

Bill as Introduced

HCR 30 - 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.

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.

1

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

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

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

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

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

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

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

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

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

25 Resolved by the House of Representatives, the Senate concurring:

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

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

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

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

HCR 30 - AS AMENDED BY THE HOUSE

03Feb2010... 0279h

2010 SESSION

10-2618
01/04

HOUSE CONCURRENT RESOLUTION **30**

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

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

COMMITTEE: Commerce and Consumer Affairs

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.

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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.

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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

HCR 30 - AS AMENDED BY THE HOUSE

- Page 2 -

1 resolved by a probate court, because no other entity has the authority or jurisdiction to rule on such
2 issues; and

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

7 Resolved by the House of Representatives, the Senate concurring:

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

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

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

HCR 30 - AS AMENDED BY THE SENATE

03Feb2010... 0279h
05/12/10 2035s

2010 SESSION

10-2618
01/04

HOUSE CONCURRENT RESOLUTION **30**

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

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

COMMITTEE: Commerce and Consumer Affairs

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.

HCR 30 - AS AMENDED BY THE SENATE

03Feb2010... 0279h
05/12/10 2035s

10-2618
01/04

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.

1

2 Whereas, Catholic Medical Center Healthcare System and Dartmouth-Hitchcock Health, 2
3 health care charitable trusts, are proposing to affiliate in order to create an integrated health care
4 system that will enhance and improve the availability of health care services in the greater
5 Manchester area; and

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

9 Whereas, the general court enacted RSA 7:19-b, regulating acquisition transactions involving
10 health care charitable trusts, which statute applies to this proposed transaction; and

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

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

15 Resolved by the House of Representatives, the Senate concurring:

16 That the New Hampshire general court hereby urges the attorney general to bring this proposed
17 transaction before the probate court for Hillsborough county in the event that the attorney general
18 determines there are unresolved legal questions within the jurisdiction of the probate court that
19 relate to charitable missions and assets of the 2 health care charitable trusts; and

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

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

HCR 30 - FINAL VERSION

03Feb2010... 0279h
05/12/10 2035s

2010 SESSION

10-2618
01/04

HOUSE CONCURRENT RESOLUTION **30**

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

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

COMMITTEE: Commerce and Consumer Affairs

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.

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.

1

2 Whereas, Catholic Medical Center Healthcare System and Dartmouth-Hitchcock Health, 2
3 health care charitable trusts, are proposing to affiliate in order to create an integrated health care
4 system that will enhance and improve the availability of health care services in the greater
5 Manchester area; and

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

9 Whereas, the general court enacted RSA 7:19-b, regulating acquisition transactions involving
10 health care charitable trusts, which statute applies to this proposed transaction; and

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

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

15 Resolved by the House of Representatives, the Senate concurring:

16 That the New Hampshire general court hereby urges the attorney general to bring this proposed
17 transaction before the probate court for Hillsborough county in the event that the attorney general
18 determines there are unresolved legal questions within the jurisdiction of the probate court that
19 relate to charitable missions and assets of the 2 health care charitable trusts; and

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

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

25 Approved: May 13, 2010

Amendments

Amendment to HCR 30

1 Amend the resolution by replacing the seventh paragraph after the title with the following:

2

3 Whereas, the community is again challenged by the profound consequences, whether intended or
4 unintended, of such an integration by these 2 distinct and unique charitable entities; and

5

6 Amend the resolution by replacing the twelfth paragraph after the title with the following:

7

8 Whereas, this proposed transaction raises complicated legal issues which are appropriately
9 resolved by a probate court, because no other entity has the authority or jurisdiction to rule on such
10 issues; and

11

12 Amend the resolution by replacing all after the resolving clause with the following:

13

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

19 That the attorney general specify in its request to the probate court that it review the impact of:

20 (1) The affiliation on health care costs in New Hampshire, including but not limited
21 to whether physicians affiliated with Dartmouth-Hitchcock Health would be allowed to add facility
22 charges to their fees; and

23 (2) The affiliation on Catholic Medical Centers Healthcare Systems' ability to ensure
24 that physicians practicing at Catholic Medical Center Healthcare System follow the ethical
25 directives of the Catholic Church; and

26 (3) Consolidating delivery of medical care in Manchester at Catholic Medical Center
27 Healthcare System on patients choice with regard to decisions regarding medical care at the end of
28 life and reproductive health care; and

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

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

Sen. Houde, Dist. 5
Sen. Hassan, Dist. 23
May 11, 2010
2010-2035s
01/05

Floor Amendment to HCR 30

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

2

3 Whereas, Catholic Medical Center Healthcare System and Dartmouth-Hitchcock Health, 2
4 health care charitable trusts, are proposing to affiliate in order to create an integrated health care
5 system that will enhance and improve the availability of health care services in the greater
6 Manchester area; and

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

10 Whereas, the general court enacted RSA 7:19-b, regulating acquisition transactions involving
11 health care charitable trusts, which statute applies to this proposed transaction; and

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

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

16 Resolved by the House of Representatives, the Senate concurring:

17 That the New Hampshire general court hereby urges the attorney general to bring this proposed
18 transaction before the probate court for Hillsborough county in the event that the attorney general
19 determines there are unresolved legal questions within the jurisdiction of the probate court that
20 relate to charitable missions and assets of the 2 health care charitable trusts; and

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

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

Committee Minutes

**SENATE CALENDAR NOTICE
COMMERCE, LABOR AND CONSUMER PROTECTION**

- ✓ Senator Margaret Hassan Chairman
- ✓ Senator Betsi DeVries V Chairman
- ✓ Senator Deborah Reynolds
- ✓ Senator Jacalyn Cilley
- ✓ Senator Peter Bragdon
- ✓ Senator Sheila Roberge

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/> Bill Status	
<input type="checkbox"/> Docket	
<input type="checkbox"/> Calendar	
Proof: <input type="checkbox"/> Calendar	<input type="checkbox"/> Bill Status

Date: April 5, 2010

HEARINGS

Tuesday

4/27/2010

COMMERCE, LABOR AND CONSUMER PROTECTION

LOB 102

8:30 AM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

- 8:30 AM HB1187
- 8:45 AM HB1368
- ✓ 9:00 AM HCR30
- 9:15 AM HB1364

relative to residential elevators and accessibility lifts.
 relative to the definition of "employee" for workers' compensation purposes.
 (New Title) urging the attorney general to fully investigate the proposed transaction between Catholic Medical Center Healthcare System and Dartmouth-Hitchcock Health.
 relative to Medicare unfair trade practices.

Sponsors:

HB1187

Rep. Nancy Elliott
 Rep. Edith Hogan

Rep. Carol McGuire

Rep. Warren Groen

Rep. Laurie Boyce

HB1368

Rep. Jeffrey Goley
 Sen. Betsi DeVries

Rep. James Craig
 Sen. Jacalyn Cilley

Rep. Rip Holden

Rep. Benjamin Baroody

HCR30

Rep. Joel Winters

Rep. Connie Soucy

Rep. William Infantine

HB1364

Rep. James Headd

Rep. Donald Flanders

START: 9:45am

END: 11:51am

**Commerce, Labor & Consumer Protection Committee
Hearing Report**

To: Members of the Senate
From: Greg Silverman, *Legislative Aide*
Re: Hearing report on **HCR30** - A RESOLUTION urging the attorney general to fully investigate the proposed transaction between Catholic Medical Center Healthcare System and Dartmouth-Hitchcock Health.
Hearing date: April 27th, 2010

Members of the Committee Present: Senator Hassan, District 23; Senator DeVries, District 18; Senator Reynolds, District 2; Senator Roberge, District 9; Senator Cilley, District 6; Senator Bragdon, District 11.

Members of the Committee Absent: None.

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

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

Who supports this bill: Kary Nealle Jencks, PPNNE; Jess Clark; Virginia Ewain, PPNNE; Claire Ebel, NHCLU; Don Welch, Self; David Russ, Self; Andre Martel, Save CMC Again; Hugo Poza, Save CMC Again; Philip Gray, Self; Hon. Barbara Hagan, Save CMC; Richard Givard, Self; Richard Gustafson, Elliot Hospital; Rep. Joel Wileps, Hills 17; Melissa Bernardin, Self; Kathleen Souza, Self.

Who opposes this bill: Steve Paris, Dartmouth-Hitchcock; Alyson Pittman-Giles, CMC.

Neutral: Richard W. Head, Attorney General's Office.

Summary of testimony received:

Rep. Joel Winters, Hills 17.

- Prime Sponsor.

Former Rep. Barbara Hagan.

- Supports HCR30.
- Two years ago CMS and Elliot Hospital merged, then had to demerge because they had two completely different missions.
- There are many questions about the proposed affiliation that have not been answered .
- All hospitals in NH who propose a merger go through the probate court process because they are public trust entities who do not pay taxes.
 - Don't want situation like optima where you have to demerger.
- Practicing Catholics in Manchester and the surrounding communities do not want to lose their hospital.
 - Released documents show that DH is the sole member.
 - Not sure where CMS fits in.
- Concerns about present Manchester Bishop.
 - Has never been at the table to answer questions.

- Has a questionable ethical history.
- Would like more questions answered before affiliation moves forward.

Richard Gerard, Manchester.

- Supports HCR30.
- Witnessed the failed merger of CMC and Elliot hospital and its dissolution.
- Considers himself prolife.
- Details of the deal and the process to inform the public was a propaganda effort.
- Passage of this resolution would send a strong message to the attorney generals office to ensure every legal avenue in the process is undertaken.
 - Every time hospitals merge the process is sent to probate court for a fair and objective hearing.
 - Ex: The merger of Franklin and LRG hospitals.
 - DH and CMC are resisting calls to go to probate court.

Steve Paris, Medical director of Dartmouth Hitchcock clinic in Manchester.

- Opposes HCR 30.
- Process under law is far more intensive than probate process would be.
 - Probate process would only consider charitable works.
 - DH and CMC have given thousands of documents to the public and held many meetings to directly answer questions from the public.
- DH and CMC have been truthful answering questions, sometimes people don't like to hear the facts.
- This is an affiliation, not a merger.
 - The contractual relationship will satisfy the directives of both CMC and DH.
- This affiliation is taking place because both DH and CMC wish to create a structure for federal regulations of a physician group working with a hospital.
 - An economic structure is necessary as to not be in violation of federal law.
- There is a broken health care system, and this is a step to provide higher quality care at a lower cost for patients.
- A probate court process would cost precious time and resources.
 - Sending this to probate court means opponents of the affiliation can always find another way to delay the process.
- The missions of DH and CMC will not change. If a woman may wish to have a tubal ligation during pregnancy, she will have a conversation with her doctor beforehand, and find the best hospital to deliver birth.

Richard Head, Assistant Attorney General.

- Neutral on HCR30.
- The review of the affiliation will be based on a charitable trust and anti-trust component.
 - The process outlined in RSA 7:19-B is required to be concluded by May 21st.
 - Guidance to director of charitable trust to review.
 - Determine compliance set forth in paragraph 2.
- The director of charitable trust in the AG's office could conclude after an extensive review that the affiliation is OK or should go to probate court.

- Probate court has to have jurisdiction upon review and be able to rule on the proposed change in the charitable mission.
- RSA 7:19-b lists the 7 things the director of charitable trusts is required to review.
- Probate court would make the ultimate decision.
 - The AG's office can only offer counsel.
- It is possible the matter could be sent to Supreme Court after Probate Court.

Former Sen. Martel.

- Supports HCR 30.
- DH and CMC both have different missions
- DH will have control over CMC's board of trustees.
- Not an affiliation, but a total acquisition.

Richard Gustafson, Past Chairman of the Elliot Health System Board of Directors.

- Supports HCR30.
- Mission and medical practices of DH and CMC is in clear conflict.
- Probate court is a proper way to have this affiliation fully examined.
- This affiliation has the potential to move resources out of the Manchester community and to other areas of the state.

Hugo Poza, Manchester Resident.

- Supports HCR30.
- Donor to CMC for many years.
 - Disapprove of his donations going toward activities opposed to philosophy opposed of Catholic faith.

Virginia Swain, Board Member of Planned Parenthood of NH.

- Supports HCR 30.
- DH is major service for Manchester's low-income residents.
- Patients in Manchester will have to find other providers for certain reproductive health care needs due to agreement between CMC and DH.
 - Birth control information and supplies.
 - Tubal ligation after cesarean child birth.
 - Comprehensive STI and HIV education, including condom use.
- Proposed affiliation will deny Manchester women to, or create unnecessary obstacles for women to access, comprehensive reproductive health care.
- Unlike in years past, this year DH has not listed Planned Parenthood as a community partner.

Allison Pittman-Giles, Catholic Medical Center.

- Opposes HCR30.
- The Optima deal between CMC and Elliot Hospital meant the closure of Catholic Health Care in Manchester.
- This affiliation prepares both institutions for the future, increase quality care, and lower costs.
- Elliot didn't want to have the affiliation for competitive purposes.

- Medicine will be Manchester centric with bottom up approval.
 - DH can continue their mission while CMC does theirs.
 - Have hired two cannon lawyers for ethical opinions.
- CMC has learned from the Optima mistakes and will meet the needs of those who are right to life and pro choice.
- It has always been the case that Doctors affiliated with CMC have served under the guidelines of ERD and will continue to do so.

Josette White, Manchester, NH.

- Supports HCR30.
- Current patient at DH.
- Another review or more scrutiny in a major change isn't bad.
- Considers primary care holistic health care.
 - If DH follows Catholic health care, then may not be able to have conversations with Primary Care Physicians about all options on the table.
- Support of HCR shows this is a major issue for Manchester residents and additional scrutiny is important for all members of the community.
- Unclear on how DH and CMC will fit together and clear details haven't yet been outlined.
 - If someone is pregnant, is anyone going to outline the full range of options available?
- Everybody that has a stake in the affiliation should have a look.

Claire Ebel, Director of NH Civil Liberties Community.

- Supports HCR30.
- Only a probate court can mandate truthful answers to questions.
 - The AG cannot do that.
- DH and CMC have two fundamentally incompatible missions.
- In the Optima decision, citizens were allowed to come into probate court, represented by counsel or by themselves and testify.
 - There may be the same kind of opportunity for individuals to addressed probate court.

Former Rep. Don Walsh, Manchester.

- Supports HCR 30.
- The Manchester community deserves full transparency and accountability.
 - Will only come out in probate court.

Former Rep. Kathleen Souza

- Supports HCR30.
- Thousands of pages of documents can only be thoroughly reviewed by a probate court.

David Ross, Hooksett, NH.

- Supports HCR30.
- There has been a lack of transparency throughout the entire process.

Action: None.

RP

Date: April 27, 2010
Time: 9:45 a.m.
Room: LOB 102

The Senate Committee on Commerce, Labor and Consumer Protection held a hearing on the following:

HCR 30 (New Title) urging the attorney general to fully investigate the proposed transaction between Catholic Medical Center Healthcare System and Dartmouth-Hitchcock Health.

Members of Committee present: Senator Hassan
Senator DeVries
Senator Reynolds
Senator Cilley
Senator Bragdon
Senator Roberge

The Chair, Senator Margaret Wood Hassan, opened the hearing on HCR 30 and invited the prime sponsor, Representative Joel Winters, to introduce the legislation.

Representative Joel Winters: Good morning. Thank you, Madam Chair, members of the Committee. For the record, my name is Joel Winters. I represent Hillsborough District 17, which is Manchester's west side where Catholic Medical Center is located.

So, this resolution is very important to a number of my constituents. I would ask for your support but, with the Chair's permission, I would like to yield my time as prime sponsor to former Representative Barbara Hagan. She is the driving force behind this. I worked around the phrase you used; she has the detailed and technical knowledge that she can, she can answer your questions.

Senator Margaret Wood Hassan, D. 23: You're good. You're good. With that, thank you very much Representative Winters, and former Representative Hagan, welcome.

Representative Winters: Thank you.

Barbara Hagan: And, please don't get nervous I am not going to read from these books.

Good morning, Madam Chair, and members of the Committee. For the record, I am former Representative Barbara Hagan. I live at 154 Winters Street on the west side of Manchester. I served two terms in the House on the Education Committee and I was one of the people, ten years ago, who was very, very concerned when Catholic Medical Center tried to do a merger with Elliot Hospital, which I don't know if many of you are familiar with that or not. But, there were two hospitals in Manchester with very unique and distinct missions who came together or tried to come together in a merger, and it was discovered, after having almost gutted out Catholic Medical Center completely, and having a shell there that, under the laws of the State of New Hampshire Charitable Trust Laws, that these two entities had completely different missions.

And, what happened was that we had to do a demerger, at a huge cost of millions of dollars that could have been used to treat sick people. And so, the purpose of the legislation, and I do have a sheet I can make available to the Committee, the purpose of this legislation is not to ask you as legislators to dig into the documents as we have. And there are a number of us on the ad hoc committee and I, with all due respect to Representative Winters, there is a driving force of community members, many of whom were involved in Optima ten years ago, who have been working on this. We are volunteers. We are not paid millions of dollars.

This proposed affiliation, is what it is being called, between these two entities raises many questions that still have not been answered. The Attorney General's Office has been very open to us, and this is not to disparage him. Although, upon learning recently that Mike Delucia is moving on on June 10th, we are all the more concerned that a probate process would be the best way for this to go.

We would ask the Committee to note that Franklin Hospital, HCA, Portsmouth Hospital, and Lakes Region Hospital and their various affiliations all went through the probate process so that the public felt good about what was happening. These two entities are not private corporations, they're public trusts, they're charitable trusts that are given certain benefits by the community in order to have that tax exempt status. And, because of the uniqueness of these two entities, which many will speak to here today, we don't feel that, unless the probate process occurs with a judge that is impartial and takes a look at everything and maybe can find out some answers to questions that we've have, that this is going to be good for the

public. And, we certainly do not want a situation like Optima, where millions of dollars have to be spent to undo what has been done.

We also have another concern, many of us, as practicing Catholics and as people who go to CMC for services, in that, we don't want to lose our hospital. And, the concern that we have is that, in these documents, Dartmouth is called the sole member of this corporation. So, that's one of the concerns that we're raising. If they are the sole member, then how does Catholic Medical Center still do what it needs to do?

There are \$99,000,000 in reserves, currently, that belong to Catholic Medical Center and that the people of Manchester have donated over the many years with their pennies, and nickels, and dimes in support of this hospital. The second page of the articles of agreement for Catholic Medical Center Health Systems it is stated, as required by law, that should Catholic Medical Center Health Systems cease to exist, the assets revert to the Bishop of Manchester, and we have concerns about that under this present Bishop. We have concerns because this present Bishop has to retire, has to submit his resignation for retirement in August. So, he is going to be leaving, possibly, a huge mess.

And, I want you to note most of all, Senators, that never in any of the public meetings, or in any of the meetings that we have been able to have with those who are proposing this affiliation, has the Bishop been at the table to answer our questions.

So, with that, I am going to conclude my testimony. I really appreciate your time this morning, and I hope that you will vote for the process because that is the way that the people of Manchester and our surrounding communities can feel really good about whether or not this particular affiliation should go forward. And, I am happy to answer any of your questions.

Senator Margaret Wood Hassan, D. 23: Thank you. Are there any questions? Seeing none, thank you very much for your testimony. I am trying to sort through a long sheet to give everybody a little bit of balance. So, bear with me for a second. Is it Richard Girard?

Richard Girard: Yes.

Senator Margaret Wood Hassan, D. 23: Come on forward.

Mr. Girard: Madam Chair, members of the Committee. For the record, my name is Richard Girard. I reside at 218 Reed Street on Manchester's west

side. I appreciate your time and I don't know if you would consider me one of the technical experts, but I will focus my points on a couple different areas.

I actually come to this issue quite by accident. Back last spring, I was invited by Jim Merrill to participate in a series of community forums that CMC was hosting with members of the Right to Life community and others in Manchester who had some history or involvement with Optima Health. As a former aide to Ray Wiecek, a former alderman myself in Manchester, I was, I saw the formation and the dissolution of Optima Health. And, I think the idea was, because I wrote a newspaper column for *The Manchester Express* until it ceased its publication in June, January, I'm sorry, that I might be able to be informed of what was going on and potentially be an advocate for what was going on. So, I accepted the invitation to participate in these meetings, and in these forums, hopeful that what was being presented was in fact something that was going to be a departure from what the City had experienced in the past.

As these meetings unfolded, as the questions were asked, as the information, frankly, was not given an answer to the questions, and then as the documents came out detailing what this proposal really is and was, I became a rather vocal critic of not only the details of the deal, but more specifically, ladies and gentlemen of the Committee, the process by which they were going through to so-called educate and inform the public. I think it might be better described, to be perfectly honest with you, as a propaganda effort. And, I will submit for the record each one of the columns that I wrote for *The Manchester Express*. I encourage, ask, practically beg if not urge that you read them because a substantial amount of time went into, not only analyzing the documents, but speaking with several people, both who are part of the CMC effort, and those who are opposed to it, to try to really get an understanding of the process that was gone through.

Please see attachment #1 – articles submitted by Richard Girard, *The Manchester Express*.

This resolution is here today asking you to encourage or request the Attorney General to send this matter to the Probate Court. This is in no way meant to cast any aspersions upon the Attorney General's Office or the work that they are doing. I think they are fine people and I think they are doing what they need to do in this process. But, we as members of the public, and I'm not affiliated with any organization, I'm not part of the Ad Hoc Committee referenced by former Representative Hagan, I am just someone who's wife thinks he has lost his mind for all of the time that he has spent on this because it is really hasn't done a whole lot other than take me away from things she would rather me focused on to be honest with you. But, the reason

for my persistence in this and the reason for my advocacy on behalf of the position I have is simply this, there are too many questions that are left unanswered and the answers that we are able to find on our own, to be honest, stand in stark contrast to the representations that are made by the people leading this effort.

And so, there is no desire for anything other than a full hearing. Making sure that every legal avenue available to the State through this process is recognized. Ovide Lamantagne, who is the Chief Counsel for CMC, back in March 2003, wrote an article for the New Hampshire Bar. He was involved with the merger between Franklin Regional and Lakes Regional Hospital, and they used the process that they went through as a model, they proclaimed it a model of the law, which is being used here, 7:19-b. I probably got the numbers screwed up, but I think everybody knows, 7, yeah, 7:19. Okay. As a model and as part of what he said was the right thing to do, and this article, which I will also leave for the court, I mean for the Senate, I do note that it's my personal copy because I didn't bring another one, so it has all my notes. I am happy to leave it if you like.

Senator Margaret Wood Hassan, D. 23: You know what; I think we have all seen the article. So, thank you.

Mr. Girard: But, it goes to note that they said that they, both institutions actually, on their own, went to probate court under the idea that, even if it wasn't required, it would be the right thing to do to make sure that all of the potential questions and issues that the communities had, but more importantly, that the people who created and supported the missions of those trusts had, were properly resolved.

So, the question comes natural, when you have institutions so distinct and different in their missions, why are not the petitioners of this process, who say that the mission of CMC in particular will remain unfettered, why are they resisting at every turn the calls to go to the probate court? It is because the resistance is so strong in opposition to what they themselves, in a prior process, said was the right thing to do. That we come before this Committee to say, add your weight as the voice of the people behind the efforts to make sure that this thing gets a full, fair, objective hearing where the answers are required in order to get a decision. See we can require nothing and we have been able to obtain little. I will leave you with a final thought on why this is important.

Senator Margaret Wood Hassan, D. 23: Okay, and I'm going to...final thought because you're well over three minutes. Okay?

Mr. Girard: Thank you, Madam Chair. But, I will leave you with this final thought because, at the end of the day, CMC, this law is being invoked because there is a change of control. A board that is now completely responsible to the Bishop, that must in it's entirety be approved by the Bishop, whose CEO can be removed with only the approval of the Bishop, now is going to find itself a subsidiary of a company that will, that in order for any member to be approved to the board, removed from the board, must be approved by the superseding company's board. They are a full subsidiary. They lose their independence and as a result of that we have to ask will they be able to maintain...

Senator Margaret Wood Hassan, D. 23: Okay, last sentence.

Mr. Girard: ...their mission. Thank you, Madam Chair.

Senator Margaret Wood Hassan, D. 23: Okay, and a question from Senator Bragdon.

Senator Peter E. Bragdon, D. 11: Thank you, Madam Chair. Thank you, Alderman. Do I understand you then that the process that has been used thus far, via forms and everything else, is relatively informal as compared to the probate process which is much more formal?

Mr. Girard: Yes.

Senator Peter E. Bragdon, D. 11: Thank you.

Senator Margaret Wood Hassan, D. 23: Any other questions? Seeing none, thank you very much for your testimony.

Mr. Girard: Thank you, Madam Chair.

Senator Margaret Wood Hassan, D. 23: Is it Steve Paris, Dartmouth-Hitchcock?

And, I will note to the Committee members, I see Attorney Head here. You have written down that you are available to provide information to the Committee. But, did you want to testify?

Assistant Attorney General Richard Head: I did. I think I did check off the speak box.

Senator Margaret Wood Hassan, D. 23: Okay. I am sorry I misunderstood that.

Attorney Head: It just means we don't take a position on the bill.

Senator Margaret Wood Hassan, D. 23: Okay. Thank you. Go right ahead.
Good morning.

Steven Paris: Good morning, Madam Chairman, and members of the Committee. My name is Doctor Steven Paris. I am a pediatrician and the Medical Director of the Dartmouth-Hitchcock Clinic in Manchester, which is part, a division of the Dartmouth-Hitchcock Clinic, a charitable multi-specialty group practice that practices throughout New Hampshire and serves a lot of patients in Vermont. We are, have been a provider of primary and specialty care in the greater Manchester area for over 25 years. We have locations in Manchester and Bedford. We currently have over 175 physicians and associate providers, and take care of over 100,000 patients in our service area. I am here to speak in opposition to HCR30, and to address some the issues that have been already raised and some of the issues that, I believe, will be raised later on.

First, why do we oppose the resolution? Our legal counsel has looked at the process that has been set up by the Legislature since 1997, RSA 7:19-b. And, we believe, and I have documentation which I will hand to you, that in fact, the process under the law is far more intensive than a probate process would be. The probate process deals with the charitable mission alone, and the Attorney General's Office, through the Division of Charitable Trust, deals with several other issues. We have had a long process with the Attorney General's Office which has gone on for over a year.

I would beg to differ in calling it an informal process. We have provided a lot of testimony, literally thousands of documents. We have employed three attorneys that the office asked for us to employ to assist in that process, and also we've employed a forensic accountant for the Division of Charitable Trust. We have had individual meetings with the attorneys and the Director of the Division, and it is very clear from those meetings, and I have attended several of them, that the Director was clearly responding to what the community was asking, and specifically addressed questions to us that came from the community that weren't even necessarily a part of the law.

So, I think that this process has been very thorough. We have been criticized in the past for the process of having community forums. This was the process that was dictated by the law, this was the process that we were instructed to do by the Director of the Division. He reviewed the process, he attended every one of the hearings, and he feels, according to him, that we complied

exactly what we were supposed to do. In addition, we have had enumerable meetings.

There are a number of people that are going to say that we haven't answered all the questions. I think we have answered questions and we have answered a lot of questions. But, when you are doing any kind of arrangement sometimes we have the answers that people don't want to hear. We are not going to change the facts. We have been truthful in answering the facts and that's what's happening. More and more process is not going to change the facts, the facts are there. I'm trying to...

Senator Margaret Wood Hassan, D. 23: Thank you.

Dr. Paris: This is not a merger, and I am not a lawyer, I am only a doctor, and the lawyers can better address that. But, this is clearly not a merger. This is not Optima. I was not here in Manchester at the time, although I was working in Massachusetts with the Caritas Christi Organization at the time, and everybody that looked outside of Manchester at that process knew that it would fail. It would fail because it was in an inappropriate form for how a Catholic organization can deal with a secular organization. There are many, many examples around the country of how Catholic organizations deal with secular organizations and that is what we have done. We have not created a new concept. This concept, this contractual relationship that we have created between Dartmouth-Hitchcock and Catholic Medical Center, is something that has been used, at least in my knowledge, for over 25 years in many jurisdictions around the country and it satisfies the Catholic needs and the ethical directives and also satisfies the community needs.

We've been told that it's going to change our values. I would like, if all the members of the Committee actually had a moment, to actually read the ethical directives. Like most things, 95% of what's in the ethical directives, no one would never disagree is the appropriate way that we should be taking care of people. It is compassionate, it's caring, it is patient-centered care and that is something that we have stood for in all of our existence.

