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RE: Exempla Healthcare System

Dear Mr. Foster and Mr. Smith:

I write to inform you of the Attorney General's determination regarding the recent Bylaws changes at Exempla Healthcare System ("Exempla"), which we understand will end the transfer of the membership interest of Community First Foundation ("CFF") to the Sisters of Charity of Leavenworth Health System, Inc. ("SCLHS"). After a review of your correspondence dated October 23, 2009, and the Transactions Involving Licensed Hospitals statute, C.R.S. § 6-19-102, (the "Statute"), the Attorney General has determined that CFF and SCLHS (the "Members") are no longer engaged in a covered transaction under the Statute.

On September 8, 2009, the Members gave notice to the Attorney General of their intent to enter into a transaction that would transfer CFF's membership interest to SCLHS (the "Transaction"). The Members gave appropriate notice to the public of the Transaction. On October 12, 2009, however, the Exempla board of directors adopted resolutions changing the Exempla Bylaws to alter the structure and composition of the Exempla board of directors, and to give SCLHS greater control over the management and operation of the hospitals in Exempla. This decision by Exempla was a significant departure from Exempla's prior position regarding the relationship among the three entities and eliminated the need for CFF and SCLHS to enter into the Transaction. On October 23, 2009, the Members informed the Attorney General of the Bylaws changes and of their intent to abandon the Transaction due to Exempla's actions (the "October 23 Letter").

The Bylaws changes accomplish the following substantive changes to Exempla's structure relevant to this transaction: 1) there is a new board of 10 directors, half of whom are appointed by each Member; 2) SCLHS shall appoint the chairman of the board while CFF will appoint the vice-chairman; 3) the right to implement operational goals, policies and procedures and to require that all operations of Exempla be conducted in compliance with the Ethical and Religious Directives of the U.S. Conference of Bishops (the "ERDs") is vested in SCLHS.

Under the Transactions Involving Licensed Hospitals statute, the Attorney General must first determine if actions taken by a licensed hospital constitute a "covered transaction" as defined by the statute. C.R.S. § 6-19-102(1). A "covered transaction" is defined as follows:

any transaction that would result in the sale, transfer, lease, exchange, or other disposition of fifty percent or more of the assets of a hospital. A series of transactions taking place in any five-year period, which would result in the aggregate of the transfer of fifty percent or more of a hospital's assets, shall in all circumstances be deemed to be a covered transaction. "Covered transaction" shall also include the sale, transfer, or other disposition of the control of a parent company, holding company, or other entity controlling a hospital. For the purposes of this subsection (1), "fifty percent or more of the assets" shall be based on the fair market value of all of the assets of the hospital.

Id.

As described in the October 23 Letter and the attached Amended and Restated Bylaws of Exempla, Inc., the Exempla board's actions do not amount to a "covered transaction." Because no assets are changing hands, the first two and fourth sentences of the definition are not applicable. Therefore, the question is whether the Exempla board's actions amount to a "sale, transfer or other disposition of the control of a parent company, holding company or other entity controlling a hospital." The Attorney General finds that it does not.

The Exempla board's actions did not sell, transfer or dispose of control of Exempla. Neither CFF nor SCLHS relinquished their membership interest, and neither gained total control over Exempla. In fact, both Members retain the ability to appoint half of the board of directors. Further, while there was a change in the rights of the Members, that change was not an alienation of control from one member to the other, which the phrase "sale, transfer or other disposition of the control" contemplates. If the General Assembly had intended the statute to cover situations, such as this, where control is not transferred, it could have written the statute to reach that result. The fact that it did not do so indicates the General Assembly was only addressing the actual transfer of control of a hospital. *See, e.g., City Council of City of Cherry Hills Village v. South Suburban Park and Recreation Dist.*, 160 P.3d 376, 381 (Colo.

2007) (stating, “had the General Assembly intended to require reimbursement of FMV, as opposed to requiring consideration of FMV as only one of several criteria in the “fair and equitable” analysis, the statute would have specifically so stated.”). Both Members retain numerous rights in relation to their Membership interests, including the right to appoint half of the board members. Control did not shift in such a way as to make this a “covered transaction.” Accordingly, the Transactions Involving Licensed Hospitals statute is not implicated.

The Attorney General is therefore terminating his review of the relationship between the Members with no further action. If the Members do enter into an agreement to transfer control of Exempla, the Attorney General expects to be notified pursuant to the Transactions Involving Licensed Hospitals statute to allow him to conduct a review of that transaction.

If you have any questions regarding this decision, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, reading "Geoffrey N. Blue". The signature is written in a cursive style with a large, stylized initial "G".

Geoffrey N. Blue, Esq.

Deputy Attorney General for Legal Policy and
Governmental Affairs