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MINUTES OF THE PUBLIC HEALTH COUNCIL
MEETING OF OCTOBER 13, 2010
MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH

**THE PUBLIC HEALTH COUNCIL OF
MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH
LOCATION: Suffolk University Law School, Sargent Hall, 120 Tremont Street, Boston,
MA 02108 (Function room, First Floor)**

Updated Docket: Wednesday, October 13, 2010, 9:00 AM

1. ROUTINE ITEM: No Floor Discussion

Compliance with Massachusetts General Laws, Chapter 30A **(No Vote)**

DETERMINATION OF NEED:

2. CATEGORY 1 APPLICATIONS: Request for transfer of ownership to Steward Health Care System LLC

- a. Project Application No. 4-3B87 of Steward Health Care System LLC for Caritas Carney Hospital, Boston **(Approved)**
- b. Project Application No. 5-3B88 of Steward Health Care System LLC for Caritas Good Samaritan Medical Center, Brockton **(Approved)**
- c. Project Application No. 3-3B89 of Steward Health Care System LLC for Caritas Holy Family Hospital, Methuen **(Approved)**
- d. Project Application No. 4-3B90 of Steward Health Care System LLC for Caritas Norwood Hospital, Norwood **(Approved)**
- e. Project Application No. 5-3B91 of Steward Health Care System LLC for Saint Anne's Hospital, Fall River **(Approved)**
- f. Project Application No. 4-3B92 of Steward Health Care System LLC for Saint Elizabeth's Medical Center, Boston **(Approved)**

The Commissioner and the Public Health Council are defined by law as constituting the Department of Public Health. The Council has one regular meeting per month. These meetings are open to public attendance except when the Council meets in Executive Session. The Council's meetings are not hearings, nor do members of the public have a right to speak or address the Council. The docket will indicate whether or not floor discussions are anticipated. For purposes of fairness since the regular meeting is not a hearing and is not advertised as such, presentations from the floor may require delaying a decision until a subsequent meeting.

Please note: Any changes to this docket will be posted on our DPH website under open meeting notices and also on the Public Health Council website: www.mass.gov/dph/phc

A regular meeting of the Massachusetts Department of Public Health's Public Health Council (M.G.L. c17, §§ 1,3) was held on October 13, 2010, 9:15 a.m., at the Suffolk Law School, David Sargent Hall, 120 Tremont Street, Boston, MA 02108. Members present were: Chair John Auerbach, Commissioner, Department of Public Health, Ms. Helen Caulton-Harris, Dr. John Cunningham, Mr. Paul Lanzikos, Mr. José Rafael Rivera, Dr. Meredith Rosenthal, Mr. Albert Sherman, and Dr. Alan C. Woodward. Absent members were: Dr. Michéle David, Dr. Muriel Gillick, Mr. Denis Leary, Ms. Lucilia Prates Ramos, Dr. Michael Wong, and Dr. Barry Zuckerman. There is one vacancy. Also in attendance was Attorney Donna Levin, General Counsel.

Chair Auerbach announced that notice of the meeting has been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance. Chair Auerbach made introductory remarks and stated in part, "At today's meeting we will be considering six different applications for the Transfer of Ownership of hospitals in Massachusetts. The hospitals are those that are owned by Caritas, and the application is to transfer their ownership to Steward Health Care System, an affiliate of Cerberus Capital Management..." He explained the process for the agenda of the day. He noted that the Public Health Council Members have thoroughly reviewed the public comments and the staff summaries and said further, "...I am assuring all of you who have participated during the public comment period that we have taken your comments very seriously and we have reviewed them and we will be factoring those into our discussions and our deliberations." He noted for those who already testified at the public hearings or submitted written comments during the official open comment period, they would be accorded two minutes of testimony before the Council today. Elected officials will be allowed two minutes also to speak.

Ms. Joan Gorga, Director, Determination of Need Program, introduced herself and her two staff members, Mr. Jere Page and Mr. Bernard Plovnick, Senior Program Analysts, who worked with Joan on reviewing these Caritas applications. Ms. Gorga noted in part, "...The six applications from Caritas were accepted by the DoN program on

May 10, 2010. They concerned the following hospitals: Caritas Carney Hospital in Dorchester, Caritas Good Samaritan Medical Center in Brockton, Caritas Holy Family Hospital in Methuen, Caritas Norwood Hospital in Norwood, Caritas St. Anne's Hospital in Fall River, and Caritas St. Elizabeth's Medical Center in Boston...They result from an acquisition of each hospital by a subsidiary of Steward Health Care System, LLC, which is itself an affiliate of Cerberus Capital Management, LP. They concern a proposed transfer, which is set forth in a six asset purchase agreement between each hospital and Steward Health Care System LLC. At the time of the applications, the applicant indicated that the transaction would bring approximately \$830 million dollars in value to the health care system in Massachusetts, including \$400 million dollars in capital projects. The value was later increased to \$895 million to cover the additional costs of funding the pensions. As part of the application and the agreements, the Catholic identity of the facilities was to be preserved through a stewardship agreement between Steward and the Archdiocese. In the applications, it was indicated that no immediate changes in services were planned for three years, and no capital expenditures were submitted in association with the transfer."

