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MARY E. O'DOWD, M.P.H.
Commissioner

June 14, 2012

VIA UNITED PARCEL SERVICE

Rebecca Hurley, Executive Vice President
General Counsel and Secretary
LHP Hospital Group, Inc
2800 North Dallas Parkway
Suite 200
Plano, Texas 75093

Re: Mountainside Hospital
Transfer of Ownership
CN# FR 120203-07-01
Acquisition Cost: \$190 million
Expiration Date: June 14, 2017

Dear Ms. Hurley:

I am approving your certificate of need (CN) application submitted to the Department of Health and Senior Services (Department) on February 1, 2012, pursuant to N.J.A.C. 8:33-3.1, for the transfer of the ownership of Mountainside Hospital (Mountainside) from Merit Health System (Merit) to Montclair Health System, LLC (Montclair Health). Montclair Health, a for-profit New Jersey limited liability company, is a joint venture between LHP Montclair, LLC, a New Jersey limited liability company which is a subsidiary of LHP Hospital Group, Inc. (LHP), a privately held Delaware corporation and Hackensack University Medical Center (HUMC).

This CN approval pertains to the transfer of ownership of Mountainside, a licensed general acute care hospital with a 365 bed capacity. Categorically, the bed composition would continue to reflect 263 Medical/Surgical beds, 15 OB/GYN beds, 10 Pediatric beds, 35 Adult ICU/CCU beds, 16 Adult Acute Psychiatric beds, 4 Adult Closed Acute Psych beds and 4 Intermediate bassinets. The hospital's service complement would continue to include the existing 7 Inpatient Operating rooms, 2 Cardiac Catheterization labs (conditional), Primary Angioplasty, Sleep Center, 2 Cystoscopy rooms, 1 MRI unit, 1 Transportable Lithotripter, 2 Linear Accelerators, 3 Hyperbaric chambers, 1 PET/CT Unit, a 30-station Chronic Hemodialysis service and Acute Hemodialysis services. Mountainside's designations, which include Community Perinatal Center-Intermediate and Primary Stroke Centers, will continue under the

operation of Montclair Health, as will the operation of the 18 bed long term care Transitional Care Unit, which operates under a separate licensing number from that of the hospital. In addition, Montclair Health will continue to operate the Mountainside School of Nursing.

The standards that I am compelled to use in evaluating this application are set forth in statute (N.J.S.A. 26:2H-1 et seq.) and by administrative rule (N.J.A.C. 8:33). I must be satisfied that the application submitted by Montclair Health is consistent with those requirements. A transfer of ownership of an entire general hospital or a transfer that will result in a new Medicare provider number for a hospital are subject to the full CN review process (N.J.A.C. 8:33-3.3(a)1). For the purposes of the review, the application was considered a transfer of ownership of a licensed facility currently offering health care services and not a reduction, elimination or relocation of health care services. Therefore, for the reasons that follow, I am approving, with conditions, the application submitted for the transfer of ownership of Mountainside to Montclair Health. I note for the record that my decision to approve this CN application is consistent with the recommendation of the State Health Planning Board (SHPB), which recommended approval of CN# FR 120203-07-01 with conditions, at its May 3, 2012 meeting. In issuing this decision, I reviewed the CN application for the transfer of ownership of Mountainside, completeness questions, transcripts of the public hearing, written comments, exhibits, Department staff recommendations, and SHPB recommendations. The referenced materials are incorporated and made a part of this final decision.

N.J.S.A. 26:2H-8, as well as N.J.A.C. 8:33-4.9(a), provide for the issuance of a CN only where the action proposed in the application for such certificate is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, will not have an adverse economic or financial impact on the delivery of health services in the region or statewide, and will contribute to the orderly development of adequate and effective health care services. In making such determinations, I must take into consideration: (a) the availability of facilities or services which may serve as alternatives or substitutes, (b) the need for special equipment and services in the area, (c) the possible economies and improvement in services to be anticipated from the operation of joint central services, (d) the adequacy of financial resources and sources of present and future revenues, (e) the availability of sufficient manpower in the several professional disciplines, and (f) such other factors as may be established by regulation.

As part of the review process, the SHPB is also required to hold at least one public hearing in the service area of the health care facility within 30 days of the application being declared complete by the Department. A public hearing was held on April 19, 2012 at Glen Ridge High School in Glen Ridge with approximately 30 people in attendance. Public comment was unanimously in support of the application with five (5) people speaking in favor and no speakers opposing the application. The five speakers supported the transfer based on community need to continue health care services at Mountainside, maintain jobs, and continue operating the hospital with an increased profit margin, as Merit has done since it acquired ownership of Mountainside in 2007. The Department and the SHPB reviewed the rationales for support of the

application and adequately addressed them in the analysis and recommendations approved by the SHPB.

