



July 29, 2024

**VIA ELECTRONIC MAIL AND  
CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

North Carolina Department of Justice  
Consumer Protection Division  
114 W. Edenton Street  
P.O. Box 629  
Raleigh, NC 27602-0629  
Attention: Logan R. Walters, or Attorney  
Responsible for Review of Nonprofit Transactions  
Email: LWalters@ncdoj.gov

North Carolina Department of Justice  
114 W. Edenton Street  
P.O. Box 629  
Raleigh, NC 27602-0629  
Attention: Sarah Boyce, or General Counsel  
Email: Sboyce@ncdoj.gov

North Carolina Department of Justice  
114 W. Edenton Street  
P.O. Box 629  
Raleigh, NC 27602-0629  
Attention: Jasmine McGhee, or Chief of Consumer  
Protection Division  
Email: JMcghee@ncdoj.gov

Re: Notification Pursuant to Section 7.17(b) of the Amended and Restated Asset Purchase Agreement dated as of January 31, 2019 (the “Purchase Agreement”) Regarding the Amended and Restated Annual Report for Fiscal Year Ending December 31, 2023, dated July 9, 2024

Dear Ms. Walters, Ms. Boyce and Ms. McGhee:

Dogwood Health Trust (“Dogwood”), the Seller Representative with respect to obligations under Section 7.17 of the Purchase Agreement, hereby notifies the North Carolina Attorney General (the “North Carolina AG”), pursuant to Section 7.17(b) of the Purchase Agreement, of Dogwood’s intent with regard to its notification to MH Master Holdings, LLLP (“Buyer”) of “potential noncompliance by Buyer,” as that phrase is used in Section 7.17(b) of the Purchase Agreement. Capitalized terms used in this letter have the meanings set forth in the Purchase

Agreement, unless otherwise defined herein. References to the Annual Report in this letter shall mean the Annual Report for the year ending December 31, 2023, dated as of April 30, 2024, as amended and restated by the Amended and Restated Annual Report, dated as of July 9, 2024 (together referred to herein as the “Annual Report”), unless otherwise indicated. The period from January 1, 2023, through December 31, 2023, which is the period covered by the Annual Report, is referred to in this letter as the “Reporting Period.”

The newly selected Independent Monitor firm began its engagement on April 1, 2024. From the start of the engagement, the Independent Monitor used meetings to inform the community and stakeholders about Buyer’s obligations and to provide a mechanism for community input. The Independent Monitor held calls and several in-person meetings during the evaluation of the Annual Report with community organizations, elected officials, healthcare professionals, and individuals. Site visits were conducted by the Seller Representative (which included members of the Independent Monitor team) in conjunction with the Reporting Period evaluation.

### **Dogwood Intends to Notify Buyer of Potential Noncompliance with Respect to Buyer’s Obligations Covered by the Annual Report.**

Dogwood has reviewed the Annual Report carefully and received advice from the Independent Monitor, in accordance with Section 7.12(c) of the Purchase Agreement. Based upon the foregoing, Dogwood hereby notifies the North Carolina AG that it intends to notify Buyer of three instances of potential noncompliance with respect to the Continuing Obligations, specifically the obligations set forth in Sections 7.13(a), 7.13(h), and 7.15 for the Reporting Period.<sup>1</sup>

#### **Potential Noncompliance with Section 7.13(a)**

Section 7.13(a) provides, in part:

*(a) Unless otherwise consented to in writing by the Advisory Board for a period of ten (10) years immediately following the Closing Date, Buyer shall not discontinue the provision of the services set forth on Schedule 7.13(a) (the “Mission Hospital / CarePartners Services”) at the Mission Hospital Campus Facility, the Community CarePartners Facilities or the Mission Children’s Hospital Reuter Outpatient Center, as applicable, subject to Force Majeure making the provision of such services impossible or commercially unreasonable (but only for the period of Force Majeure and the applicable Remediation Period).*

During the Reporting Period, concerns have been expressed regarding services that Section 7.13(a) requires to be continued. These concerns include the provision of Emergency and Trauma Services and Oncology Services at Mission Hospital. More specifically, staff reductions and other circumstances appear to have resulted in significant diminishment of access to these services. Buyer did not seek or obtain consent from the Advisory Board, pursuant to Section 7.13(a) to discontinue these services, and a Force Majeure did not occur during the Reporting Period.

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<sup>1</sup> The matters to be addressed in the Annual Report are identified in Section 7.17(a) of the Purchase Agreement.

The North Carolina Department of Health and Human Services notified Buyer on December 19, 2023, that a survey of Buyer's operations had resulted in the identification of findings of Immediate Jeopardy related to these circumstances. That notification is also addressed in the Section 7.13(h) discussion below. Additionally, the North Carolina Attorney General sued Buyer in the North Carolina Business Court, alleging that Emergency and Trauma Services and Oncology Services have degraded to the point of violation of Section 7.13(a) of the Purchase Agreement.

Dogwood acknowledges that Buyer subsequently submitted a Plan of Correction as to the Immediate Jeopardy notice and that the Plan was approved by the Centers for Medicare and Medicaid Services (CMS) in March 2024, and that the claims asserted in the Attorney General's lawsuit will be addressed by the North Carolina Business Court, pursuant to Section 13.2 of the Purchase Agreement. However, based on the circumstances described above as to Emergency and Trauma Services and Oncology Services, Dogwood intends to notify Buyer of potential noncompliance with Section 7.13(a) of the Purchase Agreement.

### **Potential Noncompliance with Section 7.13(h)**

Section 7.13(h) provides, in part:

*Unless otherwise consented to in writing by (i) with respect to any Material Facility other than the Local Hospital Facilities, the Advisory Board, or (ii) with respect to any Local Hospital Facility, its applicable Local Advisory Board, for a period of ten (10) years immediately following the Closing Date, subject to Force Majeure making doing so impossible or commercially unreasonable (but only for the period of Force Majeure and the applicable Remediation Period), Buyer shall cause the Material Facilities and the Local Hospital Facilities to remain enrolled and in good standing in Medicare, Medicaid or their successor program(s); provided that Buyer shall only be obligated to cause the Material Facilities and the Local Hospital Facilities to accept conventional Medicare and Medicaid, and shall not be obligated to cause the Material Facilities or the Local Hospital Facilities to accept managed Medicare or Medicaid or participate in any other alternative payment models.*

On December 19, 2023, and through the conclusion of the reporting period on December 31, 2023, Buyer was under Immediate Jeopardy findings by the Centers for Medicare and Medicaid Services (CMS) and the North Carolina Department of Health and Human Services (NCHHS) following a survey of operations at Mission Hospital. The Immediate Jeopardy findings notification, issued on December 19, 2023, by NCHHS in coordination with CMS, included a 23-day notice of termination due to noncompliance with noted subparts of the Conditions of Participation in the Medicare and Medicaid program (Sections 482.12, 482.13, 482.21, 482.23, 482.27 and 482.55).

Dogwood intends to notify Buyer of potential noncompliance with Section 7.13(h) of the Purchase Agreement, based on apparent failure to remain "enrolled and in good standing" in Medicare and Medicaid. Buyer did not seek or obtain consent from the Advisory Board and a Force Majeure did not occur during the Reporting Period. Dogwood notes that, after the

Reporting Period, Buyer took corrective action, and as of March 26, 2024, CMS approved Buyer's Plan of Correction related to the deficiencies identified in the survey.

### **Potential Noncompliance with Section 7.15**

Section 7.15 provides, in part:

*Between the Effective Time and the tenth (10th) anniversary of the Effective Time, Buyer shall implement and maintain at the Hospitals the Uninsured and Charity Care Policy (subject only to such revisions as (i) are approved by (A) with respect to any Material Facility other than the Local Hospital Facilities, both the Advisory Board and Independent Monitor, or (B) with respect to any Local Hospital Facility, both its applicable Local Advisory Board and Independent Monitor, (ii) provide no less access for necessary medical care regardless of ability to pay for services rendered than the Uninsured and Charity Care Policy, or (iii) are necessary to comply with applicable Law).*

In its Annual Report, dated April 30, 2024, Buyer stated "Buyer has implemented and maintained the Uninsured and Charity Care Policy at the Hospitals during the Reporting Period. No revisions to such policy were made during the Reporting Period." However, on June 21, 2024, the Independent Monitor received an email noting that the policy had been amended in the Spring of 2023, to remove language as follows: "Under no circumstances will liens be considered on properties less than \$300,000 in value." In its Amended and Restated Annual Report, dated July 9, 2024, Buyer corrected its Annual Report to reflect this amendment. Buyer states that its practice is to never levy liens over patient debt and there are other company policies related to this prohibition of the use of liens. Nonetheless, Buyer's revised Uninsured and Charity Care Policy, on its face, removes a restriction on Buyer's ability to levy liens for nonpayment of patient debt and therefore provides less access for necessary medical care regardless of ability to pay for services. Given the absence of approval of the revision by the Advisory Board, Local Advisory Boards, and Independent Monitor, Dogwood intends to notify Buyer of potential noncompliance with Section 7.15 of the Purchase Agreement.

### **Summary**

For the purpose of providing advice to Dogwood, the Independent Monitor engaged in discussions with various parties as described above, reviewed data provided by Buyer at the request of the Independent Monitor and conducted an evaluation as to whether any concerns expressed gave rise to potential noncompliance during the Reporting Period. The Independent Monitor queried and discussed relevant matters with Buyer.

Dogwood and the new Independent Monitor will continue to evaluate and seek community input along with meaningful, candid responses from Buyer with respect to these concerns. Dogwood is committed to its oversight of Buyer's obligations under the Purchase Agreement.

In its role as Seller Representative under the Purchase Agreement, Dogwood has reviewed the Annual Report and been advised by the Independent Monitor. Dogwood hereby notifies the North Carolina AG pursuant to Section 7.17(b) of the Purchase Agreement that, based upon the

foregoing, Dogwood intends to notify Buyer of potential noncompliance with regards to the Annual Report.

Should the North Carolina AG desire additional discussion of the Annual Report or the matters addressed in this letter, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John F.A.V. Cecil", followed by a horizontal flourish.

John F.A.V. Cecil  
Chair of Board of Directors