Bill as Introduced

2010 SESSION

10-2618
01/04

HOUSE CONCURRENT RESOLUTION *30*

A RESOLUTION urging the attorney general to investigate the merger between Catholic Medical Center and Dartmouth-Hitchcock Medical Center.

SPONSORS: Rep. Winters, Hills 17; Rep. C. Soucy, Hills 17; Rep. Infantine, Hills 13

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This house concurrent resolution urges the attorney general to investigate the merger between Catholic Medical Center and Dartmouth-Hitchcock Medical Center.

HCR 30 – AS INTRODUCED

10-2618
01/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

A RESOLUTION urging the attorney general to investigate the merger between Catholic Medical Center and Dartmouth Hitchcock Medical Center.

Whereas, 10 years ago Catholic Medical Center and Elliot Hospital, 2 health care charitable trusts in the city of Manchester, tried to merge their services; and

Whereas, the merger, known as Optima Health, raised profound questions and concerns in the community regarding the fiduciary duties of both entities to their charitable missions; and

Whereas, the public and members of the general court became very concerned with the overall fate of both hospitals, therefore they called upon the attorney general to investigate; and

Whereas, the attorney general's office at that time conducted a special investigation into Optima Health pursuant to both common law and the statutory authority of the New Hampshire attorney general as the director of charitable trusts; and

Whereas, the attorney general appointed special counsel to review the merger, and found violations by both charitable entities in carrying out their fiduciary duties with respect to the community; and

Whereas, 10 years later, Catholic Medical Center has again decided to affiliate, this time with Dartmouth-Hitchcock Medical Center in what appears to be an acquisition that will integrate 2 completely unique healthcare providers; and

Whereas the community is again challenged by profound questions and concerns regarding the integration of these 2 charities and the profound effects this affiliation will have on the charitable missions of these 2 entities; and

Whereas, it is the duty and obligation of the director of charitable trusts to oversee New Hampshire charitable institutions and preserve and protect New Hampshire charitable assets; and

Whereas, it is the duty of the general court to call upon the director of charitable trusts from time to time to investigate such matters; now, therefore, be it

Resolved by the House of Representatives, the Senate concurring:

That the New Hampshire general court hereby requests that the attorney general's office appoint special counsel to thoroughly examine and review any and all documents, and policies with respect to the proposed affiliation between Catholic Medical Center and Dartmouth-Hitchcock Medical Center to ensure that these 2 unique entities preserve and protect their New Hampshire charitable assets, and preserve their missions; and

That the director of charitable trusts request and require that Catholic Medical Center and Dartmouth-Hitchcock Medical Center postpone any and all formal signings of the proposed affiliation agreements until such time as the investigation is complete; and

That the attorney general file a formal report on this matter with the general court within a reasonable time so that the public may be satisfied that the director has fulfilled his or her obligations to the community and this state; and

That the house clerk deliver a copy of this resolution to the attorney general.

Amendments

Rep. Winters, Hills 17
January 25, 2010
2010-0279h
01/09

Amendment to HCR 30

Amend the resolution by replacing the title with the following:

A RESOLUTION urging the attorney general to fully investigate the proposed transaction between Catholic Medical Center Healthcare System and Dartmouth-Hitchcock Health.

Amend the resolution by replacing all after the title with the following:

Whereas, 10 years ago Catholic Medical Center and Elliot Hospital, 2 health care charitable trusts in the city of Manchester, tried to merge into a single entity known as Optima Health; and

Whereas, the merger raised profound questions and concerns in the community regarding the fiduciary duties of both entities to their charitable missions; and

Whereas, the public and members of the general court became very concerned with the overall fate of both hospitals and therefore called upon the attorney general to investigate; and

Whereas, the attorney general's office at that time conducted a special investigation into Optima Health pursuant to both common law and the statutory authority of the New Hampshire attorney general as the director of charitable trusts, and which concluded that the parties had to dissolve the merger; and

Whereas, the attorney general and the parties involved in the Optima Health merger brought the matter before the probate court over the dissolution of the merger; and

Whereas, 10 years later, Catholic Medical Center Healthcare System is again attempting to enter into a transaction with another charitable trust/health care system, this time with Dartmouth-Hitchcock Health, which will integrate 2 completely unique healthcare systems; and

Whereas, the community is again challenged by the profound consequences, whether intended or unintended, of such an integration by these 2 distinct and unique charitable entities, including the loss of one or both of the charities and/or their assets; and

Whereas, it is the duty and obligation of the attorney general through the director of charitable trusts to oversee New Hampshire charitable institutions and to preserve and protect New Hampshire charitable assets; and

Whereas, after the failed Optima Health merger, the general court enacted RSA 7:19-b, regulating acquisition transactions involving healthcare charitable trusts, which statute applies to this proposed transaction; and

Whereas, the attorney general is presently in the process of reviewing the transaction under RSA 7:19-b, and has hired special counsel to assist in this review as provided by law; and

Whereas, the provisions of RSA 7:19-b do not supplant or restrict the general powers of the probate courts with respect to charitable trusts under existing law; and

Whereas, this proposed transaction raises many complicated legal issues which can only be resolved by a probate court, because no other entity has the authority or jurisdiction to rule on such issues; and

Whereas, it is the duty of the general court to call upon the attorney general through its director of charitable trusts, to conduct a thorough, legal review of this proposed transaction, which would include a referral of this matter to the probate court for independent and impartial rulings of law by a neutral and detached judge learned in the field of charitable trust law; now, therefore, be it

Resolved by the House of Representatives, the Senate concurring:

That the New Hampshire general court hereby requests that the attorney general bring this proposed transaction before the probate court for Hillsborough county for a full review of all issues presented by the proposed transaction which are within the jurisdiction of the probate court, to ensure that these 2 unique charitable institutions preserve and protect their New Hampshire charitable identities, missions and assets; and

That the attorney general file a formal report of his or her actions and decisions taken pursuant to RSA 7:19-b with the general court within a reasonable time so that the public may be satisfied that the director of charitable trusts has fulfilled his or her statutory and common law obligations to the community and to this state; and

That the house clerk deliver a copy of this resolution to the attorney general.

2010-0279h

AMENDED ANALYSIS

This house concurrent resolution urges the attorney general to fully investigate the proposed transaction between Catholic Medical Center Healthcare System and Dartmouth-Hitchcock Health.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HCR 30 Date 1-20-10

Committee Commerce & CA

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Rep Connie Lane			Manchester	X	
Gina Bulkus	Lebanon	629-1256	Dartmouth-Hitchcock		✓
Tammy Tauzin	Concord NH		PPNNE	X	
Pilar Olivo	Concord NH		NARAL Pro Choice NH	X	
Ph. J Grenzzo	Manch		self	X	
Joan Espinola	Salem	893-3960	Self	X	
DON WELCH	BEDFORD	264-1248	SELF	X	
[illegible]	Concord	NH	Concord Fem Health Center	✓	
Rep Cindy Hagan	Manchester		Dist. 25	X	
DAN HOGAN	NASHUA		Self.	X	

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HCR 30

BILL TITLE: urging the attorney general to investigate the merger between Catholic Medical Center and Dartmouth Hitchcock Medical Center.

DATE: January 20, 2010

LOB ROOM: 302 **Time Public Hearing Called to Order:** 1324

Time Adjourned: 1512

(please circle if present)

Committee Members: Reps. Butler, DeStefano, Kopka, McEachern, Hammond, Nord, Winters, Meader, Gidge, Schlachman, Keans, D. Eaton, Hunt, Quandt, Belanger, D. Flanders, R. Holden, Dowling, Headd, Nevins and Palfrey.

Bill Sponsors: Reps. Winters, C. Soucy and Infantine

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Joel Winters, prime sponsor – Introduced the bill.

Former Rep. Barbara Hagan, NH Right to Life – Supports the bill. Read from prepared testimony. Bill asks us to protect two charitable entities and protect their assets. www.ahealthiertomorrow.org; online information. These two entities are going to have a very difficult marriage. CMC and the diocese are on opposite sides with Dartmouth. What concerns us is that these two are moving ahead like this is a done deal. They are advertising together and have started billing together. The charitable missions of both groups are very different. Once the documents are signed they are in perpetuity; there is no undoing. Dartmouth Health does not recognize ethical or religious directives. CMC has 99 million in reserves. How is this money to be used? Has an amendment that she will leave with Rep. Winters. Wants the entire issue brought before a probate court.

*Michael DeLucia Attorney General's Office – Opposes the bill. Handed out written testimony. Says HCR30 is duplicated. Attorney General already has authority to do the things that are asked. We have a CPA on hand and we have retained council. We already do what is asked in HCR30. Our review is confidential and I cannot go into detail until we publish our report. FTC is also looking at the agreement for review of its concerns.

*Richard Gustafian, Elliot Hospital – Supports the bill. Chairman of Elliot Health. Handed out prepared testimony and read from same. Is perplexed with this proposed union based on his prior experience.

Claire Ebel, NH Civil Liberties Union – Supports the bill with amendment. Catholic Medical Center is required to follow cannon law. Merger of the two hospitals are absolutely incompatible.

Kathleen Souza, NH Right to Life & Pro-Life Coalition – Supports the bill. We feel the public has been shut out. We never get our questions answered. We do want to get the CEO's of both hospitals in the same room to ask questions. All we ever get is a dog and pony show. No answers. We need a forum to get answers to our questions.

Phil Greezo of Manchester, representing self - Supports the bill. Had to leave early.

***Hugo Poza of Manchester representing self** – Had a prepared statement which he read into file. Supports probate review.

Don Welch of Bedford representing self – Supports bill. Was involved in the OPTIMA merger 10 years ago. This whole thing is about money; a lot of money.

Respectfully Submitted:

James F. Headd, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

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Bill Sponsors: Reps. Winters, C. Soucy and Infantine

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep Joel Winters - introduced HCR30 —
Former Rep Barbara Hagen — Read from prepared testimony. Bill asks us to protect 2 charitable entities and protect their assets
www.AHealthierTomorrow.org - online info
These 2 entities are going to have a very different marriage. CMC + the Diocese are an opposite side vs Dartmouth. What concerns us is that these 2 are moving ahead like this is a done deal
They are advertising together & have started Billing together.

D 2 HCR 30

The charitable missions of both groups are very different

Once the documents are signed they are in perpetuity - there is no unwinding it -

Dartmouth Health does not Recognize ethicid or religious directives

CMC has 99 million in Reserve. How is this money to be used

has an amendment that she will leave with Rep. Winters

Wants the entire issue brought before a probate court

H 3

Michael DeLucia - from AG's General's Office - handed out written Testimony. Says HCR 30 is duplicative - they already have authority to do the things that are asked

We have a CRB on board and we have retained a Counsel

We already do what is asked in HCR-30

Our Review is confidential so I can not go into detail until we publish our Report

Pg 3 HCR 30

FTC is also looking at the agreement for review of its concerns

#4 Richard Gustafson - former member of OPTIMA Health.
Chairman of Elliot Health - Supports HCR -
handed out Prepared testimony and read from same -
is perplexed with this proposed union based on his prior experience

#5 Claire Ebel - NH Civil Liberties Union - Support Bill -
CMC is Required to follow Cannon Law
mission of the 2 Hospitals are absolutely incompatible -

#6 Kathleen Souza - NH Right to Life
Supports Bill - We feel the public has been shut out. We never gets our questions answered. We do want to get the CEO's of both hospitals in the same room to ask question. All we ever get is a dog and pony show - No answers
We need a FORUM to get answers to our Questions

pg 4 HLR 30

#7 Phil Greeno - has to leave early But does support Bill

#8 Hugo Pozo - Represents himself had a prepared statement which he read into file. Supports Robert Lesser

#9 Don Welch - from Bedford Represents himself - supports Bill Was involved in the OPTIMA merger 6 years ago - This whole thing is about money A - lot of money -

Testimony

Hon. Barbara J. Hagan
154 Winter Street
Manchester, NH 03102
(603)759-0426

TESTIMONY ON PROPOSED HCR 30
HOUSE COMMITTEE ON COMMERCE & CONSUMER AFFAIRS
JANUARY 20, 2010

Mr. Chairman, members of the Committee, I wish first to thank my Representative Joel Winters, as well as Representatives Connie Soucy and Will Infantine for answering the call of their constituency and placing this resolution on the docket for discussion. The public relies on hearings such as this to bring to the attention of their elected officials, concerns, questions and grievances that can and should be addressed, and whenever possible resolved in the best interest of all concerned.

Today, we strongly appeal to the Commerce and Consumer Affairs Committee, and urge the Committee members to act swiftly to protect two charitable entities; and particularly, to insure the assets each charity holds are protected.

As you know, the public gives great benefits and tax exemptions to charities in return for the benefits the community will receive from the work and service of the respective charities. The two charities causing public concern and distress are in the communities of Manchester and Hanover:

Catholic Medical Center Healthcare System and Dartmouth Hitchcock Health.

For well over a year, members of our community, including two former Board members of CMC, have tried to get answers to questions and concerns that are still looming regarding a proposed "affiliation" between Manchester's Catholic Medical Center Healthcare System and Dartmouth Hitchcock Health.

Both charities have distinct missions and identities. Catholic Medical Center Healthcare System is a public juridic person of Canon Right, and an official agency of the Roman Catholic Church, which includes CMC, a catholic hospital. Dartmouth Hitchcock Health defines itself in its By Laws and Articles as being created exclusively for educational, scientific and charitable purposes, with no mention or recognition of any religious identity under charitable or tax-exempt law. Both charities provide a benefit to the community in health care.

The two charities have identified their proposal as "an affiliation," but for purposes of transparency, and for emphasis, our resolution refers to this proposal as a "transaction." We have reason to fear there may be an outright acquisition involved, which would forever change or obliterate one or the other of the two charities if the proposal is allowed to be formalized.

Before me, I have two large binders. One holds all of the documents thus far available at www.ahealthiertomorrow.org and some additional supporting materials. Former Representative Kathy Souza and I prepared the other binder on behalf of NH Right to Life, and concerned Catholics in the community of Manchester. It contains almost 600 pages of investigative research concerning Catholic Medical Center, the Diocese of Manchester and Dartmouth Hitchcock Health. A copy of this Binder was presented to Attorney Michael Delucia in June of 2009.

Both Representative Souza and I have read and analyzed all of the pages of the proposed transaction, and have discussed them with the Division of Charitable Trusts. Others have raised concerns and questions that have yet to be addressed, including the ACLU and Planned Parenthood. There are still blank pages in this proposal! There are huge conflicts in terms of identity and the deliverance of health care and treatment of patients. The Attorney General has stated publicly the entities in question have failed to file the proper paperwork under RSA 7:19-b and the Hart Scott Rodino law.

Ladies and gentlemen of the Committee, if I may be permitted to do so, I would like to recognize Claire Ebel and Kerri Novell.

Understand that on any other day, in any other circumstances we would be

on opposing ends of most proposed legislation. Today-- although-- for very different reasons, and from different perspectives, Barbara Hagan, Claire Ebel and Kerri Novell stand united in support of this Resolution. We do so because it is the right thing to do! We fear and reject the profound and long lasting affect this transaction will have for decades.

Although 3 public hearings have been held by CMC and Dartmouth on this proposal, the hearings have been very controlled by the entities, have not addressed any of the concerns or questions we have raised; and one of the hearings had an illegal "Legal Notice" in the paper which contained no date for the hearing. In addition, from December of 2008 until November of 2009, Rep. Souza and I, members of NH Right to Life, members of the Catholic community, Priests, and concerned citizens have met with different representatives from Dartmouth, the Diocese of Manchester and CMC to try to attain answers to our questions and concerns. The Roman Catholic Bishop of Manchester has refused to meet with us face to face to have a frank and open discussion regarding this proposal, and has resorted to requesting we have full faith in his assurances, which have been stated to us in writing and through his representatives. Despite pleas from legal counsel, the Bishop has refused to disclose pertinent documents which he is relying on to make his decision about this proposal.

CMC and Dartmouth have been widely criticized by the public, the press, and former Attorney General Walter Maroney, who have begged for transparency, and full disclosure.

Let me assure you, we do not expect the members of this Committee to become the Court to investigate our concerns. There is a Court process already in place to do this work. There is a law, RSA 7:19-b that spells out that process.

Our support of this Resolution in no way should reflect poorly on the Attorney General's Office and Attorney Michael Delucia who have graciously met with us, written down our questions, and taken our testimony and documentation. The problem is -- there are no formal answers forthcoming to serious questions we have raised.

We are pleased that Attorney General Fitch announced that special counsel has been retained by the AG to review the proposal and assist the Charitable Trust Division in its review, but that is not the same as an investigation.

We want our Legislative body to assist us in raising our voices and concerns to the Attorney General regarding this proposed transaction. We want an open process. We want transparency. We want answers to questions like, "why is the Bishop of Manchester allowing a non-religious

charitable entity to become the Sole Member of our Catholic Hospital which insists it will operate and abide by the Ethical and Religious Directives for healthcare?

I do not know the answer to that question, but I can speculate, and I can ask questions, and I can think of 99-million reasons why the Bishop might forfeit this charity. As many of you know, the charitable process provides that should a charity cease to exist, a course of action must be in place to receive any of the assets of the charity. Could it be that the Bishop would be getting $99 -- Million dollars now in reserves belonging to CMC? What would this money be used for? To pay off legal debts? The people of Manchester who built and rebuilt this hospital after Optima with their charitable donations had no intentions of their donations being used to pay off legal debts or otherwise. Once the INK is dry on these proposed documents, there will be no way out! The proposed affiliation papers state numerous times that the affiliation is in perpetuity. We hope and pray that this Committee agrees there are too many unanswered questions. There are real consequences, whether intended or unintended if this proposal does not have a full hearing in the Probate Court process.

A vote in favor of this resolution is not a vote against the proposal, but rather a vote for a full and fair airing of all the issues and concerns to

protect all parties and the public.

I thank you for your attention today, and will gladly answer any questions, either now, or at the end of the hearing.

Testimony of Richard Gustafson, Chair of Elliot Health System Board
on House Concurrent Resolution 30
House Commerce & Consumer Protection Committee

January 20, 2010

Thank you Mr. Chairman and Members of the Committee:

For the record, my name is Richard Gustafson. I am here today in my role as Chairman of the Elliot Health System Board of Directors. I have lived in the Manchester area for more than 20 years. About a decade ago I was a member of the Board of Optima Health and the community effort to consolidate the services of Elliot and Catholic Medical Center. I am here today asking you to support HCR 30.

The Elliot Board has reviewed the merger and acquisition documents relative to CMC and Dartmouth proposals to try to understand how it will affect patient care and the healthcare delivery system in Manchester. The general perspective that I bring today is that we are fascinated by these proposals and just don't understand how this merger can take place. We have reviewed the documents, are struck by the similarity of what we tried to accomplish a decade ago and have many questions, which we believe deserve clear and concise answers.

Manchester has had two community hospitals for many years. In the 1990's, an effort was made to converge the two community hospitals into one healthcare system called "Optima." Optima was eventually dissolved due to the community's concern about losing local control over CMC and its mission, and the irreconcilable differences between the secular and Catholic missions of Elliot and Catholic Medical Center.

How is a merger between CMC and Dartmouth fundamentally different? The Dartmouth Hitchcock Health system is anchored by an academic medical center that is progressive in its practice of medicine. The reproductive health, end of life, and stem cell research advancement that Dartmouth promotes and provides is in clear conflict with the Ethical and Religious Directives of the Catholic Church. For example, when you read Paragraph J of Page 4 of the Professional Services agreement, it says the agreement doesn't include services that violate the Catholic Ethical and Religious Directives, but that Dartmouth doctors may continue to provide those services. How can this happen?

During the Optima days, we believed, together and in good faith, we could navigate the Catholic Ethical and Religious Directives. We found very definitively that we could not. If it couldn't happen for Optima 10 years ago, why is it allowable now? How have the Catholic Ethical and

Religious Directives changed over the past 10years? Are the teachings and expectations of the Catholic Church different today than 10 years ago, and if so how?

What about local control and preservation of mission? The Manchester community has two community hospitals with distinctive missions controlled by the community and for the community. The Probate Court characterized the Elliot – CMC missions as incompatible because of the Catholic Ethical and Religious Directives and urged the establishment of the "Special Boards" to tackle this matter. Even the "Special Boards" were unsuccessful when the Bishop declared that the Catholic Ethical and Religious Directives would govern this and any future affiliations.

Another central argument in opposition to Optima was the loss of control of CMC by those who had supported it for many years. The merger of CMC and Dartmouth, with a confusing set of legal documents and corporate structures, clearly specify that the ultimate control over CMC will rest with the Dartmouth Hitchcock Health system. Some of the language in the merger documents looks familiar to the language of old Optima documents and to the Dartmouth acquisition of Cheshire Medical Center in Keene. This will mean not only a loss of control of the community's

hospital, a loss in the diversity of the practice of medicine, and the loss of control to an organization outside of this city.

Who will make Manchester's healthcare decisions? Where will Manchester's healthcare dollars go? I recognize the demands of running a statewide system, so I know that there are times when the revenues from one part of the system help support other areas of the system. This merger may mean that Manchester's healthcare dollars will go to other areas of the Dartmouth Hitchcock Health system and thus not be there support the needs of greater Manchester.

Manchester is a growing city with growing needs. We are a city that welcomes America's newest residents. We know today how our community healthcare system operates. We have two top notch community hospitals, we have excellent primary care doctors and specialists who live and serve in our community, and we have access to the best medicine in the world through our collaborations with Boston and Hanover.

There are fundamental questions that need to be answered:

- How have the Catholic Ethical and Religious Directives changed to permit this acquisition?

- How is this merger able to accommodate the diverse missions of Catholic Medical Center and Dartmouth Health Systems?
- How will this merger enhance patient choice and reduce costs?

The hard work of many dedicated people at Catholic Medical Center and Elliot Health Systems to achieve an affiliation to broaden choice in medical services to the people of the greater Manchester area, while streamlining administration and saving duplicative costs failed 10 years ago.

The costs to achieve the CMC – Elliot affiliation, and the ultimate disaffiliation, were in the tens of millions of dollars....costs that harmed both CMC and Elliot....and dollars that we were never able to direct to improving health care in our community.

The beginning and end of Optima Health took a toll on the city of Manchester - in terms of time, money and emotions that was driven primarily by the Catholic Ethical and Religious Directives. We can't let that happen again. In light of our own experiences, the Elliot Board of Directors remains fascinated and perplexed at how this merger and acquisition is able to bridge the chasms of the past. We simply need more answers and perhaps this House Resolution is one avenue for obtaining them. Thank you.

vings
p to $50 | Inside

'Cats climb to 8-1
No. 8 UNH tops Rhode Island in shootout, 55-42 | C1

NEW HAMPSHIRE
SUNDAY NEWS
STATE EDITION ☆☆

UnionLeader.com November 8, 2009 Vol. 64, No. 5 • 10 Sections, 122 Pages • $2.00

Views conflict on cost to patients

◆What it means: Proponents say improved treatment will lower costs; opponents say affiliation will decrease competition, raise prices.

First of Two Parts

By MARK HAYWARD
New Hampshire Union Leader

While they both provide health care in southern New Hampshire, Catholic Medical Center and Dartmouth-Hitchcock Clinic receive different payments for similar procedures.

CMC gets $151 for a shoulder X-ray from Anthem Blue Cross, while Dartmouth-Hitchcock gets $187 — a difference of about 24 percent — according to figures available through the New Hampshire Department of Insurance Web site.

While prices are a function of contracts reached by insurers and health-care providers, it's uncertain what would happen if Dartmouth-Hitchcock and CMC were to affiliate.

The Price List of Affiliation
CMC, Dartmouth-Hitchcock and the Cost of Health Care

Some experts warn that the bigger the health-care organization, the stronger the clout it has when it sits across from insurers to negotiate prices, which are paid by employers and individuals.

"The higher the volume you have, the stronger is the negotiating power of the provider," said Dr. Jim Squires, a founder of the Matthew Thornton HMO and the president of the independent New Hampshire Endowment for Health.

▻ See **Affiliation**, Page A5

A day of triumphs

Refugees

Affiliation

Continued From Page A1

Alan Sager, a professor of health policy and management at Boston University, said he can't think of any merger in the 52 cities he has studied that has resulted in lower costs. Rather, he said, a merger creates a bigger market share, which allows a larger company to extract higher prices from insurers.

"If people want to rely on competition to control health-care costs, then you need competitors," said Sager, who had consulted with the Save CMC organization 10 years ago, but had not signed on with the reformed group as of the time of his interview with the New Hampshire Union Leader.

"This is the hospitals trying to gain more power against other hospitals and, even worse, the payers. This is not competition; this is jockeying for power."

He pointed to the example of Partners Health, which was created when Massachusetts General and Brigham and Women's hospitals combined in 1994. The company is accused of demanding high payments from insurers, who knuckled under when faced with losing access to Partners' hospitals and physicians.

A work in progress

Overall, health-care spending in New Hampshire amounted to $11.34 billion last year, Sager estimated.

Dartmouth-Hitchcock generates $1.2 billion in annual revenues from its clinics and hospital, although a portion of that is from Vermont patients, the hospital organization said. CMC generates about a fifth of that amount, $242 million.

Under the proposal released this summer, CMC would lease the Manchester clinic and bill all procedures that take place there, except those that violate teachings of the Catholic church.

The organizations have yet to decide how, once affiliated, they will negotiate with insurance companies, according to Steve LeBlanc, chief operating officer at Dartmouth-Hitchcock Medical Center, and Kevin Kilday, chief financial officer at CMC.

"We didn't jump into this saying 'We're going to make X million dollars on it.' Let's get the partnership working, and the finances will flow after that," said LeBlanc.

In fact, said Dartmouth-Hitchcock lawyer Mark McCue, the companies cannot huddle over finances because federal anti-trust laws prevent the two organizations from sharing data and information until the affiliation is approved.

LeBlanc and Kilday disputed concerns about market power. LeBlanc said insurance companies such as Anthem Blue Cross and Harvard Pilgrim haven't felt that Dartmouth-Hitchcock or CMC have pushed them to the brink.

"We're pretty big already as Dartmouth-Hitchcock, and we don't do that," LeBlanc said regarding price-influencing. He said the hospital believes it has a responsibility to provide services at a reasonable cost to the population.

Chris Dugan, a spokesman for Anthem Blue Cross and Blue Shield in New Hampshire, said his company would not comment on the proposed affiliation.

A Cigna spokesman in New Hampshire said the company has not had substantive discussions with the hospitals about the proposed affiliation. Lindsay Shearer said it would be inappropriate to comment on the affiliation in detail.

"As part of any affiliation process that takes place now or in the future, we would hope that the regulators will take measures to guarantee that the cost of health care in New Hampshire is not negatively impacted," Shearer said. Most important in any affiliation is an improvement in quality and making health care more affordable, she said.

Sources of savings

Kilday said the affiliation will create savings by providing better care for patients with chronic disease. For example, he said, the number of tracheotomies and time spent on ventilators dropped substantially when Dartmouth-Hitchock and CMC jointly recruited a pulmonary specialist for the Manchester hospital.

Also, he said, primary care physicians can encourage prevention, which keeps costs down.

"I don't think anyone in health-care reform thinks the actual money spent will be less," he said.

Asked what the affiliation will mean for the little guy, Kilday said the hospital already provides huge amounts of free and charitable care.

But when Sager looks at the proposed affiliation, he sees an effort to gain market share and control prices, with little done to reduce costs.

"The way to save money in health care is mainly ceasing to do the things that are not clinically necessary to diagnose and treat patients," Sager said.

Squires has doubts about savings from the affiliation. Few examples exist of mergers that have reduced costs, he said.

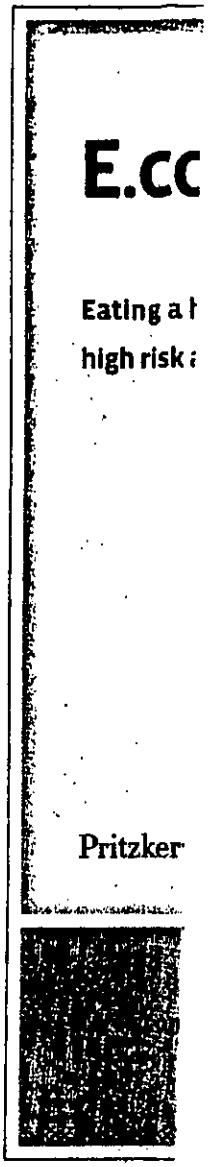
Still, he said, the trend is to develop highly coordinated systems of primary care doctors and hospitals. If the new affiliation succeeds, it could use volume to keep prices low, just like Walmart does, he said.

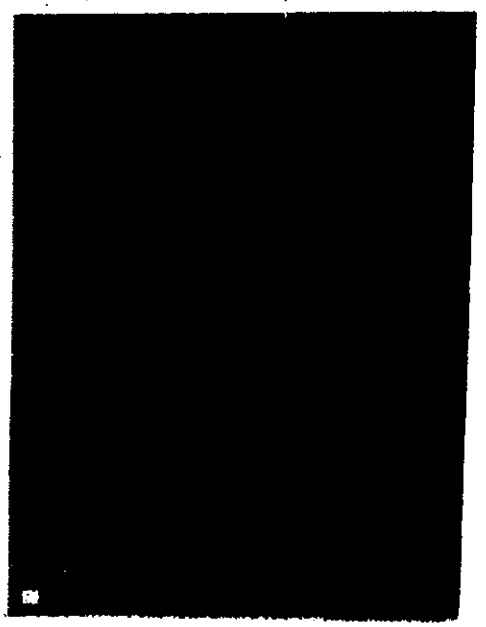
But to do so, it must combine two different hospital cultures that involve not just two nonprofit corporations, but also separate religious and secular approaches to medicine.

"I bet if this works you'll find in the end prices will come down," Squires said. "If it works."

◆

TOMORROW: What a CMC/Dartmouth-Hitchcock affiliation could mean to Medicare.





Union Leader

Same procedure, much bigger bill

By MARK HAYWARD
New Hampshire Union Leader
Nov. 9, 2009
Second of two parts

In the world of obscure Medicare regulations, 35 miles amounts to a magic number.

If a hospital-affiliated doctor's clinic is within 35 miles of the hospital, it means substantially higher payments from Medicare for the same medical procedure. Beyond 35 miles, Medicare pays a lot less.

For example, Medicare will pay a national average of $802 for a colonoscopy if done by a hospital-based physician group. For a clinic not tied to a hospital, or beyond 35 miles, the procedure fetches only $369.

Such differences could multiply hundreds of times over if Dartmouth-Hitchcock affiliates with Catholic Medical Center, putting Dartmouth-Hitchcock's Manchester clinic and its 100-plus physicians within the orbit of a hospital. Officials from both organizations acknowledged recently that the Wellington Road clinic would be eligible to receive the higher Medicare "provider-based" payments if the proposed affiliation takes place between CMC and Dartmouth-Hitchcock.

Since most of the procedures in question are ambulatory, they could also mean higher co-payments for Medicare patients.

Officials with the two hospitals maintained that the higher Medicare payments aren't the reason for the affiliation. And the organizations say they have yet to decide whether they will actually seek the higher payments. Officials said they would have to comply with a new set of regulations to do so.

"It's not a simple thing. You can't decide we're going to go to hospital-based (billing), and then a week later implement it," said Steve LeBlanc, chief operating officer at Dartmouth-Hitchcock Medical Center.

The organizations cannot negotiate payments for government-provided care. Medicare and Medicaid set take-it-or-leave-it prices that apply to huge portions of a hospital's revenue stream. For CMC, Medicare makes up 44 percent; at Dartmouth-Hitchcock, 13 percent.

Billing for Medicare involves thousands of procedures, each with a separate billing code. Medical procedures performed by a stand-alone doctor's office receive just one payment. But the same procedure nets both a physician payment and facility payment if it involves a hospital-based clinic.

Another outpatient procedure example? For a lower-leg fracture, the national average for a physician payment is $494, according to tables provided by the federal Centers for Medicare & Medicaid Services. The national average for a provider-based physician is $1,769.

Another example: Medicare pays a national average of $552 for a repair of a wound or lesion by a hospital-affiliated doctor, vs. $355 for a stand-alone doctor's office.
In August 2002, the magazine Healthcare Financial Management reported that an outpatient clinic that goes from freestanding to provider-based billing could receive total payments that are 50 to 60 percent higher.
But CMC Chief Financial Officer Kevin Kilday downplays such a conversion for Dartmouth-Hitchcock. He said health-care reform is under way, and billing models are being developed that reward hospitals and physicians for keeping patients healthy, not for ordering medical procedures.
"I think the days of these structured opportunities to chase a billing code, that's a time-limited strategy," Kilday said.
Catholic Medical Center controls several groups of physicians, and it handles each differently. The CMC affiliate Alliance Health Services currently leases four groups of physicians; it could institute provider-based billing but does not, Kilday said.
Meanwhile, two CMC practices in the North End -- Webster Street Internal Medicine and Family Physicians of Manchester -- do bill under the more generous provider-based rates.
LeBlanc said it makes sense to at least consider the higher Medicare rates because cost-shifting forces private payers to take up the slack for Medicare, Medicaid and the uninsured.

ISTORY: LEBANON'S PUBLIC LIBRARY — PAGE B3

CAL & REGIONAL

VALLEY NEWS
SUNDAY
DECEMBER 13, 2009
B

DHMC Affiliation Still Opposed

Foes of Link With Catholic Medical Center Push for Special Review

BY SUSAN J. BOUTWELL
Valley News Staff Writer

LEBANON — Opponents of a proposed affiliation between Dartmouth-Hitchcock Medical Center and Catholic Medical Center in Manchester say they'll keep fighting the plan, while hospital officials seek approvals of the arrangement from state and federal regulators.

Meanwhile, the adversaries are hoping to add another layer of review — this one by the state legislature, where Rep. Joel Winters, D-Manchester, has filed a resolution calling for the appointment of a special counsel to review the deal.

"I don't really have any concerns, but I know that some people do," said Winters.

The critics can't be won over, said Dr. Thomas Colacchio, president of Dartmouth-Hitchcock Health.

"Their concerns will not go away until after they've seen it happen and indeed nothing has changed. There's no convincing them. It will have to be a retrospective assessment of the reality," Colacchio said.

Dartmouth-Hitchcock Health and CMC Healthcare System — holding companies of the two institutions — this summer filed papers seeking approval of the affiliation. The proposal would make Dartmouth-Hitchcock Manchester, a physician group practice that employs 800 people, part of CMC Healthcare System. CMC Healthcare System would be made a member of Dartmouth-Hitchcock Health, an alliance that includes Mary Hitchcock Memorial Hospital in Lebanon and the Dartmouth-Hitchcock Clinic, which employs 900 physicians in a number of locations in the Twin States.

Critics of the affiliation say the plan is merely a way to bring more money to the institutions and to keep patients in Southern New Hampshire from going to Boston for specialty care. The affiliation could bring more income to Dartmouth-Hitchcock Manchester because health insurers are billed at a higher rate if a provider has an affiliation with a hospital.

"Everybody's going to lose money except those two corporations," said Kathleen Souza of Manchester, a former state legislator who is a member of the New Hampshire Right to Life Committee.

But hospital officials insist the plan is not about money. They say it furthers their goal of making health care available to more people, especially poor and uninsured residents of Manchester, and also giving residents of the city access to Dartmouth specialists.

"It's about doing the right thing, it's not about doing what's going to make us more money," Colacchio said. "If you quote anything ... I would hope you quote that."

Dartmouth's Manchester clinic and the 330-bed CMC have for five years

See DHMC — B6

DHMC Affiliation Opponents Still Fighting

CONTINUED FROM PAGE B1

collaborated on joint services. Last year, leaders of the two institutions said they were interested in finding a more formal way to work together.

Opponents of the affiliation include activists who are often found on the opposite sides of issues. Representatives from the anti-abortion New Hampshire Right to Life group have teamed up with Planned Parenthood of Northern New England and the New Hampshire Civil Liberties Union to fight the plan.

Anti-abortion activists worry that Catholic Church-imposed restrictions on procedures such as abortion, sterilization and some end-of-life practices will be ignored, while abortion-rights activists worry that church restrictions on medical procedures could extend to other Dartmouth-Hitchcock locations, including Lebanon.

Abortions are performed at DHMC in Lebanon but not at its Manchester clinic or at CMC. Officials from the institutions say the affiliation would not change their practices and that each would retain its separate identity.

The affiliation plan will receive a going over by federal and state regulators, including an antitrust review by the Federal Trade Commission, an Internal Revenue Service review of changes in corporate structures of the not-for-profit organizations, and a review by the Charitable Trust division of the New Hampshire Attorney General's Office to make sure the plans won't deviate from the institutions' charitable missions.

Anti-abortion activists worry that Catholic Church-imposed restrictions on procedures such as abortion, sterilization and some end-of-life practices will be ignored, while abortion-rights activists worry that church restrictions on medical procedures could extend to other Dartmouth-Hitchcock locations, including Lebanon.

Hospital officials expect to hear from the IRS in January and the FTC by March or April, and they will soon submit documents to the state for review, said Colacchio. The state review is to be done in 120 days.

If the regulators approve, the plan then goes before trustees of CMC, Mary Hitchcock Memorial Hospital and the Dartmouth-Hitchcock Clinic and to the Catholic bishop of Manchester, John McCormack, leader of Catholics in the state.

McCormack will decide whether to allow CMC to proceed with the affiliation.

In a letter he sent last month to the 250 Catholic priests in New Hampshire, McCormack wrote that one of the reasons he gave the affiliation conditional approval at the beginning of the process was because it would "mean patients at CMC would have access to the kinds of specialist care they may otherwise need to drive to Boston to receive."

McCormack will give final approval to the deal only if he is certain that CMC's Catholic identity is not changed, he wrote. "On this point, I will not bend."

Colacchio said all the approvals could be in hand by April, which would leave officials to decide when to implement changes. DHMC's fiscal year begins on Oct. 1.

Winters' resolution may not go before House and Senate members until April or May, after regulators have had their say on the plans. But, he said, "even if the merger goes through, the resolution will still get a public hearing. There will be a chance for people to come in and testify and have their say."

Right to Life Committee member Barbara Hagan of Manchester asked Winters to submit the resolution and provided him with the text, the legislator said.

Abortion opponents last week protested the affiliation plan, standing with religious icons set up on the sidewalk outside CMC. Souza said more such vigils are in the works.

"We're going to just keep persevering," she said, adding that hospital officials are "not going to fool anybody, especially God."

Susan J. Boutwell can be reached at sboutwell@vnews.com or at (603) 727-3248.

nhpr

Community Divided over Proposed Dartmouth, Catholic Medical Center Deal

By Elaine Grant on Wednesday, September 16, 2009.

State and federal officials are reviewing the proposed affiliation of Catholic Medical Center and Dartmouth Hitchcock Health.

On Tuesday evening they heard from several members of the public concerned about the ethical and financial effects of the deal.

NHPR's Elaine Grant has the story.

The proposed affiliation between CMC and Dartmouth's Manchester clinic has raised a number of thorny ethical, financial and legal questions.

And it's raised the hackles of many local residents.

Dozens of audience members sported blue 'Save CMC" stickers.

They resurrected the slogan from a fight ten years ago over a failed merger with Manchester's Eliot Hospital.

Opponents of this affiliation say they want to save CMC's identity, autonomy and mission as a Catholic community hospital.

Manchester resident Lorraine Petit sees CMC as an integral part of her parish.

"Our founding sisters were grey nuns. Without them, we wouldn't have a CMC. They were Catholic through and through. They were the ones that got us going. We have to stay Catholic because it's meant to be Catholic."

The difficulties of combining a Catholic and a secular institution are many.

The two organizations want to affiliate for a variety of overt and not-so-obvious reasons.

Officials say they want to provide more and better care to the Manchester population, in particular to the underserved.

But some inside CMC say that the real reason is so both health care providers can better compete for limited health care dollars.

"I'm sure you all know that the health care system is very tenuous these days. We all read in the papers that hospitals are losing money, going under, running million dollar deficits."

That's Rich Torossian, who directs a CMC lab.

He says reductions in Medicaid and Medicare reimbursements threaten the viability of community hospitals, including CMC.

The solution, he says, is to bring new patients – and therefore new revenue – into the hospital.

"You have to bring more patients into the system. This is what this affiliation does. It brings more patients into the system and it helps CMC be strong and vibrant... The affiliation, the purpose of this whole thing to save CMC, that's the reason why we're doing it."

Southern New Hampshire hospitals have a hard time attracting new patients, because most local areas have their own hospitals.

This deal will bring more Dartmouth doctors – especially specialists like neurosurgeons and oncologists – into Manchester.

And, as several physicians testified, having more specialty care in Manchester will mean very sick patients will no longer have to go to Boston.

And it will mean that CMC will be able to attract more patients from outside Manchester.

Alison Pitman Giles is CMC's CEO.

"When the bigger things happen and they need to be in the cath lab or they need to have open heart surgery, they don't hesitate to travel when it's their heart. Or their brain. But they're certainly not going to travel because they have a cough."

Furthermore, specialty care is expensive, and so this deal could boost the revenues of both providers.

With new specialists on hand, CMC is also likely to attract at least some patients from the nearby Eliot Hospital.

And so it was not surprising that Eliot representatives raised concerns.

Richard Gustafson is chairman of the Eliot Health System Board of Directors.

"How will this merger enhance patient choice and reduce costs to this community, and how will this merger meet the Federal Trade Commission's restraint criteria?"

The Federal Trade Commission is reviewing the proposal to make sure the affiliation would not adversely affect the community.

CMC's Alison Pitman Giles said patients will continue to choose their own health care providers.

But she did not directly address the question of cost.

Some health care observers say that provider consolidation drives up costs.

Giles disagrees.

For routine care, she says:

"People won't go past a tollbooth to go to a hospital. So we're not going to start monopolizing southern NH and having them all come to Catholic medical center."

Still, that's one of the questions that the Federal Trade Commission -- and the New Hampshire Attorney General -- are both looking into.

CMC and Dartmouth expect a response from the FTC in a couple of months.

CMC and Dartmouth have scheduled a forum in Lebanon October 7 and another in Manchester in November.

For NHPR News, I'm EG.

CMC-Dartmouth-Hitchcock deal gets airing

By MARK HAYWARD
New Hampshire Union Leader
10 hours, 4 minutes ago

MANCHESTER – Opponents of the proposed affiliation between Catholic Medical Center and Dartmouth-Hitchcock last night said they want a judge to look at the matter.

They were among dozens who spoke at the third and final hearing the two health care organizations are holding to comply with state law.

Both state and federal agencies are reviewing the proposal. But Alderman-elect Phil Greazzo and former alderman Richard Girard, both West Side residents, said it should go before a probate court judge.

"I think court now is becoming very, very important," Girard said.

Meanwhile, former cancer patients and parents of cancer patients came out to praise services that Dartmouth-Hitchcock offers in Manchester through the Children's Hospital at Dartmouth (CHaD) and Norris Cotton Cancer Center.

Amherst resident Paula Garvey is the mother of an 11-year-old with cystic fibrosis. She said she found quality care and a supportive environment. Her daughter is able to take part in clinical trials in Manchester, she said.

"The best thing about going to CHaD is you have a somewhat normal life. You grasp at anything," Garvey said.

Rich Perry said his adult daughter received cancer treatments in Manchester.

"I would do anything for them," he said of the staffers at the center.

Ben Hettrick, an 18-year-old Salem resident, said he spent his early years in and out of Boston hospitals with a disease of his pancreas. He said a Catholic hospital should provide high quality health care, but he said "we are forgetting the dignity of the unborn."

Two other speakers, including a canon lawyer from Ohio, Phil Grey, said that CMC is violating church law by having a non-Catholic as its president and chief executive.

But Manchester lawyer Ovide Lamontagne, who works for CMC, said that the hospital's canon lawyer disputes that.

CMC and Dartmouth-Hitchcock have proposed the creation of a "regional healthcare delivery system." As part of the affiliation, Dartmouth Hitchcock would lease its Manchester clinic to the hospital.

The affiliation has received preliminary approval from the hospital boards and the Bishop of Manchester. State and federal officials are reviewing the proposal on the basis of charitable trust and anti-competitive laws.

Officials from both organizations had hoped the review would conclude quickly. However, the Federal Trade Commission made a second request for information, and now CMC officials hope to be able to know something within the first three months of next year.

The proposal would make Dartmouth-Hitchcock the "sole member" of CMC's overall organization. But the Bishop of Manchester would hold some control over the selection of board members and the hospital's chief executive. Doctors and health care providers in the hospital would always have to follow Catholic rules for health care, which prohibit procedures such as abortion, most birth control and removal of feeding tubes for terminally ill patients.

Such procedures could take place at the Dartmouth-Hitchcock clinic, under a system that would remove all CMC participation. Dartmouth-Hitchcock has said it will not perform abortions at the Manchester clinic, CMC officials have said.

►Elliot project up for $140 million in bonds
►Martel misspoke about being hired

YOUR COMMENTS

OK lets get straight to the point...If CMC cannot survive on its own and closes because this affiliation dosent happen what then..Where will all of you people who are opposed go for health care? Is religon more important than a higher standard of services. Religon and misguided ideology have no place in this argument people. Its about quality of care to all people not just those of a certain reigous persuation.Whats more important two outstanding hospitals or the narrow minded beliefs of one out of touch group of zealots
- Duncan Leary, Bedford

Thanks to Alderman-elect Greazzo for listening to us. But Alderman Russ Oulette supports DH. Anybody want to launch a recall petition or at least run against him next time? (He was unopposed in the apt ward- where Ted probably lives). Move to his ward!
- Kelly, Manchester

D-H wants more business where the money is, but why do they need to seize control? They affiliate with Concord Hospital without taking control. And Jack, we don't want CMC to be huge, just great.
- Todd, Manchester

It's ironic that patients speaking for D-H about the excellent care they received shows why this affiliation is NOT needed. Manchester area residents already have access to great care- CMC, Elliot, D-H clinics, BASC, Concord, Derry, Exeter, Nashua, and Boston are all within an hours drive. Even Keene, Hanover and W-D are just over an hour. What we don't need is others running our Catholic hospital.
- Allie, Bedford

...Do it, don't do it, I really don't care-as long as we don't have to hear from Wayne Goldner.....
- Jim B, Manchester, NH

I was at the forum and offer some observations...

1) In most if not all cases the speakers in favor of the affiliation vis a vis merger reported positive health outcomes and/or great medical care. This tells me the status quo is sufficiently working.

2) The speakers in favor were in most cases either clients of DH services or salary drawing staffers from DH

or CMC, and therefore biased.

3) In opening remarks, we heard the affiliation had nothing to do with profits and money, yet they brought along the DH Chief Financial Officer to monitor to proceedings.

4) The speakers in favor made their strongest complaint about the need for "convenience" and "choice," the very same words used to convict some 48 million unborn babies to death.

5) Obviously the leadership of DH and CMC each desperately want something from the other. Proverbs 12:12 says thieves are jealous of each others' loot, but the righteous produce their own good fruit. CMC should focus on their own capabilities without limits and constraints.

If the Bishop ignores all the warning signs of disaster for CMC and their awesome "Mom's Place", then I hope this wink-and-nod compromise will be stopped in secular probate court.

Where there is no vision, the people (including babies) perish.
- Ed Holdgate, Sandown, NH

I would suggest everyone go to Holy Family in Lawrence, its the pits. My wife gave birth to our son there, its a run down looking hospital. After our experience there I will never go back to that place
My concern is the outcome of this merger with Dartmouth-Hitchcock
- Frank, Londonderry

It is most unfortunate that Catholic Medical Center, Ovide Lamontagne and Dr. Cataldo on behalf of the Bishop and Catholic Medical Center (conflict of interest) continue to refute the truth about the Canonical expectations of a Catholic Institution like Catholic Medical Center. The CEO of Catholic Medical Center has mis-spoken and made treacherous public statements about what is and what is not allowed at our Catholic Hospital. It is the obligation of the Faithful to challenge and correct these mis-statements and appeal to the Hierarchy for remedy. Dr. Cataldo continues to make ethical pronouncements with little or no medical background. Attorney Lamontagne has helped to write quite a stack of documents for this transaction, and his Firm has been paid handsomely in millions of dollars from CMC's trust funds over the last 5 years. The documents are clear and state: Dartmouth Hitchcock Health will be the SOLE member of Catholic Medical Center Health System. Dartmouth Hitchcock is not Catholic, and has promised Planned Parenthood that nothing will change in the way they deliver women's health care. Something is wrong--very very wrong. Probate Court is the only answer now.
- Hon. Barbara J. Hagan, Manchester, NH 03102

The economy stinks, unemployment is high and we pay to many taxes. So who cares if CMC and Dartmouth merge? Pleople with too much time on their hands. Mind your our business.
- Ted, Manchester

It's all about big business and dollars and cents.

With the Elliot expanding in a big big way, CMC needs to keep up otherwise they will be back where they were in the 80's, a rinky dink little hospital with no expansion to really show from it other than a building across the street and a parking garage they just built.

There doctor network they have now is, is so small compared to the Elliot they need this whatever you want to call it with Dartmouth and Dartmouth needs it to expand into the southern part of the state so they can compete and keep their presence as the biggies from Boston move north of the Massachusetts border.

Now does everyone understand? Keep throwing this under the bus and there will be no CMC.
- Jack Alex, Manchester

UNION LEADER

Bishop: CMC ethics review to stay private

By MARK HAYWARD
New Hampshire Union Leader
Monday, Nov. 23, 2009

MANCHESTER – Bishop John McCormack will not release ethical reviews of the proposed affiliation between Catholic Medical Center and Dartmouth-Hitchcock, even though a lawyer hired by the Catholic hospital recommended last week that they see the light of day.

During a forum a week ago about the proposed merger, former assistant attorney general Walter Maroney urged CMC to be transparent about the proposed affiliation. He told the hospital to "talk (about) and tell everything you've got."

He specifically mentioned three ethical reviews into the proposed partnership and noted he had access to them.

Last week, McCormack spokesman Kevin Donovan initially said the reviews were for the bishop's eyes only. But when told that Maroney had seen them, Donovan said the bishop had promised the authors of the ethical reviews that they would be seen only by himself, CMC officials and CMC lawyers.

"The bishop's reviews, he asked them to be done with the intention they remain confidential for his own study," Donovan said.

They are internal documents, said Donovan, who compared them to a consultant's report that any private business would undertake. In such a case, the consultant's work would not be made public, he said.

McCormack will need to refer to the reviews when any changes are proposed to the affiliation plan, Donovan said.

A fourth review

Catholic hospitals in the United States are required to follow the Ethical and Religious Directives for Catholic Health Care Services, which are written by the nation's bishops. They provide detailed instructions on issues such as abortion, birth control, condom use, end-of-life matters and partnerships with health care organizations that are not Catholic.

They are in their fourth edition, and bishops amended them recently to clarify language dealing with providing food and water to patients in a chronically vegetative state.

Donovan would not characterize the three ethical reviews. But he stressed that McCormack this past summer granted preliminary approval to the affiliation. At the time, he had read or seen nothing that would prompt him to reject the proposal, Donovan said.

