Edelson PC
350 North LaSalle Street, 14th Floor, Chicago, Illinois 60654
t 312.589.6370 f 312.589.6378 www.edelson.com

April 26, 2019

VIA HAND DELIVERY AND EMAIL

Ms. Courtney Avery, Administrator
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, Second Floor
Springfield, Illinois 62761

Re: Westlake Hospital (E-004-19)

Dear Ms. Avery:

I write on behalf of the Village of Melrose Park in regard to Pipeline's Application to Discontinue Westlake Hospital (E-004-19) (the "Application"), and to clarify certain statements it made to the Illinois Health Facilities and Services Review (the "Board") on April 10.

The central tenet of the Village's opposition to the pending Application is that Pipeline defrauded the Village, the community, and this Board by publicly promising to keep Westlake Hospital ("Westlake") open, while at the same time, privately planning to immediately shut it down once the sale closed. To pull off this heist, Pipeline tried to create the illusion that it didn't learn about the actual financial condition of Westlake until *after* it purchased the hospital.[1] Pipeline hopes that this false narrative will justify closing Westlake and allow it to avoid the obligations spelled out in the change of ownership exemption issued by the Board on October 31, 2018.

Although Pipeline has repeatedly denied these claims before the Board and in the press, there can now be no doubt as to their fraud. Testifying at an in-court evidentiary hearing on April 16, 2019, Pipeline Health CEO Jim Edwards admitted under oath that *Pipeline made the decision to close Westlake well before it purchased the hospital on January 29, 2019*. (Excerpts from 4/16/19 Hearing Transcript, attached as Exhibit 1, at 200:13–01:1.) In other words, at some point prior to completing the project, Pipeline made the decision to ignore the representations and promises it made to the Board and to unilaterally alter the terms and conditions of the change of ownership exemption.

This stark admission has far reaching consequences in this proceeding. First, Pipeline's decision to complete the project (i.e., purchase Westlake) in violation of the permitted scope of the exemption was a unilateral alteration that renders the exemption invalid. *See* 77 Ill. Admin. Code §1130.570(f)(2) ("Other events causing an exemption to become invalid include . . .

[1] In just one example, Pipeline Health CEO Jim Edwards was interviewed by the press on the day of the purchase and stated, "There's a need for community hospitals. The quality and cost structure we can bring to hospitals like Weiss, West Suburban, and Westlake is just what these communities need." Stephanie Goldberg, *Pipeline Health acquires Chicago-area hospitals*, CRAIN'S CHICAGO BUSINESS (Jan. 29, 2019), https://citc.law/MUH9-YB2L.

Implementation of a prohibited alteration (see Section 1130.750(c))"); *see also* §1130.750(c)(3) ("the following alterations are not allowed and, if incurred, invalidate the permit . . . any other change in the project's scope or funding that would independently require a CON permit or exemption."). Here, it is undisputable that Pipeline was required to obtain a permit to change ownership and then discontinue Westlake. That's because change of ownership applicants that do not affirm, under penalty of perjury, to provide at least two years of charity care cannot take advantage of the expedited *exemption* process and must instead seek a permit.[2] Under the *permit* process, the Board has the discretion to deny an application if there were concerns that the change of ownership and closure would have an adverse impact on the community's access to medical care. Pipeline has clearly abused the provisions of the Planning Act. No hospital—let alone a hospital with more than 600 employees that provides critical safety net services to tens of thousands of medically and socially vulnerable populations—should be ripped away from a community under these circumstances.

Second, even if Pipeline's change of ownership exemption wasn't invalidated, it must nonetheless be revoked. Under Section 1130.590(a), the Board *shall* revoke an exemption if:

- the exemption holder or applicant materially changed information or details submitted in the exemption application or in any written materials submitted to HFSRB (77 Ill. Admin. Code §1130.590(a)(3));

- the permit holder or applicant submitted false information in the Application for Exemption or in any written materials submitted to HFSRB (77 Ill. Admin. Code §1130.590(a)(4)); or

- the facility has insufficient financial or other resources to operate the facility in accordance with the exemption application or with any other information submitted to HFSRB. (77 Ill. Admin. Code §1130.590(a)(8)).

