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DEPARTMENT OF JUSTICE



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April 26, 2013

Sent Via Email and U.S. Mail

William L. Abalona, Esq.
Foley & Lardner
1215 K Street, Suite 1920
Sacramento, CA 98514-3947

RE: Proposed Change in Governance of Saint Agnes Medical Center

Dear Mr. Abalona:

Pursuant to Corporations Code section 5920 *et seq.*, the Attorney General hereby conditionally consents, to the Consolidation Agreement by and among Trinity Health Corporation, an Indiana nonprofit corporation, Catholic Health East, a Pennsylvania nonprofit corporation, and CHE Trinity, Inc., an Indiana nonprofit corporation, as set forth in the Notice submitted on January 22, 2013.

Corporations Code section 5923, and California Code of Regulations, title 11, section 999.5, subdivision (f), set forth factors that the Attorney General shall consider in determining whether to consent to a proposed transaction between nonprofit corporations. The Attorney General has considered such factors and consents to the proposed transaction subject to the attached conditions that are incorporated by reference herein.

Thank you for your cooperation and that of your client throughout the review process.

Sincerely,

[Original Signed]

WENDI A. HORWITZ
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

Attachment

**Conditions to Change in Governance of Saint Agnes Medical Center and
Approval of Consolidation Agreement among Trinity Health Corporation,
Catholic Health East, and CHE Trinity, Inc.**

I.

These Conditions shall be legally binding on Saint Agnes Medical Center, a California nonprofit public benefit corporation, CHE Trinity, Inc., an Indiana nonprofit corporation, Trinity Health Corporation, an Indiana nonprofit corporation, and Catholic Health East, a Pennsylvania nonprofit corporation, the single corporation as a result of a merger, consolidation, or reorganization of CHE Trinity, Inc., Trinity Health Corporation, and Catholic Health East as referenced in section 4.2 of the Consolidation Agreement as the "Post-Closing Transaction," any other subsidiary, parent, general partner, manager, member, affiliate, successor, or assignee of Saint Agnes Medical Center, CHE Trinity, Inc., Trinity Health Corporation, and Catholic Health East, any entity succeeding thereto as a result of the consolidation, merger or acquisition of all or substantially all of the assets of Saint Agnes Medical Center or the real property on which Saint Agnes Medical Center is located, any and all current and future owners, managers, lessees, or operators of Saint Agnes Medical Center,¹ and any and all current and future owners of the real property on which Saint Agnes Medical Center is located.

II.

The transaction approved by the Attorney General consists of the Consolidation Agreement dated January 11, 2013 and any other documents referenced in the Consolidation Agreement including, but not limited to, Governance Matrix and any amended and restated articles of incorporation and bylaws for Saint Agnes Medical Center, CHE Trinity, Inc., Trinity Health Corporation, and Catholic Health East, and any agreements or other documents to effectuate a merger, consolidation, or reorganization of CHE Trinity, Inc., Trinity Health Corporation, and Catholic Health East into a single corporation as referenced in section 4.2 of the Consolidation Agreement as the "Post-Closing Transaction." CHE Trinity, Inc., Trinity Health Corporation, and Catholic Health East shall fulfill the terms of the Consolidation Agreement and any agreement(s) for the Post-Closing Transaction, and any other documents referenced therein. CHE Trinity, Inc., Trinity Health Corporation, and Catholic Health East shall notify the Attorney General in writing of any proposed modification or rescission of any of the terms of the Consolidation Agreement. CHE Trinity, Inc., Trinity Health Corporation, and Catholic Health East shall notify the Attorney General of the agreement(s) for the Post-Closing Transaction, including a proposed modification or rescission of any of their terms. Such notifications shall be provided at least thirty days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5923.

¹ Throughout this document, the term "Saint Agnes Medical Center" shall mean the general acute care hospital located at 1303 East Herndon Avenue, Fresno, CA 93720, and any other clinics, laboratories, units, services, or beds included on the license issued to Saint Agnes Medical Center by the California Department of Public Health, effective March 22, 2013, unless otherwise indicated.

III.

For five years from the closing date of the Consolidation Agreement, Saint Agnes Medical Center and all future owners, managers, lessees, or operators of Saint Agnes Medical Center shall be required to provide written notice to the Attorney General thirty days prior to entering into any agreement or transaction to do any of the following:

(a) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of Saint Agnes Medical Center;

(b) Transfer control, responsibility, management, or governance of Saint Agnes Medical Center. The substitution or addition of a new corporate member or members of Saint Agnes Medical Center, CHE Trinity, Inc., Trinity Health Corporation, and Catholic Health East that transfers the control of, responsibility for or governance of Saint Agnes Medical Center, CHE Trinity, Inc., Trinity Health Corporation, and Catholic Health East shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body of Saint Agnes Medical Center, CHE Trinity, Inc., Trinity Health Corporation, and Catholic Health East, or any arrangement, written or oral, that would transfer voting control of the members of the governing body of Saint Agnes Medical Center, CHE Trinity, Inc., Trinity Health Corporation, and Catholic Health East shall also be deemed a transfer for purposes of this Condition. This includes the merger, consolidation, or reorganization of CHE Trinity, Inc., Trinity Health Corporation, and Catholic Health East into a single corporation as referenced in section 4.2 of the Consolidation Agreement as the "Post-Closing Transaction."

IV.

For five years from the closing date of the Consolidation Agreement unless otherwise stated, Saint Agnes Medical Center shall be operated and maintained as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250) and shall maintain and provide the following health care services:

a) Twenty-four hour emergency medical services as currently licensed (minimum of 44 Emergency beds/stations) with the same types and levels of services as currently provided²;

b) Intensive Care services as currently licensed (minimum of 35 beds), with the same types and levels of services as currently provided;

c) Coronary Care services as currently licensed (minimum of 26 beds), with the same types and levels of services as currently provided;

d) Obstetrical services as currently licensed (minimum of 32 beds, except during seismic retrofitting of the Main Building, during which time the minimum number of beds shall be 24) , with the same types and levels of services as currently provided;

² The term "currently provided" means types and levels of services provided as of January 1, 2013.

- e) Women's Health Services, with the same types and levels of services as currently provided, including the breast centers at the two locations, for ten years from the closing date of the Consolidation Agreement;
- f) The California Eye Institute, with the same types and levels of services as currently provided;
- g) Cancer Center with the same types and levels of services as currently provided;
- h) Home health and hospice services, with the same types and levels of services as currently provided; and
- i) Wound, Ostomy, and Hyperbaric Center, with the same types and levels of services as currently provided.

Saint Agnes Medical Center shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension (except during seismic retrofitting of the Main Building, during which time a maximum of 8 perinatal beds can be placed in voluntary suspension) or surrender its license for any of these beds or services.

V.

For five years from the closing date of the Consolidation Agreement, Saint Agnes Medical Center shall:

- a) Be certified to participate in the Medi-Cal program.
- b) Maintain its Medi-Cal Managed Care contracts with Health Net (partnered with CalViva Health) and Anthem Blue Cross to provide the same types and levels of emergency and non-emergency services at Saint Agnes Medical Center to Medi-Cal beneficiaries (both Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions, on the same terms and conditions as other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause.
- c) Have a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at Saint Agnes Medical Center to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care) as required in these Conditions.

VI.

For five years from the closing date of the Consolidation Agreement, Saint Agnes Medical Center shall maintain the following contracts and amendments, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contracts are terminated for cause, and shall provide the same services specified therein:

- a) Agreement with Children's Hospital Central California to provide at least a six-bed Neonatal Intensive Care Unit at Saint Agnes Medical Center;
- b) Emergency Medical Technician-Paramedic-supervised clinical training experience, including the use of Saint Agnes Medical Center clinical facilities and preceptors; and
- c) Emergency on-site mental health services for Fresno County's Crisis Psychiatric Response Services program to adults who have been placed on a California Welfare and Institutions Code section 5150 psychiatric hold. Services include patient care, discharge orders, patient instructions, patient transportation, and other requirements deemed necessary by federal, state, or local regulations.

VII.

For six fiscal years from the closing date of the Consolidation Agreement, Saint Agnes Medical Center shall provide an annual amount of Charity Care (as defined below) at Saint Agnes Medical Center equal to or greater than \$6,792,442 (the "Minimum Charity Care Amount"). For purposes hereof, the term "charity care" shall mean the amount of charity care costs (not charges) incurred by Saint Agnes Medical Center in connection with the operation and provision of services at Saint Agnes Medical Center. The definition and methodology for calculating "charity care" and the methodology for calculating "costs" shall be the same as that used by the California Office of Statewide Health Planning and Development ("OSHPD") for annual hospital reporting purposes.³ Saint Agnes Medical Center shall use charity care and collection policies that comply with Federal and California law. The planning of, and any subsequent changes to, the charity care and collection policies, and charity care services provided at Saint Agnes Medical Center shall be decided upon by the Saint Agnes Medical Center's Board of Directors.

Saint Agnes Medical Center's obligation under this Condition shall be prorated on a daily basis if the closing date of the Consolidation Agreement is a date other than the first day of Saint Agnes Medical Center's fiscal year.

³ OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, "the determination of what is classified as . . . charity care can be made by establishing whether or not the patient has the ability to pay. The patient's accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account."

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12-Month Percent Change: Consumer Price Index - All Urban Consumers in the West Region, West Urban Area, Base Period: 1982-84=100 (CPI-West Region, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of charity care provided at Saint Agnes Medical Center for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Saint Agnes Medical Center shall pay an amount equal to the deficiency to a tax-exempt entity that provides direct health care services to residents in Saint Agnes Medical Center's service area (41 ZIP codes), as defined on page 30 of the Health Care Impact Report, dated March 15, 2013, and attached hereto as Exhibit 1. Such payment shall be made within four months following the end of such fiscal year.

VIII.

For six fiscal years from the closing date of the Consolidation Agreement, Saint Agnes Medical Center shall provide an annual amount of Community Benefit Services at Saint Agnes Medical Center equal to or greater than \$2,900,000 (the "Minimum Community Benefit Services Amount"). The planning of, and any subsequent changes to, the community benefit services provided at Saint Agnes Medical Center shall be decided upon by the Saint Agnes Medical Center's Board of Directors. The following community benefit programs shall be maintained either at the current location, at alternate locations, or through affiliation with similar organizations: The Holy Cross Center for Women, The Holy Cross Clinic at Poverello House, First Source/ Health Advocates, and The Adult Sickle Cell Program.

Saint Agnes Medical Center's obligation under this Condition shall be prorated on a daily basis if the effective date of the Consolidation Agreement is a date other than the first day of Saint Agnes Medical Center's fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Community Benefit Services Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12-Month Percent Change: Consumer Price Index - All Urban Consumers in the West Region, West Urban Area, Base Period: 1982-84=100 (CPI-West Region, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of community benefit services provided at Saint Agnes Medical Center for any fiscal year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Saint Agnes Medical Center shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide community benefit services for residents in Saint Agnes Medical Center's service area (41 ZIP codes), as defined on page 30 of the Health Care Impact Report, dated March 15, 2013, and attached hereto as Exhibit 1. Such payment shall be made within four months following the end of such fiscal year.

IX.

For six fiscal years from the closing date of the Consolidation Agreement, Saint Agnes Medical Center shall submit to the Attorney General, no later than four months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein. The Chairman of the Board of Directors of Saint Agnes Medical Center and the Chief Executive Officer at Saint Agnes Medical Center shall each certify that the report is true and correct and provide documentation of the review and approval of the report by the Saint Agnes Medical Center Board of Directors.

X.

At the request of the Attorney General, the Affiliated Entities shall provide such information as is reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

XI.

The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.

EXHIBIT 1

ANALYSIS OF SAINT AGNES MEDICAL CENTER'S SERVICE AREA

Service Area Definition

SAMC's service area is composed of 41 ZIP Codes, from which approximately 88% of SAMC's discharges originated in 2011. Nearly 50% of the discharges were from the top nine ZIP Codes, located in Fresno and Clovis. SAMC's market share in the service area was nearly 24%.

SERVICE AREA PATIENT ORIGIN MARKET SHARE BY ZIP CODE: 2011						
ZIP Codes	Community	Total Discharges	% of Discharges	Cumulative % of Discharges	Total Area Discharges	Market Share
93722	Fresno	2,072	7.9%	7.9%	7,369	28.1%
93720	Fresno	1,658	6.4%	14.3%	3,943	42.0%
93727	Fresno	1,605	6.1%	20.4%	7,133	22.5%
93726	Fresno	1,497	5.7%	26.2%	4,695	31.9%
93711	Fresno	1,456	5.6%	31.7%	3,453	42.2%
93710	Fresno	1,341	5.1%	36.9%	3,169	42.3%
93705	Fresno	1,237	4.7%	41.6%	4,350	28.4%
93612	Clovis	1,129	4.3%	45.9%	3,725	30.3%
93611	Clovis	1,016	3.9%	49.8%	3,786	26.8%
93704	Fresno	961	3.7%	53.5%	3,056	31.4%
93703	Fresno	863	3.3%	56.8%	3,806	22.7%
93702	Fresno	862	3.3%	60.1%	5,531	15.6%
93706	Fresno	859	3.3%	63.4%	5,220	16.5%
93619	Clovis	549	2.1%	65.5%	2,109	26.0%
93728	Fresno	461	1.8%	67.3%	2,065	22.3%
93725	Fresno	451	1.7%	69.0%	2,667	16.9%
93637	Madera	446	1.7%	70.7%	3,321	13.4%
93657	Sanger	421	1.6%	72.3%	3,128	13.5%
93638	Madera	416	1.6%	73.9%	4,535	9.2%
93614	Coarsegold	353	1.4%	75.3%	1,095	32.2%
93636	Madera	298	1.1%	76.4%	875	34.1%
93730	Fresno	279	1.1%	77.5%	704	39.6%
93650	Fresno	252	1.0%	78.5%	581	43.4%
93723	Fresno	182	0.7%	79.1%	718	25.3%
93701	Fresno	145	0.6%	79.7%	1,616	9.0%
93721	Fresno	129	0.5%	80.2%	870	14.8%
93626	Friant	63	0.2%	80.4%	171	36.8%
93613	Clovis	62	0.2%	80.7%	150	41.3%
93737	Fresno	42	0.2%	80.8%	243	17.3%
93651	Prather	40	0.2%	81.0%	135	29.6%
93645	O'Neals	3	0.0%	81.0%	26	11.5%
93630	Kerman	344	1.3%	82.3%	1,613	21.3%
93644	Oakhurst	341	1.3%	83.6%	929	36.7%
93654	Reedley	336	1.3%	84.9%	2,712	12.4%
93662	Selma	293	1.1%	86.0%	3,343	8.8%
93631	Kingsburg	168	0.6%	86.7%	1,527	11.0%
95338	Mariposa	151	0.6%	87.3%	1,090	13.9%
93625	Fowler	117	0.4%	87.7%	749	15.6%
93648	Parlier	104	0.4%	88.1%	1,459	7.1%
93601	Ahwahnee	68	0.3%	88.4%	183	37.2%
93616	Del Rey	21	0.1%	88.4%	245	8.6%
Sub-Total		23,091	88.4%	88.4%	98,095	23.5%
All Other		3,017	11.6%	100%		
Total		26,108	100%			

Source: OSHPD Patient Discharge Database, 2011