CMC hired Maroney to review the current proposal in light of the Optima Health merger of the 1990s, which involved CMC and its crosstown rival, Elliot Hospital. Maroney worked for the Attorney General's consumer protection division at the time and participated in the review of the merger, which eventually collapsed.

Maroney said the three ethical reports examine how the proposed affiliation complies with the Ethical and Religious Directives. He would not characterize them or say whether they agree with one another or not.

Meanwhile, CMC is in the process of hiring an ethicist to undertake a fourth ethical review, which will be released to the public, said hospital spokesman Gail Winslow Pine. She said the hospital does not want to hire one of the three who have already studied the affiliation for the bishop.

She did not know when the review will be completed, but said she expects it will be available before the boards of the two organizations take a final vote on the affiliation.

Catholic teachings

CMC has said Catholic teachings will continue to be followed in the hospital, and initiatives have been taken to instruct the medical staff and credentialed physicians about the directives.

Dartmouth-Hitchcock, which allows abortion at its flagship hospital in Lebanon, has pledged it will not permit abortions to take place at its Manchester clinic. Although CMC will have control over most of the Dartmouth-Hitchcock clinic, it will use billing codes to separate from its control and finances impermissible practices such as sterilizations.

In Rhode Island, Catholic church officials recently approved the creation of a new holding company, CharterCARE Health Partners, to administer St. Joseph Health Services and a secular hospital, Roger Williams Medical Center.

As part of the process, a bioethicist reviewed the proposal. A one-page memorandum that he delivered to Providence Bishop Thomas Tobin was included in the application that went to the Rhode Island attorney general. It is available to the public through the state Web site.

Roger Williams does not perform abortions, and it has agreed to never do so, said Msgr. Paul D. Theroux, the vice chairman of the St. Joseph board. Nor will the hospital participate in embryo destruction, embryonic stem cell research or therapy, or euthanasia.

Roger Williams does perform sterilizations, but St. Joseph cannot participate or profit from such procedures, he said.

UNION LEADER

Feelings run high at CMC-Dartmouth session

By MARK HAYWARD
New Hampshire Union Leader
Wednesday, Sep. 16, 2009

MANCHESTER – A top official at Elliot Hospital last night questioned what has changed over the past 10 years that would allow a Catholic and secular hospital to merge.

Richard Gustafson, chairman of Elliot Hospital trustees, said the proposed "merger" between Catholic Medical Center and Dartmouth-Hitchcock is similar to what was tried 10 years ago between Elliot and CMC. The Optima Health merger collapsed over conflicts between Catholic and secular medicine.

"We are fascinated by these proposals and just don't understand how this merger can take place," Gufstafson said. "Our question basically is how have the Catholic Ethical And Religious Directives changed over the last 10 years?"

He said the Dartmouth-Hitchcock organization provides reproductive health, end-of-life care and stem cell research that violate Catholic principles.

He also wondered what effect the proposal would have on restraint of trade issues.

Gustafson spoke to an overflow crowd during the first of three meetings taking place regarding a self-described affiliation between CMC and Dartmouth-Hitchcock.

The meetings are held to comply with state law that governs the acquisition of one charitable hospital by another.

Opponents wore stickers that read "Save CMC Again." The failed Optima merger was brought up often. Alyson Pitman Giles, the president and chief executive of CMC, said Catholic ethics haven't changed.

But this time, CMC consulted with a canon lawyer and three ethicists about its plans, she said. "We have learned in the last 10 years how to work together, how to put together agreements that work," Giles said.

She said both CMC and Dartmouth-Hitchcock understand and embrace Catholic medical ethics, which will apply to CMC at all times.

In fact, the chairman of the CMC surgery department said that any physician who practices at the hospital must sign the ethical directives to get credentials.

"It (the affiliation) will increase the bishop's influence in this area," said Dr. Patrick Mahon. "If you're pro-abortion, you should be against this. If you're against abortion, you should be for it."

Several pro-life advocates spoke against the proposal, as did abortion-rights supporter Claire Ebel, director of the New Hampshire Civil Liberties Union. She stressed that CMC and Dartmouth-Hitchcock differ on end-of-life issues.

Ebel called on the attorney general and a New Hampshire Probate Court to review the proposal. The attorney general is reviewing the matter, but it has not gone to probate court for review.

Many who spoke in favor of the proposal last night said it would improve access to care, put more specialists and sub-specialists in Manchester and improve quality of care. Nearly all were either employees of the two organizations or worked on their behalf.

"We are moving into a future of health care that is quite unstable. I see this affiliation as providing a positive step toward stability," said Joanne Manson, a physician assistant with New England Heart Institute.

Andy Martel, the chairman of the former grassroots group Save CMC, said he opposes the deal unless safeguards are added to protect the hospital's Catholic identity.

"There are too many cracks in this plan and too many possibilities that could make her lose her autonomy," Martel said of CMC.

Boards of both hospitals and Bishop John McCormack have given conditional approval to the proposal. The New Hampshire attorney general and the Federal Trade Commission must also review the matter for charitable trust and anti-trust issues.

Hearings are expected to be held in Lebanon and in Manchester next month.

Don't these large transactions usually go through the court system? Seems reasonable to me, especially with so much controversy.

The Dartmouth

CMC-clinic affiliation still sparks controversy

BY RYAN KIM
PUBLISHED ON TUESDAY, NOVEMBER 17, 2009

MANCHESTER, N.H. — Community members voiced their concerns on Monday about the proposed affiliation between Catholic Medical Center and the Dartmouth-Hitchcock Clinic — the multi-specialty group physician practice affiliated with Dartmouth-Hitchcock Medical Center — at the New Hampshire Institute of Art here during the third and final open forum on the issue. The proposed affiliation has come under fire due to the organizations' disparate policies on issues like abortion. The affiliation would allow CMC to access more specialists, and the clinic would gain a hospital presence in the Manchester area.

"We are looking to provide the best health care for as many people as possible," Dartmouth-Hitchcock Clinic President Thomas Colacchio said at the meeting.

Critics expressed reservations about clinic policies that contradict Catholic Canon law, which governs members of the Catholic faith. The clinic makes abortion referrals, and abortions are performed at DHMC. Abortions are not permitted by the Catholic Church.

"We have a memorandum that was signed by Dr. Colacchio that states that physicians in the Manchester area are not allowed to perform abortions," CMC President Alyson Giles said. "Again, there will be no abortions performed at the CMC."

Opponents of the affiliation challenged Giles' leadership, saying that she is unable to understand the Catholic mission because she is not a member of the Church.

Several speakers cited the Ethical and Religious Directives for Catholic Health Care Services, stating that the affiliation would cause CMC to be in direct contradiction of those directives. Directive 24 that states that a Catholic institution will not honor an advanced directive that is contrary to Catholic teaching.

"The president and CEO does not have to be Catholic, but they must understand and embrace the Catholic mission," Giles said.

Both parties will continue to work with the regulatory and due diligence process that involves federal and state review, Giles said.

"We will continue to keep the Bishop of Manchester, who is the acting spokesperson of the Catholic community, informed of any changes to the conditions of affiliation," Giles said. "Both respective boards for both organizations will consider this input and conduct a thorough review to see what amendments are appropriate."

After the vote of the boards, a final version of the agreement will be published and submitted to the New Hampshire attorney general for final approval sometime in the first quarter of 2010.

"I am passionate about the Catholic Medical Center and I am only looking out for its best interests," Giles said.

Some attendees questioned the proposed affiliation's purpose, saying that the acquisition could place CMC under DHMC's control and is ultimately unnecessary.

"CMC can withstand the worst of financial storms for the next 20 years," attendee Andy Martell said.

Several supporters argued that making appropriate health care services available close to home could help families stay together during treatment.

Although CMC has provided health care services to the community for the past five years through its informal collaboration with the Dartmouth-Hitchcock Clinic, present circumstances have made affiliation necessary, Giles said.

"In the face of major changes in Washington in regards to health care policies, we have to prepare for it through integration," Giles said. "That is the only way we can continue to provide the community with great health care services."

Officials from both CMC and the Dartmouth-Hitchcock Clinic said that the affiliation would increase health care availability without raising costs. The affiliation's supporters said that community members should prioritize the expansion of health care over religious issues.

"This affiliation will increase access to care, increase access to choice, increase and maintain talent in the community," Joseph Pepe, CMC's chief medical officer, said.

Robert Wood Johnson Foundation

THE SYNTHESIS PROJECT
NEW INSIGHTS FROM RESEARCH RESULTS

POLICY BRIEF NO. 9 | FEBRUARY 2006
Also see companion report available at www.policysynthesis.org

How has hospital consolidation affected the price and quality of hospital care?

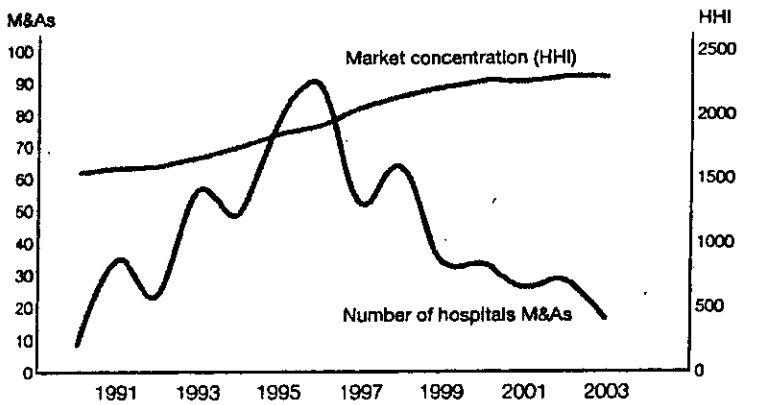
Cara S. Lesser, Gloria J. Bazzoli, Ph.D. and Robert Town, Ph.D., Center for Health Research Synthesis by Health and Human Economics

How did the hospital market change in the 1990s?

A wave of hospital mergers and acquisitions in the 1990s transformed the inpatient hospital market. By the mid-1990s hospital merger and acquisition activity was nine times its level at the start of the decade (Figure 1). By 2003, almost ninety percent of people living in the nation's larger MSAs faced highly concentrated markets.

Stakeholders and policy-makers have raised concerns about this consolidation trend, pointing to potential impacts on health care costs and quality. This brief analyzes the drivers of consolidation and evidence on how it has affected hospital prices, cost and quality.

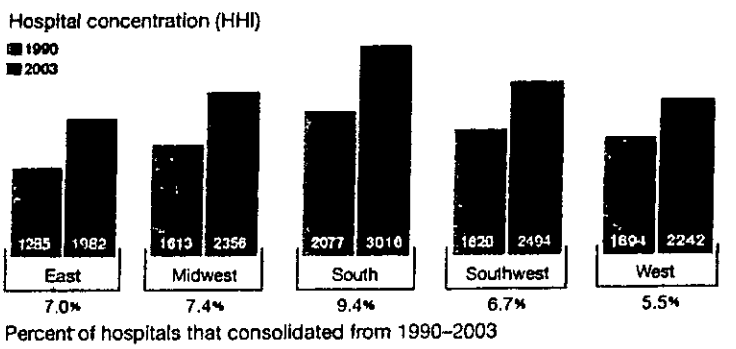
Figure 1. Trends in hospital mergers and acquisitions, 1990–2003



Source: American Hospital Association and authors' calculations. See note on page 4.

The hospital consolidation wave was national in scope, but was most striking in the South. In 2003, as a decade earlier, the South was the most consolidated region with the highest percentage of merging hospitals. The percent rise in consolidation was greatest in the East, however, where the concentration level (HHI) increased 54 percent from 1990 to 2003.

Figure 2. Changes in hospital concentration (HHI) by region, 1990–2003



Source: American Hospital Association and authors' calculations

Hospital consolidation in the 1990s raised inpatient prices by five percent or more.

What drove the wave of hospital consolidations during the 1990s?

- **The quantitative evidence does not show that managed care was the driver for consolidation,** although the results are mixed and the fear of managed care may still have contributed.

Several market changes—including technological developments that reduced inpatient demand and left hospitals with excess capacity—might have spurred consolidation. In surveys, hospital CEOs most commonly cite the promise of efficiency gains and opportunities to consolidate services and strengthen their financial position as reasons for consolidating (Reference 1).

How does hospital consolidation affect the price of inpatient care?

- **Research suggests that hospital consolidation in the 1990s raised inpatient prices by at least five percent and likely significantly more.** Prices increase 40 percent or more when merging hospitals are closely located.

There are three distinct types of studies assessing how consolidation affects prices. Each uses different assumptions and methodologies, resulting in varying findings (figure 3 and sidebar). Because of its relative strengths, the simulation approach is now commonly used by federal antitrust authorities to evaluate the antitrust implications of mergers.

Figure 3. Impact of consolidation on inpatient prices: results from strong studies of three types

Study type	Price increase	Author
Simulation	53 percent	Gaynor and Vogt
Event	40 percent	Dafny
Structure-Conduct Performace (SCP)	4–6 percent	Keeler et al. Capps et al.

See note on page 4.

Mergers can lead to lower hospital costs, but do not produce higher quality.

- **Mergers raise prices for merged entities and for their rivals.** When merged firms raise prices, it is easier for non-merged competitors to follow suit. In one community, prices went up 23 percent for a merged hospital and 17 percent for its competitor, relative to controls (Reference 2).

- **Consolidations between neighboring hospitals produce the largest price increases.**

How does hospital consolidation affect hospital costs (what it costs to deliver care)?

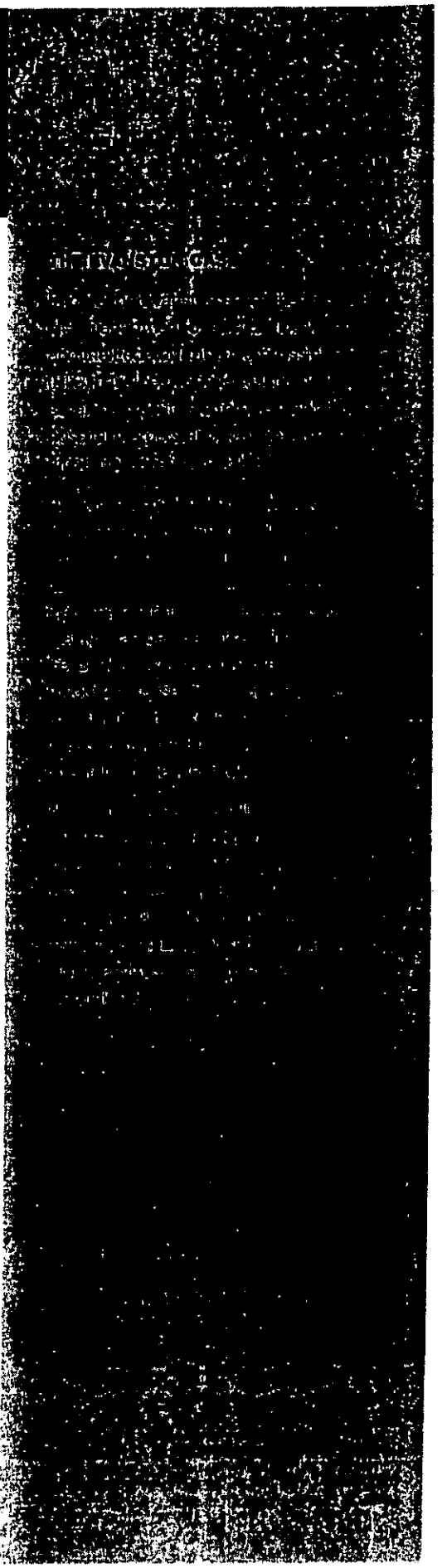
- As discussed earlier, hospital CEOs say two of their motivations for merging were to consolidate services and achieve operational efficiencies. Both could lower hospital costs.

- **Consolidation produces modest cost savings.** As a group, merged hospitals have lower cost growth than their non-merged counterparts. Savings are significant (14 percent) if hospitals merge operations, not just ownership (Reference 3).

How does consolidation affect quality of care?

- **While the evidence is limited and mixed, the majority of studies find that hospital consolidation lowers hospital quality.** The strongest studies also show this result.

- **The presence of managed care may be a factor.** One study found that concentration decreased hospital quality (and competition increased it) when HMO penetration was high, but not where it was not (Reference 4).



Policy Implications

> **Hospital markets in most parts of the country have not become monopolized.** [illegible]

> **Geographical markets for hospital services appear to be narrower than courts have typically found.** [illegible]

> **Policy-makers might consider encouraging new hospital entry as a way to increase competition, but this raises several issues.** [illegible]

THE SYNTHESIS PROJECT (Synthesis) is an initiative of the Robert Wood Johnson Foundation to produce relevant, concise, and thought-provoking briefs and reports on today's important health policy issues.

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MANCHESTER

Affiliation hearing packs venue

Many speak against health center plan

By SUSAN J. BOUTWELL
Valley News

More than 200 people packed the William B. Cashin Senior Center in Manchester Tuesday night, many arriving more than an hour early to reserve seats so they could have their say during the first of three hearings on a proposed affiliation between Dartmouth-Hitchcock Medical Center in Lebanon and Catholic Medical Center in Manchester.

The union has been viewed with suspicion, particularly by anti-abortion and abortion rights advocates. Members of the New Hampshire Right to Life Committee have been outspoken in their opposition, saying they fear the connection with Dartmouth will mean religious and ethical directives issued by the United States Conference of Catholic Bishops won't be followed.

Members of the Right to Life group sent out e-mails urging supporters to attend last night's hearing. Some in the crowd wore stickers that said "Save CMC Again!" a reference to a failed merger between Catholic Medical Center and Elliot Hospital, also in Manchester, which dissolved a decade ago over differences centered on religious and secular issues.

The fireworks started early, with the second speaker, former state representative Don Welch of Manchester, alleging that the affiliation is "about money, lots of money."

"This is about money going from this community to Lebanon. I've spent many years of my life trying to save this hospital. Believe me, nobody's going to steal it from us," he said.

Many of the proposal's supporters are employees at CMC and Dartmouth-Hitchcock's Manchester clinic, including CMC's Kevin King of Peterborough, who said employees "have trust that it's the right thing to do."

The proposed agreement would make Dartmouth-Hitchcock Manchester, a physician group practice that employs 800 people in the city, part of CMC Healthcare System. At the same time, CMC Healthcare System would be made a member of Dartmouth-Hitchcock Health, an alliance that includes Mary Hitchcock Memorial Hospital in Lebanon and the Dartmouth-Hitchcock Clinic, which employs 900 physicians in a number of locations in New Hampshire and Vermont.

The affiliation has to be approved by the Charitable Trust Division of the Attorney General's office. The two parties say they hope to finalize the deal by Dec. 31.

The next hearing on the affiliation is set for 6 p.m. Oct. 7 at Lebanon Senior Center; the last will be in Manchester on Nov. 2, at a location not yet set.

Dartmouth-Hitchcock officials have said the affiliation would have no effect on the Lebanon facility. CMC President and CEO Alyson Pitman Giles promised that the deal would not change CMC.

"Our Catholic heritage will be in place and last for decades," she said.

Giles was challenged by Manchester resident Monique Chamberlin, who asked, "Is there going to be any abortion at CMC?" Giles quickly stood to answer, "No," she said.

"You promise?" asked Chamberlin.

"There are no abortions done at CMC now and there will never be," Giles said, adding that the Diocese of Manchester would fire her if such procedures took place.

Women's health advocates have said they fear the affiliation will mean church-imposed restrictions on abortion, birth control pills, sterilization and other procedures including end-of-life documents such as living wills. Abortions are not performed at Dartmouth-Hitchcock Manchester. They are performed at Dartmouth-Hitchcock Medical Center in Lebanon.

Opponents last night included representatives from Planned Parenthood of New England, New Hampshire Civil Liberties Union and Elliot Hospital. Claire Ebel, executive director of the Civil Liberties Union, said the two institutions were not compatible.

She said "do not resuscitate" orders, not allowed by Catholic health tenets, would not be recognized by CMC physicians.

"What will happen to a Dartmouth-Hitchcock patient referred to CMC in a comatose state who wants his or her DNR order honored? It will not be," Ebel said.

HEALTHY CONSUMER

When Hospital Fees Catch You Off Guard

When patients visit some doctors' offices and urgent-care clinics, they're increasingly running into something unexpected: billing as though they had gone to a hospital.

The fees, which sometimes amount to hundreds of dollars, can result when hospitals own physician practices, urgent-care centers and other operations. Patients visiting an urgent-care clinic for a sore throat, for instance, can unexpectedly get billed as if they visited a hospital emergency room. And doctors' offices in clinics owned by hospitals, besides billing for the physician's work, might also tack on a "facility fee," an additional charge hospitals usually impose when procedures are done on their premises. Even for insured patients, such additional charges can drive up out-of-pocket costs.

By Anna Wilde Mathews

Insurers, including WellPoint Inc. and Cigna Corp., say they're seeing an increase in hospital facility fees charged when members see doctors in clinics affiliated with hospital systems. Rick Weissblatt, a senior vice president at Harvard Pilgrim Health Care, says the issue is "the expansion of hospital services far from their campus, but still billed" as if they were offered in the hospital's main building. Harvard Pilgrim estimates that doctor visits at independent urgent-care facilities cost around $24 to $185, while at clinics that are considered parts of hospitals the tab would be about $69 to $541.

Meeting Standards

Hospitals say the additional charges reflect the costs of offering a full range of health-care resources and of meeting certain regulatory standards in patient safety, infection control and other areas. But consumers can be surprised to receive hospital-type bills after visiting a facility or doctor's office that hadn't made its billing practices clear.

Kathy Forbes of Derry, N.H., brought her son to a local urgent-care center last year after one of the family's guinea pigs nipped his finger. He got four stitches and a tetanus shot. The next month, Ms. Forbes, a 44-year-old teacher, got a bill for $355 from the physician group.

A week later, another bill arrived, for $654.44. **Elliot Health System**, a hospital operator that owned the urgent-care center, was billing her for use of the facility, including a fee described as an "emergency room" charge. Ms. Forbes, whose health plan has a big deductible, says that after protesting she succeeded in getting part of the bill reduced. It's "misleading" to use hospital-billing practices at a freestanding clinic without warning patients, she says. A spokeswoman for Elliot Health System declined to comment.

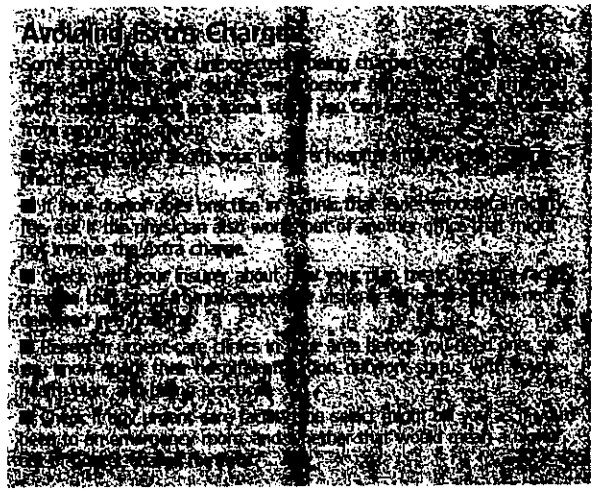
Last spring, Ms. Forbes recounted her story during a New Hampshire legislative hearing, and in July, the state's governor signed a law creating a commission to study hospital billing practices in general. Other states also are taking action. Wisconsin lawmakers are considering a bill that would require medical providers to disclose facility fees. States including Texas, South Dakota and Minnesota have moved in recent years to force greater general disclosure of medical fees.

Responsibility to Patients

Hospital officials say they are open about their charges. The Cleveland Clinic has sent more than 200,000 letters this year alerting patients about new $55 facility fees for visits with doctors at affiliated centers. And **Bozeman Deaconess Hospital**, which has added eight clinics since 2005, has put up signs identifying its facilities' hospital ties, in addition to sending letters, says Bill Pfingsten, a vice president overseeing medical practices. "It's our responsibility to let the patients know" about billing practices, he says.

The Urgent Care Association of America estimates there are at least 8,200 urgent-care centers in the U.S., and the number is rising by about 12% a year. The clinics typically treat patients for ailments ranging from sore throats to rashes and minor lacerations. According to a 2008 survey sponsored by the group, 29% are owned or co-owned by hospitals, with the remainder owned by doctors or companies.

The facility fees are "not about driving revenue," says Sara Larch, a vice president at **Inova Health System**, a not-for-profit hospital chain based in Fairfax, Va. "It's really just about getting paid for the cost of what we've provided."



If you're visiting a doctor, an urgent-care clinic or an imaging center, among other sites, you should ask in advance about hospital ownership and billing practices. Not all hospital-affiliated clinics levy these fees. It depends on the hospital's ownership structure and choice of approach, as well as its contracts with insurers. Sometimes doctors simply rent space in hospital-owned buildings, and seeing them may not incur a facility fee. And if a doctor practices in more than one location, you may be able to avoid paying a facility fee by going to an office that's not part of a hospital-owned clinic.

You should also check with your insurer about how hospital facility fees will be covered. Some insurers' contracts don't allow facility fees from in-network hospitals. In that case, make sure the hospital doesn't bill you for the difference, a practice known as balance billing. Other insurers do allow the fees, so you want to ask about the out-of-pocket implications under your plan.

The higher bills at hospital-owned centers affect employees at **Zimbrick Inc.**, a chain of car dealerships in the Madison, Wis., area. Workers there make a flat copayment when they see a doctor. But if there is an additional hospital facility fee, it counts against employees' deductible, so they might have to pay this bill out of pocket. Since the company started discussing the issue with employees a few years ago, many have switched doctors to avoid the facility fees, which can amount to $75 to $300, says Vikki Brueggeman, director of human resources for the 900-employee company.

Health plans may require consumers to pay emergency-room copayments even if they didn't understand that an urgent-care visit could count as a trip to the ER.

Michelle Pritchard, a 34-year-old administrative assistant from Richton Park, Ill., went with her son to an urgent-care clinic when they both had a serious cough in January. During a 10-minute visit, a doctor prescribed them cough medications and antibiotics. Ms. Pritchard knew the clinic was owned by **Ingalls Memorial Hospital**, but still figured she would owe $25 in copayments each for herself and her son, the usual charge under her health plan for urgent-care visits.

Misleading Signs

Instead, Ms. Pritchard says she got a bill for an emergency-room-visit copayment of $75 each, or a total of $150. "If they're an emergency room, why do they have 'urgent care' on the sign?" says Ms. Pritchard. "It's ridiculous."

Ingalls officials say their urgent-care clinics have signs inside that say they're extensions of the emergency department, but don't specifically mention fees to avoid discouraging patients from seeking care. Ingalls says that in the wake of complaints, including Ms. Pritchard's, which appeared in a local blog, the hospital now asks patients to sign a document that explains the billing practices. Ms. Pritchard says she didn't notice the signs and no one spoke to her about the bill.

If you get hit by an unexpected fee, you should first carefully check the bill and your explanation of benefits. If you're still confused, call the provider and your insurer to make sure you understand the charge and confirm that it is allowed by the health plan. If you feel the out-of-pocket amount you're being billed is unfair, you can try to appeal the provider's bill or your insurer's decision. But if the health plan's contract with the provider allows for facility charges, you will likely run into stiffer resistance.

Feeling Duped

When Jim Thomson's doctor told him to have an ultrasound a few years ago, the 35-year-old software developer selected what he believed was an independently owned imaging center. The reason: Scans at independent centers cost him nothing under his health plan, while hospital charges counted against his deductible.

A month later, Mr. Thomson got a $773 bill from hospital operator **Seton Health**, which co-owned the imaging center. "I just feel like I was duped," he says, because there was "absolutely zero" way for him to know he'd be billed as if he'd visited a hospital. Mr. Thomson says he appealed twice, but was turned down both times by his insurer, Anthem Blue Cross and Blue Shield. Mr. Thomson, who had a $1,000 deductible in his plan, ended up paying the full bill.

A Seton Health spokeswoman says the imaging center's signs include the Seton name along with the co-owner's. She says Seton Health's rates are consistent with its competitors' and it hasn't seen other complaints similar to Mr. Thomson's. Anthem parent WellPoint says it urges members to check on charges and coverage in advance.

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Valley Debates DHMC Alliance

100 Turn Out to Discuss Match With Catholic Medical Center

By Susan J. Boutwell
Valley News Staff Writer

LEBANON — The only Upper Valley hearing on a proposed affiliation between Dartmouth-Hitchcock Medical Center and Catholic Medical Center in Manchester last night brought out an audience of 100 and a new cast of supporters and opponents.

Chief executives from Upper Valley United Way, West Central Behavioral Health, Alice Peck Day Hospital and Hanover's Selectboard chairman supported a plan to formalize the relationship Dartmouth-Hitchcock has with the Catholic hospital.

Opponents included state Rep. Susan Almy of Lebanon, former Rep. Marion Copenhaver of Hanover, Elizabeth Crory of Hanover, who has chaired a state hospital review board; and representatives from Planned Parenthood of Northern New England and the New Hampshire Civil Liberties Union.

"Since when does Dartmouth-Hitchcock embrace Catholic medical ethics?" asked Virginia Swain of Hanover, a Planned Parenthood board member.

Women's health advocates and others have said they fear the affiliation will mean Catholic church-imposed restrictions on procedures including abortion, sterilization, reiki healing, and end-of-life documents such as living wills. DHMC and CMC leaders insist that the two institutions will

See Alliance—A4

retain their identities.

"We will be able to accommodate the perspectives of a Catholic hospital and the perspectives of a secular organization," Dartmouth-Hitchcock Health President Thomas Colacchio said.

Dartmouth-Hitchcock Health and CMC Healthcare System — holding companies of the two institutions — in July announced they had filed papers with the New Hampshire Attorney General's Office seeking approval of the affiliation proposal. The affiliation would make Dartmouth-Hitchcock Manchester, a physician group practice that employs 800 people, part of CMC Healthcare System. CMC Healthcare System would be made a member of Dartmouth-Hitchcock Health, an alliance that includes Mary Hitchcock Memorial Hospital in Lebanon and the Dartmouth-Hitchcock Clinic, which employs 900 physicians in a number of locations in the Twin States.

The affiliation will help the two parties better serve Manchester residents, said Harry Dorman, Alice Peck Day's president. "I applaud the efforts of this affiliation and wish it well," he said.

United Way Executive Director Julia Hadlock said she was "confident the affiliation with CMC will benefit the Upper Valley."

But others said they worry Catholic restrictions will change health practices at Dartmouth's Manchester facility and could also extend to DHMC's Lebanon location.

"Saying Mary Hitchcock may be at risk in terms of reproductive issues is not unfounded," said Clare Ebel, executive director of the civil liberties group.

Abortions are performed at DHMC but not at Dartmouth-Hitchcock Manchester or CMC. That will not change, officials from both institutions say.

The affiliation must be approved by the Charitable Trust Division of the Attorney General's Office. But Ebel last night said the proposal should get a "full judicial hearing"

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before a state Probate Court judge to permit wider participation.

Absent from last night's hearing at the Upper Valley Senior Center in Lebanon were members of a Manchester group called Save CMC and representatives from the New Hampshire Right to Life Committee, both of which oppose the plan and last month packed the first hearing in Manchester.

The final hearing is set for Nov. 16 at 6 p.m., at the New Hampshire Institute of Art in Manchester.

Susan J. Boutwell can be reached at sboutwell@vnews.com or at (603) 727-3248.

Take our bishop—please! Even by passenger rail

By JACK KENNY
Guest Columnist

Robin Comstock, the president of the Greater Manchester Chamber of Commerce is about to move her office, along with the organization's other offices, from Elm to Hanover Street. It's no knock on the Chamber as a whole, but I can't help thinking the president's move will be the biggest improvement on Elm Street since automobiles replaced trolley cars there.

A little over a week ago, Mme. President had an op-ed piece in the New Hampshire Union Leader singing the praises of a proposed Lowell-to-Nashua-to-Manchester passenger rail line and urging all area residents to support it. Her 750 or so words contained not the slightest hint of the cost of the project in federal and state dollars.

But then, why would anyone expect the whole truth and nothing but the truth from the chamber president, who is an ardent conservationist of truth? She knows it is a precious commodity and so she uses it as sparingly as possible, saving it for future generations.

But enough about the Chamber. We need to pay close attention to another prominent, veracity-challenged figure in the public life of our city. His Excellency, John McCormack, the Catholic bishop of Manchester, bears close watching—not listening to, necessarily, and certainly not believing, but watching.

When the bishop speaks, you have to read between the lines—and look behind the scenes. Ours is not to judge the man, but I think it is fair to say that candor is not his foremost characteristic. And I'm not even talking about his role in the hide-the-perverts sexual abuse scandal that took place in the Archdiocese of Boston when he sat at the right hand of Cardinal Bernard "I fought the" Law. I am talking about the bishop's duplicity over the proposed affiliation between Catholic Medical Center and Dartmouth-Hitchcock.

I approached him not long ago after a Mass at the cathedral and asked him to please reconsider his position on that affiliation.

"Oh, I haven't made up my mind," he said. He was waiting to see the review, he assured me.

I said no more about it, but thought it was passing strange. At the time we spoke, Ovide Lamontagne, a lawyer representing the diocese, and Peter Cataldo, the diocesan Respect Life chairman and ethics specialist, had been already been going about trying to persuade people that the hospital plan is a good thing. Could it be, I wondered, that the bishop was unaware of what was being done by his own emissaries? Or was the bishop (Heaven forbid!) dissembling—again?

Then the bishop, showing the public relations genius of a prohibitionist at a cocktail party, made an announcement concerning that review to determine if the new relationship between Catholic Medical Center and Dartmouth-Hitchcock would be conformable to ethical guidelines governing Catholic hospitals. The results of that study would remain private, he said.

Oh, for that passenger rail service! If only it would arrive in time to take our bishop back to Boston.

Jack Kenny is a longtime Manchester resident and freelance writer.

More conflicts in CMC deal, plus Bishop's letter

By RICH GIRARD
Express Columnist

As the acquisition of CMC by Dartmouth Hitchcock Health unfolds, more evidence of the ongoing deception and fraud surrounding this proposal continues to surge forward like water from behind a collapsed dam.

This week, we not only focus on the Bishop's recent letter to priests in the Diocese, we have dramatic new information regarding self-interested parties lobbying for this acquisition and business deals that have substantially benefited the personal finances of CMC board members.

Let's start with the business deals.

As readers of this column know, former Bedford town councilor Bill Greiner, a real estate developer, twice testified at public hearings in favor of this merger without disclosing his significant business dealings with CMC. As you also know, he failed to disclose additional dealings in an interview with me.

Since reporting on these troubling conflicts of interest, it has been confirmed that the Bedford building Greiner is renovating with financial help from CMC, and is renting to CMC, was purchased in January 2008 from Rose Marie Phillips, a member of CMC's board of directors, whose term expired just before the deal closed.

According to town records, Greiner paid Phillips more than $1.3 million for a property the town had assessed at well less than half that amount. It's hard to know whether or not Greiner paid a premium over market value for the property. Given that CMC not only invested cash for the renovations, but also located offices there to pay Greiner rent, it's not hard to believe he might have. Regardless, it's unsettling.

The plot thickened upon learning that Phillips and CMC President and CEO Alyson Pitman Giles are close personal friends and it was at Pitman Giles' invitation that Phillips came to CMC's board. Several former CMC board members have confirmed this information.

Greiner apparently wasn't kidding when he told me he had "friends at CMC."

Speaking of Pitman Giles' friends, another speaker at the Nov. 16 public hearing failed to disclose a significant conflict that would lead a neutral observer not only to conclude there was an inherent bias in their opinion, but also to their motive for coming forward.

James Dunphey, who spoke in favor of the acquisition, failed to disclose that he is President and CEO of Hampshire First Bank. Alyson Pitman Giles is a founding investor and part owner of this bank. She reportedly has similar interests in four other N.H. banks, including a recent deal in Portsmouth.

An immediate investigation ought to be launched into whether or not Hampshire First, or any other bank in which Pitman Giles has a financial interest, has in any way benefited from business dealings with CMC or DHH. Even if they haven't, one must question subordinates publicly testifying in favor of their investor/owner's business dealings.

Along these lines, a reminder to WGIR station manager and CMC board member Joe Graham: I'm still waiting for the promised information regarding how much CMC and Dartmouth spend on advertising at your radio stations. Given that Graham once told me he was going to vote for this transaction no matter what was said at the public hearings, it is important to know how much money his stations receive.

And, we're still waiting to learn how much CMC pays the Monarchs to have their logo stitched onto their jerseys. With Monarch's president Jeff Eisenberg serving as CMC's board chairman, the question must be answered.

Because these, and other potential conflicts of interest exist, the Attorney General should first investigate whether or not members of CMC's board of directors are acting in the best interest of the hospital or of themselves. CMC is a publicly protected charitable hospital trust. The Attorney General has an affirmative obligation to investigate whether or not it is being abused for personal gain.

One conflict that doesn't exist, by the way, is with CMC attorney Jim Merrill. As I once questioned his connections to Greiner, I'm pleased to say the two truly don't know each other and have had no contact regarding this matter. That said, CMC's attorney team ought to be concerned about their client's now obvious tampering with the public hearings.

Meanwhile, Bishop John McCormack sent a letter to the priests of the Diocese informing them that, while he gave "conditional approval," he has yet to decide on final approval. In the letter, he insists that the Bishop of Manchester "must preserve his authority to approve proposed changes in the structure and leadership of CMC."

While this is a hopeful sign, there is much in the letter to make an informed observer wonder whether or not His Excellency is deceived regarding the true nature and scope of this transaction.

While the agreements preserve only enough of his authority to block changes he does not want, they entirely deprive him of the ability to initiate things he does want. For example, the Bishop must now approve any and all nominees to CMC's board of directors (a duty he has entirely and sadly neglected). After the merger, he will retain approval authority over a bare majority of the board's membership, but any nominee he approves can be rejected by DHH.

The same is true over the appointment of CMC's president and CEO.

The documents, which have been written about at length in this column, set up a Mexican standoff, at best.

If this acquisition were a car and the Bishop was "in control" as the driver, then Dartmouth would be the equivalent of the Driver's Ed instructor in the passenger seat. The Bishop can apply the brake at almost any time. But, Dartmouth can use the passenger side override brake at any time to prevent the Bishop from doing anything it doesn't like. It remains to be seen how such an arrangement safeguards local control.

Furthermore, why would he even "conditionally approve" any document that didn't, from the outset, preserve or enhance his current authority given that DHH stands against virtually every fundamental tenet of Catholic healthcare?

As important, while the documents do give him authority to "monitor" compliance with the Ethical and Religious Directives (ERDs), they do not appear to specifically give him the authority to declare failure to comply with the ERDs a material breech of the contract and cause for termination of the agreement. Absent this specific authority, the Bishop may be little more than a party noise maker; annoying, but otherwise feeble.

The fact that the Bishop's letter references the "leasing" of Dartmouth's Manchester operation without acknowledging at all the integration of CMC into Dartmouth's network and the change of control that's triggered the legal intervention of state and federal regulators is worrisome.

Nothing would be more pleasing than to discuss what a "deal" like this should look like and how it could work to advance the cause of healthcare while strengthening what makes CMC not only special, but necessary in our community. Sadly, this transaction is so tainted by the willful misrepresentation of its proponents and their scandalous withholding of potential conflicts of interest that potentially lead to personal gain, that no such discussion can be had as long as they remain in power.

Questions that proponents have still failed to publicly answer include: First, why does Dartmouth become the "sole member" of CMC Healthcare Systems and what does it mean to be the sole member, anyway? Second, specifically, how will CMC's endowment be used post-acquisition and what controls will be in place to guarantee they are not misused? And finally, why must the bishop "share" or surrender any of his current authority to make this deal work? And, with less power to protect, can he guarantee CMC will remain true to its mission?

On June 25, 2009, Pitman Giles said: "Do I look like a relinquisher to you? I would never relinquish everything we've built."

With all that has and will come to light, I dare say it looks as if she's a co-conspirator doing her best to throw it all away.

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001 and is a long-time community activist.

ExpressOpinions

Hospital statements don't match documents on file

By RICH GIRARD, Express Columnist


Richard Girard

Administrators from Catholic Medical Center and Dartmouth Hitchcock Health (DHH) have made many public claims about the proposed "affiliation" of the two hospitals and how Catholic healthcare will be preserved in our community. Many of their public statements not only contradict each other, they don't reflect the reality found in the more than 500 pages of documents detailing this deal.

For example, a recent New Hampshire Sunday News story notes that Alyson Pitman Giles, President and CEO of CMC "highlighted sections of the proposed agreement with Dartmouth, noting it states all Catholic Medical Center facilities and physicians will operate under the Ethical and Religious Directives of the College of Bishops for Catholic Health Care Services."

What it leaves out is that Dartmouth's Manchester-based physicians and facilities, which will be leased by CMC as part of this transaction, are specifically allowed to continue practices that violate these Ethical and Religious Directives (ERDs). In a Valley News story, Dr. Stephen Paris, medical director of Dartmouth's Manchester facility, admitted that abortion referrals are made by the very same doctors in the very same facilities CMC will lease.

More importantly, Section J of the Amended and Restated Professional Services Agreement between Dartmouth Hitchcock Clinic and Alliance Health Services (a CMC subsidiary), specifically allows Dartmouth to continue with any and all "non-ERD procedures and activities." It also references "Exhibit A," which is supposed to list "some of the procedures and activities... that are expressly excluded from this Agreement."

Exhibit A is blank. No doubt detailing all the non-Catholic practices that would be supported by a Catholic hospital under this agreement would cause it to fail.

In multiple news reports, Giles and others note that "non-allowed" procedures will simply be billed to patients through Dartmouth, not CMC, after they've been done, in compliance with Section J. Giles has also admitted that West Side Clinic joint venture with Dartmouth, which is physically located in CMC, engage in practices not allowed by the ERDs.

Question for Giles: How are the ERDs preserved and CMC's Catholic heritage ensured by any of these permissive provisions?

Dartmouth president Dr. Thomas Colacchio, among others, claims that CMC will remain an independent hospital. Yet, in news reports, he's said DHH would have final approval of annual and capital budgets, strategic planning and selection of organization presidents and trustees. Other reports cite DHH's power to also control CMC affiliations, strategic relationships, health care services, and the appointment of CMC's president and CEO.

Here, the documents support these statements.

In addition, Article III (b) of the Articles of Agreement creating DHH states its purpose is "To serve as the controlling and coordinating organization for the system and its member organizations (the "Provider Organizations")" such as CMC.

Section 3.9.3.3 of the DHH-CMCHS Affiliation Agreement requires CMCHS to effectively pay taxes/fees for services rendered to DHH to support "the system."

Section 4.3 of this agreement specifically states that Dartmouth's facilities "will not be part of the Manchester System nor subject to the reserved powers of CMCHS or the Bishop."

Some say the Bishop can remove CMC from this "integrated system" if he finds violations of the ERDs. But, section 3.9.1 C of the By Laws of Dartmouth Hitchcock Health requires a super majority vote of its board members to approve the "withdrawal or removal of a Provider Organization from the System." This board of directors will start with 18 members and can go up to 24. Only three will come from CMCHS and at least 60 percent of the board will come from Dartmouth or Mary Hitchcock hospitals, the primary members of the organization.

So, it looks like the Bishop may not be able to pull CMC out unless DHH agrees.

Question for Giles and Colacchio: Given all that's been admitted, and all the documents that clearly subjugate CMC and any other "provider organization" to the "system," exactly what, of any consequence, is CMC free to do independent of DHH's authority and approvals?

A closing question to the local media: Given multiple statements that contradict each other and run afoul of the documents (there are many more than those exposed here), why aren't you investigating and demanding consistent answers that are supported by the readily available facts?

Do we now have to start asking why media plows aren't being driven through this snow job?

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001 and is a long-time community activist.

When will taxes be low enough?

To the Editor,

Do you support the tax cap? If so, I have a question for you. I know that you must think that our taxes are too high, or you wouldn't support the cap. But my question is: When would you think that our taxes are too low?

If we had so few teachers that we could barely keep within the legal limits for classroom size—would taxes be low enough?

If we paid less per person in local residential property tax (municipal+local school) than anywhere except, say, Berlin and Franklin—would taxes be low enough?

Those were trick questions—they are both already true.

If we had no money to spend on roads for the last four years, as Franklin has—would taxes be low enough?

If we had to reduce tax revenue by $20 million in 2011, as we will under the cap if the reassessed total value is 15 percent lower than in 2006—would taxes be low enough?

If our local property taxes were $40 million less this year, as they would have been if the tax cap had been in effect, without being overridden, for the last 10 years—would taxes have been low enough?

For a sense of scale, $40 million is more than the police and fire budgets combined. Or, it's almost half of our teachers—more than 500 of them.

Just what do you want? Where does this end?

The local estimates above are my own, using official records for source material. I'll be happy to share any of my calculations.

If you don't believe any of this—good! Be skeptical! But don't just stop there. Find out what the tax cap actually says, and what it will really do. If you want to read what you'll actually be voting on in November, do it! I've posted it on http://wiki.staubsense.com. I've posted a lot of other information there that you may or may not believe. But at least read the referendum! I became suspicious a couple of weeks, and had to get a copy at City Hall—the promoters of the cap have not posted it anywhere, and have told you and me that it's just a "spending cap," when it's much more than that.

Like everywhere else, we all have frustrations with our local government, and with all the other expenses that we have no vote on. But don't disfigure our city with this great pox out of frustration—don't "cut off your nose to spite your face."

Disclosures: I'm a registered Democrat. My wife Kathy is running for school board. I don't work for the city. My only financial interest is as a citizen, taxpayer, and parent. I'm not being paid for this in any way.

Ed Staub
Manchester, N.H.

OneMan'sManchester

Can I get more bleu cheese, please?

By ROB AZEVEDO, Express Columnist


Rob Azevedo

This is the sweet side of a Saturday morning, nursing a Bloody and a bleu cheese bacon cheeseburger at Billy's Sports Bar, peeling through the Help Wanted section of the newspaper.

"Sure, make it spicy and use the well vodka, please. I'm on a budget."

Now let's see. What would I want to be doing if I wasn't already doing it?

At first glance, I see a position for a live-in farm hand in Bedford. Sounds countrified and simply dreadful if you weren't raised in Vermont or don't like the stink of slobbering horse tongue.

The role might look handsome to someone newly divorced and working through a layoff, but the couple will offer no more than $10 an hour. Support that!

"Thirty seven flat screens in this place and I can't get The Real World on one of them? God that show goes good with eggs."

This ritual of reading the classifieds (daily pretty much) began for me nearly 15 years ago, after I'd graduated from college. By age 25, I'd held at least 25 different jobs over a five-year period, post-graduation.

"What are you saying, meatball?"

What I'm saying is: I know my way around the want ads. Whether drawing a paycheck or not, I read the classifieds the same way a sports fan does the box scores. The ads simply captivate me because every job interests. They all mean something.

Here we go, down here in the ink. The Hooksett Highway Department is hiring. Great job, I bet. Steady with pay and the hours are cake. The rate is about $14 for starters. I know if I was currently landscaping and staring down at Old Man Winter, I'd brush up on "How to Build A Catch Basin" and hustle on down to Route 3A.

"You're thinking longevity?"

"If you're lucky."

Look at this. Canobie Lake is hiring for the annual Screamfest. These positions, which appear to be plentiful and often disturbing, can be fun as well. Again, the pay will be rot, about $8 an hour (I bet), but who says every job needs to be a career!

"You mean get paid to mingle?"

"Stop talking! I've been up for only 45 minutes, guy."

Oh, now this position excites me. "Collections." You can reinvent yourself doing collections by taking on different voices and personalities. Daytime, nighttime, shifts galore. More than that, you're forced to measure your level of compassion for others, all while making the kill, and a buck to boot.

Continued on next page top

Share your opinion

All we ask is to please keep letters to no more than 350 words. Guest columns (with your photo) can be up to 500 words, to give you room to develop a point further. E-mail letters to news@manchexpress.com.

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CMC details remain elusive in Alyson's Wonderland

By RICH GIRARD
Express Columnist

The latest examples of the skullduggery that abounds in Alyson's Wonderland were on display at the third and final public hearing, held Monday, Nov. 16, on the proposed take over of CMC by Dartmouth Hitchcock Health (DHH), which provided a number of jaw droppers. Moreover, the carefully choreographed testimony of supporters simply underscored the deceptive manner in which this acquisition has been marketed.

The show stopper came near the end of the hearing when CMC president and CEO Alyson Pitman Giles, responding to comments made by acquisition opponents, targeted of Fr. Robert Smalley from the Protection of the Blessed Virgin Mary Ukrainian Catholic Church. In an attempt to turn Fr. Smalley's comments against him, she noted that the Bishop of Providence, R.I., Thomas J. Tobin, recently approved the merger of St. Joseph Health Services and Roger Williams Hospital, along with their respective subsidiaries and affiliates.

Clearly, her intent was to lead the audience to believe that what happened in Providence was somehow similar to what's happening here and that Bishop Tobin's approval should be seen as precedent setting, if not providential.

The inference is so misleading, it's downright dishonest.

According to the Rhode Island Attorney General's report, one of the key factors considered in approving this proposal was that Roger Williams (a non-religious institution), "agreed NOT to perform four medical procedures prohibited by the Ethical and Religious Directives for Catholic Healthcare Services ("ERDs"); namely, abortion, assisted suicide, euthanasia and destruction of human embryos. (Roger Williams) considered the agreement *not to perform the four prohibited procedures as an essential element in an affiliation with St. Joseph.* Emphasis added.

In other words, the ERDs in these vitally important areas regarding the termination of life at any stage were extended to the non-Catholic organization to make the merger possible. News reports regarding the transaction echoed this truth.

Contrast that with the proposed agreement that "leases" Dartmouth's Manchester physician group to CMC while allowing practices that violate the ERDs to continue and with Pitman-Giles' statements that various other violations take place at CMC itself, and one has to wonder why she brought it up. Clearly, the facts in R.I. do not support her efforts to surrender CMC to a secular organization that insists it be allowed to perform non-Catholic procedures, no matter how few they claim exist.

Note well: The list of allowed practices that violate the ERDs still remains a secret.

The necessity and structure of the R.I. merger couldn't be more different than the CMC/DHH deal. That said, the parties in R.I. seemed to arrive at a solution that not only entirely preserved Catholic ethics at Catholic institutions, but also extended the four key ones to the all secular partners.

Pitman-Giles' comments came after an obviously orchestrated parade of physicians, patients, and other affiliated parties. The general theme, first broached by DHH president and CEO Dr. Thomas Colacchio, seemed to be that if the affiliation wasn't approved, all of the wonderful improvements in care and convenience that have already been achieved would somehow disappear, leaving Manchester residents in some health care backwater. Such suggestions steal hope from and instill fear in citizens worried about their ability to have better, more convenient care.

The depth to which the P.R. campaign sunk included testimony from Bill Greiner of Bedford. Greiner's unusually detailed information about Elliot Hospital's expansion efforts served as the basis for his support of CMC's affiliation with DHH. Curious about his level of specificity, I did some research and discovered that Greiner owns the property on Route 101 that houses CMC's Family Health & Wellness Center.