Though an applicant's exemption must be revoked if any one of these conditions are met, here,

---

[2] Without the two-year charity care affirmation, Pipeline's change of ownership exemption application would have been summarily rejected. *See* 77 Ill. Admin. Code § 1130.520(b)(3) (mandating that "if the ownership change is for a hospital," the application for exemption *must* contain an "affirmation that the facility will not adopt a more restrictive charity care policy than the policy that was in effect one year prior to the transaction" as well as "an affirmation that the compliant charity care policy will remain in effect for a two-year period following the change of ownership transaction."); *see also* Illinois Health Facilities Planning Act ("Planning Act"), 20 ILCS 3960/8.5(a) ("An application for change of ownership of a hospital shall not be deemed complete without a signed certification that for a period of 2 years after the change of ownership transaction is effective, the hospital will not adopt a charity care policy that is more restrictive than the policy in effect during the year prior to the transaction . . . Nothing in this Act shall be construed as authorizing the Board to impose any conditions, obligations, or limitations, *other than those required by this Section*) (emphasis added); 77 Ill. Admin. Code § 1130.500 ("If a person or project cannot meet the requirements of exemption, then an application for permit may be filed.").

Pipeline's meets all three. There is no dispute that Pipeline materially changed information or details submitted in its change of ownership exemption application, which represented in unequivocal terms, under penalty of perjury, that "[f]ollowing the Transaction, Westlake will continue to operate for the benefit of the residents of Chicago and the greater Chicago area, including serving poor and underserved individuals through Westlake's charitable activities," that the Transaction would "result in no changes to the scope of services offered at Westlake," and that Westlake's existing charity care policy would remain in place "for no less than two years."[3] Likewise, Pipeline submitted these false statements to the Board and never withdrew them, even after, according to Pipeline's version of events, it made the unilateral determination to close Westlake. Finally, Pipeline's representation that it has insufficient financial resources provides yet another independent basis to revoke the change of ownership exemption.

Turning to Pipeline's recent representations to the Board, we are in receipt of the letter it submitted on April 10, which has since been made part of the public record.[4] Unfortunately, that letter continues to perpetuate Pipeline's all-too-consistent strategy of misleading the Board. They do this in two significant ways.

First, Pipeline provides notice of the temporary restraining order[5] and represents that it was in full compliance with the order because it was merely a continuation of the suspension of services it had already implemented under 77 Ill. Admin. Code § 1130.240(d). That is untrue. On April 16, following an evidentiary hearing on Pipeline's violation of the temporary restraining order, Judge Moshe Jacobius, Presiding Judge of Circuit Court of Cook County, Chancery Division, considered – and flatly rejected – Pipeline's arguments. In doing so, Judge Jacobius questioned the "timing of the invocation of the temporary suspension" since it "occurred on the very day Pipeline was aware the Court was going to address Melrose Park's TRO motion."[6] Furthermore, and as this Board is well aware, a suspension of services is appropriate only for *unforeseen* circumstances. The Court went on to find that "the temporary suspension rule was inapplicable to Pipeline's circumstances [because] the action taken by Pipeline was neither unforeseen nor unanticipated," and ultimately held Pipeline in contempt. Pipeline was ordered to pay a $200,000 fine for each day that it continued to violate the TRO. (*Id.*)

More significantly, Pipeline represented to the Board in its April 10 letter that "the Court believes the Board will act on the COE Application to Discontinue Westlake Hospital (E-004-19) on April 30" and that "the Court understandably expects the Board to fulfill its statutory responsibilities." That, again, is untrue. No court has expressed any such belief or expectation. In fact, Pipeline's attorney actively attempted to coax the Court into expressing something along those lines during the April 16 evidentiary hearing, when he asked Judge Jacobius to state on the

---

[3] Pipeline's September 6, 2018 Application for Change of Ownership Exemption, at 0150-0151.
[4] As a preliminary matter, we note that the letter references an *ex parte* conversation, stating "as discussed by telephone yesterday morning[.]" We therefore request that an *ex parte* report is prepared and made part of the record.
[5] The temporary restraining order, which is attached as Exhibit 2, enjoined Pipeline from "discontinuing any medical services offered by Westlake on April 9, 2019, or modifying the scope of medical services offered by Westlake on April 9, 2019."
[6] The April 17, 2019 Contempt Order is attached as Exhibit 3.

record that he "anticipate[s] that the board will rule on April 30th." (Exhibit 1, at 297:15–98:23.) But far from expressing any belief or expectation about whether the Board will act on April 30 or how it will rule, Judge Jacobius responded by saying "I cannot speak for the board . . . You know much more about this. You know, the stress, the pressures of the community, and you know what all is happening . . . So I didn't mean by anything I said to predict as to what the board will or will not do. I just know it's set there on April 30th. That's all I know." (*Id.*) Pipeline's report to the Board about the Court's "expectation" is exactly the opposite of what happened, which is deceptive and improper.[7]

There is one more key fact that Pipeline has hidden from the Board. Pipeline has received numerous offers over the last two months from hospital groups seeking to purchase Westlake that have committed to keeping it open and continuing to provide safety net services to the community. Though it had previously ignored these offers, we understand that Pipeline is now communicating with some or all of the hospital groups and is now willing to engage in a process to sell Westlake to a proper steward.

