period. The Attorney General finds that the record supports a reasonable basis for the Board’s determination, consistent with applicable general non-profit and charities law.”

(ii) “While noting the Attorney General’s process recommendations set forth in Appendix B [of the Attorney General’s Statement], the Board complied with standards of due care. Starting in approximately 2008, the Board actively explored a variety of options, including the following: (a) remaining a stand-alone hospital, (b) clinically affiliating with other non-profit entities, (c) becoming part of another non-profit system, and (d) transferring its assets to a for-profit entity. In doing so, it retained the services of qualified, independent consultants and advisors and reached a decision only after a

¹ Footnote 10 of the Attorney General’s Statement here states: “The Attorney General does not endorse or detract from the Board’s determination concerning the importance to its mission of retaining a full-service acute care hospital in Taunton (as opposed to a regional care approach, for example), but finds that it was not unreasonable for the Board to make such determination.”

thoughtful and deliberative process directed by the Board and in which the Board was fully involved.”

(iii) “While noting the Attorney General’s process recommendations set forth in Appendix B [of the Attorney General’s Statement], the Board and senior management appropriately disclosed and managed conflicts of interest concerning the Transaction. Members of the Board and senior management had no existing financial interests or business relationships with Steward. Steward’s obligation to offer all [Morton, MPA and MPI] employees active and in good standing at the time of Closing, including senior management, comparable employment with Steward at Closing was an APA provision sought and negotiated by the Board. No financial terms and conditions have been negotiated between Steward and members of [Morton, MPA, or MPI] senior management with respect to future service. No member of [Morton, MPA, or MPI] senior management will receive an increase in salary, incentive payment or bonus, or other form of compensation as consideration for identifying or finding Steward or for negotiating, effectuating, or entering into the Transaction. The interests of current Board members in future service on the [hospital’s] board [post-Closing] arises out of a local governance condition sought and negotiated by the Board. With respect to the selection of Board members to serve on the [hospital’s] board [post-Closing], such individuals were not nominated by [Morton] or appointed by Steward until after the APA was executed (such appointments are to be effective upon Closing).”

(iv) “The purchase consideration for the assets and operations of [Morton, MPA, or MPI] is fair and reasonable. Compensation for the charitable assets was the result of the evaluation of a bidding or Request for Proposals . . . process, significant negotiations with interested parties, and final terms and conditions negotiated and determined in an arm’s length manner unaffected by personal or other interests. From an industry benchmarking perspective (e.g., earnings before interest, depreciation, and amortization . . . multiple), the compensation is above the range of comparables for similar transactions. While the approximately \$53 million purchase price consideration under the APA, in and of itself, is fair and reasonable, the additional Steward obligations under the APA, including commitments to charity care, community benefits, minimum operational period, and capital expenditures, also are of value to the public.”

(v) “The Transaction serves the public interest. As noted in the AG Statement in the Caritas Transaction, there are risks to the public intrinsic in any change of control, including a non-profit to for-profit conversion. In making its determination, the Board considered such risks and attempted to mitigate them with APA post-Closing commitments in the public interest (see Sections 1.1 (a)-(i) [of the Attorney General’s Statement]). In addition, consistent with the public interest, the Attorney General has

² Footnote 11 of the Attorney General’s Statement here states: “See analysis in Section 4.3 [of the Statement], below, including footnote 29.” Footnote 29 of the Attorney General’s Statement states: “The Morton President and CEO has an employment agreement and a deferred compensation plan, both of which are being assumed by [Morton Hospital, A Steward Family Hospital, Inc.] at Closing. The deferred compensation plan contains a change of control provision that may accelerate payments otherwise due to her in 2011. In any event, the timing of the Closing mitigates any incremental benefit provided by any such accelerated payment.”

worked to enhance the Transaction, including with additional protections and transparency (see Sections 1.1(j)-(z), [of the Attorney General's Statement]).”

In connection with her review of the Transaction, the Attorney General, consistent with the authority of her office and G. L. c. 180, § 8A(d), has required the various parties to enter into the following ancillary agreements to better ensure compliance with Transaction matters related to the public interest.

(a) An Enforcement Agreement, materially in the form attached to the Attorney General's Statement and filed with the court as Exhibit K of the Complaint, by and among the Attorney General, Morton, MPA, MPI, Morton Hospital, A Steward Family Hospital, Inc., Steward Medical Group, Inc., and Steward, as guarantor, giving the Attorney General the right to enforce certain post-Closing provisions of the APA related to the public interest.

(b) An Assessment and Monitoring Agreement, materially in the form attached to the Attorney General's Statement and filed with the court as Exhibit L of the Complaint, by and among the Attorney General, Morton, and Steward clarifying that the scope of the existing assessment and monitoring agreement with the Attorney General concerning Steward includes monitoring, assessment, and evaluation of the impact of the Transaction on health care costs, access, and services within the communities served by Steward, certain aspects of which will be conducted by the Department of Public Health consistent with G.L. c. 180A § 8A(d)(5).

(c) A Transition, Windup, and Reorganization Agreement, materially in the form attached to the Attorney General's Statement and filed with the court as Exhibit M of the Complaint, by and among the Attorney General, Morton Health Foundation, Inc. (the parent of Morton, MPA, and MPI) and Morton Hospital, A Steward Family Hospital, Inc., which requires and funds the orderly reorganization, dissolution, and windup of Morton, MPA, and their non-profit charitable affiliates.

Further, any enforcement action brought by the Attorney General under the APA or any of the ancillary agreements must be brought solely in the courts of the Commonwealth of Massachusetts.

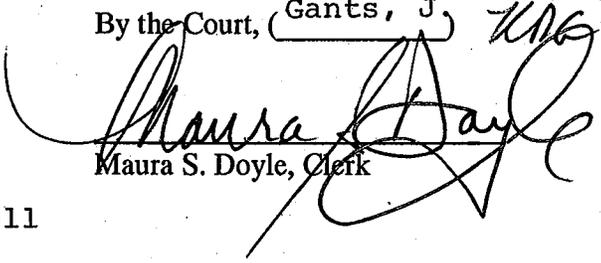
The Attorney General, being the only other party in this action, having appeared, answered, and assented to the Complaint, and it appearing, based on the Complaint and the assent and answer of the Attorney General filed herein, that: (1) the Transaction complies with applicable general non-profit and charities law, (2) due care was followed by Morton, (3) conflicts of interest were avoided or managed at all phases of decision making, (4) fair value will be received for the Purchased Assets, and (5) the Transaction is in the public interest, it is hereby DECLARED, ORDERED, and

ADJUDGED:

1. That the court hereby approves the Transaction, including the transfer of substantially all of Morton's and MPA's assets, liabilities, and operations in accordance with the terms of the APA and the three aforementioned ancillary agreements; and further, that Morton and MPA have full power and authority to convey the Purchased Assets to Morton Hospital, A Steward Family Hospital, Inc., and Steward Medical Group, Inc., as applicable and all in accordance with the terms and provisions of the APA and further subject to the terms and conditions of the three aforementioned ancillary agreements; and further,
2. That Morton and MPA may approve and cause to be executed any and all documents and instruments that they deem reasonably necessary to effectuate the Transaction and perform their respective obligations in accordance with the APA, including the three aforementioned ancillary agreements. Fully executed attested copies of all agreements attached to the Complaint herein as exhibits shall be filed with the court within thirty (30) days of the closing; and further,
3. Pursuant to my authority under St. 2000, c. 141, § 34, all agreements attached to the Complaint as exhibits, including but not limited to, the APA and all schedules and amendments thereto, and the three aforementioned ancillary agreements are hereby incorporated by reference into this judgment, and all obligations thereunder shall become orders of this court at the time of closing; and further,

4. The parties may apply to this court from time to time for such further directions or orders as may be necessary.

By the Court, (Gants, J.)


Maura S. Doyle, Clerk

ENTERED: September 27, 2011