According to a news report, CMC helped fund the renovations to his building and Greiner expects to add 10,000 square feet to the building, more than doubling its current size.

Greiner's failure to disclose his interests, not only at this hearing but also the one in Lebanon where he gave the same testimony, is deceptive at best. He denies any collusion with CMC officials, but admits he has friends who work for the hospital. He's also connected to Jim Merrill, one of CMC's attorneys, on the business networking site LinkedIn.com. Greiner denies knowing Merrill.

As of my submission deadline, phone calls and e-mails to CMC's attorneys, including Merrill had yet to be returned.

In Alyson's Wonderland, what's real and what's not remains elusive.

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001 and is a long-time community activist.

A thankful man takes a cruise down Elm Street

By ROB AZEVEDO
Express Columnist

Whether or not I just drove 150 miles through 20 small towns from Wolfeboro to Rye, I always end my day with a slow cruise down Elm Street. I could loop around to get home, take I-293, the backside of Valley Street or Mammoth all the way.

I don't. And for that, I'm thankful.

The city's alive again. There's an energy growing in Manchester, and I don't know if you feel it, but I do. I like having to look both ways when I come out of Quiznos. I like that the Strange Brew is sometimes too packed to get into during Happy Hour on a Friday. I also like that a ginger beer and vodka is waiting a few clicks away at the Z bar.

Traffic is up, that's what I'm saying. And for that, I'm thankful.

Back on Elm, once over the Queen City Bridge, I'm in the slow lane, taking it down. There's Dandi-Lyons flower shop on the left. Not only can I get a dozen roses there for $5, I can get another dozen carnations for only three more sheets.

That's good living, especially if "Flowers" is spelled L-O-V-I-N' in your house.

And for that, I'm very thankful.

Now, I'm coming into the meat of Elm. Boom! The Verizon Wireless. Love the silver shell, everything about it. I've seen everyone from Bob Dylan to a slew of trolls skating around in bubbles costumes at the Verizon.

What that venue has done for this city is maybe even more significant than Salma Hayek recently being photographed breast-feeding an African baby boy.

For that vision alone, I'm thankful.

And here's an idea "you" can thank "me" for: If the tax issues regarding the Verizon Wireless becomes too much of a burden for the city and state to handle, simply bring a reasonable offer over to the boys at Brady-Sullivan. It's only a matter of time, isn't it?

You're welcome.

Then, one of my favorite spots in the city presents itself, The Radisson. Do I look for parking and stop in for a coffee? The big screen TV in the parlor sure is calling my name. So aren't the cushy chairs and free Internet. No better place in the city to catch up on work.

But the satellite's set to Outlaw Country in the car, and I want to see if I recognize anyone coming out of Good Times Smoke Shop. Laughing at someone else's expense is just plain wrong, but a hearty chuckle at dusk is better than a handful of fish oil.

Ah, snake eyes! No one I know. Thanks anyways.

Just over to my left is a Brady-Sullivan property that pulls at my heartstrings. This garden plaza they constructed downtown is amazing. The life it shines onto Elm is generous and brilliant.

So, thank you Brady-Sullivan.

Thank you, too, Mayor Guinta. Thanks for presiding over this thoroughfare for the last four years. Your tenure inspired a movement downtown that gives me good reason to cruise Elm Street daily.

And for all that, I'm thankful on this Thanksgiving, 2009. God speed.

Manchester resident Rob Azevedo has written for the Boston Globe, Boston Globe Magazine, Improper Bostonian, Details, as well as various other men's magazines. He can be reached at onemanmanch@gmail.com.

Takeover of CMC being rammed through

By RICH GIRARD, Express Columnist

Tuesday, Sept. 15 is Primary Day. It's also the date of the first hearing on the proposed acquisition of Catholic Medical Center (CMC) by Dartmouth Hitchcock Health (DHH). Interested parties may attend this 7:30 to 9:30 p.m. forum at Manchester's senior center, located at the corner of Douglas and Main streets on the West Side.

When I first learned of the hearing, it was scheduled from 6 to 8 p.m. Concerned that many people, especially public officials, would not attend because it was Election Day, I emailed CMC spokesperson Gail Winslow-Pine on Aug. 25, asked for confirmation and suggested it be changed.

On Aug. 27, she replied: "With regard to the date of all three planned community forums, I did my best to work around multiple schedules and avoid times that would prohibit maximum involvement. The planned forum for September 15th will begin at 6PM and end at 8PM. It is not the only forum planned and we will host another one in October and November, however, I've not yet secured locations for these."

Since they haven't made the other dates public, I'm guessing they've chosen Columbus Day and Election Day at a later time in a smaller venue with less parking to "maximize involvement." Halloween and Thanksgiving might also be in the mix. I'm not sure whose schedules she's working around, but I doubt it's the voters', or people who have kids or have to get up in the morning, or elderly who may not be able to attend a late evening event.

Richard Girard

The date needs to be changed and the time needs to be reasonable. And, the other scheduled dates should be released.

My July 27 column raised serious questions regarding this proposal. What I didn't mention was that the only topic of discussion at the "community outreach" meetings was the affiliation between CMC and DH's Manchester facility. The broader plan to have DHH take CMC over was never discussed and unknown until it was made public on June 22.

CMC and DHH kept the true scope of their intentions secret until the last possible moment. Having dug through hundreds of pages of documents, it's clear to me why they occupied the attention of community representatives with a mere piece of the puzzle.

Here are some consequential facts.

A document entitled "Articles of Agreement of HIHS" (Hitchcock Integrated Health Services—now DHH) was filed with the Secretary of State on May 1. It is not posted on www.ahealthiertomorrow.org, the site being used to promote this acquisition. Maybe a document that clearly states that DHH will "serve as the controlling organization for the System and its member organizations," which includes CMC, contradicts their claim that CMC will remain autonomous.

In its filings with the state, CMC has cited RSA 7:19-b "Standards for Acquisition Transactions Involving Health Care Charitable Trusts and Review by Director of Charitable Trusts" as the governing legal authority. If this is merely an affiliation that will change little if anything at or about CMC, as claimed, why is the statute that governs changes in control of a "health care charitable trust," which is what CMC is, being invoked?

In the "Unanimous Consent Resolutions of the Board of Governors of CMC Healthcare System" this statement appears: "WHEREAS, in furtherance of the Corporation's *intent to implement the Affiliation in accordance with the letter of intent, an Affiliation Agreement by and between DHH and the Corporation which sets forth the proposed terms and conditions of the Affiliation is proposed for conditional approval.*" (Emphasis added.)

This is very interesting because the law requires pubic hearings be held in a "reasonable and timely" manner to allow the public's input "to inform the deliberations of the governing body of the health care charitable trust regarding the proposed transaction."

Is CMC's board *really* looking to be "informed" by the public's input if it has already unanimously decided what it will do and how it will do it *while* limiting the time and opportunity for that input?

The powers that be at CMC and DHH seem intent on ramming this thing through as quickly as possible. It won't be long before you know why and once again fight to save CMC from yet another predator with willing co-conspirators.

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001, is a long-time community activist, and appears Tuesdays at 7:35 a.m. on WGIR-AM 610's Charlie Sherman show.

CMC merger is about money and would hurt the city

By MICHAEL QUINLAN, Guest Columnist

Regarding the proposed merger between Catholic Medical Center and Dartmouth Hitchcock, I would like to take issue with those who are advocating for this proposed new design in health care delivery. There are promises being made by Catholic Medical Center CEO Alyson Pitman Giles and by Dr. Thomas Colacchio, who is slated to become president of this proposed new venture.

To begin with, the statements made by the two principals appear to be contradictory and confusing. Dr. Colacchio states that Dartmouth Hitchcock will be in control, and have final approval of, capital budgets, strategic planning and selection of trustees. Ms. Giles states that Catholic Medical Center would not surrender or relinquish any such control. In this scenario, Colacchio and Giles look less like experienced healthcare executives and more like the actors in the classic Abbott and Costello rendition of "Who's on First."

These statements in and of themselves should prompt increased scrutiny from the patient population as well as federal and state regulatory officials. At the outset, I must say that as someone who was in a leadership position with the Save CMC movement during the Optima Healthcare CMC/Elliot debacle, I am especially saddened and offended by this initiative taken by Alyson Pitman Giles.

In a recent statement, Ms. Giles give attribution to those who saved CMC. However, she exhibits little genuine gratitude to those of us who spent four long years in our efforts to secure an independent Catholic Medical Center and maintain two acute care hospitals in the city of Manchester. This constitutes no dramatic revelation but serves to illustrate the fact that the merger initiative is about money. But it is also about the failed leadership of Alyson Pitman Giles.

Michael Quinlan

From the time that Catholic Medical Center de-merged from Elliot Hospital and Optima Healthcare, it enjoyed an overflow of public support and goodwill—that is, at least up until this proposed merger. It is also a fact that Catholic Medical Center has a management-led board eager to acquiesce to the CEO's every whim.

But this time they have propelled Ms. Giles toward the unconscionable act of polarizing the community once again, in much the same way as during the Optima Healthcare era. If it was the goal of Ms. Giles to bring high level specialists to the medical staff, she should have used the currency of the hospital's public support and her cooperative board to recruit them. She could have avoided the present controversy, which is sure to grow as the elements of this proposal become better known.

In the early 1980s, Catholic Medical Center was a general, acute care hospital with the typical range of medical, surgical, OB-GYN and rehab services. The management and board of directors took the intrepid move to recruit and ultimately launch a successful cardiac surgical program known today as the New England Heart Institute. This bold move stitched together the necessary components for success that included skilled staff, sound business practices and first rate management.

Your place in history is secured when you can make a contribution to your city and region that results in healthy outcomes for your patients, when you provide meaningful and rewarding employment, and you contribute to the local economy.

Contrast that remarkable snapshot of CMC history with the unproven benefits and loss of autonomy within the current proposed agreement, and one has to question not only the wisdom of the plan, but how it even got to this point.

Simply put, Alyson Pitman Giles is leading this merger because she wants to accomplish two things. By merging with a teaching hospital, Catholic Medical Center will be allowed to bill and become reimbursed at a higher rate. It has nothing to do with quality, but everything to do with commerce.

Secondly, she would like to deliver a knockout blow to Elliot Hospital, which would result in the loss of jobs and further diminish the local economy. The merger agreement, if allowed to proceed, would undoubtedly result in loss of jobs at Catholic Medical Center as well. All mergers result in consolidation and consolidation always translates into a reduction of the work force.

The repeated claims by Giles and Colacchio that this agreement will help the poor is nonsense. For heaven's sake, don't the poor have enough problems without being used as pawns in a merger scheme orchestrated by savvy insiders and well heeled lawyers?

Finally, as far as the legacy of Alyson Pitman Giles and her leadership of Catholic Medical Center, I think that if, God forbid, this proposal reaches fruition, she will be likened to the owner of the Brooklyn Dodgers, hard-core businessman Walter O'Malley.

Although making money in Brooklyn, O'Malley opted for sunny California to make more. He abandoned a fan base that had followed his team for years with religious zeal. Years after his departure from Brooklyn, the mere mention of his name in the borough would be considered a profanity.

The difference here is that if this merger proposal becomes reality, Alyson Pitman Giles will make Walter O'Malley look like a sentimental slob.

Michael Quinlan is a Bedford resident who served more than six years on the board of directors at Catholic Medical Center.

More evidence that CMC merger is all about money

By RICH GIRARD, Express Columnist

Evidence of what a hospital takeover looks like can be found in the actual acquisition of Franklin Regional Hospital (FRH) by Lakes Region General Hospital (LRGH). The similarities and differences between this merger and the proposed acquisition of Catholic Medical Center by Dartmouth Hitchcock Health (DHH) make clear points about what really is and is not happening locally.

I learned of the FRG/LRGH merger from an article published by the NH Bar Association on March 1, 2003. The article says the process these two charitable hospitals followed provided "an important roadmap for practitioners and executives who may contemplate a merger or change of control of a New Hampshire charitable healthcare entity in the future"

Since a primary legal architect of the FRG/LRGH merger and author of the Bar Journal article was Ovide Lamontagne, CMC's current legal chief counsel, what he wrote about the right way to do things ought to be of interest to all parties.

First, because FRH was struggling financially and likely to close, it went looking for a partner to be rescued. LRGH was one of five bidders whose proposal was considered.

CMC, suffering no financial distress, published a document entitled "RSA 7:19-b (II) Standards Certification: CMC Healthcare System" in which it states: "Due diligence has been exercised in selecting DHH to become CMCHS' sole member under the Affiliation." This admits that DHH will be in control of CMC after the acquisition.

With no evidence that CMC sought other parties to partner with, how do we know DHH is the best partner for CMC, and why does it need one anyway?

Second, CMC again brings up RSA 7:19-b which is only used when charitable hospitals, like itself, give control of their operations to another organization. Were this not the case, the law wouldn't apply; just like it didn't apply when DHH affiliated with Elliot Hospital.

Richard Girard

Third, Lamontagne writes that "the proposed merger, even in its embryonic stages, was motivated more by charitable principles than by pure economics."

Minutes from Dartmouth's Board of Governors meetings reveal their fear that without a "formal hospital relationship in Manchester," Dartmouth "will be less relevant in the markets served by the Southern Region hospitals" such as "Concord Hospital, Elliot Hospital, and Southern NH Medical Center." They also state that "integrating" CMC into their system would provide Dartmouth with access to "inpatient beds, technical service revenue and capital."

That means DHH will have more patients, be able to charge Medicare, Medicaid, and private insurers more money for doing the same work, and have access to CMC's large bank accounts. Is this really about furthering a charitable mission or is it about what business, revenue and assets can be harvested from CMC and the Manchester market?

Fourth, Lamontagne described a deliberate process to solicit public input BEFORE developing any details of the acquisition. The hospitals didn't discuss the governing structure until after public hearings were held on the IDEA of FRH being acquired by LRGH. Then, after developing their agreement, they held a second round of public hearings to ensure they got it right and addressed all concerns.

CMC and DHH have done the exact opposite. They FIRST made up their mind about what THEY wanted, then negotiated the details, and are now TELLING the public in their staged forums, what's to be done and why.

Lamontagne also wrote "It is questionable, however, whether parties who could not withstand such scrutiny would have fully complied with the procedures and guidelines of RSA 7:19-b."

Since CMC and DHH negotiated the entire deal without any public input or scrutiny, one is left to wonder whether or not they knew this deal wouldn't survive the model example followed by FRH/LRGH; which took nearly two and one half years to complete in full view of the public, the regulators, and the probate court.

"Hopefully," wrote Lamontagne, "the recent FRH/LRGH transaction will demonstrate the measure of public good that can be achieved by respect for, and adherence to, traditional notions of what it means to be a charity in New Hampshire."

Memo to CMC and DHH: The FRH/LRGH transaction DID demonstrate the measure of public good that can be achieved when things are done the right way. Now the question is: Why haven't you followed "the important roadmap" set by their example?

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001 and is a long-time community activist.

Share your opinion

Do you care about Manchester? Are you unhappy with some aspect of our city and need to vent some steam? Or are you glad to live here and want to share the reasons why?

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- Letters may be edited for length. On rare occasions, letters may be edited for clarity, though we won't change your point or meaning.
- No form letters, please. Also, letters with potentially libelous content or that are not appropriate for a general family audience will not be published.
- Unless you're a regular columnist, we ask you to wait two weeks between letters to give others a chance.
- Please include your address and phone number for verification. We'll only publish your town of residence.

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Mistrust on ethics will doom CMC's new affiliation

By RICH GIRARD, Express Columnist

Catholic Medical Center and Dartmouth Hitchcock want to affiliate. Put this one in the category of "things that make you go, hmmm."

The justification for the proposed merger centers on the ever-changing economics of health care. The multifarious organization of the new "affiliated entity" is driven by federal and state laws and complicated by the need to maintain CMC as a Catholic institution.

Having sat through meetings hosted by CMC and met with or otherwise discussed the situation with various of its representatives, both parties have work to do to address the core concerns surrounding the protection and advancement of Catholic health care.

CMC's handling of these issues has been particularly troubling.

Of key concern is how CMC will retain its identity as a Catholic hospital while being subsumed by a non-Catholic organization and how it will govern the entities it leases as part of this deal. There are things called "ERDs," which control Catholic health care. These Ethical and Religious Directives, the "thou shalts and shalt nots" published by the church, make Catholic health care what it is.

At a meeting in May, three very important questions were asked: How does the hospital currently inform its non-Catholic affiliates of the ERDs? How does it ensure they are being followed? And, what powers does the bishop of the Diocese of Manchester retain to guarantee that hospital will retain its Catholic identity?

Richard Girard

The June meeting at which this was supposed to be presented was cancelled on short notice. CMC spokesman Gail Winslow-Pine, in a hastily arranged e-mail, said there was "no new information to report" about the proposed affiliation, so there was no reason to meet.

Why they didn't believe presenting this in and of itself was important undermined confidence in their representations. It was vitally important given that questions about how the affiliation would be governed were routinely met with answers that can be summarized like this: We don't have the details finalized yet, but trust us, it'll be fine.

Shades of Optima Health darkened the room.

While the bishop retains much of his current authority over the hospital, that authority is trumped by the newly formed governing body that will sit atop the organization. The bishop, who now approves all board appointees, will only approve 60 percent, but DHH can veto any bishop approved appointee, in addition to being able to appoint the remaining 40 percent, which can be vetoed by the board itself.

CMC will also have to play "mother may I" on budgeting and strategic planning items, as the DHH board will have approval authority in these and other important matters. While it appears the bishop can block certain things, it is also clear that CMC, as part of a larger network, must gain approval for almost everything it does.

If the two disagree, it's off to mediation or arbitration to see who gets to do what they want.

It is unclear how this apparent surrender of autonomy preserves the hospital's ability to maintain its Catholic identity.

As evidence that they've done the necessary work to preserve its Catholicity, CMC leaders point to an analysis performed by Dr. Peter Cataldo, the hospital's paid ethical consultant. Cataldo, who also works for the diocese, has provided ongoing input as the details have been finalized. Based on his input, the bishop gave the necessary preliminary approval to finalize the project.

Had the hospital agreed to my request to release Cataldo's report in April, I'd find the duality of Cataldo's role less bothersome. They denied the request because of concerns about how it would be used by critics and because the bishop was going to have two additional "independent" analyses done.

As it stands now, we not only don't have Cataldo's report, we don't know who the other two ethicists are and, therefore, cannot ascertain whatever biases they may bring to this process. This information must be released.

"When you lie with dogs, you get fleas."

This thought won't be shaken until and unless the answers to these questions are given in an unequivocally clear and concise manner. That the preliminary agreement has been approved absent this information and these core understandings breeds suspicion. Without correction, this "trust us, it'll be fine" approach will deservedly doom this project.

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001, is a long-time community activist, and appears Tuesdays at 7:35 a.m. on WGIR-AM 610's Charlie Sherman show.

Eisenberg failed to address important CMC questions

By RICH GIRARD, Express Columnist

Last week, the Express published a column by Manchester Monarchs President Jeff Eisenberg, who is chairman of CMC's board of directors. In defending the proposed acquisition of CMC by Dartmouth Hitchcock Health (DHH), he listed a couple of areas where CMC and Dartmouth already collaborate. As result of their success, he writes members of both hospitals met and "asked ourselves how we could take our current successes and create an integrated delivery system that helps those most in need."

Proponents of this takeover say it is nothing more than an "affiliation." What Eisenberg admits is for the past five years, they've been affiliated. Moreover, in stating that any further "integration" would necessarily have to protect CMC as a Catholic hospital, he concedes a fundamental change in ownership and control of CMC. After all, if CMC were to remain independent and in full control of its operations and destiny, why would such protection be necessary?

Remember, when Dartmouth wanted to take it to the next level with Elliot Hospital, with which Dartmouth was affiliated, the negotiations fell apart because Elliot "didn't want to be owned," as Doug Dean, Elliot's president and CEO, stated.

While writing glowingly of his and his fellow board members' commitment to CMC and all the potential good this "affiliation" could do, Eisenberg did nothing to address the many unanswered questions surrounding this acquisition. First and foremost, if it's not an acquisition or change of control, why are they following the state law that governs acquisitions and changes of control?

Richard Girard

More importantly, why did CMC file "Form 16 C.F.R. Part 803 – Appendix NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS" with the Federal Trade Commission? It's a form that is "required by law and must be filed separately by each person which, by reason of a merger, consolidation, or acquisition, is subject to" a variety of federal laws cited in this 15-page document, a form from which CMC spokesperson Gail Winslow Pine refused to release any requested information, including non-financial information.

On Dec. 28, 2001, CMC Healthcare System, established after CMC was freed from the Optima Health "affiliation," filed Articles of Agreement with the Secretary of State's office. Article VIII of that document gives some of the Bishop's "Reserve Powers" to a Board of Governors, but reserves eight very important powers unto the Bishop alone.

In the amended version of these Articles of Agreement, filed as part of this acquisition by DHH, Article VIII (among many others) names DHH as the "sole member" of CMC's board of directors. DHH MUST approve a wide variety of activities that make it clear that CMC will no longer be an independent hospital. No mention is made of a Board of Governors that exists to exercise any powers of the Bishop. Just like Eisenberg's Manchester Monarchs are beholden to and exist for the benefit of their NHL parent, the LA Kings, CMC will be beholden to and exist for the benefit its corporate parent, DHH.

In Article IX, the powers now exclusively reserved for the Bishop are shared with DHH. In "sharing" power, the Bishop gives up the ability to make any changes he may want because any and all changes either he or CMC may want will be subject to DHH's veto.

Currently, the Bishop approves all nominees to CMC's board. After the acquisition, he will only be able to approve six and maybe one other. DHH can veto any Bishop-approved nominee. DHH will nominate five members that the Bishop cannot veto. The Bishop's "health care delegate," the presidents and CEOs of DHH and CMC will also be on the board. (See section 3.6 of the DHH-CMC "Affiliation Agreement.")

Section 3.1.1 of the Affiliation Agreement also appoints and empowers a 17-member board over Alliance Health Services, a CMC subsidiary. CMC's board nominates four members, DHH nominates seven. The remaining six are ex-officio. The Bishop has no authority here.

Eisenberg's column could have been written 10 years ago about Optima Health and begs a number of questions, such as: What's the rush? Why were the negotiations done before public hearings? Why are they following state and federal laws governing takeovers? Why aren't they going through a probate court review? And, if they aren't surrendering control, against what does CMC's Catholic identity need protection?

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001 and is a long-time community activist.

Share your opinion

All we ask is to please keep letters to no more than 350 words. Guest columns (with your photo) can be up to 500 words, to give you room to develop a point further. E-mail letters to news@manchexpress.com.

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HCR 30--PROPOSED AMENDMENT

A resolution urging the attorney general to fully investigate the proposed transaction between Catholic Medical Center Healthcare System and Dartmouth-Hitchcock Health.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

A resolution urging the attorney general to fully investigate the proposed transaction between Catholic Medical Center Healthcare System and Dartmouth-Hitchcock Health, and to bring the matter before the Probate Court for a resolution of all questions of charitable trust law raised by the proposed transaction.

Whereas, 10 years ago Catholic Medical Center and Elliot Hospital, two health care charitable trusts in the city of Manchester, tried to merge into a single entity known as Optima Health; and

Whereas the merger raised profound questions and concerns in the community regarding the fiduciary duties of both entities to their charitable missions; and

Whereas the public and members of the general court became very concerned with the overall fate of both hospitals and therefore called upon the attorney general to investigate; and

Whereas, the Attorney General's office at that time conducted as special investigation into Optima Health pursuant to both common law and the statutory authority of the New Hampshire Attorney General as the Director of Charitable Trusts, and which concluded that the parties had to dissolve the merger; and

Whereas, the Attorney General and the parties involved in the Optima merger brought the matter before the Probate Court to over the dissolution of the merger; and

Whereas, 10 years later, Catholic Medical Healthcare System is again attempting to enter into a transaction with another charitable trust/health care system, this time, Dartmouth-Hitchcock Health, which will integrate two completely unique healthcare systems; and

Whereas, the community is again challenged by the profound consequences, whether intended or unintended, of such an integration by these two distinct and unique charitable entities, including the loss of one or both of the charities and/or their assets; and

Whereas, it is the duty and obligation of the Attorney General, through his Director of Charitable Trusts, to oversee New Hampshire charitable institutions and to preserve and protect New Hampshire charitable assets; and

Whereas, after the failed Optima Health merger, the General Court passed RSA 7:19-b, a statute regulating acquisition transactions involving health care charitable trusts, which statute applies to this proposed transaction; and

Whereas the Attorney General is presently in the process of reviewing the transaction under this statute, and has hired special counsel to assist him in this review; as provided in the law; and

Whereas, the provisions of RSA 7:19-b do not supplant or restrict the general powers of the Probate Courts with respect to charitable trusts under existing law; and

Whereas this proposed transaction raises many complicated legal issues which can only be resolved by a Probate Court, because no other entity has the authority or jurisdiction to rule on such issues; and

Whereas, it is the duty of the General Court to call upon the Attorney General, through its Director of Charitable Trusts, to conduct a thorough, legal review of this proposed transaction, which would include a referral of this matter to the Probate Court for independent and impartial rulings of law by a neutral and detached judge, learned in the field of charitable trust law;

NOW THEREFORE, be it resolved by the House of Representatives, the Senate concurring:

That the New Hampshire General Court hereby requests that the Attorney General bring this proposed transaction before the Probate Court for Hillsborough County for a full review of all issues presented by the proposed transaction which are within the jurisdiction of the Probate Court, to ensure that these two unique charitable institutions preserve and protect their New Hampshire charitable identities, missions and assets; and

That the Attorney General file a formal report of his actions and decisions taken pursuant to RSA 7:19-b with the General Court so that the public may be satisfied that the Director of Charitable Trusts has fulfilled his statutory and common law obligations to the community and to this state; and

That the House Clerk deliver a copy of this resolution to the Attorney General.

TITLE I
THE STATE AND ITS GOVERNMENT

CHAPTER 7
ATTORNEYS GENERAL, DIRECTOR OF CHARITABLE TRUSTS, AND COUNTY ATTORNEYS

Director of Charitable Trusts

Section 7:19-b

7:19-b Standards for Acquisition Transactions Involving Health Care Charitable Trusts and Review by Director of Charitable Trusts. –

I. In this section:

(a) ""Acquisition transaction" or ""acquisition" means transfer of control, direct or indirect, of a health care charitable trust, or of 25 percent or more of the assets thereof, including, but not limited to, purchases, mergers, leases, gifts, consolidations, exchanges, joint ventures, or other transactions involving transfer of control or of 25 percent or more of assets. However, changes in membership of the governing body of a health care charitable trust occurring through regular election or filling of vacancies in accordance with the bylaws thereof do not of themselves constitute acquisition transactions within the meaning of this section.

(b) ""Acquirer" means a person acquiring control, direct or indirect, of a health care charitable trust, or of 25 percent or more of the assets thereof.

(c) ""Control" of a health care charitable trust means the power to elect a majority or more of the membership of the governing body thereof, or otherwise to direct the affairs thereof.

(d) ""Health care charitable trust" means a charitable trust organized to provide health care services including, but not limited to, hospitals, community health services, and medical-surgical or other diagnostic or therapeutic facilities or services, or a charitable trust operating as a health insurer or health maintenance organization. ""Health care charitable trust" shall not include any testamentary or inter vivos trust which is not organized to provide health care services.

II. The governing body of a health care charitable trust, or any other persons having authority to direct the affairs of a health care charitable trust, shall not approve the acquisition thereof unless the governing body has acted in good faith and in a manner consistent with its fiduciary duties to the health care charitable trust, and unless the following minimum standards are met:

(a) The proposed transaction is permitted by applicable law, including, but not limited to, RSA 7:19-32, RSA 292, and other applicable statutes and common law;

(b) Due diligence has been exercised in selecting the acquirer, in engaging and considering the advice of expert assistance, in negotiating the terms and conditions of the proposed transaction, and in determining that the transaction is in the best interest of the health care charitable trust and the community which it serves;

(c) Any conflict of interest, or any pecuniary benefit transaction as defined in this chapter, has been disclosed and has not affected the decision to engage in the transaction;

(d) The proceeds to be received on account of the transaction constitute fair value therefor;

(e) The assets of the health care charitable trust and any proceeds to be received on account of the transaction shall continue to be devoted to charitable purposes consistent with the charitable objects of the health care charitable trust and the needs of the community which it serves;

(f) If the acquirer is other than another New Hampshire health care charitable trust, control of the proceeds shall be independent of the acquirer; and

(g) Reasonable public notice of the proposed transaction and its terms has been provided to the community served by the health care charitable trust, along with reasonable and timely opportunity for such community,

through public hearing or other similar methods, to inform the deliberations of the governing body of the health care charitable trust regarding the proposed transaction.

III. Notice of a proposed acquisition transaction shall be given to the director of charitable trusts in writing to be received by the director no less than 120 days before consummation of the transaction. Such notice shall identify all parties to the transaction; shall set forth all material terms thereof, including, without limitation, any changes in control or ownership of assets, any acquisition price, any change in the capital structure and management, and any and all compensation paid or to be paid in connection therewith; shall include a copy of the minutes and other documents evidencing the decision of the governing body of the health care charitable trust, including documentation of steps taken to comply with paragraph II(g) of this section and any changes in the proposed transaction resulting therefrom, any relevant community needs assessment developed by the health care charitable trust, and a copy of the acquisition agreement and financial statements of all parties; and shall include a certification signed by those members of the governing body or other person approving the acquisition on behalf of the health care charitable trust that the standards set forth in paragraph II of this section have been considered in good faith and complied with, together with such explanations and other documentation as may be necessary to demonstrate such compliance. The notice shall also include a statement from the acquirer specifying the manner in which it proposes to continue to fulfill the charitable objects of the health care charitable trust. Any information submitted pursuant to this section shall be subject to RSA 91-A.

IV. Within a reasonable time, not to exceed 120 days after receipt of the notice specified in the preceding paragraph, the director shall determine compliance with the standards set forth in paragraph II of this section and shall notify the parties either that the director will take no further action with respect thereto, or that the director objects to the transaction on specified grounds. Within 60 days following receipt of the notice specified in the preceding paragraph, the director may require submittal of such additional information as may be reasonably necessary to make such a determination. In making such a determination, the director shall accept public comment and may conduct public hearings relating thereto within the time specified in this paragraph and may direct the health care charitable trust to publish notice thereof in a manner reasonably specified by the director. Such hearing may be conducted informally or in conformity with RSA 541-A, at the discretion of the director. The expenses of such public hearing shall be paid for by the parties to the proposed transaction, after consultation with the parties. Where the acquisition transaction involves assets, the fair value of which are in excess of $5,000,000, after consultation with the parties, the director may employ, at the parties' expense, expert assistance, including independent counsel and independent financial advisors that are reasonably necessary to make the determination specified in this paragraph.

V. In addition to all other powers conferred by statute or common law, the director may bring judicial proceedings to enjoin consummation of any acquisition transaction in which notice has not been provided in accordance with paragraph III of this section. Any acquisition transaction which has been consummated following the effective date of this section without such notice having been provided, or any acquisition transaction of which such notice was deceptive or materially inaccurate, shall be voidable through appropriate judicial proceedings instituted by the director of charitable trusts.

VI. (a) Nothing in this section shall derogate from authority of the attorney general, or the rights of others, provided by common law or other statute.

(b) This section shall not supplant or restrict the general powers of the probate courts with respect to charitable trusts pursuant to RSA 498, RSA 547:3 through 547:3-h, RSA 564-B:2-203, article 4 of RSA 564-B, or at common law. Nor do the standards set forth in paragraph II of this section supplant or restrict the standards that may lawfully be applied in connection with the doctrines of cy pres, deviation, and termination as applicable by the probate courts of this state in such proceedings.

(c) Notwithstanding the provisions of this section, the commissioner of insurance retains full jurisdiction to regulate any charitable trust operating as a health insurer or health maintenance organization, including through the application of RSA 401-B. If the insurance commissioner determines that an acquisition or acquisition transaction otherwise subject to the provisions of this section is necessary to avoid the future impairment or insolvency of either or both of the merging health insurers or health maintenance organizations, the commissioner may waive any of the provisions of this section.

Source. 1997, 280:1, eff. Sept. 1, 1997. 2004, 130:2, eff. Oct. 1, 2004.

http://www.unionleader.com/missedinprint/columns.aspx/wymip?channel=cabc3b3172124[illegible]a2201e303552e74e

Priests' CMC protest goes to Vatican

Wednesday, Jan. 20, 2010 By MARK HAYWARD New Hampshire Union Leader

MANCHESTER – The current and former pastors of Ste. Marie Church are part of a small group of Manchester Catholics who have hired a canon lawyer to approach the Vatican and challenge the proposed affiliation of Catholic Medical Center and Dartmouth-Hitchcock Health.

The Revs. Maurice Larochelle and Marc Montminy, the former pastor, are named in a Dec. 8 letter that Ohio canon lawyer Philip C.L. Gray sent to the New Hampshire director of charitable trusts, which is reviewing the proposed affiliation.
New Hampshire priests rarely take a public stand that even hints of disagreement with their bishop.

"I am simply acting as a concerned pastor supporting private Catholic citizens and parishioners of Ste. Marie who are seeking a review from Rome concerning the matter," Larochelle wrote in an e-mail to the New Hampshire Union Leader.
Ste. Marie Church is located across Notre Dame Avenue from Catholic Medical Center. Both institutions are fixtures on the heavily Catholic West Side.

Two voice-mail messages left for Montminy last week at his current assignment, St. Michael Church in Exeter, were not returned.

In July, Manchester Bishop John McCormack gave the proposed affiliation a conditional approval to allow the regulatory process to move forward. At the time, McCormack said he wouldn't make a final decision until he has examined the proposal in detail and worked out any concerns. He still has not announced a decision.

CMC and Dartmouth-Hitchcock are seeking approvals for a self-described affiliation. CMC would be integrated into the newly established Dartmouth-Hitchcock Health, and CMC would lease Dartmouth-Hitchcock's Manchester clinic.

The two organizations say the affiliation is a way to improve the quality of medical care in the region and continue the collaboration they already have started.
Critics warn that either Catholic identity or secular health-care practices -- or both -- would suffer. Supporters say the larger organization would be able to control prices.
The organizations have held three public hearings on the proposal. Late last year, they were fine-tuning the proposal in response to the hearings. The Federal Trade Commission has the proposal under review, but CMC and Dartmouth-Hitchcock have yet to formally submit their affiliation plan to the state Office of the Attorney General.

Details of letter
In his letter, Gray faulted McCormack for not releasing three ethical reviews the Diocese has commissioned regarding the affiliation. Gray said the affiliation would give Dartmouth-Hitchcock powers over the hospital that church law, otherwise known as canon law, reserves for the bishop. He also said canon law requires Vatican approval of

the deal. Finally, he said canon law requires the hospital president and board members be Roman Catholic.

"A lack of transparency and what appears to be a gravely illicit appointment of a non-Catholic as president and CEO of Catholic Medical Center have contributed to substantial misapplication of Canon Law relative to this proposal," Gray wrote.

Alyson Pitman Giles, who has been president of CMC since 2000, has said she was baptized a Congregational Protestant. During a forum last November, she dismissed Gray's assertion that she must be Catholic. She said other canon lawyers disagree with Gray.

According to his Web site, Gray's office is in Hopedale, Ohio, a village of about 900 people. Gray has more than 10 years' experience as a canon lawyer, the Web site says. His services include annulment, marriage, criminal law, liturgy, rights of clergy and laity, and Catholic education. He also accepts speaking engagements. He charges $50 an hour for case evaluation; representation and consultation cost $125 an hour.

McCormack's positions

McCormack spokesman Kevin Donovan said McCormack recognizes there are differing opinions on the affiliation proposal and applauds the job the institutions have done to educate the community on the issue. But, he stressed, McCormack has not made a final decision on the affiliation.

In November, McCormack told priests that any deal must not sacrifice Catholic health-care practices at the West Side hospital, and said CMC must maintain local decision-making responsibility for itself and its affiliates.

Donovan said McCormack also has urged priests to speak to him about the matter. "They have done so and continue to do so," Donovan said.
In his letter, Gray spelled out the steps he and his clients took to address their concerns. Some of his clients twice sought a face-to-face meeting with McCormack, but the bishop declined, Gray said.

McCormack did have Gray speak with CMC's civil lawyer, Ovide Lamontagne, a candidate for the Republican nomination to the U.S. Senate.
"Mr. Lamontagne was quite clear in articulating the Bishop's continued refusal to change his approach (of) refusing transparency and collaboration," Gray wrote. "He rested his argumentation principally on the basis that we must trust the Bishop implicitly."
Lamontagne yesterday disagreed with Gray's characterization of their 1 1/2- to two-hour conversation. He said Gray called for an ecclesiastical forum as part of the process. Lamontagne said he tried to determine from Gray what was required under canon law and whether McCormack had failed to meet some unknown requirement. "It was never clear in my mind whether the forum was a requirement or (Gray's) recommendation on how the bishop should proceed," Lamontagne said.

After McCormack refused to meet, Gray wrote four Vatican offices -- the Congregation for the Doctrine of the Faith, the Pontifical Council for the Laity, the Congregation for the Clergy and the Vatican Secretary of State -- on behalf of his 13 clients. He sought

"immediate intervention" under canon law.

The 13 Catholics who have named Gray as their "procurator and advocate" are: Montminy; Larochelle; former state Rep. Barbara Hagan; Hugo and Karen Poza; Shannon McGinley; Scott and Mary Mosher; John Geary; Tim and Lynn Mark; and Jeffrey and Ana Boucher.

Larochelle and Montminy have avoided public comment on the proposed affiliation, and neither attended hearings the hospitals held in Manchester.

Garry Rayno of the New Hampshire Union Leader staff contributed to this report.

The Wanderer

New Hampshire Catholics Fear Losing Their Hospital

December 17, 2009

By PAUL LIKOUDIS

MANCHESTER, N. H. — Prolife Catholics here are opposing the " affiliation" of their Catholic Medical Center with dominant Dartmouth- Hitchcock Health, asserting it is not an " affiliation" but an outright " acquisition" that will leave them without a Catholic hospital and assisted living homes in the region that follow Catholic health care ethics.

Although Bishop John McCormack, who is on the board of CMC, insists the affiliation agreement worked out between CMC and Dartmouth- Hitchcock will allow CMC to continue to adhere to the U. S. bishops' Ethical and Religious Directives for Catholic Health Care Services, opponents say CMC, which is a "charitable trust" formed in 1974 from two existing hospitals founded by religious orders and not owned or controlled by the Diocese of Manchester, will lose its identity and independence to a corporation that profits from the full spectrum of "culture of death" medical practices.

A leading opponent of CMC's acquisition by Dartmouth- Hitchcock is a Catholic mother of seven children, Barbara Hagan. A former two- term representative to the New Hampshire House of Representatives and former president of New Hampshire Right to Life, Hagan submitted a 600-page dossier to New Hampshire's attorney general outlining the agreement worked out by CMC and Dartmouth- Hitchcock, explaining "what the deal is about and why it cannot happen."

" The CEO of CMC, Alyson Pitman Giles, and those advocating this transaction are only using the word 'affiliation' because it doesn't have the sting of 'merger' or 'takeover'," she told The Wanderer.

"This deal has been in the works for the past five- and- a- half years," she said, " and the public was never informed. Dartmouth-Hitchcock is a very aggressive teaching hospital that wants to

be the dominant health care provider in northern New England; it has no religious identity whatsoever and does not recognize any religious norms to health care. What it wants is ' market share.' It wants to control health care in New England and it is already moving into New York." Mrs. Hagan acknowledged that Bishop McCormack does not have the authority to change CMC's legal status, but as a member of the board of directors he can approve an " affiliation."

But, she explained, the CMC-Dartmouth- Hitchcock agreement, forged in February 2009, is an acquisition that would end CMC's charitable mission as a Catholic institution.

Catholic Medical Center, she pointed out, has $ 99 million in reserves.

" CMC's bylaws," she said, " state the bishop gets the spoils if the ' charity' is sold. I don't know how much it will be, but it will be whatever is left over after the lawyers get their cut."

" What we want to do," she said, " is stop this."

To that end, Manchester- area Catholics are offering up their campaign to prevent the acquisition to Mother Teresa of Calcutta, and hoping for a miracle.

On November 13, Bishop Mc-Cormack sent a letter to his priests claiming he had not made a final decision on the agreement.

He explained: " I have given conditional approval for (Catholic Medical Center Healthcare Services) to negotiate a preliminary affiliation agreement for public review, and continue exploring an affiliation with (Dartmouth-Hitchcock Health). So far, my own review of the proposal has included the opinions of community leaders, the assessments of three Catholic ethicists, and testimony submitted at community forums. I have also discussed the proposal with the Presbyteral Council. . . .

" One thing I have not done is to make a final decision — one way or the other — about the proposed affiliation. The reason for this is simple: As the documents pass through many reviews by the public, by state and federal regulators, and by me and those who advise me, I expect changes in the proposed agreement to be recommended.

. . . " The draft affiliation documents I have reviewed do not involve a merger. Instead, they describe an affiliation that permits a relationship between a Catholic hospital and a group practice of physicians, including specialists. This type of relationship would mean patients at CMC would have access to the kinds of specialist care they may otherwise need to drive to Boston to receive. . . .

" Knowing that CMC would have greater access to specialist care, resulting in better and fuller care for more people in the greater Manchester area, is one of the main reasons I have allowed

CMC to pursue this affiliation process. . . .

" The Catholic identity of Catholic Medical Center will never change. CMC will not compromise the Catholic ethical standards that distinguish it from those of a secular hospital. This means that CMC must maintain local decision- making for itself and its affiliates. Likewise, the Bishop of Manchester must preserve his authority to approve proposed changes in the structure and leadership of CMC, and ensure its adherence to the Ethical and Religious Directives for Catholic Health Care Services. I will only approve an affiliation that validates all of these points."

But opponents of the " affiliation" counter that McCormack is being less than candid, citing his refusal to make public the three " ethical reviews" he sought from Catholic specialists.

A November 24 editorial in Manchester's Union Leader sharply criticized the bishop on this matter under the headline, " Release the Reviews: More McCormack Secrecy."

" By now, Bishop John McCormack ought to have learned his lesson about keeping secrets," the editorial began.

"New Hampshire's Roman Catholic bishop, once instrumental in transferring pedophile priests from parish to parish while keeping their offenses under wraps, is now telling parishioners that they cannot read any of the diocese's multiple ethics reviews of the proposed deal between Catholic Medical Center and Dartmouth-Hitchcock.

" Many local Catholics worry that the deal, which would combine CMC and local Dartmouth-Hitchcock operations, would essentially end CMC's days as a Catholic institution.

" The diocese and CMC maintain that the arrangement would keep CMC operating under the Church's ethical and religious directives. To verify that, McCormack ordered ethical reviews of the deal. The Church has completed three reviews, with a fourth on the way. The bishop refuses to let the public see any of them.

" His spokesman, Kevin Donovan, said the reviews were to be seen by the bishop only. A reporter told him that they were already read by a CMC attorney. Well, yes, they were to be read by the bishop, CMC officials, and attorneys, Donovan backtracked.

"Hmmm.

" Donovan likened the reviews to ones done by a business. He said those are typically available only to the top executive. But the Church is a Church, not a business. Even using that analogy, such reports often are seen by shareholders. And what are parishioners but the primary stakeholders in the Church?

" Keeping these reviews secret is more than monumentally bad public relations. It is harmful to the Church and CMC. McCormack's insistence on keeping parishioners in the dark about an is-

sue of profound ethical concern reminds everyone of his past failure to keep faith with his flock. Why raise suspicions again? He should release the reports, whatever their content, in the interest of honest dealing. If he doesn't, this deal will be tainted forever by the secrecy."

Other Opponents

On November 9, Modern Healthcare Magazine reported on the growing controversy involving the agreement, which is opposed by both Planned Parenthood and the ACLU, who object on the grounds that both entities would have to " sacrifice" their respective missions. Reporter Shawn Rhea quoted Planned Parenthood's Kary Jencks asserting her concern that " the academic goals [of Dartmouth University's Dartmouth- Hitchcock] and Catholic directives aren't compatible."

Critics of the agreement, Rhea reported, " say the arrangement essentially asks doctors and the two institutions to toe an unclear line created to honor the Roman Catholic Church's ethical and religious directives while also allowing Dartmouth- Hitchcock physicians who practice at the Catholic provider's facilities to continue providing those services.

" Under the professional services agreement, Catholic Medical Center would only lease Dartmouth- Hitchcock physician services that are in keeping with the Church's ethical and religious directives. That means abortions, birth control services, and certain advance- care directives would not be provided as Catholic Medical Center services. But the doctors would still be free to offer the services under the Dartmouth-Hitchcock banner."

Barbara Hagan disagrees, telling The Wanderer that under the terms of the agreement, Dartmouth- Hitchcock will not only consolidate control of CMC's finances, but will also determine what services are provided and where, "and D-H has already made it clear it is not going to change any of its services, and that means the full scale of ' women's reproductive health care services' and ' end- of- life decisions' will be provided by D- H, regardless of Catholic ethical directives."

ModernHealthcare.com

Modern Healthcare Magazine

Can it work?

Catholic, secular facilities plan affiliation in N.H.

By Shawn Rhea

November 9, 2009

A community battle over religion-based directives on issues such as reproductive rights and end-of-life care could determine whether two New Hampshire providers are allowed to proceed with a controversial affiliation agreement.

In February, Catholic Medical Center in Manchester, N.H., entered into an affiliation agreement with Dartmouth-Hitchcock Health, a holding company affiliated with 369-bed Dartmouth-Hitchcock Medical Center, Lebanon, N.H. Through the agreement, physicians with the Dartmouth-Hitchcock Clinic would provide difficult-to-access specialty and surgical care to patients at 223-bed Catholic Medical Center and its clinical facilities. Officials at both systems say the arrangement would bring much-needed medical services to the Manchester community.

"It will bring pediatrics and more primary care and hard-to-find subspecialties that we've had trouble recruiting," said Catholic Medical Center President and CEO Alyson Pitman Giles.

When the affiliation will take effect is uncertain, with the last in a series of public forums yet to take place. New Hampshire's attorney general's office is beginning to review the proposed transaction as is the Diocese of Manchester.

Not all residents are supporting the proposed affiliation. Opponents of the agreement argue that the relationship would compromise the missions of both providers.

"This isn't a review of whether either institution provides good care; it's a concern that the academic goals and Catholic directives aren't compatible," said Kary Jencks, spokeswoman for the New Hampshire division of Planned Parenthood of Northern New England, one of the groups critical of the proposal.

According to a draft of the proposed affiliation, the agreement would set up two holding companies, the chief of which would be controlled by Dartmouth-Hitchcock. That board would review and approve all decisions regarding joint operations under the affiliation agreement, said Thomas Colacchio, president of the Dartmouth-Hitchcock Clinic, whose physician services will be leased under the deal. "CMC and Dartmouth-Hitchcock will maintain their boards and financials," Colacchio said. "What the system board has responsibility for is accepting the recommendations" that the provider members make in terms of finances and services related to the affiliation.

But critics say the arrangement essentially asks doctors and the two institutions to toe an unclear line created to honor the Roman Catholic Church's ethical and religious directives while also allowing Dartmouth-Hitchcock physicians who practice at the Catholic provider's facilities to

continue providing those services.

Under the professional services agreement, Catholic Medical Center would only lease Dartmouth-Hitchcock physician services that are in keeping with the church's ethical and religious directives. That means abortions, birth-control services and certain advance-care directives would not be provided as Catholic Medical Center services. But the doctors would still be free to offer the services under the Dartmouth-Hitchcock banner.

"The physicians there do not perform abortions and don't want to," Giles said in reference to Dartmouth Clinic. "Now they do provide tubal sterilization, and that is about 2% of what they do. So, we won't commingle any of the financials, management or governance of those services." Giles also noted that the agreement would give the Diocese of Manchester substantial power to block certain activity at Catholic Medical Center or dissolve the partnership if the two providers reach an ethical standoff.

Currently, the two providers are working on a system that would call for Dartmouth-Hitchcock doctors to bill payers under Dartmouth-Hitchcock's provider number for services that fall outside of the Catholic provider's ethical and religious directive. Giles said that the two organizations have yet to work out how they would bill separately, for example, when a patient comes in for a single office visit that includes both Church-approved and -unapproved healthcare services. "The church does not want patients to believe that they now approve of birth control and sterilization," Giles said. "I can't tell you exactly how it will work for something like a vasectomy, but we will work that out."

Such uncertainty about how the affiliation will allow both providers to continue operating in keeping with their own sometimes competing ethical directives has brought together an unusual alliance of individuals and organizations in opposition of the proposed affiliation. In addition to Planned Parenthood, the New Hampshire Right to Life committee is also challenging the proposed affiliation.

"I think it's not a viable agreement," said Barbara Hagan, former head of New Hampshire Right to Life. "I think there are other places in the U.S. where Catholic bishops have refused to buy into" affiliations with secular providers.

To be certain, other providers are struggling with similar quandaries. In October, Denver-based Exempla Healthcare's secular co-sponsor, Community First Foundation, agreed to turn over complete operational control of the provider, which owns two hospitals and manages a third, to its other co-sponsor, the Roman Catholic Sisters of Charity of Leavenworth Health System (Oct. 19, p. 16). The agreement followed a dispute over services provided by two secular Exempla hospitals.

This is also not the first time that Catholic Medical Center has waged such a fight. A 1994 merger with Elliot Hospital, Manchester, was dissolved in 2001 in part because of the organizations' different ethical views.

Giles said that the current proposed affiliation is not a repeat of the previous merger, and says she hopes opponents will see value in the two organizations coming together to provide a broader range of healthcare services. "What they don't realize is healthcare is about to go through a revolution, and we need to partner with academic medical centers and other providers to deliver world-class services."

Union Leader
Bishop: CMC ethics review to stay private

Mark Hayward

New Hampshire Union Leader
Nov. 23. 2009

MANCHESTER – Bishop John McCormack will not release ethical reviews of the proposed affiliation between Catholic Medical Center and Dartmouth-Hitchcock, even though a lawyer hired by the Catholic hospital recommended last week that they see the light of day.

During a forum a week ago about the proposed merger, former assistant attorney general Walter Maroney urged CMC to be transparent about the proposed affiliation. He told the hospital to "talk (about) and tell everything you've got."

He specifically mentioned three ethical reviews into the proposed partnership and noted he had access to them.

Last week, McCormack spokesman Kevin Donovan initially said the reviews were for the bishop's eyes only. But when told that Maroney had seen them, Donovan said the bishop had promised the authors of the ethical reviews that they would be seen only by himself, CMC officials and CMC lawyers.

"The bishop's reviews, he asked them to be done with the intention they remain confidential for his own study," Donovan said.

They are internal documents, said Donovan, who compared them to a consultant's report that any private business would undertake. In such a case, the consultant's work would not be made public, he said.

McCormack will need to refer to the reviews when any changes are proposed to the affiliation plan, Donovan said.