It is essential that the Board defer[8] consideration of Pipeline's discontinuance application to let the lawsuit play out and to allow these discussions to move forward so that a process can be put in place that allows for the orderly and equitable transition of Westlake to a new owner.

Respectfully,

VILLAGE OF MELROSE PARK

Ari J. Scharg

[7] Pipeline also states in its letter that the temporary restraining order will only "remain in effect until May 1, 2019," thus raising another inappropriate inference that the Court expects the Board to approve the discontinuance application at the April 30 meeting. In reality, the opposite is true—the Court knew that there was a possibility that the discontinuance application would not receive approval at the Board meeting, and therefore scheduled a preliminary injunction hearing to take place the following day, on May 1, at 2:00 p.m. The record could not be clearer.

[8] Given that Pipeline's discontinuance exemption application is the subject of litigation pending in the Circuit Court of Cook County, the Board must defer consideration until after the litigation is completed. 77 Ill. Admin. Code 1130.560(b)(2). The Board should also defer consideration of the application while it investigates the facts laid out in this letter that would either void – or require the Board to revoke – Pipeline's change of ownership exemption.

Exhibit 1

Planet Depos
We Make It Happen

Transcript of Trial

Date: April 16, 2019
Case: Melrose Park -v- Pipeline

Planet Depos
Phone: 888.433.3767
Email:: transcripts@planetdepos.com
www.planetdepos.com

1

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
----------x
VILLAGE OF MELROSE PARK,
Plaintiff,
v. CASE NO. 19 CH 03041
PIPELINE HEALTH SYSTEM, LLC, A DELAWARE LIMITED LIABILITY COMPANY; SRC HOSPITAL INVESTMENTS II LLC, A DELAWARE LIMITED LIABILITY COMPANY; PIPELINE WESTLAKE HOSPITAL LLC, A DELAWARE LIMITED LIABILITY COMPANY; TWG PARTNERS LLC, AN ILLINOIS LIMITED LIABILITY COMPANY; NICHOLAS ORZANO, AN INDIVIDUAL; AND ERIC WHITAKER, AN INDIVIDUAL,
Defendants.
----------x
RULE TO SHOW CAUSE

JOB NO.: 240130
PAGES: 1 - 300
TRANSCRIBED BY: Bobbi J. Fisher, RPR

2

Trial in the above matter held:

Before the Honorable Moshe Jacobius, Judge
Richard J. Daley Center
50 West Washington Street
Chicago, Illinois 60602
Tuesday, April 16, 2019
9:00 a.m.

Pursuant to Notice, before Erin Schuppert, Digital Court Reporter in and for the State of Illinois.

3

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:
ARI SCHARG, ESQ.
JAY EDELSON, ESQ.
J. ELI WADE-SCOTT, ESQ.
MICHAEL W. OVCA, ESQ.
EDELSON, PC
350 North LaSalle Street
13th Floor
Chicago, Illinois 60654
(312) 572-7218

ON BEHALF OF THE DEFENDANT:
RONALD SAFER, ESQ.
MATTHEW C. CROWL, ESQ.
PATRICIA BROWN HOLMES, ESQ.
MERILI SEALE, ESQ.
RILEY SAFER HOLMES & CANCILA, LLP
70 West Madison Street
Suite 2900
Chicago, Illinois 60602
(312) 471-8745

4

I N D E X

197

the same.
Q. I'm not asking about your ability to recruit. I'm just asking you if you are living under constant threat of unanticipated or unforeseen circumstances simply because you own a hospital in the state of Illinois.
A. I disagree. I think the threat is much greater. I wouldn't call it a threat when people in the normal course of business -- because, again, we've got the ability to recruit qualified employees into those positions. When they leave in this situation, okay, as the judge alluded to, trying to replace them is nearly impossible. So it is a much different situation. I can't anticipate how many more people are going to leave tomorrow or next week. We have to provide a safe environment of care for the patients who are in-house and for the patients that are going to walk through the door of our hospital.
Q. Sure. Are you saying that, when you announced the hospital was closing --
A. We didn't announce the hospital was closing.
Q. Okay. I'm sorry. You filed an

198

application to discontinue the facility; right?
A. That's correct.
Q. And isn't it your testimony that you said that you expected that staff members would leave at that point?
A. I expected that there would be attrition.
Q. Yes. And it's very difficult to recruit staff members --
A. Correct.
Q. -- when you have announced that a hospital is going to close.
A. That's correct.
Q. Okay. So it wasn't an unforeseen situation.
A. It was unforeseen when it would happen and the severity of the attrition. I could not tell at that point in time, okay, when we filed that on February 21st. I couldn't say with any certainty or any specificity as to which staff would leave in which areas with which skill sets, okay, and how difficult or not difficult those people would be to replace. I did not have the ability to foresee the specificity, okay, that you're alluding to.

199

Q. Okay. You just spent your whole testimony with counsel talking about how it's obviously expected of people to not want to work at a hospital that's announced -- that's going to close.
A. That's not what I said. I said that it's not unexpected that people, when a hospital announces that they're closing, that many of them may begin to seek employment at another employer.
Q. Okay.
A. Okay? Which is true.
Q. Certainly we're not talking about an earthquake or anything like that here.
A. No.
Q. Okay. You talked a lot about the financial condition of the hospital. And apparently, that's the reason why you have submitted an application to discontinue the hospital; is that right?
A. Yes.
Q. Okay. So it's got nothing to do with the staffing rates at the hospital?
A. Well, now, remember, the staffing, okay, when we issued on February 19th, okay, staffing was

200

tight, but did we have the attrition issues that we had post-announcement of closing? No, we did not.
Q. But it's one way or the other. So did you submit your application because you were losing too much money or --
A. Yes.
Q. -- because the staffing was at a dangerously low level?
A. No, because we were losing vast amounts of money, and we did not see a pathway for the hospital to recover and be financially viable long-term.
Q. When did you make the decision that you had to close it?
A. I don't have the exact date, but it was probably sometime in the late December time frame, that we looked at it and said that we felt, based on current financial information that had been obtained, okay, from the sellers, that we felt that the hospital was too far gone for us to be able to make a go of it.
Q. Did you say December?
A. December, yes.
Q. When did you buy the hospital?

201

A. We closed on January 29th, 2019.
Q. Okay. So did you -- so, obviously -- okay.
MR. SCHARG: Give me one moment, Your Honor.
THE COURT: Was it a package deal? You had to buy all three of them?
THE WITNESS: We had to buy all three hospitals. Can I explain the situation to you, Judge?
THE COURT: Sure.
MR. SCHARG: Um, no.
THE COURT: Go ahead.
THE WITNESS: We had a seriously deteriorating financial condition that occurred between the time that we had signed an intention to buy the hospital, okay, which was not something -- the deal had not closed. Okay? We based all our decisions based on the 12 months ending June 2018 numbers. For that period of time, the three hospitals, on a combined basis, had lost approximately $12 million. Okay? So from July 1st, '17, through June 30th of 2018, it had lost a combined $12 million. The majority of that had

202

been Westlake had lost that money. Okay?
Fast forward up --
THE COURT: How much did you say? 12?
THE WITNESS: 12 million.
By the time we got to the end of the year, that loss had increased to roughly $31 million across all three hospitals. Okay? Westlake made up the overwhelming majority of that, but the other two hospitals, at that point in time, were losing money as well.
We looked at it and said that we thought that we could turn around the other two hospitals, that being Weiss and West Suburban, but we felt that Westlake Hospital had gone too far, the financial conditions had deteriorated too much, and that we only had the money to turn two of the hospitals, not three. We made the decision that we could save the other two hospitals and prevent them from closing, but Westlake had gone too far, and that it wasn't viable financially for us to try to save the other hospital because it would jeopardize the survival of the other two.
Q. So you're a hero then?
A. I didn't say that. You did.

203

Q. You saved two hospitals.
A. We're in the processing of trying to, yes, we are.
Q. Okay. You want to know why people are so upset about this case?
A. I don't wonder why. Not at all.
Q. Do you --
THE COURT: No --
THE WITNESS: I don't wonder why at all.
THE COURT: Well, hold on. Hold on.
Q. Oh, you don't wonder why at all.
A. No.
THE COURT: Mr. Edwards, you hired that lawyer to represent you. Right?
THE WITNESS: He's a good guy.
THE COURT: Okay. So you know why he stood up?
THE WITNESS: Okay.
THE COURT: That was to object.
THE WITNESS: I'll be quiet.
THE COURT: Okay. Thank you.
MR. CROWL: Objection, Judge. Argumentative.
THE COURT: Sustained.

