

Constantino, Mike

E-003-12 E-004-12

From: Bielik, Elaine [EBielik@uhlalaw.com] on behalf of Gordon, Lynn [lgordon@uhlalaw.com]
Sent: Wednesday, May 09, 2012 2:01 PM
To: Constantino, Mike
Cc: Gordon, Lynn; 'Judith A. Mondello (mondelloj@genesishhealth.com)'; 'rogalski@genesishhealth.com'; Miller, Claudette P.
Subject: Certificate of Exemption Applications for Change of Ownership of Mercer County Hospital, Project E-003-12, and Mercer County Nursing Home, Project E-004-12
Attachments: 5-9-12 Letter to Michael Costantino re COE Apps.pdf; Attachment Constantino May 3 2012 Email Request .pdf; Attachment GHS audited financial strmnts ending 6-30-11.pdf

Dear Mr. Constantino:

Attached is Lynn Gordon's letter to you regarding the Certificate of Exemption applications for Change of Ownership of Mercer County Hospital, Project E-003-12, and Mercer County Nursing Home, Project E-004-12.

Please contact Lynn Gordon directly if you have any questions regarding same.

Thank you.

Elaine Bielik

Secretary to Lynn Gordon and Jonathan Brouk (Wednesdays)

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May 9, 2012

VIA EMAIL AND FEDERAL EXPRESS

Michael Constantino
Illinois Department of Public Health
525 West Jefferson
Springfield, Illinois 62761

Re: Certificate of Exemption Applications for Change of Ownership of Mercer County Hospital, Project E-003-12, and Mercer County Nursing Home, Project E-004-12

Dear Mr. Constantino:

As you know, our firm represents Genesis Health System ("GHS") and its subsidiaries GMCM and GSLM in connection with their Certificate of Exemption ("COE") applications for the change of ownership of Mercer County Hospital (the "Hospital") and Mercer County Nursing Home (the "Nursing Home"). In response to your email of May 3, 2012, a copy of which is attached for your reference, I am writing to address three of your inquiries (items two, three and five in your email). As I noted in my email to you on May 3rd, we will follow up separately on items one and four.

In item two of your email request, you ask for copies of all schedules and exhibits to the definitive agreements for the change of ownership transaction. All such documents were submitted with our application. With respect to the change of ownership of the Hospital, the three agreements that collectively total the "definitive agreement" for the transaction are the Option Agreement, the Addendum to Option Agreement and finally, the document that then established the agreement to move forward with the change of control, the Exercise of Option. Neither the Addendum to Option Agreement nor the Exercise of Option has any exhibits or schedules. The Option Agreement has four exhibits, each of which was included in the COE application. As is typical, the Option Agreement also provides for a number of schedules to be delivered at closing, none of which could or would have been provided by the parties upon execution of the Option Agreement in 2010 and none of which are or could be available at this time.

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Per Section 3.3(b) of the Option Agreement, and as explained on page 13 of the COE application (in the Narrative Section/Attachment 3), the schedules referenced in the Option Agreement are under development and do not become part of the Agreement until the closing of the change of ownership transaction.

With respect to the change of ownership of the Nursing Home, the Asset Purchase Agreement is the definitive agreement between the parties. It has two exhibits, both of which were provided as part of the COE application. The only schedule to the Asset Purchase Agreement is a Schedule of Patient Trust Accounts which, as is typical, pursuant to Section 23 of the Asset Purchase Agreement cannot be dated more than seven days prior to the closing of the change of ownership transaction, and therefore is not available to provide for your review.

