

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, SS.

NO. _____

MORTON HOSPITAL AND MEDICAL)
CENTER, INC.,)
Plaintiff,)
v.)
MARTHA COAKLEY, as she is the)
Attorney General of the)
Commonwealth of Massachusetts,)
Defendant.)

ANSWER AND ASSENT OF THE ATTORNEY GENERAL

The defendant, the Attorney General, admits the allegations contained in paragraphs 1 through 61 of the Plaintiff's Complaint in equity and assents to the relief requested by the Plaintiff.

Further answering, the Attorney General states that she, principally through her Non-Profit Organizations/Public Charities Division, and also involving her Antitrust Division and Health Care Division, has carefully considered the matters raised in the Complaint, including its Exhibits A-N, concerning the proposal of the Plaintiff, Morton Hospital and Medical Center, Inc. ("Morton"), for itself and on behalf of its affiliate, Morton Physician Associates, Inc. ("MPA"), to sell and transfer 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. (“SMG”, which is also an affiliate of Steward) (the Asset Purchase Agreement, as so amended, hereinafter referred to as the “APA” and such sale and transfer hereinafter referred to as the “Transaction”).

After her investigation and review, the Attorney General issued her findings, including the information forming the bases thereof, in the Statement of the Attorney General as to the Morton Hospital and Medical Center, Inc. Transaction dated September 7, 2011 (the “Attorney General’s Statement”) attached hereto as Exhibit A.

As set forth in the Attorney General’s Statement, the Attorney General’s assent to the relief requested by the Plaintiff is predicated on the terms of the Transaction and provisions for commitments subsequent to the Transaction closing (the “Closing”), as described in the APA and the three ancillary agreements appended as Exhibits K-M of the Plaintiff’s Complaint.

The Attorney General is mandated by G.L. c. 180, § 8A(d) to review the proposal of any non-profit, charitable hospital to sell substantially all of its assets to a for-profit buyer. In accordance with the provisions of G.L. c. 180, § 8A(d) the Attorney General, principally through her Non-Profit Organizations/Public Charities Division, and also involving her Antitrust Division and Health Care Division, conducted an investigation analyzing whether: (1) the Transaction complies with applicable general non-profit and charities law, (2) due care was followed by Morton, (3) conflict of interest was avoided by Morton 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.

In conducting her investigation, the Attorney General took the following actions:

(1) Engaged the services of independent consultants to provide financial analysis supported by industry and market research to test whether it is impracticable or impossible for Morton to continue to operate as a public charity, consider the reasonableness of the purchase price to be paid by Steward for the Purchased Assets, consider the potential impact of the Transaction on competition, and assist the Attorney General in reviewing the process that led to the Plaintiff's decision to enter the Transaction, in light of her statutory obligations;

(2) Engaged in extensive discovery, and other public notice, information gathering, and investigative efforts, including the following:

(a) conducting a public hearing in Taunton on June 30, 2011;

(b) posting Morton's written notice of the Transaction to the Attorney General (the "Transaction Notice"), the APA, and all other exhibits to the Transaction Notice on the Attorney General's website;

(c) accepting comments from other health care providers, employees, unions, and members of the public;

(d) obtaining information from health care providers interested in or potentially impacted by the Transaction, including meeting with and obtaining information from the sole non-profit bidder, Southcoast Health System, Inc.;

(e) holding meetings and discussions with interested parties;

(f) reviewing financial records, minutes, reports, and other documents provided in response to document production requests of the Attorney General;

(g) submitting interrogatories to be answered under oath to all members of the Board of Trustees of Morton (the “Board”) and senior management of Morton, as well as non-Board Morton physician committee members, and reviewing the responses to same;

(h) interviewing key Board members and senior management of Morton, including the Chief Executive Officer and the Chief Financial Officer of Morton;

(i) interviewing Steward’s President and Chief Executive Officer, as well as Steward’s Executive Vice President of Corporate Strategy and Management;

(j) consulting with other state agencies and with local and state officials; and

(k) retaining the services of consultants and outside counsel to assist the Attorney General in her analysis.

As a result of her review, the Attorney General requested and obtained the following amendments to the APA in furtherance of the public interest:

(1) Steward’s capital expenditure obligation in years six through ten post-Closing has been clarified to include a minimum aggregate commitment of at least \$25 million, in addition to the estimated range of expenditure based on an average of 100% to 125% of annual depreciation expense that shall not exceed \$35 million;

(2) If Steward fails to meet its minimum capital expenditure obligations under the APA in the first five years post-Closing, Steward shall donate any shortfall to a Massachusetts health care charity, after written notice to and approval by the Attorney General;

(3) For so long as Steward owns and operates the “Hospital” (the assets and operations of the hospital currently operated by Morton are referred to herein as the “Hospital”), Steward shall continue to maintain community benefit programs consistent with the current Morton community benefit programs, including an adult uninsured clinic and school-based

health centers, and to provide culturally and linguistically appropriate services consistent with those currently provided at Morton, subject to such changes over time that may be necessary or appropriate to ensure that such community benefit programs remain properly aligned with the needs and interests of the patients and the community served by the Hospital post-Closing;

(4) During the ten year period post-Closing (subject to certain qualifications in years eight through ten) (the “No-Close Period”), Steward will not close or reduce the number of the Hospital’s 14 inpatient geriatric psychiatric beds;

(5) The obligation of Steward to maintain a “local governing board” composed of medical staff members, community leaders and appropriate executive officers shall apply for as long as it operates the Hospital;

(6) Steward’s obligation to offer comparable employment to all active employees of Morton, MPA, and MPI in good standing applies to those employees on short-term disability, maternity leave, vacation, or leave of absence with a specified date of return;

(7) Steward is obligated to maintain an acute care hospital that shall provide at least substantially the same scope of services as currently provided by Morton during the No-Close Period;

(8) For as long as Steward operates the Hospital (including and beyond the No-Close Period), Steward shall maintain charity care and community benefit programs in compliance with the Attorney General’s Community Benefits Guidelines for Non Profit Hospitals;

(9) For as long as Steward operates the Hospital (including and beyond the No-Close Period), the Hospital will adopt and implement community benefit and charity care policies that are generally consistent with Morton’s current community benefit and charity care policies;

(10) For as long as Steward operates the Hospital (including and beyond the No-Close Period), the Hospital will continue to accept Medicare and Medicaid patients consistent with current Morton practices and to accept emergency patients regardless of ability to pay consistent with applicable law;

(11) Morton Hospital, A Steward Family Hospital, Inc., notwithstanding its for-profit status, will fully cooperate with any investigation, inquiry, study, report, or evaluation conducted by the Attorney General under her oversight authority of the non-profit charitable hospital industry to the same extent and subject to the same protections and privileges as if it were a public charity;

(12) Steward will honor all naming commitments made in the past to Morton donors;

(13) Steward may not sell or transfer a majority interest in its affiliate operating the Hospital for five years post-Closing, except as part of an otherwise permitted sale or transfer of Steward as a whole or Steward Medical Holdings LLC, which holds the corporations that operate the Steward secular hospitals, including the Hospital;

(14) Steward will give the Attorney General at least 90 days prior notice of any such sale;

(15) The following APA provisions will apply to any successor-in-interest of the Hospital: (a) ongoing obligations for community benefit and charity care, including debt collection practices, (b) the regulatory cooperation commitment, (c) the no-closure commitments, including maintaining at least substantially the same services and maintaining current community benefit and charity care expenditure levels for the No-Close Period, (d) the capital expenditures commitment in years six through ten post-Closing; (e) the local governing board commitment, (f) the donor-naming commitment; provided that only items (a) and (b) apply

if Steward satisfies the No-Close Period criteria and otherwise could close the Hospital rather than sell it.

Also as a result of her review, the Attorney General will enter into three ancillary agreements, each materially in the form attached as Exhibits K-M to the Complaint, to help ensure post-Closing compliance with Transaction matters in the public interest, including monitoring conditions consistent with G.L. c. 180, § 8A(d)(5). These ancillary agreements are: (1) an Enforcement Agreement by and among the Attorney General, Morton, MPA, MPI, Morton Hospital, A Steward Family Hospital, Inc., SMG, and Steward Health Care System LLC, as guarantor, giving the Attorney General the right to enforce certain post-Closing provisions of the APA related to the public interest (Exhibit K to the Complaint), (2) an Assessment and Monitoring Agreement by and among the Attorney General, Morton, and Steward Health Care System LLC 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 Massachusetts Department of Public Health (“DPH”) consistent with G.L. c. 180A § 8A(d)(5) (Exhibit L to the Complaint), and (3) a Transition, Windup, and Reorganization Agreement, 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 (Exhibit M to the Complaint). Further, any enforcement action brought by the Attorney General under the APA or any of the ancillary agreements shall be brought solely in the courts of the Commonwealth of Massachusetts.

As a result of the forgoing, and based on the findings detailed in the Attorney General's Statement, the Attorney General determined the following with respect to the Transaction:

(1) That it is impracticable for Morton to continue to survive in its current charitable form and that the Transaction complies with applicable general non-profit and charities law;

(2) That, while noting process recommendations set forth in Appendix B of the Attorney General's Statement, the Board and senior management of Morton complied with standards of due care in the determination process that culminated in the Board's decision to enter into the Transaction;

(3) That, while noting process recommendations set forth in Appendix B of the Attorney General's Statement, the Board and senior management of Morton appropriately disclosed and managed such conflicts of interest as existed;

(4) That the consideration for the Purchased Assets is fair and that the Transaction affords Morton and MPA fair value for the Purchased Assets; and

