STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

R.I. DEPARTMENT OF HEALTH

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OPEN MEETING IN RE:

UNITED NURSES ALLIED PROFESSIONALS PETITION FOR DECLARATORY RULING REGARDING ELIMINATION OF PRIMARY CARE SERVICES AT THE MEMORIAL HOSPITAL

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ORIGNAL

R.I DEPARTMENT OF HEALTH
3 CAPITOL HILL
PROVIDENCE, RI 02908
APRIL 27, 2016
2:30 P.M.

BEFORE: STEPHEN MORRIS, ESQUIRE, MODERATOR
MICHAEL DEXTER, CHIEF OF THE CENTER FOR HEALTH SYSTEMS POLICY

M.E. HALL COURT REPORTING

108 WALNUT STREET

WARWICK, RI 02888

(401) 461-3331

(COMMENCED AT 2:30 P.M.)

MR. MORRIS: Good afternoon, everybody. Welcome. We are going to get started. I just wanted to start things off with just letting everybody know that this matter is proceeding under the Open Meetings Act, Rhode Island General Law 42-46(a) and (b). And it was requested by the United Nurses Allied Professionals, Petition for Declaratory Ruling regarding the elimination of primary care services at Memorial Hospital. So, this meeting was set up under the Open Meetings Act to allow people to present, from the public, comment, and also, for United or UNAP to make their arguments on their behalf of their petition.

So, we will start off with UNAP presenting first, and then we will call, as people came in and signed in, those of you who want to speak. We will let you know when you are up in the order that you came in. So, with that, I turn it over to Mark Russo.

MR. RUSSO: Do you want us to do it from the podium?

MR. MORRIS: Might be easier for everybody to hear.

MR. RUSSO: Mark Russo. I represent United Nurses and Allied Professionals. I'm not quite sure what this proceeding is, but we have an action in Superior Court, so we are, obviously, reserving all rights. The Director, I take it, is not attending?

MR. MORRIS: No.

MR. RUSSO: No. So, Steve, you made a statement about our Petition for Declaratory Ruling that is a little narrow. We filed a Petition for Declaratory Ruling not only with regard to elimination of primary care services but this goes beyond that. I think The Department is doing a very careful job of having a myopic view of this; and what it really is, unfortunately, is an acute care community hospital is being wound down so it will admittedly no longer be a hospital and no longer be an engine for employment; and that's where, obviously, Mr. Callaci and I come in on behalf of our client.

So, with regard to the Petition for Declaratory Ruling, which we are, obviously, at least, at this point, not getting a hearing and being told we really don't have anywhere to go with it. We are expecting a decision on it, I guess, Judge Lanphear's rulings. In any event, it's two prong. One is that we believe that if we did have the ability to put on evidence, we can show that steps have already been taken to eliminate primary care services without this Department's approval, and that can be done in a number of ways, changing referral patterns, talking to patients, informing them that it's being wound done, telling that to employees, taking steps to have physicians credentialed at other institutions, et cetera, et cetera, et cetera. Right now that's us saying that we believe that has been taking place. We have not been granted the opportunity to try to get that on the record.

Secondly, and maybe more importantly, as I have said, we have an acute care community hospital that, based on the

documents that we've gotten through our Open Records request, is admittedly being wound down. In a statement from the hospital and/or Care New England, the Department said it is an unsustainable situation in terms of keeping Memorial open as a full-service hospital.

So, the challenge for the Department and why we think a hearing is important, whether you conduct it or we somehow force it by way of whatever legal rights we may have, is let's just say that hypothetically a hospital system comes to the Department and asks for affiliation to be approved under the Hospital Conversion Act, and under that Act, Mike Dexter and his team, who do an unbelievable job, work as hard as they do, and they issue, ultimately the Department issues approvals and there's conditions that are placed on the license as a result of that. The statute in which Mike and his group labor under say that one of the things we weigh is job retention, and there are a number of other issues. And in fact, by law, what the Department does is considers a new license for

the, quote, new hospital under the Conversion Act in parallel with the conversion proceedings. And that's under Section 28 of the Conversion Act. And one of the things those conditions have to provide is that that the hospital, the quote, new hospital, remain open and operational for a minimum period of time.

Now, continuing my hypothetical, during that period of time, why such conditions are placed on the license the hospital asked for a meeting with the Department and says, I, the same quote I read before. We can't keep this going as a full-service hospital despite those conditions; and they present a plan to the Department which says, look, we want to transfer services to other hospitals within our system, and we want to be licensed, in essence, up to 150 beds. So, as we said at the outset, it's no longer going to be an acute care community hospital.