There are some issues relating to reproductive health, which we disagree. But, we have created a forum that we can continue to do those issues in reproductive health that Dartmouth-Hitchcock Manchester has always done. We have not performed abortions in Manchester in the 25 years the clinic has been there. That was a decision made by the clinic, it had nothing to do with Catholic Medical Center or the ethical directives. It is a decision we abide by today. We also provide contraceptive services. We provide tubal ligations and vasectomies, we do certain reproductive technologies, which would not be approved by the ethical directives. These are not approved by Catholic

Medical Center, they are not part of the agreement. They're in about 2% of all the activity that we do. And again, we have created the business and financial structure so that we can continue to perform those services as we do today, and in fact, we are going to increase the amount of services.

You will hear from other people that we are limiting services to women. We are by far and away the largest out-patient provider of services to women in our community, and we provide services to women of every socio and economic status in the community. We are increasing our services to women. We've hired a new obstetrician that is going to be joining us this, late this summer. We have subspecialists in reproductive endocrinology, urogynecology, gynecologic oncology, maternal fetal medicine that are seeing patients in Manchester partly because we are part of an academic center. So, those patients don't ever travel and we can continue to support that. We provide all the provider support for the pregnancy care center at Catholic Medical Center, where there are over 300 indigent women who are getting significantly better care than they have in the past. And, in fact, if you look at the data from the health department, we have actually improved the neonatal care in the community, and there are fewer pre-term babies and early pre-term babies now in Manchester than there were ten years ago. So, we will continue to do that and we can do that under this agreement, and we are totally committed to continuing to do that.

One question that's often asked, why are you doing this? I mean, we've had different types of contractual relationships with Catholic Medical Center over the last five or six years and I can tell you that they have all been very successful. We have provided superior care. We opened up an imaging clinic to provide more care to the community and especially our refugee community. But, why are we even going through this process? And the reason is simple as far as we're concerned.

The federal regulations or the physician group working with a hospital, you have to create a structure. Independent physicians' groups and hospitals can only collaborate to a certain point and then we could be in violation of federal law. If we form an economic structure, as this structure is, then we will be able to work together. And why should we be able to work together? We have a broken financial system in health care. None of us are going to be able to continue to afford the system into the future and we need to think of different ways of doing it. We have proven in our clinic and our relationship with Mary Hitchcock, that a hospital and a physician group working together, that we can provide higher quality care and be more cost effective.

We have been involved for five years with Medicare, and they have, it was called a demonstration project were we were asked to take care of our

Medicare patients. If we took care of those patients and met all where the quality measures that Medicare set up, and, we actually saved money, which means we spent less money taking care of those patients than all the rest of the physicians in New Hampshire and Vermont, because that was our control group, that the government would literally save money and we would get some bonus for doing that. Every year for the five years we have succeeded. The government has saved literally millions of dollars in Medicare. So, we know there is strong advantage of a physician group and a hospital working together.

Health care reform was mentioned earlier when I was standing waiting. No one knows what health care reform is. But, if you look at the most successful models around the country, when you look at Mayo Clinic, you look at Geisinger, you look at these models and they are all models of physician groups and hospitals working very, very closely together and they can produce higher quality, less costly care. I am not saying we will lower the costs of care, but at least we can reduce the rapid rise in the cost of care, and that is why we are doing this. The federal government asked us to do this, and we really think that we can provide more care, higher quality care, and since we clearly are the providers of a significant amount, in fact larger than anybody else of the entities here in our community, it will allow us to continue on that mission.

Lastly, there's a statement here, which I won't read because the lawyers wrote it, which goes over the differences between the process under RSA 19-b and a probate court process. It is very clear that RSA 19-b is a far more comprehensive process. The Attorney General's Office has been looking at this process in great detail. In addition, we have had to go through the Federal Trade Commission, and Dave Rienzo from the Attorney General's Office sat in all of those meetings.

So, we are going through significant legal regulatory process. And again, unlike what the previous speaker says, the process through the Federal Trade Commission, we gave them literally hundreds of thousands of documents, and all the testimony was under deposition testimony and sworn testimony. So, we are involved in a very, very savory process. What we ask is simply please do not support this resolution. May 21st, the Attorney General's Office has to make a judgment.

The Attorney General's Office has three things that he can do. He can approve this transaction. He could disapprove this transaction and that doesn't go to Probate Court. Or, he can say there is some issue in relation to the transaction that the Probate Court should review. We, I would ask you

that, of our 14 months or more of effort, that you will allow the process to continue to its conclusion. Thank you.

Senator Margaret Wood Hassan, D. 23: Thank you. I see some questions.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair. I have two questions. I will try to make them very brief. First of all, thank you for your testimony, Dr. Paris. I would take a bit of exception with the ERDs and having read them thoroughly, and would ask you this one question on just one of them when you said that most people would be in agreement. There is a section on end-of-life and the uses of various, you know, approaches to end of life care, and that if, you know, a particular drug may shorten a person's life, it might be used under certain conditions. But, if it shortens it too much, then the patient is advised to get counseling for redemptive suffering. I love that term. Does Dartmouth subscribe to that now?

Dr. Paris: I am not sure what the term redemptive suffering means.

Senator Jacalyn L. Cilley, D. 6: I think it means a lack of adequate relief when somebody is dying.

Dr. Paris: The issues, the end of life issues are issues that are related to the hospital and it's probably best to address to the hospital personnel. We have been on staff at CMC for over 25 years. The commentaries related to the language in there have clearly suggested that end-of-life issues are similar to what people want: advanced directives; active euthanasia is forbidden. Giving, withholding therapies that have no chance of success is possible in a Catholic institution and occurs on a regular basis. Using a therapeutic drug, any drug, could be argued as a possibility for complication that maybe adverse. If the benefits of the drug outweigh the potential complications, the drugs are used. I can tell you...

Senator Jacalyn L. Cilley, D. 6: Forgive me, but my question was, does Dartmouth subscribe to the counseling of redemptive care?

Dr. Paris: Dartmouth is... I'm not sure...

Senator Jacalyn L. Cilley, D. 6: Redemptive suffering. As an alternative...

Dr. Paris: Dartmouth...

Senator Margaret Wood Hassan, D. 23: Let the witness answer please.

Dr. Paris: Dartmouth doesn't comment on the ethical directives. The ethical directives are the code for which physicians who practice at a Catholic institution have to read and abide by, and the directives are carried out by the people at the hospital. The question for me is can we deal with patients and end of life issues in that hospital appropriately to the way we feel care should be given? And, the answer is yes we can take care of those patients.

Senator Jacalyn L. Cilley, D. 6: Thank you. Second question...

Senator Margaret Wood Hassan, D. 23: A follow up.

Senator Jacalyn L. Cilley, D. 6: Could you tell me what this does to the cost structure of health care in Manchester, and whether under the agreement that Dartmouth will be utilizing things like facilities billing charges?

Dr. Paris: Currently, the facilities billing charges, I guess as everybody knows...

Senator Margaret Wood Hassan, D. 23: This Committee is pretty well informed about what facility billing charges are.

Dr. Paris: Facility billing charges, right now, there are not plans to change the way the billing structure is under this agreement and that would be evaluated. I would argue that every other hospital in southern New Hampshire, in all their clinical practices, except for Dartmouth-Hitchcock, actually uses facility charges. If you look at the financing of health care, the bigger issue is physicians and hospitals working together and not being competitive, and not having redundant equipment, not doing redundant tests. That's where the bigger dollars are to be saved. The whole system needs to be reformed. We think that by, putting this arrangement together, we will be able to contract with budgeted types arrangements, which really bypass the issue of facility charges. And I think we have proven that we can provide care under the current financing system and globally less expensively than our competitors.

Senator Jacalyn L. Cilley, D. 6: Thank you.

Senator Margaret Wood Hassan, D. 23: Senator DeVries.

Senator Betsi DeVries, D. 18: Thank you, Madam Chair and Dr. Paris. Thank you for all the work you have done on behalf of Manchester. But, explain to me, because I haven't heard much about it, how the process might be affected by the extra step of going through the probate courts? Is the

concern that you have the delay, the timing delay? Or, do you have additional concerns?

Dr. Paris: We feel that we were asked to abide by a State law. Our counsel says this State law is a complete and very thorough review of the process. Rather than prejudging what the Attorney General's process is, we feel that it's better to complete that process. The Attorney General is empowered to send something to Probate Court. Our advisor suggested that the probate review is a much briefer review of this whole arrangement than what the Attorney General, through the provision of Charitable Trust and the Antitrust Departments, are already undertaking.

Senator Margaret Wood Hassan, D. 23: Follow up.

Senator Betsi DeVries, D. 18: Follow up if I might because I do understand that you have already gone under substantial review. But, not that this resolution has the weight of anything other than the power of suggestion. But, if the probate review was added to the process, what would be the harm rendered other than the obvious time delay of the agreement?

Dr. Paris: It would be a delay of time. It's certainly a cost and this whole process has been rather expensive to us. From my point of view, if you have a process that you started with one place and you have an outcome, I mean, there always can be another process, whether it is probate court or we have been threatened by other people to take us to other courts. I can't prejudge that. But, the process that the Legislature set up to deal with transactions like this, let the process run its course, and then the community, whoever it is, can comment and deal with that.

I mean, what is the next shoe to drop after probate? We have already heard that now we are going to have to wait until a new Bishop is there, even though it is not just the Bishop's decision. The Catholic Health Association, the U.S. Council of Bishops, even the Vatican has given opinion to the current Bishop. We, you know, let the process that we are supposed to do and legally required to do run its course, then let it, then make the decision what's next, not prejudge a process that's almost at its conclusion. May 21st, the Attorney General will make a decision and all that we hear so far is that everything is on target to make that decision on May 21st.

Senator Betsi DeVries, D. 18: Thank you, Dr. Paris.

Senator Margaret Wood Hassan, D. 23: Other questions? I had a couple I just wanted to follow up on. On the issue that I think a lot of people are concerned about, which is the difference between CMC's ethical directives in

certain areas and what those principles and directives might be in a secular hospital. And, among the questions is whether there will be any Dartmouth physicians practicing in the OB/GYN area in Manchester after this affiliation, who would be using the hospital other than CMC?

Dr. Paris: Right now our physicians have privileges at both CMC and Elliot and we are, our anticipation is that would continue. We've always said in all the public hearings and all the questions, and the only questions that our patients have actually asked us, if a patient requests to go to one hospital or another, whether it is CMC or Elliot, whether it is PH or Brigham, we abide by the patient's desires and we will continue to do that.

Senator Margaret Wood Hassan, D. 23: So, it was my understanding that there was some sort of announcement earlier this week, and maybe I'm wrong, that deliveries after this affiliation, that Dartmouth would be delivering babies only at CMC. So, that is not correct?

Dr. Paris: The announcement was made that with the development of the new nursery, special care nursery at CMC, we are going to be doing deliveries at CMC. We are still working on the details. We would prefer to be able to do deliveries at both hospitals. There are some issues that have to be worked out.

Senator Margaret Wood Hassan, D. 23: So, and this will be my last follow up. I have particular concerns about what might happen, for instance, to a patient who finds herself having an unexpected C-section, let's say at CMC and she determines, since she is having the unexpected C-section, that she would at this time like to have a tubal ligation. Now, she is at CMC, which I understand doesn't permit tubal ligation. Would it be the practice of the Dartmouth OB at that point to insist that this woman be sewn back up and taken to another hospital to have a tubal ligation, which strikes me as an odd outcome?

Dr. Paris: Clearly that would not be the outcome. Catholic Medical Center has practiced OB now for six, seven years and emergency C-sections do occur. And, the situation that you are describing, if the woman wanted to have an elective tubal, what typically happens is that around six weeks, post partum, the person comes into the ambulatory environment and has a procedure. There is also an out-patient procedure now that can be used and even in the office, which we are investigating so that the woman wouldn't even need to have another surgical procedure, but have an out-patient procedure. But, if you are delivering in a Catholic hospital, tubal ligations cannot be performed, and if someone electively knows that, then they would not deliver at CMC.

Senator Margaret Wood Hassan, D. 23: And, you are telling me that if a woman who believes that the outcome of a delivery may in fact be a time in which she would like to have a tubal ligation, because certainly I have friends who have (I'm not talking about emergency C-sections, just unexpected C-sections and there is a difference) who have decided and informed their OB ahead of time that if that happens they would like to have a tubal ligation. Then Dartmouth would be perfectly comfortable with that woman telling her doctor ahead of time that she is going to deliver at Elliot?

Dr. Paris: Absolutely, that would be the discussion that would occur.

Senator Margaret Wood Hassan, D. 23: Thank you. Are there any further questions? Seeing none, thank you very much. Let's see, Attorney Head. Thank you for your patience.

Assistant Attorney General Richard Head: Thank you, Madam Chair, members of the Committee. My name is Richard Head with the Attorney General's Office. To answer what may be an obvious question as to why isn't the Director of Charitable Trusts here to testify today? The Charitable Trust Unit resides, well let me take a step back, the Office of the Attorney General is divided within two divisions. One of those is the Division of Legal Counsel; the Charitable Trust Unit resides within the Division of Legal Counsel. I am here today with my hat on as Director of the Division of Legal Counsel, as the Director of Charitable Trusts is currently undergoing a deliberative process that is specifically on the issue that is presented to you today. It seemed to make sense to separate the Director from the testimony as it is being presented to this Committee on the very subject about which he is deliberating currently.

The Office of the Attorney General, as Dr. Paris suggested, is currently undergoing two separate reviews. One is as a charitable trust issue and one relates to the issue regarding antitrust. And, our antitrust attorney is working closely with the Federal Trade Commission with regard to those issues and those are unrelated to the issues that are presented in this bill.

Separately, the Director of Charitable Trust is undergoing a review in accordance with RSA 7:19-b, and that process is, by statute, required to be concluded by May 21st of next month. The bill that is before you is a House Concurrent Resolution, it is not a binding resolution, and as such, we do not, within the Office, take a position on the bill and are neutral as to whether or not it should pass. So, I am here today to present information relative to the process and how the Probate Court may interact with regard to the process that will ultimately be concluded on May 21st.

The, as I said, as has been said, and as you are aware, RSA 7:19-b is what is providing guidance to the Director of Charitable Trusts as to his review. And, that provision specifically requires that the Director of Charitable Trust determine compliance with the standards set forth in Paragraph II of that statute. So, it is very specific as to what the role is of the Director of Charitable Trusts as it relates to his review of this particular transaction.

And, the first one, maybe, perhaps the most important to peer review of this bill, which says that the proposed transaction, and this is one of the items that the Director of Charitable Trusts is required to review and determine whether it has been complied with, the proposed transaction is permitted by applicable law, including but not limited to RSA 7:19-32, which are the general provisions with regard to the operations of charitable trusts, and RSA 292, which is the provisions with regards to voluntary corporations, which these charitable organizations would typically fall under, and other applicable statutes and common law. It is a very broad provision and provides the Director of Charitable Trusts with very broad authority with regard to his review of this transaction and ultimately a determination as to whether or not this transaction complies with applicable laws.

Within his role as Director of Charitable Trusts, he has, as was suggested, a number of options. He could simply present a decision that says that the transaction does not comply with the provisions as are listed out in 7:19-b, and that would be a decision that would come out by May 21st.

He could simply approve it and say that after extensive review and we have received thousands of pages of documents. There have been a significant number of people who have provided direct input to the Director of Charitable Trusts, and he can simply say that upon review of all of the evidence that was presented, that it complies with the requirements of 7:19-b.

Or, the third option which is there are issues which, as Director of Charitable Trusts, he would normally bring forth to the Probate Court. And, the Probate Court is a court of limited jurisdiction. So simply, or the Director of Charitable Trusts' decision to present something to the Probate Court has to be something that is authorized already by law as to a basis to upon which the probate court can rule. So, it has to have jurisdiction on the issue that is being presented, and if it does, and the Director of Charitable Trusts, upon his review of this particular transaction, believes that the Probate Court should review it for those areas within its jurisdiction, it would be a presentation by petition to the Probate Court.

So, for example, if on the review of this particular transaction, and again I am expressing this in the form of an example, it should not be in any way be an indication of what the actual decision is, that will be coming up on May 21st. But, for example, a hypothetical, if the Director of Charitable Trusts concluded that a charitable mission would be affected in a manner that changes its charitable mission, modifies it significantly enough so that it would require a review by the Probate Court, it would be a petition at that point that would be required under his statute and his authority to present that to the Probate Court, because, ultimately, a Probate Court has to approve a change in charitable mission.

There are a number of areas in which, and I don't intend to list them all, in which the Probate Court has jurisdiction and the Director of Charitable Trusts, in his capacity reviewing this particular transaction, determines that if a Probate Court review is triggered, it would be through that process of presenting it to the Probate Court.

So again, the House Concurrent Resolution, as proposed, is a request or a suggestion by the legislative body. It would be taken into consideration by the Director of Charitable Trusts, along with all the other evidence that has been presented to the Director of Charitable Trusts in terms of reaching a final conclusion that would be presented on the 21st. The House Concurrent Resolution, I could go through, but I don't think it is a good use of the Committee's time, but RSA 7:19-b lists all the very specific things, and the seven things that the Director of Charitable Trusts is required to review and ultimately report on, or ultimately use as the basis for his decision.

HCR30 also makes a request for a report that would be presented to the various entities. At the end of the day, I don't know that an specific decision has been made as to the format of the decision on the 21st. But, it will obviously be a public decision and to the extent that HCR 30 passes it would be presented in accordance with the way that the Legislative body requests.

With that, I will conclude my testimony. I would be happy to answer any questions. If I am unable to answer them, I would be happy to find a response for you.

Senator Margaret Wood Hassan, D. 23: Okay. Thank you very much for your testimony. Senator Reynolds, and then Senator Cilley.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Madam Chair. And thank you, Attorney Head. One of the structural issues in the resolution is that it seems to suggest Hillsborough County, and I guess, in the best of all possible worlds, if there was going to be a review, and there is nothing to

prevent the AG from referring it to the Probate Court, is venue an issue? In other words, would it be more appropriate, for example, to have a, you know, county where there is no real relationships with either CMC or Dartmouth, for example?

Attorney Head: My personal preference is Merrimack County because I can walk to it. But, ultimately, it is a jurisdictional issue. The Concurrent Resolution will not create or withdraw jurisdiction that the court has. Ultimately, it is going to have to be presented in the court that has venue and that will be a decision by the Director of Charitable Trusts at the time that the decision is made, in fact there is going to be a referral made to the probate court. And again, I do not want, in this testimony in any way, want to infer that that is an outcome that may happen here.

Senator Deborah R. Reynolds, D. 2: Thank you very much.

Senator Margaret Wood Hassan, D. 23: Thank you. Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair. And, I have a few questions.

Senator Margaret Wood Hassan, D. 23: Okay.

Senator Jacalyn L. Cilley, D. 6: I will be brief. I am sitting here with a copy of Section 7:19-b and one of the things that I have been looking at now for the last 24 hours, which confuses me, is Section (a)"acquisition transaction, acquisition means transfer of control, etc. This is what empowers the AG's Office to review this and it says leases, gifts, consolidations, exchanges, joint ventures or other transactions involving transfer or control of 25 or more percent, 25% or more of the assets. This gets, continues to be presented as an affiliation, something this nebulous thing, and sort of like, you know, this is a handshake deal and we're... Could you explain to me, it clearly rises to a stronger level than that if it is now come under the AG's Office for review? How would you deem it from a legal standpoint because we heard testimony today that it is not a merger?

Attorney Head: I am going to answer this question carefully because...

Senator Jacalyn L. Cilley, D. 6: I always expect that you do, Attorney Head.

Attorney Head: Given that it is currently under review by our office and that will be a specific finding, ultimately, of the decision that is made by the office, I don't want to comment on the specific facts of this case. So, I am

going to respectfully, if I may, decline to answer the question and defer it to May 21st, when the decision as to the process, the facts and the decision will all be outlined in the same report and that's the reason I am here and not my colleague.

Senator Jacalyn L. Cilley, D. 6: Okay, thank you.

Senator Margaret Wood Hassan, D. 23: So, so is it fair to say then that, in the Attorney General's understanding of the law that whether, regardless of what the parties call this transaction, there will be a finding of fact that will then drive a legal finding by your office as to whether this counts as some sort of really complete merger or affiliation or something less?

Attorney Head: I think that we've taken the position, and whether we conclude differently at the end of the day I suspect not, but we have taken the position that the jurisdictional provision of the statute has been triggered and the review is being performed under the statute and we have concluded that the statute has been triggered. The facts as to what the nature of the transaction is and the facts relating to the transaction will be outlined in the ultimate decision.

Senator Margaret Wood Hassan, D. 23: Okay, thank you. Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Okay, final question. Could you tell me what the distinctions are, I can't find it in the statute, where there is latitude for sending it to Probate Court? It sort of makes the assumption that it goes to Probate Court, but I will take your word for that fact and it says nothing in here will supplant or restrict the general powers of the Probate Court in reviewing this. It is my understanding the Probate Court looks at, does this fundamentally change the mission of the charitable entities involved in, you know, this arrangement of any sort? Does your office look at that all as well?

Attorney Head: Yes.

Senator Jacalyn L. Cilley, D. 6: Then...follow up if I may?

Senator Margaret Wood Hassan, D. 23: Follow up.

Senator Jacalyn L. Cilley, D. 6: Then, I guess what I would ask is, what more does the Probate Court do?

Attorney Head: The Office of the Attorney General reviews it and can reach that conclusion, but we do not have the ultimate power or authority to allow it to occur without the Probate Court ultimately approving the change

of charitable mission. So, the, a probate court matter outside the scope of this particular transaction can be triggered by the charitable entity itself who has made a specific decision to change its charitable mission, and therefore seeks approval from the Probate Court. The Director of Charitable Trusts is a necessary party to that action, or the Director of Charitable Trusts himself, as part of his review of charitable organizations, may identify a series of facts that have, in the opinion of the Director of Charitable Trusts, resulted in a change of the charitable mission. And, the Director himself may initiate the action in Probate Court with regard to that entity without necessarily the approval of that entity.

Senator Jacalyn L. Cilley, D. 6: Okay, thank you.

Senator Margaret Wood Hassan, D. 23: Thank you. Are there any other questions? Senator Roberge.

Senator Sheila Roberge, D. 9: If in fact this issue goes to probate. The probate approves the affiliation. Is there any place else it can be appealed after that?

Attorney Head: I would rephrase it in a sense that I don't know that the probate court would, per se, approve the affiliation. But, it would make a finding relative to the issue that was presented to it that either would have the result of either allowing or disallowing the event, or the transaction to occur. There is an appeal process from there to the Supreme Court. We do a lot of work in Probate Court, but I think there is an appeal process, yes.

Senator Sheila Roberge, D. 9: There is. Thank you.

Senator Margaret Wood Hassan, D. 23: Any other questions? Seeing none, thank you very much for your testimony.

Attorney Head: Thank you, and I apologize. I have another hearing at 10:30. If, during the course of testimony, new questions arise...

Senator Margaret Wood Hassan, D. 23: We'll find you.

Attorney Head: Either find me, or if you shoot me an e-mail, I would be happy to answer them.

Senator Margaret Wood Hassan, D. 23: Okay. Thank you.

Attorney Head: Thank you.

Senator Margaret Wood Hassan, D. 23: Former Senator Martel, please.

Andre Martel: Morning, Madam Chairman, and members of the Committee.

Senator Margaret Wood Hassan, D. 23: Good morning.

Mr. Martel: It's nice to be back and testify before all the Senators. I have a prepared text, it is handwritten, but I am going to pass it in.

Senator Margaret Wood Hassan, D. 23: Thank you.

Mr. Martel: But, I do have to reply to some of the issues that were brought in the general term. Back in the 1990s, and the beginning of the 2000s, with Optima Health I chaired that group called Save Catholic Medical Center, the Community Action to Save Catholic Medical Center. We were able to really gut out this merger of Optima Health with Catholic Medical Center where it would dissolve.

Once again, even though it's said, this is not another Optima, it has a lot of parallels, and the earmarks are so close that we've almost lost the identity and mission of one hospital, our hospital, to another. And, with this transaction, if this went through, Dartmouth-Hitchcock would have, and I have nothing against Dartmouth-Hitchcock, they are fine doctors, we already have great doctors at Catholic Medical Center as well. This, they would have total control of the Board of Trustees, the power, the budgeting, the billing. In fact, there's some information that has been given that one of the buildings that Catholic Medical Center came before the Certificate of Need Board and solicited donations from the public, who really own the institution. It's the public and the patients who own that institution since 1882. And, in 1878, my great-great, my great grandparents, my grandparents after them, my parents, and now me, have all been soliciting and built the first hospital that was ever built. They would be able to trump the Bishop's authority, which by the way, his authority has been mostly all given away by himself, and he has not responded to any request from anyone to act upon and see where he stands on this.

The point I make is that, this is not just an affiliation. This is a total acquisition of a very good hospital, excellent hospital that has a different faith-based type of view. It also has, follows the directives of the ERDs, Ethical Directives of the Catholic Church.

I'll use an analogue. This is like taking fresh water and adding salt water. That fresh water could never become fresh again; it will always be salty.

Dartmouth's the salt and CMC is the fresh water. They were owned outright, and as I was talking about this proposal, about this other building that we have information about, it was built by Catholic Medical Center. It was then leased, by what I understand, to a company in Connecticut. That company in Connecticut then turned around and re-leased it back to Dartmouth-Hitchcock.

Now, one has to wonder, what about the revenues that come out of the building. Who do they go to? How much rent is paid back to Dartmouth-Hitchcock for the use of the office space and other spaces they have there that they use for Catholic Medical Center? How much is this going to cost? It is roughly \$200,000 for each doc they have. Now, Dr. Paris said 175 doctors this morning. But we thought, our information said that it was 120. So, all we're asking for with HCR30 is to go to probate.

You heard the Attorney General speak today about the three decisions that could be made. Now, if it was that he was going to probate, I would tell you all there is no need for this bill. But, it is not finite yet. So I urge you to please pass House Concurrent Resolution, I mean, yeah, House Concurrent Resolution 30, on your Committee and in the Senate.

Senator Margaret Wood Hassan, D. 23: Thank you.

Mr. Martel: I appreciate it. I was going to go into other testimony, but I am not going to.

Senator Margaret Wood Hassan, D. 23: I appreciate your brevity. Senator Roberge?

Senator Sheila Roberge, D. 9: Former Senator, good to see you.

Mr. Martel: Same here, Senator.

Senator Sheila Roberge, D. 9: But, I am a little curious and I don't want to put you on the spot too much. But, if it goes to probate and you don't get the decision that you hope for, will you appeal it to Superior Court?

Mr. Martel: I can't tell you about that yet because we, there is no decision that has been made. We hear there are other things that could be pending. But, I can't really be sure if they are going to happen. It is almost certain, but it's certainly at least a probate system would take the transparency out into the system that has not occurred. In other words, they would have to release everything, which they haven't done.

They have been exchanging documents left and right in this pre-agreement, or agreement and the adjustment to the agreement. And, they make public what they want to make public. That's the problem, and then they aren't going to answer any questions, real questions. I know, I met with them for four and a half hours. They thought I was in favor of this. I read the document myself when I was caring for my wife. I read it 12 times, and after the fourth time, I said something is drastically wrong with this, drastically wrong. And, I kept on reading, and reading and sure enough, it was about power and control, and Dartmouth-Hitchcock is not only negotiating with CMC, they also, I hear, are negotiating with Southern New Hampshire Hospital in Nashua, two hospitals in Vermont, it looks like they want to extend to the coast. And, so how much power does one institution need to control health care which will never lower the cost of health care? It's when you don't have competition, you have anarchy. Once you have anarchy, it's all done; we know how tyrannical that is.

So, I'm not trying to preach to the choir, but these are very valid points. And, that question was very good, Senator Roberge, and I will be glad, once we have a decision or something that I will give the Committee and yourself a decision on that because I chair the committee of Save CMC again.

Senator Margaret Wood Hassan, D. 23: Thank you.

Mr. Martel: I'm glad to answer any questions.

Senator Margaret Wood Hassan, D. 23: Thank you very much for your testimony.

Mr. Martel: I will pass this in here.

Please see attachment #2 – handwritten testimony submitted by Andre Martel, Manchester, New Hampshire.

Senator Margaret Wood Hassan, D. 23: Seeing no further questions. Thanks. Mr. Gustafson, please.

Richard Gustafson: Good morning, Madam Chairman and members of the Committee. My name is Richard Gustafson. I live in Bedford, and I'm an immediate past chair of the Board of Directors of Elliot Hospital and Elliot Health Systems.

I am here this morning to urge your support of this resolution. A number of my points have already been made; I will not make them again. I also have

written testimony that's being distributed to the Committee that you can look at as time permits.

Please see attachment #3, written testimony submitted by Richard Gustafson.

Mr. Gustafson: I think the general perspective of the Elliot Health System and the Elliot Hospital Board of Directors was, when this effort was first announced, that we were concerned and amazed that it could go forward. What we had done ten years ago as Optima was looked at very carefully by the Attorney General's Office, by external organizations, and by the Probate Court. And ultimately, they decided that the mission of the Elliot and the mission of CMC were such that they really could not operate in an affiliation agreement. This is, in our judgment, more than an affiliation agreement, but really a merger agreement.

In fact, when the Probate Court looked at this several years ago, one of the actions of that court was to suggest special boards be created. A special board looking at, for CMC, and a special board for the Elliot to see if these ethical directives could be navigated. Ultimately, in the eyes of the Bishop and the eyes of those special boards, they could not be navigated. That the mission of our organizations, Elliot and CMC, were such that this affiliation could not go forward.

We all know that Dartmouth Medical School and Dartmouth Medical Center is a very forward-looking health care system providing a full range of services and choices to all of its patients. When we look at the choices that are provided by the Dartmouth-Hitchcock organization and compare it to what CMC's principles are, its mission, and its living under the ethical directives, we simply don't see how this can go forward given what we went through ten years ago. That effort, ten years ago, cost CMC and Elliot millions of dollars to try to put that together. It cost us millions of dollars to take the de-affiliation and take it apart again. It was difficult, it was costly, it was highly emotional, it still is in the greater City of Manchester. People feel very strongly about the effort and the fact that it couldn't occur is a concern to us, again, in this particular effort.

Despite the testimony of Attorney Head and Dr. Paris, we think that the best practice is really to have the Probate Court look at this. It is full transparency, everything to the light of day, everything out to sunlight, so that all aspects of this affiliation, merger, can be examined by the Court and a decision can be made by that Court. We are concerned about the diversity of care available to the citizens of the greater Manchester area. I am very pleased to hear Dr. Paris this morning indicate that women will have choice

in our community to go to the Elliot or CMC or elsewhere for their care. That was not our understanding when the directive came out a couple of weeks ago. So, it was great to hear that.

I think I will stop there. I think that other points have been made by other people that are important. I think that my, our major concern is that we've gone through this ten years ago. We think the Probate Court is a proper way to have this fully examined, all of the various information will come out in a very transparent way, and we think that's what the people of the greater Manchester area, and indeed the people of New Hampshire, deserve. And, we ask your support for this resolution. I'll stop there. If there are any questions, I will gladly try to respond.

Senator Margaret Wood Hassan, D. 23: Thank you. Senator Roberge.

Senator Sheila Roberge, D. 9: About how much larger is the Elliot than CMC?

Mr. Gustafson: About how much?

Senator Sheila Roberge, D. 9: About how much larger?

Mr. Gustafson: Larger?

Senator Sheila Roberge, D. 9: Yes.

Mr. Gustafson: I'm not sure. I would say about a third in terms of our overall revenue. I'm not sure overall revenue at the Elliot Healthcare Systems is about \$400 million.

Senator Sheila Roberge, D. 9: And would that be about the same after you build a facility under the Queen City Bridge?

Mr. Gustafson: No, I think we will continue to grow...

Senator Sheila Roberge, D. 9: As size is concerned?

Mr. Gustafson: No, I think we will continue to grow at the Elliot, as CMC and Dartmouth have continued to grow over the years. The population, as you know, in the great Manchester area and southern New Hampshire continues to grow and they demand health services. So, I think the Elliot will continue to grow.

RP

Senator Sheila Roberge, D. 9: Okay. But, right now you are about a third larger than CMC?

Mr. Gustafson: Yes.

Senator Sheila Roberge, D. 9: Do you anticipate, if this affiliation takes place, that maybe CMC would be able to catch up in size with the Elliot?

Mr. Gustafson: Well, well I'm sure with if the affiliation took place, or the merger took place, you would take those two organizations and put them together, it would certainly be as large as or maybe even larger than the Elliot.

Senator Sheila Roberge, D. 9: It could be larger?

Mr. Gustafson: Sure.

Senator Sheila Roberge, D. 9: But, there is a possibility it could outgrow the Elliot. Is that true?

Mr. Gustafson: Sure, sure.

Senator Sheila Roberge, D. 9: Would you, as a former board member of the Elliot be concerned about that?

Mr. Gustafson: No. I think that there's a lot, it is not about competition. Clearly, I mean, there is a lot of competition in health care all across the State, all across the country. We are concerned for the community.

We just don't understand how this affiliation can take place, and our concern is that, should something happen, as it did to us, once we were into it for two or three years, all of the emotion, the energy, and the expense that had occurred was all for not. We all lost a lot of money and the community lost a lot of health care that we both could have provided had we not spent that money in other ways. And again, we think that the full vetting of this, especially by the Probate Court, would be the way to go to assure us, as best we can, that if this is different than what we did, fine. But, we just don't see it that way.

Senator Sheila Roberge, D. 9: Further question.

Senator Margaret Wood Hassan, D. 23: Yes.

RP

Senator Sheila Roberge, D. 9: And, if in fact a Probate Court doesn't agree with your position, would you be, do you think you can likely take this to Superior Court?

Mr. Gustafson: I think I will side with former Senator Martel on that one. As you know, the decisions that come down from any court carry with it a rationale and an opinion with it on how they reached that decision. So, I think that, I'm not a lawyer, but I would expect that legal counsel for us and other organizations would have to look at that decision and the rationale for it and decide if, based upon that, whether they would choose to appeal or not.

Senator Sheila Roberge, D. 9: Thank you.

Senator Margaret Wood Hassan, D. 23: Thank you. Any other questions? Seeing none, thank you very much for your testimony and for your patience.

Mr. Gustafson: Thank you.

Senator Margaret Wood Hassan, D. 23: Is it Hugo Poza?

Dr. Hugo Poza: Yes ma'am. Good morning, Madam Chair.

Senator Margaret Wood Hassan, D. 23: Good morning.

Dr. Poza: And, members. I am going to pass around, it is very short, but I will pass around a few copies.

Please see attachment # 4, written testimony submitted by Dr. Hugo Poza, Manchester, New Hampshire.

Dr. Poza: My name is Hugo Poza and I am a resident of Manchester. And, I have been a donor to CMC for several years now. I chose to contribute to CMC, primarily, because of its authentic Catholic identity and mission. That means I gave money to the hospital because it stood for the Catholic philosophy of life. I certainly oppose a use of my money, in any way, to promote or carry out or help the opposite culture promulgated by Dartmouth-Hitchcock.

Because of my opposition, in December of 2009, I had a meeting with the CEO of CMC, Ms. Alyson Pitman Giles and five of her staff members and consultants. I posed the question, "When CMC pays Dartmouth-Hitchcock for the lease of 120 doctors, as it is stated in the agreement, what is it that you pay?" The answer I was given, "We pay their salaries." I said, "Yes, but

you also pay an overhead fee. Do you know where that overhead fee goes? What does it pay for?"

I knew full well the answer to that question, because I retired as President of the Homeland Security Business for the Raytheon Company. It goes to pay, among other things, for executive staff and executive salaries throughout the company, in this case, Dartmouth-Hitchcock. Given that was the case, I wanted to know how CMC would guarantee me that my contribution would not be used to support executive staff at DH involved in activities opposed to the philosophy of the Catholic faith.

They could not answer my question, but Ms. Giles promised me that she would uncover all the details of what the DH overhead covered, so that I would be assured that none of my money would be involved in anti-Catholic activities. That was good enough. She proposed having another meeting with the same people as soon as she had the details. That second meeting has never happened, and no explanation has ever been given to me regarding what the overhead fee for Dartmouth-Hitchcock would fund.

This is why going to Probate Court is so important to me; so that my questions, some of which I view as critical to this affiliation or acquisition, whatever you want to call it, get a chance to be fully answered so hospital officials, as well as church officials, become fully accountable for their actions; so that I can have peace in my soul knowing that my contributions are not used in any way to support actions and philosophies contrary to my faith.

Thank you very much, Madam Chair.

Senator Margaret Wood Hassan, D. 23: Thank you very much for your testimony. Are there any questions? Seeing none, I appreciate it very much.

Dr. Poza: I have also the testimony from our canon lawyer for the "Save CMC."

Senator Margaret Wood Hassan, D. 23: You can submit that and it will be in the record.

Please see attachment #5, written testimony submitted by Dr. Hugo Poza for Philip Gray, Professional Canonical Services.

Senator Margaret Wood Hassan, D. 23: Thank you so much. Virginia Swain, please.

Virginia Swain: Good morning. My name is Virginia Swain. And, for the past five years, I have been a board member of Planned Parenthood of Northern New England. I am also a Hanover community member, who is proud of the prestige that Dartmouth-Hitchcock's academic medical center confers on our region. As a PPNNE board member and a Hanover resident, I am concerned about the proposed affiliation between Dartmouth-Hitchcock Health and CMC Healthcare System because it will dramatically restrict the full range of medical care and advice available to the citizens of Manchester. This restriction is incompatible with Dartmouth's mission and detrimental to its reputation as one of the country's premiere providers of health care services.

Just let me give you a little bit of background, some of which you probably already know. For over four decades, PPNNE has been providing reproductive health services in New Hampshire. The current PPNNE health center in Manchester has been serving women for over a decade. PPNNE provides, promotes, and protects access to reproductive health care and sexuality education so that all people can make voluntary choices about their reproductive and sexual health. Like PPNNE's Manchester health center, Dartmouth's clinic in Manchester is a major provider of health care to Manchester's low income residents and we were that before. Although Dartmouth-Hitchcock Manchester does not offer the same kind of FAIR care as PPNNE it does provide financial assistance for health care to its qualified patients.

Since the proposed affiliation between DHH and CMC outlines that Dartmouth-Hitchcock Clinic Manchester will provide health care in accordance with the ethical and religious directives of the Catholic church. This means that charitable patients of Dartmouth-Hitchcock Clinic Manchester will have to find other providers that offer charitable care for their comprehensive reproductive health needs. PPNNE is concerned that Dartmouth is diluting its mission to provide comprehensive reproductive health services to those who need it in Manchester and altering its charitable mission.

Dartmouth is, in effect, depriving the community of a charitable benefit and placing undue pressure on limited resources, such as PPNNE, available in the community. Without the ongoing support of Dartmouth and its services, women in Manchester will not have the same unrestricted access to care that they currently usually enjoy.

The affiliation agreements state that Dartmouth OB/Gyns must comply with the Catholic Church's ethical and religious directives with no exceptions and with the provision of clinic care in their offices, at facilities, and in the

hospital. These directives restrict care, education, referrals and access for women who seek reproductive health services. As a result, a woman seeking to exercise reproductive choice will not be advised of her full options or referred for her choice of care by a Dartmouth physician under agreement with CMC.

Please understand that reproductive health care refers to much more than abortion care and services. DH Clinic in Manchester currently offers many reproductive health services that will violate the religious directives and therefore be disallowed. These include providing full access to birth control information and supplies; tubal ligation after cesarean child birth, which was a question that has already been asked at this table; emergency contraception, even in the cases of rape or sexual assault; informed consent and advanced directives for woman whose pregnancy is complicated by medical conditions that threaten the mother or fetus, such as ectopic pregnancies; infertility counseling and preparatory treatment. And, for example, in that case a woman perhaps being treated for breast cancer might not be informed that she could have her eggs removed before treatment and saved so that she might later have biological children. Those are some of the directives, but there are more in my written testimony.

As you heard, Dartmouth and CMC are seeking to merge their clinical and health care services through a regional integrated health care delivery system. And Dartmouth proposes to "carve out" certain services from the integration in order to exempt them from the impact of the ethical and religious directives. However, a special "carve out" of services or relocation of office space to provide complete women's reproductive health care operated by Dartmouth is not an adequate solution as it limits access and stigmatizes the care provided. For example, and you heard this just earlier, a patient under the care of a Dartmouth obstetrician must give birth at CMC; it is not clear if anything is going to happen with Elliot, that was left open by previous testimony, and if she has a cesarean, she could not receive a simultaneous tubal ligation, but would have to schedule a separate surgery.

Logistically, a relocation of offices outside of Manchester wherein non-compliant care would be provided will not meet the needs of the low income and charitable population of Manchester. Furthermore, there is no firm commitment by Dartmouth to establish such a special carve out or to otherwise compensate the community for the loss of access.

Dartmouth predicts that 3% of the care, or 2% we heard, but 3% is the figure that we have, of the care that its 125 Dartmouth Manchester professionals used to provide, used to provide, will be limited or prohibited by the religious directives. Most of this burden will be borne by women and teens in their

reproductive years. This means that, during any given week, Dartmouth Manchester professionals will be restricted from providing 152 hours of health care to patients because of religious directives. Such a restriction on access for women seeking care is not consistent with Dartmouth's mission of providing care when, where and how a patient needs it.

Planned Parenthood of Northern New England is concerned that despite Dartmouth-Hitchcock's best intentions this proposed affiliation will deny Manchester women access to, or create unnecessary obstacles for women to access comprehensive reproductive health care. HCR 30 may seem to be an irrelevant resolution not worth the Senate's consideration. However, to ignore HCR 30 is to ignore the relevance of women's health care in Manchester and the community benefit provided by Dartmouth-Hitchcock Clinic in Manchester.

If the proposed affiliation is good for the improved health care of Manchester, then let's do what we can to ensure that this affiliation is the best it can be for all of Manchester's citizens. Please vote ought to pass on this resolution. Thank you.

Senator Margaret Wood Hassan, D. 23: Thank you. Hold on just a second because there might be some questions. I guess, and you may have referenced this when I stepped out, so I apologize. But, one of my understandings has been that Planned Parenthood of Northern New England and Dartmouth have been community partners for some time.

Ms. Swain: Yes.

Senator Margaret Wood Hassan, D. 23: And, have you had any discussions with Dartmouth about whether that partnership will continue if this affiliation continues?

Ms. Swain: Well, apparently, and I haven't seen these documents, but I was told from someone on the staff who has looked at them, that whereas Planned Parenthood used to figure on Dartmouth, on Dartmouth's literature as a community partner, in this year they are not, we are not listed. So, I don't know whether this is something we need to look into, but it is certainly a change from what had been past practice. So...

Please see attachment #6 – written testimony submitted by Virginia E. Swain, Planned Parenthood of Northern New England.

Senator Margaret Wood Hassan, D. 23: Thank you. Thank you. Any other questions? Seeing none, thank you very much for your testimony. Ms. Pitman Giles please.

Alyson Pitman Giles: Thank you. I have my written testimony, as well as that from our alderman, Alderman Russ Ouellette. I think you got it electronically, but I have it for you today.

Please see attachment # 7 - written testimony by Alyson Pitman Giles, Catholic Memorial Center

Please see attachment #8 - written testimony by Alderman Russ Ouellette, City of Manchester, submitted by Alyson Pitman Giles

Senator Margaret Wood Hassan, D. 23: Okay, thank you.

Ms. Pitman Giles: So, thank you, Senator Hassan, and members of the Committee, for allowing us to present this to you today. My name is Alyson Pitman Giles, and I am here in opposition of HCR 30, and I am in support of the future of Catholic Medical Center.

I think it's important to know, I would like to dispel some of the myths. I don't want to repeat Dr. Paris' testimony because I think his really says everything that I would say. But, I do think it is important to note that I have been the President and CEO of CMC for the past 12 years. I also spent five years there in the '80s. And, I was there as Vice President of Specialty Services. I was President of New London Hospital and I came back during the Optima time period. So, I was the Executive Vice President, Chief Operating Officer of Catholic Medical Center reporting to Doug Dean and to the Optima Board.

So, when the dissolution was decided upon, which was two months after I had arrived from New London, I was the last man standing. Every Catholic executive from Optima went to the Elliot Hospital with the expectation that Catholic Medical Center was going to close, and I was on their team, so that was what was said to me. So, I was literally the last man standing. I am not Catholic, and I'm not sure I would have been the person they would have chosen, but I was the only one there at the time. And so, I have spent the last 12 years with many of the "Save CMC" people as my supporters. Andy Martel is someone I used to speak to on a weekly basis with employees and doctors and others working the shoulder to shoulder to bring back Catholic Medical Center, and we have nearly tripled the size than it was in 1998.

Literally, in 1998, it was slated to be closed. One of the reasons was not Optima's. Optima was closing Catholic Medical Center as an acute care hospital, maternity, pediatrics, medical-surgical care, orthopedics, everything moved to the Elliot campus, and CMC was going to be a nursing home and a rehab hospital. And so, we have really dedicated ourselves to building it to where we are today.

So, it was the right thing for us to demerge, because it was the closure of Catholic health care. It was not, as Richard Gustafson describes, if you couldn't do it then why can you do it now. It was essentially closing Catholic health care and there would be no Catholic health care, and there was no oversight when that decision was made.

And so, since the Elliot and CMC time, health care has changed dramatically and we have to change to meet the changes that are going on in health care. Elliot Hospital does have a huge integrated delivery network. They are much larger than we are. They have higher, not only about three times more primary care doctors than we do, but they've also hired the orthopedic surgeons, pulmonologists, neurologists, general surgeons, everybody who has been unemployed and a nonemployed doctor in Manchester have been hired by the Elliot hospital. So, they didn't have to go through probate to do that, but they have done a great job and their Jac-Pac facility I can see it, I could probably throw a softball to it right outside of my window.

So, I want to tell you why we're doing this, because we want to bring down the cost of care, not increase it. We want to be ready for the future, as Dr. Paris said. We are not going to get more money for health care, we are going to get less. We are trying to do a rational way to work with a group of physicians and a hospital to improve the health care of our community.

Let me talk about some of the myths that you've heard. The first one that was brought up is that there has been no transparency. We have been under the microscope for probably starting from last February until now. We have had a website, a healthier tomorrow, on which we have posted every single document that we have. We have no hidden documents, no secret documents. We have put the affiliation agreement on there. We have put answers to questions that were raised in forums and online and we have given our responses to them. We have put the Bishop's directives. We have put ethical opinions. We have tried to tell everybody everything that we can and that we are allowed to tell them.

Secondly, we have met with, as you can see, this is walking a balance beam. You look in the room and we have very, very, very vocal minorities. We go to Rotary, we go to different people who are very positive about the care we

provide, the care to the poor, the specialists we are bringing in. And I admire, I know these people feel very strongly. I think people are afraid of the word Catholic, and I have heard that from you, Senator Cilley. I think people are afraid, if it is Catholic, it is going to change health care dramatically and women's rights. I think that if it's not Catholic, the right-to-life people are terrified that we are going to do abortion on every floor. And, I think the Elliot doesn't want it to happen for competitive purposes.

And, so, that that, I just wanted to let you know what some of the other myths are. Dartmouth is not changing its services in Manchester. The affiliation explicitly recognizes that this affiliation does not affect Mary Hitchcock Memorial Hospital nor any other Dartmouth facilities in New Hampshire. Dr. Victor Poza came in and said I would not answer his question about where overhead was going to be allocated. I actually was telling him that I would tell him when we knew exactly how we would agree on any overhead, at which point he told me that I was an illegitimate leader of Catholic Medical Center because I was not Catholic. And when questioned he pounded the table and told me he would fire me immediately and write me a recommendation for a secular hospital. So, to Dr. Poza I said, I am not going to meet with you again because obviously whatever I provide I am an illegitimate leader.

Andy Martel, someone I've worked with for years, and he is incorrect. This is not top down. Catholic Medical Center is approved only by the Bishop that Board, the CMC's President reports to the CMC Board. The CMCHS Board is approved by the Bishop as well as Dartmouth-Hitchcock Health. As the President of CMC Health Care System, I report to the CMC Health System Board not to Dartmouth-Hitchcock Health, not to the President of Dartmouth-Hitchcock Health.

Senator Margaret Wood Hassan, D. 23: And, just for clarity, you're talking about should the affiliation occur that that's the structure, that is what the structure would be?

Ms. Pitman Giles: Correct. I'm sorry. And so, we've really created an affiliation trying to meet the test, all those that have presented to their concerns today to make sure we remain Catholic, but also to make sure that a secular organization and academic medical center can also maintain their mission. And, we've also negotiated that it is very Manchester centric. Its bottom up approval does not talk down decision making. For example, yes, we have our budget approved, but they have no line-item veto power. They can't say, well, you can't buy a robot. They can only say if you are going to lose 10% this year, that is not really acceptable. Can you rework the budget?

The entire thing has been worked out as a bottom up, really affirmation as opposed to decision making with Dartmouth-Hitchcock Health.

Rich Girard has given you all of his publications from *The [Manchester] Express*. I hope when you read them, you will understand that he never interviewed anyone from CMC. So, there are many, many errors in them which we have pointed out to *The [Manchester] Express* before they closed. And, with Richard Gustafson, as I said, it is not Optima. I think it is noble that they are worried about us. They have actually; they have written to the Vatican, they've written to the Ambassador from the Vatican, saying that, if this goes through, they are going to sue the Bishop because they are afraid we might not be Catholic any more. So, I'm, I'm surprised they care about how Catholic we are. But, those are the other things, the sort of scatter, that are out there.

We have hired two canon lawyers for ethical opinions. We learned from Optima. We don't want this to come apart. We don't want to go through what we went through before. I was there during the demerger. We all learned from those mistakes and we've tried very, very carefully to craft an agreement that really meets the tests of maintaining our charitable mission.

No money is going to leave CMC. No money can be taken out of Manchester to go to Dartmouth without the express permission of CMC. So, I don't want to go through the whole affiliation agreement with you, other than to say that we have tried to put so many safeguards in so that we can meet the needs of those who are right-to-life and those who are pro-choice, and trying to bring together something that is rational to improve our care; to save Catholic health care; to become a competitor in the marketplace; not be swept away by the Elliot Hospital; and to try to provide excellent subspecialty care, cancer care, women's care, and also care for the poor.

I will answer any questions that you have.

Senator Margaret Wood Hassan, D. 23: Sure. Thank you, Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair. And a couple of questions as usual. I'm, I'm not...and thank you for your testimony, Ms. Pitman Giles. I'm not particularly concerned whether the hospital remains Catholic or not. What I'm concerned about, you know, is the care of residents in that community, one of our largest in the State. So, my read of the agreement was that the doctors that were affiliated would serve under the guidelines of ERDs. Am I correct in that?

RF

Ms. Pitman Giles: Any physician who has credentials at Catholic Medical Center, while they are at Catholic Medical Center, they must follow the ethical and religious directives. It has always been that way.

Senator Jacalyn L. Cilley, D. 6: Okay. Follow up?

Senator Margaret Wood Hassan, D. 23: Follow up.

Senator Jacalyn L. Cilley, D. 6: So, what I'm confused about is if the, if you are paying the salaries, and I don't know if that is the case or not, but if you are paying the salaries and that pays. So, when the doctor is in their office at Dartmouth-Hitchcock, if I go in, and God forbid, discover I'm pregnant.

Senator Betsi DeVries, D. 18: Can you laugh a little more.

Senator Jacalyn L. Cilley, D. 6: That was not a nice laugh. But, is the doctor going to say to me, because I think for a lot of women, there is this assumption, you know, this is my doc, he is going to tell me where, or she is going to tell me where I'm going to go to deliver this child. And so, is the doctor going to say, "Well listen, we've got these affiliations at the various hospitals, where would you like to go?" Or, because of this agreement is he or she more inclined to say, you know, generally we refer, you know, to Catholic Medical Center, and would the patient know what that entails?

Ms. Pitman Giles: Absolutely. The patients will know and it is done that way now. We have had OB now since 2002. We're doing nearly a thousand deliveries, and every patient was very aware that, if they wanted to have a tubal with their C-section, that would deliver at the Elliot. So, it has always been that way. It is very, very open. There is nothing to hide and patients know where you can do things, and where you can't and we make sure that they get the care that they need.

Senator Jacalyn L. Cilley, D. 6: Thank you.

Senator Margaret Wood Hassan, D. 23: Other questions? Seeing none, thank you very much for your testimony.

Ms. Pitman Giles: Thank you.

Senator Margaret Wood Hassan, D. 23: Josiette White, please. Did I pronounce that correctly?

Josiette White: Josiette.

Senator Margaret Wood Hassan, D. 23: Josiette.

Mrs. White: Hi, my name is Josiette White. I am a resident in Manchester, 508 South Main Street. I am also a patient at Dartmouth-Hitchcock. And, I am here today to ask you to support HCR 30 on behalf of myself and my partner, Nick, who couldn't be here, who is also a patient at Dartmouth-Hitchcock.

So, I am going to be really brief. Nick and I moved to New Hampshire in 2007. We had the luxury of people that have always had health care, health insurance. So, I have consistently had doctors that I've chosen, that I feel very comfortable with. So, when we moved to New Hampshire, it was one of our first priorities finding new doctors. For Nick, it was easy. He was like, "Oh, Dartmouth, great reputation, I'm going to go there." And, he found a doctor he liked pretty immediately and has been very happy with his primary care service.

I wanted to find a place that was smaller, a local neighborhood practice, a smaller family practice because that is something that I have always had. And you may notice there is a little bit of a doctor shortage in New Hampshire. So, I was on a lot of waiting lists and I had a couple of doctors that just weren't the right fit. So, Nick's really positive experience finally convinced me to also go to Dartmouth and his doctor was no longer accepting new patients. But, the folks at the scheduling center were amazing and talked to me about what I was looking for and referred me to a doctor that was accepting new patients and had a great relationship with my primary care ever since.

And, I wanted to share, for me, the concerns that we bring and our support of HCR 30. Choosing our health care is a really big deal for us. So, we don't see why additional scrutiny or another review step in the process, should be a barrier or a problem. We are not saying this is something that is bad, but there is a lot of things about it that are still really unclear for us.

For example, I consider primary care holistic health care, which is how my doctor presents herself and considers herself as well. So, if I go in for something like a cough that is bothering me, I expect that my doctor and I will talk about my whole health, and if I need to bring in my birth control prescription, we will do it right then. How does that work? It is really unclear about how this works if she needs to be following Catholic directives, which I don't adopt as part of my health care. We choose our health care based on academic research, not religious beliefs, that's the choice that we have made and expect that we will be able to have conversations with our

doctors about all of our options with our primary care physicians in the building that we see them, you know, at any given time.

So, while the folks at Dartmouth and Catholic Medical Center, I think, do amazing work and being in the community and having them there is absolutely value added. We think that support of HCR 30 really just shows that this is serious, this is a really big deal, and while it is clear that they have undergone extensive scrutiny, supporting additional scrutiny in this for me as a patient and as a resident of Manchester is really important. And, I think even today, in some of the testimony that's been given, there is still a lot of questions and things that haven't been determined.

I've attended one of the community meetings in Manchester and at that point in time there were definitely documents posted online. Ones that bring out the details, there were like blank pages. And, you know, it is concerning for me when I feel like folks at CMC are being assured absolutely Catholic directives will be preserved and adhered to. And, I'm being assured that absolutely you will have full access to all of the care that you want, including your full range of your medical options under any circumstance. I just don't, it is still really unclear to me how those two fit together. And I still think there are a lot of questions and even in some of the testimony today. Will Dartmouth doctors still deliver at Elliot? They may be referred there, but will my doctor come with me? Certainly it is expressed that they want that to be the intent. But, it's not been outlined yet, and, you know, to follow up on Doctor Cilley's question, if I find myself pregnant...

Senator Jacalyn L. Cilley, D. 6: I am not a doctor.

Mrs. White: Sorry, Senator Cilley, my apologies. If I find myself pregnant, not only will my doctor talk to me about where I would deliver, but is she going to talk to me about my full range of options? That, to me, is very important. I want to be able to have those types of holistic conversations with my medical providers. And so, with that, we really see that support of HCR 30 is just saying that this is serious, having, encouraging the Attorney General to send it to the Probate Court for one more look, from my perspective, doesn't do harm. You are not saying that you think this is a good idea or a bad idea, but that everybody that has a stake in it should maybe take a look at it. Thank you.

Senator Margaret Wood Hassan, D. 23: Thank you. Are there questions?
Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Just a comment. Very nice testimony.
Thank you.

Mrs. White: Thank you.

Senator Margaret Wood Hassan, D. 23: Thank you very much. A former colleague of ours once said that the best testimony is both clear and true and yours was both. So, thank you.

Mrs. White: Thank you.

Senator Margaret Wood Hassan, D. 23: Claire Ebel, please.

Claire Ebel: I don't know how to make that segway, Madam Chair. But, my name is Claire Ebel. I am the Executive Director of the New Hampshire Civil Liberties Union. And, you are the Commerce Committee, and very often the issues that you deal with can be distilled to one small sentence, "is it about the money?" Yes. It's always about the money.

CH, HCR 30, excuse me, is not a diss of the Attorney General. He has a statutory responsibility, and I think his office is executing that responsibility with all due diligence and skill. But, there is no standing for individual people who seek to speak out on this in the process established by the Attorney General's Office because, statutorily, he doesn't have a right to do that. He can't require that the questions that we want answers to be asked or answered.

The fora gave us three minutes. We asked the questions. We didn't get the answers. And, there is no way for the Attorney General to mandate, under oath, that these questions be answered. The Probate Court can do so, and the individual fundamental civil liberties can only be protected if there is a court process where individuals will have standing to go to the judge and say this is how we will be harmed.

This merger, affiliation, acquisition, whatever the term is dujour, is an attempt to unite two fundamentally incompatible missions. The Dartmouth-Hitchcock Health articles of agreement require that Dartmouth-Hitchcock Health must be the controlling party of any outside collaboration. There articles of agreement require them to be in control. CMC's articles of agreement state that CMC is an official agency of the Roman Catholic Church. It's, it's a slight difference of definition, but it's an important one. They are not a Catholic hospital; they are an agency of the Roman Catholic Church that provides health care. And, in a 1989 amendment to those affiliations, those articles of agreement, any affiliation with another health care provider must be delivered in a manner consistent with the principles set forth in the ERDs. That is a quotation. The constituents that many of

you represent and some of you have, I know, constituents in Manchester. They are the ones that are being left out and left behind and I want to give you an illustration of that.

In terms of critical and acute care, right now, Catholic Medical Center makes all of their referrals to Elliot Hospital, or the majority of their referrals to Elliot Hospital, the idea being to keep people in their communities. Dartmouth has announced that, once the merger, once the affiliation, the association is completed, that the referrals to Dartmouth, to Elliot will cease. And, that the elderly patients in Manchester, the critically ill children, all of those individuals who were transferred to Elliot, are going to be transferred instead to Mary Hitchcock Memorial Hospital in Lebanon, New Hampshire. Children are going to be 90 miles from their parents; parents are going to be 90 miles from their own parents or their children in a State with virtually no public transportation. Those are the kinds of people who need to be heard, and in Probate Court, they will have that opportunity.

And, I would like to leave you with one additional piece of information. I know for many in Manchester, Elliot and CMC is like two friendly hotels occupying an island where one gets customers and then the other needs to improve their customer base, etc. But, they are, after all, institutions that seek to provide excellent health care to as many people as come in the door. But, CMC no longer provides charitable health care. Indigent patients are sent to Elliot Hospital; it is they who are providing the charitable care in Manchester. It is they who, if this affiliation occurs, will lose all the critical care patients that are transferred to them. As I started, I will end, it is all about the money.

Senator Margaret Wood Hassan, D. 23: Thank you. And, I am going to recognize Senator Reynolds. I apologize, I have to excuse myself to go testify on something and I am going to give the gavel over to Senator DeVries. Thank you.

Senator Deborah R. Reynolds, D. 2: Thank you, Senator Hassan, Madam Chair. Claire, putting aside the fact that people who are here today have real heartfelt concerns about the underlying proposed affiliation or whatever you want to call it, and that those are genuine. You are aware that the Probate Court has complete unfettered discretion to consider what evidence may be relevant to him or her in this process.

So, I guess I question your statement that in the Probate Court people, members of the public are going to have an opportunity to weigh in on this, because the probate judge has complete discretion in terms of what is relevant. So, I do question your statement, and I guess I would like to have

you respond to that knowing that you are not an attorney. Why you would make that sweeping statement?

Mrs. Ebel: Well, Senator Reynolds, in the case of the demerger between Elliot and CMC, that is exactly what the Probate Court set up. Individuals went in, some represented by counsel, some acting on their own, and they were allowed to address the court and express to the court their concerns, their feelings, their worries, the issues that were never raised when the merger occurred and the issues that they wanted answers to, simply as citizens and consumers of the medical care that was being discussed.

And so, having talked to the attorneys who deal with the Probate Court, they have informed me that there is likely to be the same kind of opportunity for individuals to address the Probate Court with their concerns as was granted in the demerger ten years ago.

Senator Deborah R. Reynolds, D. 2: But, as a follow up, if I may?

Senator Betsi DeVries, D. 18: Follow up please.

Senator Deborah R. Reynolds, D. 2: We are dealing with a different judge, a different transaction. It may have some parallels to a demerger, but there is no guarantee that the new judge, if there is one, is going to follow the same procedures. Would you believe that?

Mrs. Ebel: Senator, I would agree that without the same judge, and the same set of circumstances, since the circumstances are different, the process is going to be different. But, if the Attorney General does not refer this issue to the Probate Court, the Probate Court will never get a chance to speak, because, if the Attorney General approves this affiliation, the process ends. And there may be appellate opportunities. But, as you as an attorney know, the appellate opportunities are based on what occurred in the process of the merger and new and ancillary issues may not be allowed, usually are not allowed to be brought forward.

Senator Deborah R. Reynolds, D. 2: Well, as a final follow up because...

Senator Betsi DeVries, D. 18: Follow up.

Senator Deborah R. Reynolds, D. 2: I don't want to take up the Committee's time. As a practical matter, it seems to me, that those that aggrieved may petition for declaratory judgment regarding the procedure that is followed by the AG's Office, but that's an argument for another day. Thank you.

Mrs. Ebel: And, Madam Chair, I brought that, I mean Senator Reynolds, I'm so used to Judiciary, I raised that with the attorneys to whom I spoke and they said it was unlikely that that would be recognized because they would have to find a defect in the Attorney General's process. And the Attorney General's process, no one is suggesting that it is defective; it simply isn't complete.

Senator Betsi DeVries, D. 18: Thank you. All set? Further questions from the Committee? Thank you for your testimony. Calling on former State Rep., Representative Don Welch. Good afternoon. Two more after Mr. Welch. Welcome.

Don Welch: Good morning, Senator DeVries, and members of the Committee. My name is Don Welch. I am a former State Rep from the west side of Manchester. The time I was a State Representative was the same time that CMC and Elliot Hospital were going through the demerger process. I spent about seven years of my life advocating for the demerger of Catholic Medical Center. Under full disclosure, I am a Catholic, but it is not why I am here. I am here because I've followed this stuff for the last ten years. I was one of the people that picked Alyson Pitman Giles to be the Catholic, I mean to be the CEO, of Catholic Medical Center.

This is about money, as Claire Ebel said. This is about, if any of you have seen the Partner's model in Massachusetts, as far as health care goes, it is acquiring and then you have no choice. And, I say this, it is all about money, it is all about money to the State, it is all about money to the local municipalities and their health care premiums. When you control the health care, especially in a State, it is an easy grab. I have nothing against Dartmouth. I have had 15 heart operations. I have seen the best medical care there is out there. I had it done down in Boston because that is where CMC referred me with their heart institute, which is one of the best around.

This is about money. This is so big and complex; I don't think any one of us here really truly understands. The lawyers have been working at this for five and a half years putting this scheme together just like they did with the Optima case. And what they did is they basically they just fine-tuned every thing from Phil McLaughlin's report. They took a line out of the Attorney General's report on the Optima demerger and took that line and lawyers, and millions of dollars have been spent. Millions of dollars that have been taken away from the people they are charged to serve. Both Dartmouth and CMC, both fine institutions.

At the end of the day, this is about money. It is about bonding capacity for Dartmouth-Hitchcock Hospital, and through its affiliations. Not just Catholic Medical Center, they are going around the State, there are 26 health care hospitals in the State of New Hampshire. I would say, within five years, there is going to be about five. And, and the biggest one is going to control health care. In Massachusetts, Partner's Group, when an insurance company says they were going to pay and reimburse \$70 for an x-ray, and when Partner's Group comes back and says no you are going to pay \$125; otherwise your subscribers can't go to our hospitals. That is where we are going. And, that in turn turns into taxpayer dollars that are either paying for State employees or municipal employees. This thing is so huge and complex.

I have been, I was one of the community members that was selected to go to these private meetings when this first started rolling out back in January of last year. And, I am going to tell you straight up. There has been a lot, to me, it's not the answer that is given that I agree or disagree with. I say, at the end of the day, the individual that has jurisdiction is that judge in Probate Court. Both sides can tell you anything they want. The facts speak for themselves, and those facts will only come out in a Probate Court setting.

I remember back in the Optima days, it is almost like the rats were jumping the ship. Everybody was pointing at each other. "No, I didn't do that." "This person did that, I didn't do this." That's where it came out. True transparency, and I think that is what we deserve in the community in Manchester. I think that is what we deserve as taxpayers in our community or in our State, is full accountability and transparency and that will only come out in Probate Court.

This thing has been going on for five and a half years. It is almost like Lehman Brothers on Wall Street and Goldman Sachs, it is too big to fail. We are not there yet, we are not there yet. But, soon we will be because they have already put these things in motion. They, I have a helicopter that goes over my old house every day, two, three times a day. I talked to a doctor yesterday that's a practicing doctor at CMC who had a patient that, when she was on vacation she informed me, she didn't disclose who the patient was, this is a patient that had a stroke and died. This was last week. That patient was airlifted to Dartmouth-Hitchcock Hospital and died there. When the directors of that patient were to know, what is it called? DNR and everything else, and wanted to be with the family at the time of that person's death. And, where were they? They were up at Dartmouth, on a helicopter ride, which costs ten grand. That thing, they built a \$1,000,000 facility at the Manchester airport.

There is a lot of things that have been going on and continue to go on and have been going on for the last two to three years. This is why they are before the Charitable Trust Division, because they've pushed the limit to the point where, I say they surpassed it a couple of years ago, and to me, in the community of Manchester, Elliot Hospital and Catholic Medical Center, we heard all these stories ten years ago. Oh, it was going to fail and, you know, the hospital wouldn't be here and this and that. Both of these institutions thrived in our community. Mayor Wieczorek at the time, where did he...he went around the Boston and all over for some ailment that he had. Where did he get the solution to his medical problem? And, he had an article in the paper about this some years back, right at the Elliot Hospital, after bouncing around to these major institutions and stuff. I just say that, in the City of Manchester, both these institutions, the Elliot Hospital and Catholic Medical Center provide services; they both have prospered over the last ten years.

This affiliation is about money, it is a \$1,000,000,000 deal, and it is one of the biggest deals this State will ever see. Thank you for your time, and I hope you support the House Concurrent Resolution number 30.

Senator Betsi DeVries, D. 18: Thank you for your testimony. Do we have questions from the Committee? Seeing none, we thank you for taking the time today. Is it former Representative Kathleen Souza?

Kathleen Souza: Yes, thank you.

Senator Betsi DeVries, D. 18: That's what I thought.

Mrs. Souza: Thank you. Very much former. My name is Kathleen Souza. I did serve three terms here. I'm thinking of putting my name in again this year, I don't know, maybe. I am here in support, and I am speaking for New Hampshire Right to Life. I would just like to say that this is the first time in my lifetime that I, or anyone I know from Right to Life has been on the same side as Civil Liberties and Planned Parenthood, and it all comes down to the very basic thing, mission. It is all about mission.

Our respective organizations represent, as do CMC and Dartmouth, totally different missions. The AG has done a very exhaustive job, but no one person who has to do a multi-faceted review could spend the time on mission that a Probate Court can. These are just the refiled documents, thousands of pages; it has been going on for five years.

Right to Life representatives were brought into the mix just a year or so ago. We were invited to monthly meetings that started out at two hours. But, then there were too many questions and too much contention, so the meetings

got reduced to like, 45 minutes. They were little more than dog and pony shows. We were not given the answers, we were given what we believe was misinformation. We were assured at the outset that the missions would be comparable, well or compatible. The mission of CMC, as you heard, is first and foremost, CMC is a Catholic institution that happens to provide health care. The mission of Dartmouth Health is exclusive of religion. It uses the word exclusive when it says, "it is exclusively for educational, scientific research health endeavors." They told us this was an affiliation.

All the documents here and there say it is going to be a sole member deal. Dartmouth-Hitchcock Health is going to be the sole member. The articles of agreement of the new Dartmouth-Hitchcock Health, which is the new super-entity, makes it very clear. Its mission is to control all the subsidiaries under it, to control and govern. So, all the questions we asked at these forums that we went to with Alyson Pitman Giles with the emphasis that represented both the Bishop, protecting his interests and CMC to put this forward, and the lawyer representing both, the questions were not answered.

We were told at the very beginning this only involves Manchester. As soon as we went to the 500 pages, we saw the total statewide involvement and plus probably Vermont. All the subsidiaries of Dartmouth and all the member, new organizations, Alliance Health and all the subsidiaries of CMC, are all involved, so it wasn't just Manchester. They told us the Bishop could get out at any time. That is a direct quote. Then, the documents say it is in perpetuity. They said "Well, oh, the Manchester part, every 12 months the lease comes up and they can renegotiate." Well, they can renegotiate, but the 12 months is for certain terms. If the Bishop doesn't like it, he might as well pound sand because it goes to arbitration and it is not Catholic arbitration.

And, the curious wording of the 12-month agreement, which we were told the Bishop could get out at anytime, is coterminous, if you read the, coterminous with the bigger affiliation which is in perpetuity. So, we kept asking questions and the more questions we got, the more confused we became. And so, we asked questions about end-of-life care and I wished Senator Cilley was still here, but maybe you will pass the information on to her. The end-of-life care is huge. What are they going to do with people who, according to the ethical and religious directives, cannot be starved to death, cannot be dehydrated?

And, there's two huge dichotomies of philosophy here. One is the ethical and religious directives, which have just been restated saying that there is an obligation to provide patients with food and water, including medically assisted nutrition and hydration, for those who cannot take food orally. This obligation extends to patients in the persistive vegetative state. So, no Terri

Shiavo at CMC. Dartmouth-Hitchcock believes in other palliative care, kind they practice at Kendall Place, where they have residents, called slow medicine, where patients are taught how to die by not eating or drinking. So, these two things, along with the beginning of life issues that you have heard about, cannot co-exist. Someone has got to give at some place and this goes back to the mission.

The mission, the mission, the mission, it is all about the mission and if it is not about money, it is about mission. And...

Senator Betsi DeVries, D. 18: I see we have a question from Senator Roberge. Are you willing to accept that?

Mrs. Souza: Of course.

Senator Betsi DeVries, D. 18: Senator.

Senator Sheila Roberge, D. 9: At CMC if you have a directive that you do not want to be hydrated or given food or whatever, water, does CMC not follow that?

Mrs. Souza: They could not follow it if the purpose was for you to die. If the purpose was that it would do no good, if food and water aren't going to help you, you are going to die any way, then certainly. But, there is a different philosophy practiced by many physicians and some of these are at Dartmouth that, if a person has decided that's it they want to exit this world then they can do it by stopping drinking, that cannot be done at CMC and that is going to be a big problem. It is going to be a huge problem.

Senator Sheila Roberge, D. 9: If you are otherwise relatively healthy?

Mrs. Souza: Right, right. Or, even if you are not healthy, but you're not going to die. If the only way you are going to die is by refusing food and water, there are some people who think that is okay and this slow medicine approach that is being taught. And there's another discrepancy that is going to happen when the residents come down.

You have heard that CMC will not get involved in any way with abortion. Well, the Dartmouth residents have certain requirements and it is in black and white and there are in the documents. They do not have to assist in abortion, but they have to do referrals, and they have to be willing to provide the full range of other reproductive services, whether it is the pills or sterilizations or whatever. They have to give the information, it is right in their contracts. So, we're, we're, we're hitting heads against heads with these

missions, and the AG has got so much to go through. And, I am not saying anything against Mr. Delucia, he is really very good, but he can't get answers from these people any more than we could get answers from them, and a judge can get answers, he could put the Bishop on the stand.

I asked the Bishop why won't you come to these meetings. We were going to these meetings and we needed a legal question and the lawyer wouldn't be there. We need an ethical question, oh they knew it was coming, the ethicist wouldn't be there. Well, I said to the Bishop, why don't you go? And, he said, quote, "You can't expect me to go to these meetings, I have to be in 40 other important places." And, we think that, if it goes to Probate Court, well he and the others will just be told this is the important place and you've got to be here and you've got to answer these questions. And, with Optima, I was one of those people who did go to Court and Judge Cloutier did allow us to ask questions and did decide that the mission has to control here. People deserve to have their mission.

Senator Betsi DeVries, D. 18: Thank you for your testimony. Do we have further questions? Seeing none, we thank you very much for your testimony this morning. And, I believe I am drawing up to the last person who is signed up wishing to speak and that would be... Is it David Ross?

David Ross: Yes.

Senator Betsi DeVries, D. 18: David, come on forward, and staff you are doing okay? Did the prior Chair give you a break?

Greg Silverman: All set.

Mr. Ross: Thank you for allowing me to speak. I'm sorry to see that there is hardly anyone left here, but enough said. They will hear the tape after, I presume.

Good afternoon, my name is David Ross, I live in Hooksett. What brings me here today is just my firm biblical beliefs. And I am, as another speaker is, one of those people that writes letters to the editors and does pay attention to certain things political, especially were it intersects with religion.

And, I think that a lot of what has been said today is really in the peripheral of what is really being determined by your Committee, and that is has there been a full hearing of everything here? And, I don't believe there has been because I have attended many forums, one that Channel 23 put on, where nobody from CMC's side of this argument showed up at all. They had chairs with their names just plastered to them. But, a tape was made and

testimony and questions were taking and none of them have been answered to this day, that I can believe. This was months and months ago.

And, this is a trust, and it is my belief that everyone that puts a dime in the hat in a Catholic Church has standing in this trust. That the trust has been given to these people to properly use their donations, their bequeathments, their policies, their life and death policies that support, that first of all, built CMC and continue to support CMC. Now, should this go through in the way that it has been, which is in darkness and there, I beg to differ with Pitman Giles who has now chosen to leave, that it has not been out in the open and that these answers have not been forthcoming, and they need to see the light of day. Because what will happen, my fear is what will happen, and it has already begun in the Catholic Church for other reasons, is that the membership will continue to decline. God's church, and it is his Church, and it's his hospital, will fail because the money will dry up that they have been getting for all these years, the spiritual support through prayers, whether you believe or not, is irregardless to the point, it is that that is the trust that was placed in Catholic Medical Center. And, how it's written down in legal documents and all that that is beyond me, but I think it still flies clearly in the face of the intent of this trust that has been placed on Catholic Medical Center by their supporters.

A number of things have come up here which beg for this. First of all, obviously, again I'm another one who has never been on the same side as some of the people that have spoken here. So, I think that says volumes to that fact that this is so desperately needed, that there needs to be a hearing. Both sides of this argument want it heard. The only people that don't want it heard are the ones who are privy to the negotiations that did occur behind closed doors that are also extreme beneficiaries to this arrangement, this thing of ours. That is what the term that came to my head. They call it an affiliation and they call it this and that. The one thing neither side has denied calling it, and that is mutually beneficial, and for a Catholic organization, regardless of its type, that takes a single dime from the Catholic Church to enter into any kind of a mutually beneficial agreement with an organization that clearly defies and violates Catholic teachings on a daily basis is not proper.

And, that's that word, term came to me. Some people may wonder where this term comes from, this thing of ours; it is what the mafia used to call itself because they were the mafia. Okay? The silence from our Bishop is deafening. He will not, and these shell games which is what I would choose to call these, these payments from one company to another company in Massachusetts and then the return of money to another entity in New

Hampshire, is a shell game. It reminds me of washing money, that's all that sounds like to me.

The response that responded to the public questions, were responded to in private settings. The public was not given the responses to the public's questions. These questions still remain unanswered. The ethical directives that's a document, that is a document that has already undergone revision and will continue to after this. And, if this goes through, then they won't have any veto power, if you will, as to what is in that ethical directives document.

The fact that, to point out one of the things about Dartmouth-Hitchcock is they are a very big promoter of and supporter of fetal stem cell research, which the Catholic Church, as a matter of fact and precedent and it is in writing, is vehemently opposed to it and considers this research to be nothing less than fetal genocide. It is a fact. So, how can an entity that supports and promotes and will do this type of teaching in their teaching hospital, be benefiting in any way from any Catholic in this State is beyond me, or any Catholic in the world, frankly.

Currently right now, people talk about the new health care bill that is out there. Sorry, the health care law, it is not a bill any more. That there are establishments in that law which are diametrically opposed to establishing it as a religion right now. And, should this law, when it finally does fully take effect, will now be compelling this new entity, this new thing of ours to perform abortions. There is nothing that prevents that from happening because that is in there.

The redemptive suffering. Now, there is a term that that attorney knows exactly what it means and for him to say that it doesn't is just beyond comprehension. Everybody knows, every Catholic knows what redemptive suffering is. It is what Jesus did on the cross, and it is what we are called to do in our lives, which is what I am doing by being here myself.

I do not represent anybody but me. I am self-employed, so this costs me. My wife is another one that stayed away, see chosen to read the part in the newspapers. But, I am here because I am compelled to be so. I was born in the Catholic Church, I was raised in the Catholic Church, my children were baptized in the Catholic Church, I was married in the Catholic Church, I buried my second daughter in a Catholic ceremony. So, no, nothing about this is clear, and the people that support and are members of the Catholic Church, not just in Manchester, but statewide and nationwide and all over the world, have a right to hear these questions answered.

RP

We are still waiting for the Bishop to give us the answers as to what is he going to say to Jesus when he is asked the question, is this a good deal or a bad deal? And, it is clearly spelled out in the Bible that you cannot serve both man and money, and promoters say it is all about money. Well, I put it to them and they have yet to answer. Well, if you believe that Jesus Christ is God Almighty and all powerful, don't you think he can save this little hospital without the help of Satan's workers? No, that is showing a lack of faith and again my fear that Catholic Medical Center, as an entity, will fail because they are going against everything that they teach and everything that is written in God's word.

So, needless to say, I think the bottom line is that hearing from both sides of this issue and the level of concern about it is, should give us, I would hope, a unanimous consent by this Committee to have this referred to Probate Court, where there is further opportunity to scrutinize the answer to these questions.

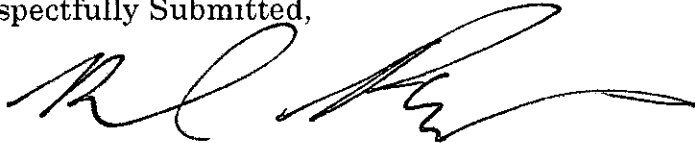
Senator Betsi DeVries, D. 18: I thank you very much for your testimony. It is very compelling. Senator Roberge did you have any questions? Seeing none, thank you for taking the time.

Mr. Ross: And, thank you for allowing me.

Senator Betsi DeVries, D. 18: I have nobody else who is signed up to speak. Were there any wishing to give testimony? Seeing none, we will close the hearing on HCR 30.

Hearing closed at 11:51 a.m.

Respectfully Submitted,



Richard M. Parsons, Senate Secretary
6/7/10

8 Attachments

ExpressOpinions

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 im-

plementation 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.

"The focus of the Oversight Committee will be the maximizing of the Girard 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



Richard Girard

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 Wiczeorek 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.

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 hoarding 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



Joe Briggs

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 health-care 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 (al-

beit free market) way that we pay for health-care 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 parti-

san 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 jockeying 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?

All we ask is a few things:
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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.

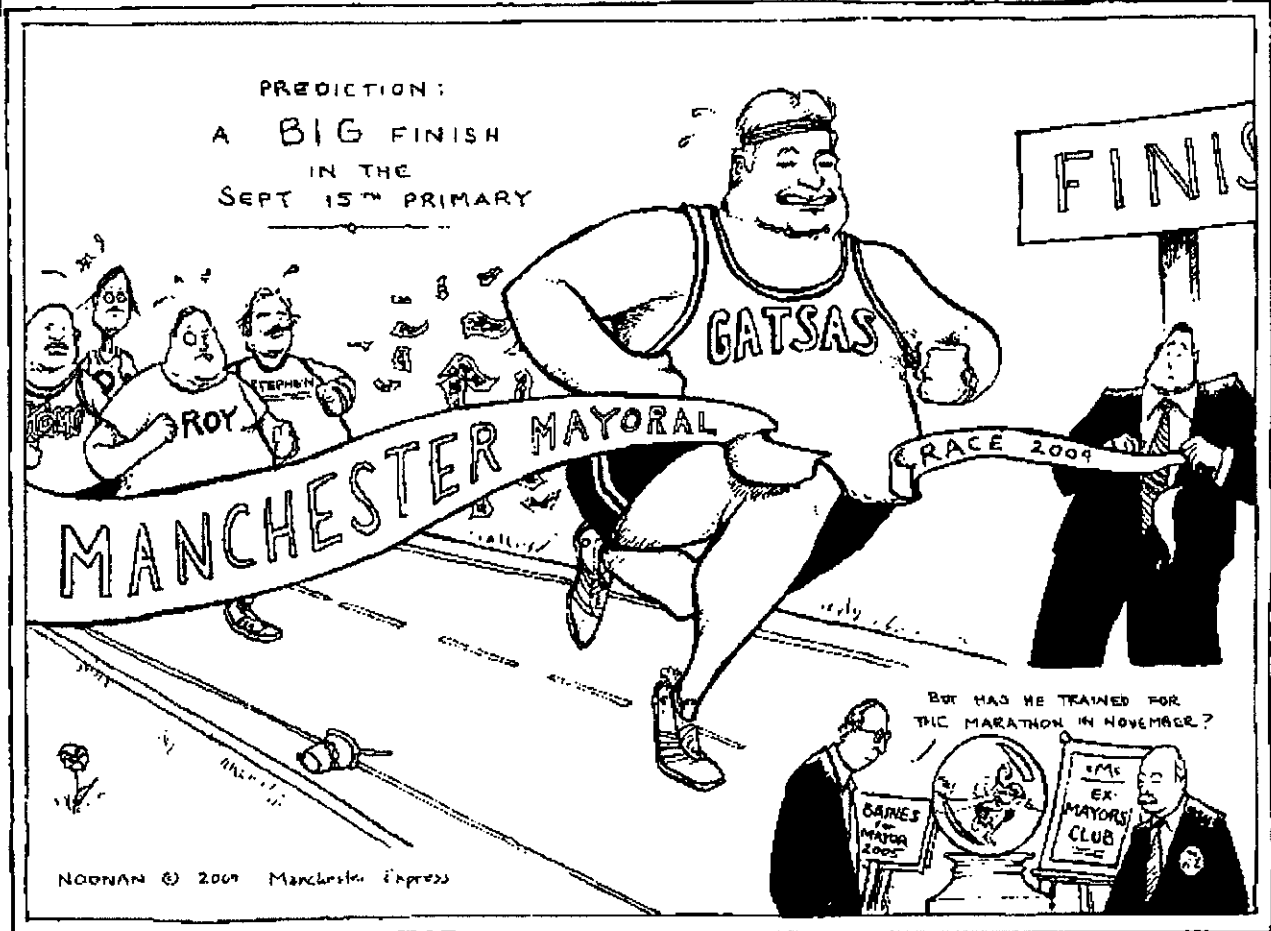
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Hospital's PR campaign deceptive, misleading

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.

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



Richard Girard

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 terminat-

ing 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 Wiecezorek 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 worked 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.*

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.

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



Jeff Eisenberg

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 immedi-

ate 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?

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



Richard Girard

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 Wiecek 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?

All we ask is a few things:
• 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.

• 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@manchestexpress.com. Questions? Call Jeff Rapsis at 625-1855, Ext. 23.

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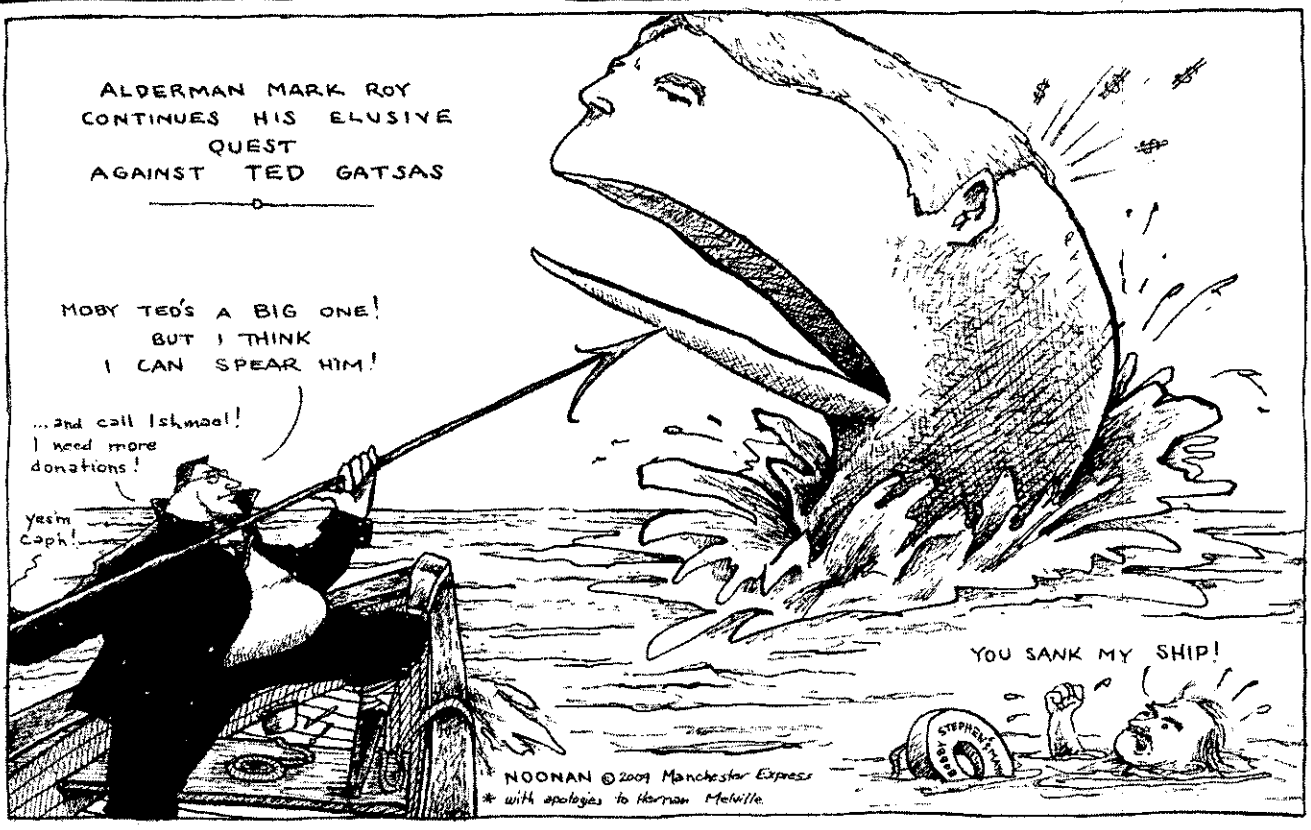
ExpressOpinions

ALDERMAN MARK ROY
CONTINUES HIS ELUSIVE
QUEST
AGAINST TED GATSAS

MOBY TED'S A BIG ONE!
BUT I THINK
I CAN SPEAR HIM!

...and call Ishmael!
I need more
donations!

Yeah
Caph!



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?

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 inde-



Richard
Girard

pendent 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 Wiecek 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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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 Agree-

ment 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



Richard Girard

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 Wiecek 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.

12

Cory Magano
Black

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.

"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 land-scaping and staring down at Old Man Winter, I'd brush up on "How to Build A



Rob Azevedo

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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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.

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.



George R. Copadis

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.

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.



Richard Girard

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 public 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 Wiecek 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.

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



Richard Komi

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.

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.

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



Richard Girard

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 Wiecek 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 commitment 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 minimum 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.*

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 in-

adequate 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.*

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.*

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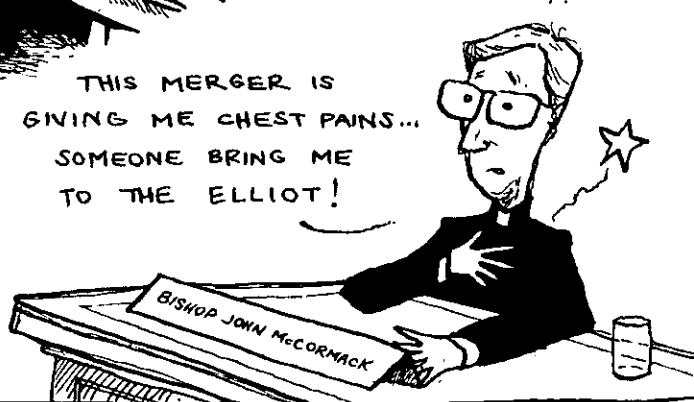
ALYSON PITMAN GILES
ASSURES THE COMMUNITY THAT CATHOLIC TRADITIONS WILL
BE UPHELD AT HER HOSPITAL.



WRONG!
THE ANSWER IS
"MERGER"
NOT
"AFFILIATION"!



THIS MERGER IS
GIVING ME CHEST PAINS...
SOMEONE BRING ME
TO THE ELLIOT!



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DEADLINE: 10P.

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@manchesters.com or via mail at The Manchester Express, 49 Hollis St., Manchester, NH 03101. Questions? Call Susan King at (603) 625-1855 ext. 28.

CORRECTION

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 RAPSI**
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—ev-



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 of-

ficials 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

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.*

CMC details remain elusive in Alyson's Wonderland

By **RICH GIRARD**
Express Columnist

The latest examples of the skulduggery 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 Wiecezorek 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 breastfeeding 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.

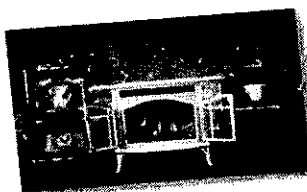
So, thank you Brady-Sullivan. Thank you, too, Mayor Guinta. Thanks for presiding over this thoroughfare for the last four years. Your tenure inspired a movement downtown that gives me good reason to cruise Elm Street daily.

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

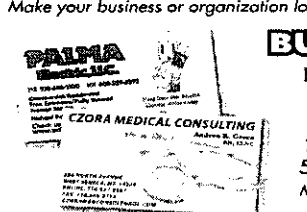
Manchester resident Rob Azevedo has written for the Boston Globe, Boston Globe Magazine, Improper Bostonian. Details, as well as various other men's magazines. He can be reached at oneman-manch@gmail.com.

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LETTERS



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 be 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.

Bogus testimony cheapens CMC public hearing

By RICH GIRARD
Express Columnist



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 Wiecezorek 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 health-care 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

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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.



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 ben-



efited 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 equiva-

lent 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 breach 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 Wiecek 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.

Senator Andie A. Mouton
Manchester, N.H.
603-289-0397

Testimony regarding HCR-30:

Madame Chair
Members of the Committee

As a former Senator I am
always proud to come back and
testify before you.

HCR-30 as amended simply
resolves that the Attorney General's
Office bring the ^{planned} affiliation/acqui-
sition between Catholic Medical
Center and Dartmouth-Hitchcock
to Probate Court. Once there, real
transparency could finally come to
fruition. While in Probate witnesses
could be placed under oath having them
testify and answer the real questions
we have been asking since we began
this fight.

As my involvement was so strong against Optima during the 1990's and 2000's, this proposal/plan has many parallel earmarks which could identify the roadblocks to avoid.

We must remember as consumer advocates ~~that~~ we must protect those who have or who may be donating to Catholic Medical Center and these people like the patients because they are the true owners of this private religious hospital.

The history of Catholic Medical Center is very rich and as my family has been involved in 1878, I am as committed as they were preserving the culture and healthcare which which is second to none.

Testimony of Richard Gustafson,
Immediate Past Chair of Elliot Health System Board
on House Concurrent Resolution 30

Senate Commerce, Labor & Consumer Protection Committee

April 27, 2010

Thank you Madam Chairman and Members of the Committee:

For the record, my name is Richard Gustafson. I am here today in my role as Immediate Past 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 proposal 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 understand that many in the community, from a variety of perspectives, share this concern and amazement. 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 the documents related to 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? 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. The Probate Court should review this transaction for the same reasons it reviewed Optima.

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. 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?

These are questions that need to be raised in the process of a thorough review by the Probate Court. Only through a transparent and open process in the

Probate Court, can the community receive the full dialogue and debate it requires on a transaction of this magnitude. Without Court review, we could stand to repeat Optima - which cost the community 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 Probate Court will provide a venue for consideration of these many issues and questions, and will ensure that this major and far-reaching transaction involving charitable assets and the delivery of health care is in the best interests of the 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 differences in mission. 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 and the community simply need more answers. We believe this Resolution urging Probate Court review is an appropriate way for the Legislative Branch to indicate its level of concern for the community, and to indicate to the Executive Branch (acting through the Attorney General's Office) that review through the court is appropriate under the circumstances. Thank you.

Testimony to Senate Committee on Commerce, Labor and Consumer Protection

My name is Hugo Poza, and I have been a donor to CMC for several years now. I chose to contribute to CMC primarily, because of its authentic Catholic identity and mission. That means I gave money to the hospital because it stood up for the Catholic philosophy of life. I certainly oppose the use of my money, in any way, to promote or carry out or help the opposite culture promulgated by Dartmouth Hitchcock (DH).

Because of my opposition, in December of 2009 I had a meeting with the CEO of CMC, Alyson Pitman-Giles and five of her staff members/consultants. I posed the question, "When CMC pays DH for the lease of 120 doctors, as is stated in the agreement, what is it that you pay?" The answer I was given was, "We pay their salaries." I said, "Yes, but you also pay an overhead fee...do you know where that overhead fee goes? What does it pay for?" I knew full well the answer to that question, because I retired as President of the Homeland Security Business for the Raytheon Company. It goes to pay, among other things, for executive staff and executive salaries throughout DH. Given that was the case, I wanted to know how CMC would guarantee me that my contribution would not be used to support executive staff at DH involved in activities opposed to the philosophy of the Catholic faith.

They could not answer my question, but Alyson Pitman-Giles promised me that she would uncover all the details of what the DH overhead covered, so that I would be assured that none of my money would be involved in anti-Catholic activities. She proposed having another meeting with the same people as soon as she had the details.

That second meeting has never happened, and no explanation has ever been given to me regarding what the overhead fee for DH would fund. This is why going to Probate Court is so important to me; so that my questions, some of which I view as critical to this affiliation or acquisition, get a chance to be fully answered; so hospital officials, as well as Church officials, become fully accountable for their actions; so that I can have peace in my soul knowing that my contributions are not used in any way to support actions and philosophies contrary to my faith.

Thank you very much.

Dr. Hugo B. Poza
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RE: Catholic Medical Center, Manchester

26 April 2010

New Hampshire Senate
107 N. Main Street
Room 302 - State House
Concord, NH 03301

Honorable members of the New Hampshire Senate:

By way of introduction, I am a canon lawyer in private practice representing individuals who oppose the affiliation/acquisition of Catholic Medical Center (CMC) by Dartmouth Hitchcock Health (DH). You may be familiar with my 8 December 2009 letter to Michael DeLucia, Director of Charitable Trusts for the New Hampshire Attorney General's office. In that letter, I identified individual's I represented. Some of them, like Dr. Hugo Poza and Andy Martel, will be present for the 27 April 2010 committee hearing on whether this matter should be referred to Probate Court. I have asked that they deliver this letter to you. Since the time of my writing to Mr. DeLucia in December 2009, others have also mandated me to represent them. They include priests as well as laity who oppose the transfer of corporate sole ownership from Catholic Health Services to DH. We support the proposal to refer the matter for a full review by Probate Court. I ask your kind consideration of the following points motivating our support of this proposal.

1. This is an issue of concern for a broad range of people with varying backgrounds and beliefs, including Catholics, Protestants, Planned Parenthood, and the ACLU. While usually in disagreement on political issues, we are united in our opposition to the proposed acquisition.
2. It has been rumored that the Bishop and the Vatican support this proposal, and have no concerns over this matter. This is not true. In a recent letter sent to Rev. Ron Tannariello in early April, Bishop McCormack admits that he has not given approval to the proposal submitted to the Attorney General for review, and that he continues to consult with experts to evaluate the proposal and its adherence to Catholic teaching and discipline. I have received three communications from Vatican officials. From those responses, it is clear that the Vatican has significant concerns.
3. The review by Vatican authorities is not bound by the same time-constraints as the Attorney General's office, and Vatican review will likely go well beyond the late May 2010 deadline for the Attorney General to rule on the matter. Also, canon law does not allow the kind of public disclosure that New Hampshire statutes allow. This places donors of the charitable trust in a compromised situation, as they are unable to obtain information that could be essential to the protection of their interests in the charitable trust. There needs to be greater transparency.
4. The 120 day obligatory review period is not sufficient for the Attorney General's office to complete its work in a thorough manner. New Hampshire statute protects the mission of the charitable trusts and the fiduciary duties to donors and founders. Essentially, this matter hinges on whether or not

the two charitable trusts will breach obligations to their identities and missions if this transaction is approved. The answer to this question involves a review of complex and nuanced information originating from both secular and ecclesiastical sources. As proven by the investigation completed on the CMC-Elliot hospital merger, the limited time given the Attorney General to rule is not sufficient for a comprehensive investigation into the issues present.

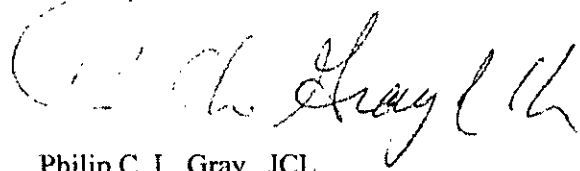
5. In recent weeks, a number of questions have arisen that directly involve the proposed transaction and use of property. For example, the January 2010 lease agreement between CMC and DH identifies real estate located at 87 McGregor St. and 88 McGregor St. in Manchester as facilities leased to CMC by DH. The first address is the physical location of Notre Dame Pavilion. The DH website lists suite 201 in Notre Dame Pavilion as one of its facilities. 88 McGregor St. is a physicians' office space built by CMC adjacent to the hospital. Donors understand that CMC built these facilities. If CMC built these properties on real estate owned by CMC, possibly using donated money to do so, why would it lease these properties from DH? What financial transactions have occurred in the past that give DH a legal claim to be a lessor of these property? question is of significant importance to donors of CMC. A Probate hearing could explore this in a manner that demands transparency to those with legal and fiduciary interest.
6. Why does the proposed affiliation require a transfer of corporate sole and reconstruction of boards that give DH control, and therefore an acquisition of CMC? Lease agreements are already in place and operative. DH physicians are already providing services to CMC. Billing is already being funneled through DH. In short, the two entities are already operating as though approval has been given. I will set aside the question of whether this is legal, ethical, or in any way a violation of obligations. But this concern illustrates that the only action left to complete the transaction is a re-configuration of the Boards and the granting of DH corporate ownership of CMC. Why is this necessary? How will this improve the level of care either facility can offer above and beyond what is taking place through agreements already in place? It appears to be a corporate takeover by DH aimed at expanding its control over a competitor that holds an entirely different mission established on an entirely different set of values.
7. CMC and DH administrations have avoided transparency and have not followed through on promises. Mr. Hugo Poza has offered one experience related to financial transparency. Relative to the Catholic mission of CMC, the President and CEO of CMC promised during a public hearing to obtain a fourth, ethical opinion of the issues impacting CMC's Catholic identity. She recognized that the Bishop of Manchester had obtained three such opinions, but would not publicize any of them. She promised to obtain a fourth opinion from a new ethicist, and to make the results open to the public. Instead, she hired one of the original three ethicists used by the Bishop and has only published an "executive summary" of his report. A probate hearing would allow full disclosure of all information related to financial and ethical dealings, and allow those with fiduciary interests to pursue answers to their unanswered questions.
8. CMC is a public juridic person under canon law. I explain this construct in my 8 December 2009 letter to Mr. DeLucia. This identity has been touted by CMC as proof that the Catholic mission and identity will be preserved. In reality, the public juridic nature of CMC raises a host of questions directly pertaining to its identity and mission as a charitable trust. Those questions remain unanswered. I have raised these issues on behalf of CMC donors, and they deserve objective and well-informed answers.

A Probate hearing would allow transparency in answering these, and many other questions and concerns that have been raised by New Hampshire citizens relative to the proposed CMC-DH acquisition.

On behalf of those I represent, I respectfully ask the New Hampshire Senate to confirm the action of the New Hampshire House of Representatives and pass a resolution referring the matter to Probate Court for full, public hearing.

With assurances of my prayers, and gratitude for your work, I remain,

Sincerely,

A handwritten signature in cursive script, appearing to read "Philip C. L. Gray". The signature is written in dark ink and is positioned above the printed name.

Philip C. L. Gray, JCL

NEW HAMPSHIRE PUBLIC AFFAIRS OFFICE

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STATEMENT OF PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
SUBMITTED BY: Virginia E. Swain, PPNNE Board member and Hanover
community member
Date: April 27, 2010

- My name is Virginia Swain. For the past 5 years I have been a board member of Planned Parenthood of Northern New England (PPNNE). I am also a Hanover community member who is proud of the prestige that Dartmouth Hitchcock's academic medical center confers on our region. As a PPNNE board member and Hanover resident I am concerned about the proposed affiliation between Dartmouth Hitchcock Health and CMC Health Care System because it will dramatically restrict the full range of medical care and advice available to the citizens of Manchester. This restriction is incompatible with Dartmouth's mission and detrimental to its reputation as one of the country's premier providers of health care services.

PPNNE and the Manchester Community Will Suffer From the Loss of Access to Reproductive Health Services.

- For over four decades, PPNNE has been providing reproductive health services in New Hampshire. The current PPNNE health center in Manchester has been serving women for over a decade.
- PPNNE provides, promotes, and protects access to reproductive health care and sexuality education so that all people can make voluntary choices about their reproductive and sexual health. PPNNE is committed to full and affordable access to comprehensive reproductive health care and education that will improve the lives of women, men, teens, and families throughout our service area.
- PPNNE has long been a community partner with Dartmouth, working to meet the reproductive health care needs of a vulnerable population. In 2008, Planned Parenthood of Northern New England's Manchester Health Center served 5,480 patients and had 8,255 visits. Of these visits approximately 60% received care at a sliding scale or at no fee based on their ability to pay. While our mission to provide services regardless of our patient's ability to pay is a large financial responsibility, it is a needed service for Manchester.
- Like PPNNE's Manchester health center Dartmouth's Clinic in Manchester is a major provider of health care to Manchester's low income residents. Although Dartmouth Hitchcock Manchester does not offer the same type of FAIR care as



PPNNE, it does provide financial assistance for health care to its qualified patients.

- Since the proposed affiliation between DHH and CMCHS outlines that Dartmouth Hitchcock Clinic Manchester will provide health care in accordance WITH the Ethical and Religious Directives of the Catholic Church, this means that charitable patients of Dartmouth Hitchcock Clinic Manchester will have to find other providers that offer charitable care for their comprehensive reproductive health needs. This creates an unbalanced responsibility in reproductive health care, especially on those reproductive health care providers like PPNNE that already carry a high responsibility with no financial return.
- According to data collected by the Manchester Department of Health in 2000, there were 5,840 low-income residents per primary care physician in the city of Manchester. Federal guidelines to serve a low income population call for a ratio of 3,000 low income residents per physician (2000 data).
- Research has demonstrated that placing too much of the burden for delivering free and reduced fee services on too few of the providers jeopardizes the system itself. (See *Community Needs Assessment Manchester, New Hampshire Service Area*. Sponsor Organizations: Catholic Medical Center, Dartmouth Hitchcock Manchester, and Elliot Health System. May 01, 2004.) Jeopardizing the reproductive health services of Manchester women will not be in Manchester's public interest.
- PPNNE is concerned that Dartmouth is diluting its mission to provide comprehensive reproductive health services to those who need it in Manchester and altering its charitable mission. Dartmouth is in effect depriving the community of a charitable benefit and placing undue pressure on limited resources available in the community.
- Without the ongoing support of Dartmouth and its services, women in Manchester will not have the same unrestricted access to care they currently enjoy.

The Integration of Catholic Medical Center and Dartmouth Hitchcock Manchester Prevents Dartmouth From Meeting The Community's Need for Complete Reproductive Health Care Services

- The affiliation agreements state that Dartmouth OB/Gyns must comply with the Catholic Church's Ethical Religious Directives (ERDs) -- with no exceptions -- in the provision of clinical care in their offices, at facilities and in the hospital. These religious directives restrict care, education, referrals and access FOR women who seek reproductive health services.
- The affiliation agreements specify that referrals will be made in a manner that is consistent with the ERDs. As a result, a woman seeking to exercise reproductive

choice will not be advised of her full options or referred for her choice of care by a Dartmouth physician under agreement with CMC.

- Please understand that “reproductive health services” refers to much more than abortion care. DH-Clinic in Manchester currently offers many reproductive health services that will violate the religious directives and therefore be disallowed. These include providing full access to:
 - *Birth control information and supplies – Directives 45, 52, and 53*
 - *Tubal ligation after cesarean child birth – Directives 45, 52, and 53*
 - *Emergency contraception even in cases of rape or sexual assault – Directives 45, 52, and 53*
 - *Informed consent and advance directives for women whose pregnancy is complicated by medical conditions that threaten the mother or fetus; such as ectopic pregnancies – Directives 45 and 48*
 - *Pregnancy testing with comprehensive options education; abortion referral – Directives 45, 46, 47, 48, 50, 51 and 54*
 - *Comprehensive STI education (this includes condom use) – Directives 45 and 52*
 - *Comprehensive HIV education (this includes condom use) – Directives 45 and 52*
 - *Prenatal testing and genetic counseling; Amniocentesis may not be available for the purpose of identifying potentially severe birth defects that could affect a woman's reproductive choices – Directives 47, 50, and 54*
 - *Infertility counseling and preparatory treatment (including a woman being treated for breast cancer may not be informed that she could have her eggs removed before treatment and saved so she may later have biological children) – Directives 31 and 32.*

Proposed Carve-Out Solutions are Disconcerting

- Dartmouth and CMC are seeking to merge the clinical and health care services of the two organizations through a regional integrated health care delivery system. Dartmouth proposes to “carve out” certain services from the integration in order to exempt them from the impact of the ethical religious directives.
- However, a special carve-out of services or relocation of office space to provide complete women’s reproductive health care operated by Dartmouth is not an adequate solution as it limits access and stigmatizes the care provided. For example, a patient under the care of a Dartmouth OB must give birth at CMC; and if she has a cesarean, SHE could not receive a simultaneous tubal ligation but would have to schedule a separate surgery. Logistically, a relocation of offices outside of Manchester wherein non-compliant care will be provided will not meet the needs of the low income and charitable population of Manchester. Furthermore, there is no firm commitment by Dartmouth to establish such a special carve-out or to otherwise compensate the community for the loss of access.

- Dartmouth predicts that 3% of the care that its 125 Dartmouth Manchester professionals used to provide will be limited or prohibited by the religious directives. Most of this burden will be born by women and teens in their reproductive years. This means during any given week Dartmouth Manchester professionals will be restricted from providing 152 hours of health care to patients because of religious directives. Such a restriction on access to women seeking care is not consistent with Dartmouth's mission of providing care when, where, and how a patient needs it.
-

- Planned Parenthood of Northern New England is concerned that despite Dartmouth Hitchcock's best intentions this proposed affiliation will deny Manchester women access to, or create unnecessary obstacles for women to access, comprehensive reproductive health care.
- HCR 30 may seem to be an irrelevant resolution not worth the Senate's consideration. However, to ignore HCR 30 is to ignore the relevance of women's healthcare in Manchester and the community benefit provided by DH-Clinic Manchester.
- If the proposed affiliation is good for the improved healthcare of Manchester then let's do what we can to ensure that this affiliation is the best it can be for all of Manchester's citizens.

PLEASE VOTE "OUGHT TO PASS" ON HCR 30

Thank you for your service to the state of New Hampshire.

Testimony of Alyson Pitman Giles, President and CEO of Catholic Medical Center
Senate Commerce Committee Hearing on HCR 30 – April 27, 2010

Thank you Senator Hassan and esteemed members of the committee for the opportunity to speak with you this morning. My name is Alyson Pitman Giles, and I am here today to testify in opposition to HCR 30.

For the past 12 years I have been proud to serve as the President and CEO of Catholic Medical Center in Manchester. In fact, I've spent almost half of my professional life, nearly 20 years, at CMC. From 1987 to 1991, I was the Vice President of Specialty Services at CMC and in 1998, after serving as President and CEO of New London Hospital, I rejoined CMC as the Executive Vice President and COO under Optima Healthcare. Following the dissolution of Optima and the demerger of CMC and Elliot Hospital, I was, as they say, the last man standing at CMC - literally. Every other Optima-era leader left CMC to join Elliot Hospital. At that time, many doubted the future viability of CMC, and thought CMC was a lost institution that had been stripped of its history, heritage and services. But I, along with hundreds of other loyal supporters and long term employees, saw the jewel that CMC was and could continue to be. So together, we stood by CMC and rededicated ourselves to rebuilding its foundation, brick by brick, as a world class institution of Catholic healthcare. We will continue to defend and fight for her every step of the way, because I, along with the employees and patients of CMC, have come to know and trust the outstanding and compassionate care that CMC stand for.

Twelve years ago, demerging from Elliot Hospital was the right decision for CMC. At the time, CMC was being carefully closed – no longer to be a Catholic acute care community hospital. Since that time, healthcare has changed dramatically, and it is essential for us to meet these changes to ensure that CMC will continue to thrive into the future. That is why I come before you today to share my thoughts with you about why the proposed affiliation with Dartmouth-Hitchcock Manchester is right for CMC, our community and our state. I also appear before you to dispel some of the myths and misinformation that have been presented concerning the proposed affiliation, to justify passage of HCR 30.

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Since publicly announcing our letter of intent to affiliate with Dartmouth-Hitchcock Manchester 12 months ago, a vocal minority has accused the proposed affiliation of being a “repeat of Optima,” ignoring the obvious and substantial differences between Optima and what has been proposed here, and failing to recognize how the proposed affiliation will benefit the healthcare of our communities and ignoring our commitment, and indeed, our obligation, as a Catholic hospital, to remain true to our historic charitable mission including abiding by the Ethical and Religious Directives for Catholic Health Care Services issued by the United States Conference of Catholic Bishops.

In February 2009, Catholic Medical Center Healthcare System (CMCHS) and Dartmouth-Hitchcock Health (DHH) announced a letter of intent to explore a formal and contractual working relationship that would allow CMCHS, the parent company of CMC (the hospital), to lease 125 plus primary and specialty providers from Dartmouth-Hitchcock Manchester, a subsidiary multi-specialty practice group of DHH. This letter of intent legally allowed our two organizations to meet and determine how a structure might be developed that would accommodate both of our institutions. It allowed us to discuss parameters and expectations about our values and ethics and how we could collaboratively approach healthcare so that our respective missions would not be altered or changed in anyway. At no time in this announcement, or in any negotiations leading up to or resulting from this announcement, have we indicated that the identity or the charitable mission of CMC would be compromised. In fact, I have publicly stated more than once that the Catholic identity of CMC is non-negotiable. We are a Catholic hospital and will remain such.

How did we get here today? Since 2002, CMC and DH Manchester have enjoyed successful collaborations on several patient-focused initiatives. In 2002, when maternity services returned to CMC, the Dartmouth-Hitchcock’s department of nurse midwifery chose to move their practice to The Mom’s Place. In 2007, we contracted with Dartmouth-Hitchcock to have them support inpatient care by providing 24/7 hospitalist care, a service CMC had previously contracted with an out-of-state organization which

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lacked the maximum coverage. In 2006, when Dartmouth-Hitchcock was looking for additional cardiology support, cardiologists and midlevel providers of the New England Heart Institute at CMC began to see patients at the Dartmouth-Hitchcock Manchester Hitchcock Way facility. Today, we provide cardiology staff and support to Dartmouth-Hitchcock Manchester five days a week. Also in 2006, CMC and DH Manchester opened a pediatric and family center when both organizations recognized that many of the uninsured or underinsured women who birthed babies at the Mom's Place had nowhere to take their infant upon discharge. And a milestone in our relationship occurred in 2007, when Dartmouth-Hitchcock's Norris Cotton Cancer Center opened in the Notre Dame Pavilion on the CMC campus, an event that expanded cancer care opportunities and access to patients and families of the greater Manchester area.

In addition to enlarging access and improving the quality of care for our communities, CMC's existing collaboration with DH Manchester provides cost savings to the healthcare system as a whole. In 2008, Dartmouth-Hitchcock Manchester's pulmonologists began an intensivist program in our intensive care unit. Prior to the arrival of the pulmonary intensivist, an average 16 cardiac surgery patients underwent a tracheostomy during each of the past five years at CMC. A tracheostomy associated with a major OR procedure, such as cardiac surgery, has the second highest Medicare diagnosis related group (or DRG) cost, at nearly \$110,000 per episode. For the past 16 months, with the Dartmouth-Hitchcock intensivists in the CMC ICU, no tracheostomies were performed for cardiac surgery patients. This one example - having the Dartmouth-Hitchcock intensivist in our ICU - saved Medicare and therefore taxpayers approximately \$1,760,000.00 in the past year alone. This is in addition to the reduced length of hospital stay for these patients, reduced complications and better patient outcomes. ICU cardiac surgery patient length of stay was reduced by 0.8 days and their overall hospital length of stay was reduced by 2.1 days. For all ICU patients, the average length of stay in its entirety, including time in the ICU and in the hospital, has decreased by 20% since the integration of the intensivist and hospitalist programs at CMC.

Through our collaborative efforts with Dartmouth-Hitchcock to date we have:

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- increased access to care for patients in our community;
- increased our ability to address the primary care needs of surrounding communities, including indigent care delivery; and
- expanded and grown specialty care services, including bringing tertiary (sub-specialty) level care from Dartmouth-Hitchcock Clinic to Manchester;

We have witnessed first-hand how our collaborative efforts have improved the coordination of care across both the outpatient and inpatient setting, and seen how both organizations have benefited from the ability to recruit and retain hard to find sub-specialists. This is indeed what the proposed affiliation is actually about: increasing access to quality care in a collaborative setting that places patient need first.

Some have said that we haven't acted in good faith throughout this process; that we've disregarded our stewardship to Catholic healthcare, or that we've operated under a cloak of secrecy. Since February 2009, we have taken every opportunity to openly engage the community, solicit input, answer questions and share the progress of the affiliation agreement and the steps that led to each development along the way. Pursuant to RSA 7:19-b, there is a clear framework as to how we must proceed in this process, and how the State must review the proposed affiliation. We have acted in good faith to uphold the standards set before us by the law. As part of my testimony, I will provide a summary of the public meetings we've held and participated in, and extensive media coverage concerning the proposed affiliation, occurring over the past 15 months.

Upon announcing that an initial agreement had been filed with the state's Attorney General Office for review in July 2009, we initiated a public effort to ensure that all interested constituents of CMC were made aware of our efforts. We launched a website, www.ahealthiertomorrow.org and posted all of the materials we had submitted to the Attorney General's Office so that the public could review and provide their comments, all of which have been made part of the public record. In the fall of 2009, our two organizations hosted three widely-publicized community town hall meetings. These town halls, two held in Manchester and one in Lebanon, were well attended and gave our communities the opportunity to listen, ask questions and provide testimony, whether in

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support of, or in opposition to, the proposed affiliation. In addition to the general public, every town hall meeting was attended by representatives from the Attorney General's office, the Diocese of Manchester, and members of CMC's board and trustees from Dartmouth-Hitchcock as they considered the proposed framework of the affiliation. Based on the community input we received through these public forums, through the myriad of other public meetings we engaged in and from web site comments, we amended the originally filed affiliation documents and resubmitted them to the Attorney General on January 21st of this year.

We take seriously our responsibility to conduct ourselves in a transparent manner worthy of the public's trust and confidence, and on behalf of CMC. My professional mission is to ensure that we are true stewards of Catholic healthcare. And as well-intentioned as our colleagues at the much larger Elliot Health System may be in expressing their concern for our Catholic identity, as they did before the House Commerce Committee, we believe that as the only hospital in Manchester that abides by the ERDs, we are in a better position to know and understand both what the ERDs prescribe and proscribe and how they should be implemented and integrated into our daily work and mission.

Some will testify before you and tell you that the Attorney General's office and the thorough and comprehensive review they are conducting pursuant to RSA 7:19-b is not sufficient and that an additional probate court review should be requested. In fact, it is the Director of Charitable Trusts, under the auspices of the Attorney General's office, not the Probate Court, who is in the best position to evaluate whether this transaction meets the standards set forth in RSA 7:19-b. The statute created by the New Hampshire Legislature specifically requires that the Director of Charitable perform this analysis – not the Probate Court. So for the past 15 months, we have acted in good faith and close coordination with the Attorney General and the Director of Charitable Trusts, and we trust his comprehensive statutory review, which has included the hiring of additional outside legal counsel and forensic accounting support, all as permitted per RSA 7:19-b. We trust in the law and trust that the mis-information and mis-truths which have been raised do not undermine the authority of the Attorney General and his ability to render an

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opinion based on the law, not the political agenda of a vocal few, and the business agenda of a much larger competitor.

In closing, let me reassure you today what we have said from the beginning: at no time will the proposed affiliation jeopardize our Catholic identity or our historic charitable mission – it will strengthen it. A few additional points that I should raise with you:

- We're grateful to have a collaborative relationship with an organization who respects and understands our Catholic heritage and our charitable mission which doesn't impose their beliefs on how we practice medicine;
- At no time will procedures or activities inconsistent with the Ethical and Religious Directives be allowed at CMC at any of its subsidiary operations or with any affiliation services;
- None of CMC's assets will be lost or transferred to any other organization as a result of this proposed affiliation;
- CMC Healthcare System (CMCHS) is the sole member and supporting organization of Catholic Medical Center (CMC), a non-profit hospital. Even after the Affiliation is implemented, CMCHS will remain as the sole member of CMC;
- CMCHS is a public juridic person of diocesan right under the canon law of the Roman Catholic Church and is responsible for ensuring that CMC operates in adherence to the Ethical and Religious Directives for Catholic Health Care Services. This means that the present and future operation of CMC is, and will be, subject to the express reserved powers of the Roman Catholic Bishop of Manchester to ensure CMC's viability as a Catholic facility;
- This type of affiliation/relationship between Catholic and secular health care facilities is not unprecedented in America. It is increasingly common, and U.S. Conference on Catholic Bishops recognizes that such partnerships can be necessary, and, if done correctly, are permissible;

Some have even questioned if the proposed affiliation is in violation of canon law.

Throughout this process, we have been advised by a nationally recognized canon lawyer and Catholic bio-ethicists, to ensure that the proposed affiliation is constructed in such a way as to not conflict with Roman Catholic Church law and teaching.

We are grateful to all those in the community who have expressed their opinions, asked their questions, and shown their concerns concerning the proposed affiliation. We have worked diligently to engage the public, provide answers and work with the Attorney

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General's office and his team of experts. We now respectfully ask that the Senate allow the Attorney General to digest the multitude of information with which he has been provided, and render his opinion based in process and law.

I thank you for your time today and I am happy to answer any questions you may have.
Thank you.



CITY OF MANCHESTER
Board of Aldermen

April 6, 2010

To the Honorable Members of the Senate Commerce Committee:

My name is Russ Ouellette and I am the Ward 11 Alderman for the City of Manchester. Thank you for allowing me to submit written testimony in opposition to HCR 30, and in support of the future of Catholic Medical Center.

As an elected official for the City of Manchester, I consider it to a part of my duty to know and understand the issues facing the neighborhoods and communities I represent. As an Alderman, I take very seriously my job of listening and meeting the many people of not only my ward but of the entire city to ensure that the citizens of Manchester are afforded excellence in education, affordable housing, quality health care and expectations of a standard living which embodies the state in which we live. As a letter carrier for the U.S. Postal Service, I walk the neighborhoods on a regular basis, and I'm regularly approached by many people who share their comments and questions about any number of issues. However, I have not heard much or any concern expressed about the proposed affiliation. What I have heard more regularly is support for the increased health care options that the affiliation will provide, and confidence expressed that the future of Catholic Medical Center will be preserved in this process.

In February 2009, representatives of Catholic Medical Center and Dartmouth-Hitchcock reached out to me and my fellow Aldermen to discuss their signing of a letter of intent proposing an affiliation between CMC and Dartmouth-Hitchcock Manchester Clinic, a multi-specialty practice group located off Wellington Road. Since this time, I, and many others, have been invited to numerous meetings with representatives of both organizations, including CMC President and CEO, Alyson Pitman Giles, to learn and understand the details of this proposed affiliation. Their process of reaching out to the community has been open and engaging. At these meetings, I've listened and learned about what this affiliation means to not only the future of CMC but to the physical health and well-being of our Manchester citizens.

Over the past 13 plus months, CMC and Dartmouth-Hitchcock have held numerous meetings and forums in the City to ensure their proposal has been properly vetted and addressed in accordance to the requirements of the state statute. I personally attended a town hall meeting held in Manchester in November 2009, where over 200 persons attended and found the process to be reassuring. At that meeting, representatives from both organizations listened to testimony from any interested person, and answered questions from attendees until there were no questions remaining. Between the enormous amount of media coverage this proposal as received, the development of a website where all documents were posted and comments accepted, to the distribution of the print affiliation documents to local libraries and senior centers, I feel very comfortable knowing that the people of Manchester have had ample opportunity to read and voice their opinion with regard to the proposed affiliation. And in the long-run, both organizations took this feedback seriously and incorporated this feedback into the final proposal documents submitted to the AG this January 2010,

As a lifelong citizen of Manchester, I remember Optima very well. And I can tell you that not only is the substance of the proposed affiliation vastly different than Optima, but that the process that CMC and Dartmouth-Hitchcock have engaged in is also vastly different. Optima was an attempt to fool everyone, to disregard the public's interests and avoid a true vetting process, all while working to systematically shut down our Catholic

hospital and eliminate needed services and programs to the residents of the West Side. As Alderman, it is my solemn responsibility to listen to both sides, those in favor and those opposed. While I respect those in my community who have expressed concern about the affiliation, I submit testimony today to this committee in opposition of HCR 30 because I believe that my constituents will be well served by the affiliation, and further, because I believe – and have seen – that CMC and Dartmouth-Hitchcock have acted reasonably, responsibly and truthfully in ensuring that any agreement that is executed is deeply rooted in the commitment to strengthen the short and long term viability of Catholic Medical Center.

I have confidence as an elected official that the state's Attorney General Office is conducting a thorough and expansive review of the proposal and that this committee would potentially be doing a disservice by pre-empting the ability of the Attorney General's Office to render his own opinion first, and politicizing what is a complicated and thorough legal process.

I respectfully ask the members of the Senate Commerce Committee to vote against passage of HCR 30.

Submitted by

A handwritten signature in black ink, appearing to read 'Russ Ouellette', written over a horizontal line.

Alderman Russ Ouellette
Ward 11
City of Manchester

Speakers

Testimony



**Steven A. Paris, MD - Testimony in Opposition to HCR 30,
urging the Attorney General to fully investigate the proposed transaction
between CMC Healthcare System and Dartmouth-Hitchcock Health
April 27, 2010**

Good morning, Madam Chairman and members of the Committee. My name is Dr. Steven Paris. I am a pediatrician and the Medical Director of Dartmouth-Hitchcock Manchester, which is part of the Dartmouth-Hitchcock Clinic, a charitable multi-specialty physician group practice with practices throughout New Hampshire. Dartmouth-Hitchcock Manchester has been a provider of primary and specialty care services in the greater Manchester community for over 25 years. With practice locations in Manchester and Bedford, we currently have over 175 physicians and associate providers and see more than 100,000 patients each year. I am here to speak in opposition of HCR 30 and to address issues that may be raised here today about the proposed affiliation between Dartmouth-Hitchcock Manchester and Catholic Medical Center.

First, let me address this resolution. Dartmouth-Hitchcock opposes this resolution urging the Attorney General to bring our proposed affiliation to the Probate Court. We believe it is unnecessary and preemptive. It politicizes a well-established and proven regulatory process. RSA 7:19-b has been law since 1997. That law requires the director of charitable trusts, acting on behalf of the Attorney General's office, to thoroughly review the transaction to determine it is *"in the best interest of the health care charitable trust and the community which it serves."*

Both Dartmouth-Hitchcock and Catholic Medical Center have complied fully with this law, including hosting public forums in Manchester and Lebanon, and numerous one-on-one and group meetings with community stakeholders. Additionally we launched and promoted a website, AHealthierTomorrow.org in which we posted affiliation documents that were submitted to the Attorney General's office, providing an opportunity for the public to review and provide their comments. Based on the community input that we received during this period, we amended and resubmitted the originally filed affiliation documents.

In an attempt to go above and beyond the RSA recommendations, both Dartmouth-Hitchcock and Catholic Medical Center have responded to any request we have received by an interested party and have continued to fully cooperate with the state Attorney Generals' office in conducting ourselves in an open and transparent manner. The majority of materials related to this transaction that have been filed with the Attorney General have been simultaneously posted to the website, AHealthierTomorrow.org. Additionally, these materials were prepared, photocopied, and placed in public forums such as the libraries and senior centers, and are made available upon request.

It is also evident to see the depth and thoroughness of the Attorney General's office review of this transaction. In addition to attending all community forums, the Attorney General's office has held numerous meetings with representatives and legal counsel from both Dartmouth-Hitchcock and Catholic Medical Center, on a variety of issues related to reviewing legal statutes and standards. Additionally, they have listened to and investigated all public comments and

have asked our respective organizations for responses to make sure we are addressing all issues brought forth by the public. We have also funded the Attorney General's engagement of outside legal counsel and a forensic accountant to assist the Attorney General in conducting an in-depth review.

We are looking forward to the Attorney General's decision on our compliance with the law, which is forthcoming by May 21st. If the Attorney General concludes that the proposed affiliation results in a deviation of the parties' charitable missions, he may submit that issue to the Probate Court for further ruling. We hope that the Legislature trusts the review process that it created. You should be confident that the Attorney General has fully implemented the spirit and letter of the law and has represented the public's interest fully and appropriately. We believe that passage of HCR 30 would preempt and prospectively disregard the Attorney General's decision of our proposed affiliation.

Next, I'd like to tell you what the affiliation is and is not:

- **It is not a merger.** Both Dartmouth-Hitchcock Manchester and Catholic Medical Center will maintain our respective identities. Dartmouth-Hitchcock Manchester will still be a multi-specialty group practice associated with an academic medical center. Catholic Medical Center will still be a Catholic hospital. While our individual missions and histories will be respected, we'll be able to work together more closely as an integrated health system with the common goal of advancing the health of people in New Hampshire. We already have a successful history of collaboration over the past several years related to efficient healthcare patient services and programs and look forward to continue and grow on that relationship.
- **It is not Optima.** The failed Optima arrangement was a merger of two hospitals, in which services were consolidated, some services were eliminated and Catholic Medical Center's mission as a Catholic acute care hospital was jeopardized. In our proposed affiliation, services will be enhanced through a closer collaboration between a physician group and hospital. New options for specialty care, such as highly specialized oncology care through Dartmouth-Hitchcock's Norris Cotton Cancer Center, will now be available in Manchester.
- **It is not a new concept.** We are not the first secular and religious entities to try this type of collaboration. There are many examples of successful affiliations across the country that have passed muster from both a secular and religious perspective.
- **It is not going to change our values.** The affiliation includes a professional services agreement in which CMC leases most of the professional services of Dartmouth-Hitchcock Manchester providers. Within that leasing arrangement, our providers will follow the Ethical & Religious Directives of the Catholic Church. Alyson Pitman-Giles will speak to this from CMC's perspective. But as Medical Director for Dartmouth-Hitchcock Manchester, I can assure you that those directives are not inconsistent with the way we provide care now. Those directives call for patient-centered, compassionate care. None of my 175 providers have any issue with this approach. It's the way we have always practiced medicine in the greater Manchester area.
- **It is not going to limit reproductive services in Manchester or Lebanon.** First, you need to know that Dartmouth-Hitchcock Manchester does not perform abortions. It

was a decision made over 25 years ago when the group was formed. That will not change. Dartmouth-Hitchcock physicians in Manchester provide other reproductive services, such as contraceptive services, tubal ligations and vasectomies, genetic testing and counseling and infertility treatments. We will continue to provide those services. How? The reproductive services I just mentioned are not part of the leasing arrangement; therefore they will continue to be available from Dartmouth-Hitchcock in our capacity as an independent physician practice. Services in Lebanon are not included in the leasing arrangement.

I know that many Senators have been approached by advocates who are raising concerns about the availability of these services. Those same concerns were raised in public forums and considered by our Board of Trustees. Those concerns were also raised in the Attorney General's review process. We've provided forthright answers and structured the affiliation agreement to address the concerns. I don't believe that Probate Court review would provide any further clarification but certainly would result in additional costs and delay.

It is also important to note that Dartmouth-Hitchcock Manchester is the largest outpatient provider of women's health services in the greater Manchester area, and we are and will continue to expand our women's health services. In addition to obstetrics and gynecology services, our connection to an academic health system has provided us with subspecialists in the areas of urogynecology, gynecologic oncology, maternal fetal medicine, reproductive endocrinology, and genetic counseling right here in Manchester. We are fully committed to the entire population that we serve, and particularly to women, who should feel confident that this affiliation will not diminish our ability to care for their needs.

Lastly, I'd like to say a few words about why we need to develop this type of structure and how will health care reform affect our future. First, I'm often asked, why do we need to develop a formal affiliation relationship? Why can't we continue to work with Catholic Medical Center without a formal structure? The reason is that healthcare regulation requires a certain infrastructure to occur between hospitals and physicians in order to do business and provide higher quality care in the most cost effective manner.

Working with a Catholic hospital, we have created that infrastructure that respects Catholic healthcare and also allows us to continue to provide high quality primary, specialty and tertiary level care. This relationship will only strengthen healthcare in our community, and provide greater access to care for those in need.

There is no doubt that reforming healthcare and launching Accountable Care Organizations will require integrated health systems in communities. I know there has been much discussion in this Committee about bending the cost curve on rising hospital costs. In order to do that, hospitals need to have committed physicians who are focused on providing care that is highly coordinated, efficient and evidence-based. There is a reason why President Obama frequently highlights multi-specialty physician groups such as the Mayo Clinic and Geisinger in Pennsylvania. It is because those types of group practices are in the best position to change the delivery of health care. Those groups are affiliated with hospitals. Dartmouth-Hitchcock Clinic is

exactly that type of group. Dartmouth-Hitchcock has proven, through participation in a national CMS Medicare Demonstration Project, that we provide coordinated, measurable, high quality care with total costs per Medicare patient that are lower than the total costs for Medicare patients treated by other New Hampshire providers. Our affiliation with Catholic Medical Center will bring a level of integration that can have a meaningful impact on availability and delivery of care in greater Manchester.

I've provided you with a lot of information about our proposed affiliation. In the last year and half, we have provided this -- and much, much more -- to the Attorney General's Office in conjunction with the director of charitable trust and the division of consumer protection and antitrust. Our attorneys have even commented that they have never seen a more comprehensive review process for any other arrangement since RSA 7:19-b was enacted. Additionally, we have reviewed over 1.2 million documents and submitted hundreds of thousands of them for review by the Federal Trade Commission, including multiple meetings and depositions. This process has been much more thorough and comprehensive than any probate court proceeding possible, as the Probate Court's review must be limited to the mission of the charitable trust, and whether the trustees of the charitable trust are honoring that mission. RSA 7:19-b does not replace these powers of the Attorney General, but instead supplements and broadens them. With this testimony, I am also including a statement prepared by our legal counsel that highlights the substantially broader review process provided under RSA 7:19-b as opposed to a Probate Court process.

With this in mind, is there a need for HCR 30? I don't believe there is. On behalf of Dartmouth-Hitchcock, I urge you to recommend this resolution as "inexpedient to legislate."

Thank you. I would be happy to answer any questions you might have.

Respectfully Submitted:



Steven A. Paris, MD
Medical Director
Dartmouth-Hitchcock Manchester

April 27, 2010

**STATEMENT REGARDING PROBATE COURT AND CHANGE OF CONTROL
(RSA 7:19-b) PROCESS FOR HCR 30 TESTIMONY**

**(Submitted on April 27, 2010 in conjunction with the testimony of Dr. Steven Paris
and prepared by legal counsel representing both Dartmouth-Hitchcock and
Catholic Medical Center)**

Enacted in the aftermath of, and as a reaction to, the failed Optima Health merger, RSA 7:19-b provides the New Hampshire Director of Charitable Trusts with broader review powers over a health care charitable trust "change of control" transaction than would otherwise be available through a petition to the Probate Court. Under New Hampshire law, a non-profit hospital or health care provider is a "charitable trust."

Probate Court Review:

Under statutory and common law, the Attorney General has standing to petition the Probate Court under the following limited circumstances:

- (a) An action in *cy pres* if the trustees of the charitable trust seek to apply the property of the trust to a purpose other than its stated mission because the mission has become impossible, impracticable or illegal. Such an action would include proposed terminations of a charitable trust;
- (b) An action to review a proposed *deviation* from the charitable trust's mission in a particular instance (as opposed to permanently under a *cy pres* petition); and
- (c) A writ of *quo warranto*, which the Attorney General may bring to prevent the unlawful use, abuse or usurpation of corporate powers by the trustees of a charitable trust.

In each of the above actions, the Probate Court's review must be limited to the mission of the charitable trust, and whether the trustees of the charitable trust are honoring that mission or identifying appropriate circumstances under which the charitable assets can be used for a different purpose. RSA 7:19-b does not replace these powers of the Attorney General, but instead supplements and broadens them.

Director of Charitable Trust Review: RSA 7:19-b.

Enacted in 1997, RSA 7:19-b requires the trustees of health care charitable trusts proposing a "change of control" transaction to seek prior approval from the Director of Charitable Trusts of the Attorney General's Office. The trusts must certify that the following seven standards in RSA 7:19-b(II) have been met, and the Director is then obligated to determine the trusts' compliance with those standards:

(a) The proposed transaction is permitted by all applicable laws, including common law;

(b) Due diligence has been exercised in selecting the transaction party, and expert assistance and advice has been engaged to negotiate the terms of the transaction and determine that it is in the best interests of the charitable trust and the community which it serves;

(c) Any conflict of interest or pecuniary benefit transaction has been disclosed and has not affected the decision to engage in the transaction;

(d) Any proceeds involved in the transaction are at fair value;

(e) The assets of the charitable trust and any proceeds will continue to be devoted to the charitable mission of the trust and the community which it serves;

(f) If the other transaction party is not a New Hampshire charitable trust, control of the proceeds remains in-state and independent of the out-of-state party; and

(g) Reasonable notice of the terms of the transaction has been provided to the community served by the charitable trust and the community members have been given an opportunity to inform the deliberations of the governing board of the charitable trust.

Many of the RSA 7:19-b standards, such as (a), part of (b), (c), (f) and (g), extend beyond the scope of a Probate Court proceeding while the remaining elements are all of the essential ingredients of a Probate Court proceeding. Therefore, the NH Legislature has both empowered and obligated the office of the Director of Charitable Trusts, which has considerable experience and expertise in these matters, to conduct a much broader and more thorough review than would otherwise be required or permitted through the Probate Court process.

Because the Attorney General, and not the general public, has standing to commence a Probate Court action, RSA 7:19-b still requires the necessary analysis under common law and explicitly retains the Attorney General's ability to bring an action in Probate Court. At the same time, however, RSA 7:19-b maintains the long-standing common law principle that the Attorney General, acting through the Director of Charitable Trust, is most capable of analyzing a proposed change of control transaction and ensuring that the charitable mission is being honored and furthered by the parties. Therefore, the NH Legislature purposefully has not created a duplicative review process, which also would be more narrow given the limited jurisdiction of the Probate Court, and more costly to both the State and the charitable trusts seeking to better serve their communities.

**REPORT REGARDING THE PROPOSED AFFILIATION OF
CMC HEALTHCARE SYSTEM
CATHOLIC MEDICAL CENTER
ALLIANCE HEALTH SERVICES
AND
DARTMOUTH -HITCHCOCK HEALTH AND
THE DARTMOUTH HITCHCOCK CLINIC - MANCHESTER**

Commissioned by CMC Healthcare System

And Presented at the Public Hearing on the Proposed Affiliation

November 16, 2009

Revised in part December 8, 2009

By:

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I. INTRODUCTION

I have been asked by Catholic Medical Center (“CMC”) to comment on the proposed affiliation (the “Affiliation”) between CMC and the Dartmouth-Hitchcock Clinic in Manchester (“DHC-Manchester”), as well as the associated agreements between CMC Healthcare System (“CMCHS”) and Dartmouth-Hitchcock Health (“DHH”), the supporting organizations for each entity, and other related contracts, which are intended to facilitate and effectuate the Affiliation. I am providing these comments in light of my personal experience in the New Hampshire Attorney General’s Office as a member of the team of attorneys who, working with and under the direction of Attorney General Philip McLaughlin, investigated and released a report on the 1994 merger of Catholic Medical Center and Elliot Hospital into the Optima Healthcare system and as the principal attorney representing the State in the unwinding of that transaction.¹

A. ISSUES DISCUSSED

In particular, I have been asked to comment on whether, and to what extent, the Affiliation has taken into account the issues raised in the Attorney General’s Report on Optima Health (the “Report”). I have identified the following issues of relevance to this inquiry:

- a) Whether the substance and details of the Affiliation have been accurately disclosed to the communities served by CMC and DHC-Manchester;
- b) Whether the Affiliation will preserve or alter the charitable missions of either or both CMC and DHC-Manchester;

¹ Under the terms of my engagement, I am to provide to CMC an independent review of the Affiliation. I required and have been given complete autonomy in structuring and conducting my Review, have been granted access to any person and all documentation which I have requested to inspect. While CMC and its counsel have been permitted to provide comments on my Report and responses to my conclusions, neither CMC nor its counsel has been permitted to alter the text of this Report or the substance of my conclusions.

- c) Whether the Affiliation Agreement contains sufficient safeguards to prevent the alterations in function and mission of CMC or DHC-Manchester that occurred in connection with the Optima transaction following the consummation of that transaction.²

These questions, of course, reflect a larger set of issues that inevitably affect any major transaction involving any change in control of CMC, that is: (i) whether the Affiliation will result in any of the profoundly negative consequences of the Optima transaction on the continuing existence and functioning of CMC as a Roman Catholic hospital; (ii) whether the transaction may result in an impermissible compromise or violation of Catholic doctrine or the principles of Catholic health care³, particularly with respect to matters involving Catholic teachings on the

² My comments on these issues, while informed by relevant New Hampshire statutes and the common law of charitable trusts, are not intended and should not be read as a comprehensive opinion on the issues addressed by RSA 7-19-b ("Standards for Acquisition Transactions Involving Health Care Charitable Trusts and Review by Director of Charitable Trusts.") or other laws administered by the Director of Charitable Trusts. As you know, RSA 7-19-b requires review by the Director of Charitable Trusts of proposed transactions involving changes of control or transfer of more than 25% of the assets of a certain charitable trusts organized to provide health care services. The statute requires the Director to examine, among other questions, whether:

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 charitable trust

RSA 7:19-b: II, (g). The Director is also generally empowered under RSA Ch. 7 and RSA 292 to examine whether a proposed transaction involving any charitable trust is likely to result in a change in the charitable mission of the organization which must be approved by the Probate Court under the common law doctrines of *cy pres* and *deviation* (this was the power exercised by the Attorney General's Office in his examination of the Optima transaction).

Rather, my review and comments are directed at examining the Affiliation in comparison to the numerous failures and defects which afflicted the Optima experience, and should not be read as explicit advice to, or a comment on, the determinations to be made under law by the Director.