A fourth review

Catholic hospitals in the United States are required to follow the Ethical and Religious Directives for Catholic Health Care Services, which are written by the nation's bishops. They provide detailed instructions on issues such as abortion, birth control, condom use, end-of-life matters and partnerships with health care organizations that are not Catholic.

They are in their fourth edition, and bishops amended them recently to clarify language dealing with providing food and water to patients in a chronically vegetative state.

Donovan would not characterize the three ethical reviews. But he stressed that McCormack this past summer granted preliminary approval to the affiliation. At the time, he had read or seen nothing that would prompt him to reject the proposal, Donovan said.

CMC hired Maroney to review the current proposal in light of the Optima Health merger of the 1990s, which involved CMC and its crosstown rival, Elliot Hospital. Maroney worked for the Attorney General's consumer protection division at the time and participated in the review of the merger, which eventually collapsed.

Maroney said the three ethical reports examine how the proposed affiliation complies with the Ethical and Religious Directives. He would not characterize them or say whether they agree with one another or not.

Meanwhile, CMC is in the process of hiring an ethicist to undertake a fourth ethical review, which will be

released to the public, said hospital spokesman Gail Winslow Pine. She said the hospital does not want to hire one of the three who have already studied the affiliation for the bishop.

She did not know when the review will be completed, but said she expects it will be available before the boards of the two organizations take a final vote on the affiliation.

Catholic teachings

CMC has said Catholic teachings will continue to be followed in the hospital, and initiatives have been taken to instruct the medical staff and credentialed physicians about the directives.

Dartmouth-Hitchcock, which allows abortion at its flagship hospital in Lebanon, has pledged it will not permit abortions to take place at its Manchester clinic. Although CMC will have control over most of the Dartmouth-Hitchcock clinic, it will use billing codes to separate from its control and finances impermissible practices such as sterilizations.

In Rhode Island, Catholic church officials recently approved the creation of a new holding company, CharterCARE Health Partners, to administer St. Joseph Health Services and a secular hospital, Roger Williams Medical Center.

As part of the process, a bioethicist reviewed the proposal. A one-page memorandum that he delivered to Providence Bishop Thomas Tobin was included in the application that went to the Rhode Island attorney general. It is available to the public through the state Web site.

Roger Williams does not perform abortions, and it has agreed to never do so, said Msgr. Paul D. Theroux, the vice chairman of the St. Joseph board. Nor will the hospital participate in embryo destruction, embryonic stem cell research or therapy, or euthanasia.

Roger Williams does perform sterilizations, but St. Joseph cannot participate or profit from such procedures, he said.

Release the reviews: More McCormack secrecy

Nov. 24, 2009, Union-Leader

By now, Bishop John McCormack ought to have learned his lesson about keeping secrets.

New Hampshire's Roman Catholic bishop, once instrumental in transferring pedophile priests from parish to parish while keeping their offenses under wraps, is now telling parishioners that they cannot read any of the diocese's multiple ethics reviews of the proposed deal between Catholic Medical Center and Dartmouth-Hitchcock.

Many local Catholics worry that the deal, which would combine CMC and local Dartmouth-Hitchcock operations, would essentially end CMC's days as a Catholic institution.

EDITORIAL

The diocese and CMC maintain that the arrangement would keep CMC operating under the church's ethical and religious directives. To verify that, McCormack ordered ethical reviews of the deal. The church has completed three reviews, with a fourth on the way. The bishop refuses to let the public see any of them.

His spokesman, Kevin Donovan, said the reviews were to be seen by the bishop only. A reporter told him that they were already read by a CMC attorney. Well, yes, they were to be read by the bishop, CMC officials and attorneys, Donovan backtracked.

Hmmm.

Donovan likened the reviews to ones done by a business. He said those are typically available only to the top executive. But the church is a church, not a business. Even using that analogy, such reports often are seen by shareholders. And what are parishioners but the primary stakeholders in the church?

Keeping these reviews secret is more than monumentally bad public relations. It is harmful to the church and CMC. McCormack's insistence on keeping parishioners in the dark about an issue of profound ethical concern reminds everyone of his past failure to keep faith with his flock. Why raise suspicions again? He should release the reports, whatever their content, in the interest of honest dealing. If he doesn't, this deal will be tainted forever by the secrecy.

Article published on September 21, 2009

Letter

Stop hospital merger

Don Welch, Manchester

For the Monitor

September 21, 2009

Dr. Thomas Colacchio, president of Dartmouth Hitchcock Health, raises more questions than he answers in defending the controversial proposed merger ("Dartmouth, CMC will be stronger together," Monitor Forum, Sept. 14).

Most important, this is a merger, not an affiliation, since the state and federal agencies reviewing the deal are conducting their analyses under merger regulations. Ultimate control of both hospitals would be under Colacchio, as the head of Dartmouth Hitchcock Health.

The ethical conflicts between a Catholic hospital and a secular academic medical center cannot be resolved. That's why the Optima merger collapsed, and there is no reason to think this merger will be any different.

The underlying problem is this: If Dartmouth Hitchcock and Catholic Medical Center can't be honest about the fact that this is a merger, they lose credibility in describing other aspects of the deal, such as its effect on health care cost, services and the mission of the two very different hospitals.

The attorney general and the bishop should stop this merger before it goes any further.

DON WELCH

Manchester

This article is: 56 days old.

wbur.org

A Controversial Hospital Deal Unfolds in NH

Thursday, October 15, 2009

Former New Hampshire State Representative Don Welch, Democrat of Manchester, says a pending hospital acquisition will further limit patient choice, drive up costs, and enrich a local academic hospital. (He also says it's bad for Catholics, like himself):

As the fight for affordable, accessible health care rages in Washington, it appears that we're losing that war one business deal at a time in our own backyard. The latest battlefront is in the Granite State. New Hampshire's Dartmouth-Hitchcock Health has filed papers to acquire Catholic Medical Center in Manchester. Their public relations strategy of calling the takeover an "affiliation" belies the institution's own federal filings, and may prompt some to dismiss the importance and ramifications of the deal.

But, why would they find it necessary to emphasize that this is not a merger or an acquisition when their own legal filings indicate otherwise? The reason is two-fold. First of all, by calling it a mere affiliation, they hope to appease Catholics. Many of the faithful in Manchester and Boston, myself included, are outraged that a Catholic institution is about to fall prostrate to a secular academic hospital—the first ever such takeover in the United States.

Secondly, and perhaps more importantly, they do not want to call attention to the fact that by acquiring Catholic Medical Center, costs for all New Hampshire health care consumers will inevitably rise—just as they did in Boston in the wake of the Partners merger. Partners has not only driven up costs for patients of Mass General Hospital and Brigham and Women's, but also for patients of all nearby hospitals forced to compete against a dominant health care system (Partners) that pressured insurers (especially Blue Cross) to increase their own reimbursements. The Massachusetts Attorney General is investigating that deal and its continuing impact on premiums. The ***Boston Globe*** has quoted studies that attributed the increase in health care costs in Boston to that merger, and the Robert Wood Johnson Foundation also studied the cause-and-effect relationship between hospital mergers and increased costs.

There are several ways Dartmouth-Hitchcock Health will profit from the acquisition. First, DHH can use CMC as another teaching hospital for residents and charge more for inpatient care. Those higher rates are available for being an academic medical center. Also, there is technical fee billing, and provider based billing – internal procedures that people won't see until their premiums rise. This is aside from striking higher reimbursement deals with insurers. DHH will make millions more simply from those billing methods.

If DHH continues its current growth trajectory, it's hard to imagine that the cost of health care in New Hampshire will do anything other than increase. In Boston, Partners made tens of millions out of the merger, and continues to do so in its aftermath. Dartmouth seems to be trying to follow that same path to riches at the cost of affordable health care for New Hampshire residents. If history is to be our guide, New Hampshire health care consumers are about to take it on the chin. While it's important to pay attention to what's going on with health care in our nation's capital, let's not forget what's happening closer to home.

As a former State Representative in 1997, representing Manchester, N.H., I took the lead position in petitioning the N.H. Attorney General to de-merge Catholic Medical Center and Elliott Hospital under the umbrella of Optima Health. This was a successful de-merger. I once again have prepared a petition to STOP the take over of Catholic Medical Center by Dartmouth-Hitchcock Health and will present it to the N.H. Attorney General in the next 2 weeks.

North of the border, we're hoping the AG squashes this deal before we end up with a huge hospital monopoly.

(Welch, who calls himself a community activist, says he has no financial stake in the deal, nor is he a member of New Hampshire Right to Life, which is also opposing the proposal.)

STATEMENT TO NEW HAMPSHIRE LEGISLATURE IN SUPPORT OF RESOLUTION FOR PROBATE HEARING DH ACQUISITION OF CMC

In a 13 page letter to the Director of Charitable Trusts dated 8 December 2009, my appointed canon lawyer provided a detailed explanation of concerns over this proposed affiliation/acquisition of CMC by DH. I encourage you all to review that letter and its contents as you consider this resolution before you. I make one point at this time.

I am a donor and patron of Catholic Medical Center. I am deeply concerned that pro-choice physicians and abortionists from Dartmouth Hitchcock have been allowed privileges at CMC even before the proposed acquisition/affiliation has taken place. It's as though this process of public hearing, review, and approval is being ignored.

The mission of a charitable trust must be carefully protected in law. Because a charitable trust is a trust relationship between donors and patrons and those who conduct business on behalf of the institution, the mission that motivates donors and patrons to build that trust relationship must be carefully preserved.

Catholic Medical Center is a Catholic institution, incorporated in canon law, and the Catholic Church has given it an official charter to pursue a mission on behalf of the Catholic Church. That mission constitutes the identity of CMC as a charitable trust under New Hampshire law.

There are aspects of this proposal that only the Vatican can approve. And, there are many aspects the bishop can approve but are not found in the proposal documents. I support a probate hearing on this proposal, and I support the intervention of the Courts to cease the acts of affiliation taking place before the public approval process is concluded.

Testimony of Richard Girard, 218 Reed Street, Manchester 03102

Members of the committee,

Until it stopped publishing, I wrote a weekly column for the Manchester Express for more than two years. For your information, I've attached every article that I've written regarding the acquisition of CMC by Dartmouth Hitchcock Health.

About this topic, I have written considerably more than any other topic. The primary reason is that the marketing effort surrounding this acquisition bears little if any semblance to the reality found in its documents.

Many questions remain unanswered. More importantly, there appear to be significant conflicts of interest at play, which are brought to light in my column. Unfortunately, the paper's decision to discontinue publication has prevented the publication of such further information and, in submitting this letter and these articles, I request that the Attorney General be requested to investigate whether or not members of CMC's various boards are acting in the interest of the hospital or of their personal or professional well being.

The latest questions arose when outgoing CMCHS chairman Jeff Eisenberg announced he was buying the Vitale and Ryze agency in Manchester, an agency that has done substantial, and award winning television and radio advertising for Dartmouth Hitchcock. One has to wonder just how those negotiations started, how long they took, and whether or not they played a role in Mr. Eisenberg's advocacy for the acquisition of his hospital by Dartmouth.

Thank you for your attention to this matter. I will be available to either the committee or any of its members to discuss the considerable amount of research and writing I've done on this topic. I could easily write another dozen articles about the various points, but it should go without saying that the Attorney General should be asked to take a thorough look, regardless of the amount of time required to examine it.

It should also go without saying that the Probate Court should review it to ensure as many objective reviews as possible.

Their ongoing slight of hand in presenting this acquisition to the public must endure the scrutiny of those whose charge is to protect such a public charitable trust. Your approval of this matter only reinforces the Attorney General's abilities in this important matter.

Richard H. Girard

Richard Girard Testimony

Mistrust on ethics will doom CMC's new affiliation

By RICH GIRARD, Express Columnist

Catholic Medical Center and Dartmouth Hitchcock want to affiliate. Put this one in the category of "things that make you go, hmmm."

The justification for the proposed merger centers on the ever-changing economics of health care. The multifarious organization of the new "affiliated entity" is driven by federal and state laws and complicated by the need to maintain CMC as a Catholic institution.

Having sat through meetings hosted by CMC and met with or otherwise discussed the situation with various of its representatives, both parties have work to do to address the core concerns surrounding the protection and advancement of Catholic health care.

CMC's handling of these issues has been particularly troubling.

Of key concern is how CMC will retain its identity as a Catholic hospital while being subsumed by a non-Catholic organization and how it will govern the entities it leases as part of this deal. There are things called "ERDs," which control Catholic health care. These Ethical and Religious Directives, the "thou shalts and shalt nots" published by the church, make Catholic health care what it is.

At a meeting in May, three very important questions were asked: How does the hospital currently inform its non-Catholic affiliates of the ERDs? How does it ensure they are being followed? And, what powers does the bishop of the Diocese of Manchester retain to guarantee that hospital will retain its Catholic identity?

Richard Girard

The June meeting at which this was supposed to be presented was cancelled on short notice. CMC spokesman Gail Winslow-Pine, in a hastily arranged e-mail, said there was "no new information to report" about the proposed affiliation, so there was no reason to meet.

Why they didn't believe presenting this in and of itself was important undermined confidence in their representations. It was vitally important given that questions about how the affiliation would be governed were routinely met with answers that can be summarized like this: We don't have the details finalized yet, but trust us, it'll be fine.

Shades of Optima Health darkened the room.

While the bishop retains much of his current authority over the hospital, that authority is trumped by the newly formed governing body that will sit atop the organization. The bishop, who now approves all board appointees, will only approve 60 percent, but DHH can veto any bishop approved appointee, in addition to being able to appoint the remaining 40 percent, which can be vetoed by the board itself.

CMC will also have to play "mother may I" on budgeting and strategic planning items, as the DHH board will have approval authority in these and other important matters. While it appears the bishop can block certain things, it is also clear that CMC, as part of a larger network, must gain approval for almost everything it does.

If the two disagree, it's off to mediation or arbitration to see who gets to do what they want.

It is unclear how this apparent surrender of autonomy preserves the hospital's ability to maintain its Catholic identity.

As evidence that they've done the necessary work to preserve its Catholicity, CMC leaders point to an analysis performed by Dr. Peter Cataldo, the hospital's paid ethical consultant. Cataldo, who also works for the diocese, has provided ongoing input as the details have been finalized. Based on his input, the bishop gave the necessary preliminary approval to finalize the project.

Had the hospital agreed to my request to release Cataldo's report in April, I'd find the duality of Cataldo's role less bothersome. They denied the request because of concerns about how it would be used by critics and because the bishop was going to have two additional "independent" analyses done.

As it stands now, we not only don't have Cataldo's report, we don't know who the other two ethicists are and, therefore, cannot ascertain whatever biases they may bring to this process. This information must be released.

"When you lie with dogs, you get fleas."

This thought won't be shaken until and unless the answers to these questions are given in an unequivocally clear and concise manner. That the preliminary agreement has been approved absent this information and these core understandings breeds suspicion. Without correction, this "trust us, it'll be fine" approach will deservedly doom this project.

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001, is a long-time community activist, and appears Tuesdays at 7:35 a.m. on WGIR-AM 610's Charlie Sherman show.

In Manchester, not everyone can agree on change

By JOE BRIGGS, Express Columnist

By the time you read this, the filing period for those seeking an elected city position will have expired, and the race will begin in earnest to get your attention, find your sweet spot, say what you want to hear, offer to give you a ride to the polls, and beg for your vote. Will there be any change? Should there be any change?

State senator and Ward 2 Alderman Ted Gatsas has created a void by seeking the mayor's office, which has four people jockeying for his position. His well-funded campaign has mailed out thousands of surveys in attempt to determine the pulse and values of Manchester on issues ranging from education to parks to fire safety. Unlike most political surveys, its questions don't lead to a predetermined answer, and if responded to by a broad enough cross section of taxpayers, could lead to a decisive determination of the age-old Manchester question of how many favor safety and low taxes over education and growth. He promises to make the results of that survey public before the November election.

But what changes, if any would you like to see in the Queen City in the coming years? It probably depends upon your situation. If you are a parent, you are likely tired of the beating that the school system seems to get every year, and worry about its rankings relative to neighboring towns. You want your kid to measure up against the competition when it comes to college admittance, especially if you are counting on scholarships to ease the cost.

Joe Briggs

If you are a realtor, you know that residential property value is directly proportional to the reputation of the neighborhood schools, so you don't want any public debate on their demise due to property tax or ESL overloading.

On the other hand, if you are retired or on a fixed income, you have had it with the endless whining from the teachers and parents that only seem to raise your taxes. After all, you had over 30 kids in class when you went to school. Why should kids today be so pampered?

If you are the superintendent of schools, you want to stay out of jail by not using federal stimulus dollars on teacher salaries just to bolster the political point that "Once again, after all the hullabaloo, the school found the money!"

The closer to the river you live, the more you are likely concerned about "safety"—fire and police. You want quick response to a 911 call, and you are likely to get it with 11 well-staffed fire stations and a $20 million budget. It pays to have a few firemen on the Board of Mayor and Alderman because that is one department that got an increase in this year of extreme fiscal austerity.

What if you are disabled or just don't own a car or too young or old to drive? If you have the time and live in the right spot, you could take the bus. But if you don't time to circle the city, then you might want to restore some of the MTA bus funding.

Will a little change-up at the aldermanic level send a signal to future leaders that we take the right of an individual or group to get an issue on the ballot by securing a minimum number of signatures seriously? (We all know how touchy our revolutionaries were about "Assent to Laws.")

What about those who want a few dog parks and a common-sense leash-law? Too touchy.

What about those who are tired of subsidizing downtown business with trash pickup while their South Willow street brethren have to pony up for dumpster service? Don't mess with Elm Street.

What about that pharmaceutical company looking to relocate or expand research to a transportation hub with an educated labor force, good schools, affordable electrical power, and a nearby research university? Keep looking.

But how about that minimum-wage assembler looking for industrial space with low taxes and an available pool of sub high-school level talent?

Now we're talking. Too bad for Manchester that this dinosaur is extinct.

The primary date is Tuesday, Sept. 15. Until then, each Wednesday night from 7 to 10 p.m., the 2 Joes Live Show will put all of those running and willing to talk and listen on MCAM-TV23 ready for your phone call or e-mail.

Joe Briggs is a candidate for Ward 2 school committee member.

CMC-Dartmouth affiliation would break a community promise

By DON WELCH, Guest Columnist

Anyone living in the greater Manchester area 10 years ago will surely remember the protracted debate brought about by the proposed merger between Elliot Hospital and Catholic Medical Center.

The proposal at that time called for the closing of Catholic Medical Center, with Elliot Hospital being left as the single provider of acute care for an estimated 350,000 people.

There was the creation of a holding company Optima Health, which would have included St. Joseph Hospital in Nashua and Wentworth Douglas Hospital in Dover. There was much debate as to how, or even if, this healthcare model would benefit the citizens of Manchester.

The Catholic and the "Right to Life" communities were up in arms, thinking this affiliation would contravene the ethical and religious directives of the church. The "Pro Choice" advocates voiced opposition and were concerned that it would limit access to services. Paramedical personnel raised issues about emergency care. Those concerned about quality of care worried about the absence of competition. Independent physicians also worried about how they would fare in this proposed compact, not to mention anxious employees at both institutions, who felt powerless that many now would be disenfranchised by this consolidation.

Four years of polarized debate ensued and there were many casualties, with millions of dollars wasted on this foolish experiment.

In the end, following a lopsided citywide referendum vote against this proposal, an investigation by the state Attorney General's office found that the management and respective boards of all parties concerned had executed this merger activity without consultation from the citizens they were charged to serve.

The state Attorney General's report would serve as an admonition to the hospital executives and board members alike that this reckless behavior of non-profit healthcare institutions should never be revisited.

As we all know, a period of de-merger activity took place and Elliot Hospital and Catholic Medical Center would once again be independent. Their respective missions remained intact, and both institutions experienced unprecedented growth over the next 10 years.

To most, the "urge to merge" in light of the painful past, would seem to be a counter-intuitive move, sure to alienate the people who fought so hard to save Catholic Medical Center.

Well, it's nice to know that there is always a little fruitcake left after Christmas. Because now comes Alyson Pitman Giles, CEO of Catholic Medical Center, proposing a merger with Dartmouth Hitchcock Medical Center. Once again a proposal comes forward between a Catholic healthcare institution with a secular organization.

The first hint of this affiliation came almost a year ago with Ms. Giles stating that the proposed affiliation would do little

Continued on next page.

Share your opinion

All we ask is to please keep letters to no more than 350 words. Guest columns (with your photo) can be up to 500 words, to give you room to develop a point further. E-mail letters to news@manchexpress.com.

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Honoring the sacrifices of labor

By GEORGE N. COPADIS, Commissioner, NH Department of Labor

"Labor was the first price, the original purchase-money that was paid for all things. It was not by gold or by silver, but by labor, that all wealth of the world was originally purchased." —Adam Smith

On this Labor Day 2009, it's important to recognize the contributions of working people throughout the U.S. and to hail the sacrifices of all those who've strived to create a positive business atmosphere throughout our nation. It is also equally important to recognize the strides made within our own state over the past year to safeguard the rights of New Hampshire workers.

My message last year at this time was the need for our state to enact its own state WARN Act so that we may be able to ensure that workers were protected from large companies closing doors without prior notice to State officials. I felt strongly about this legislation as prior notice of a plant closing is vitally important in providing re-employment services to workers displaced from plant closings and mass layoffs.


George R. Copadis

Today, I'm pleased to say that our state has taken a major step in protecting our workforce with the passage of the State WARN Act. I would like to extend my deepest thanks to Gov. Lynch for his leadership and unwavering support for the workers of this state, along with supporters in the Legislature as well as the AFL-CIO, Teamsters and the many businesses whose input helped to craft this legislation.

There was no better example of the need for a State WARN Act than last week's sudden closing of Precision Technologies in Pembroke, leaving 130 workers standing at the door without prior notification or paychecks. To ensure that this situation doesn't happen again, the Department of Labor has already begun outreach to the Business & Industry Association of New Hampshire and local Chambers of Commerce to ensure that the business community has all of the tools necessary to be in compliance with the new law. I thank the BIA and the Chambers for their proactive approach and partnership and know that together we will educate businesses so that they will be aware of their responsibilities to their employees.

In terms of other positive recent developments, the Department of Labor is currently in the process of finalizing a Web site that will allow residents to report tips when fraud related to employment is reported. The "Task Force for the Misclassification of New Hampshire Workers" has created the site to allow anonymous tips to be reported simultaneously to all four State regulatory agencies that comprise the Task Force—the Department of Labor, Employment Security, Department of Revenue and the Department of Insurance. Each of these agencies is committed to ensuring that New Hampshire workers are treated fairly.

In a speech at the 1980 Democratic Convention, the late Sen. Ted Kennedy said, ""For all those whose cares have been our concern, the work goes on, the cause endures, the hope still lives, and the dream shall never die." That is never so true than on Sept. 7, 2009 as our state and country celebrate the accomplishments of its greatest asset—its working men and women whose efforts have ensured our status as the greatest nation in the world.

The writer is a resident of Manchester.

Takeover of CMC being rammed through

By RICH GIRARD, Express Columnist

Tuesday, Sept. 15 is Primary Day. It's also the date of the first hearing on the proposed acquisition of Catholic Medical Center (CMC) by Dartmouth Hitchcock Health (DHH). Interested parties may attend this 7:30 to 9:30 p.m. forum at Manchester's senior center, located at the corner of Douglas and Main streets on the West Side.

When I first learned of the hearing, it was scheduled from 6 to 8 p.m. Concerned that many people, especially public officials, would not attend because it was Election Day, I emailed CMC spokesperson Gail Winslow-Pine on Aug. 25, asked for confirmation and suggested it be changed.

On Aug. 27, she replied: "With regard to the date of all three planned community forums, I did my best to work around multiple schedules and avoid times that would prohibit maximum involvement. The planned forum for September 15th will begin at 6PM and end at 8PM. It is not the only forum planned and we will host another one in October and November, however, I've not yet secured locations for these."

Since they haven't made the other dates public, I'm guessing they've chosen Columbus Day and Election Day at a later time in a smaller venue with less parking to "maximize involvement." Halloween and Thanksgiving might also be in the mix. I'm not sure whose schedules she's working around, but I doubt it's the voters', or people who have kids or have to get up in the morning, or elderly who may not be able to attend a late evening event.


Richard Girard

The date needs to be changed and the time needs to be reasonable. And, the other scheduled dates should be released.

My July 27 column raised serious questions regarding this proposal. What I didn't mention was that the only topic of discussion at the "community outreach" meetings was the affiliation between CMC and DH's Manchester facility. The broader plan to have DHH take CMC over was never discussed and unknown until it was made public on June 22.

CMC and DHH kept the true scope of their intentions secret until the last possible moment. Having dug through hundreds of pages of documents, it's clear to me why they occupied the attention of community representatives with a mere piece of the puzzle.

Here are some consequential facts.

A document entitled "Articles of Agreement of HIHS" (Hitchcock Integrated Health Services—now DHH) was filed with the Secretary of State on May 1. It is not posted on www.ahealthiertomorrow.org, the site being used to promote this acquisition. Maybe a document that clearly states that DHH will "serve as the controlling organization for the System and its member organizations," which includes CMC, contradicts their claim that CMC will remain autonomous.

In its filings with the state, CMC has cited RSA 7:19-b "Standards for Acquisition Transactions Involving Health Care Charitable Trusts and Review by Director of Charitable Trusts" as the governing legal authority. If this is merely an affiliation that will change little if anything at or about CMC, as claimed, why is the statute that governs changes in control of a "health care charitable trust," which is what CMC is, being invoked?

In the "Unanimous Consent Resolutions of the Board of Governors of CMC Healthcare System" this statement appears: "WHEREAS, in furtherance of the Corporation's *intent to implement the Affiliation in accordance with the letter of intent, an Affiliation Agreement by and between DHH and the Corporation which sets forth the proposed terms and conditions of the Affiliation is proposed for conditional approval.*" (Emphasis added.)

This is very interesting because the law requires pubic hearings be held in a "reasonable and timely" manner to allow the public's input "to inform the deliberations of the governing body of the health care charitable trust regarding the proposed transaction."

Is CMC's board *really* looking to be "informed" by the public's input if it has already unanimously decided what it will do and how it will do it *while* limiting the time and opportunity for that input?

The powers that be at CMC and DHH seem intent on ramming this thing through as quickly as possible. It won't be long before you know why and once again fight to save CMC from yet another predator with willing co-conspirators.

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001, is a long-time community activist, and appears Tuesdays at 7:35 a.m. on WGIR-AM 610's Charlie Sherman show.

Think about voting for the future

By RICHARD KOMI, Guest Columnist

Sometimes, when you have lost focus or direction, it helps to glance over a shoulder in order to see where you are coming from or where you have been. In my long-shot quest to become the mayor of Manchester I have learned a lot about the character and spirit of the people of our city. It is clear to me that, due especially to the bad economy, many people are afraid of the future. Many people are also waiting desperately for a leader, someone who can quell that fear and restore our confidence in ourselves and our faith in one another.

When I look over my own shoulder in order to take stock of the past, I can honestly say that had I not learned to welcome the future, I would never have left a refugee camp on the west coast of Africa. Regardless of the outcome, I also welcome the results of our primary election on Tuesday, Sept. 15. I sincerely hope that the people of our city will vote their hopes on Election Day, and not their fears. More than that, I fervently hope that we will choose LEADERS who will go forward to the general election in November. In my opinion, our city is in desperate need of leaders who will move beyond the set of stale debates that have restricted our prospects in the past.


Richard Komi

As a relative newcomer to politics I am greatly impressed by the caliber of the candidates-of all political persuasions-who are participating in the process. There are many smart, energetic, well-intentioned men and women running for mayor, alderman, school board and for other offices. I have met and talked politics and policies with many of these folks and feel duty bound to report that we are truly blessed to have such choices.

That said, our leaders in the immediate future need to start by stressing the many things we already have going for us as a city. We have a manageable size, a proud history, a great geographic location, a solid bond rating and a favorable tax climate (except for property taxes). We have a thriving airport, a fantastic network of roads and a beautiful river that runs right through the heart of the city. We have a population of relatively well educated, hard-working people whose work ethic is legendary.

Missing at this time are the following: a declining crime rate, a stable and world-class education system, employment opportunities and a plan to capitalize on the aforementioned attributes. I have previously written about my plans to address crime and education; improvements in these areas will serve also to engender the creation of new businesses and new and better jobs.

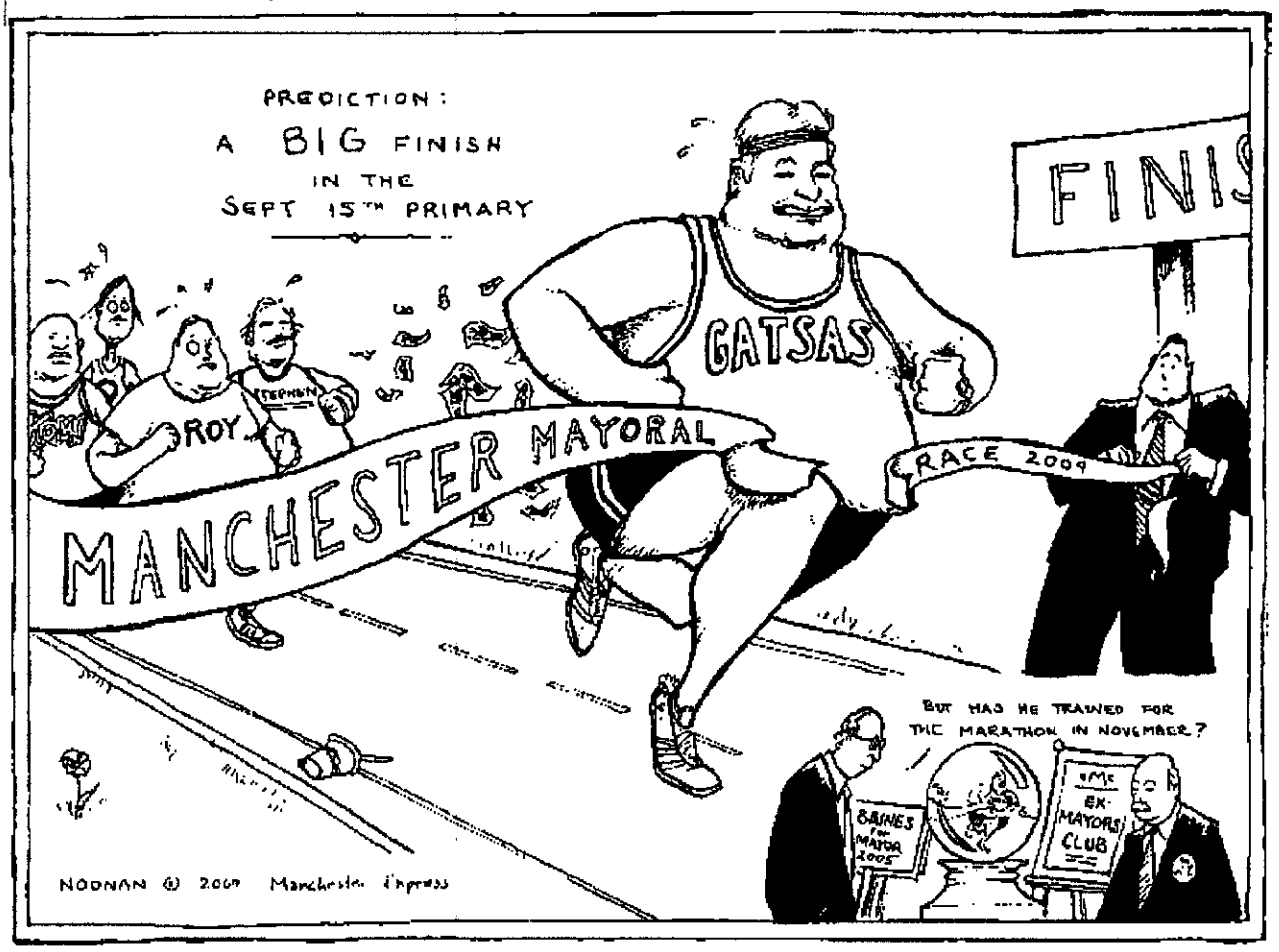
As for a plan to broker and market our current strengths, I offer the following vision because being known primarily as a cheap place to live (as we were recently described in nationwide reporting) does a great injustice to a fundamentally good locale. I would rather Manchester be known as a small city with a big heart, big brains and big dreams.

Let New York City be the "Big Apple," let Montana be "the last best place," let Reno, Nevada be "the biggest little city in the world." But let's make Manchester "the smallest big city in the world" because we are big of heart and brains and spirit while still small in relative scope. And like the ebb and flow of the river that runs through us, we do not and cannot be stopped. We change course ever so slightly as required and we nurture what is alive in us.

Therefore, I hereby challenge the voters to use the primary election to pick out the superstars for the November ballot. I implore you to create a menu of people who can restore a real sense of pride to Manchester and who are not afraid of the future. We CAN have a good quality of life, good services, good schools and low taxes. We just need to vote our hopes and push LEADERS across the finish line on Sept. 15th.

Vote early and vote smart; drag a non-participating friend or neighbor to the polls with you. I believe that a 21st century renaissance awaits us and I look forward to being part of it.

Richard Komi is a state Representative and candidate for mayor of Manchester.



Hospital's PR campaign deceptive, misleading

By RICH GIRARD, Express Columnist

Several things about the proposed acquisition of CMC by Dartmouth Hitchcock Health (DHH) are troubling. Aside from the inability to reconcile the obvious ethical differences and approaches to healthcare that naturally separate a Catholic hospital from a secular one, the public relations campaign has simply been deceptive.

After Optima Health was dissolved and CMC was restored as an independent hospital, papers were filed with the Secretary of State establishing CMC Healthcare System (CMCHS). This document effectively created a holding company that owned and governed CMC and all of its affiliates. Importantly, it was made the "sole member" of the hospital, meaning it was the final and controlling authority over any and all activity of the hospital and its affiliates.

Supporters, who call this takeover an "affiliation," would have us believe that nothing of consequence will change at CMC or any of its subsidiaries. Yet, the public forum they're holding on Tuesday, Sept. 15 from 7:30 to 9:30 p.m. is being held pursuant to RSA 7:19-b, the state law that governs the merger, acquisition, or transfer of control of one charitable hospital with, by and to another.

Significantly, "control" is defined as having the "power to elect a majority or more of the membership of the governing body thereof or otherwise to direct the affairs thereof."

Were it not the case that CMC would lose autonomy and control over its operations, this law would not come into play; thus, the deceptive use of the term "affiliation."

Should this acquisition happen, DHH will be the "sole member" of CMCHS. That means, per their own documents, they will have approval and removal authority over all members of the hospital's board of directors as well as the president and CEO. When an organization controls the board of directors and the executive authority, it controls the organization.


Richard Girard

DHH also gains the right to approve the annual operating and capital budgets of CMC and all its affiliates, any mergers or acquisitions desired by CMCHS, the formation of "Key Strategic Relationships," the elimination or addition of any "material health care service or program," and any change to the company's governing documents that would "reasonably be expected to have any material strategic, competitive or financial impact on one or more of the Regional Provider Organizations or on the Regional System and the Manchester System as a whole," among other things.

This is important because DHH's bylaws state that it "will serve as the overall authority for the development of health care delivery policies for the Provider Organizations (such as CMC) and their subordinate organizations and will develop strategic plans for the expansion and direction of health care services within the System."

The bylaws also state that DHH "shall be responsible for managing and directing all aspects of the System" including the establishment "of the goals, objectives and strategy for the System," and to review and approve the proposals and/or decisions of the Provider Organizations (such as CMC) to ensure they are consistent with DHH's goals and objectives.

In other words, the budgets, planning, services, and leadership of CMC and how it provides care to the citizens of Greater Manchester will no longer be made at CMC in consideration of the area's needs. They will now be made by administrators in DHH's Lebanon headquarters whose primary concern will be whether or not the provision of services will provide a benefit or consequence to their multi-provider, multi-state network.

Quality of care or the needs of the community will now be secondary considerations behind how providing or terminating a service will impact "the System." Moreover, what may benefit the system just might not benefit CMC or those who would be served by it.

Every now and then, my kids think they're in control around the house. It's sometimes cute and even funny. But, eventually, the true authority in the household asserts itself and the children are reminded of their actual place.

Those who say that the post-acquired CMC will remain in control of its own affairs are like the fanciful children who sometimes believe they're in control. Unfortunately, the consequences of such tomfoolery aren't limited to the hospital. They'll be reminded of their actual place by a "system" concerned more with its own perpetuation than our treasured hospital and community needs.

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001 and is a long-time community activist.

Gatsas, inspiration for young professionals

To the Editor,

As a life-long resident of Manchester, I am proud to support Ted Gatsas for mayor. I have known Ted and his brother Michael for more than 15 years. I first met them at various community events throughout the city and later had the good fortune of working for Ted and Michael at Staffing Network after college. Beyond being an incredible success story, the Gatsas family is one of the most supportive and compassionate families that I have ever met.

Ted is an inspiration for young professionals in the Queen City. As a product of the Manchester public schools and the state university system, Ted work hard to achieve the American Dream. When most in similar positions would sit back and enjoy life, Ted has worked tirelessly over the last decade to serve his city and state. He is a statesman with a record of success.

Ted has inspired me and many others to develop as professionals and give back something to the community. As our next mayor, I'm confident that he will inspire the city to achieve great things.

Bill Skouteris
Manchester, N.H.

In CMC takeover, watch the actions, not the words

By RICH GIRARD, Express Columnist

Every deception has its smoking gun. The acquisition of Catholic Medical Center by Dartmouth Hitchcock Health (DHH), which both parties falsely claim is an "affiliation," is no different.

While investigating this takeover, I stumbled across a recent news report or two quoting officials from the Elliot Hospital. Curious about why DHH and Elliot weren't pursuing such an "affiliation," I spoke with Doug Dean, Elliot's president and CEO. In that conversation, I learned that Elliot and Dartmouth had been formally affiliated since September 2001.

If that's so, I asked, why is this thing happening with CMC?

"We weren't interested in being owned," was his response. "The original affiliation was based on mutual respect and parity and its focus was to develop programs locally. Eventually, I think Dartmouth saw Elliot as too large and strong and a relationship of parity between two equals was not acceptable to them," Dean stated.

Dean provided a copy of the 2001 agreement, all six pages, which required no regulatory review. It established an oversight committee to evaluate options to strengthen their relationship, monitor the planning and implementation of all joint programs, ensure the alignment of strategic goals, resolve any conflicts that might arise in the context of their relationship, and ensure that their resources were optimized by avoiding unnecessary duplication of services.


Richard Girard

"The focus of the Oversight Committee will be the maximizing of the parties' collective resources for the benefit of the community at-large." In that context, the agreement outlined specific clinical program initiatives to be studied and spelled out the areas of cooperation.

Significantly, there was an "Exclusivity of Relationship" clause under which Dartmouth pledged it would "not plan or undertake joint programs or activities with any other acute care hospital that would be construed by either party as in conflict with the goals of this agreement." And, Elliot would "not plan or undertake joint programs with out-of-state tertiary providers that would be construed by either party as in conflict with the goals of this agreement."

The initial term of the affiliation was three years and it would renew for successive three-year periods "automatically...unless any party gives written notice to the other parties of its intentions to terminate a relationship no less than four months prior to the end of any three-year term."

The final clause of the affiliation provided that "either party may request a review of this agreement to be conducted by the Oversight Committee or by a mutually agreed upon special committee of Trustees from both organizations. The purpose of any such requested review will be to reexamine this agreement in the context of changed facts or circumstances which may make the goals of this agreement difficult to achieve."

Did Dartmouth provide "written notice to other parties of its intention to terminate a relationship"? "No," said Dean. Did either party request a review? "We asked to meet," Dean said "but nothing came of it." When asked what reason Dartmouth gave for violating the exclusivity clause, Dean said he was told "there were enough benefits for them to do it."

Signing the agreement on behalf of Dartmouth Hitchcock was its president, Thomas A. Colacchio; the same man who, along with CMC President and CEO Alyson Pitman Giles, keeps telling us that the acquisition of CMC is little more than an affiliation and that those of us who believe and argue otherwise "just don't understand what's going on."

For as long as I've been involved with politics, I've always believed that it is not enough to listen to what people say, one must watch what they do. If the two don't match, there's a problem and it's the actions that count.

On the one hand, we have an actual example of an affiliation agreement (which Dartmouth dishonored and broke for its own benefit) between Elliot and Dartmouth that successfully reduced cost, coordinated activities, and improved care in the Manchester area. On the other hand, we have what's happening with CMC and DHH, which involves acquisition laws, regulatory reviews, a change in control and ownership of CMC, and the claim that it is nothing more than an affiliation.

Is it any wonder there is no trust in those who've obviously acted in an untrustworthy manner? DHH and CMC know what's going on, and now so do you.

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001 and is a long-time community activist.

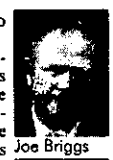
Healthcare is busting school, city budgets

By JOE BRIGGS, Express Columnist

September is all abuzz here in Manchester as school has started and administrators are taking daily tallies of enrollments and juggling teachers between schools to keep class sizes within the state guidelines. It is an impressive orchestration of patience, flexibility, and professionalism.

Once again we have asked our school system to do with less and after a few months of trying to inform the public of what those cuts will mean to their kids and our property values, an exhausted school system has replied with the equivalent of "Yes Sir! May I have another?" and have returned to its work of molding our future.

In the beginning of this budget cycle, where 'safety' interests clearly and defiantly trumped education, where state education funds were used to balance a loss of revenue sharing revealing the vulnerability of only spending 42 percent of our property taxes on education (where most of our peers are spending well over 55 percent), there was a prevailing and mean-spirited attitude that giving money to education in this town was like tossing a Franklin to a street beggar, knowing full well that it was more likely to go to liquor than it would a hot meal.


Joe Briggs

There are two reasons that I continue to beat this tired drum. The first is to remind you that the fact that kids are back in school and that they are coming home happy and that they liked the hot lunch and that their new teacher is a far greater indication of the quality and professionalism of our educators than confirmation of suspicions that the schools were hording money in odd accounts and already had more than they needed, as many in this town like to sneer.

The second is that the aldermen in all of their wisdom once again left out the single most important threat to our schools and city government, and that is the rising cost of health-care and the lack of any plans to deal with it.

We budgeted for over $26 million in healthcare and pension benefits this year for city workers. That is more than the pay and equipment budget for either fire or police departments. (It is also a bit obfuscation since education budget must include health and benefits, making city-worker's budgets look smaller by comparison). The school department spends over $20 million just on healthcare. The education funding crisis this year alone was caused by a $4 million shortfall ($1 million = 20 teachers), and could have been avoided if we could achieve just a 20 percent reduction in health insurance costs.

New Hampshire was third in the nation for rising health-care costs this decade. Consider this headline from a recent report:

"Nationally, family premiums for employer-sponsored health insurance increased 119 percent between 1999 and 2008, and could increase another 94 percent to an average $23,842 per family by 2020 if cost growth continues on its current course."

The only innovation that we seem to be hearing from any of our candidates for alderman or mayor is to increase the employee contribution to an ultimate of 20 percent. Yet in New Hampshire we saw a 30 to 40 percent increase between the 2003 and 2008 alone. The three-year education contract approved by the school board demands that the teachers pay an increasing amount of their health insurance costs, which is currently over $14,000 per year. Imagine a $40,000 teacher being asked to pay $2,800? We need a better solution.

President Obama was undeniably correct when he said that "the problem with healthcare costs today is that it costs too much." And for taxpayers right here in Manchester and the entire country, it is not greedy teachers or safety workers that are eating up our property taxes, it is the crazy and corrupt (albeit free market) way that we pay for healthcare in this country.

But let's take a safe bet and assume that nothing changes at the national level and health-insurance, along with its perpetuity costs in pensions, continues to rise. How do we handle it? What about those fixed-income seniors that are so sensitive to property taxes? What can be done?

I have asked every candidate that I have interviewed about this topic and most just don't seem to grasp it. Call me Chicken Little, but if there is no healthcare solution passed at the national level that reduces or at least halts the rise in costs, then we must be prepared to make dramatic, union-busting changes in how we deliver essential city services.

We must this year set and achieve goals to achieve a minimum of 25 percent of all fire, police, and education workers as part-time workers not eligible for either health insurance or pension. Every department head must present a budget and plan for achieving this initial level. I say initial because it will have to be increased beyond that.

Nobody is going to like this, but we must get sober on dealing with this cost. It is not the union contract and its Cost Of Living Allowance (COLA) or varsity hockey raising our property taxes. It is the out-of-control rising cost of healthcare. We need to deal with now.

Joe Briggs is a candidate for Ward 2 school committee member and co-host of the '2 Joes Live' show on MCAM-TV23 Wednesdays from 7 to 10 p.m.

Now the fun begins

To the Editor,

With the end of the primary season, the choices have been made and now all the vacuous, clichéd statements made by all of us can go away and the real fun begins.

First, as an unsuccessful candidate for school board in Ward 1, I want to thank all the folks in Ward 1 who took the time to vote, especially my supporters. To my opponents I congratulate them on their efforts to make it to the next round.

Platitudes aside, let's explore what we can expect over the next few weeks up to the election. Specifically, one candidate wants to build community consensus and have better collaboration with the alderman. Now, that's a fresh idea! The other wants healthy two-way communication between all players (my words) and tools to accomplish this. As opposed to unhealthy? And what tools? More cell phones? I apologize in advance for my attempts at sophomoric humor.

Both candidates are professional people who want to make a difference and I respect that. But now here are the tough questions. What are you actually going to do if you are elected? Continue the partisan lockstep policy of the majority on the board as it exists today? Or are you going to bring an independent voice and open-mindedness to do what is right for all of us, and not just the few who have the loudest voices complaining constantly?

There is no reason the board cannot get spending under control and hold the school administration accountable for poor decisions. The budget is not a cash cow to draw from to spend on frivolous projects and unneeded programs just because someone whined enough about it. Someone has to take a stand and say No!

I hope the person elected from Ward 1 will be the leader of this battle and not just another lemming following the rest over the cliff of financial irresponsibility. How you approach these issues and specifically what you are going to do to make the school board more effective will benefit all of us and make us confident our children will get that quality education we all want and expect.

Kevin A. McCue
Manchester, N.H.

Share your opinion

Do you care about Manchester? Are you unhappy with some aspect of our city and need to vent some steam? Or are you glad to live here and want to share the reasons why?

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- Letters may be edited for length. On rare occasions, letters may be edited for clarity, though we won't change your point or meaning.
- No form letters, please. Also, letters with potentially libelous content or that are not appropriate for a general family audience will not be published.
- Unless you're a regular columnist, we ask you to wait two weeks between letters to give others a chance.
- Please include your address and phone number for verification. We'll only publish your town of residence.

E-mail those letters to news@manchexpress.com. Questions? Call Jeff Rapsis at 625-1855, Ext. 23.

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ExpressOpinions

CMC board dedicated to what's best for the community

By JEFF EISENBERG, Guest Columnist

In 2000, I arrived in Manchester poised and ready to lead the challenge of building a first class American Hockey League team, the Manchester Monarchs. Across the river, under the leadership team of Alyson Pitman Giles and a multitude of physicians, nurses, medical staff and employees, Catholic Medical Center was emerging from the Optima disintegration. We were on parallel tracks.

I joined the Board of Directors at Catholic Medical Center in 2004. My initial committee work included strategic planning and philanthropy. Today, I have the distinct honor of serving as Chairman of the Board.

Since my first day on the board, I have witnessed first-hand the dedication and commitment of the CMC staff, medical personnel and the members of its Board of Directors to maintain an institution of Catholic healthcare that is a place of healing, hope and compassion of which our entire community can and should be proud.

Over the years, I've served alongside many esteemed civic and community leaders at CMC. As a board, we treat our governance roles and responsibilities with the utmost respect. The recent news of the proposed affiliation agreement between CMC and Dartmouth-Hitchcock is just one example. Beginning in 2004 through 2006, CMC and Dartmouth-Hitchcock Manchester successfully collaborated to increase access to quality care, whether through Dartmouth-Hitchcock Manchester providing nurse midwifery support at The Mom's Place, or CMC providing on-site cardiology care at Hitchcock Way from the New England Heart Institute.

Jeff Eisenberg

In 2006, a small group of senior leaders and board members from CMC visited the Dartmouth-Hitchcock's Norris Cotton Cancer Center. At the time, CMC was preparing to break ground for construction of the new parking garage and the medical office building, known today as the Notre Dame Pavilion.

As our group of senior leaders and board toured Dartmouth-Hitchcock's Norris Cotton Cancer Center in Lebanon, we were profoundly impacted by the need to bring the cutting-edge cancer care being delivered there, to our campus, to serve the greater Manchester community.

In February 2007, Dartmouth-Hitchcock's Norris Cotton Cancer Center at Catholic Medical Center opened. Today, cancer patients are seen by specialists who come to them instead of making sick patients travel. Through the collaboration of integrating the infusion therapy department at CMC with the other services and programs of Dartmouth-Hitchcock's Norris Cotton Cancer Center, our organizations have created a caring environment to help those most in need through innovation and cooperation.

As a board, we ask tough questions, we are actively involved, we serve on committees, we seek institutional knowledge and the advice of professional advisors, and we listen. Together, we bring our collective professional and personal experiences to bear on behalf of not only CMC, but also the members of the greater Manchester community for whom CMC is held in trust.

In 2008, building on the successful collaborations over the past five years, representative board members from both Dartmouth-Hitchcock and Catholic Medical Center began to meet. At these meetings we discussed a multitude of issues related to what a proposed affiliation agreement would even look like. We asked ourselves how we could take our current successes and create an integrated delivery system that helps those most in need.

Immediately, a few non-negotiables were identified. On behalf of those at CMC whom I represented, this meant first and foremost that we create a structure that affirms and preserves CMC's Catholic identity, upholds the Ethical and Religious Directives of Catholic Health Care Services by which CMC abides, and advances the charitable mission of CMC in providing quality care to a broad and diverse patient base.

It also meant that CMC must ensure that existing resources that have historically remained local be reinvested in our greater Manchester community remain as such and in no uncertain terms be drawn away from the healthcare needs that we have here in our immediate region.

Given Dartmouth-Hitchcock's investment in the greater Manchester community over the last 25 years through its physician base, facilities and indigent care, it became readily apparent that this goal is shared by both parties.

In the coming weeks, our respective boards will be attending two more community forums being held for the purpose of listening. We want to hear what the community has to say with regard to the proposed affiliation and use this feedback to help us deliberate the details of a proposed affiliation.

We must execute our governance, oversight and fiduciary duties as CMC board members. And that is what we will do. Just as we have done since we each began service to the Board of Directors, we are listening, we are involved and we seek understanding. As a board we have been, and will remain, committed to making informed decisions aimed at preserving CMC as an institution of excellence in Catholic healthcare, while benefiting the greater Manchester community and those who seek the care we offer.

We do this as torchbearers for all who have served before us, for those who will come after us and for the community we all treasure.

Jeff Eisenberg is the Chairman of the Board at Catholic Medical Center and President of the Manchester Monarchs.

