

May 4, 2021

Hon. Sharon Ashe-Nadrowski, Council President
City of Bayonne
630 Avenue C
Bayonne, New Jersey 07002

Re: Bayonne Medical Center

Dear Council President Ashe-Nadrowski:

I write on behalf of Hudson Regional Hospital (“HRH”) by way of follow-up to the meeting that was held at City Hall on Wednesday, April 28, 2021, in which representatives of HRH met with Mayor Davis, the City’s redevelopment counsel, as well as the principals of BMC Hospital, LLC/Surgicore, and executives from CarePoint Health System. During the meeting, we expressed our complete agreement with the desire expressed by City leaders to ensure that Bayonne Medical Center remains in operation for another hundred years. HRH management pledged to work towards that goal with singular commitment to investing in the steps necessary to make that happen, and made clear to all assembled that we are fully prepared to work with the City to ensure the continued operation of the facility as an acute care hospital. In short, HRH would like to turn around Bayonne Medical Center and invest in its future to the same extent that it turned its Secaucus hospital into a thriving center of care in Hudson County.

HRH’s management appreciated the opportunity offered by the City to meet on a one-on-one basis with Surgicore’s principals, and to engage in a frank exchange of views in the presence of City officials. While we received no reciprocal expression of good faith from Surgicore or its representatives, you should know that we nonetheless offered Surgicore the right to buy into a 50/50 partnership in the real estate holding company through which HRH owns the Bayonne Medical Center real estate, in exchange for Surgicore’s grant, to HRH, of a right to buy into a 50/50 ownership of their shell entity, BMC Hospital, LLC, that has entered into a contingent Asset Purchase and Sale Agreement to acquire the operations of Bayonne Medical Center from CarePoint. HRH’s offer, if accepted, would merge ownership of the land and the operations of Bayonne Medical Center, clear any remaining roadblocks and lead to swift certificate of need approval.

HRH was moved to make this generous offer because it is committed to resolving this matter, believes that the citizens of Bayonne deserve better than what they are receiving and its management is eager to get on to the task of revitalizing Bayonne Medical Center. At the meeting, HRH also expressed that it is confident enough in the bright future for this hospital that it is

prepared to enter into a legal restriction with the City that will ensure the site remains as an acute care hospital in the long term.

HRH offered Surgicore far more than it received in return because the real estate interest it put on the table is a tangible asset with a nine-figure current valuation. Contrariwise, all HRH asked for in return was an equal interest in BMC Hospital, LLC, which is a shell entity with no value or assets other than the intangible, contingent contractual right to purchase the assets of Bayonne Medical Center from CarePoint. That Asset Purchase and Sale Agreement is contingent upon BMC Hospital, LLC obtaining certificate of need approvals and the landlord's consent on an assignment of the lease, neither of which it presently possesses.

Further, because BMC's principals have no particular expertise or track record in running an acute care hospital, their involvement through this shell entity brings nothing to the table for us, from an operational perspective. Moreover, based upon publicly available information and CarePoint's own public audit reports, the value of Bayonne Medical Center as a going concern, in light of the termination of its lease and the facts and data disclosed in the public domain, is rather minimal and dwarfed in comparison to the value of the real estate. Thus, a contingent right to purchase the assets of an acute hospital whose auditors have expressed substantial doubt as to its status as a going concern has very little value.

Despite the unbalanced nature of the deal, HRH was prepared to, and made an offer to Surgicore to be equal equity owners in a combined enterprise. HRH's position is that partnering with BMC Hospital, LLC will bring greater stability and an increased chance of success. Since BMC Hospital's owners have never run an acute care hospital, HRH would bring to the table operational experience, capital and a track record in this industry. This plan would thus redound to the advantage of the community. Shockingly, however, BMC Hospital rejected this offer, and does not appear to be interested in bridging any differences for the good of the community. HRH cannot speak to their motives, but we would suggest that this rejection speaks for itself and leaves HRH with little choice in the matter.

During the meeting, the parties further discussed the eminent domain process and the City's plans for taking control of Bayonne Medical Center. It appears, based upon this presentation, that the City has not fully thought through the process by which it suggests that it wants to ensure Bayonne Medical Center's continued operation as a hospital. While the City might decide to move forward with a taking of the land, it should be noted that its \$95M bond ordinance woefully undervalues the current nine-figure market price of the real estate, exposes the City to substantial risk if the hospital winds up in the hands of the wrong operator when exposed for public bidding, will lead to a legal challenge to the taking, and does not specify a process by which it intends to select a successor operator.

That is, the City's attempt to take the land is legally dubious and subject to litigation, but even if it does so, this will not give the City the right to operate Bayonne Medical Center without an agreement from CarePoint to sell its assets to a third-party designated by the City, and even so that can only occur after a public procurement process that is open to all qualified bidders. The City has simply not explained how it expects to convince CarePoint to leave once it acquires the

land, nor has it proffered any evidence of an agreement or understanding that they would do so voluntarily.

If, on the other hand, the City intends to simply evict CarePoint over its objection, absent a willing operator that is ready, willing and able to apply for and receive a certificate of need from the Department of Health, the hospital would close. Once a hospital closes, under Department of Health regulations, the license is irrevocably extinguished, it cannot re-open, and no new acute care hospital service can be initiated unless the Commissioner of the Department of Health issues a public call for applications, in her discretion. Such calls are rarely issued and flow only upon the evidentiary finding that there is a defined need for acute care services that cannot be met by other existing health care facilities in the region. More often than not, when a hospital has closed the Department has allowed the services to be absorbed by excess capacity at other facilities, and the general trend is towards consolidation of acute care and not expansion.

It is clear, based upon the question and answer session that took place, that the City has not considered all of the ramifications of its contemplated actions. It has not set forth a clear plan for what it intends to do were it to take title to the real estate, has not specified what interim financial arrangement it will enter into with CarePoint while the bidding process takes place, the timeline for a procurement, and how the specifications and requests for proposals will be drafted. If, on the other hand, the City simply intends allow CarePoint remain as a tenant at will, at a below-market rate, that is not permissible as a matter of law and would be subject to challenge. In other words, if the City is considering simply letting CarePoint stay as an at-will tenant in anything more than a transitional role, that would violate public bidding laws, since the City would be granting a valuable possessory interest in City property without bidding.

As HRH management explained to the City leaders and to the principals of Surgicore, they have put a bona fide, good faith offer on the table that is more than fair, and which would turn the page on this matter. There is no need for the City to proceed with a poorly thought out eminent domain plan when HRH is prepared to enter into a joint venture with the only other competitor for Bayonne Medical Center, with no infusion of public monies whatsoever. We look forward to addressing this matter in more detail at the next Council meeting.

Respectfully submitted,

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

By: /s Thomas A. Abbate