³ These principles are primarily set out in the "Ethical and Religious Directives of the Catholic Health Facilities (the "Ethical Directives" or the "ERDs").

sanctity of life; or (iii) whether the Affiliation will result in a limitation by Catholic doctrine on the medical procedures, options and advice currently available at DHC-Manchester.⁴

B. CONDUCT OF REVIEW

In preparing these comments I have reviewed the following materials:

- i. The Attorney General's Report on Optima Health (March 10, 1998), and all relevant exhibits and appendices;
- ii. The Change of Control Notice, dated July 22, 2009, jointly submitted by CMCHS and DHH to the Director of Charitable Trusts;
- iii. The Affiliation Agreement between CMCHS and DHH, with all Exhibits and Appendices;
- iv. The Bylaws of Dartmouth Hitchcock Health;
- v. The current and proposed Articles of Agreement and Bylaws of CMCHS, Alliance Health Services ("AHS")⁵ and CMC;
- vi. Consolidated Financial Reports of CMCHS for fiscal years ending June 30, 2007 and 2008 (as submitted to the Director of Charitable Trusts);
- vii. Draft Financial Report of CMCHS for fiscal year ending June 30, 2009;
- viii. Draft Financial Reports of CMC and subsidiaries for fiscal year ending June 30, 2009;
- ix. Moral and ethical analyses of the transaction commissioned by the Diocese;

*

⁴ As will be discussed in greater detail below, the latter two questions include, but are not limited to, the highly charged issue of abortion.

⁵ AHS, a subsidiary of CMCHS, is a service organization which, among other things, will serve as the vehicle under which CMCHS will lease space from and contract for professional services from Dartmouth-Hitchcock Clinic ("DHC") for the Manchester-based facilities at DHC-Manchester.

I have also met with or interviewed the following individuals:

- i. Alyson Pitman Giles, FACHE, CEO - Catholic Medical Center;
- ii. Kevin Kilday, CFO – Catholic Medical Center;
- iii. Peter J. Cataldo, Ph.D., Ethicist for the Diocese;
- iv. Counsel for both the CMC-related and the Dartmouth-Hitchcock related entities.

*

The parties have responded to my questions and inquiries, both in written form and verbally, directly or through counsel.

C. SUMMARY OF CONCLUSIONS

As a result of my inquiry, it is my view that (i) the Affiliation generally avoids the acts, omissions, mistakes and inaccurate public statements which were cited by the Attorney General in his Report on Optima Health; (ii) in contrast to the Optima experience, the Parties to the Affiliation have made a concerted effort to accurately describe the substance and details of the proposed transaction and the resulting relationships among the Parties; (iii) the Parties have made extensive efforts to address the religious and ethical issues raised by the Affiliation; (iv) the Affiliation does not contemplate any material change in the charitable missions of either CMC or DHC-Manchester or their respective holding companies; and (v) the Affiliation Agreement, read as a whole, contains significant substantive and procedural safeguards against a subsequent change in the charitable mission and Catholic identity of CMC; and (vi) the Affiliation Agreement, read as a whole does not impose material restrictions on any procedure, medical option or advice currently available at DHC-Manchester.

II. THE OPTIMA EXPERIENCE

It is impossible to overstate the shadow cast on the Affiliation -- indeed any transaction involving any aspect of control over the assets and/or charitable mission of CMC -- by the Optima Healthcare debacle of a decade ago.

As you know, the Optima transaction involved a full merger of CMC and its supporting organization and subsidiaries with Elliot Hospital and its supporting organization. It was supported by government and business interests, and its critics were largely marginalized in public discussions. However, this support was predicated on numerous public statements by the leading proponents of the merger -- including, in particular, the CEOs of both hospitals -- that fudged the issue of whether and to what extent the Parties were contemplating consolidation of services and the removal of all acute care services from CMC. In fact, it is safe to say that much of the public support for the merger was based on the *impression* left from public statements the hospital CEOs⁶ made that the two hospitals would both continue to offer significant acute care services in much the same way as they had historically done. Within months after the completion of the merger this *impression* was shattered by Optima's announcement that it intended to move all of CMC's acute care services, not insignificantly including the New England Heart Institute, to the Elliot campus and that facilities at Elliot would be vastly expanded to accommodate those services.

In addition, the merger's proponents insisted repeatedly that the merger would conform easily with Catholic doctrine. There were many problems with this statement. First, the exclusive focus on abortion as the only significant "Catholic" issue affecting the merger reflected a profound misunderstanding -- it would not be unfair to call it ignorance -- of the breadth of Catholic doctrine in the healthcare arena, and the scope of issues and procedures, including end

⁶ In particular, a joint presentation by the CEO's to the Mayor and Aldermen on September 7, 1993.

of life care, issues relating to conception (such as artificial insemination), the whole matter of contraception, including the kinds and manner of family planning advice and referrals that were (and are) morally permissible for Catholic healthcare providers to give to patients.

The other – rather large – problem with the Parties’ pre-merger statements regarding the congruence of practices at CMC and Elliot was that they simply weren’t true. Shortly after the merger, news leaked to the public that pregnancy terminations impermissible under Catholic principles had taken place routinely, though not frequently, at Elliot Hospital. In addition, Optima promulgated a clarification of its abortion policy which was so vague and imprecise as to provide no comfort at all to either pro-life or pro-choice advocates, and was roundly criticized by members of its own OB/Gyn staff.

It was at approximately this time that the Attorney General began his investigation of the merger and Optima’s post-merger conduct. At the end of a months’ long process he issued a Report criticizing the merger’s proponents for their lack of candor prior the merger. He also found that by stripping the Hospitals’ Boards of Trustees of independent power and creating mirror boards for the two Hospitals, Optima had obliterated the independent status of both Elliot and CMC as public charities. Finally, the Attorney General determined that the decision to remove all acute care services from CMC had eviscerated CMC’s capacity to fulfill its charitable mission as a Catholic acute care hospital; and that the imposition by Optima of Catholic principles of healthcare regarding abortion and other sensitive procedures at Elliot compromised that hospital’s mission. The Report concluded that such drastic and wholesale changes in the charitable missions of both hospitals should have been submitted to the Probate Court for examination under the doctrines of *cy pres* and *deviation*.⁷ Faced with that conclusion, under the

⁷ As you are aware, *cy pres* and *deviation* are common law doctrines which apply respectively to the termination or a change in the mission of a charitable trust. Under each doctrine, the Probate Court is charged with determining that

oversight of the Attorney General's Office, Special Boards comprised of community leaders were established to evaluate the historic charitable mission of each hospital and then determine what steps needed to be taken to amend the merger in a manner consistent with those missions or to dissolve the merger. Faced ultimately with the very real prospect that they might not be able to make the showings in Probate Court necessary for approval of a change of charitable mission for either CMC or Elliot, the Trustees of Optima and the Special Boards of the Hospitals voted – reluctantly but, in my view, appropriately -- to dissolve the merger and return the Hospitals to their independent pre-merger state.

In retrospect, the Optima experience could be characterized as many things: an example of greed and corporate arrogance; an object lesson in the need to accurately disclose to the public all aspects of a proposed transaction involving charitable trusts; and the need to fully understand and fully prepare for all foreseeable complications that may arise as a result of a consolidating transaction. It was also, inescapably, a fierce education in the moral and ethical issues raised by collaboration between Catholic and secular health care institutions, and a powerful reminder of how important the institution of CMC is to its served community and to the City of Manchester as a whole. The architects of the Optima merger failed to appreciate or address any of these issues, either in the run up to the merger or after the merger had been completed, and the merger failed as a result.

The simple fact is that charitable trusts are very different from ordinary business corporations. They exist, not as legal entities holding generalized powers to do business, but as instruments of their creator's or donors' will. As such, they operate within a much narrower

the charitable assets in question are used for a purpose as nearly close to the original mission of the charity as possible.

scope than ordinary business corporations, and their assets may not be used for purposes other than or inconsistent with their charitable missions.

In the Optima matter – as well as in the present Affiliation – this distinction was and is further complicated by the significant moral and ethical issues posed by Catholic doctrine on the provision of medical care. Under Canon Law, CMCHS, the sole corporate member of CMC, is a public juridic person of diocesan right. Public juridic persons are “aggregates of persons (*universitates personarum*) or of things (*universitates rerum*) which are constituted by competent ecclesiastical authority so that, within the purposes set out for them, they fulfill in the name of the Church, according to the norm of the precepts of the law, the proper function entrusted to them in view of the public good.” This definition obviously overlaps to some extent with the common law concept of charitable trust. But it goes further by establishing that the actions of a juridic person are taken “in the name of the Church” and must be carried out “according to the norm of the precepts of the law.” Code of Canon Law, Book I, Title VI, Chapter II, Canon 116. In other words, CMC, through its sole member, is morally bound to provide its services in strict accordance with the law and doctrines of the Catholic Church in whose name it provides these services.⁸

This is not a small thing. Indeed, within the Catholic faith tradition and under the ecclesiastical law of the Roman Catholic Church, it is a profound moral and legal obligation. CMC is morally bound to act in all things as a Catholic institution and is, in consequence, proscribed from acting in a manner contrary to Catholic principles and doctrine. These

⁸ “A juridic person is perpetual by its nature; nevertheless, it is extinguished if it is legitimately suppressed by competent authority or has ceased to act for a hundred years.” Canon 120 §1.

principles are not subject to compromise. This inescapable *fact* was never addressed in anything like an adequate manner by the architects and managers of Optima.⁹

In this context it should be noted that the Optima debacle also demonstrated, in my view, a failure of oversight by the Diocese which resulted in large part from the poor drafting of the Optima documents by the Parties to that transaction. Prior to the Optima merger, CMC's organizational documents failed to provide the Diocese, in the person of the Bishop¹⁰, with any meaningful role in the governance of the organization or in decisions regarding the disposition of its assets or restructuring of its charitable and juridic missions.

The Optima transactional documents also failed to include any meaningful role for the Bishop.¹¹ Accordingly, there is scant record.

There is, however, no indication in the materials compiled by the Attorney General in his Report, or from any other source, that the Diocese was able to assert direct pastoral authority to control the merger or the transfer of assets from CMC. The Diocese did convene a meeting with the CEO's of both Hospitals, which was attended by a consultant from the Catholic Health Association (then the Catholic Hospital Association) to *discuss* the role of the ERDs in the

⁹ It has been striking to me – as a lawyer – when reviewing the Optima merger agreement, how much the documents read as a generic corporate merger, with no genuine attention being paid to the ethical issues which *must* be central to any large-scale cooperative agreement between Catholic and secular healthcare providers.

¹⁰ In general, and particularly in connection with the Affiliation Documents discussed below, when referring to the Bishop, I will be referring to the institutional Office of the Bishop as chief prelate of the Diocese and not to any specific person. This is an important distinction because, as discussed more fully below, the reserved powers remain operative *in perpetuity* after the execution of the Agreement. Therefore, any reference to the Bishop must be understood as institutional and not limited to the present or any future holder of the office.

¹¹ Under canon law, CMC is a public juridic person "*of diocesan right*." This means that CMC derives its existence as a Catholic hospital from a charter granted by the Diocese and is, therefore, subject to the authority and protection of the Diocese. It follows logically that the Diocese is obligated to exercise that authority and provide that protection as necessary to preserve the assets and mission of CMC and its status as a juridic person under Canon Law. Canon Law recognizes this obligation with respect to transfer of substantial assets from one juridic person to another, Can. 122, and the dissolution of a juridic person. Can. 123. However, it provides no meaningful guidance in a situation --such as Optima – where the juridic person is being subsumed by a secular entity.

merger. It was at that meeting that the CEO of Elliot apparently informed the Diocesan Representative and others that no abortions were performed at Elliot for reasons impermissible under the ERDs. This assurance was, of course, untrue.

It is critical to note that prudent counsel would certainly have advised the Bishop that intervention in the Optima merger without clear authority to do so under civil or Canon Law could easily lead to litigation with a genuine risk of Diocesan liability. In essence, the Diocese found itself with few viable alternatives for intervention in the merger, even as it became clear that the merger was becoming unglued. Moreover, by failing to include a meaningful role for the Bishop with respect to CMC's Catholic identity and mission, the Optima transactional documents – and the organizational documents of the restructured entities after the merger -- effectively sidelined the Bishop from a debate in which by rights he should have been a major participant.

III. THE PROPOSED AFFILIATION

It is within this context that the proposed Affiliation among DHC-Manchester, CMC, DHH and CMCHS takes place. It is not surprising, therefore, that the public and relevant regulators – including, in particular, the Director of Charitable Trusts — would approach the Affiliation with some caution, and with a determination that the mistakes of the Optima matter not be repeated in the current transaction. For that reason, my analysis of the Affiliation – although neither the last nor most authoritative voice in the matter – has been directed at both substance and legal structure of the Affiliation, as well as the proposed operation of the affiliated entities precisely in light of the criticisms of the Optima experience that I have voiced above.

While Optima remains a powerful cautionary example for which this review should account, it would also be surprising if the Parties to this Affiliation had not learned from that example. Accordingly, one would expect the substance of and documentation for the Affiliation to reflect efforts by all Parties, -- by which I mean the healthcare organizations and the Diocese - - to address and seek ways to avoid the myriad issues that brought down Optima Healthcare. Accordingly, I am gratified to be able to observe that the proposed Affiliation differs in crucial ways from the Optima transaction and that the Affiliation documentation which I have reviewed appears to proactively address the complex issues surrounding cooperation between Catholic and secular healthcare entities rather than, as in Optima, to ineffectually pretend that those issues do not exist.

A. PUBLIC INFORMATION

Pursuant to RSA 7:19-b, II(g), the Parties are in the process of holding three public hearings regarding the Affiliation: two in Manchester and one in Lebanon, thus providing the communities most affected by the transaction with information and an opportunity to comment. Although a public information process is mandated by statute -- and indeed was enacted into law following the Optima merger -- this process undertaken by CMCHS and DHH is already more extensive than was undertaken by the parties to the Optima merger.¹²

In addition, the Parties have created an accessible website, www.ahealthiertomorrow.org, which provides narrative summaries of salient aspects of the proposed Affiliation and makes all operative legal documents pertaining to the transaction available for public review. This also

¹² In addition, I am informed that the parties also conducted meetings with community leaders, including the governor, legislative representatives, the mayor and the mayor-elect and the Board of Aldermen, and meetings of the Kiwanis, Rotary and Manchester Young Professional Network. It is my further understanding that the CMCHS personnel have met with particular stakeholders in the process, including representatives of the right to life community.

goes well beyond the extent of public disclosure that attended the Optima merger when the Parties did not release their transactional documents to the public prior to the completion of the merger and continued to argue for their confidentiality long after the problems with the merger had arisen.

It will be up to the Director of Charitable Trusts to determine whether the present level of public disclosure is sufficient to comply with the statutory mandate. I am satisfied that informational efforts and opportunities for public comment vastly exceed the efforts made during the Optima transaction.

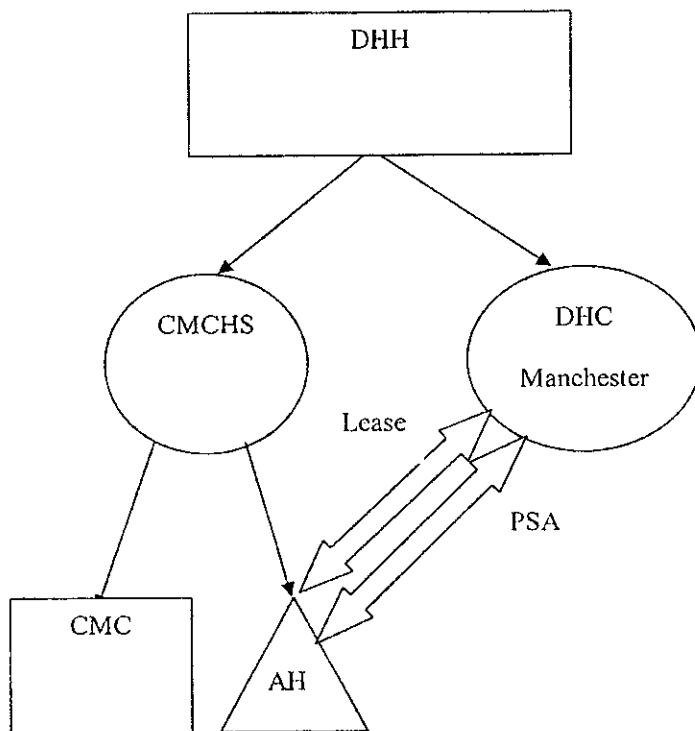
B. STRUCTURE AND GOVERNANCE

The structure proposed for the Affiliation is moderately complex. This is, of course, a contrast in itself with the Optima structure and documentation, which, as discussed above, was drafted and treated as a generic corporate merger.

1. Structure

As I understand the structure, CMCHS is currently the sole corporate member of CMC. AHS, a subsidiary of CMCHS, is a service organization which, among other things, currently serves as the vehicle under which CMCHS leases space to and contracts for professional services from Dartmouth-Hitchcock Clinic ("DHC") for the Manchester based facilities at DHC-Manchester. DHC-Manchester is a division within the Dartmouth Hitchcock Clinic organization, a not-for profit entity, of which DHH is sole member. Under the Affiliation, CMCHS will become the principal governing entity for a system, which includes both CMC and the DHC-Manchester, while continuing to operate AHS as, a subsidiary. DHC-Manchester's legal status within the Dartmouth-Hitchcock Clinic will not change. However, the organizing

documents for CMCHS will be amended to name DHH, i.e., the entity responsible for the regional integration of services within the larger DHH organization, as the sole member of CMCHS.



Importantly, in my view, this structure presupposes that both DHC-Manchester and CMC will retain their individual corporate identities. Their *functions* – but not their legal status or existence -- will be combined to a large, yet pointedly restricted, degree by means of a lease and a professional services agreement between DHC-Manchester and AHS. In addition, the interposition of DHH as the member of both CMCHS and DHC-Manchester appears intended to provide (i) a vehicle for integration of services in Manchester and in any other market or area in which the Dartmouth-Hitchcock system may enter into an Affiliation; and (ii) a method to achieve sufficient integration of management and shared economic risk to insulate payments

under the Lease and the PSA from challenge under federal anti-kickback laws and regulations concerning referrals among unrelated entities. For reasons discussed below, the powers which DHH can exercise over CMCHS are limited to a degree which would make it difficult, if not impossible, for DHH to function as a vehicle for stripping assets or services away from CMC.¹³

2. Governance

The Parties have also carefully constructed a governance scheme which is intended to perpetuate the independence of the various Parties to this transaction. Thus, the Boards of Trustees of each of the institutions involved in the Affiliation will be structured as follows:

Entity	Board of Trustees Or Governors
Dartmouth Hitchcock Health	Expanded to include <u>Three</u> CMCHS members
DHC-Manchester	No change from present structure
CMC	No change from present structure
CMCHS	<u>Three</u> <i>ex officio</i> members, including the CEOs of CMCHS and DHH and the Bishop's Healthcare delegate, <u>Seven</u> members nominated by CMC, <u>Five</u> members nominated by the Hitchcock-affiliated members of AHS, yielding a total of <u>Ten</u> CMC-affiliated members and <u>Six</u> Hitchcock-affiliated members
AHS	<u>Seventeen</u> members (including <i>ex officio</i> members), the majority of whom are not employees of CMCHS, DHC-Manchester, AHS or CMC, <u>Nine</u> members associated with DHH or DHMC, <u>Eight</u> members associated with CMC or CMCHS

This governance arrangement merits two comments. First, it maintains intact the original and independent boards of both CMC and DHC-Manchester. This contrasts with the structure of Optima, in which the boards of Elliot and CMC were reorganized into "mirror boards" with

¹³ Again, this is a significant departure from the Optima model, where the Parties merged their corporate identities completely into Optima, which then exercised an untrammelled right to move services away from CMC.

identical membership. In the Optima structure, as concluded in the Attorney General's Report, the "mirror boards" would face an inherent conflict of interest at any time that a proposed corporate action would redound to the benefit of one, but the disbenefit of the other. That issue does not arise in the present structure for the boards of DHC-Manchester or CMC.

The second is that the proposed makeup of the boards of CMCHS and AHS, with their varying mixes of DHC and CMC-affiliated members, indicates an effort to balance interests of CMC, DHC-Manchester and the overall DHH system, which is itself an indication that the Parties anticipate that the CMCHS-related and the DHH-related parties to this transaction will retain sufficiently separate identities as to have operating autonomy with potentially divergent interests which will need full and fair airing at the Board levels. Although not a guaranty of the relative autonomy of the affiliated entities, this structure at least signals an expectation that such operative autonomy will be a continuing feature of the Affiliation.¹⁴

3. Reserved Powers of DHH

Of course, none of the above features would have any meaning if, as in Optima, the parties were made subject to a holding company which could exercise overriding or plenary power to direct the actions of its subsidiaries. In this case, the Affiliation Agreement does not grant anything like plenary or overriding power to DHH over CMCHS or the Manchester System. Rather, the Agreement establishes DHH's authority in the proposed structure through an enumeration of reserved powers, which are strictly limited and reactive to decisions and actions initiated by CMCHS.

¹⁴ This impression is furthered by the inclusion of extensive dispute settlement procedures, which feature both internal and external mediation options, including resorting to the American Arbitration Association.

The limitation of DHH's powers over CMCHS is accomplished by a contractual provision under which DHH agrees to exercise only a discrete set of oversight powers with respect to CMCHS:

As the sole member of CMCHS, DHH will retain certain reserved powers over CMCHS and, if and to the extent expressly stated below, its direct subsidiaries, so that DHH can serve as the coordinator and steward of the Regional System. *DHH normally reserves all of the powers described in its Bylaws attached as Exhibit 3.9.2. As permitted by Section 1.4 of the DHH Bylaws, however, DHH agrees that it will reserve only the following powers over CMCHS, which modified powers will be set forth in the CMCHS Articles of Agreement or Bylaws and are in the best interests of the Regional System.*

Art. Agr., ¶ 3.9.2.¹⁵

The dual powers reserved to DHH are not insignificant, but are also far from comprehensive. The reserved powers give DHH concurrent approval power over: (i) appointment or removal of CMCHS Trustees; (ii) approval of CMCHS's capital and Operating Budgets; (iii) transfer of assets beyond specified amounts; (iv) incurring unbudgeted debt beyond specified limits; (v) entry by CMCHS into new affiliations; (vi) corporate dissolution of CMCHS, CMC or AHS; (vii) entry into relationships with other healthcare systems or teaching hospitals; (viii) appointment of the CMCHS CEO; (ix) elimination or addition of major services; and (x) Amendments to the Articles or Bylaws of the entities comprising the Manchester System. These powers are of approval only. With the exception of procedural matters, such as the invocation of a dispute settlement mechanism,¹⁶ the documents do not accord DHH with the power to initiate any corporate action with respect to CMCHS or its subsidiaries.¹⁷ Given this

¹⁵ See also, CMCHS Amended Art. Agr., Article, VII, at 3.

¹⁶ The fact that there even are extensive dispute resolution provisions in the Affiliation Agreement is evidence that the Affiliation Agreement presupposes the continuing independent corporate existence of each of the Parties.

¹⁷ Again, compare the legal structure of Optima under which a regional holding company had *absolute discretion* to move assets and services out of CMC or Elliot.

limitation, the probability is that corporate initiatives under the proposed Affiliation will be generated in Manchester through consideration of related but not identical interests, and not dictated from above.

C. RELIGIOUS ISSUES – STRUCTURAL MATTERS

In the Affiliation documentation which I have reviewed, the Parties are not trying to run away from the religious status of CMC or to elide the duties and obligations that flow from that status, as was the case with Optima. To the contrary, the proposed documents appear structured to immediately confront that status and the issues it presents to collaboration with a secular healthcare institution. In stark contrast to the Optima documents, CMCHS's status is presented in the opening of the preamble as follows:

CMCHS is the sole member and supporting organization of Catholic Medical Center, a non-profit hospital located in Manchester, New Hampshire ("CMC"). CMCHS is a public juridic person of diocesan right under the canon law of the Roman Catholic Church and is responsible for assuring that CMC operates in adherence to the Ethical and Religious Directives for Catholic Health Care Services ("ERDs") and subject to the powers reserved to the Roman Catholic Bishop of Manchester (the "Bishop"). CMCHS also is the sole member and supporting organization of Alliance Health Services.

Affiliation Agreement, Preamble, ¶ B, at 1.¹⁸

The intent of the Parties to maintain CMCHS's status within the Church is also announced in the Preamble:

As a result of such analysis and negotiation, CMC and DHC desire to create the Manchester System by combining their Manchester-based resources under a common parent, CMCHS. CMCHS will maintain certain reserved powers over CMC and

¹⁸ This language and the provisions here and quoted subsequently illuminate, to my mind, one important area in which the Parties have learned from the Optima experience. The drafters of these documents appear to have concluded that the only sure method of establishing continuing diocesan authority over CMCHS was to agree on such authority in the text of the Affiliation Agreement. Thus, the Agreement establishes that the Bishop has reserved powers over CMCHS Aff. Agr. Ex. 3.5; by making the Bishop a third party beneficiary to the Agreement, *Id.*, § 5.74, at 32; and by agreeing that the provisions of the Agreement concerning the juridical status of CMCHS and the power of the Bishop (among other provisions) will survive the closing. *Id.*, §5.77, at 33.

AHS, which entities will retain their separate corporate identities. CMCHS will continue to serve as a public juridic person of diocesan right under the canon law of the Roman Catholic Church and the Bishop will continue to retain certain reserved powers over CMCHS.

Adherence to the ERDs is also highlighted early in the text of the Affiliation Agreement in paragraph 2.5, at 8:

2.5. Adherence to ERDs and Collective Goals of Manchester System. 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, as well as the ERDs and the Bishop's reserved powers described below. The Parties acknowledge that these elements currently are compatible with the goals and purposes of the Manchester System.¹⁹

It is difficult to suggest, in the context of these statements, that what was referred to as "the Catholic Issue" during the Optima period, has not been placed front and center in the documents which create and give structure to this Affiliation.²⁰

¹⁹ Each of these statements are repeated in the proposed Amended Articles of Agreement of CMCHS. See CMCHS Art. Agreement, ¶ 1, at 1, where the first listed purpose of CMCHS as corporate and charitable entity is described as:

To benefit, serve as the sole member of, help carry out the purposes of, and uphold, promote and further the welfare, programs and activities of Catholic Medical Center and Alliance Health Services and any and all other for-profit and non-profit entities subsidiary to Catholic Medical Center or Alliance Health Services (collectively, the "Subsidiary Entities" or, alternatively, referred to as the "Manchester System"), by exercising certain powers over the Subsidiary Entities and serving as a public juridic person of diocesan right under the canon law of the Roman Catholic Church responsible for assuring that the Subsidiary Entities, individually and collectively, operate in adherence to the Ethical and Religious Directives for Catholic Health Care Services ("ERDs") and subject to the powers reserved to the Roman Catholic Bishop of Manchester (the "Bishop") consistent with the canon law of the Roman Catholic Church

Emphasis added. See also, the proposed Amended Articles of Agreement of CMC, which set out the Hospital's congruent but independently assumed mission:

To maintain its identity as an acute care hospital in the Roman Catholic tradition. As such, the Corporation will comply with the ETHICAL AND RELIGIOUS DIRECTIVES FOR CATHOLIC HEALTH CARE SERVICES, the teachings of the Roman Catholic Bishops of the United States of America and the Holy See, as interpreted by the Roman Catholic Bishop of Manchester, New Hampshire. The Corporation will conduct its affairs so as to maintain its listing in the official National Catholic Directory.

²⁰ See also, Affiliation Agreement, Exhibit 3.5 (Bishop's Reserved Powers), which establish adherence to Catholic doctrine as a corporate norm and requirement for CMCHS:

At all times, CMCHS 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*

D. RELIGIOUS ISSUES – OPERATIVE PROVISIONS

It is, of course, one thing to declare an intention, another to put it into practice. In the Affiliation documents, the Parties propose two methods to achieve CMCHS' goal of maintaining its Catholic identity and its fidelity to the ERDs as a participant in the Manchester System. The Parties look to effectuate these goals through multiple methods and provisions. The first is through limitation of the reserved powers of DHH over CMCHS discussed above. The second is the concurrent grant of extensive reserved powers to the Roman Catholic Bishop of Manchester. See Affil. Agr., ¶ 3.92: (“DHH acknowledges and agrees that some of its reserved powers must be exercised concurrently with the reserved powers of the Bishop”).

1. Reserved Powers of the Bishop

The Affiliation Agreement establishes that the Diocese, in the person of the Bishop, although not a signatory to the agreement,²¹ also has specified reserved powers with respect to CMCHS and the Manchester System as a whole. These reserved powers establish that the following corporate and system-wide actions may not be taken without the express approval of the Bishop: (i) amendment, alteration or repeal of the Articles of Agreement or Bylaws of CMCHS; (ii) any change in CMCHS's philosophy, objectives, purpose or ethical or religious standards; (iii) hypothecation of assets of CMCHS in excess of amounts set by the Holy See for Catholic hospitals; (iv) appointment or removal of CMC-affiliated Trustees to the Board of

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*.

