

Via Electronic Mail

December 31, 2020

Hon. Judith M. Persichilli, Commissioner
New Jersey Department of Health
P.O. Box 360
Trenton, New Jersey 08625-0360

**Re: Termination of CarePoint's Lease of Bayonne Medical Center and
Termination of Management Agreement**

Dear Commissioner Persichilli:

I write on behalf of Hudson Regional Hospital (“HRH”)¹ to update the Department with respect to the issues raised in our letter, dated December 11, 2020, in which we objected to the two certificate of need applications filed by: (a) IJKG Opco, LLC d/b/a CarePoint Health System (“CarePoint”), seeking approval for a transfer of a 49% ownership stake in Bayonne Medical Center to BMC Hospital, LLC (“BMC”); and (2) BMC’s earlier certificate of need application seeking to purchase substantially all of the assets of Bayonne Medical Center.

In HRH’s December 11 letter, it should also be recalled that we sought a declaratory ruling that: (1) CarePoint and BMC are without authority to seek certificate of need approval for a sale of substantially all of the assets of Bayonne Medical Center or, in the alternative, seeking to transfer a purported minority ownership interest to BMC; (2) BMC may not seek certificate of need approval for a purported minority interest in CarePoint absent a full review process in which HRH shall be permitted plenary participation as an interested party-intervenor; and (3) no certificate of need application filed by CarePoint or BMC shall be processed contrary to the right, title and interest of HRH as the Lessor, which has a superior contractual right under the Lease to consent to any such filing, and to possession of the facility upon the Lessee’s default.

We will file, under separate cover, a reply in response to BMC’s opposition to the petition for a declaratory ruling, dated December 18, 2020 and write today to advise the Department of

¹ Hudson Regional Hospital is a trade name for, among other things, NJMHMC, LLC, as the licensed operator of Hudson Regional Hospital in Secaucus, and 29 E 29 Street Holdings, LLC, which holds title to the real estate associated with Bayonne Medical Center and is also CarePoint’s landlord as assignee of a Lease. Both entities are under common ownership and control and for ease of reference are referred to collectively herein.

certain actions we have undertaken with respect to CarePoint's current tenancy at the Bayonne Medical Center premises. Specifically, by letter served earlier today, see Exhibit A annexed hereto, as a result of uncured defaults HRH has terminated CarePoint's Lease of the premises, terminated the management company and exercised certain of its rights under the relevant transaction documents as set forth below.

As noted in the termination letter, under Article XIX of the Lease, CarePoint will be permitted, in the interim, to remain in possession of the premises under a tenancy at will, and shall remain obligated "to perform and observe all of the terms, covenants and conditions" of the Lease, including the payment of rent, impositions and other charges. See Lease at §19.3. We anticipate and expect that, consistent with CarePoint's continued regulatory obligation to operate the licensed acute care hospital at the premises, CarePoint will choose to remain in possession at the present time. If, however, CarePoint chooses to vacate the premises and files a certificate of need application seeking approval to do so, HRH stands ready, willing and able to step into the void. In any event, we are exercising the following Lease remedies:

1. Pursuant to Section 16.1(F)(ii) and (L)(1) of the Lease, the Management Company operating Bayonne Medical Center will be replaced with a Substitute Management Company to be designated by HRH. We have directed CarePoint to terminate its Management Agreement with the current Management Company and we will review and approve a new Management Agreement with the Substitute Management Company in a form satisfactory to HRH.

No changes to the hospital's medical staff management or department heads, employed health care providers and physicians or other front line employees will take place as a result of this action, which pertains solely to administrative management. To ensure continuity of operations, HRH has permitted the current management team to remain in place for a brief transitional period, and we have advised CarePoint that we have set a meeting for January 5, 2021 to enter upon the premises and inspect the facility, its books and records, and to establish a process for an orderly transfer of administrative control.