Your May 3, 2012 email also asked for the meaning of the term "significant control," as referenced on page 11 of the COE applications for each of the Hospital and the Nursing Home. GMCM and GSLM, the proposed new owners of the Hospital and the Nursing Home, respectively, have the same corporate structure, in that each is an Illinois not-for-profit corporation applying for federal tax exemption under Section 501(c)(3) of the Internal Revenue Code of 1986, and each has GHS as its sole corporate member. As we detail in the narratives to the COE applications on page 11, GHS "has retained certain significant control over" GMCM and GSLM. The term "significant control" was used indicate the fact that GHS has certain exclusive authority over the actions of GMCM and GSLM and certain approval authority over actions taken by the Boards of Directors of GMCM and GSLM; these types of reserved powers are standard for not-for-profit entities with corporate members, particularly within health systems, and establish control over board appointments, finance, capital, budget, strategic planning matters, etc. To expand on the summary of the reserved powers provided on pages 11 and 12 of the COE applications, GHS has the following exclusive reserved powers over GMCM and GSLM:

- [a] The power to determine the number of directors serving on the GMCM/GSLM Board and to elect, appoint, remove or fill the vacancies of such directors.
- [b] The power to present at any regular or special meeting of the GMCM/GSLM Board (i) one or more amendments to the Articles of Incorporation or bylaws; (ii) a plan of merger or consolidation by GMCM/GSLM into or with any other corporation, organization, or association; (iii) a proposal for any sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, of GMCM/GSLM's assets; or (iv) a proposal for dissolution of GMCM/GSLM and plan of distribution.

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- [c] The power to establish system-wide policies and procedures to be followed by GMCM/GSLM and any affiliates regarding: (i) quality of care; (ii) finance, (iii) utilization of resources; (iv) managed care contracting; (v) strategic planning; and (vi) employee benefits;
- [d] The power to assess GMCM/GSLM expenses of the Member attributable to GMCM/GSLM and any affiliates and to assess to GMCM/GSLM its share of the general overhead of GHS established in accordance with policies and procedures adopted by GHS; and
- [e] The power to direct GMCM/GSLM to transfer funds to GHS for the development of system-wide projects in accordance with policies established by GHS.

In addition, GHS also has approval powers over decisions of the GMCM/GSLM Board of Directors with respect to the following:

- [a] the interpretation of or any change in a statement of mission, philosophy, role, or purpose of GMCM/GSLM or any affiliate;
- [b] the adoption of amendments to the Articles of Incorporation, bylaws or other governing documents of GMCM/GSLM or any affiliate;
- [c] the merger, dissolution, consolidation or reorganization of GMCM/GSLM or any affiliate;
- [d] the formation or restructuring of affiliates;
- [e] the acquisition, sale, lease, transfer, encumbrance, or other alienation of property of GMCM/GSLM or any affiliate, other than in the usual and regular course, when such acquisition, sale lease, transfer, encumbrance, or other alienation is above specified financial levels set in accordance with policies established by GHS;
- [f] the adoption or authorization of annual capital and operating budgets of GMCM/GSLM or any affiliate as developed by its Board or management or the making of non-budgeted expenditures in excess of financial levels set in accordance with policies established by GHS;

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- [g] the incurrence of debt or the guarantee of the debt of another by GMCM/GSLM or an affiliate which is in excess of such limits as are established by GHS;
- [h] the adoption of a plan of distribution or disposition of the assets of GMCM/GSLM or any affiliate at the time of its dissolution;
- [i] the adoption or approval of strategic and long-range financial plans for GMCM/GSLM or any affiliate;
- [j] the adoption of an internal auditing program for GMCM/GSLM or any affiliate which is consistent with the internal auditing program established by GHS;
- [k] the amendment, modification or exercise of any right or power hereunder granted; and
- [l] any action which is reserved as the right and power of GHS in the Articles of Incorporation or the bylaws.

Finally, per your request, attached please find the most recent GHS audited financial statements for the fiscal year ending June 30, 2011. As you know, GHS has an "A-1" bond rating, proof of which was submitted with the COE applications.

Please do not hesitate to contact me directly should you need any further information on these three follow-up inquiries.

Sincerely,



Lynn Gordon

Attachments

cc: Judy Mondello
Ted Rogalski
Claudette P. Miller