(5) That the Transaction serves the public interest, as the Transaction will include the following components that are beneficial to and consistent with the public interest: (a) assuming the unfunded pension plan liability for approximately 1,800 Morton beneficiaries, (b) satisfying outstanding Morton debt, (c) committing no less than \$85 million in Hospital capital expenditures within five years post-Closing, with \$25.5 million to be expended in the first year post-Closing, (d) committing a minimum aggregate amount of at least \$25 million in Hospital capital expenditures in years six through ten post-Closing, (e) not closing the Hospital and maintaining an acute care hospital that shall provide substantially the same scope of services as Morton currently provides during the No-Close Period, subject to certain performance and notice criteria for the final three years, (f) maintaining charity care pursuant to the Attorney

General's Community Benefits Guidelines for Non Profit Hospitals for as long as Steward operates the Hospital, including maintaining the current levels of charity care at the Hospital during the No-Close Period, (g) maintaining community benefit programs in compliance with the Attorney General's Community Benefits Guidelines for Non Profit Hospitals for as long as Steward operates the Hospital, including maintaining the current levels of community benefit expenditures at the Hospital during the No-Close Period, (h) not closing or reducing the number of the 14 inpatient geriatric psychiatric beds during the No-Close Period, (i) maintaining Morton's adult uninsured clinic and school based health centers, as well as providing culturally and linguistically appropriate services consistent with those currently provided at Morton, subject to such changes over time that may be necessary or appropriate to ensure that such community benefit programs remain properly aligned with the needs and interests of the Hospital's patients and the community post-Closing, (j) not selling or transferring a majority interest in the Steward affiliate operating the Hospital for five years post-Closing, except as part of an otherwise permitted sale of Steward as a whole or Steward Medical Holdings LLC, (k) offering comparable employment positions to the approximately 1,200 Morton, MPA, and MPI employees active and in good standing at the time of Closing, as well as recognizing Morton unions and collective bargaining agreements, (l) honoring naming commitments made by Morton in the past to donors, (m) for as long as Steward operates the Hospital, maintaining a local governing board for the Hospital, with designated responsibilities consistent with DPH requirements, subject to the authority of Morton Hospital, A Steward Family Hospital, Inc.'s board of directors, organizing documents, and bylaws, (n) adopting and implementing community benefit and charity care policies generally consistent with Morton's current community benefit and charity care policies and complying with the current debt collection

practices of Morton and the Recommended Hospital Debt Collection Practices set forth in the Attorney General's Community Benefits Guidelines for Non Profit Hospitals, (o) for as long as Steward operates the Hospital, continuing to accept Medicare and Medicaid patients consistent with current Morton practices and to accept emergency patients regardless of ability to pay consistent with applicable law, (p) committing that the following APA provisions will apply to any successor-in-interest of the Hospital (after 90 days prior notice of such sale to the Attorney General): ongoing obligations for community benefit and charity care, including debt collection practices; regulatory cooperation; the no-closure commitments, including maintaining at least substantially the same services and maintaining current community benefit and charity care expenditure levels for the No-Close Period; the capital expenditures commitment in years six through ten post-Closing; the local governing board commitment; and the donor-naming commitment; provided that only the community benefit/charity care and regulatory cooperation obligations will apply if Steward satisfies the No-Close Period criteria and otherwise could close the Hospital rather than sell it, (q) agreeing that the Attorney General shall have the right to enforce certain post-Closing provisions of the APA related to the public interest, (r) agreeing that any enforcement action brought by the Attorney General under the APA or any of the ancillary agreements shall be brought in the courts of the Commonwealth of Massachusetts, (s) assuring and funding the reorganization or dissolution of Morton, MPA, and their non-profit affiliates, including assuring that endowment and other donor-restricted funds are appropriately segregated and used for appropriate purposes, (t) confirming that Morton Hospital, A Steward Family Hospital, Inc., notwithstanding its for-profit status, will fully cooperate with any investigation, inquiry, study, report, or evaluation conducted by the Attorney General under her oversight authority of the non-profit charitable hospital industry to the same extent and subject

to the same protections and privileges as if it were a public charity, (u) clarifying that the existing assessment and monitoring of Steward by the Attorney General and DPH includes the impact of the Transaction on health care costs, access, and services within the communities served by Steward, as set forth in the Assessment and Monitoring Agreement (Exhibit L to the Complaint), and (v) agreeing that if Steward fails to meet its minimum capital expenditure obligations under the APA in the first five years post-Closing, Steward shall donate any shortfall to a Massachusetts health care charity, after written notice to and approval by the Attorney General.

For the reasons set forth above, the Attorney General believes that the Transaction satisfies the G.L. c. 180, § 8A(d) criteria, including that the Transaction is the public interest. Accordingly, the Attorney General assents to the Plaintiff's Complaint and Proposed Order of the Court.

Respectfully submitted,

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Dated: September 20, 2011.

EXHIBIT A

Statement of the Attorney General as to the Morton Hospital and Medical Center, Inc.
Transaction dated September 7, 2011