2. The Lease has been terminated and CarePoint's occupancy of the premises has been converted to a tenancy at-will. See Lease at Section 16.1(L)(2). At this time, we are permitting CarePoint to remain in possession of the premises pending the resolution of related legal action pending in the Delaware Court of Chancery. However, any further default in the performance of CarePoint's obligations may result in a dispossession or invocation of the standby letter of credit without further notice.

3. HRH has exercised its right to require CarePoint to "execute and deliver to Lessor (to be held in escrow) all documents, agreements, notices and applications...as shall be necessary or desirable in Lessor's sole discretion to transfer and assign the Licenses...to a new operator...it being understood that such documentation shall be held by Lessor in escrow and shall not be utilized by Lessor until the occurrence of a Major Event of Default which results in the termination of the Lease." See Lease at Section 35.4(b).

We have provided CarePoint with a form of acknowledgement memorializing HRH's right to apply for a transfer of the operating license, or to designate a successor operator. Further, because the Lease has been terminated, we reserve the right without further notice to remove the documents from escrow, and to seek a transfer of the operating license from the Department subject to the filing of a certificate of need application and approval thereof.

4. We have directed that no further fees or other remuneration shall be paid to the existing or any successor Manager, other than a Substitute Manager that shall be selected and approved by HRH. See Subordination Agreement Sections 2(2) and (3).

5. We have required CarePoint to provide an immediate accounting of, and disgorgement of all management fees in amount equal to that sufficient to cure all monetary defaults under the Lease. See Subordination Agreement at Section 5.

6. We have advised CarePoint of HRH's intention to invoke its right to "take immediate possession of the Collateral, without notice or resort to legal process, and for such purpose, to enter upon any premises on which the Collateral or any part thereof may be situated and remove the same therefrom...". See Security Agreement at Section 8(a)(iii). Collateral includes, among other things, "any rights and options to purchase the Leased Property," all of the Lessee's furniture, fixtures and equipment, personal property, accounts receivable and proceeds from insurance and, most importantly, "all general intangibles...including, without limitation, all Licenses, Operating Agreements and Participation Agreements, whether now or hereafter required." See Security Agreement at Section 2(a)-(f).

With respect to the termination of the Lease and Management Agreement, as well as the anticipated execution of the license transfer documents, we recognize and acknowledge that notwithstanding the parties' contractual rights, any dispossession of CarePoint, and future change of ownership of, or control over Bayonne Medical Center requires a certificate of need, the approval of which is in the Department's sole discretion. If that action becomes necessary, we would like to assure the Department that we will file a certificate of need application before taking any further action towards dispossession of the current tenant.

For present purposes, however, as CarePoint no longer has the contractual right to seek certificate of need approval for a sale of a 49% equity interest to BMC, and insofar as CarePoint's default renders its purported sale to BMC, neither certificate of need application should be processed until this matter has been resolved in the courts or through a workout plan that is satisfactory to all parties².

² If the Department intends to keep processing either certificate of need application while the petition for a declaratory ruling is pending, we respectfully ask for notice of the same so that HRH may seek a stay.

We remain available to discuss this matter in further detail with the Department at its convenience and will otherwise continue to provide written updates to the extent circumstances warrant. Thank you.

Very truly yours,

**DECOTIIS, FITZPATRICK,
COLE & GIBLIN, LLP**

By: /s Thomas A. Abbate

Encl.

cc: Marcela Ospina Maziarz, Deputy Commissioner, Health Systems
Maria Christensen, Assistant Commissioner, Division of Certificate of Need and
Licensing
Jean M. DeVitto, Executive Director, Certificate of Need and Healthcare Facility
Licensure Program
Joy L. Lindo, Director, Office of Legal and Regulatory Compliance
Michael J. Kennedy, Office of Certificate of Need and Facility Licensure
Matthew G. Oliver, Counsel for IJKG Opco, LLC
Louis A. Modugno, Counsel for IJKG Opco, LLC
James P. Flynn, Counsel for BMC Hospital, LLC
Sheila A. Woolson, Counsel for BMC Hospital, LLC