Ms. Gorga continued, "The Caritas Hospitals are non-profit hospitals, and they are being acquired by a for-profit company. This raises a wider range of issues than the usual Transfer of Ownerships that you are familiar with dealing with, and involves the Public Charities Division of the Office of the Attorney General...Public hearings were requested formally at two hospitals, Carney and Holy Family. However, within the regulations, it is within the purview of the DoN Director to hold public hearings on applications and so we held six public hearings in all the hospitals' communities. They were held jointly with the Public Charities Division of the Office of the Attorney General. We held the hearings in Brockton, Norwood, Methuen, Brighton, Fall River and Dorchester in June and early July of 2010. Almost a thousand people attended the six hearings and three hundred people testified. A formal written comment period was held through July 30, 2010 and written comments were received, some after the formal cut-off day, which though read cannot be considered part of the official testimony."

Ms. Gorga noted that they received about 250 form letters from employees of the hospitals and also letters from individual groups. Ms. Gorga explained the DoN Criteria for Transfer of Ownership, taken from the Determination of Need Regulations (105 CMR 602.000):

- A. Individuals residing in the Applicant's health systems area will comprise a majority of the individuals responsible for decisions concerning: 1. approval of borrowings in excess of \$500,000; 2. additions or conversions which constitute substantial change in services; 3. approval of capital and operating budgets; and 4. approval of the filing of an application for determination of need.
- B. Evidence that consultation has taken place with the Division of Medical Assistance prior to submission of the application, regarding access problems of Medicaid recipients to medical services in the facility's primary service area.
- C. The Division of Health Care Quality has determined that neither the Applicant nor any health care facility affiliates have not been found to have engaged in a pattern or practice in violation of the provisions of M.G.L. c.111, §51(D). This is Anti-fraud.
- D. If the application is for a Transfer of Ownership of a hospital and the applicant is a hospital licensed by the Department, or an affiliate of a hospital licensed by the Department.

Ms. Gorga said, "These are the criteria we use for review of Transfer of Ownership, non-profit or for-profit...and later I will tell you how the Caritas applications met these criteria." Chair Auerbach added in regard to the above criteria, "They define the authority allowed to us by law and regulation, as a Council, to consider the application, they are relatively narrow and that means in terms of the Council's consideration, its authority only rests with regard to these four areas of criteria, which is different from the Attorney General, who has a

different scope of criteria and authority for consideration of the application..."

Ms. Gorga went over the public comments presented at the six public hearings and summarized them in charts which are attached and made a part of this record as **Exhibit No. 14,957**.

Attorney David Spackman, Chief, Division of Non-Profits and Public Charities, Office of the Massachusetts Attorney General Martha Coakley addressed the Council. He said in part, "...I would like to briefly cover the following, what her role is, as Attorney General, the process she undertook, her findings, the conditions that will be part of the court order, and that she will enforce as Attorney General, and respond briefly to some of the misperceptions and some of the comments..." Some excerpts from his presentation follow:

"Our role in the Public Charities Division is based upon common law. As we indicated at the public hearings, these are assets that are held in charitable trust for the benefit for the public. When any organization, be it a hospital, neighborhood health center, day care center seeks to go out of business and transfers its assets to somebody else, that requires judicial approval and we, as the Attorney General's Office, are the representative of the public in that process."

"...We look at five criteria. The criteria are: one, is it impractical or impossible for the organization to continue on its own? You can't come and simply transfer assets because you think you might do better in a for-profit mode. There has to be some impracticality or impossibility involved. You have to follow a Duty of Care. These are trustees and the boards that direct these things are fiduciaries. They must act consistent with the Duty of Care. They must be methodical and careful. They have a Duty of Loyalty, the third criteria. There are always conflicts of interest. You must handle them appropriately. You must disclose them and you must address them appropriately. Fourth, you must get fair market value for those assets. They are held to the benefit of the public, and the public deserves a fair return, and ultimately the criteria are that this must ultimately be in

the public interest, which we have a very simple definition of. This deal must be better for the public than without the deal. Those are the five criteria that we look at...Our findings were issued on October 6, 2010. We found affirmatively on all five of these criteria."

Attorney Spackman highlighted some of the conditions (please see verbatim transcript for full discussion):

- Contractual commitment to cover the employee pensions
- Capital investment of four hundred million dollars
- During first three years Steward cannot go public – issuing any debt to pay dividends (funds that would take funds out of the system to pay investors)
- During first three years cannot sell or transfer a majority interest in any hospital
- Added a provision that no closure or reduction in behavioral health beds (psychiatric, Detox, substance abuse) as long as the hospital is open, those beds must remain
- A two year public notice process before closure of any hospital (can't close for the first three years)
- Indigent and charity work will continue, even if a hospital is sold
- Community benefits expenditures will continue at current levels
- Steward will fund transition of endowments
- Steward will fund a five-year study of their impact on the marketplace with 1.5 million due at closing
- AG will monitor price and services

Chair Auerbach responded and stated in part, "...I particularly want to thank you for your willingness to hear our thoughts and commentaries, as well as those of the people who participated in the open process and we appreciate that part in the report which includes a role for the Department of Public Health in looking at the issues of the impact on the health of communities, the potential impact on access, and the other concerns that we have...and we will pledge, should the vote be a positive one, to work closely in collaboration with you..."