And in making that presentation to the Department, this hospital system says we recognize that we need to amend certain

statutes. We need to amend certain regulations. We need certain relief; and what do they do, Chris, they file. They say we would like to file petitions for declaratory rulings. So, they want to put together this plan and they acknowledge that they need certain relief to do this plan; and the reason why they do that -- this is just supposition on our part -- we think, ultimately, if someone conducts a hearing where people have to actually answer questions, they realize and admit that what they are doing is a conversion of the assets of a licensed hospital.

So, if you're converting the assets of a licensed hospital in this state, you have to go through a conversion proceeding; but we seem to have, again, very focused blinders on saying, oh, we are just talking about moving a primary care service. Let's not look at all this other stuff. And we think, by law, that you have to because that hypothetical actually took place in February of 2016. That meeting was asked for. That plan was presented. Those acknowledgements that

regulations and statutes need to be changed were made. And the Department -- and we would say rightly so -- did not basically concede that that could be done; and yet, we would say, if we were allowed to have a hearing and put evidence in a record, that steps have already been taken to do all of that which we outlined in our hypothetical.

So, you have, basically, an unapproved conversion. So, now, we look at it from UNAP's standpoint. Well, what do we do? First, we could file -- just like the hospital system said, let's file a Petition for a Declaratory ruling and have some orderly assessment of the issues and what really should be done to allow this to take place. And we went to Superior Court the other day and very skilled attorneys stood up and said, you're not entitled to a hearing. You're not really entitled to anything. The Judge asked, well, have they intervened in this regulatory proceeding. No, they haven't, but even if they did, you Honor, they could not take an appeal of it because they are not a transacting party.

So, we go around and around in circles, and what we pointed out to the Department and to the Director in our Petition for a Declaratory Ruling is that you do have regulations under the Conversion Act, and in fact, it emanates from the Conversion statute. It's Section 30, and what it says is that you can take steps, if you feel that someone has not complied with their licensure requirements. If someone has not complied with the Conversion statute, the Director and/or our Attorney General can ask for a hearing to determine the facts and determine if, in fact, something is taking place.

Why do we want to know what has taken place? Do we want to punish Care New England or Memorial? No, we do not. Mr. Callaci and I would like to force someone in the record to look at this issue and determine what took place, because maybe there are other alternatives. Maybe, if we look at this in a conversion proceeding, maybe somebody else might want to buy that asset and keep it in Pawtucket and serve the folks in Pawtucket

and Central Falls and the surrounding communities. Maybe somebody else can make it work.

We are cognizant of Care New England has said they can't financially do it. We don't think we can reverse that, but you can't tell me that you get to take a community asset like this that employs people, that's an economic engine and say, we haven't, from a business prospective, been able to make it. It's a highly-regulated institution. It's a highly-rated community asset. We realize that what we are doing is, in essence, a conversation; but don't look at that, because if you look at that, you might, who knows, maybe another hospital entity -- this is in an economy right now or a sector of our economy in flux. There's a lot of people looking for opportunity. Maybe there's a way to retain the jobs. Maybe there's a way to work together with Care New England and the Department. Nobody seems to want to listen. It's just, all right, let's take 90 days. Let's wind down OB; and by the time we do that, it's not a hospital

anymore and they will accomplish what they want to accomplish. We don't think that's right.

The other aspect of that Section 30 is that someone can bring an action in Superior Court and the Superior Court can have a hearing to determine it.

We are going to continue to pursue our rights; but at the end of the day, we are asking for someone to take a level playing field, look at can this be done in a different way, number one. And number two, have they already made it a fait accompli and have they violated the regulations and the statute by doing that, because it seems like they made a decision somewhere in February of 2016 to do that and set about doing it without any approvals.

Now, that, right now, is argument. We preserved our right through Judge Lanphear's proceeding. We would very much like to have that somehow in a record and explore that. Certainly, the Department has the ability to do that. We have seen documents go back and forth from our Open Records process

where Mike Dexter's group, and I think rightly so, has asked for certain things like what is your Comprehensive Plan. What ultimately are you going to do. And I think what came back from Care New England is, no, you only can look at the elimination or transfer of the primary care services to Kent and Women and Infants. You're not allowed to look at our comprehensive plan, and Chris and I submit that, in this instance, with the override of the Hospital Conversion Act and the steps that were taken and the admissions that were made in February of 2016, you have to look at it. You really should have a hearing.

If we are not allowed to ask the questions, you guys should be asking the questions, but it shouldn't be done in an expedited fashion that allows the hospital to accomplish what they set out to accomplish in February where they admitted we need changes to the statute and regulations to do it and not at least look at what are the other alternatives, what can be done to retain the jobs, which is one of the things you looked at during the

conversion proceeding.

So, we were -- it was said in court yesterday that you and I are trying to extend this for all these nefarious purposes. We are not. We would like to force someone to look at alternatives.

MR. MORRIS: Thank you, Mr. Russo. Next on the list is John, and looks like Miskovsky. Could you spell it?

DR. MISKOVSKY: M-I-S-K-O-V-S-K-Y. I am an attending physician at Memorial Hospital. I am a member of Memorial Hospital's executive committee of the medical staff. Have been so for four years, all prior to and during Care New England's management of the facility. I also have a independent primary care practice in Pawtucket and provide out-patient services in my out-patient practice as well as hospital services, including ICU-based care at Memorial Hospital. I was part of the physician group who initially reviewed all of the proposals when requests for proposals were floated approximately three years ago for strategic

partners for Memorial Hospital, including the proposal from Care New England as well as alternative proposals such as from Lifespan, to establish affiliation with Memorial at the time.

I think a key point that drove most members of the physician staff to affiliate with Care New England were the commitments that Care New England made to maintaining primary care services and specialty services in Pawtucket. It was fairly clear to many of us in the medical staff leadership that Lifespan did not have an intention of maintaining Memorial Hospital as a full service hospital at the time, and Care New England gave us every indication in public and in private that their plan was to invest in Memorial Hospital to expand its footprint, to expand the services available, to grow the business and to make the hospital more profitable and more able to deliver the care that the citizens of Pawtucket needed.

I do not feel that any of that has happened. It is hard for me to speak to

the motivations of Care New England, and I don't wish to try to; but I do not feel that Care New England has kept its word to the medical leadership of the hospital and to the citizens of Pawtucket. I have seen five different leaders during the span of the last three years come and go. Each attempting to establish relationships with various physician leaders in the community. None of whom has actually remained for any length of time to develop the relationships necessary to help reestablish the physician referrals back to the hospital that were lost during the previous administration of Frank Deitz.

I have heard many proposals, including many by Dr. Dacey when he functioned as chief clinical integration officer for the Care New England system, about development of a wound care center in Pawtucket. Development of hyperbaric oxygen treatments at Pawtucket. Development of a multi-type disciplinary vascular center given our 18 podiatrists we have on staff. None of that has come to fruition.

I listen to the ads on the radio when I drive to work. I hear all the ads about Care New England. I was told many years ago, three years ago, the ads at Memorial are coming. The ads for Memorial Hospital have come very few and very far between; and as far as I can tell, in the last several months, they haven't really been out there. And the services that have been added and expanded where there were opportunities to be added and expand for Memorial just haven't been. I don't know how many of you listen to the ads by Dr. Giovanni, the new bariatric surgeon who is doing her bariatric surgery down at Kent. And is having informational seminars at Women and Infants and Kent. They don't mention Memorial.

The patients of the Blackstone Valley don't have issues related to obesity? The patients of the Blackstone Valley don't have that problem? I feel like we have been a neglected step-child of the Care New England system since we joined.

I have seen little investment in physical plant. I have seen little investment

in physician recruiting. I read the lists submitted by Care New England as part of a presentation to the Pawtucket City Council. The list of those 20 some doctors, some of whom don't exist, because the names are incorrect. Some of whom are already present on staff and merely changed employment from a Lifespan physician group to a Care New England group. Many of whom are no longer present at the hospital. Many of them who never saw patients because they were emergency room doctors and other physicians who were not involved in developing a patient base.

The claims that Care New England makes in terms of recruitment and retention of staff can easily be disputed and refuted, and I will submit a list with each individual name, if that is requested. I personally can't get basic services for any patients done at Memorial that I was able to years ago. If I have a patient whose heart slows and stops and needs a pacemaker insertion, that patient has to be sent to Miriam or Kent. Our cardiac catheterization lab has been closed. Why was

our catheterization lab closed? It was closed because we no longer had staff to service our catheterization lab. Why didn't we have staff to service our catheterization lab, because they were all told that the catheterization lab is going to be closed soon; so, rightly so, they went out and found other jobs.

This is what's happening to our ICU now. We have one full-time employed ICU nurse who's going to be working a night shift in the ICU. Even though the ICU has not been closed, this plan that has been referenced with respect to closure has been put to the staff; so, everyone who's concerned about their future has gone out and sought employment elsewhere.

This has been accelerated in the last three months, certainly since this memo has been promulgated, but these are sort of the curtailments of services that we have seen over time, curtailments of primary care services, curtailments of out-patient pediatrics, closure of inpatient pediatrics, limitation of diagnostic catheterization services, and ultimately, elimination of that that has made

it difficult for primary care doctors like myself to be able to refer patients to Memorial Hospital, has contributed to this ultimate decline, and we have this downward spiral where now Care New England is throwing up their hands and throwing in the towel and saying we can't do it any longer.

I think the hospital is saveable. I think the hospital is salvageable. I think there's a loyal group of patients in the City of Pawtucket who would come back to the hospital if the hospital had the services that these patients needed; and I don't think Care New England can do it, but I think there are potential other partners out there who could save the institution, and I agree with the previous speaker in saying that at least that opportunity should be pursued.

I want to speak to one other thing, which is slightly off topic, which is my frustration as a member of the medical staff to get to speak to Care New England administrators and leaders. I have seen more Care New England leaders in this room than I have seen face to

face at any public medical staff meeting or meeting of the executive committee of the staff at Memorial Hospital. The executive committee at Memorial Hospital asked every member of the Care New England Board to come to the emergency meeting to discuss their plans of what the future of the hospital was and not one of them chose to show up.

So, I would welcome the opportunity for a public hearing. I would welcome the opportunity to speak with Mr. Keefe, to speak with Sandy Coletti and to speak with others members on the board to discuss this. I have ideas -- there are many members of the medical staff in Pawtucket who have the ideas of how to turn this place around. I would love to see this strategic plan that you guys came up with years ago. Sort of reminds me of Mitt Romney's strategic plan to end the deficit that was very detailed that we all had details of. I urge the Department of Health, I urge the Director, I urge the public to not let the hospital to cease to essentially function as a community

hospital in the next 90 days with the allowance of the elimination of the OB service. I know, as soon as that occurs, that Care New England is proceeding to close the ICU services and close the primary services. Thank you.

MR. MORRIS: Thank you, Doctor. The next speaker, Gerry Goulet.

MR. GOULET: My name is Gerard R. Goulet of Health Policy Analytics, LLC, and I am appearing here today on behalf of Care New England and Memorial Hospital of Rhode Island. The following comments are offered on behalf of Care New England and Memorial Hospital in connection with the Open Meeting to hear argument and public comment on the United Nurses Allied Professionals petition for Declaratory Ruling regarding MHRI to eliminate its inpatient obstetric services.

In this context, UNAP requested declarations by the Department of Health as to a number of issues set forth in Items A through F, H and I at Page 11 of its petition. Most of these are procedural in nature or have been addressed by circumstances that have occurred

in the weeks that have passed since the March 11 filing of that petition with the Department of Health.

There is one substantive point, however, upon which UNAP's position is premised on which Care New England and Memorial Hospital feel that comment must be made. This is the allegation that Care New England and Memorial has violated a condition of the approval that they received under the Hospital Conversions Act in June of 2013. It was through that conversion that MHRI was permitted to become a part of Care New England.

That approval was subject to four conditions, only one of which is germane to these proceedings. That condition reads as follows: The transacting parties shall implement the conversion as detailed in the initial application and as approved by the Director of Health. The transacting parties in question, in this case, Care New England and Memorial Hospital, have, in fact, implemented the conversion as detailed in the initial application. As one prong of its argument,

UNAP asserts that the transacting parties have completely ignored binding conditions that CNE fund MHRI's operational shortfalls through September of 2016. This is untrue. CNE has funded MHRI's operational shortfalls to the tune of $37.2 million through September, 2015, and is projected to reach $70 million in funding shortfalls by September, 2016, if no changes were to be made.

This figure is nearly twice the high point of the range of 27 million to 36 million in estimated shortfalls that had been projected by the parties in early 2013. CNE nevertheless continues to fund these shortfalls at an unsustainable rate of 2 to $3 million a month. The obligation to fund operational shortfalls, which CNE has never really shirked, does not prevent Care New England from taking actions to reduce the magnitude of those operational shortfalls.

UNAP also erroneously alleges that Care New England must maintain primary care services in place at MHRI with the exception of cardiac catheterization and

1 certain imaging services, and that was in
2 quotes, from maintaining the services.
3 We all know that cardiac
4 catheterization and certain imaging services
5 that were detailed in the application are not
6 primary care services. Those are specialty
7 services. There is no condition imposed upon
8 Care New England and Memorial Hospital nor was
9 any such commitment made in the context of the
10 initial application.
11 Care New England never indicated
12 that it would maintain all services or all
13 primary care services at Memorial for any
14 specified period. What Care New England said
15 in actuality was that it did not envision or
16 contemplate closing services within the first
17 three years after the conversion apart from
18 those specialty services it identified in
19 Appendix D. That language was a far cry from a
20 commitment to maintain all services. In fact,
21 the specific language of the application spoke
22 directly to consolidation of services as a
23 distinct possibility during the first three
24 years.

To underscore this point, Question 14 of the application asks the following: And I quote, please complete Appendix D regarding plans for all hospital departments for services that will be eliminated or significantly reduced at the new hospital during the first three years, at the new hospital following the implementation of the proposed conversion. The Care New England Memorial Hospital response in relevant part was as follows: Care New England and Memorial Hospital are studying how best to configure their services in the proposed combined system. Currently it is not anticipated that any services will be reduced or terminated on a system-wide basis so that all services currently at Memorial will continue to be offered either at Memorial or elsewhere in the Care New England system in a manner accessible in the Memorial service area. Care New England and Memorial fully expect that their ongoing examination of the combined system will lead to additional opportunities for integration, including potential changes in services

provided.

Thus, apart from the specialty services that were specifically identified, terminations or reductions of services were neither envisioned nor contemplated. This did not mean that such terminations or reductions could not occur but rather any terminations or reductions in services at Memorial would, after further study, arise through consolidation that would preserve those services on a system-wide basis. This was the Care New England/Memorial Hospital commitment. No more. No less.

Therefore, Care New England and Memorial have not violated any condition related thereto. With specific reference to the Memorial inpatient Obstetrics Unit, Care New England and Memorial have neither terminated nor significantly reduced that unit pending the Department of Health's decision on its request to do so. Moreover, Care New England continues to fund Memorial Hospital's operational shortfalls.

Accordingly, any ruling request based on a purported violation of an HCA

condition of approval is, in the view of Care New England and Memorial, baseless.

One other point I would like to address is the idea that MHRI's announcement of its restructuring plans will, quote, terminate Memorial's participation in the community as an acute care community hospital. This is not accurate. Memorial Hospital will continue to operate in the community as an acute care community hospital. There's no requirement under the Rules and Regulations for Licensing of Hospitals requiring a community hospital, which is not defined anywhere in those regs., to maintain an obstetrics unit. In fact, at least two community hospitals operating in Rhode Island currently operate without an inpatient obstetrics unit. The hospital is still working with Care New England to evaluate what that structure will be at the end of the day; but clearly, it will still remain a community hospital in Pawtucket, Rhode Island.

I thank you for the opportunity to make these comments.

MR. MORRIS: Thank you, Gerry.

The next and last listed speaker is Mark -- can't read the last name. Mark?

MR. RUSSO: No, that was me.

MR. MORRIS: Okay. And Chris is listed. Did you want to speak, also, Chris?

MR. CALLACI: Yeah, just a footnote to Mr. Russo's comments. Chris Callaci, C-A-L-L-A-C-I, on behalf of the United Nurses and Allied Professionals. There's no mystery that this is about more than closing the OB. Care New England says they are going to close the ICU. Care New England says it's going to reduce the beds in med-surge. Care New England says it's going to reduce services in the Emergency Department. These things are already in motion. Turning a full-service acute care community hospital, at the end of the day, into a grouping of out-patient clinics.

The Department of Health should follow through with the request you made of Care New England for a Comprehensive Plan. The notion that you would review this in isolation with respect to OB in and of itself is

troubling to us. There should be an evidentiary hearing, as my brother, Mr. Russo said, on such plan. And that should happen especially because there is a very different version of events that is going on when you listen to the comments that my brother, Mr. Goulet made and the comments I'm making and Mr. Russo made. There are conflicts that ought to be ironed out in the context of an evidentiary hearing, especially because we have alleged and we stand by those allegations that what's going on at that hospital represents violations of the Hospital Conversion Act; and contrary to my brother, Mr. Goulet, also, represent violations of the conditions that came with the Director's decision in 2013. Thank you.

MR. MORRIS: Thank you, Chris. Is there anybody else that came in after the signing in took place that would like to make comments?

(PAUSE)

MR. MORRIS: All right. If not, then that concludes the open meeting today.

Thank you all for attending.

(OPEN MEETING CLOSED AT 3:04 P.M.)

1 C E R T I F I C A T E

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3 I, Mary Ellen Hall, hereby certify that the foregoing is a true, accurate and complete transcript of my notes taken at the

4 above-entitled meeting.

5 IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of May, 2016.

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8 Mary Ellen Hall

_____

9 MARY ELLEN HALL, NOTARY PUBLIC/
CERTIFIED COURT REPORTER

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11 DATE: APRIL 27, 2016

12 IN RE: PUBLIC MEETING IN RE CARE NEW ENGLAND/MEMORIAL HOSPITAL AND UNAP

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