204

MR. SCHARG: I'll withdraw it.
Q. Okay. So you submitted an application for a change of ownership exemption on September 6th, 2018.
A. Yes.
Q. And in that change of ownership application, you made a number of representations.
A. Correct.
Q. Among --
THE COURT: What was the date, please? The date?
MR. SCHARG: September 6, 2018.
Q. I want to read a couple of these representations. Now, this is what was submitted to the Health Facilities and Services Review Board; right?
A. Correct.
Q. That's a State board.
MR. CROWL: And, Judge, I'm going to object on relevance. This is far afield from the Rule to Show Cause hearing.
THE COURT: I think -- I think we're -- we are getting a little far afield because, you know, these -- and I'll take the blame for asking

297

THE COURT: Yes, yes. You mean restoring services?
MR. SAFER: Exactly.
THE COURT: Yes, yes.
MR. SAFER: Thank you.
And second, just so that the record is crystal clear -- and I heard Your Honor just say this -- there's nothing in this lawsuit and nothing in Your Honor's ruling that --
THE COURT: Right. Right. I made no finding of willfulness.
MR. SAFER: Yeah, and --
THE COURT: I made no finding of bad faith.
MR. SAFER: Understood, Your Honor.
Though you anticipate -- and everybody anticipates -- the board will hear this on April 30th, and there's nothing that's gone on here that would get in the way of that.
THE COURT: I make no finding of willfulness. I make no finding of bad faith. I grant you that some people may have certain notions from reading an order, and I didn't hear anything where I believe that the management of the hospital

298

is out to hurt anybody.
MR. SAFER: Thank you, Your Honor. I appreciate that.
And you anticipate that the board will rule on April 30th?
THE COURT: I cannot speak for the board. You know --
MR. SAFER: But it's not in your ruling --
THE COURT: You know much more about this. You know, you know, the stress, the pressures of the community, and you know what all is happening. And you've heard from the doctors that wanted to maybe buy this or maybe -- so anything can happen. I'm not a prophet. I can't predict what the board will or will not do. And Judge Reilly will be back, I think -- we know she'll be back May 1st, and then I'm happily handing this back to her.
So I didn't mean by anything I said to predict as to what the board will or will not do. I just know it's set there on the 30th. That's all I know.
MR. SAFER: Thank you.

299

THE COURT: And I want to commend counsel for their professionalism and their -- the excellence of their presentation on both sides. Thank you.
(At 4:14 p.m., the above hearing concluded.)

300

CERTIFICATE OF TRANSCRIBER

I, Bobbi J. Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

Bobbi J. Fisher, NCRA Registered Professional Reporter/Transcriber
April 18, 2019

Exhibit 2

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

VILLAGE OF MELROSE PARK, Plaintiff, v. PIPELINE HEALTH SYSTEM LLC, *et. al,* Defendants.	Case No. 19 CII 3041 Judge Eve Reilly Calendar 07

TEMPORARY RESTRAINING ORDER WITH NOTICE

This cause coming before the Court on Plaintiff's Motion for a Temporary Restraining Order, notice having been given, the Court having reviewed Plaintiff's Verified Complaint, Plaintiff's Motion for Temporary Restraining Order, and the Defendant's Opposition to Plaintiff's Motion for Temporary Restraining Order, and the Court having considered oral arguments of counsel, the Court finds as follows:

1. Plaintiff has raised a fair question that it has a clearly ascertainable right in need of protection;
2. Plaintiff has raised a fair question that Plaintiff will succeed on the merits;
3. Plaintiff has shown that it will suffer irreparable harm if an injunction does not issue; and
4. Plaintiff has shown that it has no adequate remedy at law.

Having weighted and balanced the hardships of the parties, IT IS ORDERED:

1. Defendants are temporarily enjoined from:
    a. Discontinuing any medical service offered by Westlake Hospital on April 9, 2019, or modifying the scope of medical service that were offered by Westlake Hospital on April 9, 2019, until such time as Defendants receive approval to do so from the Illinois Health Facilities and Services Review Board pursuant to 20 ILCS 3960/1 *et seq.*
    b. Creating conditions that change the status quo, including but not limited to:
        i. Terminating employees or contracts that result in insufficient staffing to provide the scope of services that were offered by the Hospital on April 9, 2019;

ii. Failing to maintain facilities, staffing, or supply levels that interfere with providing the scope of services and adequate standard of care to patients that were provided by the Hospital on April 9, 2019.

2. This restraining order is entered on April 9, 2019 at 4:30 p.m. and shall remain in full force and effect until May 1, 2019 at 2:00 p.m., unless sooner modified or dissolved by court order.
3. Per 735 ILCS 5/11-103, no bond is required by a governmental office or agency.
4. Hearing on Plaintiff's Motion for Preliminary Injunction is set for May 1, 2019 at 2:00 p.m.
5. The parties are directed to the requirements governing evidentiary hearings that are contained in the Court's standing order.