More evidence that CMC merger is all about money

By RICH GIRARD, Express Columnist

Evidence of what a hospital takeover looks like can be found in the actual acquisition of Franklin Regional Hospital (FRH) by Lakes Region General Hospital (LRGH). The similarities and differences between this merger and the proposed acquisition of Catholic Medical Center by Dartmouth Hitchcock Health (DHH) make clear points about what really is and is not happening locally.

I learned of the FRG/LRGH merger from an article published by the NH Bar Association on March 1, 2003. The article says the process these two charitable hospitals followed provided "an important roadmap for practitioners and executives who may contemplate a merger or change of control of a New Hampshire charitable healthcare entity in the future"

Since a primary legal architect of the FRG/LRGH merger and author of the Bar Journal article was Ovide Lamontagne, CMC's current legal chief counsel, what he wrote about the right way to do things ought to be of interest to all parties.

First, because FRH was struggling financially and likely to close, it went looking for a partner to be rescued. LRGH was one of five bidders whose proposal was considered.

CMC, suffering no financial distress, published a document entitled "RSA 7:19-b (II) Standards Certification: CMC Healthcare System" in which it states: "Due diligence has been exercised in selecting DHH to become CMCHS' sole member under the Affiliation." This admits that DHH will be in control of CMC after the acquisition.

With no evidence that CMC sought other parties to partner with, how do we know DHH is the best partner for CMC, and why does it need one anyway?

Richard Girard

Second, CMC again brings up RSA 7:19-b which is only used when charitable hospitals, like itself, give control of their operations to another organization. Were this not the case, the law wouldn't apply; just like it didn't apply when DHH affiliated with Elliot Hospital.

Third, Lamontagne writes that "the proposed merger, even in its embryonic stages, was motivated more by charitable principles than by pure economics."

Minutes from Dartmouth's Board of Governors meetings reveal their fear that without a "formal hospital relationship in Manchester," Dartmouth "will be less relevant in the markets served by the Southern Region hospitals" such as "Concord Hospital, Elliot Hospital, and Southern NH Medical Center." They also state that "integrating" CMC into their system would provide Dartmouth with access to "inpatient beds, technical service revenue and capital."

That means DHH will have more patients, be able to charge Medicare, Medicaid, and private insurers more money for doing the same work, and have access to CMC's large bank accounts. Is this really about furthering a charitable mission or is it about what business, revenue and assets can be harvested from CMC and the Manchester market?

Fourth, Lamontagne described a deliberate process to solicit public input BEFORE developing any details of the acquisition. The hospitals didn't discuss the governing structure until after public hearings were held on the IDEA of FRH being acquired by LRGH. Then, after developing their agreement, they held a second round of public hearings to ensure they got it right and addressed all concerns.

CMC and DHH have done the exact opposite. They FIRST made up their mind about what THEY wanted, then negotiated the details, and are now TELLING the public in their staged forums, what's to be done and why.

Lamontagne also wrote "It is questionable, however, whether parties who could not withstand such scrutiny would have fully complied with the procedures and guidelines of RSA 7:19-b."

Since CMC and DHH negotiated the entire deal without any public input or scrutiny, one is left to wonder whether or not they knew this deal wouldn't survive the model example followed by FRH/LRGH; which took nearly two and one half years to complete in full view of the public, the regulators, and the probate court.

"Hopefully," wrote Lamontagne, "the recent FRH/LRGH transaction will demonstrate the measure of public good that can be achieved by respect for, and adherence to, traditional notions of what it means to be a charity in New Hampshire."

Memo to CMC and DHH: The FRH/LRGH transaction DID demonstrate the measure of public good that can be achieved when things are done the right way. Now the question is: Why haven't you followed "the important roadmap" set by their example?

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001 and is a long-time community activist.

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- Unless you're a regular columnist, we ask you to wait two weeks between letters to give others a chance.
- Please include your address and phone number for verification. We'll only publish your town of residence.

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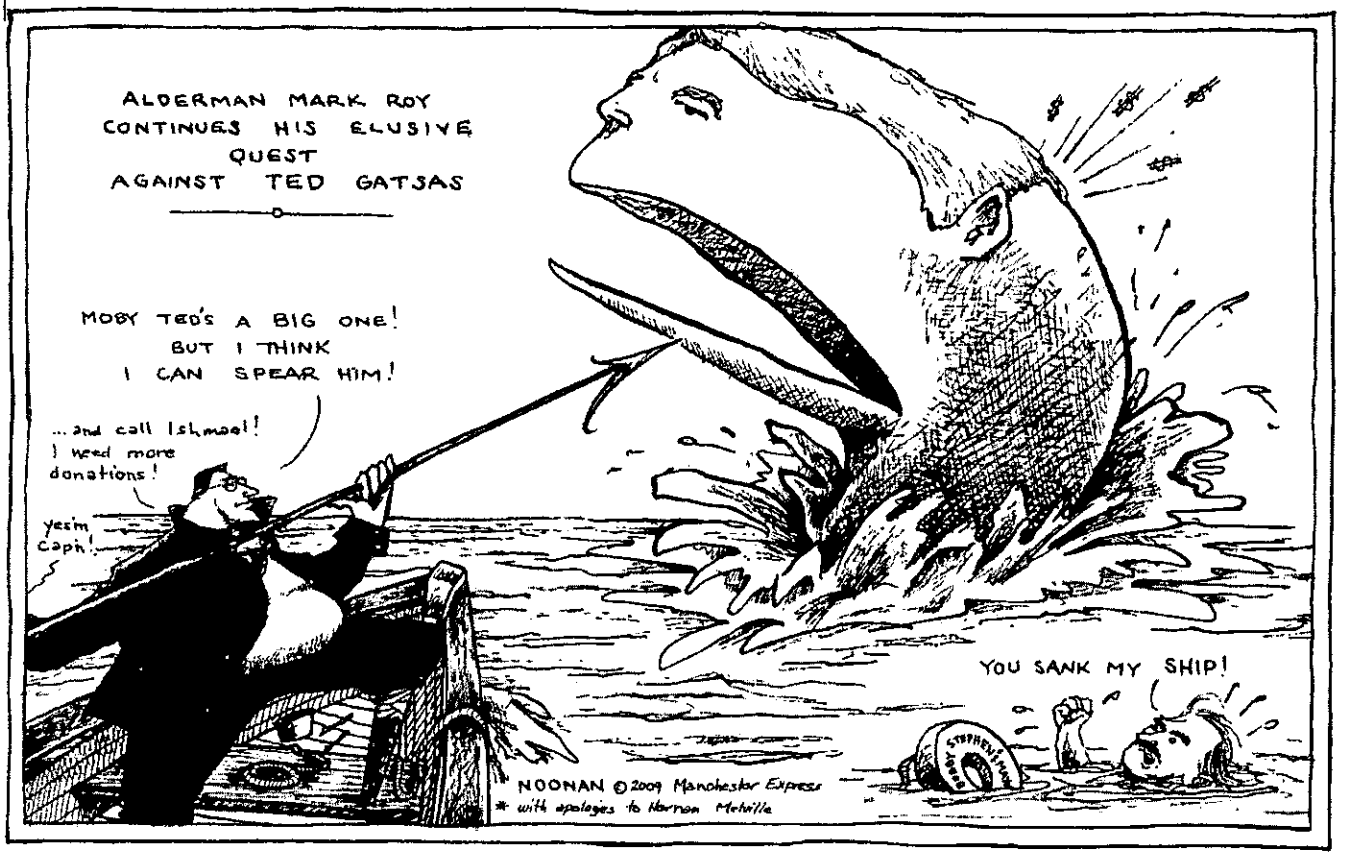
ExpressOpinions



Eisenberg failed to address important CMC questions

By RICH GIRARD, Express Columnist

Last week, the Express published a column by Manchester Monarchs President Jeff Eisenberg, who is chairman of CMC's board of directors. In defending the proposed acquisition of CMC by Dartmouth Hitchcock Health (DHH), he listed a couple of areas where CMC and Dartmouth already collaborate. As result of their success, he writes members of both hospitals met and "asked ourselves how we could take our current successes and create an integrated delivery system that helps those most in need."

Proponents of this takeover say it is nothing more than an "affiliation." What Eisenberg admits is for the past five years, they've been affiliated. Moreover, in stating that any further "integration" would necessarily have to protect CMC as a Catholic hospital, he concedes a fundamental change in ownership and control of CMC. After all, if CMC were to remain independent and in full control of its operations and destiny, why would such protection be necessary?

Remember, when Dartmouth wanted to take it to the next level with Elliot Hospital, with which Dartmouth was affiliated, the negotiations fell apart because Elliot "didn't want to be owned," as Doug Dean, Elliot's president and CEO, stated.

While writing glowingly of his and his fellow board members' commitment to CMC and all the potential good this "affiliation" could do, Eisenberg did nothing to address the many unanswered questions surrounding this acquisition. First and foremost, if it's not an acquisition or change of control, why are they following the state law that governs acquisitions and changes of control?


Richard Girard

More importantly, why did CMC file "Form 16 C.F.R. Part 803 – Appendix NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS" with the Federal Trade Commission? It's a form that is "required by law and must be filed separately by each person which, by reason of a merger, consolidation, or acquisition, is subject to" a variety of federal laws cited in this 15-page document, a form from which CMC spokesperson Gail Winslow Pine refused to release any requested information, including non-financial information.

On Dec. 28, 2001, CMC Healthcare System, established after CMC was freed from the Optima Health "affiliation," filed Articles of Agreement with the Secretary of State's office. Article VIII of that document gives some of the Bishop's "Reserve Powers" to a Board of Governors, but reserves eight very important powers unto the Bishop alone.

In the amended version of these Articles of Agreement, filed as part of this acquisition by DHH, Article VIII (among many others) names DHH as the "sole member" of CMC's board of directors. DHH MUST approve a wide variety of activities that make it clear that CMC will no longer be an independent hospital. No mention is made of a Board of Governors that exists to exercise any powers of the Bishop. Just like Eisenberg's Manchester Monarchs are beholden to and exist for the benefit of their NHL parent, the LA Kings, CMC will be beholden to and exist for the benefit its corporate parent, DHH.

In Article IX, the powers now exclusively reserved for the Bishop are shared with DHH. In "sharing" power, the Bishop gives up the ability to make any changes he may want because any and all changes either he or CMC may want will be subject to DHH's veto.

Currently, the Bishop approves all nominees to CMC's board. After the acquisition, he will only be able to approve six and maybe one other. DHH can veto any Bishop-approved nominee. DHH will nominate five members that the Bishop cannot veto. The Bishop's "health care delegate," the presidents and CEOs of DHH and CMC will also be on the board. (See section 3.6 of the DHH-CMC "Affiliation Agreement.")

Section 3.1.1 of the Affiliation Agreement also appoints and empowers a 17-member board over Alliance Health Services, a CMC subsidiary. CMC's board nominates four members, DHH nominates seven. The remaining six are ex-officio. The Bishop has no authority here.

Eisenberg's column could have been written 10 years ago about Optima Health and begs a number of questions, such as: What's the rush? Why were the negotiations done before public hearings? Why are they following state and federal laws governing takeovers? Why aren't they going through a probate court review? And, if they aren't surrendering control, against what does CMC's Catholic identity need protection?

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001 and is a long-time community activist.

Share your opinion

All we ask is to please keep letters to no more than 350 words. Guest columns (with your photo) can be up to 500 words, to give you room to develop a point further. E-mail letters to news@manchexpress.com.

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ExpressOpinions

Hospital statements don't match documents on file

By RICH GIRARD, Express Columnist

Administrators from Catholic Medical Center and Dartmouth Hitchcock Health (DHH) have made many public claims about the proposed "affiliation" of the two hospitals and how Catholic healthcare will be preserved in our community. Many of their public statements not only contradict each other, they don't reflect the reality found in the more than 500 pages of documents detailing this deal.

For example, a recent New Hampshire Sunday News story notes that Alyson Pitman Giles, President and CEO of CMC "highlighted sections of the proposed agreement with Dartmouth, noting it states all Catholic Medical Center facilities and physicians will operate under the Ethical and Religious Directives of the College of Bishops for Catholic Health Care Services."

What it leaves out is that Dartmouth's Manchester-based physicians and facilities, which will be leased by CMC as part of this transaction, are specifically allowed to continue practices that violate these Ethical and Religious Directives (ERDs). In a Valley News story, Dr. Stephen Paris, medical director of Dartmouth's Manchester facility, admitted that abortion referrals are made by the very same doctors in the very same facilities CMC will lease.

More importantly, Section J of the Amended and Restated Professional Services Agreement between Dartmouth Hitchcock Clinic and Alliance Health Services (a CMC subsidiary), specifically allows Dartmouth to continue with any and all "non-ERD procedures and activities." It also references "Exhibit A," which is supposed to list "some of the procedures and activities...that are expressly excluded from this Agreement."

Richard Girard

Exhibit A is blank. No doubt detailing all the non-Catholic practices that would be supported by a Catholic hospital under this agreement would cause it to fail.

In multiple news reports, Giles and others note that "non-allowed" procedures will simply be billed to patients through Dartmouth, not CMC, after they've been done, in compliance with Section J. Giles has also admitted that West Side Clinic joint venture with Dartmouth, which is physically located in CMC, engage in practices not allowed by the ERDs.

Question for Giles: How are the ERDs preserved and CMC's Catholic heritage ensured by any of these permissive provisions?

Dartmouth president Dr. Thomas Colacchio, among others, claims that CMC will remain an independent hospital. Yet, in news reports, he's said DHH would have final approval of annual and capital budgets, strategic planning and selection of organization presidents and trustees. Other reports cite DHH's power to also control CMC affiliations, strategic relationships, health care services, and the appointment of CMC's president and CEO.

Here, the documents support these statements.

In addition, Article III (b) of the Articles of Agreement creating DHH states its purpose is "To serve as the controlling and coordinating organization for the system and its member organizations (the "Provider Organizations")" such as CMC.

Section 3.9.3.3 of the DHH-CMCHS Affiliation Agreement requires CMCHS to effectively pay taxes/fees for services rendered to DHH to support "the system."

Section 4.3 of this agreement specifically states that Dartmouth's facilities "will not be part of the Manchester System nor subject to the reserved powers of CMCHS or the Bishop."

Some say the Bishop can remove CMC from this "integrated system" if he finds violations of the ERDs. But, section 3.9.1 C of the By Laws of Dartmouth Hitchcock Health requires a super majority vote of its board members to approve the "withdrawal or removal of a Provider Organization from the System." This board of directors will start with 18 members and can go up to 24. Only three will come from CMCHS and at least 60 percent of the board will come from Dartmouth or Mary Hitchcock hospitals, the primary members of the organization.

So, it looks like the Bishop may not be able to pull CMC out unless DHH agrees.

Question for Giles and Colacchio: Given all that's been admitted, and all the documents that clearly subjugate CMC and any other "provider organization" to the "system," exactly what, of any consequence, is CMC free to do independent of DHH's authority and approvals?

A closing question to the local media: Given multiple statements that contradict each other and run afoul of the documents (there are many more than those exposed here), why aren't you investigating and demanding consistent answers that are supported by the readily available facts?

Do we now have to start asking why media plows aren't being driven through this snow job?

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001 and is a long-time community activist.

When will taxes be low enough?

To the Editor,

Do you support the tax cap? If so, I have a question for you. I know that you must think that our taxes are too high, or you wouldn't support the cap. But my question is: When would you think that our taxes are too low?

If we had so few teachers that we could barely keep within the legal limits for classroom size—would taxes be low enough?

If we paid less per person in local residential property tax (municipal+local school) than anywhere except, say, Berlin and Franklin—would taxes be low enough?

Those were trick questions—they are both already true.

If we had no money to spend on roads for the last four years, as Franklin has—would taxes be low enough?

If we had to reduce tax revenue by $20 million in 2011, as we will under the cap if the reassessed total value is 15 percent lower than in 2006—would taxes be low enough?

If our local property taxes were $40 million less this year, as they would have been if the tax cap had been in effect, without being overridden, for the last 10 years—would taxes have been low enough?

For a sense of scale, $40 million is more than the police and fire budgets combined. Or, it's almost half of our teachers—more than 500 of them.

Just what do you want? Where does this end?

The local estimates above are my own, using official records for source material. I'll be happy to share any of my calculations.

If you don't believe any of this—good! Be skeptical! But don't just stop there. Find out what the tax cap actually says, and what it will really do. If you want to read what you'll actually be voting on in November, do it! I've posted it on http://wiki.staubsense.com. I've posted a lot of other information there that you may or may not believe. But at least read the referendum! I became suspicious a couple of weeks, and had to get a copy at City Hall—the promoters of the cap have not posted it anywhere, and have told you and me that it's just a "spending cap," when it's much more than that.

Like everywhere else, we all have frustrations with our local government, and with all the other expenses that we have no vote on. But don't disfigure our city with this great pox out of frustration—don't "cut off your nose to spite your face."

Disclosures: I'm a registered Democrat. My wife Kathy is running for school board. I don't work for the city. My only financial interest is as a citizen, taxpayer, and parent. I'm not being paid for this in any way.

Ed Staub
Manchester, N.H.

OneMan'sManchester

Can I get more bleu cheese, please?

By ROB AZEVEDO, Express Columnist

This is the sweet side of a Saturday morning, nursing a Bloody and a bleu cheese bacon cheeseburger at Billy's Sports Bar, peeling through the Help Wanted section of the newspaper.

"Sure, make it spicy and use the well vodka, please. I'm on a budget."

Now let's see. What would I want to be doing if I wasn't already doing it?

At first glance, I see a position for a live-in farm hand in Bedford. Sounds countrified and simply dreadful if you weren't raised in Vermont or don't like the stink of slobbering horse tongue.

The role might look handsome to someone newly divorced and working through a layoff, but the couple will offer no more than $10 an hour. Support that!

"Thirty seven flat screens in this place and I can't get The Real World on one of them? God that show goes good with eggs."

This ritual of reading the classifieds (daily pretty much) began for me nearly 15 years ago, after I'd graduated from college. By age 25, I'd held at least 25 different jobs over a five-year period, post-graduation.

Rob Azevedo

"What are you saying, meatball?"

What I'm saying is: I know my way around the want ads. Whether drawing a paycheck or not, I read the classifieds the same way a sports fan does the box scores. The ads simply captivate me because every job interests. They all mean something.

Here we go, down here in the ink. The Hooksett Highway Department is hiring. Great job, I bet. Steady with pay and the hours are cake. The rate is about $14 for starters. I know if I was currently landscaping and staring down at Old Man Winter, I'd brush up on "How to Build A Catch Basin" and hustle on down to Route 3A.

"You're thinking longevity?"

"If you're lucky."

Look at this. Canobie Lake is hiring for the annual Screamfest. These positions, which appear to be plentiful and often disturbing, can be fun as well. Again, the pay will be rot, about $8 an hour (I bet), but who says every job needs to be a career!

"You mean get paid to mingle?"

"Stop talking! I've been up for only 45 minutes, guy."

Oh, now this position excites me. "Collections." You can reinvent yourself doing collections by taking on different voices and personalities. Daytime, nighttime, shifts galore. More than that, you're forced to measure your level of compassion for others, all while making the kill, and a buck to boot.

Continued on next page top

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ExpressOpinions

Why isn't local media investigating CMC merger?

By RICH GIRARD, Express Columnist

Having read the documents associated with Dartmouth's proposed acquisition of CMC, it's clear that the reporters "covering" this story have not. Were those pretending to report on this proposal conversant with the facts, many obvious questions would have to be asked.

Take a recent radio interview with CMC president and CEO Alyson Pitman Giles. Trying to calm concerns about the hospital's independence, Giles said "CMC will have its own board of directors exactly as it is now." For this statement to be true, the Bishop would have to retain his current authority to approve all nominees to the board. He doesn't. Because Dartmouth will appoint nearly half the members and approve all nominees, including the Bishop's, it will gain control of CMC.

Proponents have repeatedly claimed this "affiliation" is the next step in an ongoing collaborative effort to improve service, access, quality and cost. Yet, not one media outlet has asked why, if things are working so well, must CMC surrender control over its operating and capital budgets, strategic planning, and future service provisions and outside affiliations, to become part of the Dartmouth system. Moreover, they haven't pressed the issue of why laws concerned with "acquisitions, mergers, and changes of control" are being followed.

Richard Girard

If they've been able to "affiliate" to this point without the intervention of regulators, what is different about this proposal that requires they get involved? Something about CMC will change or these laws wouldn't apply.

By the way, if they're going to remain independent, why will they have three seats on the Dartmouth board of directors; the board that will control the system and have authority over all system members, like CMC?

While providing no evidence, Giles and others have accused opponents of "making things up" and "not understanding" the proposal, nor have they provided information that contradicts what has been published. Other media outlets, apparently without any analysis, have simply reported on the "he said, she said" charges and accusations of both parties. Curious, given that the documents are readily available, don't you think?

When I spoke with Elliot president and CEO Doug Dean, I asked him how CMC and Dartmouth expanding services, specifically in maternity and oncology, will affect competition. He said "volume brings lower cost, higher quality, and consistency. Everybody loses with this. It's destructive competition."

I don't know if that's reality or the biased commentary of a competitor, but it bears examination, doesn't it? When one considers that minutes of Dartmouth board meetings reveal they will be able to charge more money to do the same procedures after the "affiliation," it merits some real hard-nosed investigation.

At the public hearing in Manchester, all of the "pro-affiliation" speakers were either directly affiliated with or employed by either Dartmouth or CMC. Why wasn't that reported? Most of the opponents shown or quoted were little old French ladies concerned about abortion, hardly representative of the opposition.

On the Catholic questions, we've heard about the "three ethicists" and the "canon lawyer" they worked with, but they've refused to release their reports. In fact, we only know the identity of one ethicist and it's the one that CMC paid to do the work. Why isn't the media demanding these documents be released for public review?

Oh, if all is okay, "why not go through a Probate Court review?" seems like something the media should ask.

Most articles have not only been devoid of any real exploration of the abundantly available information, they have contained errors, half truths, and mischaracterizations. One article said the Bishop would have the power to appoint or remove CMC's CEO. That's not true. Another cites an anti-Catholic "watchdog" group claiming "no threat to CMC." Why not ask the fox about any threat to the hens?

The degree to which the local media has gone to either avoid this issue or cast it in a favorable light is so breathtaking and unprecedented that one wonders whether their "coverage" has anything to do with the nearly $4 million spent by CMC, Dartmouth, and Mary Hitchcock Hospital on advertising and marketing, as disclosed in the most recent federal 990 tax filings available when this article was written.

Are the local news organizations doing their advertisers' bidding, or are they lazy, incapable, and uninterested? This needs to be asked. The contradictions are screaming for reconciliation.

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001 and is a long-time community activist.

What kind of a torch is this?

To the Editor:

Having read the 500 or so pages filed by CMC and Dartmouth Hitchcock—available on their Website—with the Attorney General's office, and having many questions, I read your recent guest piece by Mr. Eisenberg, chairman of the Catholic Medical Center board, thinking he might shed some light on the proposed acquisition.

After reading the half-page of script three times, I was enlightened to Mr. Eisenberg's credentials and experience; the compassion, knowledge, wisdom, and success of the CMC board, and its committment to pursuits in healthcare. What I did not read was anything enlightening about the current controversy—NO answers to the important questions regarding the Catholic identity of CMC, no responses to the questions about the erosion of the Bishop's powers and authority under the new governance structures, no answers about how Dartmouth-Hitchcock doctors can change not only their hats, but their convictions as they move in and out of CMC property, no answers as to how the Diocesan-sponsored end-of-life document is being promoted at parishes around the state, while the D/H-approved one, allowing people to ask to be starved and dehydrated, is being distributed at CMC; no answers to how future residents, mandated to at a miniumum counsel and reference for abortion, will be handled; no answers as to how the dichotomy already known in Concord when the Diocese and D/H doctors testify on opposite sides of life-related bills will be treated; no answers as to how this new prominence and money for D/H will enable them to increase their research involving the destruction of human embryos—the unanswered questions go on.

Interestingly enough, the final words of this commentary are: "We do this as torchbearers for all who have served before us...." Does the present chairman of the Catholic Medical Center board not know the previous board's efforts to give CMC away just 10 years ago?

Those who lived through the Optima years should shudder that the present board hopes to carry this torch.

Kathleen Souza
Manchester, N.H.

Vote Greazzo in Ward 10

To the Editor,

First, thanks for the Manchester Express. It's good to have a community newspaper that covers local news stories we would not otherwise read! Kudos to you!

Next, I am taking a minute to write about the next city election. Time is running short, and I want to make sure I put in a strong recommendation to vote for Phil Greazzo for Ward 10 Alderman.

My husband and I strongly supported the spending cap initiative. We were very upset when our current alderman voted against it. It's time for our city government to take a hard look at the expense column, and realize THEY HAVE NO MONEY! The only money city government has is the money they take from taxpayers like us, who work very hard for our wages and make careful choices in our own lives about the "wants and the needs." Families can't afford anymore foolish government spending!

As a dad, Phil Greazzo understands what families are going through. Phil Greazzo has shown us that he shares a strong sense of community. Phil Greazzo thinks out of the box when it comes to creative decisions to make our city better. Phil Greazzo supports a spending cap, because he knows, like we know, that government has no money except what they take from families, and families can't afford any more.

Our family is supporting Phil Greazzo for Ward 10 Alderman. Ward 10 and the City of Manchester need aldermen like Phil Greazzo. It's time to make some changes in favor of working families. Phil Greazzo understands that safety, schools and services need a careful review to make our dollars work better for us.

Vote Greazzo for alderman!

Barbara J. Hagan
Manchester, N.H.

Gatsas is a first-class act

To the Editor,

As a resident of Senate District 16, it's been an honor to be represented in Concord by state Sen. Ted Gatsas. I've enjoyed the kind of first-class representation we should expect from our elected officials.

For many years, I served as a town councilor in Hooksett. Issues came before us that required the attention of department heads in Concord. As a council, we would do our due diligence and outreach. Many times the action required was beyond our capacity and we would enlist the help of our state Sen. Ted Gatsas. Ted was always quick to return a call and take action.

As an example of this I point to the floods. Two years in a row we had "once in a generation" flooding that shut down Route 28. The area was an ongoing issue due to an inadequate culvert on Benton Road. The fix was beyond the financial capacity of the town and quite frankly required coordination between town and state due to permitting issues.

We called Ted Gatsas and he spearheaded the project. He brought the town and the state to the table and crafted a solution that was a win win for everyone. Without a doubt, this project would not have come to fruition without the leadership and relentless persistence of Ted Gatsas.

The voters of Manchester are lucky to have the opportunity to elect Ted Gatsas as their next mayor. As a constituent of District 16, I know that I will certainly miss his service.

Pat Reuppel
Hooksett, N.H.

Vote Arnold in Ward 12

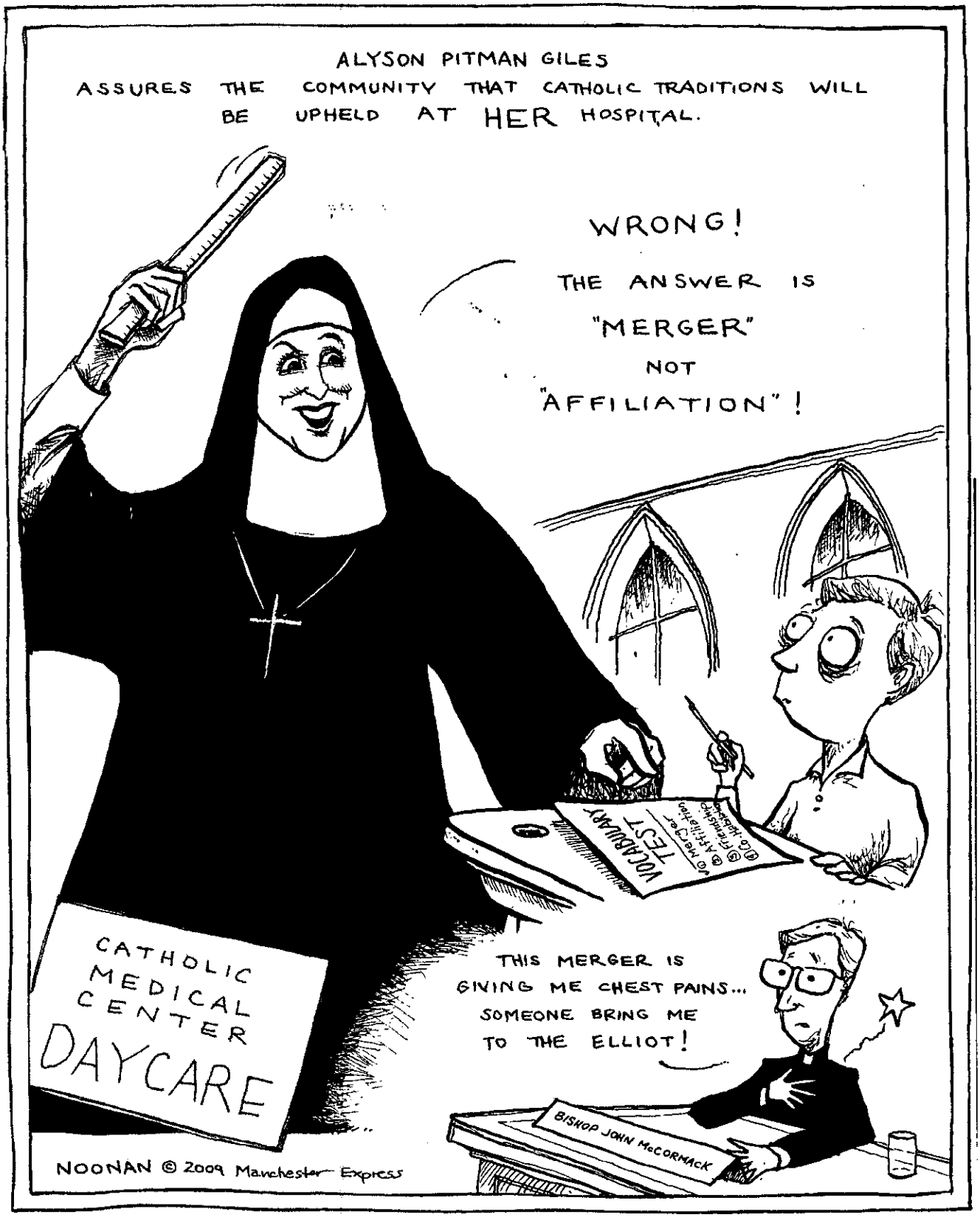
To the Editor,

Ward 12 deserves a fresh perspective at City Hall. Newcomer Patrick Arnold provides that perspective. A graduate of Franklin Pierce Law Center, Patrick managed to pass the bar exam while in the middle of his campaign for alderman. I know he will work just as hard for you once elected.

While representing the Campaign for Ratepayers' Rights, Patrick worked to protect our wallets and fight increases in our electric rates. He's also active in a number of other community organizations, such as Breathe New Hampshire and Ste. Marie's Parish.

As Ward 12's Alderman, Patrick will be reasonable and fair, and will serve his constituents well. So please vote for Patrick Arnold for Ward 12 Alderman on Nov. 3.

Greg Sargent
Manchester, N.H.



READER OPINION

LETTERS

The Manchester Express welcomes letters of reasonable length on local issues. We reserve the right to edit letters for style and sense, and to reject letters judged unsuitable for publication. Send your letters to us via e-mail at news@manchexpress.com or via mail at The Manchester Express, 49 Hollis St., Manchester, NH 03101. Questions? Call Susan King at (603) 625-1855 ext. 28.

Renovations are "unconscionable"

To the Editor,

Just a brief follow-up on the "asbestos-related" renovations to the county courthouse in Manchester.

The Nov. 13, 2009 issue of the New Hampshire Bar News provides the following details on the "asbestos-related renovations" to the county courthouse in Manchester, New Hampshire:

"...a new façade with an illuminated glass lobby extended to the second floor, and skylights in the courtrooms."

"...a sally port to facilitate the secure entry of prisoners, and a floor plan that allows separate access for court staff on the park-side of the building."

"...the new design includes sufficient space for attorneys to go through a separate security line ... "

It is absolutely unconscionable that this exercise in judicial self-indulgence is taking place at a time of 10 percent unemployment and ubiquitous increases in fees and taxes.

Ed Mosca
Manchester, N.H.

EXPRESS OPINIONS

The patron alderman of city firefighters

By JOE BRIGGS
Express Columnist

As most of you well know, Tuesday, Nov. 3 was the city elections in which voters approved the spending cap and its chief sponsor, Ward 10 Alderman Phil Greazzo, along with the hardest-working man in Manchester, Ted Gatsas. It also brought in a few newcomers such as myself, where I won the Ward 2 school board position.

I spent from 6 a.m. to 7 p.m. outside Hillside Middle School, along with Ron Ludwig, Bob O'Sullivan, and occasionally Ted Gatsas, Kathy Kelly, and Dan O'Neil. Dan was out there for almost three hours joining the several Manchester firefighters who were holding his sign in support of their patron.

During this period, I overheard the most fascinating discussions between our incumbent at-large alderman and his firefighting supporters. This man was incredible. He knew every detail about their personal and professional life. He knew about the station they worked in, what the issues were at that station, who their captain was, where they were in their EMT and other training; the list just went on.

It is little wonder why we in Manchester have such a happy, functional, and effective fire department with an advocate and friend like Dan O'Neil on the Board of Mayor and Alderman.

So I asked him. "Dan, when is the last time you had such an intimate conversation with an elementary school

principal?" No answer. "When is the last time you sat down with a teacher to go over her career and her work environment?" Blank stares. "When is the last time that you met with a PTO group to discuss the disruption in elementary schools caused by the budget cuts that you approved?" A shrug.

"Dan, did you speak with any Manchester parents about education this election—because most of our firefighters live in Hooksett or Bedford because they are worried about their kid's education?" He responded with, "Well, I probably do need to spend some more time in the schools." Damn right you do.

I was rude and aggressive and he didn't deserve my attitude. For that, I apologize.

The fact is that I was envious. I didn't want what he had, but rather his ability to get it. Where is education's Dan O'Neil?

If those of us in this city who want their kids to grow up, get good jobs and create new technologies and businesses right here in Manchester had such a patron as Dan O'Neil, then we might actually be experiencing a better economy today, and we wouldn't be so concerned about using union labor to clean our streets and man our firetrucks.

We have completely lost sight of the fact that good parks and good fire stations and good police forces and good homes follow good jobs. And good jobs follow good education, innovation, and speculation.

That's right—education is the single greatest priority because it is ultimately responsible for our economic stability. And for that we need a Dan O'Neil.

Who among us does not have more faith in the 10-year-old down the street than any politician that appeared on our ballot? If we want good leaders in Manchester, we have to start making them in elementary school. If we want new industries and high paying jobs and someone to take care of us when we are old, then we need to go no further than the 2nd grade class at Smyth Road School. Every engineer that we produce out of US FIRST will be responsible for keeping at least 100 union workers busy. Let's not lose sight of that.

We have to be a lot more concerned with producing doctors and scientists and engineers than we are with fireman and police. These will come. These will take care of themselves. But where we are when we come out of this long, dark, economic recession of a tunnel will depend on where we invest today.

My money is on the 10-year-old. I just wish we had a Patron Alderman of Education such as Dan O'Neil behind him.

Joe Briggs was recently elected Ward 2 school board member. He co-hosts Two Joes Live on MCAM Channel 23 in Manchester.

Note to CMC: Still a need for newspapers

By JEFF RAPSIS
Express Editor

There's an important public meeting scheduled for the very same day this edition of the Express hits the streets. But you haven't heard about it in our pages.

What's the meeting? It's the final public "community forum" on the proposed affiliation between Catholic Medical Center and Dartmouth Hitchcock Health. It's scheduled for Monday, Nov. 16 at 6 p.m. in the ballroom of the New Hampshire Institute of Art, 148 Concord St.

This hearing is the last of three, which are required by law. It's intended to be an important and public part of the process of any such agreement, affiliation or merger, in the state of New Hampshire.

I'm writing this on Friday, Nov. 13, and to my knowledge this newspaper has yet to receive any word from anyone connected with the CMC-Dartmouth deal about the when and where of this meeting. Nor did we receive any advance notice about the two earlier forums, one of which was in Manchester and another up in Lebanon.

And I have to wonder about this. We get information from countless groups—everything from the Majestic Theatre to the Manchester soup kitchen—about events and activities coming up. But from CMC, about an important meeting that gives the public an opportunity to question top hospital officials about a deal that may affect the healthcare choices of thousands of city residents, nothing.

This bugged me enough to ask the hospital's public relations person, Gail Winslow-Pine, how they were going about publicizing these hearings, if not through the local newspapers. She explained to me how CMC has made a major and comprehensive effort involving outreach to dozens of community groups such as the city's two Rotary clubs, a complete Web site about the deal (www.ahealthiertomorrow.org), and more. They've also run ads in the Union Leader's "legal notices" section.

Also, no long-term advance notice was available for the hearings because it was likely their dates or times might change, she said. Sure enough, the first one (scheduled for Manchester's primary election day, on Tuesday, Sept. 15) was pushed back a few hours at the last minute when hospital officials realized that holding a public hearing while polls were open wasn't such a great idea.

Finally, Winslow-Pine pointed out the first hearing was packed, so she didn't think they were exactly falling down on the job in getting out the word.

So I wonder. If we're not getting any info from the hospital in advance, are these hearings really being publicized to the average person in the community—someone who does not belong to Rotary, or doesn't spend a lot of time on www.ahealthiertomorrow.org, or read the Union Leader legal notices?

And also, is the input from the community really going to be used to shape this agreement?

When asked about this, Winslow-Pine said the hospital had already responded to one concern raised in the public hearing: that crucial documents were only available online, and not everyone had Internet access. So CMC responded by printing out documents, putting them in binders, and making them available at local libraries and places like the Manchester City Hall information desk.

That's good, though it's not clear to me how that's incorporating public input into the deal itself.

But using print to communicate! Now there's a breakthrough!

I don't get a sense CMC officials are trying to hide anything. But I do think they are falling victim to the notion that online is the only way to go these days, and that print is an afterthought.

And that's probably why we don't have any notice of this meeting in our almanac or in any other part of today's Express, except here, and only because I asked about it.

Radio and the Internet and holding community meetings are fine. But in a fragmented communications landscape, good old local newspapers have emerged the one mass media remaining to reach a community.

So we continue to welcome CMC to use our pages to alert the public, and our opinion pages to promote the proposed affiliation, as well as to critics of the deal.

But in terms of getting the word out to the general public, they might want to call someone at the Majestic Theatre to get some tips on press releases and getting your meeting listed in the paper.

Jeff Rapsis is editor of the Manchester Express.

CMC details remain elusive in Alyson's Wonderland

By RICH GIRARD
Express Columnist

The latest examples of the skullduggery that abounds in Alyson's Wonderland were on display at the third and final public hearing, held Monday, Nov. 16, on the proposed take over of CMC by Dartmouth Hitchcock Health (DHH), which provided a number of jaw droppers. Moreover, the carefully choreographed testimony of supporters simply underscored the deceptive manner in which this acquisition has been marketed.

The show stopper came near the end of the hearing when CMC president and CEO Alyson Pitman Giles, responding to comments made by acquisition opponents, targeted of Fr. Robert Smalley from the Protection of the Blessed Virgin Mary Ukrainian Catholic Church. In an attempt to turn Fr. Smalley's comments against him, she noted that the Bishop of Providence, R.I., Thomas J. Tobin, recently approved the merger of St. Joseph Health Services and Roger Williams Hospital, along with their respective subsidiaries and affiliates.

Clearly, her intent was to lead the audience to believe that what happened in Providence was somehow similar to what's happening here and that Bishop Tobin's approval should be seen as precedent setting, if not providential.

The inference is so misleading, it's downright dishonest.

According to the Rhode Island Attorney General's report, one of the key factors considered in approving this proposal was that Roger Williams (a non-religious institution), "agreed NOT to perform four medical procedures prohibited by the Ethical and Religious Directives for Catholic Healthcare Services ("ERDs"); namely, abortion, assisted suicide, euthanasia and destruction of human embryos. (Roger Williams) considered the agreement *not to perform the four prohibited procedures as an essential element in an affiliation with St. Joseph.* Emphasis added.

In other words, the ERDs in these vitally important areas regarding the termination of life at any stage were extended to the non-Catholic organization to make the merger possible. News reports regarding the transaction echoed this truth.

Contrast that with the proposed agreement that "leases" Dartmouth's Manchester physician group to CMC while allowing practices that violate the ERDs to continue and with Pitman-Giles' statements that various other violations take place at CMC itself, and one has to wonder why she brought it up. Clearly, the facts in R.I. do not support her efforts to surrender CMC to a secular organization that insists it be allowed to perform non-Catholic procedures, no matter how few they claim exist.

Note well: The list of allowed practices that violate the ERDs still remains a secret.

The necessity and structure of the R.I. merger couldn't be more different than the CMC/DHH deal. That said, the parties in R.I. seemed to arrive at a solution that not only entirely preserved Catholic ethics at Catholic institutions, but also extended the four key ones to the all secular partners.

Pitman-Giles' comments came after an obviously orchestrated parade of physicians, patients, and other affiliated parties. The general theme, first broached by DHH president and CEO Dr. Thomas Colacchio, seemed to be that if the affiliation wasn't approved, all of the wonderful improvements in care and convenience that have already been achieved would somehow disappear, leaving Manchester residents in some health care backwater. Such suggestions steal hope from and instill fear in citizens worried about their ability to have better, more convenient care.

The depth to which the P.R. campaign sunk included testimony from Bill Greiner of Bedford. Greiner's unusually detailed information about Elliot Hospital's expansion efforts served as the basis for his support of CMC's affiliation with DHH. Curious about his level of specificity, I did some research and discovered that Greiner owns the property on Route 101 that houses CMC's Family Health & Wellness Center.

According to a news report, CMC helped fund the renovations to his building and Greiner expects to add 10,000 square feet to the building, more than doubling its current size.

Greiner's failure to disclose his interests, not only at this hearing but also the one in Lebanon where he gave the same testimony, is deceptive at best. He denies any collusion with CMC officials, but admits he has friends who work for the hospital. He's also connected to Jim Merrill, one of CMC's attorneys, on the business networking site LinkedIn.com. Greiner denies knowing Merrill.

As of my submission deadline, phone calls and e-mails to CMC's attorneys, including Merrill had yet to be returned.

In Alyson's Wonderland, what's real and what's not remains elusive.

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001 and is a long-time community activist.

ONE MAN'S MANCHESTER

A thankful man takes a cruise down Elm Street

By ROB AZEVEDO
Express Columnist

Whether or not I just drove 150 miles through 20 small towns from Wolfeboro to Rye, I always end my day with a slow cruise down Elm Street. I could loop around to get home, take I-293, the backside of Valley Street or Mammoth all the way.

I don't. And for that, I'm thankful.

The city's alive again. There's an energy growing in Manchester, and I don't know if you feel it, but I do. I like having to look both ways when I come out of Quiznos. I like that the Strange Brew is sometimes too packed to get into during Happy Hour on a Friday. I also like that a ginger beer and vodka is waiting a few clicks away at the Z bar.

Traffic is up, that's what I'm saying. And for that, I'm thankful.

Back on Elm, once over the Queen City Bridge, I'm in the slow lane, taking it down. There's Dandi-Lyons flower shop on the left. Not only can I get a dozen roses there for $5, I can get another dozen carnations for only three more sheets.

That's good living, especially if "Flowers" is spelled L-O-V-I-N' in your house.

And for that, I'm very thankful.

Now, I'm coming into the meat of Elm. Boom! The Verizon Wireless. Love the silver shell, everything about it. I've seen everyone from Bob Dylan to a slew of trolls skating around in bubbles costumes at the Verizon.

What that venue has done for this city is maybe even more significant than Salma Hayek recently being photographed breast-feeding an African baby boy.

For that vision alone, I'm thankful.

And here's an idea "you" can thank "me" for: If the tax issues regarding the Verizon Wireless becomes too much of a burden for the city and state to handle, simply bring a reasonable offer over to the boys at Brady-Sullivan. It's only a matter of time, isn't it?

You're welcome.

Then, one of my favorite spots in the city presents itself, The Radisson. Do I look for parking and stop in for a coffee? The big screen TV in the parlor sure is calling my name. So aren't the cushy chairs and free Internet. No better place in the city to catch up on work.

But the satellite's set to Outlaw Country in the car, and I want to see if I recognize anyone coming out of Good Times Smoke Shop. Laughing at someone else's expense is just plain wrong, but a hearty chuckle at dusk is better than a handful of fish oil.

Ah, snake eyes! No one I know. Thanks anyways.

Just over to my left is a Brady-Sullivan property that pulls at my heartstrings. This garden plaza they constructed downtown is amazing. The life it shines onto Elm is generous and brilliant.

So, thank you Brady-Sullivan.

Thank you, too, Mayor Guinta. Thanks for presiding over this thoroughfare for the last four years. Your tenure inspired a movement downtown that gives me good reason to cruise Elm Street daily.

And for all that, I'm thankful on this Thanksgiving, 2009. God speed.

Manchester resident Rob Azevedo has written for the Boston Globe, Boston Globe Magazine, Improper Bostonian, Details, as well as various other men's magazines. He can be reached at onemanmanch@gmail.com.

READER OPINION

LETTERS

The Manchester Express welcomes letters of reasonable length on local issues. We reserve the right to edit letters for style and sense, and to reject letters judged unsuitable for publication. Send your letters to us via e-mail at news@manchexpress.com or via mail at The Manchester Express, 49 Hollis St., Manchester, NH 03101. Questions? Call Susan King at (603) 625-1855 ext. 28.

Share your opinion

Do you care about Manchester? Are you unhappy with some aspect of our city and need to vent some steam? Or are you glad to live here and want to share the reasons why?

Please keep letters to no more than 350 words. Guest columns (with your photo) can be up to 500 words, to give you room to develop a point further.

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Mr. Gatsas, what are you trying to achieve?

To the Editor,

What are Mr. Gatsas' school district goals and how will he measure success? "Save money and improve the quality of education" is not specific enough to succeed.

Examples of specific goals worthy of attaining:

1. Reduce the dropout rate by 20 percent over within three years.

2. Get the school district off of the District In Need of Improvement list within five years.

3. Instead of spending less per student than any other district in New Hampshire, spend 20 percent less than the next cheapest district within two years.

4. Achieve the highest ratio of town tax to local education tax of any town in the state by next year, etc.

The last goals two sound a bit silly, but during the past two years, both under a Gatsas built budget, progress has been made on those goals. Just check your tax bill: For 2010, the most recent bill, the Board of Mayor and Aldermen charged us (per thousand dollars) $9.27 for city services, and $5.34 for education. Last year, they charged us $8.05 for city services and $5.98 for education. My taxes went up, even though I was charged 12 percent LESS for schools! I'm being charged 15 percent more for city services.

Doubt this? Just read your bill. The state's Department of Education Web site will show you that we already spend less per student than anyone else.

Another possibility seems obvious. In the Scott Brooks Sunday Union Leader article that broke this news, Adamakos is quoted saying that the high schools were designed for 2,500 students. Like most people, I expect Gatsas knows that the majority of Hooksett parents will have nothing to do with moving their children to West High School. The Gatsas proposal can easily been seen as a plan to close West. If so, say so. If not, Mr. Gatsas, what are you trying to achieve?

Peter Sorrentino
Manchester, N.H.

EXPRESS OPINIONS

Bogus testimony cheapens CMC public hearing

By RICH GIRARD
Express Columnist

Last week's column took issue with the testimony of Bedford resident Bill Greiner for his failure to disclose an ongoing business relationship with Catholic Medical Center while supporting its acquisition by Dartmouth Hitchcock Health. The testimony was offered at a public hearing held Monday, Nov. 16. Since publication, I've been inundated with information that leads me to conclude my investigation may have tripped over something big.

It seems Greiner was somewhat understated when he said he "had friends" that work for CMC. According to one CMC insider, Greiner is there so frequently "people think he's on the board of directors." And, speaking of board of directors, a number of people have since told me that Greiner and Jeff Eisenberg, chairman of CMC's board, are "best friends."

Moreover, the Bedford property that Greiner owns and leases to CMC isn't their only business dealing. A commercial realtor sent along information detailing a substantial real estate deal between CMC and Greiner involving two medical office condos totaling nearly 19,000 square feet on Webster Street in Manchester. Greiner bought the properties from CMC for more than $3.5 million and is now leasing them back to the hospital.

Greiner failed to mention this other business dealing during our interview. Makes one wonder just what else is out there, doesn't it?

The realtor in this deal was Bob Rohrer, Jr. principal of Grubb & Ellis. Sources confirm that Rohrer and Greiner are longtime friends and business associates. Rohrer's career summary page online advertises the following: "He recently has been involved in transaction (sic) exceeding $20 million for clients including CCA Global Partners, GCR, Catholic Medical Center, and several private investors."

This matters, because Rohrer also spoke in favor of DHH's proposed takeover of CMC at the Nov. 16 public hearing. Advertising himself only as "a small business owner with 12 employees from Amherst," he went on at length, again in unusual detail, about how the proposed "affiliation" would benefit the community by lowering the cost and improving the quality of health care. In explaining he was a practicing Catholic, he expressed "trust" that the hospital administration would keep CMC Catholic.

As with Greiner, he failed to disclose information which might color his as a biased opinion.

Clearly, both men have gained financially by their dealings with CMC and may gain even more if this takeover is approved. Greiner's assertion, in response to my question, about how he came across his information was that his testimony was based on "published news reports." Last week, I gave him the benefit of the doubt.

Given the close personal relationship Greiner has with Eisenberg and the number of people who've indicated he's ever-present at CMC, the time has come for an investigation into the personal and professional associations of CMC's board members and administrators to determine whether or not there's been an effort to deceive the public with testimony at the public hearings.

Those hearings, by law, are to receive public input on hospital transactions that involve acquisition, merger, or change of control. Those who withhold information about their associations deceive the public and it must be determined whether or not either CMC or DHH was involved in any way.

While we're looking at questions of conflict of interest, let's also examine just how much money CMC pays the Manchester Monarchs hockey team to have their logo stitched onto the Monarchs' jerseys. Eisenberg is, after all, the Monarchs president. And how much money do CMC and DHH spend on advertising at WGIR? Inasmuch as station manager Joe Graham is on CMC's board of directors, I think we should know.

There are other conflict of interest questions, too. They involve donut franchises, credit unions, and employees of the Diocese of Manchester, and they're just too much to get into detail here.

And, why didn't attorney Walter Maroney, who helped dismantle Optima Health while working for the state Attorney General's office, disclose he's on CMC's payroll during his supportive testimony?

Given that people with significant financial interests and personal relationships testified on Nov. 16 without disclosing them, it all needs to be investigated.

The merits of this proposal can no longer be discussed absent the persistent, deceptive efforts to cajole the public into thinking this takeover is something it's not, while trying to frighten us into believing that the quality and cost of care will suffer untold consequences if they don't get their way.

Rich Girard served as aide to Mayor Ray Wieczorek from 1992 to 1997 and as alderman-at-large from 1998 to 1999. He ran for mayor in 2001 and is a long-time community activist.

CMC affiliation will position hospital for the future

The following group statement was submitted for publication by the below-named physicians and administrators affiliated with Catholic Medical Center.

As physician leaders serving at the time of the Optima demerger, we can attest to the negative impact it had on our community, the medical staff and the morale of Catholic Medical Center.

Many of us have practiced medicine in the Greater Manchester area since the 1980s or '90s. We've either held or currently hold medical staff leadership positions. We've lived through the past and we look forward to the future. We stand solidly behind the leadership and vision of CMC.

We endorse the proposed affiliation between CMC Healthcare System (CMCHS) and Dartmouth-Hitchcock Health (DHH) and believe it will secure Catholic Medical Center in the palm of 21st century healthcare, without a loss of its Catholic identity or philosophy. This will provide for the long-term viability of Catholic Medical Center and Catholic healthcare for decades to come.

As medical staff physician leaders, we understand the landscape of healthcare delivery is rapidly evolving. Multiple factors influencing change include federal government policy, the push for a comprehensive nationalized healthcare reform bill, the public awareness and demand for high quality, efficient, accessible care. There are exciting advances in technology and imaging that have been and will

HCR 30, 2010

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
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MICHAEL A. DELANEY
ATTORNEY GENERAL

CHARLES P. "RUDY" FITCH II
DEPUTY ATTORNEY GENERAL

June 2, 2010

Honorable Terie Norelli
House Speaker
State House, Room 312
Concord, New Hampshire 03301

Dear Speaker Norelli:

Enclosed please find a copy of the Report of the Director of Charitable Trusts Regarding the Proposed Acquisition Transaction Between CMC Healthcare System and Dartmouth-Hitchcock Health.

Very truly yours,

Michael A. Delaney
Attorney General

MAD/p
Enc.

cc: Karen Wadsworth, House Clerk

#476491

NEW HAMPSHIRE

Department of Justice

Office of the Attorney General

Report of the Director of Charitable Trusts Regarding the Proposed Acquisition Transaction Between CMC Healthcare System and Dartmouth – Hitchcock Health

Michael A. Delaney
Attorney General

Michael S. DeLucia
Director of Charitable Trusts

May 21, 2010

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I. INTRODUCTION

The Office of the Attorney General, through the Director of Charitable Trusts (the "Attorney General"), pursuant to New Hampshire RSA 7:19-b (the "Acquisition Act")[1] and under its common law and statutory duties, has reviewed the proposed acquisition transaction[2] between Dartmouth-Hitchcock Health ("DHH") and CMC Healthcare System ("CMCHS")[3] (the proposed acquisition transaction is referred to in this Report as the "Transaction"). At its essence, the Transaction reorganizes the corporate structures of CMCHS, and its affiliates, Catholic Medical Center ("CMC") and Alliance Health Services ("AHS"),[4] resulting in these organizations ceding control to DHH and becoming a part of a regional integrated health care delivery system overseen and controlled by DHH.[5]

The Attorney General's review has been performed in accordance with the Acquisition Act and the Attorney General's common law and statutory rights, duties, and powers in

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[1] Specifically, the Attorney General is directed to determine, within 120 days from the date of Parties filing if the Parties have complied with the minimum requirements set forth in RSA 7:19-b II or object to the Transaction on specified grounds. The requirements set forth in RSA 7:19-b II are as follows:

a) The proposed transaction is permitted by applicable law, including, but not limited to, RSA 7:19-32, RSA 292, and other applicable statutes and common law;

b) Due diligence has been exercised in selecting the acquirer, in engaging and considering the advice of expert assistance, in negotiating the terms and conditions of the proposed transaction, and in determining that the transaction is in the best interest of the health care charitable trust and the community which it serves;

c) Any conflict of interest, or any pecuniary benefit transaction as defined in this chapter, has been disclosed and has not affected the decision to engage in the transaction;

d) The proceeds to be received on account of the transaction constitute fair value therefor;

e) The assets of the health care charitable trust and any proceeds to be received on account of the transaction shall continue to be devoted to charitable purposes consistent with the charitable objects of the health care charitable trust and the needs of the community which it serves;

f) If the acquirer is other than another New Hampshire health care charitable trust, control of the proceeds shall be independent of the acquirer; and

g) Reasonable public notice of the proposed transaction and its terms has been provided to the community served by the health care charitable trust, along with the reasonable and timely opportunity for such community, through public hearing or other similar methods, to inform the deliberations of the governing body of the health care charitable trust regarding the proposed transaction.

[2] "Acquisition transaction" is defined in RSA 7:19-b, I(a) as "transfer of control, direct or indirect, of a health care charitable trust, or of 25 percent or more of the assets thereof, including, but not limited to, purchases, mergers, leases, gifts, consolidations, exchanges, joint ventures, or other transactions involving transfer of control or of 25 percent or more of assets. However, changes in membership of the governing body of a health care charitable trust occurring through regular election or filling of vacancies in accordance with the bylaws thereof do not of themselves constitute acquisition transactions within the meaning of this section." The Parties refer to the Transaction as an "affiliation" in their documents. The Attorney General finds, as a matter of law, that the Transaction is an acquisition transaction as defined by RSA 7:19-b, I(a).

[3] DHH and CMCHS are sometimes referred to in this Report collectively as the "Parties."

[4] CMCHS, CMC, AHS and their affiliates are sometimes referred to in this Report collectively as the "CMC Charities."

[5] The resulting organizational chart and the current organizational charts of DHH and CMCHS are attached as Exhibits 1, 2, and 3.

connection with the supervision, administration and enforcement of charitable trusts pursuant to RSA 7:19 to 7:32-l

Based on the review of the Transaction completed by the Attorney General, the Attorney General objects under RSA 7:19-b, II(a) to the Transaction on the grounds that the Transaction is not permitted by applicable law. The Transaction will result in DHH obtaining control over core functions of the CMC Charities, which until this point have operated as an independent Catholic hospital. The Attorney General concludes that the Transaction will result in a profound change in the governance structure of the CMC Charities and diminish the fiduciary duties of the Boards of Directors of the CMC Charities which will inhibit the ability of the CMC Charities to carry out their charitable missions. The Attorney General also concludes that Probate Court approval of this transfer of control would be necessary in order to be permitted under New Hampshire law.

The Attorney General also objects to the Transaction in accordance with RSA 7:19-b, II(e). Based on the information provided by the Parties, the Attorney General concludes that the Parties have not provided adequate information upon which the Attorney General can determine whether it exercised due diligence in determining the effect of the Transaction on the cost of delivering health care. For that reason, the Attorney General objects.

Under RSA 7:19-b, II(d), the Attorney General has concluded that while the consideration exchanged in connection with the Transaction constitutes fair value, the Attorney General objects to the Transaction as there are insufficient safeguards in place to ensure that the calculation of the Post-Affiliation Surplus is not subject to manipulation or abuse by the Parties.

The Attorney General also reviewed the employment agreements for certain executives of DHH and CMC. RSA 7:19-b, II(c) to determine whether the Transaction would result in a pecuniary benefit. The compensation of the President and CEO of CMC, Alyson Pitman-Giles, when compared with the total compensation of other hospital presidents in the region, reveals that Ms. Pitman-Giles' compensation is significantly greater than her peers based on total compensation and as a percentage of operating revenue. Because the review under this Report is limited to the statutory factors listed in RSA 7:19-b, and the Transaction does not directly affect her salary, the Attorney General cannot conclude her salary is a basis for objecting to the Transaction. Her salary, however, will be separately reviewed under the statutory and common law authority of the Attorney General, and a separate determination will be made regarding the compensation paid to executives at CMC, as well as the executives of other hospitals in New Hampshire.

II. SUMMARY OF TRANSACTION

The Attorney General has engaged in an extensive review of the Transaction. This review included meeting with the senior executives of the Parties, meeting with those having an interest in the Transaction, meeting with interested citizens, reviewing the documents filed by the Parties, reviewing information provided by the Parties in response to detailed information requests issued by the Attorney General, and attending public hearings conducted by the Parties.

The Attorney General also retained legal counsel and an accountant to assist him with the review of the Transaction.

The Transaction is complex. First, the Transaction proposes the creation of a regional integrated health care delivery system comprised of: (1) an academic medical center and hospital based in Lebanon, New Hampshire, (2) an acute-care hospital based in Manchester, New Hampshire, and (3) a multi-specialty physician practice group located in Manchester, New Hampshire. It is anticipated that additional health care organizations will subsequently be added to the regional integrated health care delivery system created by this Transaction. In order to create the regional system, the governance structures of the organizations involved will be amended to ensure that DHH has control of the entities making up the regional system.

Second, the Transaction proposes an affiliation between secular and religious health care charitable trusts with the secular health care charitable trusts obtaining control of the religious health care charitable trusts. The Transaction has been structured in a manner that attempts to establish certain safeguards to preserve and protect the charitable missions of the health care charitable trusts involved, in particular the Roman Catholic mission of the CMC Charities. It should be noted that the Bishop of the Roman Catholic Diocese of Manchester (the "Bishop of Manchester") the authority to approve certain acts proposed by the Board of Trustees of CMCHS. The Bishop of Manchester has only conditionally approved the Transaction.

Third, the Transaction provides that most of the Dartmouth-Hitchcock Clinic Manchester ("DHC-M") physician practice group services will be combined with those services offered by AHS at CMC. This combination of services will be governed by an Amended and Restated Professional Services Agreement between DHC-M and AHS (the "PSA"). To comply with the Parties' stated goal of preserving the Roman Catholic aspects of the mission of the CMC Charities, as well as complying with the Ethical and Religious Directives for Catholic Health Care Services (the "ERDs"), the Parties have created three separate and distinct categories of medical procedures:

1. those medical procedures that are allowable at CMC or the DHC-M facilities leased by CMC (the DHC-M Facilities");

2. those medical procedures that may only be performed at DHC-M Facilities that are not leased by CMC and not under the PSA (e.g., direct sterilization and contraception related procedures); and

3. those medical procedures that may not be performed at CMC or at DHC-M Facilities (i.e., direct termination of pregnancy and in vitro fertilization).[6]

The Parties acknowledge that this three category approach has no precedent under the ERDs.

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[6] The Parties have represented to the Attorney General that DHC-M does not currently provide services relating to the direct termination of pregnancy.

III. THE PARTIES

A. CMC Healthcare System

CMCHS is a New Hampshire voluntary, non-profit corporation with a principal place of business at 100 McGregor Street, Manchester, New Hampshire 03102. It is the coordinating organization for, and the sole member of, CMC and AHS. CMCHS is a public juridic person of diocesan right under the Code of Canon Law of the Roman Catholic Church, subject to powers reserved to the Bishop of Manchester.

CMC is a New Hampshire voluntary, non-profit corporation with a principal place of business at 100 McGregor Street, Manchester, New Hampshire. CMC operates an acute care hospital in Manchester, New Hampshire. CMC had its origins in 1892, when the Sisters of Mercy opened Sacred Heart Hospital. In 1894, the Sisters of Charity of Saint Hyacinthe opened Notre Dame Hospital. In 1974, Sacred Heart Hospital and Notre Dame Hospital merged to form CMC. Today, CMC is a 330-bed full-service hospital. CMC offers full medical-surgical care with more than 25 subspecialties. It is the home of the Poisson Dental Facility, a Healthcare for the Homeless Project, the Parish Nurse Program, and the Westside Neighborhood Health Center.[7]

AHS is a New Hampshire voluntary, non-profit corporation with a principal place of business at 100 McGregor Street, Manchester, New Hampshire. AHS is a provider of health care services primarily through a professional services agreement and a facilities lease with Dartmouth-Hitchcock Clinic.

1. Dartmouth-Hitchcock Health

DHH is a New Hampshire voluntary, non-profit corporation with a principal place of business at One Medical Center Drive, Lebanon, New Hampshire. DHH was created on May 1, 2009 to be the coordinating organization for, and sole member of, Mary Hitchcock Memorial Hospital ("MHMH") and Dartmouth-Hitchcock Clinic ("DHC"). DHH has applied to the Internal Revenue Service (the "IRS") for recognition of its exemption from federal income tax as a charitable organization described under Section 501(c)(3) of the Internal Revenue Code.

MHMH is a New Hampshire voluntary, non-profit corporation with a principal place of business at One Medical Center Drive, Lebanon, New Hampshire. MHMH operates an academic medical center located in Lebanon, New Hampshire.

DHC is a New Hampshire voluntary, non-profit corporation with a principal place of business at One Medical Center Drive, Lebanon, New Hampshire. DHC is a provider of clinical services.[8] DHC-M was founded in 1984, when six physicians joined forces to create Manchester's first multi-specialty group practice. In 1998, DHC-M constructed a 120,000

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[7] Dorothy Bazos *et al.*, *Believe in a Healthy Community*, app. at 54 (Greater Manchester Community Needs Assessment 2009).

[8] The DHC health care providers that provide services in Manchester, New Hampshire are referred to as Dartmouth-Hitchcock Clinic-Manchester ("DHC-M").

square-foot ambulatory care facility to house its Manchester group practice. Today, DHC-M is a multi-specialty group practice with more than 125 physicians and associate providers. DHC-M's primary and specialty care departments offer a full range of health care services.[9]

IV. PROCEDURAL HISTORY

CMCHS and DHH jointly filed a notice pursuant to RSA 7:19-b III with the New Hampshire Director of Charitable Trusts on July 22, 2009 (the "July Notice"). The July Notice included the Dartmouth-Hitchcock Health – CMC Healthcare System Affiliation Agreement dated July 22, 2009 (the "Initial Affiliation Agreement"). Subsequent to the filing of the July Notice, CMCHS and DHH solicited public comment concerning the Transaction through three public hearings[10] and a website that the Parties established to provide the public with information regarding the Transaction, *www.ahealthiertomorrow.org*. As a result of the public commentary, the Parties amended the terms of the Initial Affiliation Agreement to address certain concerns raised during the public comment period. The First Amendment to Affiliation Agreement was adopted by the CMCHS and DHH Boards in January 2010 (the Initial Affiliation Agreement and the First Amendment to Affiliation Agreement are collectively referred to in this Report as the "Affiliation Agreement"). On January 21, 2010, the Parties filed the Supplemented and Restated Notice to the New Hampshire Director of Charitable Trusts Pursuant to RSA 7:19-b (the "Notice").[11]

V. METHODOLOGY

A. Review

Upon the filing of the July Notice, the Attorney General engaged in an extensive review of the Transaction. This review included an evaluation of: documents submitted to the Attorney General by the Parties with the July Notice, a revised set of documents with the First Amendment to Affiliation Request with the Notice, and responses provided by the Parties to two sets of information requests issued by the Attorney General. The Attorney General attended each of the public forums held by the Parties. Information submitted to the Attorney General by interested citizens was reviewed. The law firm of McLane, Graf, Raulerson & Middleton, Professional Association and the accounting firm of Carew & Wells, PLLC were retained to assist the Attorney General in connection with his review of the material and information obtained in this review.

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[9] Bazos, *supra*, app. at 56.

[10] Public forums were held in Manchester on September 15, 2009 and November 16, 2009, and in Lebanon on October 8, 2009.

[11] The Notice can be found at http://www.ahealthiertomorrow.org/affiliation.html and a paper copy is available at the New Hampshire Department of Justice.

B. Interviews

In addition to attending hearings and receiving public comment, meetings regarding the Transaction were held with the following individuals:

- Timothy Soucy, Manchester Public Health Director
- Patrick Long, Manchester Alderman
  Edward George, Executive Director, Manchester Community Health Center
- Dr. James W. Squires, President, Endowment for Health
- John Friberg, Jr., Esq., Senior Vice President, General Counsel, Elliot Hospital
- Attorney Donald Crandlemire, legal counsel to Elliot Hospital
- Attorney James Bianco, legal counsel to Elliot Hospital
- Thomas Colacchio, M.D., President, Dartmouth-Hitchcock Health
- Steve LeBlanc, Chief Operating Officer at Dartmouth-Hitchcock Medical Center
- Steven Paris, M.D., Chief Physician Executive at Dartmouth Hitchcock Manchester
- Kevin Stone, Project Specialist, Dartmouth-Hitchcock Medical Center
- Alyson Pitman-Giles, Chief Executive Officer and President, Catholic Medical Center
- Kevin Kilday, Chief Financial Officer, Catholic Medical Center
- Peter Cataldo, Director of Mission Effectiveness, Catholic Medical Center
- Raymond Bonito, Executive Vice President, Chief Operating Officer, Catholic Medical Center
- Honorable Donald Welch, Former N.H. State Representative
- Honorable Andy Martel
- Barbara Hagan, New Hampshire Right to Life
- Kathleen Souza, New Hampshire Right to Life
- Lucy Hodder, Planned Parenthood of Northern New England
- Claire Ebel (New Hampshire Civil Liberties Union)
- Donald Shumway, -Former Commissioner, N.H. Department of Health and Human Services
- Marilee Nihan, New Hampshire Department of Health and Human Services
- Michael Quinlan
- Richard H. Girard
- Philip C.L. Gray, JCL
- Attorney Arpiar Saunders
- William G. Steele, Jr., CPA.

C. HCR-30

The New Hampshire General Court has passed House Concurrent Resolution 30, urging the Attorney General to bring the Transaction before the New Hampshire Probate Court in the event the Attorney General determines there are any unresolved legal questions within the jurisdiction of the Probate Court that relate to charitable missions and assets of DHH and CMCHS. A copy of the Resolution has been delivered to the Attorney General.

VI. THE PROPOSED TRANSACTION

A. Description Of The Transaction

The Transaction would result in: (i) the integration of the DHC Manchester-based physician practice group services with the services of CMC under its parent company, CMCHS (the "Manchester System"), and (ii) the integration of CMCHS into a regional health care delivery system overseen and controlled by DHH (the "Regional System").

The Parties have each operated in Manchester for many years. Over the past several years, DHC has collaborated with CMC on several patient-focused initiatives, including birthing support, pediatrics, cardiology, family medicine, intensivist services, hospitalist services, echocardiography and oncology. CMC and DHC also worked together in opening the Westside Neighborhood Health Center, which provides primary and pregnancy care to under-insured and uninsured children and adults in the Manchester area. The Parties represented that the programmatic success of DHC and CMC led the leadership of DHC and CMCHS to commence discussions that ultimately resulted in the Parties moving forward with the Transaction.

The general terms of the Transaction are set forth in the Affiliation Agreement. The Affiliation Agreement describes the purposes of the Transaction and the guiding principles of the Parties. The Affiliation Agreement also describes the rights and obligations of the Parties relating to the development and implementation of an integrated health care delivery system in Manchester, and includes the "Manchester System Financial Management: Dartmouth-Hitchcock Health (DHH) Financial Principles," which outlines the financial principles that are to be used to guide the Parties with regard to financial matters (Exhibit 4).

The Transaction includes an Amended and Restated DHC-AHS Professional Services Agreement which describes the employee leasing arrangements between DHC and AHS. The PSA replaces the existing Professional Services Agreement between AHS and DHC, and is intended to be broader and to cover almost all of the physician services offered by DHC-M in the Manchester area.

The Parties have also included a CMCHS Management Agreement with CMC for Management Services of the Chief Executive Officer and Chief Financial Officer, which describes the allocation of time and associated compensation expense of the CEO and CFO between CMCHS and CMC.

Upon the consummation of the Transaction, DHH will be the sole member[12] of CMCHS. In order to facilitate the operation of the Regional System, the Articles of Agreement and Bylaws

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[12] In New Hampshire, the rights of members in a voluntary corporation are established and described in the corporation's Articles of Agreement and Bylaws. A voluntary corporation's "bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with the laws of the state or the articles of agreement...." (RSA 292:6). As a result, specific rights and roles of members in New Hampshire voluntary corporations can be varied and diverse. Unlike the shareholders of a business corporation, the members of a voluntary corporation are not "owners" of the voluntary corporation and have no rights other than those limited rights set forth in RSA 292 and those included in the Articles of Agreement and bylaws of the voluntary corporation.

of CMCHS will be amended to provide DHH with reserved powers over certain core functions and of CMCHS, many of which will be exercised concurrently with the reserved powers retained by the Bishop of Manchester (described further below).

CMCHS will continue to serve as the sole member of CMC and AHS. In conjunction with the development of the Regional System, certain powers have been reserved by CMC and AHS to CMCHS (Exhibit 5 and Exhibit 6, respectively). Under the regional health care delivery system established as part of the Transaction, CMCHS will coordinate the delivery of integrated health care services in the greater Manchester area. CMCHS will be responsible for creating and implementing a strategic plan for the Manchester System as well as coordinating and facilitating the implementation of the Regional System's strategic plan, financial guidelines and quality goals.

B. Role Of The Bishop

The Articles of Agreement of each of the CMC Charities provide that each of the CMC Charities are to be "operated in accordance with canon law of the Roman Catholic Church promulgated by the Supreme Roman Pontiff and the teachings of the Roman Catholic Church enunciated by the Holy See as well as with the Ethical and Religious Directives for Catholic Health Care Services issued by the United States Conference of Catholic Bishops, as amended from time to time." The CMC Charities' Articles of Agreement also provide that the Roman Catholic Bishop of Manchester shall monitor the implementation of and compliance with the ERDs. The Affiliation Agreement specifically provides that "[t]he Parties understand the need to preserve and respect the Catholic elements of the Manchester System and the charitable purposes for which they were established, as well as the ERDs and the Bishop's reserved powers . . ."

The ERDs are a set of directives and principles developed by the Committee on Doctrine of the United States Conference of Catholic Bishops. The ERDs provide that their purpose is twofold: "First, to reaffirm the ethical standards of behavior in health care that flow from the Church's teachings about the dignity of the human person; second, to provide authoritative guidance on certain moral issues that face Catholic health care today."[13] The ERDs specifically address and provide guidance with regard to the formation of new partnerships with health care organizations and providers.[14]

Statutorily defined rights and roles of members of voluntary corporations are limited to the following: (1) a requirement that a voluntary corporation's Articles of Agreement contain provisions for (among other things) establishing membership and prioritizing the rights of members in an event of dissolution (RSA 292:2); (2) a reference that a voluntary corporation's Articles of Agreement may grant the corporation's members the right to amend the corporation's bylaws (otherwise this power vests in the corporation's board of directors, subject to repeal or change by a 2/3 majority action of the shareholders or holders of the membership certificates) (RSA 292:6); and 3) that a voluntary corporation may generate funds through its members, including the issuance of membership certificates, receipt of contributions to capital, and assessments of dues and fees on members (RSA 292:9).

[13] Comm. on Doctrine of the U.S. Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, preamble at 3-4 (United States Conference of Catholic Bishops, 5th ed. 2009).

[14] Directive 68: Any partnership that will affect the mission or religious and ethical identity of Catholic health care institutional services must respect church teaching and discipline. Diocesan bishops and other church authorities should be involved as such partnerships are developed, and the diocesan bishop should give the appropriate

The Transaction has been structured to include various safeguards that are intended to preserve the Bishop of Manchester's right to monitor the implementation of and compliance with the ERDs within the Manchester System. For example, CMCHS will remain a public juridic person of diocesan right under the Code of Canon Law of the Roman Catholic Church and it will be subject to certain powers reserved to the Bishop of Manchester. The Affiliation Agreement provides that if the Bishop determines that any of the Manchester System entities has failed to fulfill their obligations to comply with the ERDs, the Bishop will have the right to commence a civil proceeding to enjoin such violation and seek specific performance of the obligations to implement and abide by the ERDs. The Affiliation Agreement provides that if the Bishop is required to pursue enforcement of his rights and remedies under the Affiliation Agreement, then CMCHS will reimburse the Bishop for all of his reasonable costs, expenses and attorneys' fees arising from such enforcement. The inclusion of the Bishop's Health Care Delegate as an *ex-officio* member of the CMCHS Board serves as another safeguard of the Bishop of Manchester's oversight authority. CMC has also created the position of Director of Mission Effectiveness which will include the responsibility for monitoring and ensuring the ongoing compliance with the ERDs. This position will report to CMC's CEO.

The Affiliation Agreement states that the Parties understand the need to preserve and respect the Catholic elements of the Manchester System and the charitable purposes for which they were established. The Affiliation Agreement provides that CMC will remain a Catholic hospital and the care provided to CMC's patients will be administered in a manner that is consistent with the requirements of the ERDs. In order to facilitate compliance with the ERDs, the Parties have identified the procedures performed by the DHC-M and organized the procedures into three categories:[15]

1. those medical procedures that are allowable at CMC or the DHC-M Facilities leased by CMC;

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authorization before they are completed. The diocesan bishop's approval is required for partnerships sponsored by institutions subject to his governing authority; for partnerships sponsored by religious institutes of pontifical right, his *nihil obstat* should be obtained.

Directive 69: If a Catholic health care organization is considering entering into an arrangement with another organization that may be involved in activities judged morally wrong by the Church, participation in such activities must be limited to what is in accord with the moral principles governing cooperation.

Directive 70: Catholic health care organizations are not permitted to engage in immediate material cooperation in actions that are intrinsically immoral, such as abortion, euthanasia, assisted suicide, and direct sterilization.

Directive 71: The possibility of scandal must be considered when applying the principles governing cooperation. Cooperation, which in all other respects is morally licit, may need to be refused because of the scandal that might be caused. Scandal can sometimes be avoided by an appropriate explanation of what is in fact being done at the health care facility under Catholic auspices. The diocesan bishop has final responsibility for assessing and addressing issues of scandal, considering not only the circumstances in his local diocese but also the regional and national implications of his decision.

[15] Category 1 procedures are those that have no ethical or religious implications. Lists of Category 2 and Category 3 procedures are attached as Exhibit 7 and Exhibit 8, respectively.

2. those medical procedures that may only be performed at DHC-M Facilities that are not leased by CMC and not under the Amended and Restated Professional Services Agreement (e.g., direct sterilization and contraception related procedures); and

3. those medical procedures that may not be performed at CMC or at DHC-M Facilities (e.g., direct termination of pregnancy and in vitro fertilization).

In order to ensure compliance with the ERDs and the protocols established for the Manchester System, all DHC-M physicians and other appropriate personnel will participate in training regarding the application of the ERDs and will be required to complete continuing education programs regarding the ERDs conducted by CMCHS.

While the Category 3 procedures will not be performed at the DHC-M Facilities, Category 2 procedures may be performed at the DHC-M Facilities (which will be leased to AHS), provided such procedures are not performed under the PSA. The PSA provides that a portion of the facilities leased by DHC to AHS in Manchester and Bedford, and related furniture, fixtures and medical office supplies, will be excluded from the lease arrangement (the "Excluded Portion"). The Excluded Portion will be a percentage determined by dividing the amount currently billed by DHC for all services provided by it at the facilities in Manchester and Bedford by the current amount billed by DHC for only those services provided by it at the facilities in Manchester and Bedford that are not compliant with the ERDs. The Excluded Portion will not be physically segregated from the remainder of the facility. The PSA provides that the Category 2 procedures will be billed by DHC and no revenue from these procedures will be credited to or benefit any of the CMC Charities. In order to ensure that patients are aware of the segregation between services provided by the CMC Charities and DHC, the Parties intend to post a disclaimer statement at the DHC-M Facilities where the DHC physicians provide services, post the disclaimer on its website, and include the disclaimer in patient information packages.

The theoretical separation and segregation relating to the Category 2 procedures are intended to allow DHC to continue to perform the Category 2 procedures at the DHC-M Facilities in a manner that complies with the ERDs. This structure raises questions regarding its operational integrity given that the Category 2 procedures may not be performed at CMC. However, these same procedures may be performed at a facility leased by CMC, in a theoretically (but not physically) segregated area by physicians who at times may be leased to AHS, but for purposes of performing Category 2 procedures the physicians are not considered leased employees of AHS.

Whether the creation and implementation of the three categories of procedures developed by the Parties complies with the Code of Canon Law and the ERDs[16] is a matter of interpretation of Roman Catholic Doctrine. Pursuant to the Establishment and Free Exercise Clauses of the First Amendment of the United States, such interpretation and analysis are beyond the scope of the Attorney General's jurisdiction, because it would impermissibly entangle the Attorney

[16] Comm. on Doctrine of the U.S. Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, dir.71 at 37 (United States Conference of Catholic Bishops, 5th ed. 2009).

General "in matters of doctrine, discipline, faith, or internal organization of the Roman Catholic Church."[17] The Establishment Clause prohibits the government from taking action with respect to the establishment of religion, and the Free Exercise Clause prohibits the government from interfering with the free exercise of religion. Therefore, the Attorney General defers to the Bishop of Manchester with regard to whether this proposed structure complies with Canon Law.

C. Regional System

In their response to the Attorney General's information requests, the Parties state that one of the principal reasons for engaging in the Transaction is the desire of the Parties to expand the integrated health care delivery system that has been established by DHH. DHH was formed with the following stated purpose: to

> organize, operate, coordinate and govern a health care delivery system (the "System") in support, promotion and advancement of Mary Hitchcock Memorial Hospital, a New Hampshire voluntary corporation, Dartmouth-Hitchcock Clinic, a New Hampshire voluntary corporation, and such other not-for-profit, voluntary organizations that shall become members of the System . . .

DHH states as its goal "to establish, manage, govern, and fundraise for an integrated health care delivery system that best serves the purposes of preventing, diagnosing, treating and curing human illness within the Northern New England region." DHH's stated objectives are to manage a system that provides health care services to the public in a cost-effective manner; establish and maintain cooperative hospital and provider relationships throughout its system; achieve excellence in clinical innovations, service, quality cost and outcomes, supported by a strong academic program; and integrate research, training, information technology and academic medicine in the provider organizations throughout the system. DHH believes that the development of a regional integrated health care delivery system, which will be enhanced by the addition of the CMC Charities, will enable it to establish an accountable care organization[18] in the greater Manchester area. DHH believes that the development of a regional integrated health care delivery system will allow it to provide the highest quality and most effective health care services in an efficient manner.

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[17] *Berthiaume v. McCormack*, 153 N.H. 239, 245 (2006). *See also Reardon v. Lemoyne*, 122 N.H. 1402, 1048 (1982), citing *Jones v. Wolf*, 443 U.S. 595, 602 (1979); *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969).

[18] An accountable care organization ("ACO") is a healthcare delivery model in which the ACO is responsible for managing the health of a population as efficiently as possible. The incentive will be to maintain health as opposed to provide treatment. While the structure of this healthcare delivery model is continuing to evolve, it is expected that an ACO will be reimbursed on a global or bundled payment basis. This payment will be expected to cover physician services as well as hospital services and primary care as well as tertiary care. An ACO can only function if it is an integrated system that can deliver all aspects of the care continuum. This healthcare delivery model is a significant departure from the fee for service based system that currently dominates healthcare.

The entities comprising the Regional System would be DHH, MHMH, DHC, Cheshire Medical Center,[19] CMCHS, CMC and AHS, with additional organizations subsequently being added. DHH's role in the Regional System will be: (1) exercising long-term oversight and planning for the provider organizations, (2) approving operating and capital budgets for the provider organizations, (3) approving the appointment or removal of members of the provider organizations' governing boards, (4) approving the level of debt allowed by the members of the system, (5) designing and implementing strategic plans for the provider organizations, and (6) approving any participation in any key strategic relationship by any of the provider organizations with an organization not within the integrated health care system. DHH will serve as the overall authority for the development of health care delivery policies for provider organizations and will develop strategic plans for the expansion and direction of health care services within the system. DHH will also oversee the financial condition of the Regional System, approve policies for, and oversee the management and investment of, all funds within the Regional System, and approve the decisions of the provider organizations with respect to the selection, evaluation, compensation, and discharge of their presidents or chief executive officers. In general, DHH will oversee all of the strategic operations of the provider organizations within the Regional System.

VII. ATTORNEY GENERAL'S REVIEW CRITERIA

New Hampshire RSA 7:19-b IV provides that within 120 days from the Parties' notice of the proposed transaction to the Attorney General, the Attorney General shall determine whether the health care charitable trusts' boards of trustees have fulfilled their fiduciary standards.[20] Within the stated 120 days, the Attorney General shall notify the Parties that either the Attorney General will take no further action with respect to the Transaction, or the Attorney General objects to the Transaction on specified grounds. The Acquisition Act sets forth the following minimum standards to be considered by the Attorney General in his review:

> 1. The governing body has acted in good faith and in a manner consistent with its fiduciary duties to the health care charitable trust, and unless the following minimum standards are met: (a) The proposed transaction is permitted by applicable law, including, but not limited to, RSA 7:19-32, RSA 292, and other applicable statutes and common law. RSA 7:19-b, II(a).
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> 2. Due diligence has been exercised in selecting the acquirer, in engaging and considering the advice of expert assistance, in negotiating the terms and conditions of the proposed transaction, and in determining that the transaction is in the best interest of the health care charitable trust and the community which it serves. RSA 7:19-b(II)(b).

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[19] Chesire Medical Center, a New Hampshire voluntary, non-profit corporation with a principal place of business at 580 Court Street, Keene, New Hampshire, 03431. Cheshire Medical Center operates a medical center located in Keene, New Hampshire.

[20] RSA 7:19-b, IV makes it clear that this section does not derogate from the authority of the Attorney General provided by common law or other statutes.

3. Any conflict of interest, or any pecuniary benefit transaction has been disclosed and has not affected the decision to engage in the transaction. RSA 7:19-b, II(c).

4. The proceeds to be received on account of the transaction constitute fair value therefor. RSA 7:19-b, II(d).

5. The assets of the health care charitable trust and any proceeds to be received on account of the transaction shall continue to be devoted to charitable purposes consistent with the charitable objects of the health care charitable trust and the needs of the community which it serves. RSA 7:19-b, II(e).

6. Reasonable public notice of the proposed transaction and its terms has been provided to the community served by the health care charitable trust along with reasonable and timely opportunity for such community, through public hearing or other similar methods, to inform the deliberations of the governing body of the health care charitable trust regarding the proposed transaction. RSA 7:19-b, II(g).

It should be noted that under the First Amendment of the United States Constitution, the Attorney General must defer to the interpretation by a religious organization of its theology. *See, e.g., Berthiaume*,153 N.H. at 245 (citing *Jones*, 443 U.S. at 603). The Attorney General acknowledges that ethicists engaged by the CMC Charities and the Bishop of Manchester have opined that the Transaction conforms with the ERDs.[21] The Attorney General expresses no opinion on such findings made from a theological perspective. The Attorney General does, however, have the right and duty to analyze the Transaction in light of the "neutral principles" of charitable trust law. *See Berthiaume v. McCormack*, 153 N.H. 239, 249 (2006) (citing *Jones v. Wolf*, 443 U.S. 595, 602 (1979) and *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969) (adjudication of religious property dispute to be determined in accordance with "neutral principles" of governing law)). *See also Reardon v. Lemoyne*, 122 N.H. 1402, 1048 (1982).

VIII. RSA 7:19-B, II (a) – IS THE TRANSACTION PERMITTED BY APPLICABLE LAW

The first statutory standard that must be evaluated by the Attorney General is whether the governing body has acted in good faith and in a manner consistent with its fiduciary duties to the health care charitable trust, and unless the following minimum standards are met: (a) The proposed transaction is permitted by applicable law, including, but not limited to, RSA 7:19-32, RSA 292, and other applicable statutes and common law.

This standard is the broadest of the six standards to be considered, in that it incorporates the broad statutory authority of the Director of Charitable Trusts. For the reasons discussed in detail below, the Attorney General has concluded that the Transaction will result in a profound

[21] For example, Roland P. Hamel, Ph.D., who is the Senior Director for Ethics with the Catholic Health Association, as a consultant for the CMC Charities, has reviewed the Affiliation and concluded that it "is in accord with the Catholic Church's moral teaching and with the ERDs." Roland P. Hamel, *Moral Analysis of the Affiliation Agreement between CMC Healthcare System and Dartmouth-Hitchcock Health Executive Summary*, 3 (Jan. 19, 2010), http://www.ahealthiertomorrow.org/docs/MoralAnalysis_Hamel_Jan2010.pdf.

change in the governance structure of the CMC Charities and diminish the fiduciary duties of the Boards of the CMC Charities which will inhibit the ability of the CMC Charities to carry out their charitable missions.

A. Change Of Control Over Core Functions Of CMC Charities

The Transaction will result in DHH being granted control over core functions of the CMC Charities (which until this point have operated as an independent Catholic hospital). For the reasons discussed below, the Attorney General concludes that the Transaction will result in a profound change in the governance structure of the CMC Charities and diminishment of fiduciary duties of the Boards of the CMC Charities. This deviation will result in such a significant change of control, that the charitable mission of CMC cannot be adequately protected by the restructured Board of Directors. The Attorney General also concludes that Probate Court approval of this transfer of control would be required in order to be permitted under New Hampshire law.

The Transaction will cause DHH to become the sole member of CMCHS. The Board of CMCHS would be composed of the following individuals:

- the President/CEO of CMCHS;
- the President/CEO of DHH;
- the Bishop's Health Care Delegate;
- seven (7) members selected by the CMC Board of Directors[22]; and
- five (5) members selected by those AHS Trustees selected, directly or indirectly, by DHH.

Pursuant to the terms of its Bylaws, all actions that come before the CMCHS Board would be determined by a majority vote of the members of the Board present at the meeting subject to the reserved powers of DHH and the Bishop of Manchester.

The Affiliation Agreement grants to DHH ten significant reserved powers that directly impact the mission, governance and operation of CMCHS. Four of these reserved powers would be exercised exclusively by DHH and six would be exercised on a shared basis with the Bishop of Manchester.[23] The powers reserved exclusively to DHH are:

1) The DHH Board must approve the final adoption of the entirety of each annual and any revised operating and capital budgets of CMCHS approved by the CMCHS Board, and any proposed action which may result in a deviation

[22] These members selected by the CMC Board of Directors, however, would be subject to DHH's approval of CMC Healthcare System, Article VIII.

[23] Proposed CMCHS Affidavit of Amendment, Article VIII.

in a "Material Amount" (which is defined as a dollar amount equal to or greater than the capital expenditure threshold for acute care facilities set forth in New Hampshire RSA 151-C:5(II)(a) as adjusted for inflation from time to time by the Health Services Planning and Review Board) from such budgets. If the DHH Board does not approve any annual or revised operating or capital budgets, the entire such budget will be returned for reconsideration and resubmission by the CMCHS Board. It is the Parties' understanding that the DHH Board will not have a "line item veto" over any annual or revised operating or capital budgets of CMCHS. The DHH Board also must approve the final adoption of, and any approval of a deviation in a Material Amount from, only those components of the annual and any revised operating and capital budgets of CMC and AHS, respectively, that constitute a Material Amount and have strategic implications for the Regional System;

2) The DHH Board must approve any unbudgeted transfer by CMCHS, CMC and/or AHS to any person or organization, with or without consideration, during any twelve (12) month period of tangible, intangible or mixed assets with a value of a Material Amount (which amount need not be equal among Regional Provider Organizations);

3) The DHH Board must approve any unbudgeted single occurrence, or unbudgeted cumulative occurrences in any twelve (12) month period, of debt by CMCHS, CMC and/or AHS in a Material Amount, which amount need not be equal among Regional Provider Organizations (the term "debt" is defined as short-term and long-term indebtedness and financial obligations of all types, including, but not limited to, capitalized leases, notional principal contracts, and guarantees, except "debt" shall not include loans or guarantees incurred to facilitate routine business transactions, not to exceed a Material Amount, or accounts payable incurred in the ordinary course of business); and

4) The DHH Board must approve the elimination or addition of any material health care service or program by CMCHS, CMC and/or AHS, with the understanding that any such new health care service or program by CMCHS, CMC and/or AHS must be in accordance with the ERDs.

Consistent with the fourth reserved power listed above, the proposed Bylaws of CMCHS include a provision that DHH will have the right to approve significant clinical and other programmatic initiatives and development in the Manchester System identified by the CMCHS Board and the CMCHS management.[24]

The six powers reserved jointly to DHH and the Bishop of Manchester are:

1) The DHH Board of Trustees (the "DHH Board") must approve the appointment or removal of a member of CMCHS's Board, provided that if

[24] Proposed CMCHS Bylaws, Article III, Section 19.

new members are appointed as a slate, the DHH Board will exercise its approval with respect to the entire slate;

2) The DHH Board must approve the creation of any affiliate or subsidiary of CMCHS or any merger with or consolidation of CMCHS, CMC and/or AHS into another entity, or the acquisition by the CMCHS, CMC and/or AHS of substantially all of the assets of another entity which acquisition may have a material effect on the Manchester System and/or the Regional System;

3) The DHH Board must approve the corporate division, dissolution, or liquidation of CMCHS, CMC and/or AHS;

4) The DHH Board must approve the participation by CMCHS, CMC and/or AHS in a "Key Strategic Relationship" defined as the ownership of, or contractual participation in, a network, system, affiliation, joint venture, alliance or similar arrangement (not including ordinary academic programs, managed care contracts, or other payment arrangement with third party payors), entered into with another organization that is not a Manchester Provider Organization;

5) The DHH Board must approve the appointment and termination of the CMCHS's President and CEO; and

6) The DHH Board must approve the amendment of the Articles of Agreement and/or Bylaws of CMCHS, CMC and/or AHS where such proposed amendment would (i) impact the powers reserved to DHH, or (ii) reasonably be expected to have any material strategic, competitive or financial impact on one or more Regional Provider Organizations or on the Regional System and Manchester System as a whole.

Both AHS and CMC are subject to reserved powers similar to those reserved by CMCHS to DHH and the Bishop of Manchester.[25]

With regard to AHS, the Parties state that one of the purposes of the Transaction is to "provide DHC with a more significant role in AHS' governance."[26] Accordingly, the AHS Board would be reconstituted to allow eleven (11) of the seventeen (17) members—sixty-five percent (65%) — to be selected, directly or indirectly, by DHH.[27] (Thus, control over AHS will be

[25] Proposed AHS Bylaws, Article II, Section 2 and Proposed CMC Affidavit of Amendment, Article VI.

[26] The Notice at 3–4.

[27] Restated Affiliation Agreement at Sec. 3.1.1.

changed to DHH regardless of its reserved powers.) Specifically, the AHS Board of Trustees would be composed as follows:[28]

1) The CMCHS Chief Physician Executive, ex officio;

2) The AHS Medical Director, ex officio, provided that if the same individual holds the office of CMCHS Chief Physician Executive and the AHS Medical Director, then the AHS Associate Medical Director will serve on the AHS Board of Trustees, ex officio;

3) The DHC President, ex officio;

4) The Dartmouth-Hitchcock Vice President of Community Group Practices, ex officio;

5) The CMCHS CEO, ex officio;

6) The CMC Physician Practice Associates Medical Director, ex officio;

7) Two (2) members nominated by the DHC-M Board of Governors (defined below);

8) Five (5) members nominated by the DHC Board of Trustees; and

9) Four (4) members nominated by the Board of Directors of CMC.

Further, the Board of Governors of AHS, which is responsible for advising and implementing the policy and programmatic decisions of the AHS Board, will have eighteen (18) of its twenty (20) members selected directly or indirectly by DHH. The AHS Board of Governors will be comprised of the following individuals:

- CMCHS President and CEO;
- Medical Director of CMC Physician Practice Associates;
- Chief Physician Executive (Elected by Board of Trustees, initially will be the current Medical Director of DHC-Manchester);
- AHS' Medical Director or Associate Medical Director (Appointed by Chief Physician Executive after consultation with Board of Governors and DHC President, and subject to the approval of the Board of Trustees);
- Associate Medical Director of Dartmouth-Hitchcock Clinic;
- Chairs DHC-Manchester: Pediatrics;
- Chairs DHC-Manchester: Adult Medicine;
- Chairs DHC-Manchester: Obstetrics and Gynecology;
- Chairs DHC-Manchester: Surgery and Gastroenterology;

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[28] The members identified in 1, 2, 3, 4, 7 and 8 are referred to in the Affiliation Agreement as the "D-H Members" of the AHS Board because all will have been selected directly or indirectly by Dartmouth-Hitchcock.

- Chairs DHC-Manchester: Medical Specialties;
- Chairs DHC-Manchester: Pediatric Specialties (ChaD);
- 3 physicians elected by DHC-Manchester;
- 1 associate provide elected by DHC-Manchester;
- 1 staff member elected by DHC-Manchester;
- Dartmouth-Hitchcock Vice President of Community Group Practices;
- 3 representatives of other clinical specialties appointed by the Chief Physician Officer; and
- Such other members as are recommended by the Chief Physician Executive, subject to Board of Trustee approval.

In summary, the Transaction will result in the CMC Charities ceding significant control over their mission, governance and operations to DHH. DHH will become the sole member of CMCHS and will be granted "reserved powers" over the CMC Charities which eliminate the ability of the Boards of CMC Charities to exercise their fiduciary duty in many areas. The "reserved powers" granted to DHH relate to the CMC Charities' core organizational and board functions, including, changes to the entity's Articles of Agreement and Bylaws, appointment and removal of board members, appointment and removal of the Chief Executive Officer, approval of annual budgets, transfer of assets, incurrence of debt, liquidation, dissolution, as well as how to implement its mission such as changes in the charitable purposes, affiliations with other entities, and changes in the services and programs provided.

While DHH will have significant involvement in the oversight and strategic direction of the CMC Charities, the CMC Charities will have no countervailing or equivalent control over the DHH Charities. The rights of the CMC Charities to be involved in the governance of the Regional System are limited to CMCHS having the ability to nominate three (3) of the eighteen (18) members of DHH's Board and the CMCHS President/CEO would have a seat on the DHH Leadership Council.[29] While these rights allow CMCHS to remain informed about the actions taken by the DHH Board or the DHH Leadership Council, but they do not provide CMCHS with any ability to control or limit DHH's authority over the CMC Charities.

B. Discussion Of Applicable Law

The members of the board of directors of a charitable corporation have two distinct fundamental fiduciary duties: the duty of care and the duty of loyalty. In addition, the boards

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[29] The Leadership Council will be composed of the President of DHH and the provider organizations (currently, MHMH, DHC and CMCHS). The responsibilities of the Leadership Council include: (1) developing and recommending DHH strategic plans for review and approval by the DHH Board of Trustees; (2) developing and recommending strategic plans to the Boards of Trustees of the regional provider organizations which plans are aligned with DHH strategic plans; (3) coordinating the development of Five-year Capital Plans and Annual Operating and Capital Budgets that support DHH and regional provider organization strategic plans, including but not limited to the use of Regional System resources; (4) developing and coordinating quality improvement plans among the regional provider organizations; (5) overseeing the coordination and integration of clinical and administrative services and processes to advance the goals of DHH and the regional provider organizations in a manner consistent with their respective charitable missions and, where applicable, the ERDs; (6) monitoring the performance of DHH and the regional provider organizations, including but not limited to their commitment to their community benefit, educational and research programs; and (7) resolving conflicts that may arise.

also have a derivative duty, the duty of obedience to the mission of the organization.[30] The duty of care requires directors to make a reasonable attempt at obtaining all relevant information before taking action and then requires the director to take prudent action.[31] The duty of loyalty requires directors to disclose actual and potential conflicts of interest in transactions involving the director and the charity as well as acting in the best interest of the charity.[32] The duty of obedience requires directors to be faithful to the mission and not allow the charity to violate the organizational documents (i.e., a faithfulness to the charity's purpose).[33]

In a charitable corporation, the board of directors is vested with the right to authorize action to be taken by the corporation.[34] The duty of care owed by the members of a board of directors of a charitable corporation (*i.e.* one of the CMC Charities) includes the duty to oversee and supervise all of the core functions of the charitable enterprise.[35] It is acceptable for board members to delegate certain tasks, provided the board retains the right to oversee the execution of such task. However, a delegation of core responsibilities of the board where the right to oversee the execution of such task has not been retained by the board is an abdication of the board's duty[36] and constitutes a breach of the board's duty of care.[37]

A distinction needs to be drawn between delegation of functions and management on the one hand and the transfer of the fiduciary duty itself. A director cannot give a proxy to another person: the fiduciary duty is personal and nontransferable. If there is such a transfer, the courts characterize the action as an "abdication", an improper shedding of the director's core

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[30] It should be noted charitable corporations should be held to the same rules and principles as charitable trusts. Restatement (Second.) of Trusts § 348 cmt. f (1959).

[31] "The duty of care requires each governing board member –

(a) to become appropriately informed about issues requiring consideration, and to devote appropriate attention to oversight; and

(b) to act with the care that an ordinary prudent person would reasonably exercise in a like position and under similar circumstances."

Amer. Law. Inst., *The Law of Nonprofit Organizations*, A.L.I. Nonprofit § 315 (T.D. No. 1, 2007).

[32] Phil Kline *et al.*, *Protecting Charitable Assets in Hospital Conversion: An Important Role for the Attorney General*, 13 Kan. J.L. & Pub. Pol'y 351, 360 (Spring 2004).

[33] Peregrine, "Coalition For Nonprofit Healthcare, Overview of State Law Challenges to Nonprofits" 3 (2001); *See also* Amer. Law Inst., *The Law of Nonprofit Organizations*, § 320 cmt. e (T.D. No. 1, 2007) (providing that the duty of obedience may in appropriate circumstances determine that the organization's purposes be modified).

[34] Rev. Model Nonprofit Corp. Act § 8.01(b) (1987), available at http://www.muridae.com/nporegulation/documents/model/_npo_corp_act.html.

[35] Amer. Law. Inst., *Principles of the Law of Nonprofit Organizations*, A.L.I. Nonprofit § 325 (T.D. No. 1, 2007).

[36] An abdication is a delegation where the right to oversee the execution of such task has not been retained by the board.

[37] Amer. Law Inst., *The Law of Nonprofit Organizations*, A.L.I. Nonprofit, § 325, comment a.(1) (while delegation of certain functions is permitted, abdication of responsibility is not).

responsibilities.[38] When an agreement substantially limits the freedom of a director to take action on matters of management policy, such agreement violates the duty of care that requires each director to exercise his own best judgment on matters coming before the board.[39]

This concept of supervision over delegated actions is incorporated into New Hampshire's laws under the Uniform Trust Code. The Uniform Trust Code states that trustees in noncharitable trusts may delegate duties, powers and management functions to a person with appropriate skills.[40] However, the trustee must periodically review the agent's actions to monitor performance.[41] Under New Hampshire's business corporation law (which is frequently referred to in the voluntary corporation context) there are similar provisions that all corporate powers must be exercised by or under the authority of its board of directors.[42]

C. Application Of Applicable Law To Voting Structure And Reserved Powers In The Transaction

The Attorney General objects to the proposed structure due to the substantial impact it would have on the fiduciary duties owed by the CMC Charities' directors. Due to the profound change in the governance structure of the CMC Charities and the diminishment of the board's fiduciary duties a Petition for Deviation to the Probate Court is required in order to effectuate such significant changes to a charitable trust.