Ms. Gorga explained how the applicant complied with the DoN Transfer of Ownership Criteria noted earlier: "Between 55% and 92% of the hospital boards will reside in the primary service area of the facility. The requirement is 50%. In four of the hospitals, over 80% of the boards members are residents of the primary service area. The Executive Office of Health and Human Services has determined that there are no Medicaid access problems and further that they anticipate the applicant will continue to make access to Medicaid providers and primary care for Medicaid patients a priority. The Division of Health Care Quality has determined that the applicant is in compliance with M.G.L. Chapter 111, Section 51D – has not engaged in Medicaid Fraud. The applicant is an affiliate of a licensed hospital through a Management consulting Agreement by and between each Caritas Hospital Corporation and the corresponding Steward Hospital Corporation. The Division of Health Care Quality found that the six Steward hospitals met the requirements for suitability set forth in 105 CMR 130.104."

Ms. Gorga noted the recommended conditions of approval by DoN: (1) standard DPH conditions on the provision of interpreter services through the DPH Office of Health Equity; (2) continue to fund DoN community health initiatives agreed to on previous DoNs granted to the hospitals and at the time of closing on the acquisition, must have completed all current payments; and (3) Successor Agreement on Community Health Initiatives.

There was as short discussion clarifying that CLAS standards are included in the interpreter conditions for all six hospitals and around the fear of anticipated unfair competition or lack of contracting with local health centers. Please see verbatim transcript for that full discussion.

In accordance with the DoN Regulations, members of the general public who previously testified during the public hearing process or submitted written comments at that time were given two minutes each to testify before the Public Health Council.

Chair Auerbach noted for the record that the Public Health Council has been provided with all of the testimony from the six public hearings (300 people testified) and the Council reviewed it.

Those who testified before the Public Health Council on October 13, 2010 follow, with some excerpts from their presentations (please see verbatim transcript for their full testimonies):

State Senator Steven Baddour testified on behalf of himself, his constituents and Mayor William M. Manzi III of Methuen in support of the acquisition. "...This is an opportunity to bring people back in the local hospitals because we have a world class facility in the Holy Family Hospital..."

Bob Fowkes, District Director, Congressman Stephen Lynch's Office, which represents the 9th Congressional District, noted that three of the hospitals are in their district: Carney, Norwood and Good Samaritan providing 4,000 jobs. "These hospitals have become critical to the well-being of the quality of life to those people in the district....The Congressman is in full support of this acquisition."

Steven Meunier, on behalf of Senators John Kerry and Scott Brown's Office, summarized a letter they wrote in support of the acquisition to Attorney General Martha Coakley. "In addition to being the second largest health care network in New England, Caritas is also the tenth largest employer in the Commonwealth and this transaction protects over 13,000 jobs and in the communities where Caritas hospitals provide care, they are an essential part of the community fabric..."

Donald K. Stern, Cooley Law Firm and Health Care Access Coalition (Lawrence General Hospital, Lawrence, Brockton Hospital, Brockton, South Coast Hospital, Fall River): "We are here not to oppose the transaction but to support it with conditions and we believe the Public Health Council has ample authority to impose those conditions...We are concerned it will engage in predatory practice...We proposed prohibiting improperly inducing physicians

away from Coalition hospitals; monitoring of changes in the physician payer mix; prohibit no bid exclusive health plan contracts..."

Laurie Martinelli, Chair of the Board, Dorchester House, a community health center in Dorchester: "I respectfully disagree with what you have heard about being a for-profit because Cerberus or Steward is not like MetroWest or St. Vincent's Hospital because it has no history in the hospital field I think that is a really important point for this group to consider..." Ms. Martinelli asked for the number of psychiatric beds in each hospital and in addition asked for clarification of what the Attorney General means by 'robust and open dialogue' and what the process will be."

Enid Eckstein, Vice President, Union 1199 SEIU noted that their union along with the Carpenter's the Mass. Nurses, the Teamsters, the Area Trades Council, the Electrical Workers, the Greater Boston Labor Council, the Building Trades and the State AFL-CIO all support the acquisition, a rare thing for them all to be in agreement.

Kamran Hakimdin, Chief Operating Officer for EasCare Ambulance Service: "...This is not the time to take away such an asset from the good people of Dorchester. The licensure must be approved in order for the residents of this great, diverse neighborhood to continue to receive the world class medical care that they have become accustomed to and deserve..."

State Representative Michael Rodrigues, 8th Bristol District, including Westport and City of Fall River (Also speaking on behalf of Representative David Sullivan, Representative Kevin Aguiar, Representative Patricia Haddad, Assistant Majority Leader from Town of Somerset): "I strongly believe that the new owner will enable these hospitals to better serve their communities moving forward and provide the resources and commitment to continue these essential Community Benefits Programs...the entire delegation from Southeastern Massachusetts, strongly urge the Council to adopt this proposal."

State Representative Paul McMurtry, 11th Norfolk District that abuts Norwood, home of Norwood Hospital. "I respectfully urge you to grant the transfer of licenses to these neighborhood hospitals to help ensure that community health care remains strong and viable for all of us in the Commonwealth. This acquisition will provide necessary capital infusion that, without, could result in the possibility of multiple Caritas Christi hospitals closing..."

Amy Whitcomb Slemmer, Executive Director, Health Care for All: "...It is essential that the Attorney General and DPH work together to develop an independent vigorous and comprehensive monitoring program to focus on the consequences of this deal, particularly as they relate to consumers and the patients that Steward Health Care System will be caring for...We believe this deal meets the concerns that we have expressed, and we look forward to the ongoing opportunities for continuous evaluation and monitoring so that health care consumers are both protected and well cared for..."

Matt Selig, Executive Director, Health Law Advocates: "...The regulators have scrutinized the deal appropriately. Caritas has responded to many concerns raised by HLA and others, and stakeholders from the communities affected have eloquently expressed their views...HLA is committed to working with other interested parties to maximize the likelihood that the hospitals under new ownership will continue to address the needs of low income health care consumers and the communities in which they live."

Al Norman, Executive Director, Mass. Home Care: "...I want to suggest the following condition as a recipient of Mass Health funds, Steward facilities shall develop a community benefits plan that ensures that all inpatients are maintained in the least restrictive setting in accordance with Section 9 of Chapter 118E. We are wasting millions of dollars in this State on funding of inappropriate hospitalizations and rehospitalizations. A recent study said that 28% of hospitalizations are avoidable and 40% of nursing home to hospital transfers are inappropriate. We need to deal with this issue..."

Dr. Helen Jackson, OB-GYN in private practice in Brookline, affiliated with St. Elizabeth's Hospital. "I oppose the deal for the following reasons. Health care should not be for-profit. Fee-for-service, yes. Catholic Health care should be modeled after the divine healer...Here is a unique Catholic institution in its present fight because of sub-par management. The policymakers are businessmen with no regard for Catholic identity. I don't see any women in the pioneering paper that was given out...The buyer has no experience in the health care industry...there is no transparency....I appeal to the Public Health panel not to let this deal go through. Catholic institutions should be given a chance to be administered by others than the present group for they have served this Commonwealth for 147 years..."

Kathryn Audette, Policy Analyst on behalf of Daniel J. Driscoll, President/CEO, Harbor Health Services, Mattapan: "...Harbor Health Services is not opposed to the transfer of the Carney Hospital license to Cerberus Steward. We do feel that it is within your scope of authority, there are several conditions that could be put in place to protect community and public health in the service areas we represent..." Ms. Audette recommended three conditions, in brief she said Cerberus should make their business plan transparent and open to the public before receiving approval, require an investment in community health centers that serve Carney Hospital, and thirdly demonstrate that their insurance provider networks do not reduce access to Medicaid and Medicare recipients.

James Kelleher, Chair, Board of Selectmen, Norwood: "...I am to speak as a citizen, as a representative of the community and those communities at large, that really rely on this facility and would like to keep it going for another 100 years in Norwood and be a partner and give our residents the highest level of care possible..."

R.T. Neary, Educator, husband, father, grandfather, war veteran and volunteer at Norwood Hospital for five years of Medfield: "I speak in opposition because I believe that Cerberus is getting a free ride..." Mr. Neary noted that he is opposed due to the

following reasons in brief: Cerberus has a bottom-line orientation and no experience in running hospitals, donors in good faith wanted them retained with the highest ideals inherent in the Catholic Church's mission, believes the Attorney General has a conflict of interest and should not have made any recommendation on this project, and that the entire process has been done without ethics.

John O’Gorman, Executive Director, Media and Research, Campaign to Save Catholic Health Care: “...The reason this has come about is the fears that we have generated that Caritas Christi is about to go under.” He said that the new CEO, Dr. Ralph de la Torre turned the hospitals around and transformed them. And in 2009, made a thirty-one million dollar profit, according to the Boston Globe.

Attorney Renee Markus Hodin, Project Director, Community Catalyst: “We...are pleased by many of those additional conditions that were noted earlier...the buyer’s commitment to keeping the hospitals open and maintaining the number of behavioral health beds, extending the community benefit...commitments to future owners ...and requiring each hospital to implement specific elements of a professional medial interpreter services program...” Attorney Markus Hodin recommended further conditions: a community needs assessment in each service area to determine the sales impact on the accessibility, quality and affordability of health care services; a promise to increase spending on indigent or charity care and community benefits to meet inflation or increased needs; and a formal role for consumers in the independent monitoring of costs and services beyond the sale.

Rich Marlin, Massachusetts Building Trades Council: “...We are here supporting this transfer for two particular reasons, one, we represent 75,000 workers in the construction industry and 300,000 insured workers who use these facilities and feel this transfer is the only way to modernize and upgrade the infrastructure needed to upgrade these hospitals to where they should be ...”

State Representative Kevin Honan (also on behalf of City Councilor Mark Ciommo from Allston-Brighton): “...I am here

to support the license transfer of the Caritas Christi hospital network to Steward Health Care...This is the way to preserve this quality health care and preserve all these jobs..."

Adam Webster (on behalf of Boston City Councilor at-Large John Connolly): "...Granting this merger will solidify long term stability of the Caritas network, and benefit the City of Boston and the Commonwealth of Massachusetts by increasing accessibility to health care, sustaining and creating jobs, and bringing significant economic and community benefits to our localities..."

