

STATE OF RHODE ISLAND
DEPARTMENT OF HEALTH



IN RE: Care New England Health System and Memorial Hospital of Rhode Island applications to eliminate or significantly reduce emergency department and primary care services and request to proceed to closure of Memorial Hospital of Rhode Island.

CONSENT ORDER

WHEREAS, this matter is before the Rhode Island Department of Health ("RIDOH"), pursuant to the authority conferred upon the Director of RIDOH (the "Director") under the provisions of R.I. General Laws § 23-17, § 23-17.14, and R23-17.14-HCA, the *Rules and Regulations Pertaining to Hospital Conversions* ("HCA Regulations"), 216-RICR-40-10-4, the *Rules and Regulations for Licensing of Hospitals* ("Hospital Regulations"); and

WHEREAS, Section 10 of the HCA Regulations states *No hospital emergency department or primary care services which existed for at least one (1) year and which significantly serve uninsured or underinsured individuals shall be eliminated or significantly reduced without the prior approval of the Director in accordance with section 23- 17.14-18 of the Rhode Island General Laws, as amended*; and

WHEREAS, Memorial Hospital of Rhode Island ("MHRI") is a licensed hospital located at 111 Brewster Street in Pawtucket and has been in operation since 1901; and

WHEREAS, Kent County Memorial Hospital ("Kent Hospital") is a licensed hospital located at 455 Toll Gate Road in Warwick; and

WHEREAS, MHRI and Kent Hospital are members of the Care New England Health System (“CNE”); and

WHEREAS, MHRI currently provides emergency, surgical, anesthesia, rehabilitation, pharmacy, laboratory, nursing, radiology, dietary, and other hospital inpatient and outpatient services; and

WHEREAS, on November 2, 2017 MHRI submitted an application to RIDOH requesting to eliminate the Emergency Department at MHRI (“Emergency Department Reverse CON”) as a step toward ceasing operations as a licensed inpatient hospital. In the November 2, 2017 application MHRI stated *“Given such under-utilization and unsustainable chronic financial losses, MHRI cannot continue to adequately staff and deliver patient care services in a clinically safe and financially viable manner and intends to cease all MHRI operations as soon as possible”*; and

WHEREAS, on November 3, 2017, MHRI sent notices to all affected employees that MHRI intends to close, as required by the Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 et seq., which requires employers to give employees 60-days prior written notice in the event of a pending plant closing.; and

WHEREAS, in a letter dated November 6, 2017 RIDOH informed MHRI that RIDOH had received MHRI’s Emergency Department Reverse CON request and notified MHRI that *“MHRI’s current services, including, but not limited to, inpatient, emergency and intensive care services, must remain open and fully staffed in a routine manner, meeting all applicable state and federal statutes and regulations until such time as the Director of Health receives formal notification of closure and issues final approval of an orderly plan of closure, and second until the Director of Health issues a final decision on MHRI’s plan to cease providing emergency department services.”* The November

6, 2017 letter also informed MHRI of the minimum requirements that must be included in the orderly plan of closure for the hospital; and

WHEREAS, in a letter dated November 8, 2017, CNE informed RIDOH that among other things:

1. *“Clinical Management of MHRI believes that it is not in the best interest of patient care and safety for MHRI to continue to accept patients in need of ICU services.”*
2. *“Since MHRI has limited physician availability, such as no on-site gastrointestinal physicians, orthopedics, and limited other specialties, it is not possible to address the clinical needs of traditional ICU patients.”*
3. *“In addition, there is a shortage of appropriately trained ICU nurses.”*
4. *“It is not financially reasonable nor clinically responsible to continue to staff the ICU with short-staffed nurses and a clinical determination has been made to close the unit. MHRI will stop admitting patients into the ICU as of Sunday, November 12, 2017, and if any patients remain in the ICU as of Monday, November 13, 2017, the patients will be notified of the need to transfer and will be offered a choice of available hospitals with suitable ICU or step-down unit capabilities.”; and*

WHEREAS, in a letter dated November 9, 2017 RIDOH informed MHRI that an administrative review of the Emergency Department Reverse CON would commence on November 10, 2017 and would conclude within 90-days of that date; and

WHEREAS, in a letter dated November 10, 2017 in response to RIDOH’s November 6, 2017 letter, MHRI submitted its draft “Voluntary Closure Plan” containing responses to the requirements as set forth in RIDOH’s November 6, 2017 letter; and

WHEREAS, on November 11, 2017, MHRI sent a Memorandum to EMS providers notifying them of the clinical changes occurring at MHRI due to diminishing clinical capabilities and that effective November 13, 2017 the ICU will be closing and will not be accepting further patients. The November 11, 2017 Memorandum also identified a list of medical conditions and diagnoses for which patients should not be transported to the MHRI Emergency Department effective November 13, 2017. The November 11, 2017 Memorandum further noted going forward elective surgeries will only be performed at MHRI for low risk patients; and

WHEREAS, MHRI's draft Voluntary Closure Plan informs, among other things, that it intends to reduce and stop providing elective surgery, surgery and anesthesia services effective December 1, 2017:

1. "Elective Surgery

Due to Anesthesia Provider terminating Agreement effective November 30, 2017, too little time to recruit, credential, privilege replacement providers."

2. "Surgery

Due to Anesthesia Provider terminating Agreement effective November 30, 2017, too little time to recruit, credential, privilege replacement providers. Also affects Endoscopy and Pain Center."

3. "Anesthesia

Anesthesia Group terminated contract effective November 30, 2017. Even if we could find and afford locums, they would likely come from afar and would have to get RI license and go through credentialing process. Will take at least three months."; and

WHEREAS, on November 20, 2017, RIDOH notified the public that on November 27, 2017 a public informational meeting would be held concerning MHRI's Emergency Department Reverse

CON request and that RIDOH would accept written comments regarding the request until December 11, 2017; and

WHEREAS, on November 21, 2017, MHRI sent a letter to RIDOH stating, among other things, the following:

1. *“It is not possible to provide alternative coverage due to scheduling and staffing constraints and the fact that other anesthesiologists do not have credentials and staff privileges at MHRI.”*
2. *“Given the planned hospital closing and staffing movement, MHRI expects that it will not be able to continue to adequately staff the OR and Anesthesia Services.”*
3. *“Only elective surgeries are currently scheduled after December 1, 2017 and such surgeries can be transitioned and scheduled to more suitable facilities.”*
4. *“It will not be economically or operationally feasible to recruit temporary anesthesiologists to provide services on a short-term basis due to licensure, credentialing, and cost considerations.”*
5. *“As a result, it would be costly and unnecessary hardship for MHRI to continue to provide surgery and anesthesia services as of December 1, 2017.”*

WHEREAS, in the letter of November 21, 2017, MHRI requested a waiver from the requirements of Sections 4.6.19 and 4.6.20 to no longer maintain a surgical service and anesthesiology service as a requirement for the provision of Emergency Department services effective December 1, 2017, for those reason as noted above; and

WHEREAS, RIDOH requested and MHRI provided a November 1, 2017 letter from Anesthesia Care, Inc. to MHRI. The November 1, 2017 letter stated, *“I regret to tell you that Anesthesia Care, Inc. will no longer be able to provide consistent anesthesia service after November*

30, 2017. I have attempted to taper our payroll and maintain our services throughout the end of the year, however due to physicians obtaining alternative positions we will not be available after this month... I feel there is no other viable option at this time.”

WHEREAS, MHRI provided data to RIDOH on emergent, elective and outpatient surgeries performed at MHRI between July 2017 and November 2017 which indicated a total of 1,050 cases were performed which types included Orthopedic, Urology, ENT, General, Neurology, Podiatry, Pulmonary and Pain Management; and

WHEREAS, MHRI provided confirmation to RIDOH stating that all elective Surgical procedures scheduled at MHRI have been canceled beginning December 1, 2017; and

WHEREAS, based on the information above and the confirmations made by RIDOH, RIDOH has determined that MHRI can no longer provide anesthesia and surgery services in a way that insures adequate patient safety and quality of care; and

WHEREAS, on November 22, 2017, MHRI submitted its request to eliminate the provision of primary care services currently provided under the MHRI license (“Primary Care Reverse CON”) and transfer to the licenses of other Care New England hospitals; and

WHEREAS, RIDOH determined required information was absent from MHRI’s November 22, 2017 Primary Care Reverse CON; and

WHEREAS, RIDOH sent an email on November 22, 2017 requesting the missing information; and

WHEREAS, on November 24, 2017, MHRI resubmitted its Primary Care Reverse CON in response to RIDOH’s request; and

WHEREAS, in a letter dated November 24, 2017 RIDOH informed MHRI that an administrative review of the Primary Care Reverse CON would commence on November 25, 2017 and would conclude within 90-days of that date; and

WHEREAS, on November 24, 2017, RIDOH amended its November 20, 2017 notice to the public regarding the public informational meeting and written comment period to also include MHRI's Primary Care Reverse CON; and

WHEREAS, pending resolution of the Reverse CON applications for closure of the Emergency Department and for transfer of the provision of primary care services from MHRI to other CNE hospitals and Hospital Closure Request of CNE and MHRI, RIDOH has determined that MHRI, including its Emergency Department, cannot function in a manner that assures safe treatment of patients.

NOW, THEREFORE, in consideration of the facts set forth above and in the best interest of patient care and safety, the parties hereby agree as follows:

1. MHRI shall not admit patients after November 30, 2017.
2. MHRI shall not perform any scheduled non-emergent inpatient or outpatient surgical procedures after November 30, 2017.
3. MHRI shall not provide any anesthesia services after November 30, 2017.
4. Notwithstanding parts 1, 2, and 3 of this Order as provided above, MHRI shall maintain its Emergency Department in compliance with all other requirements set forth in 216-RICR-40-10-4; 4.6.7
5. Notwithstanding parts 1, 2, and 3 of this Order as provided above, MHRI shall maintain 24/7 Emergency Department supportive services including but not limited to respiratory therapy, radiology services including a protocol to govern the interpretation by a radiologist of

diagnostic images and a procedure for prompt communication of the radiologist's interpretation, Computed Tomography, Magnetic Resonance Imaging, clinical laboratory service with arterial blood gas analysis capability, blood transfusion services, and pharmacy services in accordance with all applicable requirements as required by the Hospital license.