As to the specifics of this application, N.J.S.A. 26:2H-8(a) requires that I consider the availability of facilities or services which may serve as alternatives or substitutes. The applicant carefully and thoroughly examined its available options before deciding to proceed with the acquisition of Mountainside. The applicant does not intend to downsize services or reduce availability of any service currently provided at Mountainside. The applicant and the seller both believe the successful completion of this transfer of ownership will preserve the current level of health care services in the area. I have taken into consideration that there are six other hospitals in the county within a three and one half mile to an eight and one half mile radius that offer comparable or expanded capabilities to Mountainside, which have coexisted with Mountainside, and I find this transfer alternative to be the least disruptive to maintaining the current level of care and services. I agree that the proposed transfer of ownership will continue the preservation of access to health care services for the community including the medically indigent and medical underserved population. Although the Department realizes that in the future, Montclair Health may approach the local Hospital Board and the Department with requests to modify services to continue strengthening the viability of the hospital, on balance, the stability to the community by this provider outweighs any possible alternative service arrays in the future. Thus, I am satisfied that this criterion is met.

I also find that the requirement at N.J.S.A. 26:2H-8(b) to consider the need for special equipment and services in the area would be met in this case following the transfer of ownership, because Montclair Health has agreed to offer the same services at the same levels that are currently licensed at the facility.

With respect to N.J.S.A. 26:2H-8(c) regarding the possible economies and improvement in services to be anticipated from the operation of joint central services, I find that the applicant's plan to coordinate administration of Mountainside with equal Board membership from LHP and HUMC to be a positive for profit/not for profit arrangement and should have a beneficial effect on the hospital. The clinical and business working relationships between Mountainside and HUMC would help to control expenses, improve quality and efficiencies, and integrate care, and thus, offer reliable access to more financially secure facilities in their communities.

N.J.S.A. 26:2H-8(d) requires me to examine the adequacy of financial resources and sources of present and future revenues. Financial analysis of the Montclair Health application undertaken by the Department indicates that Montclair Health possesses adequate financial resources to accomplish the proposed project. I also recognize that Montclair Health will have access to cash generated by Mountainside operations; revolving credit by LHP; and capital contributions made to Montclair Health by its members, LHP and HUMC. The acquisition agreement for purchase of this hospital indicates that LHP would pay \$152 million and HUMC will provide \$38 million of the \$190 million purchase price. Projected gains from operations of Mountainside in 2013 and 2014 of \$17.5 million and \$25.5 million, respectively, translate to operating margins

of 7.4% and 9.9%. With respect to N.J.S.A. 26:2H-8(e) regarding the availability of sufficient manpower in the several professional disciplines, I am satisfied that there will be sufficient qualified personnel since Montclair Health has agreed to operate all of the existing beds and services presently at Mountainside and hire substantially all Mountainside employees at the time of transfer.

N.J.S.A. 26:2H-8(f) requires consideration of such other factors as may be established by regulation. Therefore, I have taken into consideration the applicable administrative rules governing the services subject to full review (i.e., N.J.A.C. 8:33-1.1 et seq.). Montclair Health is in compliance with the access requirements set forth in N.J.A.C. 8:33-1.1 et seq. and N.J.A.C. 8:33-4.10(a) to promote access to low income persons, racial and ethnic minorities, women, disabled persons, the elderly, persons with HIV infections, and other persons who are unable to obtain care. Montclair Health specifically states in its application that "no changes in the services provided, or access thereto, for Medicare and Medicaid recipients and medically underserved are contemplated in connection with this transfer of ownership." The application further states that Montclair Health "commits to continue to provide indigent care at the same levels currently provided by Merit." I note these assurances and address them in conditions 5 through 9 of this approval. I also note that the availability and accessibility of health care services for all residents, including the medically indigent and medically underserved population, will be monitored by the local Hospital Board of Directors, Board of Trustees and the Department through annual reporting requirements.

In addition, N.J.A.C. 8:33-4.9(a) requires a demonstration by the applicant that this transfer of ownership shall not have an adverse impact on the population being served in regards to access and quality of care. The applicant indicates that the transfer of ownership of Mountainside will preserve and enhance the financial viability of the hospital and allow it to continue as a general acute care hospital providing the same level of licensed beds and health care services in the community. In addition, Montclair Health has made a commitment to comply with the CN condition of approval, which required the current owner, Merit to maintain Mountainside as a general acute hospital for a ten year time period. Since Merit will have operated Mountainside for a five year time period as of June 1, 2012, Montclair Health has committed to operating Mountainside for five years from the date of this CN approval letter through June 30, 2017 as reflected in CN condition 5. I find a five-year commitment to keep the hospital operational to be sufficient. I also find that the proposed clinical integration between Mountainside and HUMC to offer enhanced possibilities for sharing of specialty services and improvements in quality at both hospitals.