In the Transaction, the voting power and reserved powers granted to DHH impact core functions of the Boards of the CMC Charities. While the board members of each of the CMC Charities will continue to owe fiduciary duties to their respective organizations to act in a manner that is in the best interest of these organizations, the DHH and reserved powers will significantly limit the CMC Charities' directors' ability to implement their decisions. This is not a situation in which the documents provide DHH with merely a consulting role with regard to

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[38] *Id. See also, Ray v. Homewood Hospital, Inc.*, 27 N.W.2d 409, 411 (Minn. 1947), *Chapin v. Benwood Foundation, Inc.*, 402A.2d 1205, 1210 (Del. Ch. 1979), *Grimes v. Donald*, 673 A.2d 1207, 1214 (Del. 1996), *Vt Dept. of Pub. Serv. v. Mass. Mun. Wholesale Elec.*, 151 Vt. 73, 89 (1988).

[39] *Abercrombie v. Davis*, 123 A.2d 893, 899 (Del. 1957); *see Ray v. Homewood Hospital, Inc., et al.*, 27 N.W.2d 409, 411 (1947) (board of directors of non-profit corporation is "vested with a fiduciary responsibility to administer its affairs. As such, they are charged with the duty to act for the corporation according to their best judgment, and in so doing they cannot be controlled in the reasonable exercise and performance of such duty . . . and an agreement by which individual directors, or the entire board, abdicate or bargain away in advance the judgment which the law contemplates they shall exercise over the affairs of the corporation is contrary to public policy and void. . . . They may not agree to abstain from discharging their fiduciary duty to participate actively and fully in the management of corporate affairs. The law does not permit the creation of a sterilized board of directors." (Internal citations omitted)).

[40] RSA 564-B:8-807. In contrast, it is recognized that a founder of a charitable corporation can design a governance structure where certain individuals have limited fiduciary duties.[40] This option is not available to directors after the initial formation.[40] Therefore, after the initial creation of the entity, all board members retain the same duty of care as originally bestowed on them.

[41] RSA 564-B:8-807(a)(3).

[42] RSA 293-A:8.01.

these core functions; rather, DHH reserves an actual veto power over many strategic, operational and clinical decisions by the Boards of the CMC Charities.[43] The DHH reserved powers effectively result in the Boards of the CMC Charities being relegated to an advisory role on issues where DHH holds a reserved power, and puts the Boards of the CMC Charities in a position where they must compromise their decisions to accord with DHH goals (or risk the denial of required approval).[44]

Unlike with delegated powers, the Boards of the CMC Charities do not have the ability to withdraw the reserved powers from DHH if those Boards determine its mission or implementation is at risk.

Although the Affiliation Agreement includes dispute resolution and termination mechanisms, these mechanisms do not serve to counterbalance the reserved powers granted to DHH. The Affiliation Agreement provides that if a matter is not approved after two attempts, is not considered in a timely manner, or if the Parties agree, that the matter may be addressed through the dispute resolution mechanism described in the Affiliation Agreement.[45]

While the dispute resolution mechanisms and termination provisions provide the Parties with a way to address disputes that may arise or changes that undermine the fundamental assumptions of the Parties, these mechanisms do not in any way ameliorate the impact of the transfer of the reserved powers to DHH. The availability of non-binding mediation and binding arbitration for dispute resolution does not alleviate the problem with improper delegation of authority; it simply shifts the potential decision-maker from DHH to another third party – an arbitrator.[46]

The Affiliation Agreement also includes a series of events that, if any were to occur, would result in the termination of the relationship of the Parties under the Affiliation

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[43] *See Taylor v. Baldwin*, 247 S.W.2d 741, 748-9 and 752-3 (both lower and appellate courts found that Barnard Hospital board had not violated its fiduciary duties by merely agreeing to *consult* with another hospital (with which it was affiliating) regarding appointment of medical staff and the hospital director; while court stated that an agreement that would preclude a board from appointing the officers of the corporation, it found that a mere agreement to consult with another entity did not constitute a delegation of the authority where the Barnard board retained the final decision-making authority).

[44] It should be noted that, in general, when authority is delegated to a third party by a non-profit board of directors (for example, to an investment advisor), no fiduciary duty arises in that third party toward the non-profit corporation. Instead, the fiduciary duty remains with the board of directors of the non-profit corporation to supervise the actions of the delegee. In this situation, the delegation of authority by its nature would not allow for supervision by the CMC Charities.

[45] Affiliation Agreement, Section 5.4.2. The Affiliation Agreement provides that a dispute will first be submitted to non-binding mediation. If mediation fails to achieve a mutually agreeable resolution, the matter will be submitted to binding arbitration.

[46] *See Abercrombie v. Davies*, 123 A.2d 893 (Del. 1956) (improper delegation of authority occurred when directors shifted their ability to govern to a minority of the board which, if unable to come to unanimous decision, would submit relevant board decision to arbitrator for determination).

Agreement.[47] Upon the occurrence of a termination event, the Parties would proceed to terminate the Affiliation Agreement and dissolve and unwind the Transaction as described in the Affiliation Agreement.[48] Providing the Board of the CMC Charities with the extraordinarily burdensome option of withdrawing from the Affiliation Agreement does not constitute an appropriate or effective mechanism through which the CMC Charities' Boards may exercise their fiduciary duties.

Courts have recognized that, over time, certain charitable purposes and the means of carrying out these charitable purposes may become obsolete. Thus, under certain circumstances, in order for a charitable trust to remain viable in a changing society, it may need to alter its course.

In New Hampshire, there are two mechanisms available for such course alterations, both of which require the approval of the Probate Court. One course, *cy pres*, applies to the purpose of the charitable trust; the other course, deviation, applies to the administration of this purpose. While these two concepts are closely linked, there are distinctions between them; further, a change to the purpose of a charitable trust requires a more substantial showing than does a change to the administration of the charitable trust.

Cy pres is a traditional equitable power exercised by the Probate Court. When property is given in trust for a charitable purpose, New Hampshire law allows the Probate Court to approve a change to the purpose of a charitable trust where its purpose "is or becomes impossible or impracticable or illegal or obsolete or ineffective or prejudicial to the public interest to carry out."[49] The Court may permit the trustees to redirect the assets of the charitable trust to some other charitable purpose which "fulfills as nearly as possible the general intent of the settlor or

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[47] The written consent of the Parties upon a determination by their respective Boards of Trustees that the mutual vision and purpose of their affiliation, is unlikely to be furthered or achieved;

A material breach of this Agreement which remains uncured or for which a cure has not been commenced within a period of ninety (90) days after the breaching party's receipt of written notice of such default;

A subsequent and material change in applicable laws or regulations which prohibit, or substantially impair the Parties' abilities to effect, the affiliation contemplated by this Agreement;

A subsequent and material change in the ERDs, or a binding interpretation thereof by the Bishop resulting from new procedures or treatments arising after the Closing Date and which interpretation is a material change, in either case which is incompatible with the goals and purposes of the Manchester System and/or the Regional System, or which substantially impairs the Parties' abilities to effect the affiliation contemplated by this Agreement, or which materially and adversely affect any clinical services permitted under the ERDs in effect on the Effective Date; and

A subsequent circumstance which prevents Dartmouth-Hitchcock Medical Center from continuing to operate as an academic medical center and which circumstance: (1) is not satisfactorily addressed within nine (9) months; and (2) has a material adverse effect on the Regional System and/or the Manchester System.

[48] Affiliation Agreement Section 5.5.1.

[49] RSA 547:3-d; *see, e.g., In re Certain Scholarship Funds*, 133 N.H. 227, 233-34 (1990) (*cy pres* is appropriate relief to alter purposes of scholarship fund with impermissibly restrictive class of beneficiaries).

testator."[50] Thus, the purpose of a *cy pres* petition is to allow the Probate Court to determine the original purposes of the charitable trust, to determine whether a change to that purpose is allowable under the criteria set forth above.

While *cy pres* may be applied to allow for changes in purpose, there are situations in which the charitable purpose need not change, but rather, there must be a significant alteration to the administrative structure of the charitable trust. Under the doctrine of deviation, the Court may alter the administrative provisions of a charitable trust, if an unanticipated change in circumstances has made strict compliance with the "administrative machinery"[51] of a charitable trust would "substantially impair the accomplishment of the purposes of the trust," the court may permit the trustees of the charitable trust to deviate from these administrative provisions.[52] Thus, if the purpose of a charitable trust (or charitable corporation) will remain the same, but a substantial change in the administrative or governance mechanism is required to allow the effective accomplishment of the purposes, the Probate Court may allow this change under the doctrine of deviation.

Courts have allowed for the restructuring and enlarging of charitable boards under the doctrine of deviation.[53] Chief Justice Brock of the New Hampshire Supreme Court described the doctrine of deviation as follows:

> Where the dominant objective of a trust remains capable of fulfillment, but its method of accomplishment has been stalled due to a hitch in the administrative machinery, the doctrine of deviation permits a reworking or repair of the administrative mechanism so that the trust purposes may be accomplished effectively. The doctrine of deviation permits changes in the management of all trusts, and in the case of charitable trusts, may be employed to substitute trustees as well as to alter trust conditions.[54]

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[50] RSA 547:3-d.

[51] *In re Certain Scholarship Funds*, 133 N.H. at 240 (Chief Justice Brock, dissenting), *citing Jacobs v. Bean*, 99 N.H. 239, 241-42 (1954).

[52] RSA 547:3-c.

[53] *See, e.g., The Barnes Foundation, a Corporation*, No. 58,788, Memorandum Opinion and Order Sur Second Amended Petition to Amend Charter and Bylaws, Court of Common Pleas of Montgomery County, Pennsylvania Orphans' Court Division (Jan. 29, 2004), slip op. at 12 ("With this authority in mind, we believe it appropriate to permit deviation on this issue. We determine that the provisions in the indenture concerning the structure of the Board of Trustees of The Foundation are administrative in nature. We agree that Dr. Barnes could have foreseen neither the complicated, competitive, and sophisticated world in which non-profits now operate, nor the range of expertise and influence the members of their governing bodies must now possess. We conclude that maintaining the status quo in this regard would substantially impair the accomplishment of the Foundation's charitable purposes, and that approving the expansion of its Board of Trustees is therefore necessary.").

[54] *In Re Certain Scholarship Funds*, 133 N.H. 227, 240 (1990) (Brock, C.J., dissenting) (citing *Jacobs v. Bean*, 99 N.H. 239, 241-42 (1954)).

The precise procedure for seeking deviation from the terms of a charitable trust are set forth in RSA 547:3-c.[55]

The Attorney General recognizes that as part of the Transaction the CMC Charities provide the Bishop of Manchester with a series of reserved powers (Exhibit 9).[56] Based on the history of the Bishop's involvement with the CMC Charities and the predecessor governing instruments, these reserved powers do not create the same issues as do the newly created reserved powers flowing to DHH. The original Articles of Agreement of each of the CMC Charities specifically reference operating each entity consistent with the teachings of the Roman Catholic Church as enunciated by the Holy See and the ERDs. Those Articles and subsequent amendments have acknowledged the Bishop's oversight and reserved powers.[57] Hence, the doctrine of deviation is not needed to create or expand the Bishop's reserved powers.

Based on the foregoing, the Attorney General objects to the Transaction and in order for the Transaction to be in compliance with all applicable laws the Board of the CMC Charities must obtain the approval of the Probate Court under the doctrine of deviation prior to ceding control over core aspects of their mission, governance and operations to DHH through the reserved powers.

D. Expansion of Charitable Mission.

The Transaction will result in the CMC moving from an independent hospital to part of a regional integrated health care delivery system controlled by DHH. In connection with the Transaction, each of the CMC Charities' "Purposes" as set forth in their Articles of Agreement will be modified. The changes to the charitable purposes of CMCHS will be expanded to include additional purposes relating to the Regional System. The change to the charitable purposes of CMC and AHS will be modest. The Attorney General believes that although the expansion of CMCHS' charitable purposes does not require Probate Court approval, the integration of CMCHS into the Regional System and the actions required to carry out these

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[55] RSA 547:3-c Deviation From Terms of Trust – In all cases where by reason of a change of circumstances which has occurred, shall occur, or is reasonably foreseeable, subsequent to the creation, heretofore or hereafter, of a trust by any deed, will or other instrument, compliance by the trustee or trustees with the terms of the trust relating to the property or the kinds of classes of property which may be held under the trust would defeat or substantially impair the accomplishment of the purposes of the trust, the court may, upon the filing by the trustee of a bill in equity for instructions and upon notice to all parties in interest, enter a decree permitting the trustee to deviate from such terms of the trust and directing the trustee, if necessary to carry out the purposes of the trust, to sell all or any part of the property held under the trust and to invest the proceeds of such sale in kinds or classes of property which are lawful investments for trustees of estates. No such decree, after its entry, shall thereafter operate to relieve any trustee of any duty imposed by law relating to the investment of trust funds and the exercise of reasonable care for the preservation thereof. This section shall not be construed to limit or restrict the general equitable jurisdiction of the court over the trustees, trusts or trust funds.

[56] *See* Proposed CMCHS Affidavit of Amendment, Article IX; Proposed CMC Affidavit of Amendment, Article VI; Proposed AHS Affidavit of Amendment, Article II, Section 2.

[57] CMCHS Articles of Agreement (filed 12/28/01); CMC Articles of Agreement (filed 11/7/74); CMC Affidavit of Amendment and Restatement (filed 12/31/01); AHS Articles of Agreement (filed 6/12/07).

purposes presents potentially challenging issues for board members who sit on the Boards of both DHH and any of the CMC Charities.

1. Discussion of Changes to Charitable Purposes

CMCHS currently acts as a supporting organization for CMC and its affiliated entities, and has as its primary focus upholding and promoting the charitable missions of CMC and its affiliates. As a result of the Transaction, CMCHS's purposes will be expanded to include:

- Serve as a public juridic person of diocesan right under the canon law of the Roman Catholic Church responsible for assuring that CMC, AHS and their subsidiaries operate in adherence to the ERDs and subject to the reserved powers of the Bishop of Manchester;

- Initiate, develop and conduct programs to further (i) the quality and accessibility of health services, particularly in the Greater Manchester community and throughout the State of New Hampshire (when acting in conjunction with DHH) now referred to as the "Regional System," (ii) the efficiency of utilization of health care facilities, particularly in the Regional System, and (iii) the reasonable containment of the cost of health care to the public; and

- Develop a strategic plan for the Manchester System that is compatible with the Regional System plan and account for adherence within the Manchester System of overall quality goals established for the Regional System.[58]

The core purpose of CMC will not change; it will remain an entity focused on operating an acute care hospital in Manchester, New Hampshire in compliance with the ERDs and the teachings of the Roman Catholic Bishops of the United States and the Holy See, as interpreted by the Bishop of Manchester[59]. AHS' fundamental purpose will continue to be to provide services through a multi-specialty group of physicians in collaboration with CMC and CMCHS.[60]

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[58] Proposed CMCHS Affidavit of Amendment, Article II.

[59] The dissolution provisions will be changed to eliminate the Bishop as the automatic recipient of any funds in the event that CMC is dissolved and CMCHS no longer exists. Under the proposed By-Laws, DHH and the Bishop would both have to agree to CMC's decision regarding the distribution of the remaining assets to another 501(c)(3) organization. The Bishop's consent would be required only with respect to "stable patrimony" which is undefined in the documents.

[60] *See* Proposed AHS Affidavit of Amendment, Article II. The purposes of AHS will be amended to add an additional purpose which is possibly allowed by the current Articles: The current Articles provide that AHS' purpose is "To promote and generate health care for a broad cross section of the Greater Manchester, New Hampshire community in general and to own interests in entities which accomplish such purposes." These very broad purposes will be amended to include that the promotion and generation of health care will be "through a multi-specialty group practice model" (which it is already doing prior to the proposed affiliation) and that AHS will "participate in an integrated health care delivery system with" as well as own entities which accomplish such purposes.

2. *Discussion of Applicable Law*

As discussed above, under common law, the directors of a charitable corporation are subject to two fundamental fiduciary duties: the duty of loyalty and the duty of care, and subsumed within these duties is the duty of obedience.[61] Where directors are voting to change the purposes of the voluntary corporation, the issue involved is the duty of obedience.

> The duty of obedience requires corporate directors to be faithful to the corporation's mission. Although board members may exercise their own reasonable judgment concerning how the organization should best meet its mission, they are not permitted to act in a way that is inconsistent with the central goals of the organization.[62]

While no New Hampshire courts have provided direct guidance on the duty of obedience,[63] courts in other jurisdictions have addressed this issue. In California, a court found that while a charitable corporation may do things other than its primary purpose, it cannot abandon this primary purpose.[64] In New York, a court found that a merger between two non-profit hospitals (one Catholic, one not) was acceptable and did not require court review even under New York's fairly rigorous amendment statute because the amendments did not alter the core purpose of the two hospital corporations – which was to operate hospitals.[65]

The right to alter the purpose of a charitable corporation does not correspondingly grant the board the right use the assets of the organization in a manner other than in accordance with the purposes for which they were given. In order to ensure that a charity's funds are used in a

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The only material change to the purpose is in the language relating to the participation in the integrated health care delivery system. However, this participation may well be within the ambit of the already broad purposes of the organization which include the promotion and generation of health care in the Manchester area.

Another change in the proposed Articles involves the distribution of assets upon dissolution. Under the current Articles, remaining assets would be distributed first to CMC, then if CMC is not in existence to CMCHS and then to the Bishop. Under the proposed Articles, this change to have the assets distributed first to CMCHS, then if CMCHS is not in existence, to another 501(c)(3) organization to be chosen by AHS, but which must be approved by DHH and the Bishop (the Bishop's approval is required with respect to "stable patrimony" which may refer only to ecclesiastical resources, but is undefined).

[61] See, e.g., Huberfeld, N. "Tackling the 'Evils' of Interlocking Directorates in Healthcare Nonprofits," 85 Neb. L. Rev. 681701-02 (2007).

[62] Kline, *supra*, at 360. *See also* Amer. Law. Inst., *supra*, § 310 cmt. a(1) (the duty of fiduciaries is to the charitable mission, not to a particular entity); *Id.* § 310 cmt. e (it is possible for a board to determine that the organization undergo an extraordinary change such as a merger).

[63] New Hampshire law does address the application of the doctrines of *cy pres* and deviation to change the charitable purpose or administration of a charitable trust. *E.g. Portsmouth Hospital v. Attorney General,* 104 N.H. 51 (1962).

[64] *See Queen of Angels Hospital v. Younger*, 66 Cal. App. 3d 359, 368 -71 (Cal. Ct. App. 1977).

[65] *Nathan Littauer Hospital Association v. Spitzer*, 287 A.D.2d 202 (NY. App. Div. 2001).

manner that is consistent with the purpose for which they were given, some courts have restricted the ability of a charitable corporation from using its existing funds to further its changed purpose. In such cases, funds already held by the charity must be used for the purposes of the charitable corporation's original mission. In Massachusetts, a court found that the charitable corporation could change its charitable purpose and did not have to restrict these changes to purposes that would be in support of the original, dominant, purpose of the charitable corporation. However, the court also found that the assets of the charitable corporation were held in charitable trust, and that the change to the corporation's purpose could not impact the assets held by the charitable corporation prior to the change to the corporate purpose.[66] In South Dakota, a court similarly held that a voluntary corporation could not amend its Articles of Agreement with respect to the use of assets received in advance of the amendment to its purposes.[67]

3. Application of Applicable Law to the Transaction

The Transaction includes a provision that states that the assets of the CMC Charities will be valued as of the date of the Transaction, and these assets will be safeguarded and used exclusively to support the CMC Charities' original purposes.[68] By employing this structure, the Parties have addressed the issue of the Charities' funds being used in a manner that is consistent with the purpose for which they were given.

As noted above, the Transaction will result in the expansion of CMCHS' purposes[69] CMCHS will continue as a supporting organization of CMC and AHS. Following the Transaction, CMCHS will gain two additional functions.

First, the expansion will result in CMCHS being charged with the responsibility to ensure that the other CMC Charities adhere to the ERDs and to certain quality guidelines put into place in the Regional System. Second, CMCHS will also support the efforts of the CMC Charities to integrate into the Regional System through strategic planning and accounting for the adherence by the CMC Charities with the Regional System quality guidelines. The expansion of CMCHS' purposes proposed by the Transaction does not constitute an improper expansion of its purposes.

It should be noted that DHH as the sole member overseeing the Regional System becomes a new benefactor of the services of CMCHS. With these expanded purposes, CMCHS may be subject to a possible conflict of interest between supporting CMC and AHS and

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[66] *See also Attorney General v. Hahnemann Hospital*, 494 N.E.2d 1011 (Mass. 1986).

[67] *Banner Health System v. Long*, 663 N.W.2d 242 (S.D. 2003).

[68] Not only are said assets protected, but so are the future earnings derived from those assets. Section 3.9.3.1 of the Affiliation Agreement states in part: "After the Effective Date, the Parties will track changes in such net asset values annually and attribute those changes to either non-Affiliation matters . . . and [to] Affiliation related matters. . . . The positive changes in the net asset value attributable to Affiliation related matters will be referred to in this Agreement as the "Post-Affiliation Surplus."

[69] Some commentators believe that a board has the obligation to keep the purpose of the charity current and useful. To that end, the board must amend the stated purposes when necessary and appropriate to do so. Amer. Law Inst:, *Principles of Law of Nonprofit Organizations, supra*, § 300 cmt. g(3).

overseeing the integration of the Manchester System into the Regional System (whose goals CMCHS does not define). While these purposes are not necessarily in conflict, the CMCHS Board will need to have a heightened sensitivity to balancing these purposes.

4. Duality of Board Loyalty

In the corporate setting, it is possible for an individual to serve on more than one board of directors. This does not change the fiduciary duties owed to each organization. Similarly, the fact that a board member is nominated by one organization to serve on the board of another organization is irrelevant: "[t]he rule that the fiduciary duties run to the organization is true for every board member, regardless of how that board member obtained his or her seat."[70] When individuals serve on the boards of more than one organization, the possibility of "duality of loyalties" arises and can result in conflicts of interest.

It is recognized that in the Transaction, a Regional System organization board member could be elected to one of the CMC Charities' boards. In such case, issues will arise (*e.g.*, how to deploy an organization's assets, how to determine the Post-Affiliation Surplus, whether to expand or contract along geographic or medical services lines, etc.) that may place a board member in a conflict. While this issue is not unique to the Transaction, the Attorney General notes that this issue warrants continued vigilance by the Parties. The Director of Charitable Trusts will continue to review the exercise of the Board members' duties to ensure compliance with applicable law.

IX. RSA 7:19-B, II(b) EXERCISE OF DUE DILIGENCE

The Acquisition Act provides that,

> [t]he governing body of a health care charitable trust, or any person having authority to direct the affairs of a health care charitable trust, shall not approve the acquisition thereof unless the governing body has acted in good faith and in a manner consistent with its fiduciary duties to the health care charitable trust, and unless the following minimum standards are met: due diligence has been exercised in selecting the acquirer, in engaging and considering the advice of expert assistance, in negotiating the terms and conditions of the Transaction, and in determining that the transaction is in the best interest of the health care charitable trust and the community which it serves;

RSA 7:19-b, II (b).

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[70] Amer. Law. Inst., Principles of the Law of Nonprofit Organizations, A.L.I. Nonprofit § 310 cmt. a(1) (T.D. No. 1, 2007).

A. Selection Of Acquirer

The Transaction is viewed by the Parties as an expansion the existing relationship between CMC and DHC. This relationship developed over the past several years through the successful collaboration of DHC with CMC on various patient-focused initiatives, including birthing support, pediatrics, cardiology, family medicine, intensivist services, hospitalist services, echocardiography and oncology. Each organization also has its own reasons to participate in the Transaction.

According to DHH, in connection with the development of the MHMH and DHC strategic plans, MHMH and DHC determined that they could best achieve their missions through collaborations with health care providers throughout New Hampshire via an integrated health care delivery system. The MHMH and DHC Trustees recognized that they needed to bring their services to New Hampshire's most populous area, the Southern region, and they could accomplish this goal by affiliating with one of the two hospitals located in Manchester.[71] MHMH and DHC recognized that an affiliation with an organization such as CMCHS would allow MHMH and DHC to bring specialty services to more people and would better position MHMH and DHC to develop an accountable care organization for the delivery of health care services.

The Board and senior management of CMCHS recognize that in the current health care environment stand-alone community hospitals, such as CMC, face many challenges. These challenges include: (1) recruiting and retaining physicians, medical staff and related health care providers; and (2) accessing the capital necessary to allow for the investment in essential equipment, such as computerized physician order entry systems and electronic medical records.[72] In addition, as a stand-alone community hospital, CMC believes that it will be difficult to adapt to and take advantage of future payment models, such as those offered by accountable care organizations. Given these challenges, CMCHS concluded that the best way of continuing the long-term viability of CMC, and preserve its Catholic mission, is to integrate into a broader health care delivery system, such as proposed by the Transaction.

Based on the information provided to the Attorney General, the Attorney General concludes that due diligence was exercised by the Parties in selecting the acquirer.

B. Engaging And Considering The Advice Of Expert Assistance

Throughout the process of structuring and negotiating the Transaction the Boards of DHH and CMC engaged the following consultants to assist them with the evaluation of the Transaction:

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[71] DHH Noted that it had discussions with Elliot Hospital about a possible collaboration, however, DHH concluded that the parties did not share a common vision for the nature or scope of an affiliation and discontinued discussions with Elliot Hospital.

[72] It should be noted that Catholic Medical Center's income from operations based on its IRS Forms 990 has decreased in the years 2005-2007 from $12,649,735 dollars to $3,489,095 to $699,332.

CMCHS

- PriceWaterhouseCoopers, LLC, certified public accountants;
- Kaufman, Hall & Associates, Inc., consulting services;
- Peter J. Cataldo, Ph.D., ethicist;
- Father Francis G. Morissey, O.M.I., canon lawyer;
- Ronald Hamel, Ph.D., Senior Director, Ethics of The Catholic Health Association, ethicist; and
- Walter Maroney, Esq.

DHH

- KPMG LLP, certified public accountants; tax and advisory services;
- Watson Wyatt & Company, actuarial consultants;
- InterContinental Risk Management Consulting, insurance and risk consultants;
- The Chartis Group, health care consultants;
- Foley & Lardner, LLP, Stark, Anti-Kickback, Medicare and Medicaid;
- Hinckley, Allen, Snyder, LLP, antitrust legal counsel; and
- Sutherland, Asbill & Brennan, LLP, tax and ERISA legal counsel.

The reports issued by the consultants were used by the Parties to provide them with guidance regarding the Transaction. The Parties also engaged in a thorough due diligence process. The due diligence review conducted by the Parties included a review of legal, financial, employee benefits and insurance coverage issues.

Based on the information provided to the Attorney General, the Attorney General concludes that the Parties exercised due diligence in selecting the consultants who assisted them and in considering the advice of the experts retained in connection with the evaluation of the Transaction.

C. Negotiating The Terms And Conditions Of The Proposed Transaction

The Parties initiated the evaluation of the Transaction in December, 2007. Following a December, 2007 meeting of key executives of CMCHS and DHC, the senior leaders from both organizations conducted joint meetings to determine whether mutual interest existed in pursuing an affiliation. A meeting of representatives of the Boards of both organizations (the "Joint Trustee Committee") was held on May 1, 2008, where the Parties agreed to explore a formal affiliation between CMCHS and DHC. After consideration by each organization's Board, the Parties entered into a confidentiality agreement in June, 2008 and commenced formal discussions regarding the structure of the affiliation. Over the next twelve months, the Parties used a combination of meetings among senior management (the "Senior Leadership Group"), legal counsel, and the Joint Trustee Committee to negotiate the terms of the Transaction.[71] The effort concluded with a letter of intent being signed in February, 2009, following which, the Parties negotiated and entered into an Affiliation Agreement in July, 2009. Subsequent to

[71] The Joint Trustee Committee met nine times between May 1, 2008 and May 29, 2009. The Senior Leadership Group met eleven times between June 16, 2008 and May 22, 2009.

receiving feedback via its internet website, http://www.ahealthiertomorrow.org, and at three public forums, the Parties amended the Affiliation Agreement in January, 2010.

Based on the information provided to the Attorney General, the Attorney General concludes that the Parties exercised due diligence in negotiating the terms of the Transaction.

X. RSA 7:19-b, II(c) DETERMINING THAT THE TRANSACTION IS IN THE BEST INTEREST OF THE HEALTH CARE CHARITABLE TRUST AND THE COMMUNITY WHICH IT SERVES:

RSA 7:19-b directs the Attorney General to determine if the health care charitable trusts exercised due diligence in determining that the Transaction is in the best interest of the health care charitable trusts and the communities they serve. MHMH and CMC have enjoyed longstanding relationships with the communities where they are located; therefore, any change to either organization will impact the communities they serve. However, given the dynamic nature of health care and health care policy, health care providers are forced to continually evolve. The Transaction represents an evolution for the Parties and for the communities they serve.

A. Best Interest Of Health Care Charitable Trusts

As discussed above, in the current health care environment stand-alone community hospitals face many challenges. Given these challenges, CMCHS has concluded that the best way of continuing the long-term viability of CMC, and preserve its Catholic mission, would be to integrate into a broader health care delivery system.

With regard to DHH, the Boards of MHMH and DHC recognized that MHMH and DHC needed to bring its services to New Hampshire's most populous area, the Southern region, and to establish a relationship with a hospital in the State's largest city, Manchester. MHMH's and DHC's realizations developed out of their belief that communities are better served when services provided by physicians and hospitals are more fully integrated, thereby enhancing care coordination and facilitating joint decisions on how best to allocate their resources to meet patients' health care needs. Through an integrated health care delivery model, DHH believes that it can offer the community the best care, in a coordinated and efficient manner. DHH believes that in order for its plan for an integrated health care delivery system to be effective that a financial alignment with a hospital is needed.

B. Best Interest Of Communities Served

With regard to the assessment that due diligence was exercised by the Parties to determine that the Transaction is in the best interest of the communities served by the health care charitable trusts, the Attorney General has focused his review on the impact of the Transaction on the greater Manchester community. The Attorney General made this decision based on the conclusion that the Transaction will have limited impact on the current operations of MHMH and the Lebanon, New Hampshire community.

1. Community

According to CMCHS, the community that it serves is the citizens residing in the municipalities within CMC's primary and secondary service areas.[74] CMCHS recognizes that the communities served by certain specialty programs, such as the New England Heart Institute, is broader, and may encompass the State of New Hampshire. This description of the community served by CMCHS is consistent with its Articles of Agreement, which suggest that CMCHS' primary focus is on the greater Manchester area, but recognizes that part of its purpose is to serve the State of New Hampshire.

2. Access to Specialist and Additional Services

Among the benefits that the Transaction offers to the communities served by MHMH and CMC is greater access to specialists through an integrated health care delivery system. In spite of Manchester being the largest city in New Hampshire, CMC's management has concluded that it has historically lacked access in certain key clinical areas. As is discussed above, CMC and DHC have collaborated on several patient-focused initiatives

In connection with its preliminary evaluation of the Transaction, the Parties identified the following as clinical services and programs that may be added to or improved in the greater Manchester service area following the consummation of the Transaction:

- Critical Care: the addition of another intensivist physician;
- Neurosurgery/neurosciences development;
- CHad specialties: increase presence and physician depth to improve access. The following new community services may be added:
  - pediatric pulmonary
  - behavioral pediatrics
  - Epilepsy and Multiple Sclerosis specialty programs
  - Swedish model neonatal program
- Cancer specialty treatment programs: expand presence of comprehensive breast cancer program (including surgery at CMC both therapeutic and reconstructive);
- Lung Cancer; Colon Cancer; Bone Marrow Transplantation;
- Expand presence of organ transplant services (liver; kidney);
- Digestive Health Program: continue development just started to create a multi-disciplinary digestive health program;

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[74] Primary Service Area: Allenstown, Auburn, Bedford, Candia, Deerfield, Goffstown, Dunbarton, Hooksett, Manchester, New Boston.

Secondary Service Area: Amherst, Bow, Chester, Derry, Londonderry, Raymond, Weare.

The Manchester Health Service Area as of 2010 is estimated to be 191,150 persons. The primary and secondary service areas include approximately 350,000 people. Dorothy A. Bazos and Anna Thomas, *Manchester's Primary Care Safety Net "Intact but Endangered": A Call to Action*, 5 (Manchester Sustainable Access Project, City of Manchester Dept. of Health, June 2008).

- Vascular Services: create linkages between DHMC and local vascular surgeons to expand local care in the greater Manchester area.

3. Benefits of Integrated Health Care Delivery System

According to the Parties, the creation of an integrated health care delivery system that integrates health care facilities and various providers along the continuum of care has the following benefits: (1) allows for the management and coordination of the utilization of all patient services; (2) overcomes regulatory restrictions on the sharing of information and the alignment of incentives between facilities and providers; and (3) establishes a framework by which accountability for quality and efficient care can be established. While it is assumed that certain administrative savings will be achieved, the Parties' main focus has been on clinical improvements and larger system efficiencies, which can only occur through clinical integration. With regard to the Manchester community, the Parties believe that the development of an integrated health care delivery system will provide the Parties with the ability to: (1) avoid or minimize the duplication of clinical services; (2) allow for the development of additional specialty care, primary care and tertiary care services for greater Manchester; (3) position both organizations to compete in the highly competitive health care environment of greater Manchester and southern New Hampshire; and (4) enhance the financial positions and future prospects of both organizations. The Parties also expect that the Transaction will lead to the development of an accountable care organization which will allow the organizations to participate in the Dartmouth-Hitchcock CMS project titled "Physician Group Practice Demonstration Project" that was mandated by the "Benefits Improvement and Protection Act" of 2000, and has shown substantial savings for the Medicare program. The development of an accountable care organization will also allow DHH to contract with third party payors in creative fashions.

The case for the need to develop an integrated health care delivery system is made more compelling if one assumes that the current method of health care reimbursement will undergo significant changes in the near future. The Parties believe that federal review of insurance premium increases will quickly lead to a change to the way that health care providers are paid. According to the Parties, the Transaction puts the Parties in a better position to adapt to this evolution in health care.

As discussed above, the Parties believe that the challenges facing stand-alone community hospitals place them at risk. While it is not possible to predict with any degree of certainty what impact these challenges will have on the long-term viability of CMC, the senior management of CMCHS believe that the affiliation with DHH, and the creation of an integrated health care delivery system in Manchester, New Hampshire, will enhance CMCHS' ability to maintain a Roman Catholic hospital in Manchester, New Hampshire.

4. Cost of Care

Another factor to consider when assessing the impact of the Transaction on the community is the impact that the Transaction will have on the cost of delivering health care. Multiple factors affect overall health care costs associated with consolidation of health care

providers. When physicians perform services in hospital settings, both the hospital and the physicians may bill for the services. Medicare reimburses physicians less when the services are rendered in a hospital setting as opposed to a private office setting. This is known as the "site of service differential." However, because the hospital will also bill for an outpatient facility fee, there is a possibility of additional revenue flowing into the system, this method of billing is referred to as hospital-based billing. In addition, costs of services to Medicare could increase as clinics can receive higher Medicare payments for services if located within thirty-five miles of an affiliated hospital under the "Provider-based Rule."

CMCHS and DHH stated in response to information requests that they do not "envision any change in their respective charge structures *solely* due to the affiliation." Emphasis added. The Parties further stated that

> [a]lthough there have been no final determinations made as to whether or not CMCHS through AHS would implement hospital based billing for professional services or hospital based billing for technical services, it has been calculated by independent consultants that revenue opportunities exist in the approximate amount of $6.2 million. Hospital based professional services could generate $1.9 million through Medicare and technical services could generate $4.3 million through commercial payors. This revenue would be derived from service volumes being paid under existing payor contracts and would not be the result of any new negotiations on the part of either party.

Based on the information provided by the Parties, the Attorney General concludes that the Parties have not provided adequate information upon which the Attorney General can determine whether it exercised due diligence in determining the effect of the Transaction on the cost of delivering health care. For that reason, the Attorney General objects.[75]

XI. RSA 7:19-B II(c) DISCLOSURE OF CONFLICT OF INTEREST AND PECUNIARY BENEFIT TRANSACTIONS

A. Conflict of Interest

The Acquisition Act permits the Attorney General to consider whether all conflict of interest and pecuniary benefit transactions have been disclosed and evaluate if any such transactions have affected the decision to engage in the Transaction. New Hampshire RSA 7:19-a defines "pecuniary benefit transaction" as "a transaction with a charitable trust in which a director, officer, or trustee of the charitable trust has a financial interest, direct or indirect." 7:19-a(I)(c). This statute exempts from the definition of pecuniary benefit transaction reasonable compensation for services of an executive director, and expenses incurred in connection with official duties of a director, officer, or trustee, and a continuing transaction entered into by a charitable trust, merely because a person with a financial interest therein subsequently becomes a

[75] As is referenced in Section XIV (Other Approvals), a separate antitrust evaluation is being performed, and the effect on health care costs in the community is subject to review and analysis within the context of the antitrust review.

director, officer, or trustee of the charitable trust. RSA 7:19-a defines "financial interest" as "an interest in a transaction exceeding $500 in value for any officer, director, or trustee on an annual aggregate basis."[76] An "indirect" financial interest arises where the transaction involves a person or entity of which a director, officer, or trustee, or a member of the immediate family of a director, officer, or trustee, is a proprietor, partner, employee, or officer."[77]

All directors, officers, or trustees of the Parties must act in the best interest of each respective party, and avoid conflicts of interests or pecuniary benefit transactions. In connection with the Transaction, each member of the Boards of DHH and CMCHS delivered to the Attorney General certifications that any conflicts of interest or any pecuniary benefit transactions have been disclosed and have not affected the Parties' decision to engage in the Transaction ("Conflict Certificates"). The Attorney General reviewed the Conflict Certificates to determine whether the affiants acted in the best interest of the health care charitable trusts, engaged in any conflict of interest or pecuniary benefit transaction or anticipated receiving any benefit for supporting the Transaction.

In connection with his review of the Transaction, the Attorney General reviewed a transaction involving Jeff Eisenberg, former Chairman of the Board of Directors of CMC. Mr. Eisenberg served on the Board of Directors of CMC for two consecutive terms commencing January, 2004 and concluding January, 2010. Mr. Eisenberg participated in three actions of the Board of Directors of CMC to conditionally approve the Transaction. On December 23, 2009, Mr. Eisenberg acquired an ownership interest in Vital & Ryze Advertising, Inc. ("Vital"). Vital includes among its clients DHH. DHH was a client of Vital prior December 23, 2009.

The Attorney General has concluded that the transaction involving Mr. Eisenberg's acquisition of an ownership interest in Vital is not a pecuniary benefit transaction as defined by RSA 7:19-a. In addition, the Transaction was disclosed to legal counsel for CMC and its President prior to the time that the January, 2010 vote was taken and all actions taken were approved by a majority of disinterested board members. The Attorney General concluded that Mr. Eisenberg's acquisition of an ownership interest in Vital does not constitute a pecuniary benefit transaction or a conflict transaction that affected the decision to engage in the Transaction.

B. Excessive Compensation

The Attorney General also reviewed the employment agreements for certain executives of DHH and CMC. Salaries are disclosed annually to the Attorney General with the filing of IRS Form 990. The Parties have represented that there will be no changes to the compensation paid to any executive of DHH or any of the CMC Charities as a result of the Transaction. In addition, the Affiliation Agreement provides that after the consummation of the Transaction, CMCHS will utilize certain services of Alyson Pitman-Giles, CEO and President of CMC. The Affiliation Agreement provides that a Management Services Agreement be entered into by CMC and

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[76] 7:19-a(I)(b).

[77] 7:19-a(I)(b)

CMCHS and that CMC be reimbursed for the portion of time Ms. Pitman-Giles devotes to CMCHS's operations. The Management Services Agreement does not change the terms of the employment relationship between CMC and Ms. Pitman-Giles set forth in her existing Employment Agreements.

CMC's Form 990 was due to the Attorney General on November 15, 2009 for the fiscal year ending June 30, 2009. CMC sought an automatic extension, and its Form 990 was not delivered until May 17, 2010. Based on the IRS Form 990s filed by CMC, the compensation of the President and CEO of CMC was as follows:

Fiscal Year	Compensation Alyson Pitman-Giles	Compensation as a % of Operating Revenue
2006	$540,736	0.28%
2007	$695,803	0.33%
2008	$907,604	0.38%
2009	$1,359,848	0.51%

A comparison of Ms. Pitman-Giles' total compensation with other hospital presidents in the region reveals that Ms. Pitman-Giles' compensation is significantly greater than her peers based on total compensation and as a percentage of operating revenue (See Exhibit 10 and Exhibit 11). The reasonableness of the compensation paid to Ms. Pitman-Giles is an area of significant concern to the Attorney General.

XII. RSA 7:19-B II(d) THE PROCEEDS TO BE RECEIVED ON ACCOUNT OF THE TRANSACTION CONSTITUTE FAIR VALUE THEREFORE

The Acquisition Act permits the Attorney General to consider whether the proceeds to be received on account of the Transaction constitute fair value. The Affiliation Agreement provides that no payment is being made by either Party in connection with the Transaction. Although no cash is being paid, consideration is being exchanged by CMCHS and DHH in connection with the Transaction. For example, as a result of the Transaction, CMCHS will gain access to a broader integrated health care delivery system. As discussed above, CMCHS' management views this access to be essential because of the challenges facing CMC. With regard to DHH, the Transaction allows DHH to bring its specialty services to more of New Hampshire's population and allows it to be better positioned to develop an accountable care organization. Without a hospital partner, DHH does not believe that it could economically afford to transition care from its Lebanon integrated delivery system to a non-integrated system in the greater Manchester area.

The Transaction will also result in DHH having direct and indirect access to certain CMCHS assets. As part of the Regional System, CMCHS will pay an annual assessment fee to DHH. The assessment fee will be a prorated amount equal to the expenses incurred by DHH to oversee the Regional System. DHH will also have access to the positive changes in net asset value attributable to the Transaction, referred to in the Affiliation Agreement as "Post-Affiliation Surplus." The Affiliation Agreement provides that as of the effective date of the Transaction, the Parties will determine the value of the consolidated net assets of CMCHS. After the effective

date, the Parties will track changes in the net asset value annually and attribute those changes to either non-affiliation related matters, such as investment return and mark-to-market adjustments on swap agreements, and matters related to the Transaction, such as the benefit which may be derived from hospital-based physician services or from administrative cost efficiencies (the "CMCHS Assets"). The positive changes in net asset value attributable to the transaction are referred to as "Post-Affiliation Surplus." The Parties have represented to the Attorney General that the CMCHS Assets will continue to be used to support the mission of the Manchester System. The Parties agree that DHH will only have the right to allocate Post-Affiliation Surplus within the Regional System through the annual budget or five-year capital plan provided such allocation is consistent with the Manchester System Financial Management, DHH Financial Principals and with the ERDs.

The Affiliation Agreement provides that the Parties will determine the value of the consolidated net assets of CMCHS as reported on its financial statement and track changes in net asset value annually and attribute those changes to either non-Affiliation related matters or Affiliation related matters. The annual calculation of Post-Affiliation Surplus is an area that affords the Parties a degree of discretion. The Affiliation Agreement does not include any oversight mechanism or audit mechanism to ensure that the discretion exercised by the Parties is reasonable. The Attorney General believes that the Parties must include additional protective measures to ensure that the Parties do not have the ability to abuse or manipulate the discretion afforded to them under the Affiliation Agreement with regard to calculation of the Post-Affiliation Surplus.

Based on the information provided to the Attorney General, the Attorney General has concluded that while the consideration exchanged in connection with the Transaction constitutes fair value, the Attorney General objects to the Transaction as there are insufficient safeguards in place to ensure that the calculation of the Post-Affiliation Surplus is not subject to manipulation or abuse by the Parties.

XIII. RSA 7:19-B II(e) ASSETS AND PROCEEDS SHALL BE DEVOTED TO CHARITABLE PURPOSES

The Acquisition Act permits the Attorney General to consider whether the assets of the health care charitable trusts and any proceeds to be received on account of the Transaction will continue to be devoted to charitable purposes consistent with the charitable objective of the charitable trust and the needs of the community which it serves. RSA 7:19-b, II(e). The analysis under RSA 7:19-b II(e) of the Acquisition Act requires the Attorney General to assess the deployment of the proceeds from the Transaction with regard to the health care charitable trust and the community.

A. Health Care Charitable Trusts

As discussed above, the Transaction will result in DHH becoming the sole member of the CMCHS and having control over certain aspects of the operations of CMCHS and its affiliates. In the Affiliation Agreement, the Parties have established certain mechanisms that are intended to allow CMCHS, CMC and AHS to retain the ability to oversee and manage the assets

generated by the Manchester System. These mechanisms include adherence to guidelines set forth in the Manchester System Financial Management, DHH Financial Principles (Exhibit 4), the segregation of the consolidated net assets of CMCHS as of the effective date of the Transaction from the Post-Affiliation Surplus, requirements set forth in the Affiliation Agreement that provide that the development of clinical and programmatic initiatives will be identified by the CMCHS management and Board, a reporting structure that provides that the CEO of CMCHS will report directly to the CMCHS Board, statements that the operating and capital budgets of CMCHS will be developed by the CMCHS Board subject to the approval by DHH (however, DHH will not have a "line item" veto over any annual or revised operating or capital budgets of CMCHS) and the restriction in the Affiliation Agreement that provides that DHH may not allocate the Post-Affiliation Surplus in a manner that is not consistent with the ERDs.

CMC and MHMH both have significant endowment funds and restricted institutional funds that are used to support the missions of their respective organizations. In addition, several of the organizations involved in the Transaction, including CMC, have other significant assets, including real estate and equipment. While DHH will gain some limited ability to influence the manner in which CMCHS' funds are expended, as described above, DHH does not have any right to direct how the CMC Charities' assets are allocated. The Affiliation Agreement specifically provides for the segregation of the assets of CMCHS as of the date the Transaction is consummated. The Parties have represented that there will be no changes to how they use their endowment and institutional funds, and that these funds will continue to be held in separate accounts controlled by the respective entities.

B. Community

The City of Manchester, is the largest urban community in northern New England, and has a diverse health care system that is comprised of both public and private health institutions.[78] The charity care provided by health and social service agencies is a critical component of this system. In 2009, the Healthy Manchester Leadership Council, a partnership chaired by the Manchester Health Department and composed of a number of Manchester area health and social service agencies (including CMC and DHC-M), prepared a community assessment titled "Believe in a Healthy Community" (the "Community Health Assessment").[79] The Community Health Assessment states:

> "The Manchester Health Service Area has the largest population and number of jobs, but also has the lowest average income levels in the State. .... Residents experience discrepancies in health and health care access there associated with their age, income, educational attainment and neighborhood."[80]

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[78] Bazos, *Believe in a Healthy Community, supra*, at 11.

[79] Pg. 1 Executive Summary

[80] *Id.*

The Community Health Assessment identifies many health related challenges facing the people of Manchester, including high rates of hospitalization of young children for acute Ambulatory Care Sensitive Conditions, obesity, increasing rates of mental health concerns, aging population, higher rates of heart disease, and disparity with regard to access to health care across income levels.[81] The Community Health Assessment also noted that poverty is greater in Manchester than in the rest of New Hampshire and that childhood poverty is growing[82]. The Community Health Assessment concludes that certain poor health outcomes and risk factors appear to have ties to income and that service providers in Manchester have seen increasing requests for assistance.[83]

CMC and DHC-M each provide a significant amount of health care services to the indigent, underserved and uninsured population of greater Manchester. CMC and DHC-M are each an essential part of the web of service providers that serve this population and any change to the scope or degree of charity care provided by CMC or DHC-M could have a dramatic impact on the overall Manchester health care system.[84]

CMCHS and DHH have represented that they are committed to continuing to provide health care services to all regardless of ability to pay or insurance coverage. The Parties believe that the proposed Transaction will put CMC and DHC-M in a better position to continue to serve the varied needs of the indigent and underserved in greater Manchester. The Transaction will allow DHH to continue to develop ways of serving patients that will allow the Parties to better coordinate out-patient and in-patient needs and allow for these services to be delivered more efficiently and effectively. CMCHS and DHH have represented to the Attorney General that they expect the creation of an integrated health care delivery system will provide the underserved with greater access to specialty care. The Parties also believe that the Transaction will allow for the development of more innovative health care delivery models, such as accountable care organizations which the Parties believe will enhance the delivery of health care.

Several organizations have expressed concern that certain DHC-M physicians will no longer provide women's health services at Elliot Hospital and the Manchester Community Health Center following the Transaction. DHC-M is the largest outpatient provider of women's health services in the greater Manchester area. In addition to obstetrics and gynecology services, DHC-M's connection to New Hampshire's only academic health system has provided Manchester with sub-specialists in the areas of urogynecology, gynecologic oncology, maternal fetal medicine, reproductive endocrinology, and genetic counseling. In connection with the Attorney General's review process, DHH has represented that it will continue to expand its women's health services in Manchester. Because the PSA has been revised to exclude those DHC-M services that do not comply with the ERDs, but specifically allows DHC-M physicians

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[81] *Id.* at 129-131.

[82] *Id.*

[83] *Id.*

[84] For fiscal years 2004 – 2006, the Manchester Community Health Center (MCHC), Dartmouth-Hitchcock Manchester, Child Health Services, The Mental Health Center of Greater Manchester, and the CMC and Elliot Hospital contributed a total of $133,023,926 in uncompensated care to the community.

to continue to provide these services (albeit outside the Manchester System) the Transaction will not cause a reduction in the availability of women's health services at DMC-M.[85]

Subject to the concerns raised earlier in this Report, the Attorney General believes that the safeguards and firewalls provided for in the Affiliation Agreement are sufficient to ensure that the assets that are currently held by the charitable trusts will continue to be devoted to the charitable purposes consistent with the charitable objectives of the health care charitable trust and the needs of the community which they serve.

C. Reasonable Public Notice Of The Transaction (RSA 7:19-b II(g))

The Acquisition Act permits the Attorney General to consider whether reasonable notice of the Transaction and its terms has been provided to the community served by the health care charitable trusts, along with reasonable and timely opportunity for such community, through public hearings or similar methods, to inform the deliberations of the governing bodies of the health care charitable trusts. The Parties have utilized various methods to provide the public with notice of the Transaction. RSA 7:19-b, II(g). The Parties established an internet website, http://www.ahealthiertomorrow.org, where Transaction documents were made available for review. The website allowed visitors to provide written comments regarding the Transaction. Three public forums were held, two in Manchester, on September 15, 2009 and November 16, 2009, and one in Lebanon, on October 8, 2009. The public forums were recorded and copies of the recordings were provided to each of the members of the Board of DHH and CMCHS for their consideration. The Parties also made copies of the transaction documents available at various locations in Manchester, Lebanon and Hanover. The Parties compiled the public commentary and posted responses to many of the issues raised by the public on the http://www.ahealthiertomorrow.org website. As a result of the comments received by the Parties, several amendments were made to the Affiliation Agreement and the PSA.

Based on the steps taken by the Parties to solicit and respond to public commentary regarding the Transaction, the Attorney General has concluded that the Parties have provided reasonable public notice of the Transaction to the communities served by the health care charitable trusts and reasonable and timely opportunity for interested members of the community, through public hearing or other methods, to inform the deliberations of the governing bodies of the health care charitable trusts regarding the Transaction.

XIV. OTHER APPROVALS PENDING OR REQUIRED

A. Approval Of The Roman Catholic Church

The Parties have sought the approval of the Transaction from the Bishop of Manchester. In a statement dated July 22, 2009, the Bishop of Manchester states that "he has begun to review the documents submitted to him concerning the Transaction and has given his conditional approval to move forward with the transaction." The Parties have certified to the Attorney General that the Transaction is consistent with Canon Law and provides the Bishop of

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[85] It should be noted that termination of pregnancy services have never been provided by DHC-M.

Manchester with sufficient reserved powers to maintain the Catholic identity and fidelity to Catholic teaching and practice of the CMC Charities. The Parties have also certified that the Bishop of Manchester possesses the legal authority under Canon Law to approve the Transaction.

Based on the certification provided by the Parties, the Attorney General concludes that in order for the Transaction to comply with applicable law that the approval of the Bishop of Manchester is required.

B. Federal Trade Commission

The Parties filed a Notification and Report Form with the Federal Trade Commission ("FTC") under the Hart-Scott-Rodino Antitrust Improvement Act[86] on August 28, 2009.[87] On October 1, 2009, the FTC issued a "second request" to the Parties which required the Parties to produce a considerable amount of data and documents for the FTC's review. The Parties completed the submission of the response to the FTC "second request" on May 7, 2010. Unless extended by the parties, the FTC has thirty (30) days from May 7 to determine whether to contest the transaction. If the FTC fails to object or intervene on or before the expiration of the 30-day period, the Transaction may be consummated by the Parties.

Based on the information provided to the Attorney General, in order for the Transaction to comply with applicable law, the 30-day period following the completed submission by the Parties of the response to the FTC "second request" must lapse with no objection or intervention by the FTC or extension by the parties during this 30-day period, or such other final resolution that must be reached between the Parties and the FTC regarding the issues reviewed by the FTC.

C. New Hampshire Consumer Protection And Antitrust Bureau Of The Attorney General's Office.

The New Hampshire Consumer Protection and Antitrust Bureau of the Attorney General's Office (the "Antitrust Bureau") is obligated to engage in a review of the Transaction as it relates to RSA 356, the New Hampshire Combinations and Monopolies Act (the "Combinations Act"). Pursuant to RSA 356:14, the Combinations Act is to be interpreted in a manner consonant with the federal antitrust laws. Accordingly, the Antitrust Bureau has undertaken its review of this matter jointly with the FTC. Despite its joint review of the Transaction with the FTC, the Antitrust Bureau will make an independent determination of whether the Transaction is in accord with New Hampshire's antitrust laws.

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[86] The Hart-Scott-Rodino Antitrust Improvement Act of 1976 provides that parties to certain mergers or acquisitions notify the Federal Trade Commission and the Department of Justice before consummating the transaction. The parties must wait a specific period of time while the FTC reviews the transaction. The purpose of the review is to ensure that the proposed transaction complies with federal antitrust laws. If the FTC believes that a proposed transaction may violate the federal antitrust laws, it may seek an injunction in federal district court to prohibit consummation of the transaction.

[87] The FTC acknowledged receipt of a completed Notification and Report Forms on September 1, 2009.

Based on the information provided to the Attorney General, in order for the Transaction to comply with applicable law the Antitrust Bureau must determine that the Transaction is in accord with New Hampshire's antitrust laws.

D. Internal Revenue Service

On May 7, 2009, DHH submitted an Application for Exemption, Form 1023, and Private Letter Ruling request to the Internal Revenue Service ("IRS"). The private letter ruling requests that the IRS rule that: (1) the restructuring of the relationship among MHMH, DHC and CMC, including the formation of DHH, the addition of CMC to the system, and the potential future additions of other tax-exempt health care organizations will not adversely affect the continued tax-exempt status of DHC, MHMH or any other organization that may become a member of the system, (2) the proposed restructuring and the transfer of authority, responsibility and assets to it by MHMH, DHC, and CMC will not adversely affect the continued non-private-foundation status of MHMH, DHC, or CMC, and (3) the proposed restructuring will not give rise to the use of the proceeds of any outstanding tax-exempt bond issue for the benefit of MHMH, DHC or CMC by any person other than an organization described in Internal Revenue Code ("IRC") Section 501(c)(3) or for any purpose other than an exempt purpose, and will not cause any of the facilities financed by such tax-exempt bonds to be treated as used for any private business use within the meaning of IRC Sections 141(b) and 145(a). On October 13, 2009 DHH added the following additional requests to its private letter ruling request: (1) that the proposed restructuring will not adversely affect CMCHS's ability to continue to be listed in The Official Catholic Directory and will not adversely affect the continued tax-exempt status of CMCHS, (2) the proposed restructuring, including the appointment of DHH as the sole member of CMCHS with certain retained powers and the granting of certain retained powers over AHS to DHH will not adversely affect the continued tax-exempt status of CMC and AHS, (3) the proposed restructuring, including the appointment of DHH as the sole member of CMCHS with certain retained powers and the granting of certain retained powers over AHS to DHH will not adversely affect the continued non-private-foundation status (under IRC Sections 509(a) and 170(b)(1)(A)(iii)) of CMC and AHS, and (4) the proposed restructuring, including the appoint of DHH as the sole member of CMCHS with certain retained powers will not give rise to the use of the proceeds of any outstanding tax-exempt bond issue for the benefit of CMC by any person other than an organization described in IRC Section 501(c)(3) or for any purpose other than an exempt purpose, and will not cause any of the facilities financed by such tax exempt bonds to be treated as used for any private business use within the meaning of IRC Sections141(b) and 145(a).

Based on DHH's submission of an Application for Exemption and Private Letter Ruling request with the IRS, in order for the Transaction to comply with applicable law, DHH must receive a favorable ruling from the IRS determining that the creation of the Regional System and the affiliation of CMCHS with DHH will not jeopardize the tax-exempt status of CMCHS or the Manchester System members.

XV. CONCLUSION

In accordance with RSA 7:19-b, IV, the Attorney General must, "[w]ithin a reasonable time, not to exceed 120 days after receipt of the notice specified in the preceding paragraph...determine compliance with the standards set forth in paragraph II of this section and ... notify the parties either that [he] will take no further action with respect thereto, or that [he] objects to the transaction on specified grounds." The Attorney General makes the following findings:

1. The Attorney General objects under RSA 7:19-b, II(a) to the Transaction on the grounds the Transaction is not permitted by applicable law. The Transaction will result in DHH obtaining control over core functions of the CMC Charities, which until this point have operated as an independent Catholic hospital. The Attorney General concludes that the Transaction will result in a profound change in the governance structure of the CMC Charities and diminish the fiduciary duties of the Boards of Directors of the CMC Charities which will inhibit the ability of the CMC Charities to carry out their charitable missions. The Attorney General also concludes that Probate Court approval of this transfer of control would be necessary in order to be permitted under New Hampshire law. .

2. Based on the information provided by the Parties, the Attorney General concludes that the Parties have not provided adequate information upon which the Attorney General can determine whether it exercised due diligence in determining the effect of the Transaction on the cost of delivering care. For that reason, the Attorney General objects.[55]

3. Under RSA 7:19-b, II(d), the Attorney General has concluded that while the consideration exchanged in connection with the Transaction constitutes fair value, the Attorney General objects to the Transaction as there are insufficient safeguards in place to ensure that the calculation of the Post-Affiliation Surplus is not subject to manipulation or abuse by the Parties.

4. The Transaction remains subject to approval of the Bishop of Manchester, Federal Trade Commission, the Consumer Protection and Antitrust Bureau and Internal Revenue Service. To the extent those approvals are not obtained, the Attorney General objects in accordance with RSA 7:19-b, II(a) on the grounds the Transaction is not permitted by applicable law.

In addition to the Parties, copies of this Report will be delivered to the Governor, Speaker of the House and the Senate President.

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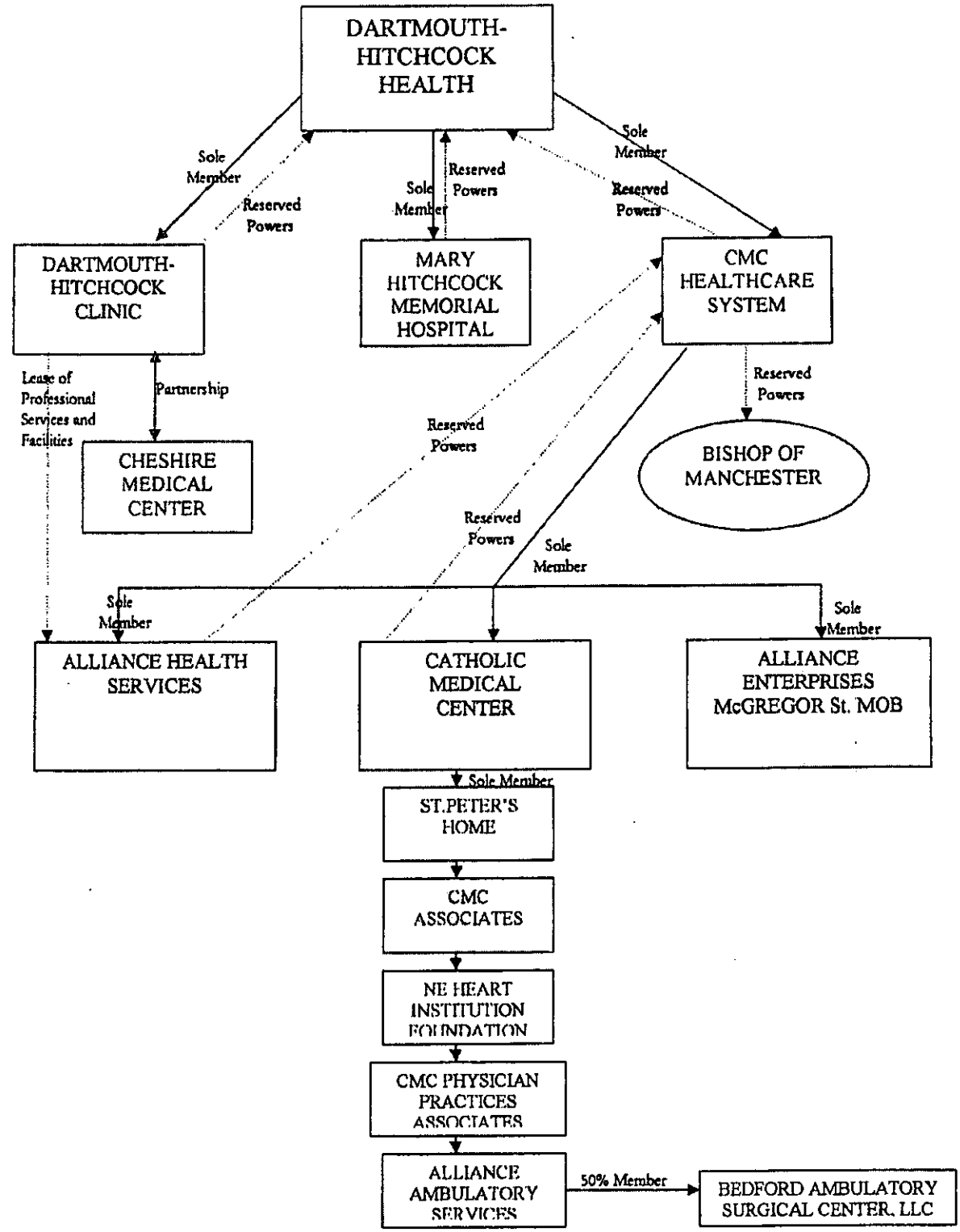
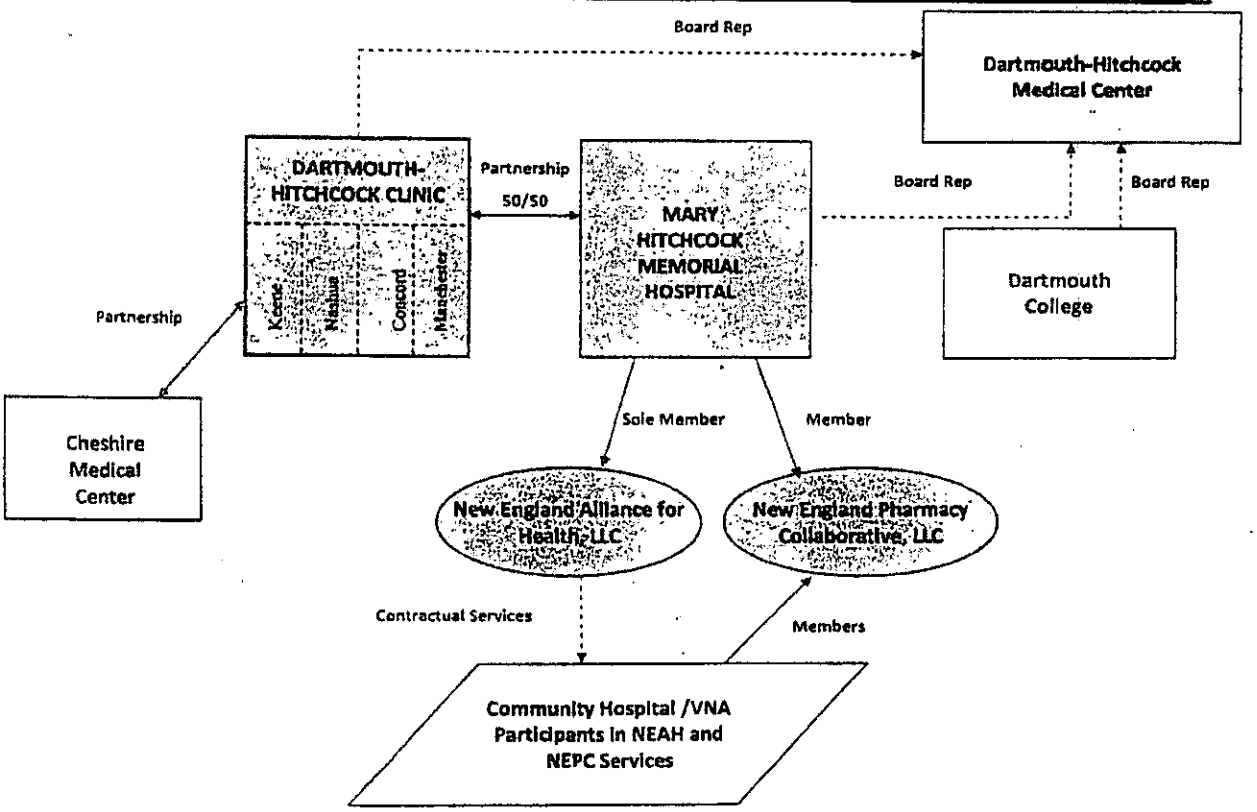
[55] As is referenced in Section XIV (Other Approvals), a separate antitrust evaluation is being performed, and the effect on health care costs in the community is subject to review and analysis within the context of the antitrust review.

EXHIBITS

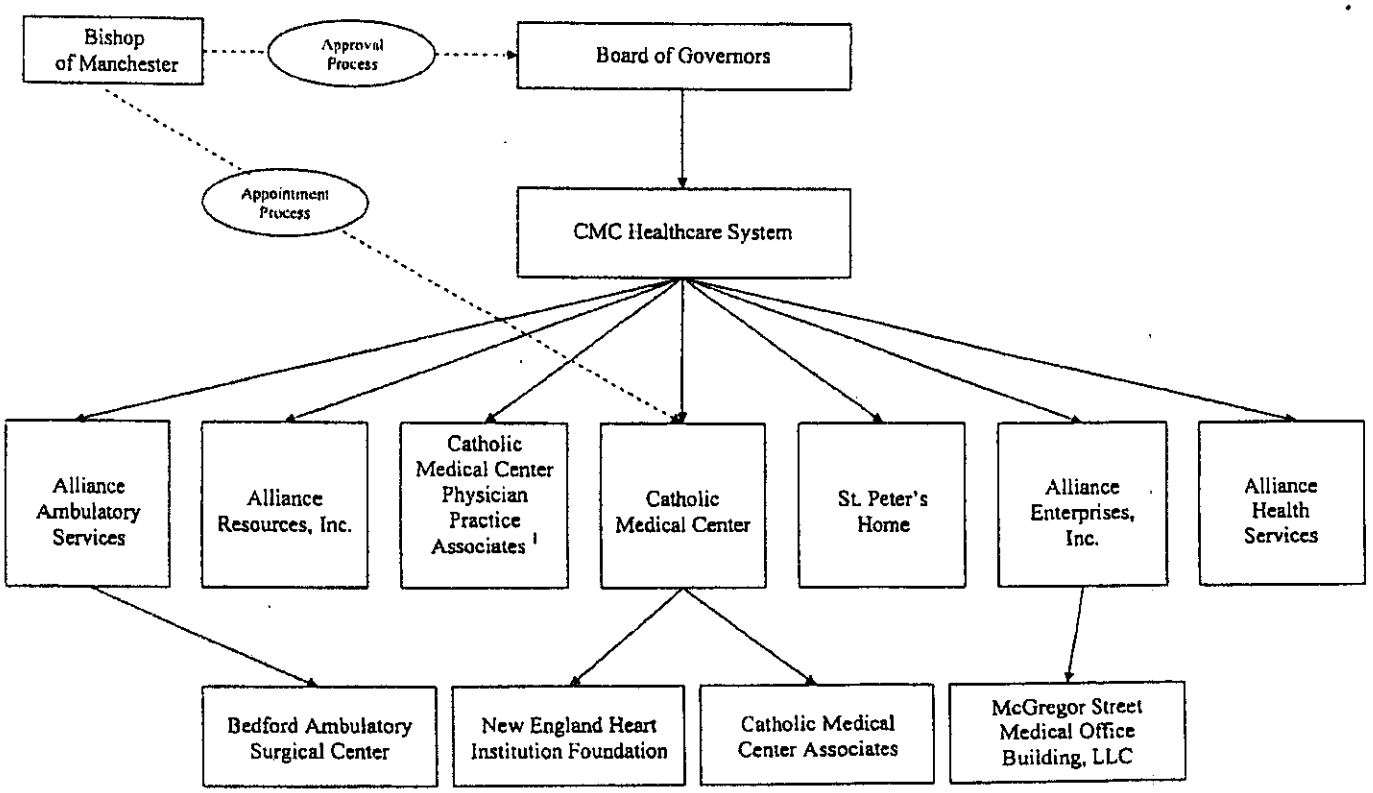
DHH-CMCHS Proposed Affiliation Structure



Basic Dartmouth-Hitchcock Structure (as of 1/1/09)



CMC HEALTHCARE SYSTEM
CURRENT CORPORATE STRUCTURE



1 - NEHI is a division of CMC PPA

EXHIBIT 3.8
Manchester System Financial Management

DARTMOUTH-HITCHCOCK HEALTH
(DHH)

Financial Principles

INTRODUCTION

Dartmouth-Hitchcock Clinic and Mary Hitchcock Memorial Hospital have a 75 year history of working collaboratively to optimize each other's ability to meet the needs of the population which they serve. In recent years, this relationship has evolved into Dartmouth-Hitchcock, two legal entities working together as one economic unit to fulfill a single mission and, most recently, to achieve a vision of the healthiest population possible. Recognizing that forging substantive relationships with other health care providers is a requirement to fully realizing this vision, DHH was formed to support the creation of a regional integrated health care delivery system.

It is important to note that optimizing the population's health within a given region is not necessarily the same as maintaining or expanding the existing health care delivery system. DHH is committed to improving the health of the population; to being a good steward of its resources and those within the community; and to ensuring the optimal deployment of those collective resources to achieve the greatest value for the community. These financial principles have been developed to guide the DHH Leadership in achieving these goals.

PURPOSE

This document sets forth financial principles to be generally utilized by DHH organizations in developing long-term financial plans, annual operating and capital budgets and in conducting their financial affairs.

These financial principles have been developed to provide a basis for the DHH organizations to evaluate their financial position, establish financial objectives, and create financial plans that provide for future operating and capital needs and achieve financial objectives. In short, following these principles will help to ensure the long-term financial health of DHH and the Regional Provider Organizations.

DHH recognizes that these financial principles reflect its understanding of financial planning and operating practices which should be utilized. It also understands that regulators and others may have differing views. It is DHH's responsibility to communicate the logic and rationale of these concepts to other parties and in the case that DHH does not follow them, to analyze the impact of those decisions on DHH's future financial position.

The DHH Board of Trustees (or appropriate Committee) will employ these principles in the review and approval of Regional Provider Organization annual budgets and long-term financial plans and projects. These principles will also be helpful in presenting and explaining our financial plans to regulators, bond holders, rating agencies and others.

I. GENERAL FINANCIAL PRINCIPLES

A. DHH will strive to maintain an actual (if applicable) or a shadow credit rating equivalent to Standard & Poor's A+ rating or higher as reflected by financial ratios and credit market analysis. Individual Regional Provider Organizations will establish a goal of achieving and maintaining the following targets for their overall financial condition:

1. D-H will strive to achieve and maintain an "A+" actual (if applicable) or shadow rating; and

2. Other Regional Provider Organizations will strive to achieve and maintain an "A-" actual (if applicable) or shadow rating.

B. DHH organizations should maintain working capital reserves rather than relying on external lines of credit or Regional System support to finance operations.

C. Debt should be issued when it is most economical to borrow and with consideration for future capital project needs over time.

1. Tax-exempt debt generally remains the least costly means to finance capital expenditures. The establishment of an Obligated Group (or Groups) will be utilized as appropriate to maximize access to capital markets at the lowest cost possible.

2. Borrowings through a DHH Revolving Loan Program (should one be developed) will require a financial analysis which reflects reasonable assumptions and an ability of the borrower to repay the loan according to the original terms.

3. Equipment leases should only be used when they result in lower financing costs compared to other alternatives or when they improve the ability to manage technological obsolescence.

4. Operating leases should be considered for financing real estate that is used for non-core purposes or programs with unpredictable long-term funding sources.

D. Significant new program, facility and equipment investments proposed by Regional Provider Organizations will be reviewed to ensure a full understanding of the immediate and long-term financial impacts of the proposal.

II. PRINCIPLES FOR LONG-TERM FINANCIAL PLANNING

A. Organizations should periodically assess the adequacy of their financial position. They should calculate financial indicators and compare them to minimum acceptable levels and target levels. Minimum or maximum acceptable levels have been established for five key ratios as follows:

Ratio	Capital Intensive	Non- Capital Intensive
▪ Debt Service Coverage - Annual	Minimum of 2x	(same)
▪ Days Cash on Hand	Minimum of 100	Minimum of 45
▪ Debt-to-capitalization	Maximum of 50%	(same)
▪ Days in A/R, net	Maximum of 70	(same)
▪ Average Age of Fixed Assets	Maximum of 12	(same)

B. Financial objectives should be established by the Regional Provider Organization Boards based on their evaluation of the adequacy of current financial position and projected financial requirements.

1. Minimum and maximum levels of liquid and unencumbered assets ("reserves") should be established by the Board. Appropriate levels of conservatism should be considered when establishing reserves, or committing funds to various operating and strategic purposes. Specific financial objectives should be established if any reserves are not minimally adequate.

2. Organizations should maintain reserves sufficient to maintain their facilities and equipment and to handle unanticipated cash flow requirements. Reserve levels should be based on the following:

   a) Equipment replacement reserves should be at least equal to 100% of accumulated equipment depreciation.

   b) Plant replacement reserves should be at least equal to 40% of accumulated facility depreciation.

   c) Other specific reserves should be identified where appropriate.

   d) The adequacy of general undesignated reserves should be based on the evaluation of funds for general purposes and the evaluation of contingencies and provisions for uncertainties.

C. A Five Year Financial Plan should be prepared and/or updated annually and projections compared to financial objectives.

1. Cash provided from operations reflected in the Five Year Plan should be adequate to cover the following:

   - Equipment and plant replacement and/or reserve funding
   - New technology
   - Debt retirement, including funding of sinking funds for the retirement of debt
   - Working capital needs
   - Provision for certain strategic initiatives
   - Funding requirements for defined benefit plans

2. If capital and strategic reserves are inadequate, non-operating income should be added to reserves until adequate levels are reached.

3. If capital and strategic reserves are adequate, consideration should be given to using non-operating income (including unrestricted income earned on permanently restricted funds via an endowment spending policy) for investing in mission related objectives.

III. PRINCIPLES FOR ANNUAL OPERATING AND CAPITAL BUDGETS

A. Each year, the budgeted operating margin will approximate the operating margin projected in the current Five Year Financial Plan.

B. A level of conservatism sufficient to accommodate normal variation in market conditions and errors in estimates shall be incorporated into the annual operating budget in order to achieve financial objectives in normal situations. Organizations with a less than desired financial position should incorporate additional levels of conservatism to increase the probability of attaining their financial goals. All organizations should meet their budgeted operating margins at least 75% of the time (i.e. 3 out of 4 years).

C. Impacts of current budgeting decisions on future periods must be considered.

a) Pricing of products and services should be consistent with the organization's overarching strategy and be based on an understanding of costs, competition, and consumer expectations.

b) Employee compensation should be set at levels appropriate to attract and retain skilled personnel.

c) The organization should annually and systematically replace equipment and maintain facilities.

D. Non operating income should generally not be used to support operations unless specifically justified.

AFFIDAVIT OF AMENDMENT OF
CATHOLIC MEDICAL CENTER
A NEW HAMPSHIRE NONPROFIT CORPORATION

Form No. NP 3
RSA 292:5 & 7

ARTICLE VI

Each of the following actions of the Corporation must be approved by the Board of Trustees of its Sole Member (as defined in Article VIII (the "CMCHS Board") and, where applicable and as set forth in the Sole Member's Articles of Agreement and Bylaws, by either or both Dartmouth-Hitchcock Health ("DHH") and/or the Bishop of the Roman Catholic Diocese of Manchester (the "Bishop"):

1. *Amendments of Articles of Agreement.* Any proposed amendment or repeal of the Articles of Agreement of the Corporation which proposed amendment or repeal would (i) impact the powers reserved to the Sole Member in this Article VI, or (ii) reasonably be expected to have any material strategic, competitive or financial impact on one or more of the provider organizations in the Manchester System (of which CMCHS is the sole member) or in the Manchester System as a whole;

2. *Changes to Mission or Ethical and Religious Standards of the Corporation.* Any change in the mission, objectives or purposes of the Corporation or its ethical and religious standards;

3. *Appointment or Removal of Directors.* The appointment or removal of each Director of the Corporation;

4. *Appointment of President and Chief Executive Officer.* The appointment and termination of the Corporation's President and Chief Executive Officer;

5. *Operating and Capital Budgets.* The final adoption of, and any deviation in a Material Amount from, the annual and any revised operating and capital budgets of the Corporation. For purposes of these Articles, the term "Material Amount" will mean a dollar amount equal to or greater than the capital expenditure threshold for acute care facilities set forth in New Hampshire RSA 151-C:5(II)(a) as adjusted for inflation from time to time by the Health Services Planning and Review Board;

6. *Conveyance of Assets; Indebtedness.* Any conveyance, purchase, sale or lease of, or grant of mortgages, trust deeds or creation of other liens or encumbrances on, real property assets of the Corporation in excess of a material amount or any conveyance of any assets of the Corporation (other than real property assets) or the incurring of any indebtedness (other than any such indebtedness secured by real property assets) which exceeds a material amount;

7. *Clinical Service or Programs.* Any elimination or addition of any material health care service or program proposed by the Corporation;

8. *Merger or Acquisition.* Any merger with or consolidation of the Corporation into

another entity, or the acquisition by the Corporation of substantially all of the assets of another entity which may have a material effect on the Manchester System, or the sale or lease of substantially all of the assets of the Corporation to any person or entity;

9. *New Affiliations.* Any creation of an affiliate or subsidiary organization, or any affiliation of the Corporation with any other entity for the purpose of the joint conduct of business or other programs, whether in the form or participation in a corporation (either through the holding of stock or membership), partnership, joint venture, co-tenancy or any other form of ownership or control; and

10. *Dissolution.* The dissolution or liquidation of the Corporation.

11. *Information to be Furnished to the Member.* The Corporation will provide the Sole Member with such information as the Sole Member may reasonably request to fulfill its role as the integrator of the Manchester System, including without limitation financial statements, budgets, strategic plans and quality improvement plans.

ARTICLE VII

1. These Articles of Agreement may be amended or repealed by a two-thirds vote of the members of the Corporation's Board of Directors. Any such amendment or appeal which may (a) impact the powers reserved to the Sole Member in the Corporation's Articles, or (b) reasonably be expected to have any material strategic, competitive or financial impact on one or more entities of which the Sole Member is the sole member or on the integrated health care delivery system managed by the Sole Member as a whole, must be approved by a majority vote of the CMCHS Board.

2. At all times this Corporation shall be operated in accordance with the canon law of the Roman Catholic Church promulgated by the Supreme Roman Pontiff and the teachings of the Roman Catholic Church enunciated by the Holy See as well as with the Ethical and Religious Directives for Catholic Health Care Services promulgated by the United States Conference of Catholic Bishops, as amended from time to time. In regard to the foregoing, the Corporation shall, in all such matters, rely upon and defer to the teaching, ruling and sanctifying authority of the Roman Catholic Bishop of Manchester who shall monitor the implementation of and compliance with the Ethical and Religious Directives for Catholic Health Care Services, whether directly or by delegation of authority, in such manner as he deems appropriate.

CONFIDENTIAL AND PRIVILEGED COMMON INTEREST MATERIALS
Final Draft: *To Be Executed at Closing*

SECOND AMENDED AND RESTATED BYLAWS

OF

ALLIANCE HEALTH SERVICES

ARTICLE I
NAME, BUSINESS ADDRESS AND PURPOSES

The name of the corporation is Alliance Health Services (the "Corporation"). The business address and purposes of the Corporation are as set forth in the Articles of Agreement as amended from time to time.

ARTICLE II
MEMBER AND RESERVED POWERS

Section 1. Member. The sole Member of the Corporation is CMC Healthcare System, a tax-exempt New Hampshire voluntary corporation with a principal place of business in Manchester, New Hampshire ("CMCHS"). CMCHS also is the sole member of Catholic Medical Center and manages and operates an integrated health care delivery system in the Greater Manchester, New Hampshire service area (the "Manchester System"), in which the Corporation is a participant. The sole member of CMCHS is Dartmouth-Hitchcock Health, a tax-exempt New Hampshire voluntary corporation ("DHH"), which manages and operates a regional integrated health care delivery system in the Northern New England service area (the "Regional System"), in which CMCHS is a participant.

Section 2. Powers Reserved to CMCHS. Each of the following actions of the Corporation must be approved by the CMCHS Board of Trustees (the "CMCHS Board") and, where applicable and as set forth in the CMCHS Articles and Bylaws, by either or both DHH and/or the Bishop of the Roman Catholic Diocese of Manchester (the "Bishop"):

2.1. *Amendments of Articles of Agreement and Bylaws.* Any proposed amendment or repeal of the Articles of Agreement or Bylaws of the Corporation which proposed amendment or repeal would (i) impact the powers reserved to CMCHS in this Article II, Section 2, or (ii) reasonably be expected to have any material strategic, competitive or financial impact on one or more of the provider organizations in the Manchester System (of

which CMCHS is the sole member) or in the Manchester System as a whole;

2.2. *Changes to Mission or Ethical and Religious Standards of the Corporation.* Any change in the mission, objectives or purposes of the Corporation or its ethical and religious standards;

2.3. *Appointment or Removal of Trustees.* The appointment or removal of each trustee of the Corporation;

2.4. *Appointment of Chief Physician Executive.* The appointment and termination of the Corporation's Chief Physician Executive;

2.5. *Operating and Capital Budgets.* The final adoption of, and any deviation in a Material Amount from, the annual and any revised operating and capital budgets of the Corporation. For purposes of these Bylaws, the term "Material Amount" will mean a dollar amount equal to or greater than the capital expenditure threshold for acute care facilities set forth in New Hampshire RSA 151-C:5(II)(a) as adjusted for inflation from time to time by the Health Services Planning and Review Board;

2.6. *Conveyance of Assets; Indebtedness.* Any conveyance, purchase, sale or lease of, or grant of mortgages, trust deeds or creation of other liens or encumbrances on, real property assets of the Corporation in excess of $1 million or any conveyance of any assets of the Corporation (other than real property assets) or the incurring of any indebtedness (other than any such indebtedness secured by real property assets) which exceeds $1 million;

2.7. *Clinical Service or Programs.* Any elimination or addition of any material health care service or program proposed by the Corporation;

2.8. *Merger or Acquisition.* Any merger with or consolidation of the Corporation into another entity, or the acquisition by the Corporation of substantially all of the assets of another entity which may have a material effect on the Manchester System, or the sale or lease of substantially all of the assets of the Corporation to any person or entity;

2.9. *New Affiliations.* Any creation of an affiliate or subsidiary organization, or any affiliation of the Corporation with any other entity for the purpose of the joint conduct of business or other programs, whether in the form or participation in a corporation (either through the

holding of stock or membership), partnership, joint venture, co-tenancy or any other form of ownership or control; and

2.10. *Dissolution.* The dissolution or liquidation of the Corporation.

Section 3. Information to be Furnished to the Member. The Corporation will provide CMCHS with such information as CMCHS may reasonably request to fulfill its role as the integrator of the Manchester System, including without limitation financial statements, budgets, strategic plans and quality improvement plans.

ARTICLE III
BOARD OF TRUSTEES

Section 1. Number and Composition. The Board of Trustees will be responsible for governing the Corporation, and will be comprised of seventeen (17) seats. To ensure that the Board of Trustees is representative of and responsive to its role within the Manchester System, the Board of Trustees will be composed as follows:

1.1 *Ex Officio Members.* The following individuals will serve on the Corporation's Board of Trustees *ex officio*, with full voting rights: (a) the CMCHS Chief Physician Executive; (b) the Medical Director of the Corporation or, if the same individual holds the office of CMCHS Chief Physician Executive and the Corporation's Medical Director, then the Associate Medical Director of the Corporation; (c) the Dartmouth-Hitchcock Vice President of Community Group Practices; (d) the CMCHS President and Chief Executive Officer; (e) the Dartmouth-Hitchcock Clinic President; and (f) the Catholic Medical Center Physician Practice Associates Medical Director. If any of the above offices are renamed or reorganized, the holder of the successor office will serve on the Corporation's Board of Trustees.

1.2 *Elected Members.* The remaining members of the Board of Trustees will be elected by the Corporation's Board of Trustees from a slate of candidates determined as follows:

(a) Two (2) members will be nominated by the Dartmouth-Hitchcock Manchester Board of Governors;

(b) Five (5) members will be nominated by the Dartmouth-Hitchcock Clinic Board of Trustees; and

Category 2 Procedures

2.1 With respect to the procedures and activities performed in this Category 2, it must be made clear to patients the DHM health care provider is not acting as an agent of Catholic Medical Center or the Manchester System. A mutually agreed upon disclaimer will be created by CMCHS and DHM. This disclaimer will be published electronically on websites, displayed at appropriate DHM locations and be included in any general information packets given to all patients and especially obstetrical patients.

2.2 No referral for abortions are allowed. Any counseling that mentions abortion may only be in response to a request from a patient and can only give general contact information pursuant to the Preamble.

2.3 The listing of the procedures and activities in this Category 2 is simply a recognition of procedures and activities that preexisted the Manchester System and continue to be offered at DHM facilities but outside of the Manchester System. The listing is a current complete list of Category 2 procedures done at DHM facilities. A procedure will be adopted to review any contemplated new procedures to determine what category it would belong to pursuant to Exhibit A of the Restated Professional Services Agreement.

2.4 Direct sterilization procedures (tubal ligation, vasectomy).

2.5 Semen analysis.

2.6 Intrauterine Insemination (IUI).

2.7 Non directive genetic counseling to discuss with couples diagnostic tests available to identify syndromes/conditions in affected fetuses. If and when syndromes/conditions are identified, nondirective counseling about options available including treatment in utero or after birth if possible, care of an affected child after birth, termination of pregnancy (only if requested by patient/couple and subject to the Preamble), use of donor sperm or eggs, or the choice not to have children.

2.8 Counseling families about management of pregnancy at the lower limit of viability and acceding to family wishes for no obstetrical intervention and no neonatal resuscitation acceding to family decisions of nonintervention for severe fetal abnormalities consistent with federal law and/or regulations and when treatment offers no reasonable hope of benefit or poses and excessive burden.

2.9 Counseling about sterilization procedures.

2.10 Counseling about all methods of contraception including emergency contraception.

2.11 Contraception: placing intrauterine or implantable devices, providing prescriptions for medical contraception, emergency contraception, use of barrier methods for all ages regardless of marital status, permanent sterilization.

2.12 Fertility sparing or fertility preserving procedures for patients with cancer including ART for patients completing cancer therapy other the IVF or any IVF-based procedures.

2.13 Counseling leading to, but not the performance of, In Vitro Fertilization, Itra-Cytoplasmic-Sperm injection (ICSI), Embryo freezing (FET), Donor oocytes, Donor embryo, Gestational carrier, and subsequent pregnancy care.

Category 3 Procedures

3.1 The listing of the procedures and activities in this Category 3 is simply recognition of procedures and activities that have not and will not be performed at the DHM facilities. The listing does not in any way establish them. It is understood and agreed by the Parties that the procedures identified in this Category 3 will not be offered at the DHM Facilities even outside of the Affiliation.

3.2 Prescriptions for drugs such as RU-486 (Mifepristone) for medical abortions.

3.3 Performing any direct termination of pregnancy.

3.4 In Vitro Fertilization (with cryopreservation, embryo discarding, donation and research on excess embryos, Intra-Cytoplasmic-Sperm Injection (ISCI), Embryo freezing (FET), Donor oocytes, Donor embryo, Gestational carriers.

3.5 Research on donated sperm, eggs, embryos.

EXHIBIT 3.5
Reserved Powers of the Roman Catholic Bishop of Manchester Over CMCHS

Although many of the reserved powers of the person who holds the office of the Bishop of the Roman Catholic Diocese of Manchester are delegated to the Board of Trustees of CMC Healthcare System ("CMCHS"), the following actions require the express approval of the Bishop of the Roman Catholic Diocese of Manchester before they can be effective and implemented:

1. Any repeal, alteration or amendment of the Articles of Agreement or Bylaws of CMCHS;

2. Any change in the philosophy, objectives or purposes of CMCHS or its ethical or religious standards;

3. Any conveyance, purchase, sale or lease of, or grant of mortgages, trust deeds or creation of other liens or encumbrances on, real property assets of CMCHS or those of its Subsidiaries[1] with a fair market value in excess of the maximum amount approved by the Holy See for the United States of America[2] or any conveyance of any non-real property assets of CMCHS or those of its Subsidiaries or the incurring of any general indebtedness by CMCHS or those of its Subsidiaries which exceeds the same maximum amount;

4. The appointment of each elected trustee of CMCHS as described in section 3.6.4 of the Affiliation Agreement between CMCHS and DHH dated July 22, 2009, as amended by the First Amendment to Affiliation Agreement dated January 20, 2010 (the "Affiliation Agreement");

5. The removal of any elected trustee of CMCHS;

6. The appointment of the President and Chief Executive Officer of CMCHS as described in section 3.7.1 of the Affiliation Agreement;

7. The removal of the President and Chief Executive Officer of the CMCHS;

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[1] The term "Subsidiary" means any voluntary corporation over which either CMCHS or Catholic Medical Center serves as sole member or in the case of other forms of entities, where either CMCHS or Catholic Medical Center exercises control over the organization.

[2] The approved amount is $5,000,000, indexed according to the cost-of-living index. For 2008-2009, the maximum amount is fixed at $5,699,000.

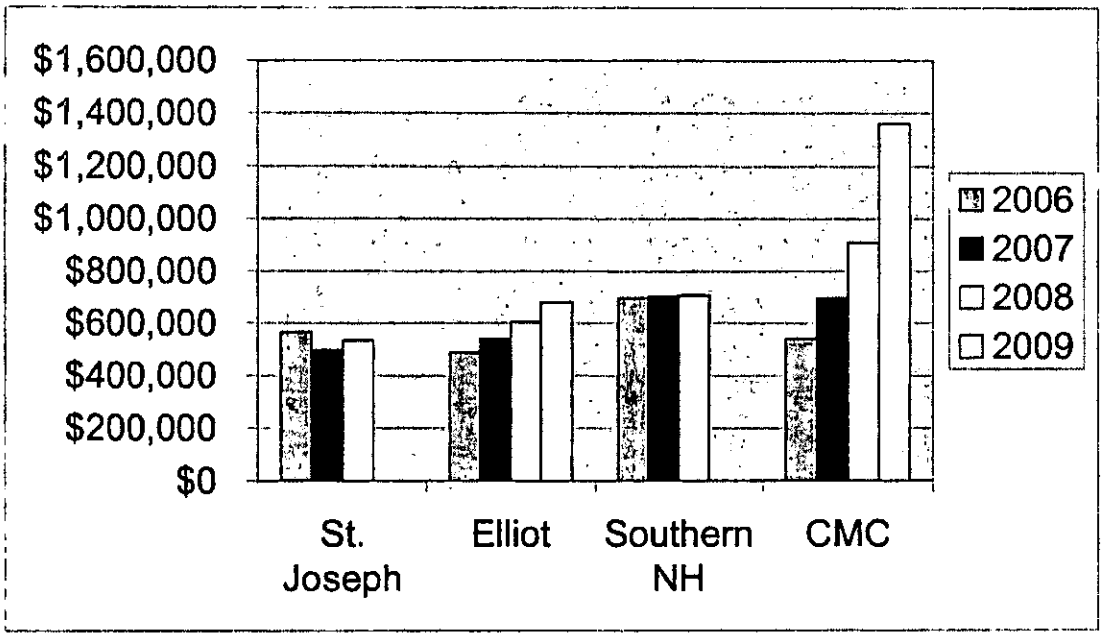
8. Any merger with or consolidation of CMCHS or any of its Subsidiaries into another entity, or the acquisition by CMCHS or any of its Subsidiaries of substantially all of the assets of another entity or the sale or lease of substantially all of the assets of CMCHS or any of its Subsidiaries to any person or entity;

9. Any creation by CMCHS or one of its Subsidiary organizations of an affiliate or subsidiary organization, or any affiliation of CMCHS or any of its Subsidiaries with any other entity for the purpose of the joint conduct of business or other programs, whether in the form of or participation in a corporation (either through the holding of stock or membership), partnership, joint venture, co-tenancy or any other form of ownership or control; and

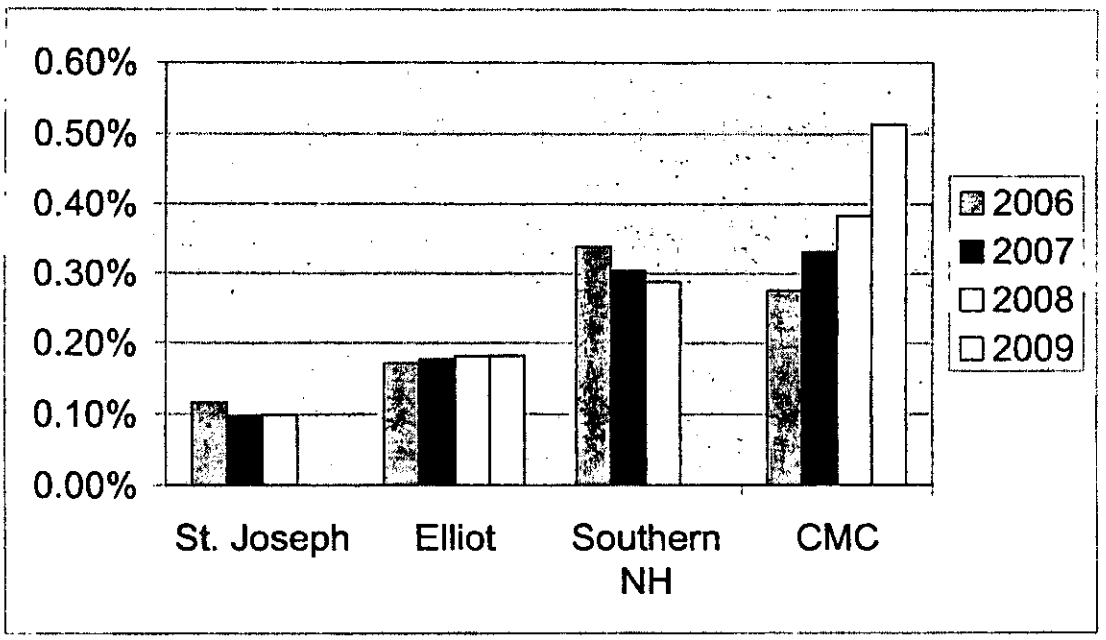
10. The dissolution or liquidation of CMCHS.

At all times, CMCHS and its Subsidiaries shall be operated in accordance with the Canon Law and teachings of the Roman Catholic Church as well as with the *Ethical and Religious Directives for Catholic Health Care Services*, issued by the United States Conference of Catholic Bishops, as amended from time to time. In regard to the foregoing, CMCHS shall, in all such matters, rely upon and defer to the authority of the Bishop of the Roman Catholic Diocese of Manchester who, in such manner as he deems appropriate -- whether directly or by delegation of authority -- shall monitor CMCHS' implementation of and compliance with the *Ethical and Religious Directives for Catholic Health Care Services.*

CEO Compensation



CEO Compensation as % of Operating Revenue



Voting Sheets

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HCR 30

BILL TITLE: **urging the attorney general to investigate the merger between Catholic Medical Center and Dartmouth Hitchcock Medical Center.**

DATE: 1-26-10

LOB ROOM: 302

Amendments:

Sponsor: Rep. Winters	OLS Document #:	2010	0279h
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

Motions: (OTP), OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Winters

Seconded by Rep. Headd

Vote: 11-8 (Please attach record of roll call vote.)

Motions: OTP, (OTP/A), ITL, Interim Study (Please circle one.)

Moved by Rep. Winters

Seconded by Rep. DeStefano

Vote: 10-9 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: Consent or (Regular) (Circle One)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. James F. Headd, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HCR 30

BILL TITLE: **urging the attorney general to investigate the merger between Catholic Medical Center and Dartmouth Hitchcock Medical Center.**

DATE: 1-26-10

LOB ROOM: 302

Amendments:

Sponsor: Rep. Winters/Headd OLS Document #: 0279h

Sponsor: Rep. / OLS Document #:

Sponsor: Rep. OLS Document #: passed - 11-8

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Winters

Seconded by Rep. Dastfuro

Vote: 16-9 (Please attach record of roll call vote.) passed 10-9

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

Will No Rec minority to Rep

CONSENT CALENDAR VOTE: Consent or Regular (Circle One)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. James F. Headd, Clerk

OFFICE OF THE HOUSE CLERK 2010 SESSION

COMMERCE AND CONSUMER AFFAIRS

Bill #: HCR30 Title: Merger CMC & Dartmouth

PH Date: ___/___/___ Exec Session Date: 1/26/10

Motion: OTP Amendment #: 0279h

MEMBER	YEAS	NAYS
Butler, Edward A, Chairman	✓	
Schlachman, Donna L, V Chairman	✓	
DeStefano, Stephen T	✓	
Kopka, Angeline A		✓
Meader, David R	✓	
McEachern, Paul		✓
Hammond, Jill Shaffer	✓	
Nord, Susi	✓	
Winters, Joel F	✓	
Keans, Sandra B		✓
Gidge, Kenneth N	✓	
Hunt, John B		✓
Quandt, Matt J	✓	
Belanger, Ronald J		✓
Flanders, Donald H		✓
Holden, Rip		✓
Dowling, Patricia A	✓	
Headd, James F, Clerk	✓	
Nevins, Chris F		
Palfrey, David J		✓
	11	8

TOTAL VOTE:

Printed: 12/18/2009

OFFICE OF THE HOUSE CLERK 2010 SESSION

COMMERCE AND CONSUMER AFFAIRS

Bill #: HCR38 Title: Merger CMC + Dartmouth

PH Date: / / Exec Session Date: 1/26/10

Motion: OTP/A Amendment #:

MEMBER	YEAS	NAYS
Butler, Edward A, Chairman	✓	
Schlachman, Donna L, V Chairman	✓	
DeStefano, Stephen T	✓	
Kopka, Angeline A		✓
Meader, David R	✓	
McEachern, Paul		✓
Hammond, Jill Shaffer		✓
Nord, Susi	✓	
Winters, Joel F	✓	
Keans, Sandra B		✓
Gidge, Kenneth N	✓	
Hunt, John B		✓
Quandt, Matt J	✓	
Belanger, Ronald J		✓
Flanders, Donald H		✓
Holden, Rip		✓
Dowling, Patricia A	✓	
Headd, James F, Clerk	✓	
Nevins, Chris F		
Palfrey, David J		✓
	10	9
TOTAL VOTE:		

Printed: 12/18/2009

Committee Report

REGULAR CALENDAR

February 3, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on COMMERCE AND CONSUMER AFFAIRS to which was referred HCR30,

AN ACT urging the attorney general to investigate the merger between Catholic Medical Center and Dartmouth Hitchcock Medical Center. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Joel F Winters

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**COMMERCE AND CONSUMER AFFAIRS**
Bill Number:	**HCR30**
Title:	**urging the attorney general to investigate the merger between Catholic Medical Center and Dartmouth Hitchcock Medical Center.**
Date:	**January 28, 2010**
Consent Calendar:	**NO**
Recommendation:	**OUGHT TO PASS WITH AMENDMENT**

STATEMENT OF INTENT

Recent discussions and plans for affiliation between Catholic Medical Center and Dartmouth-Hitchcock have raised many questions, by many diverse groups, about how the different underlying philosophies can be merged. Yet the answers to some of these questions have not been revealed. Sending this affiliation for review by a probate court (like many other hospital mergers) would allow a judge to ensure that all the issues have been addressed.

Vote 10-9.

Rep. Joel F Winters
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

COMMERCE AND CONSUMER AFFAIRS

HCR30, urging the attorney general to investigate the merger between Catholic Medical Center and Dartmouth Hitchcock Medical Center. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Joel F Winters for COMMERCE AND CONSUMER AFFAIRS. Recent discussions and plans for affiliation between Catholic Medical Center and Dartmouth-Hitchcock have raised many questions, by many diverse groups, about how the different underlying philosophies can be merged. Yet the answers to some of these questions have not been revealed. Sending this affiliation for review by a probate court (like many other hospital mergers) would allow a judge to ensure that all the issues have been addressed. **Vote 10-9.**

Original: House Clerk
Cc: Committee Bill File

HB1431 maj report ITL

Residents of New Hampshire are currently free to purchase out of state insurance policies, but this bill would restrict that to policies approved by the Insurance Commissioner. Additional rules and regulations would be required to put these restrictions in place and the committee did not feel this was appropriate.

HCR30 maj report OTP/A

Recent discussions and plans for an affiliation between Catholic Medical Center and Dartmouth-Hitchcock have raised many questions, by many diverse groups, about how the different underlying philosophies can be merged. Yet the answers to some of these questions have not been revealed. Sending this affiliation for review by a probate court (like many other hospital mergers) would allow a judge to ensure that all the issues have been addressed.