EXHIBIT A

Via Overnight Mail and Electronic Mail

December 31, 2020

Mr. William Pelino
IJKG Opco LLC d/b/a Bayonne Medical Center
CarePoint Health Management Associates, LLC,
d/b/a CarePoint Health
Quality Care Associates, LLC
10 Exchange Place, 15th Floor
Jersey City, NJ 07302

Re: Notice of Termination of Lease and Exercise of Additional Remedies

Dear Mr. Pelino:

I write on behalf of 29 E 29 Street Holdings LLC (the “Lessor”) as successor in interest to the Lease of the premises associated with Bayonne Medical Center, under which IJKG Opco, LLC (the “Lessee”) currently leases the facility for operation of an acute care hospital. This letter is by way of follow up to Lessor’s letter, dated December 11, 2020, setting forth certain Events of Default and Major Events of Default under the Lease, which are incorporated by reference herein. As noted in that correspondence, Lessor provided a twenty (20) day cure period to correct any and all defaults outlined in that notice.

Although we have received correspondence from Lessee’s outside legal counsel, dated December 16, 2020, in response to our notice, no additional financial records have been provided and no meaningful demonstration of Lessee’s compliance with the Lease terms have been proffered. To this extent, Lessee’s counsel’s statements regarding EBITDAR compliance, the production of the financial records due under the Lease, and the untimely reference to the purported existence of a force majeure event are, collectively, nothing more than the same empty statements we have been hearing since the inception of our client’s acquisition of the leased premises. Given the repeated opportunities we have offered leading up to this date, within which Lessee might have attempted to work out the various defaults in a good faith, and constructive manner, but declined to do so, these most recent statements cannot be taken seriously.

Accordingly, consistent with the December 11, 2020 default notice, this letter hereby serves as a Notice of Termination of the Lease. As required by Article XIX of the Lease, until further notice from Lessor, Lessee shall remain in possession of the premises under a tenancy at will, and remain obligated “to perform and observe all of the terms, covenants and conditions” of the Lease, including the payment of rent, impositions and other charges. See Lease at §19.3. As

a consequence of the foregoing, Lessee's obligations going forward shall include payments equal to 150% of Base Rent, 25% of EBITDAR and all Impositions due and owing. We anticipate and expect that, consistent with Lessee's continued regulatory obligation to operate the licensed acute care hospital at the premises, Lessee will choose to remain in possession at the present time and will be permitted to do so without prejudice to our Lessor's rights under the Lease.

As noted in our previous default notice, we are now exercising the following remedies:

1. Pursuant to Section 16.1(F)(ii) and (L)(1) of the Lease, this shall serve as a Removal Notice replacing the Management Company with a Substitute Management Company to be designated by Lessor in its sole discretion. As such, the Lessee is directed to immediately advise the current Management Company that its Management Agreement will be cancelled upon the Lessor's designation of the Substitute Management Company designated by the Lessor. You will then be required to enter into a new Management Agreement in a form satisfactory to Lessor. We emphasize that Lessee shall not enter into any new Management Agreement without the Lessor's consent and for avoidance of doubt we expressly disapprove any action to the contrary. In addition, pursuant to the foregoing section, Lessee shall be required to remit to the Substitute Management Company as additional consideration an amount equal to 25% of EBITDAR on a quarterly basis.

In furtherance of the exercise of these rights, we demand physical access to the facilities, as well as to the books, records and personnel of the Lessee in order to effectuate the orderly transition to a Substitute Management Company. We have set Tuesday, January 5, 2021 at 9:30 a.m., for an initial meeting at Bayonne Medical Center to begin the transition process with CarePoint management. We will provide an agenda and list of documents to be inspected in advance of the meeting.