Sister Marie Puleo, Interim President, Carney Hospital, Life Long Resident of Dorchester: "...I think it is important for us to remember that, for all of those years, the Catholic identity has been the source of strength for all of our hospitals and I would like to assure you that we are committed to continuing, in all of our hospitals, that great tradition of Catholic health care in our hospitals...without our hospitals, the communities would not be the same and I hope that you will support that transaction..."

Joseph C.J. Doyle, Executive Director, Catholic Action League of Massachusetts: "...We realize that we are asking quite a lot of you. We are asking you to be more concerned with the Catholic identity than the Archdiocese of Boston was, but we ask that you do not approve this sale until such time as the termination clause is either excised or modified, and let me also point out that, if no redress can be found for Catholics concerned with the Catholic identity on the state level, then the only solution and the only alternative will be a canonical case in the Courts of the Holy See..."

Linda M. Soucy, Resident of Methuen, Holy Family Community Benefit Board Member and resident of Methuen: "...I am in support of the sale of Holy Family Hospital. Holy Family Hospital is very important to the City of Methuen and its residents. It has over 1500 employees, of which many are my neighbors... I feel this sale will also generate a much needed tax revenue for the City of Methuen..." Ms. Soucy also noted that the agreement should be for at least five years, not three years and that the money raised by the

foundations should be kept separate from Cerberus and continue their mission to help local charities and lastly that more screenings can be done.

Catalina Mondes, Board of Trustees, St. Elizabeth's Hospital, Brighton: "...I am from St. Elizabeth's. I came here to offer my support for the Steward Health Care System and to request that the Massachusetts Public Health Council award a license as needed to operate our six Caritas hospitals. This hospital is vital to the Brighton community as a source of income for thousands of employees ..."

Chair Auerbach noted that this concluded the public testimony/comment period and that we would now hear from the applicant and Steward Health Care. He said in part, "...I would like to thank each of the people who spoke today and I think your testimony was reflective of the rich, thoughtful and compassionate testimony that we have heard throughout the public comment period and those of us on the Council were very impressed with the quality and the commitment of the people who offered the more than 300 oral and additional written testimony...We have reviewed it."

Ms. Lisa Gray, Board Member, Steward Health Care System, LLC addressed the Council and stated in part (please see the verbatim transcript for the full discussion): "...I am pleased to be here on behalf of Steward Health Care System and each of the DoN applicants...I would also like to thank the community members and public interest groups, who provided their comments during the review process. We really think that their participation helped guide the formulation of these agreements. Steward recognizes how critical the Caritas hospitals are to their patients in the communities they serve. The Caritas system is an important part of the overall health care delivery system of Massachusetts. The ongoing existence and vitality of these facilities is also crucial to the twelve thousand Caritas employees whose livelihood is dependent upon the continuation of this system. We also care about the pensioners, who are counting on what is now a substantially under-funded pension for their retirement security. While Dr. De La Torre and his team have made great strides over the past years, these hospitals are vulnerable

because of outstanding debt, lack of access to much needed capital and the enormous under-funding of the pension. Without overcoming these challenges, these hospitals will not thrive and their very survival may be in jeopardy. This transaction presents a solution, one that will achieve the parties' shared goal of continuing to provide high quality, state-of-the-art, community-based health care..."

Ms. Gray continued, "...Working with the Department and with the Attorney General, Steward made a number of commitments, summarized by Ms. Gorga and Mr. Spackman earlier this morning, and we have really taken the time to satisfy these offices that this transaction is in the public interest, and that Steward will continue to promote the public interest following this transaction. Notably we have agreed with the Attorney General, to ongoing commitments and reporting designed to ensure continued oversight in a manner that is unprecedented for for-profit health care providers in Massachusetts. Steward's interest is to make the Steward Health Care System a highly successful health care delivery model that demonstrates high quality patient satisfaction and community involvement while, at the same time, achieving and maintaining financial stability. In closing, I want to emphasize that Steward is committed to ensuring that, under our stewardship, the hospitals and the other Caritas Christi health care providers, will continue to fill their goals and responsibilities as vital participants in providing community-based health care."

Dr. Ralph De La Torre, President/CEO Caritas Christi Health Care addressed the Council: "...During the process, we have listened, we have learned, and we have modified a transaction that will provide substantial immediate and long term benefits to the Commonwealth....For five years, Caritas has been searching for a financial sponsor to stabilize our system, and lay the foundation for growth and service to our communities. We feel strongly that the future of health care in Massachusetts lies in a robust integrated, community-based health care system. Massachusetts has long suffered by the migration of basic health care with patients leaving their community hospitals to seek more expensive care in tertiary and quaternary medical facilities. In many cases, the same level of care

can, and should be, provided in community hospitals. In most of Caritas communities, more than 60% leave the Caritas system, as well as the entire region, for health care in Boston. This has not only placed an enormous cost burden on our State, but it has economically disadvantaged our communities as jobs and incomes leave the immediate area. We are here to reverse that tide. We, however, realize that our patients, our families, have a choice, and that it is our responsibility to provide the facilities, the personnel, and the convenience needed to entice people to stay in their communities for health care. Caritas faces a significant challenge. Our fiscal plants are among the oldest of any hospital system in the State. Investments in new technology have been lacking. The pension obligation is enormous, seriously under-funded and has no federal insurance backstop, and our debt service is draining our operating funds. In order to simply meet debt obligations and pension obligations, we would need approximately sixty-five million dollars a year of cash...In short, without capital, we will not survive..."

Dr. De La Torre continued, "...The partnership with Steward is more than just about capital, although this was by far the best offer we received. Steward is committed to building a low cost, high quality, community-based, accountable care organization, and maintaining the company as a Massachusetts-based operation. These are crucial distinctions and commitments. Inherent in Steward's business plan, is the shift in care, back to lower cost community hospitals...To facilitate these shifts, we must invest in our facility and expand our services, not the opposite. This includes investments in fields like Behavioral Health and Addiction Services. This shared vision is what brought Caritas and Steward together. Steward Health Care will commit \$895 million dollars to acquire Caritas. Of this, \$116 million is being spent immediately for much needed improvements, new operating rooms, cardiac cath labs, new emergency departments, new radiation therapy centers...roofs boilers, windows etc. These projects are well overdue and will provide a great benefit to our patients and our communities. In addition, they will create 4,000 badly needed jobs in the community...The initial funds will allow us to pay off nearly all of our outstanding debt...."

Dr. De La Torre further said in summary, the initial Steward commitment guarantees and secures our pension, eliminates our debt and begins a massive construction effort, aimed at revitalizing our system in our communities. In addition, Steward has agreed to preserve our identity and embrace our vision. Steward has agreed to embrace our charity care and community benefit. This represents an annual commitment, system-wide, of over 67 million dollars...To ensure that the community is fully represented in the allocation of these benefits, each hospital will retain their local board of trustees and we will work collaboratively with organizations such as Health Care For All, to ensure a smooth, appropriate and equitable delivery of these benefits...Furthermore, as part of our identity, our Catholic heritage and mission will be perpetuated...This relationship is a bedrock of our culture and it will not change. It reflects our beliefs and our heritage. These beliefs not only shape our views on charity care but encompass our appreciation of social justice...Caritas for the first time, will pay state and local taxes and over the next five years estimate \$100 million in new taxes to the state and local communities..."

In closing he said in part, "...A great deal of effort has brought us to this day. A plethora of outside consultants, labor unions, community groups, health centers, and governmental agencies all played vital roles. Over the last six months, the Department of Public Health and the Attorney General of Massachusetts have conducted an in depth discovery and analysis of the transaction. Over the last couple of months, the Attorney General and the Department, with input from organizations such as Health Care for All, have further negotiated a transaction that is not just good, but great for the Commonwealth of Massachusetts..."

Discussion followed by the Council (please see verbatim transcript for full discussion). Excerpts follow:

Mr. Paul Lanzikos asked about the community initiatives. Dr. De La Torre replied, "What we have committed to is continuing the Community Benefit Needs Assessment and funding the plan as the Attorney General puts it forward. It is a living breathing document,

not a set thing....the local boards and the community representatives on those boards are the ones that are going to be determining, participating in the need assessment and be responsible for determining where the funding goes with help from agencies like Health Care for All to moderate the needs and help us gauge what the real needs are..." Dr. De La Torre said he would also consider the staff recommendations on the community initiatives stated in the DoN Staff summaries.

Dr. Alan Woodward inquired, "I, in broad terms would like to hear about your strategies on how do you parlay this capital investment into a long term sustainable model, particularly when it becomes a for-profit model with all of its additional obligations..."

Dr. De La Torre responded by stating in part that (1) they will have half a billion dollars in cash flow from eliminating the pension and the debt; (2) the business plan is to keep health care local and keep the patients and Caritas doctors from leaving their hospitals for the downtown tertiary hospitals by improving the physical facilities, integrating physicians with their hospitals, having a huge care management team, and having a robust and integrated health IT system that makes obtaining care at their hospitals simple and nicer for the patients. For example, having an 800 number to call to schedule an MRI instead of the patient having to make 12 phone calls to do it. Dr. De La Torre said further," by proving the alternative, keeping our patients in our hospitals at a lower cost, we win and the State wins..."

Dr. Woodward also asked about psychiatric and substance abuse beds. Dr. De La Torre stated that they are committed to keeping those beds and perhaps even expanding those services. He said, "If they don't take care of their patients then they have to grossly overpay somebody else to do it."

The issue of Cerberus not having a lot of experience in health care was raised. Dr. De La Torre responded, "...Even though Cerberus is an investor and doesn't really have health care experience, they hired us. The management team all stays in place...and there is a

tremendous benefit to having a management team that ... understands these communities, stay right here rather than be bought by another hospital company based in Tennessee or California, where they bring in a management team that doesn't understand this area...We are the team, it's the team that is here locally that stays here and will manage these hospitals."

Mr. José Rafael Rivera asked if the "Community Health Network Areas" would be included in the community benefits needs assessment. Dr. De La Torre replied, "Yes." Chair Auerbach inquired about the monitoring being transparent in terms of financing and in terms of operations in the hospital service delivery. Dr. De La Torre responded by stating that they are committed to having a robust monitoring process that DPH and the Attorney General's Office will run. Dr. De La Torre asked that the other major players be included in this monitoring/evaluation so a real comparison of health care in the area will emerge.

Mr. Lanzikos asked DPH staff to put in writing the number of psychiatric and substance abuse beds each Caritas hospital now has so there is a starting baseline. Chair Auerbach confirmed that the Department has that information through the licensure units and will put it in writing as part of the record and noted further that there is no proposal in this request that changes the licensure status in this regard.

Don Stern's comment during public testimony, noted above was raised regarding predatory behavior on the part of other for-profit health care institutions. Attorney David Spackman, Office of the Attorney General, responded in part by stating "...I actually have not heard any complaint about our for-profits in that regard, and I have heard complaints about virtually every non-profit system, and certainly every non-profit system of size, including some of the members of the coalition. So, it is conduct that is going on continually. I think, as a statewide issue, it is of concern. We expect to look at it here, both with this transaction and in general as the Attorney General continues her evaluation of what is going on in the marketplace..."

Chair Auerbach noted for the record and said in part, "...We, as a Council, should be mindful of any decisions we make that might be harmful to the community hospitals as we think about DoN Regulations and other review processes...He further noted that the applicant will be back for other DoNs in the future to implement its new plans and at that time, the Council will look at how Caritas has treated other community hospitals."

Dr. De La Torre responded in part by stating that Caritas hospitals are the community hospitals and that they feel threatened and said further that "the tertiary quaternary institutions in Boston have a machine that cannot be fed with tertiary quaternary care only, they need basic care in those hospitals to keep the machines alive...when you look at community hospitals, our biggest threat is not these other community hospitals and if we grow it won't be at the expense of these other community hospitals. At Norwood Hospital, the largest two physician groups in the medical office building on our campus are tertiary downtown hospitals...I think what will happen is, as ACOs develop, we will seek partnerships on our terms and if you get a group of community hospitals together, the tables will turn and the long process that gets us to what we envision, where there is a more reasonable balance is established between Boston and our communities. It adds to the robustness of our community hospitals, and adds a system that doesn't bankrupt the state, quite frankly..."

Mr. Albert Sherman inquired about the hospital affiliations now in place, will they continue? Dr. De La Torre noted that the present affiliations would continue for now but in the long run they will probably go out to bid and look for quality and IT infrastructure and commitments from the tertiaries and establish different relationships system-wide. Dr. De La Torre said, "I will be clear, we have no intentions of building a downtown quaternary hospital. We have way too many of those already..." Mr. Sherman also asked if they had electronic patient records. Dr. De La Torre replied yes at all their hospitals and they are expanding it to all their physicians and integrating it so no matter what office a patient walks into, the patient's record will be available.

Dr. John Cunningham asked the applicant to insure the Council that they are still failing and not hiding anything from the AG, noting that public testimony suggested otherwise for Fiscal year 2010. Dr. De La Torre said the books look that way because the pension does not sit on their books. "If we moved the pension from the Archdiocese Multi-Employer Fund to our books, we would be below junk bond status." Attorney Spackman confirmed it.

Chair Auerbach noted, "We are now at the stage of considering a motion. The staff recommendation is for approval of each of the six sales with conditions that are noted on the movie screen and in the six DoN Staff summaries. Do I have a motion for consideration of Carney Hospital?"

Mr. Paul Lanzikos moved to approve the staff recommendation. After consideration upon motion made and duly seconded, it was voted unanimously to approve **Project Application No. 4-3B87 of Steward Carney Hospital, Dorchester, MA.** A staff summary and its four attachments are attached and made a part of this record as **Exhibit Number 14,958.** As approved the application provides for transfer of ownership and original licensure of Caritas Carney Hospital, Inc. resulting from a change in its corporate membership whereby Steward Carney, Inc. will assume control over Caritas Carney Hospital, Inc. This Determination is subject to the following conditions:

- 1) Steward Carney Hospital must provide interpreter services as described in the document prepared by the Office of Health Equity, which is attached to the staff summary as Attachment 4.
- 2) Steward Carney Hospital shall continue to fund the commitments on Community Health Initiatives agreed to with regard to previously approved Determinations of Need granted to the Hospital and at the time of closing on the acquisition must have completed all current payments.

Mr. José Rafael Rivera moved to approve the staff recommendation of Good Samaritan Hospital. After consideration upon motion made and duly seconded, it was voted unanimously to approve **Project Application No. 5-3B88 of Steward Good Samaritan Medical Center, Brockton, MA**. A staff summary and its four attachments are attached and made a part of this record as **Exhibit Number 14,959**. As approved the application provides for transfer of ownership and original licensure of Caritas Good Samaritan Medical Center resulting from a change in its corporate membership whereby Steward Good Samaritan Medical Center, Inc. will assume control over Caritas Good Samaritan Medical Center, Inc. This Determination is subject to the following conditions:

- 1) Steward Good Samaritan Medical Center must provide interpreter services as described in the document prepared by the Office of Health Equity, which is attached to the staff summary as Attachment 4.
- 2) Steward Good Samaritan Medical Center shall continue to fund the commitments on Community Health Initiatives agreed to with regard to previously approved Determinations of Need granted to the Hospital and at the time of closing on the acquisition must have completed all current payments.

Mr. Albert Sherman moved to approve the staff recommendation of Holy Family Hospital. After consideration upon motion made and duly seconded, it was voted unanimously to approve **Project Application No. 3-3B89 of Steward Holy Family Hospital, Methuen, MA**. A staff summary and its four attachments are attached and made a part of this record as **Exhibit Number 14,960**. As approved the application provides for transfer of ownership and original licensure of Caritas Holy Family Hospital resulting from a change in its corporate membership whereby Steward Holy Family Hospital, Inc. will assume control over Caritas Holy Family Hospital, Inc. This Determination is subject to the following conditions:

- 1) Steward Holy Family Hospital must provide interpreter services as described in the document prepared by the Office of Health Equity, which is attached to the staff summary as Attachment 4.
- 2) Steward Holy Family Hospital shall continue to fund the commitments on Community Health Initiatives agreed to with regard to previously approved Determinations of Need granted to the Hospital and at the time of closing on the acquisition must have completed all current payments.

Dr. Alan Woodward moved to approve the staff recommendation of Norwood Hospital. After consideration upon motion made and duly seconded, it was voted unanimously to approve **Project Application No. 5-3B90 of Steward Norwood Hospital, Norwood, MA.** A staff summary and its four attachments are attached and made a part of this record as **Exhibit Number 14,961.** As approved the application provides for transfer of ownership and original licensure of Caritas Norwood Hospital resulting from a change in its corporate membership whereby Steward Norwood Hospital, Inc. will assume control over Caritas Norwood Hospital, Inc. This Determination is subject to the following conditions:

- 1) Steward Norwood Hospital must provide interpreter services as described in the document prepared by the Office of Health Equity, which is attached to the staff summary as Attachment 4.
- 2) Steward Norwood Hospital shall continue to fund the commitments on Community Health Initiatives agreed to with regard to previously approved Determinations of Need granted to the Hospital and at the time of closing on the acquisition must have completed all current payments.

Dr. Meredith Rosenthal moved to approve the staff recommendation of St. Anne's Hospital. After consideration upon motion made and duly seconded, it was voted unanimously to approve **Project Application No. 5-3B91 of St. Anne's Hospital, Fall River, MA.** A staff summary and its four attachments are attached and made a part of this record as **Exhibit Number 14,962.** As approved the application provides for transfer of ownership and original licensure of Caritas St. Anne's Hospital resulting from a change in its corporate membership whereby Steward St. Anne's Hospital, Inc. will assume control over Caritas St. Anne's Hospital, Inc. This Determination is subject to the following conditions:

- 1) Steward St. Anne's Hospital must provide interpreter services as described in the document prepared by the Office of Health Equity, which is attached to the staff summary as Attachment 4.
- 2) Steward St. Anne's Hospital shall continue to fund the commitments on Community Health Initiatives agreed to with regard to previously approved Determinations of Need granted to the Hospital and at the time of closing on the acquisition must have completed all current payments.

Dr. Alan Woodward moved to approve the staff recommendation of St. Elizabeth's Medical Center of Boston, Inc. After consideration upon motion made and duly seconded, it was voted unanimously to approve **Project Application No. 4-3B92 of Steward St. Elizabeth's Medical Center of Boston, Inc.** A staff summary and its four attachments are attached and made a part of this record as **Exhibit Number 14,963.** As approved the application provides for transfer of ownership and original licensure of Caritas St. Elizabeth's Medical Center resulting from a change in its corporate membership whereby Steward St. Elizabeth's Medical Center, Inc. will assume control over Caritas St. Elizabeth's Medical Center. This Determination is subject to the following conditions:

- 1) Steward St. Elizabeth's Medical Center of Boston, Inc. must provide interpreter services as described in the document prepared by the Office of Health Equity, which is attached to the staff summary as Attachment 4.
- 2) Steward St. Elizabeth's Medical Center of Boston, Inc. shall continue to fund the commitments on Community Health Initiatives agreed to with regard to previously approved Determinations of Need granted to the Hospital and at the time of closing on the acquisition must have completed all current payments.

Follow-up Actions:

- Have staff write down the number of behavioral/ substance abuse beds licensed in each of the six hospitals for the record (Lanzikos, Auerbach)

LIST OF DOCUMENTS PRESENTED TO THE PHC FOR THIS MEETING:

- Docket of the meeting
- Copy of the meeting notice to A&F and Secretary of the Commonwealth
- Staff Summary of Steward Carney Hospital, Inc. /attachments
- Staff Summary of Steward Good Samaritan Medical Center/attachments
- Staff Summary of Steward Holy Family Hospital Inc. /attachments
- Staff Summary of Steward Norwood Hospital, Inc. /attachments
- Staff Summary of Steward Saint Anne's Hospital/attachments
- Staff Summary of Steward St. Elizabeth's Medical Center of Boston, Inc. /attachments
- General Comments Cerberus/Caritas Transfer of Ownership (staff's listing of public comments in brief)
- Further public testimony transcripts of the public hearings on Cerberus/Caritas Transfer of Ownership made available on-line
- Copy of PowerPoint slides shown at said meeting

The meeting adjourned at 12:10 p.m.

John Auerbach, Chair

LMH