Judge Eve M. Reilly

APR 09 2019

Circuit Court - 2122

April 9, 2019
Dated

Judge Eve Reilly

BY COURT ORDER

Exhibit 3

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

VILLAGE OF MELROSE PARK,

Plaintiff,

v.

PIPELINE HEALTHCARE SYSTEM LLC, a Delaware limited liability company, SRC HOSPITAL INVESTMENTS II LLC, a Delaware limited liability company, PIPELINE-WESTLAKE HOSPITAL LLC, a Delaware limited liability company, TWG PARTNERS LLC, an Illinois limited liability company, NICHOLAS ORZANO, an individual, and ERIC WHITAKER, an individual,

Defendants.

Case No. 19 CH 3041
Judge Moshe Jacobius
Calendar 12

MEMORANDUM OPINION AND ORDER

This matter comes before the court on Plaintiff Village of Melrose Park's ("Melrose Park") Verified Emergency Petition for Rule to Show Cause whereby Melrose Park requested this Court to issue a rule to show cause why Defendants (collectively referred to here as "Pipieline") should not be held in indirect civil contempt. Having issued the rule to show cause following a hearing on April 11, 2019 and having conducted an evidentiary hearing on April 16, 2019, the Court now finds Defendants to be in indirect civil contempt of court.

BACKGROUND

Westlake Hospital ('Westlake") is a community hospital located in the Village of Melrose Park. Pl.'s Compl. 5. In 2018, Pipeline agreed to purchase Westlake, contingent upon the approval of the Illinois Health Facilities and Services Review Board (the "IHFSRB"), which, *inter alia*, reviews changes of ownership applications and discontinuance of services applications

to ensure compliance with the Illinois Health Facilities Planning Act (the "Planning Act") and related rules and regulations. Pl's Compl. 2-3; *see* 20 ILCS 3960/4. The sale of Westlake to Pipeline was completed on January 29, 2019. Pl.'s Compl. 14. Less than one month after finalizing the purchase, on February 21, 2019, Pipeline filed an application of discontinuance with the Review Board requesting to permanently close Westlake's doors. Pl.'s Compl. Ex. 2. In response to the discontinuance application, Melrose Park filed this action on March 7, 2019. The Review Board held a public hearing on March 11, 2019 where members of the public could voice their opinion on Westlake's potential closure, and withheld review of Pipeline's application to close Westlake until the next Review Board meeting on April 30, 2019.

On April 8, 2019, Melrose Park filed a Verified Emergency Motion for a Temporary Restraining Order, and on April 9, 2019, the Court heard oral argument on the motion and subsequently granted the temporary restraining order. The temporary restraining order, in pertinent part, enjoined Pipeline from "discontinuing any medical services offered by Westlake on April 9, 2019, or modifying the scope of medical services offered by Westlake Hospital on April 9, 2019" until the Review Board meeting on April 30, 2019. TRO Order 1. Pipeline was also enjoined from "creating conditions that change the status quo," such as "terminating employees or contracts that result in insufficient staffing" or "failing to maintain facilities, staffing, or supply levels." TRO Order 1-2.

Despite the clear mandate from the Court to continue to staff Westlake to provide an adequate standard of care to patients and to keep the hospital open, Melrose Park alleged that on April 10, 2019, Pipeline ceased providing medical services at the hospital except to existing in-hospital patients and, *inter alia*, no longer provided emergency treatment to patients, surgical services except to existing in-hospital patients, mental health services and obstetrics services.

Given the severity of the allegations, the Court granted Melrose Park's Verified Emergency Petition for Rule to Show Cause on April 11, 2019, and heard oral argument later that same day as to why Pipeline should not be held in indirect civil contempt.[1]

At the Rule to Show Cause hearing, Melrose Park argued that by no longer providing essential medical services as of the morning of April 10, Pipeline was in clear violation of the TRO's mandates not to reduce staff or services further. Pipeline, on the other hand, argued that they were in full compliance with the TRO because the actions were merely a continuation of the suspension of services Pipeline had already implemented. *See* 77 Ill. Admin. Code 1130.240(d). After reviewing all applicable pleadings and hearing argument from both Melrose Park's and Pipeline's counsel, the Court issued the rule to show cause why Pipeline should not be held in indirect civil contempt and scheduled an evidentiary hearing for April 16, 2019.

DISCUSSION

It is well established that courts have the inherent power to enforce their own orders and to find individuals in contempt for failing to follow the Court's order. *In re Marriage of Betts*, 190 Ill. App. 3d 961 (4th Dist. 1989). "The power to impose contempt is an extraordinary one and, thus, should be exercised only in extreme situations. It should not be used when other adequate remedies are available." *Central Prod. Credit Assoc. v. Kruse*, 156 Ill. App. 3d 526, 531 (2d Dist. 1987) (internal citation omitted).

"Civil contempt is coercive in intent and ordinarily consists of failing to do something ordered to be done by a court in a civil action for the benefit of an opposing litigant." *Id.*; *see*

[1] Melrose Park's Verified Emergency Petition for Rule to Show Cause also petitioned the Court to issue a rule to show cause why Pipeline's Chief Executive Officer Joseph Ottolino should not be held in indirect criminal contempt. The Court struck the portion of the Petition as it related to the request for indirect criminal contempt as the petition was procedurally improper.

also Pancotto v. Mayes, 304 Ill. App. 3d 108, 111 (2d Dist. 1999) ("Civil contempt relies on coercion of the contemnor; he is being coerced to do something and thus can be relieved from the coercion by compliance."); *Felzak v. Hruby*, 226 Ill. 2d 382, 391 (2007) ("In general, civil contempt is 'a sanction or penalty designed to compel future compliance with a court order . . . [it] is a coercive sanction rather than a punishment for past contumacious conduct.'"). "Indirect contempt arises from acts that occur outside the presence of the court." *Kruse*, 156 Ill. App. 3d at 531. While, "[d]irect contempt arises from acts that are committed in the presence of the court or any constituent element." *Id.*

"In civil contempt proceedings, the burden is on the party charged to establish his inability to comply with the order and to show why he should not be held in contempt." *Id.* at 532; *see also Hall v. Clark*, 344 Ill. App. 3d 1137, 1147 (4th Dist. 2003) (stating "when the trial court issued the rule, the burden shifted to respondent to show cause why he should not be held in contempt"). In addition, where civil contempt is premised on violation of an injunction, the contempt need not be willful. *County of Cook v. Llyod A. Fry Roofing Co.*, 59 Ill. 2d 131, 137 (1974) (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949) ("Since the purpose of civil contempt is remedial, it matters not with what intent the defendant did the prohibited act.")). The burden of proof for civil contempt is preponderance of the evidence. *Kruse*, 156 Ill. App. 3d at 531.

"A finding of civil contempt is not proper unless the means to purge the alleged contempt is within the power of the contemnor[.]" *In re Marriage of Berto*, 344 Ill. App. 3d 705, 712-713 (2d Dist. 2003); *see also Pancotto*, 304 Ill. App. 3d at 111 (stating "contemnor must have an opportunity to purge himself of contempt by complying with the pertinent court order"); *Felzak*, 226 Ill. 2d at 391 ("[A] valid purge condition is a necessary part of an indirect civil contempt

order. A contemnor must be able to purge the civil contempt by doing that which the court has ordered him to do.") (internal citation omitted).

At the hearing on April 16, 2019, Pipeline presented four witnesses with management responsibilities for Westlake. Counsel for Pipeline acknowledged that as of April 10, 2019 Westlake had not provided services to patients which were previously provided on April 9, 2019. The testimony adduced by Pipeline contended that on April 9, 2019 Pipeline invoked the temporary suspension provision of Section 1130.240 of the Administrative Code rules of the HFSRB promulgated by the Joint Committee on Administrative Rules. This rule provides as follows:

> (d) Temporary Suspension of Facility or Category of Service
>
> A facility that ceased operation or that ceased to provide a category of service due to unanticipated or unforeseen circumstances (such as the loss of appropriate staff or a natural or unnatural disaster) shall file notice to HFSRB of a temporary suspension of service that is anticipated to exceed 30 days. The notice shall be filed no later than 30 days after the suspension of the service, and shall include a detailed explanation of the reasons for the suspension, as well as the efforts being made to correct the circumstance and a timetable to reopen the service. Reports documenting the progress of corrections must be filed every 30 days thereafter until services resume. Temporary suspensions shall not exceed one year unless otherwise approved by HFSRB.

Pipeline's witnesses testified that since they adopted the temporary suspension provision prior to the Court's entry of the TRO at 4:30 P.M., they believed that they were no longer duty bound to provide medical services that were provided earlier that day. Pipeline maintained that once they filed an application to close Westlake with HFSRB in February, 2019, there were resignations of medical staff at the hospital. They claimed that due to attrition of staff, they did not believe that the hospital could adequately safeguard the health, safety and welfare of patients. At the conclusion of Pipeline's case, Melrose Park motioned the Court for a Directed Finding.

The Court, having made a number of oral findings at the evidentiary hearing, hereby incorporates those findings into this memorandum opinion order as though fully set forth herein, as documented in the transcript, and finds that Pipeline's defense that it promulgated a temporary suspension prior to the Court's entry of the TRO, and is therefore not bound by the Court's Order, to be without merit. There was no testimony of any documentation disseminated between the hospital administrators relative to the temporary suspension prior to April 9, 2019. Pipeline's witnesses acknowledged that the hospital's committees charged with reviewing medical care were not advised of the temporary suspension prior to its implementation. In addition, there was no presentation to the pertinent committees of the attrition of staff issue. The timing of the invocation of the temporary suspension was also questionable since it occurred on the very day Pipeline was aware the Court was going to address Melrose Park's TRO Motion. Furthermore, it is clear to this Court that the temporary suspension rule was inapplicable to Pipeline's circumstances and improvidently promulgated. The action taken by Pipeline was neither unforeseen nor unanticipated. To the contrary, Pipeline's witnesses testified that they anticipated the issue of staff attrition when they applied to close the hospital. They also did not submit any plan of remediation as contemplated by the rule.

It is extremely puzzling and inexplicable to this Court why Pipeline did not unequivocally notify the Court (Judge Eve Reilly) on April 9, 2019 that they had invoked the temporary suspension state and provide the Court with the letter written to HFSBR that they had taken this action. The Court's TRO Order was clear and unambiguous: all medical services provided by Westlake on April 9, 2019 regardless of the time of day should continue unabated until further Order of Court.

Pipeline attempted to prevail upon this Court that renewal of services provided on April 9, 2019 would result in possible endangerment to patients. The Court rejects this Cassandra-like warning since Pipeline was able to provide medical services on April 9, 2019 and the Court cannot believe that it would have taken any risk with patients' well-being and medical care.

Illinois law does not require a showing of willful conduct for a finding of indirect civil contempt and the Court makes no finding that the Defendants acted willfully. *Fry*, 59 Ill. 2d at 137. The Court believes, however, that Defendants are duty bound to follow Judge Eve Reilly's TRO Order of April 9, 2019 until the HFSRB has made a determination on the application for closure of Westlake or until further Order of Court.

IT IS THEREFORE ORDERED:

1. Defendants are hereby found in Indirect Civil Contempt of Court for violation of the Court's Temporary Restraining Order of April 9, 2019.

2. Defendants shall not take any implementation action on the temporary suspension of services until further Order of Court, beyond notice of this Order to the applicable regulatory authorities.

3. Defendants shall admit patients to all units of Westlake Hospital, including, but not limited to, the emergency room, intensive care, obstetrics, rehabilitation, internal medicine, pediatrics, surgical, and psychiatric, in the same manner they did on April 9, 2019 before the implementation of the temporary suspension of services.

4. Defendants shall operate all units of Westlake Hospital, including, but not limited to, the emergency room, intensive care, obstetrics, rehabilitation, internal medicine, pediatrics, surgical, and psychiatric, in the same manner and provide the same services they did on April 9, 2019 before the implementation of the temporary suspension of services.

5. Defendants shall notify all hospital and medical staff of the restoration of services.

6. Defendants are not required pursuant to this Order to return the bariatrics equipment that was moved to West Suburban Hospital on or about April 10, 2019, or to provide bariatric surgery or bariatric services.

7. Defendants are not required to modify any critical care bypass or diversion that is carried out in accordance with Illinois Department of Public Health Regulations.

Defendants shall not utilize the temporary suspension of services as a basis to suspend emergency room services; however, if they are in bypass status, they may utilize all of the procedures permitted under the Illinois Department of Public Health regulations.

8. Westlake Hospital medical and clinical staff is entitled to utilize its medical and clinical judgment in good faith on the same basis that they utilized their medical and clinical judgment on April 9, 2019 and prior thereto in rendering medical services.

9. If Defendants have failed to comply with any of the terms of this Order commencing on April 18, 2019 at 9:00 A.M., a daily amount of $200,000 (two hundred thousand) shall be assessed on Defendants, jointly and severally, until such time as Defendants demonstrate compliance. Should an amount be assessed, Defendants shall submit a check payable to the Clerk of the Circuit Court for the appropriate amount.

April 17, 2019

Dated

Judge Moshe Jacobius

ENTERED
JUDGE MOSHE JACOBIUS-1556
APR 17 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK