

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS

SUPERIOR COURT

C.A. NO. 2014-101

MARTHA COAKLEY, as she is
ATTORNEY GENERAL of the
COMMONWEALTH OF
MASSACHUSETTS,

and

THE COMMONWEALTH OF MASSACHUSETTS
BY ITS DEPARTMENT OF PUBLIC HEALTH,

Plaintiff-Petitioners

v.

NORTH ADAMS REGIONAL HOSPITAL, INC.,

and

BERKSHIRE HEALTH SYSTEMS, INC.

Defendant-Respondents.

ORDER

This matter having come on for hearing on the Commonwealth's Motion for Entry of Temporary Order (1) enjoining Northern Berkshire Healthcare, Inc. ("NBH") from closing its emergency department until it properly and completely complies with the hospital closure requirements of G. L. c. 111, § 51G, and 105 CMR 130.122 or has exhausted the funds that it possesses or that may be paid to it to continue operation of its emergency department, or until ^{Medical Center, Inc. "BMC"} Berkshire Health Systems, Inc. (hereafter "~~BHS~~") is able to license and operate a satellite emergency department from the Hospital in accordance with the terms and conditions of the

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Court's order, and (2) appointing ^{BMC} ~~BHS~~ as temporary provider of emergency services and medical record support services, in order to: (1) alleviate and avoid an immediate threat to the health and safety of the residents in the NBH service area from the abrupt cessation of operations at North Adams Regional Hospital (the "Hospital"), (2) prevent serious harm arising from imminent inaccessibility of electronic health records for patients of NBH and other health care providers relying on NBH for electronic health record hosting services, (3) pursue planning for longer term provision of emergency medical and other services for residents in the NBH service area, and (4) if necessary, pursue orderly and safe closure of the Hospital facility in collaboration with the Department of Public Health ("DPH") and others, and there being both subject matter and personal jurisdiction as well as sufficient basis of fact for the entry of this Order; it is hereby ORDERED AND ADJUDGED that:

(1) NBH be and hereby is enjoined from closing its emergency department until it properly and completely complies with the hospital closure requirements of G. L. c 111, § 51G, and 105 CMR 130.122 or has exhausted the funds that it possesses or that may be paid to it to continue operation of its emergency department, or until ^{BMC} ~~BHS~~ is able to license and operate a satellite emergency department from the NBH facility consistent with the terms and conditions of this Order;

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(2) After BHS obtains authorization from the DPH to operate an emergency department at the NBH facility, ^{BMC} ~~BHS~~ shall be and hereby is appointed as temporary provider of emergency medical and support services at the Hospital with such powers as are enumerated herein.

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(3) All persons and entities, including without limitation NBH, the Hospital, and the

directors, officers, employees, and agents of NBH and the Hospital having possession, custody or control thereof shall turn over or cause to be turned over to ^{BMC} ~~BMC~~ the control of such facilities, equipment and other items as ^{BMC} ~~BMC~~ and DPH mutually and reasonably determine are necessary or desirable for ^{BMC} ~~BMC~~ to provide emergency services and electronic health record support (as herein defined) at the Hospital facility, including without limitation (1) access to and control of relevant portions of the Hospital facility, systems, and records (including without limitation medical records and electronic health records); (2) access to and control of such equipment, supplies and other items and materials onsite at the Hospital as ^{BMC} ~~BMC~~ and DPH determine are necessary or desirable to enable ^{BMC} ~~BMC~~ to provide the emergency services and electronic health record support; (3) such other items or facilities as ^{BMC} ~~BMC~~ and DPH determine are necessary to enable BHS to provide the emergency services and electronic health record support;

(4) "Emergency services" shall mean those emergency medical and related services usually and customarily provided by an emergency department licensed by DPH and that ^{BMC} ~~BMC~~ and DPH determine are necessary and feasible to provide to ensure the safety and well-being of residents of the NBH service area;

(5) "Electronic health record support" shall mean the maintenance of all electronic health records held or supported by NBH or the Hospital, maintenance of facilities and systems for storing and accessing such records, and services and equipment relating to the orderly transfer of such records to alternative hosting and maintenance arrangements in the aftermath of NBH's announced closure;

(6) For the purpose of providing the emergency services and electronic health record support, ^{BMC} ~~BMC~~ shall have full power and authority to:

- a. Employ, engage, discharge, assign, supervise and fix the compensation, salaries

and wages for all additional personnel ^{BMC} ~~§ 87(2)(b)~~ deems necessary and desirable, including without limitation medical, nursing, administrative and support personnel formerly employed by NBH or the Hospital; JAA

- b. Notify NBH's and the Hospital's business partners and patients about ^{BMC} ~~§ 87(2)(b)~~'s role as provider of emergency services and electronic health record support and information about such services; JAM
- c. Expend such funds as may be made available for the commencement and provision of emergency services and electronic health record support ("the Start-Up Amount" as defined herein), provided that ~~§ 87(2)(b)~~ shall maintain an accounting of such expenditures; JAA
- d. Do any and all acts not inconsistent with the terms and conditions of this Order and DPH requirements to carry out the purposes hereof;

(7) ~~§ 87(2)(b)~~ shall evaluate, with DPH, the feasibility of long-term provision of emergency and other services at the Hospital facility with the goal of determining under what terms essential health services will continue to be provided for residents of the Hospital service area after the expiration of ^{BMC} ~~§ 87(2)(b)~~'s authority under this Order; JAA

(8) ^{BMC} ~~§ 87(2)(b)~~ shall file monthly reports of its operations pursuant to this Order with this Court, DPH and the Attorney General showing its progress in implementing this Order; JAA

(9) All persons, firms and corporations be, and they hereby are, enjoined from disturbing or interfering with the present gas, telephone service, heat, electrical service, water supplies or any other utility of like kind now being furnished to the Hospital facility, and from cutting off or disconnecting the furnishing of any service, except upon notice to ^{BMC} ~~§ 87(2)(b)~~ in writing and after ^{BMC} ~~§ 87(2)(b)~~ has had an opportunity to be heard before this Court; JAM

such access, records, and information as ^{BMC} ~~REDACTED~~ may determine to be necessary for the effective provision of emergency services and electronic health record support and planning for long-term service availability in the Hospital service area and (b) are enjoined from interfering with or impeding either the provision of emergency services and electronic health record support or planning for long-term provision of services to residents of the Hospital services area;

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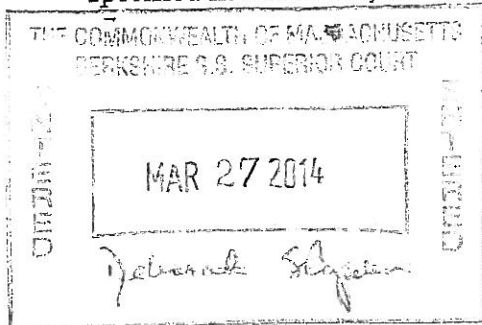
(15) ^{BMC} ~~REDACTED~~'s obligation to perform its duties as described in this Order is expressly conditioned upon the timely availability to ^{BMC} ~~REDACTED~~ of funds necessary to perform such duties (the "Start-Up Amount"), whether such funds are provided directly to ^{BMC} ~~REDACTED~~ or made available through third parties or agencies;

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(16) ^{BMC} ~~REDACTED~~ shall provide notice to the Court and the Attorney General as soon as the Start-Up Amount is available. In the event of lack of clarity or dispute about the availability of the Start-Up Amount, ^{BMC} ~~REDACTED~~ or the Attorney General may request a hearing before this Court for determination of the issue;

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(17) ^{BMC} ~~REDACTED~~ or the Attorney General may apply to the Court from time to time for such further directions or orders as may be necessary. During and at the conclusion of the period specified in this Order, the Court may make such further orders as are just and proper.

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By the Court, (AGOSTINI , J.)

Assistant Clerk

[Signature]
John A. Agostini
Associate Justice, Superior Court

Entered: March 27, 2014