Identical language is applied to AHS at Affil. Agr., ¶ 3.13 (Continued Applicability of ERD's) .

²¹ The Bishop is a third party beneficiary to the Agreement, with power to enforce all provisions which are intended to be of benefit to him. See discussion above at fn. 15.

CMCHS; (v) appointment or removal of the CEO of CMCHS, (vi) mergers involving CMCHS, CMC and AHS, sale of substantially all of the assets of any of them and/or acquisition of substantially all the assets of any of them; (vii) any formal affiliation of CMCHS, CMC or AHS with any entity; and (viii) dissolution or liquidation of CMCHS. Aff. Agr. Ex. 3.5.

Here again, the contrast with Optima, where the Bishop was effectively stripped of his pastoral authority *sub silentio*, and excluded from any continuing role with respect to CMC, could not be more stark.

2. Compliance with ERDs

The third issue addressed in some detail in the Affiliation Agreement is the mechanism by which CMCHS, as a juridic person within the Catholic Church, can affiliate with DHC-Manchester at which, admittedly, procedures contrary to the ERDs are carried out. As I understand it, the services at issue would be primarily (i) surgical sterilization, (ii) contraception, and (iii) management of ectopic pregnancy. DHC-Manchester does not now perform abortions or in vitro fertilization procedures.²²

I have reviewed ethical opinions commissioned by the Bishop in this case and have spoken extensively with the Diocesan ethicist, Peter Cataldo. From my conversations with Dr. Cataldo, I understand the ethical analysis of these matters to be based on the realization that collaboration between Catholic and secular health care providers can have significant benefits for the communities served by the Catholic institution. Thus, there is no inherent bar to working with or affiliating with institutions in which certain activities contrary to the ERDs are

²² End of life issues such as compliance with advance directives and Catholic positions regarding withdrawal of nutrition and hydration from the irrecoverably ill. are, as a practical matter, unlikely to arise in the primary, subspecialty and day-surgery practice of DHC-Manchester.

undertaken or procedures performed.²³ Indeed, if there were, Catholic healthcare would be functionally walled off from anything beyond occasional cooperation with secular institutions, a position which is unlikely to be beneficial to Catholic providers in any long run. However, the Catholic institution must walk a fine line to ensure that it does not contribute to or derive any benefit from those actions or procedures which do occur within the practice of an allied provider.

At this stage of the process, it is my understanding that the Parties have been and are continuing to audit DHC-Manchester's procedures and practices to identify with precision – and to the satisfaction of the Bishop – which actions or procedures occur at DHC-Manchester which pose a conflict with the ERDs. With respect to most such actions, the Parties intend to establish several protocols under which most such procedures will continue to be performed at DHC-Manchester, but (i) patients will be informed that the action or procedure is not sanctioned by CMCHS or CMC and is being performed under the aegis of DHC-Manchester as part of the Dartmouth-Hitchcock system; (ii) any prescription written contrary to the ERDs will be written on prescription pads identifying the prescribing doctor or DHC as the prescriber; (iii) any procedure contrary to the ERDs will be provided, managed and billed by DHC-Manchester, rather than the hospital; and (iv) AHS (and by extension CMCHS) will not receive remuneration under the PSA or the Lease for that procedure.

There are, in my view, certain logistical and practical matters which will have to be fully addressed before the Affiliation is consummated. For example, holding back PSA payments by AHS for non-ERD procedures should not, as a practical matter, be logistically difficult, in that

²³ This analysis, which balances the social good to be achieved by the collaboration, the moral seriousness of the action contrary to the ERDs, and the proximity of the Catholic entity to the problematic action, is generally referred to as the rule or doctrine of "proportionality." The singular exception to this rule concerns abortion. The termination of life (as abortion is understood by the Church) is deemed so intrinsically evil that a Catholic entity is essentially barred from any part of an affiliation or having any direct financial, operational, or governance role with an entity in which abortion occurs. However, under the rule of proportionality, participation within a broad system in which actions contrary to the ERDs occur (in a part of the system where the Catholic entity is not a direct participant) is subject to the proportionality analysis and may be permissible under appropriate circumstances.

most procedures likely to come under this arrangement will have specific billing codes readily identified.²⁴ Hold-backs under the Lease will be more difficult to quantify and may ultimately have to be derived by proxy: e.g., deducting from the lease payments by DHC-Manchester to AHS an amount equal to the percentage of revenue cut out of the PSA payments.²⁵

For purposes of this review, however, the precise manner by which these logistical issues are resolved is less important than two overriding facts. First, I am informed by Diocesan authority that these types of accommodation, if carefully structured and administered, are morally permissible under Catholic doctrine.²⁶ Second, whatever procedures the Parties devise to address these matters, *they must be approved by the Bishop before the transaction can be*

²⁴ In conversations with CMCHS CFO Kevin Kilday, we discussed methods of streamlining accounting for this cut out, for example, by doing a steady percentage holdback based on the percentage of non-ERD procedures performed at the Clinic during a prior reporting period. I have suggested that any such “approximating” method, if ultimately adopted, be reviewed by Diocesan ethicists and that the Parties consider a “true-up” audit of procedures at the end of an agreed-upon reporting period. My concern here is that any overestimate of procedures would not be morally troubling because the hold-back would exceed the revenues actually generated by non-ERD procedures. However, any underestimate would result in AHS (and therefore CMCHS) receiving some revenue that could be attributed to doctrinally impermissible procedures.

²⁵ Using similar reasoning, CMCHS members of the Board of DHH and of a so-called “Leadership Council” which serves as an advisory board for DHH are permitted to recuse themselves from any discussion of system-wide issues that may compromise the Church’s moral imperative to avoid involvement in “immoral” activities. Aff. Agr. § 3.9.4 at 21 (Board of Trustees); Id. at Sec. 3.7.6, at 16 (Leadership Council).

²⁶ As I understand the principles governing this issue, the Church looks to measure the social good to be achieved by collaboration with an institution which performs actions or procedures that conflict with the ERDs against the relative seriousness of the conflict with doctrine and the extent to which the Catholic institution is involved in actions which support the actions or procedure. Catholic healthcare institutions may not promote or participate in actions or procedures which violate the ERDs.

Under this analysis, certain activities – in particular abortion and certain actions designed to hasten the end of life – are deemed so intrinsically evil as to bar almost any level of Catholic participation in their provision other than the most remote forms of cooperation. Other activities, such as advice concerning contraceptives or the prescription of contraceptives, may occur within a joint project between a Catholic and secular institution, as long as the Catholic institution does not participate and is not perceived as condoning the action or procedure.

This analysis also explains why the occasion of procedures which violated the ERDs by Optima was deemed more morally problematic by the Diocese than the present Affiliation appears, at this juncture, to be. In Optima, the Parties engaged in a full merger, under which all actions by Optima necessarily implicated the Catholic entity which had been subsumed into it. The proposed Affiliation has been consciously structured in a manner under which the Catholic and secular entities remain legally separate corporations, with legally separate Boards of trustees, operating officers and charitable missions. Subject of course to the Bishop’s final determination, this structure is designed to permit the Catholic entities – CMCHS, AHS and CMC –to separate themselves legally, publicly and economically from doctrinally impermissible actions.

closed. Under the Affiliation Agreement, the Bishop has ultimate authority to approve the Affiliation. His approval is deemed a condition precedent to closing, without which the transaction cannot go forward. Aff. Agr. ¶ 4.42, at 23. Given the powers reserved to the Bishop under the Affiliation Agreement itself, it seems improbable to me that the Bishop would let the transaction go forward on a doctrinally imperfect basis. Again, for purposes of analyzing this transaction, the Bishop's ultimate decisions remain less important than the fact that all parties have agreed to defer to him with respect to ERD-related provisions in structuring and establishing the Affiliation. To my mind, this sends a clear signal that, for the parties to this transaction – again, in contrast to Optima – the ERDs are recognized as having meaning and the status of juridical person under Church law is being respected.

By the same token, under the doctrinal interpretation and the effectuating protocols discussed above, and based on the materials that I have reviewed to date, DHC-Manchester does not presently seem likely to suffer a significant curtailment of the services it currently provides in Manchester, because DHC-Manchester does not now provide abortion or in-vitro fertilization procedures. However, until the process of identification of non-ERD procedures is complete and a full set of protocols established, it is not possible to state this definitively. Therefore, it is sufficient at this stage of the transaction to note that if the service offerings of DHC-Manchester should be significantly curtailed to achieve a doctrinally acceptable method of accommodating the ERDs, then under the reasoning applied in the Attorney General's Optima Report, its own charitable mission could be compromised. In addition, the community served by DHC-Manchester would be deprived of the full range of healthcare options and services available to them now. From my review of the Affiliation documentation and conversations with counsel for the DHH entities, it appears to me that DHC-Manchester does not anticipate, and would not

acquiesce in, that result. Nevertheless, a final evaluation of this issue will have to be deferred until the Parties fully agree on the scope of affected services and the precise protocols to be observed.

Moreover, because this issue will remain unresolved after the conclusion of the third scheduled public hearing and because, as is natural in ongoing discussions regarding cooperative ventures among any institutions, the Affiliation documents themselves may yet be subject to some change prior to closing, I believe that the Parties should consider, at a minimum, publishing the full text of all final documents, including the text of any finalized protocols, for public review, and taking such other steps to inform the public as may seem appropriate at that time.

E. FINANCIAL PROTECTIONS

By merging into Optima and by initially acceding to a consolidation of services at the Elliot, CMC essentially permitted a transfer of a substantial portion of its charitable assets to another entity, without the approval of the Probate Court as required by New Hampshire law and, as I understand, in possible violation of Canon Law.²⁷

No such transfer is contemplated by the Affiliation documents. Rather, the Affiliation Agreement provides for the Parties to establish a baseline value of the assets of CMCHS as of the effective date of the Affiliation. Aff. Agr. §3.9.3.1, Exhibit 3.9.3.1. Generally, only post-Affiliation positive changes in CMCHS's net asset value attributable to Affiliation-related activities ("Post-Affiliation Surplus") will be subject to potential movement out of Manchester to

²⁷ See, Code of Canon Law, Bk. I, Tit.7, Ch.1, Can. 127 (juridic acts requiring consent not to be taken absent such consent or permission).

DHH or the larger Dartmouth-Hitchcock system.²⁸ DHH has the capacity under the documents to (i) suggest an annual assessment to be budgeted by CMCHS as payment of CMCHS's share of the operating expenses of DHH; and (ii) to propose that CMCHS allocate a portion of any Post-Affiliation Surplus for use elsewhere in the System, provided such use of such funds is consistent with the ERDs. There are, however, several limitations to this ability. First, the ability is to propose, not to assess. Any such proposal will be part of CMCHS' annual or periodic budgetary process, which is itself subject to review and approval by the CMCHS Trustees. Second, any proposal to allocate funds within the overall system is (i) limited to Post-Affiliation Surplus, effectively walling off CMCHS's charitable corpus, including all endowment funds and income generated from investment of the endowment; and (ii) constrained by the financial principles governing the DHH system as a whole (see Affiliation Agreement, Exhibit 3.8, discussed below), which restrict the capacity of DHH to request contributions from an affiliate to circumstances where the financial stability of the affiliate will not be adversely affected. Third, there are currently no other members of the DHH system, so this ability will not come into play until some unspecified time in the future, if at all.²⁹

1. Financial Principles

Finally, the assets of CMCHS – including Post-Affiliation Surplus -- are further insulated from broader use by incorporation into the Agreement of a series of financial targets and

²⁸ Under this definition, the Post-Affiliation Surplus excludes investment income, Aff. Agr. Exhibit 3.9.3.1.

²⁹ It should be noted that the assessment for DHH operating costs is not limited to Post-Affiliation Surplus. Thus, it is theoretically possible – if the System were to generate no operating surplus -- for DHH to propose a costs assessment that reaches the charitable corpus of CMCHS. However, as a practical matter, both parties to the proposed Affiliation are operating at a modest profit and there is no obvious reason to suppose that their condition will so materially worsen over the next year or two as to erase all operating profits. Moreover, the possibility of DHH requesting a costs contribution from the Affiliated entity which reaches the CMCHS corpus should become increasingly remote with each year in which the Affiliated entity generates such a surplus; and is also restricted to circumstances where the financial stability of CMCHS is not affected by the proposed assessment. Finally, under the proposed documents, DHH does not have the unilateral power to exact contributions from the system. Rather it may request such contribution, but the decision to grant the request will rest with the CMCHS Board which will continue to operate under a continuing fiduciary duty to act in the best interests of CMCHS.

principles which DHH requires each of its affiliated entities to attempt to achieve or maintain. See, Exhibit 3.8 (“DHH Financial Principles”). These include a requirement that Regional Provider Organizations (CMCHS and any equivalent entity that may become affiliated with DHH in the future) strive to maintain a credit rating equivalent to Standard & Poor’s A- Rating. In furtherance of this goal, DHH will require that its affiliates maintain prescribed ratios and standards with respect to Annual Debt Service coverage (Minimum of 2x); Days Cash on Hand (Minimum of 100 for an organization the size of CMCHS); Debt to Capitalization (Maximum 50%); Days in Accounts Receivable (Maximum of 70); Average Age of Fixed Assets (Maximum of 12 years). The DHH financial principles also encourage maintenance of cash reserves adequate to meet long term equipment and facility needs and to address unexpected expenditures. Affiliates are expected to engage in long term budgetary planning (five year plans) and to monitor and adjust each annual budget with respect to five-year plan goals met or unmet.

None of these standards are unusual or remarkable for hospitals, clinics or other equivalent healthcare entities. However, they reflect an expectation by DHH that its affiliated organizations are going to remain in existence for the foreseeable future, and that their affairs will be prudently managed so as to maintain their ongoing financial viability. In addition, the existence of and importance placed by the Parties on these principles also serves as a check on any capacity DHH might have to receive funds from CMCHS. Under the Agreement it cannot do so if the result is that CMCHS becomes financially unstable.

F. TERMINATION PROVISIONS

The final area in which I have found the proposed Affiliation to be, at a minimum, distinguishable from Optima is the existence of explicit provisions for the termination of the

Affiliation. The Parties establish five specific events which would be triggers to a dissolution of the Affiliation:

- A mutual decision by the Parties, through their respective Boards, memorialized in writing, that the purpose and “mutual vision” of the Affiliation are unlikely to be achieved;
- A material breach of the Agreement, uncured for 90 days;
- A subsequent change in law or regulation which prohibits or substantially impairs the ability of the Parties to continue the Affiliation;
- A subsequent and material change in the ERDs which is incompatible with continued affiliation;³⁰
- Circumstances which prevent Dartmouth-Hitchcock Medical Center from operating as an academic medical center.

If any of these events occur, the Agreement sets out a template for unwinding which is intended to “restore the Parties to their respective rights, titles and interests which were enjoyed by each of them immediately prior to the Effective Date” of the Affiliation. The Parties commit to cooperation in the unwinding process which would include: (i) preparation, approving and filing restated articles of agreement; (ii) terminating the Professional Services Agreement and Lease between AHS and DHC-Manchester; (iii) coordinating filings with relevant regulators; (iv) contacting and amending contracts with third party vendors; (v) establishing a joint committee to oversee the necessary financial reconciliation and transfers or allocations of property.

Here again, the implication of the inclusion of these provisions in the Agreement itself – which remain binding on the Parties after the closing and as long as the Affiliation shall last – provides evidence that the Parties have given thought to the possibility of future dissolution.

³⁰ I view this language as broad enough to encompass a change in interpretation or application of the ERDs by the Holy See, which would be ecclesiastically binding on the Diocese. However, the Parties may wish to review this language for specificity with regard to this issue.

This is again indicative – though not probative – of the Parties’ conception of the Affiliation as a meshing of independent entities rather than a subsuming of one by the other.

G. CONCLUSION

It is inevitable that any transaction which involves the association of CMC with a secular entity will raise the question among CMC’s served communities in Manchester and elsewhere, and with government regulators, of whether the transaction represents “another Optima.” This is not only understandable but appropriate in light of the profound dislocation caused by the Optima episode to Manchester and its Catholic community, as well as to those who value the provision of a full range of medical care for women by Manchester healthcare providers. At a second level, this directly raises the issues of (i) whether the Diocese and current management of CMCHS (which is different from CMC’s management prior to and during the Optima experience) have learned from the mistakes of the past; and (ii) whether its partner in the proposed Affiliation has seriously and completely examined the question of how its services will be affected by affiliating with an entity which is morally bound by Catholic doctrine and the ERDs.

I have concluded that CMCHS and DHH have worked diligently to structure the Affiliation to address and avoid, to the extent possible, the myriad mistakes of the parties to the Optima transaction, and that the Diocese is intended to play a continuing role in ensuring that the Affiliated entity continues to operate in a manner consistent with Catholic doctrine. In fact, the documents and process I have examined could not contrast more sharply with the Optima experience. I have reached this conclusion based on the following factors:

- i. Under the Affiliation documents, both CMCHS and DHC-Manchester will retain independent corporate existence.
- ii. DHH, as sole member of CMCHS, is strictly limited to approval of, and reaction to, initiatives instigated at the local level.
- iii. The Bishop is granted extensive reserved powers to intervene in the event of corporate events which pose the kinds of threats to the integrity of the participants' charitable and juridic missions.
- iv. The charitable corpus of each institution is protected by (i) valuation at the time of the Affiliation; (ii) limitation of contribution to DHC-Manchester and the larger DHH system to net retained surplus, if any, over the pre-Affiliation value of each entity; and (iii) application of financial principles developed and made a part of the Affiliation Agreement which appear designed to promote financial stability and viability of all DHH affiliates.
- v. The Parties have included a dispute resolution process and a termination process by which the Affiliation can be terminated by its constituent Parties in a manner designed to place the Parties as nearly as possible back at *status quo ante*. The inclusion of these provisions suggests that CMCHS and DHH view the constituent entities within the Affiliated structure as distinct corporate entities.
- vi. The Parties and their subsidiaries each have carefully constructed independent Boards of Trustees or Boards of Governors, as applicable.

- vii. The Affiliation documents respect the status of CMCHS as a public juridic person of diocesan right under canon law, and provide protection for that status by, among other things, investing the Bishop with ongoing powers and authority over CMCHS.
- viii. The Diocese has carefully delineated the ethical rules governing its cooperation with DHH and DHC-Manchester by application of the doctrine of proportionality; and the Affiliation documents provide for accommodation of Catholic doctrine to the provision by DHC-Manchester and other elements of the DHH system of services which may conflict with the ERDs; and
- ix. The Parties are working with care, and apparent good faith, towards establishing a comprehensive protocol for service delivery at DHC-Manchester in a manner which is intended to be consonant with Catholic doctrine without limiting the range of services currently provided by and at DHC-Manchester mindful of the fact DHC-Manchester does not currently provide abortion or IVF procedures.

I believe that the Parties have made and are making a good faith effort at public communication, including three public forums, the establishment of an informational website where all operative Affiliation documents are posted and available for public view, meetings with stakeholders and, for that matter, the commissioning of this Report. As noted above, I believe that the public interest in this transaction is so great and the hangover from the Optima transaction so compelling that continued public outreach would be appropriate when all documents have been finalized and when the Parties have completed the process of establishing

comprehensive protocols for accommodating the services available at DHC-Manchester with the moral imperatives of Catholic doctrine.

I have appreciated the opportunity to review these matters and the openness and candor with which my inquiries have been met. As someone who has spent approximately two years of his professional life sorting through the legal and ethical wreckage of Optima, I am not in the least anxious to see Manchester's citizens so shabbily treated ever again. The documents and process I have reviewed, and the structure of the Affiliation going forward, strike me as having been carefully considered and constructed to avoid "another Optima." I believe that the current management of CMC and CMCHS are sincere in their stated intent to pursue this Affiliation in order to secure the long term financial viability of CMC in an uncertain economic environment. The Affiliation documents suggest strongly that the Diocese will not be sidelined in the structuring or operation of the Affiliation and that, in complete contrast to the Optima experience, thought has been and will continue to be given to the difficult – but seemingly resolvable – issues raised by Catholic/secular healthcare cooperation.³¹

Optima – it cannot be said often enough – was a disaster, which, if allowed to stand, would have decimated CMC while simultaneously limiting patient choice, particularly, but not exclusively regarding reproductive issues of critical importance to women in our community. The present Affiliation represents an attempt to expand rather than limit the range of medical services available in Manchester, and to craft a method by which CMC may engage in genuine cooperation with secular providers without sacrificing its Catholic identity. The Affiliation has

³¹From a broader perspective, I believe it to be crucial to the long term viability of Catholic healthcare that the Church find ways to achieve such cooperation. To not do so would erect a barrier around Catholic institutions, walling them off from anything but superficial cooperation with secular providers. That sort of isolation would, in my view, constrict the clinical and economic options available to institutions such as CMC, which could place Catholic institutions at genuine economic risk in the developing healthcare markets of the twenty-first century, and could ultimately compromise their essential ministry as providers of high quality healthcare to Catholics and non-Catholics alike, with a particular – and profoundly religious – emphasis on providing such services without regard to ability to pay.

been structured to avoid the problems of Optima. My review indicates that there is every possibility that it will succeed in doing so.

SUBMITTED TO CMCHS AND PRESENTED AS PUBLIC COMMENT THIS 16th
DAY OF NOVEMBER, 2009 AND REVISED DECEMBER 8, 2009.

/s/ Walter L. Maroney

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SUPPORT HCR 30, OUGHT TO PASS WITH AMENDMENT.

Urging the attorney general to investigate the merger between Catholic Medical Center and Dartmouth Hitchcock Medical Center.

This Resolution is non-binding, but sends a message from the people of New Hampshire to the Attorney General to bring this matter to Probate Court after his review. This Resolution is in no way intended to disparage the duties of the Attorney General, but rather requests another layer of protection for the people in Probate Court where an impartial judge can review the findings. Current law only allows the Attorney General to obtain certain information.

This Non-binding Resolution not only has bi-partisan support, but also is supported by NH Right to Life, and the NH Civil Liberties Union who have worked for over a year on this project, and all of whom have been frustrated and stonewalled by the Roman Catholic Bishop of Manchester, CMC and Dartmouth Hitchcock. They have failed to answer critical questions about how each will maintain their separate identities and missions as Charities under NH Law.

The people want transparency and truth. The people want the charitable assets of both of these entities protected. A vote for HCR 30 is not a vote against this proposed affiliation, but rather a vote for full disclosure which can only happen in Probate Court.

The people of Manchester are especially concerned that should their beloved hospital cease to exist, \$99 Million dollars in charitable assets may go to the Roman Catholic Bishop of Manchester, who could use the money for purposes other than catholic health care.

Commerce Committee Chairman Rep. Ed Butler (D) Harts Location, broke the tie vote on the resolution and said "people in the community also worry that CMC will be dominated by Dartmouth Hitchcock. With less than full disclosure about the proposal, he said, "they feel they've been stonewalled."^{1*} Commerce Committee member Rep. Susi Nord, (D) Candia said the probate court will give all interested parties in the issue a chance to weigh in.^{2*}

PLEASE SUPPORT THE COMMITTEE RECOMMENDATION ON HCR 30.

¹ Manchester Union Leader article Jan 21, 2010

² Manchester Union Leader article Jan. 21. 2010

Voting Sheets

Senate Commerce, Labor & Consumer Protection Committee

EXECUTIVE SESSION

Bill # HCR 30

Hearing date: 4/27/10

Executive session date: 5/16/10

Motion of: OTP

VOTE: 5-1

<u>Made by</u>	Hassan <input type="checkbox"/>	<u>Seconded</u>	Hassan <input type="checkbox"/>	<u>Reported</u>	Hassan <input type="checkbox"/>
<u>Senator:</u>	DeVries <input type="checkbox"/>	<u>by Senator:</u>	DeVries <input type="checkbox"/>	<u>by Senator:</u>	DeVries <input type="checkbox"/>
	Reynolds <input type="checkbox"/>		Reynolds <input type="checkbox"/>		Reynolds <input type="checkbox"/>
	Cilley <input checked="" type="checkbox"/>		Cilley <input type="checkbox"/>		Cilley <input type="checkbox"/>
	Bragdon <input type="checkbox"/>		Bragdon <input type="checkbox"/>		Bragdon <input type="checkbox"/>
	Roberge <input type="checkbox"/>		Roberge <input checked="" type="checkbox"/>		Roberge <input type="checkbox"/>

Motion of: _____

VOTE: _____

<u>Made by</u>	Hassan <input type="checkbox"/>	<u>Seconded</u>	Hassan <input type="checkbox"/>	<u>Reported</u>	Hassan <input type="checkbox"/>
<u>Senator:</u>	DeVries <input type="checkbox"/>	<u>by Senator:</u>	DeVries <input type="checkbox"/>	<u>by Senator:</u>	DeVries <input type="checkbox"/>
	Reynolds <input type="checkbox"/>		Reynolds <input type="checkbox"/>		Reynolds <input type="checkbox"/>
	Cilley <input type="checkbox"/>		Cilley <input type="checkbox"/>		Cilley <input type="checkbox"/>
	Bragdon <input type="checkbox"/>		Bragdon <input type="checkbox"/>		Bragdon <input type="checkbox"/>
	Roberge <input type="checkbox"/>		Roberge <input type="checkbox"/>		Roberge <input type="checkbox"/>

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Hassan, Chairman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator DeVries, Vice-Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Reynolds	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Cilley	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Bragdon	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Roberge	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: May 11, 2010

THE COMMITTEE ON Commerce, Labor and Consumer Protection
to which was referred House Concurrent Resolution 30

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

Having considered the same, the committee recommends that the Resolution:

OUGHT TO PASS

BY A VOTE OF: 5-1

AMENDMENT # s

Senator Betsi DeVries
For the Committee

Danielle Barker 271-3093

New Hampshire General Court - Bill Status System

Docket of HCR30

Docket Abbreviations

Bill Title: (New Title) urging the attorney general to fully investigate the proposed transaction between Catholic Medical Center Healthcare System and Dartmouth-Hitchcock Health.

Official Docket of **HCR30**:

Date	Body	Description
12/10/2009	H	Introduced 1/6/2010 and Referred to Commerce and Consumer Affairs; HJ 6 , PG.248
01/05/2010	H	Public Hearing: 1/20/2010 1:15 PM LOB 302
01/20/2010	H	Executive Session: 1/26/2010 10:00 AM LOB 302
01/28/2010	H	Committee Report: Ought to Pass with AM #0279h (New Title) for Feb 3 RC (vote 10-9); HC 11 , PG.467
01/28/2010	H	Proposed Committee Amendment #0279h (New Title); HC 11 , PG.493
02/03/2010	H	Amendment #0279h (New Title) Adopted, VV; HJ 15 , PG.676-677
02/03/2010	H	Ought to Pass with Amendment #0279h (New Title): MA VV; HJ 15 , PG.676-677
03/24/2010	S	Introduced and Referred to Commerce, Labor and Consumer Protection; SJ 11 , Pg.265
04/06/2010	S	Hearing: April 27, 2010, Room 102, LOB, 9:00 a.m.; SC15
05/11/2010	S	Committee Report: Ought to Pass, 5/12/10; SC19A
05/12/2010	S	Sen. Houde Floor Amendment 2035s, Division 13Y-11N, AA; SJ 18 , Pg.423
05/12/2010	S	Ought to Pass with Amendment 2035s, MA, VV; OT3rdg; SJ 18 , Pg.423
05/12/2010	S	Passed by Third Reading Resolution; SJ 18 , Pg.498
05/13/2010	H	House Concurs with Senate AM 2035s (Rep Butler): MA VV by Required Two-Thirds; HJ 42 , PG.2150

NH House

NH Senate

Contact Us

New Hampshire General Court Information Systems
 107 North Main Street - State House Room 31, Concord NH 03301

Other Referrals

COMMITTEE REPORT FILE INVENTORY

HR 30 ORIGINAL REFERRAL

_____ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: 1 THRU 8

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 1997s _____ - AMENDMENT # _____
 - AMENDMENT # 2035s _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED AS AMENDED BY THE HOUSE
 FINAL VERSION AS AMENDED BY THE SENATE

PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [a thru g or a, b, c, d] here: A THRU D

EXECUTIVE SESSION REPORT

_____ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK 7/16/10


COMMITTEE SECRETARY