6. Notwithstanding parts 1, 2, and 3 of this Order as provided above, MHRI shall otherwise continue to maintain all other hospital services as required in 216-RICR-40-10-4.

7. Notwithstanding parts 1, 2, and 3 of this Order as provided above, MHRI shall maintain the appropriate staffing, equipment, pharmaceutical and supply levels required and set forth in 216-RICR-40-10-4; 4.6.7 in order to support the Emergency Department and those supportive services listed above.

8. MHRI shall revert to "internal disaster" mode, diverting all ambulance services from its emergency department effective November 30, 2017.

9. MHRI shall maintain ambulance services on-site 24/7 to transport patients who arrive or are otherwise at MHRI receiving treatment that cannot be adequately provided at MHRI to the nearest hospital for the appropriate services required, until RIDOH issues its decision in response to MHRI's request to discontinue emergency department services

10. MHRI shall triage patients presenting to the MHRI Emergency Department in accordance with EMTALA standards.

11. CNE and MHRI shall notify the public through multiple outlets, including but not limited to; press release, social media, local signage and in English, Spanish and Portuguese languages of all changes as set forth herein at times deemed appropriate by RIDOH. All notification by CNE and MHRI shall be pre-approved by RIDOH.

12. MHRI shall include prominent signage at the hospital notifying the public of the services that are available and no longer available at MHRI.

13. MHRI will promptly notify affected professional, paraprofessional, ancillary and support staff of effects of the closure of services on their employment as well as provide support to affected staff in finding future employment. This Order will terminate automatically and immediately, without any further action on the part of the parties, upon full performance and satisfaction of the covenants, stipulations and obligations as set forth herein.

This Order is an interim plan designed to insure patient care and safety pending the Director's decision on the reverse CON applications and the request for closure plan submitted by MHRI and CNE. Nothing in this order is intended to influence or indicate the Director's decision which will be based on the merits of the applications and request for closure plan, public comments and the applicable rules, regulations and law governing these matters and entrusted to RIDOH as parameters of oversight regarding the interests of life and health among the citizenry of Rhode Island.

Notices. Except as may otherwise expressly be provided herein, any notice required or desired to be served, given or delivered hereunder shall be in writing, and shall be deemed to have been validly served, given or delivered upon the earlier of (a) personal delivery to the addresses set forth below, (b) in the case of facsimile transmission, immediately upon confirmation of completion of transmission, (c) in the case of mailed notice, seven (7) days after deposit in the mail, with proper postage for registered or certified mail, return receipt requested, prepaid, or (d) in the case of notice by Federal Express or other reputable overnight courier service, two (2) business days after delivery to such courier service, addressed to the party to be notified as follows:

If to: Memorial Hospital of Rhode Island

Joseph Oriti
Chief Administrative Officer
Memorial Hospital of Rhode Island
111 Brewster Street
Pawtucket, RI 02860

James Fanale, MD
Executive Vice President
Chief Operating Officer
Care New England
45 Willard Avenue
Providence, RI 02905

With a copy to:

Alyssa V. Boss, Esq.
Executive Vice President and General Counsel
Care New England Health System
45 Willard Avenue, Third Floor
Providence, RI 02905

If to: Rhode Island Department of Health

Michael K. Dexter
Chief
Center for Health Systems Policy and Regulations
Rhode Island Department of Health
3 Capitol Hill, Room 410
Providence, Rhode Island 02908

Mary E. Bennet
Chief
Center for Health Facilities Regulation
Rhode Island Department of Health
3 Capitol Hill, Room 410
Providence, Rhode Island 02908

With a copy to:


Stephen Morris, Esq.
Deputy Legal Counsel
Rhode Island Department of Health
3 Capitol Hill, Room 404
Providence, Rhode Island 02908

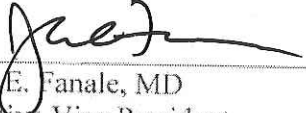
or to such other address or telecopy number as may be designated in writing by any party from time to time in accordance herewith.

Counterparts. This Order may be executed in one or more counterparts, each of which shall be construed as an original, and all of which together shall constitute one and the same instrument.


IN WITNESS WHEREOF, the parties, by their agents duly authorized, have executed this Consent Order effective November 30, 2017.


MEMORIAL HOSPITAL OF RHODE
ISLAND

By: 
Joseph Oriti
Chief Administrative Officer
Memorial Hospital of Rhode Island

By: 
James E. Fanale, MD
Executive Vice President
Chief Operating Officer
Care New England Health System

RHODE ISLAND DEPARTMENT OF
HEALTH

By: 
Michael K. Dexter
Chief, Center for Health Systems Policy and
Regulations
Rhode Island Department of Health

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Mary E. Bennett
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Rhode Island Department of Health