Moreover, I find that Montclair Health has provided an appropriate project description, which includes information as to the acquisition, operating costs and revenues, services affected, equipment involved, source of funds, utilization statistics, and justification for the proposed project (N.J.A.C. 8:33-4.10(b)), assurance that all residents of the area, particularly the medically underserved, will have access to services (N.J.A.C. 8:33-4.10(a)), and assurance that it will meet appropriate licensing and construction standards (N.J.A.C. 8:43G-1.1 et seq. and N.J.A.C. 8:33-4.10(d)).

The issue of the for-profit status of the applicant is one that has been raised in other hospital transfers. In this particular case, both the seller and the buyer are for-profit entities. However, for the record, as I believe is appropriate, neither staff nor the SHPB has ever determined that the for-profit status of an entity is one that is relevant in the review of CN or licensing applications. In other areas of health care licensing such as long-term care, we see primarily for-profit ownership. There is also no statutory or regulatory authority for treating for-profit and not for-profit entities differently in CN or licensing reviews. I also note that compliance with all CN and licensing requirements is equally enforced for all facilities, whether non-profit, for-profit or governmental.

Both the SHPB and I have independently reviewed the conditions of approval. Montclair Health's commitment to hiring substantially all staff, its recognition of current employees' existing levels of service and provision of health insurance coverage at substantially equivalent levels, terms and conditions to those that were offered to the employees prior to the transfer are addressed in conditions 3 and 4. These are conditions similar to those placed on other hospital transfers, which are working appropriately. Thus, I concur with the recommendations of both the SHPB and staff on the content of these conditions. Since health care is a particularly dynamic enterprise, I find that a five-year commitment to keep the hospital operational to be sufficient, as a minimum time requirement. As condition 6 states, any elimination of services shall require the Department's prior written approval.

The SHPB unanimously recommended approval of the CN application to transfer the ownership of Mountainside from Merit to Montclair Health with the staff recommended conditions. I agree with the SHPB's recommendation for approval with the below noted conditions of approval.

Based on the foregoing, I am approving the application for the transfer of ownership of Mountainside. My decision to allow this transfer of ownership from Merit to Montclair Health is based on the fact that the operation of Mountainside under the proposed new ownership would continue to be beneficial to the population in its service area since it will preserve access to health care services for the community, including the medically indigent and medically underserved population. I believe that this approval of a transfer of an existing license will not have an adverse impact on the other existing hospitals in Essex County or the surrounding counties. There is no existing data to suggest that this transfer of ownership would change Mountainside's relationship with other Essex County hospitals or adversely impact the health status of the community.

Finally, I acknowledge that Mountainside has had a long-standing commitment to the residents in its service areas and believe that this approval will enable the hospital, under its new ownership, to continue to maintain and enhance its commitment to the community into the foreseeable future. I also note that the applicant's business model and marketing strategy could stimulate an increase in patient volume and, in turn, maintain and even enhance the hospital's financial stability. For the reasons set forth in this letter and noting the approval of the SHPB, I am approving Montclair Health's application for the transfer of ownership of Mountainside subject to the following conditions.

Conditions:

Based on this documentation of compliance with regulatory and statutory criteria, Department staff recommends approving this transfer of ownership with the following conditions:

1. The applicant shall file a licensing application with the Department's Certificate of Need and Healthcare Facility Licensure Program (CNHCFL) to execute the transfer of the ownership of Mountainside to Montclair Health.
2. The applicant shall notify the Department's CNHCFL in writing, specifically who is responsible for the safekeeping and accessibility of all Mountainside patients' medical records (both active and stored) in accordance with N.J.S.A. 8:26-8.5 et seq. and N.J.A.C. 8:43G-15.2.
3. Montclair Health shall hire substantially all of the employees who are currently employed at Mountainside in accordance with Section 6.5 – Employee Matters of the Purchase Agreement. As stated in the CN application, Montclair Health shall recognize all current employees' existing levels of service and seniority.
4. As stated in the CN application and in accordance with the provisions of N.J.S.A. 26:2H-18.59h, Montclair Health shall "offer to its employees who were affected by the transfer, health insurance coverage at substantially equivalent levels, terms and conditions to those that were offered to the employees prior to the transfer."
5. Montclair Health shall comply with CN Condition 4 of the May 11, 2007 letter approving Merit's CN application as the then applicant to own and operate Mountainside. CN Condition 4 required Merit to operate Mountainside as a general hospital, for a ten-year time period. Merit will have operated the hospital for five years as of June 1, 2012. Montclair Health shall operate Mountainside, in compliance with all regulatory requirements, for five years from the date of this CN approval letter through June 30, 2017. This condition shall be imposed as a contractual condition of any subsequent sale or transfer, subject to appropriate regulatory or legal review, by Montclair Health within the five-year period.
6. As noted in the CN application, Montclair Health shall continue all clinical services currently offered at Mountainside and continue the operation of the Mountainside School of Nursing. Any changes in this commitment involving either a reduction, relocation out of Mountainside's current service area, or elimination of clinical services offered by Mountainside, shall require prior written approval from the Department and shall be subject to all applicable statutory and regulatory requirements.
7. Montclair Health shall continue compliance with N.J.A.C. 8:43G-5.21(a), which requires that "[a]ll hospitals . . . provide on a regular and continuing basis, out-patient and preventive services, including clinical services for medically indigent patients, for those services provided on an in-patient basis." Documentation of

Compliance shall be submitted within 30 days of the issuance of the license and quarterly thereafter for a period of five years.

8. In accordance with N.J.S.A. 26:2H-18.64 and N.J.A.C. 8:43G-5.2(c), Montclair Health shall not only comply with federal EMTALA requirements, but also provide care for all patients who present themselves at Mountainside without regard to their ability to pay or payment source.
9. The value of indigent care provided by Mountainside shall be determined by the dollar value of documented charity care, calculated at the prevailing Medicaid rate, and shall not be limited to the amount of charity care provided historically by Mountainside.
10. As stated in Completeness Responses by the applicant to the Department, Montclair Health shall establish joint venture Board of Directors comprised of ten members, five appointed by each of LHP and HUMC. The function of the joint venture Board of Directors is to provide strategic direction for Montclair Health. Actions of the joint venture Board of Directors will be accomplished through block voting; such actions require the approval of both a majority of the LHP-appointed members and a majority of the HUMC-appointed Board members.
11. Also as stated in above noted Completeness Responses, the joint venture Board of Directors shall appoint a 12-member local Board of Trustees for Mountainside, at least 50% of whose members shall be physicians from the active medical staff at the hospital, at least one of whom shall be a resident of Montclair, and the remainder of whom shall be local leaders from the hospital's service area. The hospital local Board of Trustees will be responsible for, among other things, (1) adopting a vision, mission, and values statement for the hospital; (2) monitoring performance improvement at the hospital; (3) granting medical staff privileges and, when necessary and with the advice of counsel, taking disciplinary action consistent with the medical staff bylaws; (4) ensuring medical staff compliance with the requirements of the Joint Commission; (5) supporting physician recruitment efforts; and (6) fostering community relationships and identifying service and education opportunities in the community.
12. Within 30 days of the issuance of the hospital's new license, Montclair Health shall provide the Department with an organizational chart of the hospital and each service that shows lines of authority, responsibility, and communication among, Montclair Health, hospital management and the Board of Directors. Montclair Health, as licensee, shall be responsible for compliance.
13. An outreach plan shall be placed into effect to ensure that all residents of the hospital service area, especially the medically indigent, have access to the available services at the location. A self-evaluation of this effort shall be conducted on a yearly basis beginning the first full year after licensure and for four years thereafter to measure the plan's effectiveness including any payments accounted

for activities, including but not limited to, outreach, community programs, health professional education, and shall be submitted to the Department every year at the time of license renewal for review and comment and presented to the public at the hospital's annual public meeting.

14. Montclair Health shall report annually on the anniversary date of CN approval to the Department's CNHCFL Program concerning the status of the conditions referenced in this approval letter.
15. All reports required in these conditions shall be forwarded to the Department's CNHCFL Program.
16. All the above conditions shall also apply to any successor organization to Montclair Health who acquires Mountainside within five years from the date of the CN approval.

Failure to satisfy the aforementioned conditions of approval may result in sanctions, including license suspension, monetary penalties and other sanctions in accordance with N.J.S.A. 26:2H-1 et seq. and all other applicable requirements. Acceptance of these conditions will be presumed unless written objections are submitted to the Department within 30 days of receipt of this letter. Upon receipt of such objections, this approval will be deemed suspended and the project shall be reexamined in light of the objections.

We look forward to working with you and helping you to provide a high quality of care to the patients of Mountainside. If you have any questions concerning this certificate of need, please do not hesitate to contact John Calabria, Director of the Department's Office of Certificate of Need and Healthcare Facility Licensure, at (609) 292-8773.

Sincerely,



Mary E. O'Dowd, M.P.H.
Commissioner

c: Mr. Calabria