For present purposes and to address Lessee's concerns with respect to the continuity of operations, we shall permit the current management team to remain in place for a transitional period that is to be determined by Lessor at the January 5 meeting. The Chief Executive Officer and Chief Financial Officer of Hudson Regional Hospital, respectively, and their designees shall be deemed the point of contact with respect to management of the facility until further notice. Until further notice, no changes are to take place with respect to medical staff, employed physicians and health care providers directly involved in the delivery of patient care and services and there shall be no disruption to the continuity of care.

2. Pursuant to Section 16.1(L)(2), the Lease shall be terminated and the Lessee's occupancy of the premises shall be converted to a tenancy at-will. As such, all other rights of the Lessee under the Lease, except as otherwise provided in Article XIX thereof, are terminated and of no further force and effect. As a result of the Lessee's failure to maintain EBITDAR in an amount equal to or in excess of 100% of the Fixed Charges, the Base Rent shall increase to 150% of the Base Rent during 2019 and the Lessee will remain liable to pay the other charges as specified in Article XIX, Section 3. Henceforth, Lessor shall invoice Lessee for 150% of Base Rent, plus substitute management fees in the amount of 25% of EBITDAR, (see Point 1, supra) plus Impositions due under the Lease. Please be advised that, due to the ongoing state of default, failure

to timely remit rent when due and owing may result in Lessor's drawing against the standby letter of credit without further notice.

3. Under Section 35.4(b) of the Lease, the Lessor hereby exercises its right to require Lessee to "execute and deliver to Lessor (to be held in escrow) all documents, agreements, notices and applications...as shall be necessary or desirable in Lessor's sole discretion to transfer and assign the Licenses...to a new operator...it being understood that such documentation shall be held by Lessor in escrow and shall not be utilized by Lessor until the occurrence of a Major Event of Default which results in the termination of the Lease." We are attaching as Exhibit A, a form of acknowledgement that sets forth the exercise of these rights which memorializes – subject to such other documents as the Department of Health may require – Lessor's right to apply for a transfer of the operating license. Lessee is directed to execute and return this document immediately. Further, given that the Lease has been terminated, under Section 35.4(a) of the Lease, we reserve the right without further notice to remove the documents from escrow, and to seek a transfer of the operating license from the Department of Health subject to the filing of a certificate of need application and approval thereof. Upon the approval of the same, we reserve the right to seek dispossession of Lessee and a termination of the tenancy at will.

4. We are providing additional notice herein of the termination of the Management Agreement pursuant to Sections 2(2) and (3) of the Subordination Agreement and directing that no further fees or other remuneration shall be paid to the existing or any successor Manager, other than a Substitute Manager that shall be selected and approved by Lessor. To the extent that the existing management is required for transitional purposes, we will evaluate and approve, if warranted, an appropriate payment upon a review and inspection of the books and records. Lessee shall not enter into any new Management Agreement absent Lessor's approval.

5. Further, and as referenced in more detail in the December 11 default notice, pursuant to Section 5 of the Subordination Agreement, we hereby demand an immediate accounting of, and disgorgement of all management fees in amount equal to that sufficient to cure all monetary defaults under the Lease. See Subordination Agreement at Section 5 ("Manager hereby agrees that, notwithstanding anything to the contrary in the Management Agreement, after the occurrence of an Event of Default, if Manager receives payment of or security for any fees, expenses or other amounts from Lessee, Manager shall forthwith deliver such payment or security to Lessor in precisely the form received...for application in such manner as the Lessor shall elect.").

6. Pursuant to Section 2 of the Security Agreement, Lessor was granted a priority security interest in, among other things, "any rights and options to purchase the Leased Property," all of the Lessee's furniture, fixtures and equipment, personal property, accounts receivable and proceeds from insurance and, most importantly, "all general intangibles...including, without limitation, all Licenses, Operating Agreements and Participation Agreements, whether now or hereafter required." See Security Agreement at Section 2(a)-(f) (emphasis added) (collectively referred to as the "Collateral"). As Lessee has committed a Major Event of Default, Lessor hereby invokes its remedies under Section 8(a) of the Security Agreement which includes, among other things, the right to "take immediate possession of the Collateral, without notice or resort to legal process, and for such purpose, to enter upon any premises on which the Collateral or any part

thereof may be situated and remove the same therefrom...”. See Security Agreement at Section 8(a)(iii). We therefore demand immediate access to the facility, its books, records and accounts and further demand that Lessee undertake any all actions to preserve and turn over to Lessor the Collateral.

Thank you in advance for your anticipated cooperation in effectuating the foregoing steps. We trust that it will not be necessary to expend further efforts on judicial process in order to protect our rights and remedies under the Lease, but reserve the right to do so as circumstances warrant.

Very truly yours,

**DECOTIIS, FITZPATRICK,
COLE & GIBLIN LLP**

By: /s/ Michael Profita

cc: Louis A. Modugno, Esq. (via electronic mail)
Lawrence G. McMichael, Esq. (via electronic mail)

EXHIBIT A

LICENSE TRANSFER AGREEMENT

This LICENSE TRANSFER AGREEMENT (“License Agreement”) is made on this ___ day of _____, 2021, by and between IJKG Opco, LLC, d/b/a CarePoint Health System and/or Bayonne Medical Center, a New Jersey limited liability company having its principal place of business located at Bayonne Medical Center, 29th Street and Avenue E, Bayonne New Jersey 07002, (“CarePoint” or “Lessee”), and 29 E 29 Street Holdings, LLC, d/b/a Hudson Regional Hospital, a New Jersey limited liability company having its principal place of business located at 32 Farmstead Lane, Brookville, New York 11545 (“HRH” or “Lessor”).

WHEREAS, CarePoint and HRH, as successor in interest to the initial Lessor, are parties to a certain Lease Agreement, dated February 4, 2011, together with certain other ancillary and supporting documents, including, but not limited to a Subordination of Management Agreement and Security Agreement (collectively, the “Lease”), each of which is incorporated by reference herein and all terms defined therein shall have the same meaning in this License Transfer Agreement; and

WHEREAS, under the foregoing Lease, CarePoint, as Lessee, leases the premises commonly known as Bayonne Medical Center from HRH, as Lessor; and

WHEREAS, through various notices issued on various dates, HRH and its predecessors in interest have issued numerous default notices to CarePoint under the Lease for Major Events of Default and Events of Default that remain uncured; and

WHEREAS, under Section 35.4(b) of the Lease, HRH has the right to require “within fifteen (15) days after such request, Lessee shall execute and deliver to Lessor (to be held in escrow) all documents, agreements, notices and applications...as shall be necessary or desirable in Lessor’s sole discretion to transfer and assign the Licenses...to a new operator...it being

understood that such documentation shall be held by Lessor in escrow and shall not be utilized by Lessor until the occurrence of a Major Event of Default which results in the termination of the Lease” and

WHEREAS, by letter dated December 11, 2020, HRH provided CarePoint with a final Notice of Default under the Lease and, subject to a twenty (20) day cure period, advised of its intention to exercise its default remedies; and

WHEREAS, in that same December 11, 2020 letter, HRH further exercised its rights under Section 35.4(b) of the Lease and required that CarePoint execute documents necessary to place the License transfer in escrow; and

WHEREAS, by letter dated December 31, 2020, upon expiration of all relevant cure periods, HRH issued CarePoint a Notice of Termination of the Lease based upon uncured defaults under the Lease; and

WHEREAS, upon termination of the Lease due to the existence of an uncured Major Event of Default, Section 35.4(a) of that agreement provides, in relevant part, that “Lessee shall, for reasonable periods of time before and after such termination, use its commercially reasonable efforts to facilitate an orderly transfer of the operation and occupancy of the facility to Lessor or its designee, and such cooperation shall include, without limitation: (1) Lessee’s execution and submission to the appropriate authority of any and all documents required to effect the transfer and assignment to Lessor or its designee of any and all licenses, including all Medicare and Medicaid provider numbers and provider agreements...” and

WHEREAS, HRH now desires to invoke and confirm its rights under Section 35.4 of the Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. CarePoint consents to, and HRH or its designee may apply to the New Jersey Department of Health (“DOH”) seeking certificate of need approval for any and all operating licenses and regulatory approvals necessary for, or incidental to the continued operation of Bayonne Medical Center as an acute care hospital. It is further agreed that HRH may directly apply for, or designate a third-party to acquire the operating license subject to further certificate of need approval from DOH. CarePoint shall not oppose, nor induce others acting with its knowledge, consent or acquiescence, whether directly or indirectly, to oppose HRH’s application and shall exert commercially reasonable efforts to effectuate the orderly transition of the acute care services. This License Agreement shall be provided to DOH to fully evidence CarePoint’s consent to the foregoing. CarePoint shall undertake any and all further acts incidental to, or necessary to comply with DOH’s requirements to evidence CarePoint’s consent to transfer of the License.

2. CarePoint shall immediately withdraw its pending certificate of need application seeking to grant a minority interest in the operations of Bayonne Medical Center to BMC Hospital LLC.

3. CarePoint acknowledges and agrees that HRH’s contractual interest in the License is superior to, and shall take priority over DOH’s processing of any purported application for a certificate of need for transfer of the Bayonne Medical Center operating license applied for by BMC Hospital LLC (“BMC”) pursuant to the Asset Purchase and Sale Agreement entered into between CarePoint and BMC, dated June 1, 2020. CarePoint further agrees to refrain from cooperating with, supporting, or otherwise assisting in the processing of BMC’s certificate of need

application without HRH's further advance written approval.

4. Any notice permitted or required under this Agreement shall be made in the same manner as dictated by the Lease.

5. Except as otherwise expressly stated in this Agreement, nothing contained in this Agreement shall affect the right or obligation of any party with respect to any other contract, matter or thing whatsoever, and the parties reserve their respective rights to pursue any potential claims that they might have against each other in this regard.

6. The parties acknowledge and agree that: (a) this Agreement has been freely negotiated by the parties; (b) in any controversy, dispute or contest over the meaning, interpretation, validity, or enforcement of this Agreement, or any of its terms and conditions, there shall be no inference, presumption or condition drawn whatsoever against any party by virtue of that party having drafted or participated in the drafting of this Agreement or any portion of it; and (c) they knowingly, intelligently and voluntarily waive the benefit of any law, court decision, or rule of contract construction that would otherwise permit a court to construe any perceived ambiguity in this Agreement against the drafter of this Agreement.

7. No modification or amendment to this Agreement, and no waiver of any rights under this Agreement (including a waiver of the right to enforce this paragraph) shall be effective unless in writing and signed by an authorized representative of each party.

8. Each undersigned party represents and warrants that all legal actions necessary for the effectuation and execution of this Agreement has been validly taken and that the individuals whose signatures appear on behalf of each party are fully authorized to execute this Agreement on behalf of their respective parties.

9. This Agreement may be signed and initialed in counterparts, with each counterpart

constituting an original, and with all counterparts constituting a single contract when taken together. Delivery by email of counterpart signatures and initials shall be as effective as delivery of the original, manually signed and initialed counterpart of this Agreement.

10. Enforcement and interpretation of the terms of this Agreement shall be governed by and construed in the same manner as dictated by the Lease.

11. This Agreement contains the entire agreement of the parties concerning the transfer of, and HRH's approval of the License rights.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement as of the date first set forth above.

29 E 29 STREET HOLDINGS, LLC

By: _____
Yan Moshe

Dated:

IJKG OPCO, LLC

By: _____

Dated: