

COPY

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS

SUPERIOR COURT
C.A. NO. 2014-101

_____)
COMMONWEALTH OF MASSACHUSETTS)
)
Plaintiff)
)
v.)
)
NORTHERN BERKSHIRE HEALTHCARE, INC.,)
a/k/a NORTH ADAMS REGIONAL HOSPITAL)
)
Defendant)
_____)

REVISED TEMPORARY ORDER

This matter having come on for hearing on the Commonwealth's Motion for Entry of Temporary Order (1) enjoining Northern Berkshire Healthcare, Inc. (hereafter "NBH") from failing to permit and maintain access to its medical record systems and its emergency department facility, equipment, books and records, and administrative personnel (for informational purposes), and failing to take other reasonable steps, that the Department of Public Health (hereafter "DPH") and Berkshire Medical Center, Inc. (hereafter "BMC") may need to (i) provide medical records support to ensure appropriate maintenance, security and access to medical record information and systems that NBH currently possesses, and (ii) for DPH to license and BMC to operate a satellite emergency facility from the Hospital on an expedited basis in accordance with the terms and conditions of the Court's order, and (2) appointing BMC as temporary provider of emergency services and medical record support services, in order to:

(1) alleviate and avoid an immediate threat to the health and safety of the residents in the NBH

service area from the abrupt cessation of operations at North Adams Regional Hospital (the "Hospital"), (2) prevent serious harm arising from imminent inaccessibility of electronic health records for patients of NBH and other health care providers relying on NBH for electronic health record hosting services, and (3) pursue planning for longer term provision of emergency medical and other services for residents in the NBH service area, and there being both subject matter and personal jurisdiction as well as sufficient basis of fact for the entry of this Order; it is hereby ORDERED AND ADJUDGED that:

(1) This Order shall replace in full the order entered by Court on March 27, 2014, in this matter.

(2) NBH be and hereby is enjoined from (A) failing to permit and maintain access to its medical record systems and its emergency department facility, equipment, books and records, and administrative personnel (for informational purposes), and failing to take other reasonable steps, that the Department of Public Health (hereafter "DPH") and Berkshire Medical Center, Inc. (hereafter "BMC") may need to (i) provide medical records support to ensure appropriate maintenance, security and access to medical record information and systems that NBH currently possesses, and (ii) for DPH to license and BMC to operate a satellite emergency facility from the North Adams Regional Hospital (the "Hospital") on an expedited basis in accordance with the terms and conditions below; (B) failing to provide notice of this Order to its staff and other persons, firms or corporations that at present provide supplies, services, or utilities to the Hospital facility; (C) failing to take reasonable steps to provide public notice of this Order and information on appropriate steps individuals in need of emergency services in the North Adams region should take to obtain emergency medical services following closure of NBH's emergency

department, including, but not limited to, on site information to assist individuals who may present at the Hospital with emergency conditions;

(3) After BMC obtains authorization from the DPH to operate an emergency facility at the NBH facility, BMC shall be and hereby is appointed as temporary provider of emergency medical and support services at the Hospital with such powers as are enumerated herein;

(4) All persons and entities, including without limitation NBH, the Hospital, and the directors, officers, employees, and agents of NBH and the Hospital having possession, custody or control thereof shall turn over or cause to be turned over to BMC the control of such facilities, equipment and other items as BMC and DPH mutually and reasonably determine are necessary or desirable for BMC to provide emergency services and electronic health record support (as herein defined) at the Hospital facility, including without limitation (1) access to and control of relevant portions of the Hospital facility, systems, and records (including without limitation medical records and electronic health records); (2) access to and control of such equipment, supplies and other items and materials onsite at the Hospital as BMC and DPH determine are necessary or desirable to enable BMC to provide the emergency services and electronic health record support; (3) such other items or facilities as BMC and DPH determine are necessary to enable BMC to provide the emergency services and electronic health record support;

(5) "Emergency services" shall mean those emergency medical and related services usually and customarily provided by an emergency facility licensed by DPH and that BMC and DPH determine are necessary and feasible to provide to ensure the safety and well-being of residents of the NBH service area;

(6) "Electronic health record support" shall mean the maintenance of all electronic health records held or supported by NBH or the Hospital, maintenance of facilities and systems

for storing and accessing such records, and services and equipment relating to the orderly transfer of such records to alternative hosting and maintenance arrangements in the aftermath of NBH's announced closure;

(7) For the purpose of providing the emergency services and electronic health record support, BMC shall have full power and authority to:

- a. Employ, engage, discharge, assign, supervise and fix the compensation, salaries and wages for all additional personnel BMC deems necessary and desirable, including without limitation medical, nursing, administrative and support personnel formerly employed by NBH or the Hospital;
- b. Notify NBH's and the Hospital's business partners and patients about BMC's role as provider of emergency services and electronic health record support and information about such services;
- c. Expend such funds as may be made available for the commencement and provision of emergency services and electronic health record support ("the Start-Up Amount" as defined herein), provided that BMC shall maintain an accounting of such expenditures;
- d. Do any and all acts not inconsistent with the terms and conditions of this Order and DPH requirements to carry out the purposes hereof;

(8) BMC shall evaluate, with DPH, the feasibility of long-term provision of emergency and other services at the Hospital facility with the goal of determining under what terms essential health services will continue to be provided for residents of the Hospital service area after the expiration of BMC's authority under this Order;

(9) BMC shall file monthly reports of its operations pursuant to this Order with this

Court, DPH and the Attorney General showing its progress in implementing this Order;

(10) All persons, firms and corporations be, and they hereby are, enjoined from disturbing or interfering with the present gas, telephone service, heat, electrical service, water supplies or any other utility of like kind now being furnished to the Hospital facility, and from cutting off or disconnecting the furnishing of any service, except upon notice to BMC in writing and after BMC has had an opportunity to be heard before this Court;

(11) With the exception of the Department of Public Health and other state or federal regulatory authorities, all creditors of NBH or the Hospital and any and all persons or parties are restrained and enjoined from taking possession of or interfering with the Hospital facility or with any aspects of BMC's operations at that facility pursuant to this Order, whether by attachment, trustee process, levy or otherwise, from discontinuing services to the Hospital facility or from instituting any suit, action or other proceeding that would interfere with or frustrate the purpose of this Order without advance leave of this Court in each instance;

(12) All lessors of real property or furniture, furnishings, equipment or other personal property at the Hospital that BMC and DPH reasonably determine are necessary or desirable for the provision of emergency services or electronic health record support, or any of them, are enjoined, restrained and stayed from in any way interfering with the usual use of such property in the provision of said services, except upon notice to BMC in writing and after BMC has had an opportunity to be heard before this Court;

(13) Health care payers contracting with BMC for payment for services provided at BMC' current licensed facilities are directed to negotiate in good faith the expeditious extension of current contractual terms to cover services provided by BMC at Hospital pursuant to this Order;

(14) All persons and companies providing alarm and fire protection services or equipment to the Hospital facility, their employees, representatives and agents are enjoined, restrained and stayed from disconnecting or cancelling such services or equipment except upon notice to BMC in writing and after BMC has had an opportunity to be heard before this Court;

(15) All past and present members, officers and directors of NBH and the Hospital (a) shall cooperate fully with BMC, its officers, directors and agents, and with DPH, in providing such access, records, and information as BMC may determine to be necessary for the effective provision of emergency services and electronic health record support and planning for long-term service availability in the Hospital service area and (b) are enjoined from interfering with or impeding either the provision of emergency services by BMC and electronic health record support or planning for long-term provision of services to residents of the Hospital services area;

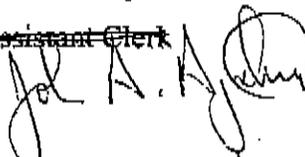
(16) BMC's obligation to perform its duties as described in this Order is expressly conditioned upon the timely availability to BMC of funds necessary to perform such duties (the "Start-Up Amount"), whether such funds are provided directly to BMC or made available through third parties or agencies;

(17) BMC shall provide notice to the Court and the Attorney General as soon as the Start-Up Amount is available. In the event of lack of clarity or dispute about the availability or application of the Start-Up Amount, BMC or the Attorney General may request a hearing before this Court for determination of the issue;

(18) BMC or the Attorney General may apply to the Court from time to time for such further directions or orders as may be necessary. During and at the conclusion of the period specified in this Order, the Court may make such further orders as are just and proper.

By the Court, (Agostini J.)

~~Assistant Clerk~~



John A. Agostini
Associate Justice, Superior Court

Entered:

