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March 2, 2017

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Re: Motion for Recusal and to Strike Recommended Decision
Baltimore Upper Shore Cardiac Surgery Review
Anne Arundel Medical Center (Docket No. 15-02-2360)
University of Maryland Baltimore Washington Medical Center
(Docket No. 15-02-2361)

Dear Counsel, Mr. Meltzer, and Dr. Chan:

On February 20, 2017, Dimensions Health Corporation d/b/a/ Prince George's Hospital Center ("PGHC") filed a Motion for Recusal and to Strike the Recommended Decision in the Baltimore Upper Shore Cardiac Surgery Review. As grounds for its motion, PGHC asserts that my "relationship" with my former wife (Dr. Jennifer W. Tanio, a medical cardiologist at Johns Hopkins Medicine), as well as my unpaid part-time faculty appointment in General Internal Medicine at Johns Hopkins School of Medicine, presents the appearance of impropriety and an

apparent conflict of interest. (Motion at ¶¶ 5-7). PGHC requests that I recuse myself from this matter, that the Recommended Decision I issued on December 30, 2016 be stricken, and that the comparative review of these applications begin anew. (Motion at p. 4). I have considered PGHC's motion, the opposition filed by Anne Arundel Medical Center, and, for the reasons stated below and in my attached affidavit, I deny PGHC's motion.

PGHC's primary argument is that I should recuse myself because, at one time, I was married to Dr. Jennifer Tanio, a medical cardiologist currently employed by Johns Hopkins Medicine at Green Spring Station in Lutherville, Maryland. (Motion at ¶¶ 5-6). PGHC insists that I should have disclosed my ex-wife's employment, even discussing my minor children in its motion, stating that both my ex-wife and I contribute to their financial support. (Motion at ¶5). The employment of my ex-wife is completely irrelevant and has no influence on my ability to render an impartial decision in this contested case. (See Exh. 1, Affidavit of Craig P. Tanio, M.D. ("Tanio Aff.") at ¶ 6). My ex-wife and I have been divorced since 2013. As former spouses, we do not have a relationship that either creates or that is typically viewed as creating a conflict of interest. The provisions of the Maryland Public Ethics Law¹ governing restrictions on participation specifically identify the types of relationships that could create a conflict of interest, which, notably, do not include a former spouse.²

PGHC also argues that I should recuse myself from this matter because of what it characterizes as my part time position with Johns Hopkins General Internal Medicine. (Motion at ¶ 7). For more than twenty years, I have served as a volunteer, unpaid, part-time member of the faculty at the Division of General Internal Medicine of the Johns Hopkins School of Medicine (Tanio Aff. at ¶ 3; http://www.hopkinsmedicine.org/gim/faculty/p-t_alpha.html). This position is one of several volunteer academic appointments that I hold with multiple institutions. (Tanio Aff. at ¶ 2). In this position, I have taught medical residents in their evidence-based medicine rotation (as contrasted with teaching medical students). (*Id.* at ¶3). My position at the Division of General Internal Medicine does not interfere in any way with my ability to render an impartial decision in this contested case. (*Id.* at ¶ 6). Since I began my service as a Commissioner in 2011, my faculty position at Johns Hopkins has been publicly listed in my biography on the Commission's website, where the biographies of all Commissioners can be found. Please see screenshots of my biography from the MHCC website for November 2012, October 2013, September 2014, November 2015, and February 2017 (attached as collective Exh. 2). At this late date, PGHC cannot be heard to raise a conflict of interest claim given this prior disclosure. *Miller v. Kirkpatrick*, 377 Md. 335, 358 (2003).

As an appointed unpaid member of the Maryland Health Care Commission,³ I am a public official who is bound by the Maryland Public Ethics Law. This law was enacted, among other things, to ensure impartial action by public officials and to avoid conflicts of interest. Generally,

¹ Md. Code Ann., General Provisions §§ 5-101 through 5-1001 ("Gen. Prov.").

² The Maryland Public Ethics Law uses the term "qualifying relative" and defines such a person as "a spouse, parent, child, brother or sister." Gen. Prov., §5-501(a) and §5-101(gg).

³ I was appointed by Governor Martin O'Malley to the Commission in 2011. On June 8, 2012, I was appointed Chair of the Commission, effective July 1, 2012.

the law provides that a public official cannot participate in a matter if it involves certain relatives or entities with which he or she has an interest, or if it involves as a party, a business entity in which the official or certain relatives of the official have employment, contractual, or creditor relationships. Gen. Prov., §5-501(a)(1) and (2). Additionally, an official may not hold any employment relationship that would impair his or her impartiality and independence of judgment. *Id.* at §5-502(b)(2).

Apart from the Maryland Public Ethics Law, a Commissioner should avoid even the appearance of impropriety or improper behavior. A Commissioner has a special obligation to avoid the appearance that self-interest drives official acts. There is no dispute that the parties to this contested case, like all parties appearing before an administrative agency, are entitled to a fair and impartial proceeding before the Commission. See *Regan v. State Bd. of Chiropractic Examiners*, 355 Md. 397, 409 (1999). The factual circumstances detailed in PGHC's motion, however, neither demonstrate actual prejudice on my part, nor do they provide a basis upon which my impartiality can reasonably be questioned. PGHC also claims that my voting record on other applications involving Johns Hopkins is an acknowledgement by me that I have a conflict or a potential conflict of interest in this matter. (Motion at ¶ 8p. 3). Specifically, PGHC states that my September 20, 2016 abstention from the vote on a staff report and recommendation regarding the Certificate of Need (CON) application of an affiliate of Johns Hopkins for its proposed Green Spring Station Surgery Center "is an indication of [my] recognition of the conflict . . ." (*Id.*). PGHC clearly confuses abstention with recusal. Recusal is the proper response to a conflict of interest, and had I felt that such a conflict existed with respect to that matter, I would have recused myself. I initially introduced the agenda item regarding the matter and led the discussion, but decided to abstain because questions I asked about the impact of the proposed ambulatory surgical facility on Johns Hopkins global budget revenue agreement with the Health Services Cost Review Commission were not answered to my satisfaction. (Tanio Aff. at ¶ 4). My abstention in that matter does not require me to recuse myself in this contested case.

Additionally, PGHC states that my absence from the May 19, 2016 meeting in which the Commission voted on a CON application filed by Suburban Hospital (owned by Johns Hopkins) also indicates that I recognize that I have a conflict. (Motion at ¶ 8). Again, this argument is misplaced. My absence from the meeting occurred because I had an out-of-state obligation on that date. (Tanio Aff. at ¶ 5).

Moreover, while PGHC states that I have not voted on any application involving Johns Hopkins in the last two years, its selective range of dates fails to acknowledge that I have indeed voted on matters involving Johns Hopkins during my tenure with the Commission. On February 16, 2012, I voted on staff reports and recommendations regarding two CON applications by Johns Hopkins Bayview Medical Center (Bayview), one seeking to expand its emergency department and, the other, to construct a comprehensive cancer building on its campus. I was one of two Commissioners who voted against approval of the comprehensive cancer building. (http://mhcc.maryland.gov/mhcc/pages/home/meeting_schedule/documents/minutes/MHCC_min_20120216.pdf). Furthermore, on December 16, 2011 and again on December 19, 2013, I voted on requests of Howard County General Hospital (a member of Johns Hopkins Medicine), and Bayview for

Counsel, Neil Meltzer, and Jinlene Chan, M.D.
Motion to Recuse and to Strike Recommended Decision
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renewal of their waivers to provide primary percutaneous coronary intervention (emergency angioplasty) services at a hospital without on-site cardiac surgery.
(http://mhcc.maryland.gov/mhcc/pages/home/meeting_schedule/documents/minutes/MHCC_min_20111216.pdf;
http://mhcc.maryland.gov/mhcc/pages/home/meeting_schedule/documents/minutes/MHCC_min_20131219.pdf).

I want to remind all parties that this remains a contested case and that the *ex parte* prohibitions in the Administrative Procedure Act, Maryland Code Ann., State Gov't §10-219, apply to this proceeding until the Commission issues a final decision.

Sincerely,



Craig P. Tanio, M.D.
Chair/Reviewer

cc: Steven R. Schuh, Executive, Anne Arundel County
Leana S. Wen, M.D., Baltimore City Health Commissioner
Gregory Wm. Branch, M.D., Baltimore County Health Officer
Leland Spencer, M.D., Caroline and Kent County Health Officer
Edwin F. Singer, L.E.H.S., Carroll County Health Officer
Stephanie Garrity, M.S., Cecil County Health Officer
Susan C. Kelly, E.H.S., Harford County Health Officer
Maura J. Rossman, M.D., Howard County Health Officer
Joseph A. Ciotola, M.D., Queen Anne's County Health Officer
Fredia Wadley, M.D., Talbot County Health Officer
Paul Parker
Kevin McDonald
Suellen Wideman, AAG
Siobhan K. Madison, AAG

Exhibit 1

**IN THE MATTER OF
BALTIMORE/UPPER SHORE
CARDIAC SURGERY REVIEW**

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**BEFORE THE
MARYLAND HEALTH
CARE COMMISSION**

**Anne Arundel Medical Center
Docket No. 15-02-2360**

**University of Maryland
Baltimore Washington
Medical Center
Docket No. 15-02-2361**

* * * * *

AFFIDAVIT OF CRAIG P. TANIO, M.D.

I, Craig P. Tanio, M.D., being over 18 years of age and competent to testify as to the matters set forth herein, state as follows:

1. I have been a member of the Maryland Health Care Commission since 2011, and have served as the Chair of the Commission since July 1, 2012.
2. I currently hold volunteer, unpaid academic appointments at the Johns Hopkins School of Medicine, Thomas Jefferson University, and Florida Atlantic University.
3. At the Johns Hopkins School of Medicine, I am a volunteer, unpaid, part-time faculty member in the Division of General Internal Medicine. In this capacity, I teach four two-hour seminars to first-year medical residents as part of their evidence-based medicine rotation. I have held this position for more than 20 years. My volunteer unpaid faculty position at Johns Hopkins School of Medicine was disclosed to the Governor's Appointments Office and the MHCC at the time of my appointment and has been posted on the MHCC website since 2011.
4. On September 20, 2016, in my capacity as Chair of the Maryland Health Care Commission, I introduced an agenda item regarding an application for Certificate of Need filed by Johns Hopkins Surgery Center Series to establish a freestanding ambulatory surgical facility at

Green Spring Station in Lutherville, Maryland. I decided to abstain from voting on the matter because questions I asked about the impact of the proposed ambulatory surgical facility on the Johns Hopkins global budget revenue agreement with the Health Services Cost Review Commission were not answered to my satisfaction. My abstention in that matter does not require me to recuse myself in this contested case. My vote was not needed because sufficient Commissioners were present to establish a quorum.

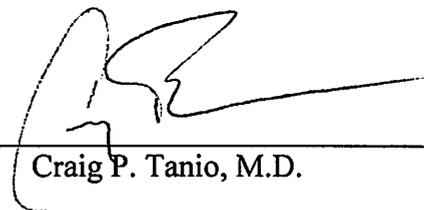
5. I was absent from the Commission meeting held on May 19, 2016, because I had an out-of-state obligation on that date.

6. Neither my volunteer, unpaid faculty position at the Johns Hopkins School of Medicine nor the employment of my ex-wife as a medical (non-interventional) cardiologist with Johns Hopkins Medicine at Green Spring Station in Lutherville, Maryland has in any way impacted or will impact my impartiality in the Baltimore Upper Shore Cardiac Surgery Review, or my past or future service as a Commissioner and Chair of the Maryland Health Care Commission.

I solemnly declare under the penalties of perjury and upon personal knowledge that the foregoing affidavit is true and correct.

3/1/17

Date



Craig P. Tanio, M.D.

Exhibit 2

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MHCC > Commissioners

The Commission is composed of fifteen members appointed by the Governor, with the advice and consent of the Senate, for a term of four years. A short biography of each Commission member follows:

Craig Tanio, MD, MBA, Chair, is the Chief Medical Officer at Chen Med, a physician owned group that is expanding an innovative global risk care model for moderate to low income seniors that emphasizes preventive and primary care. Previously, he was a partner at McKinsey & Company, a global management consulting firm and the Chief Operating Officer for Baltimore Medical System, a group of federally qualified community health centers serving the Baltimore area. Dr. Tanio received his MD from UC San Francisco, his MBA from the Wharton School and completed internal medicine training at the Hospital of the University of Pennsylvania. He is a part-time Assistant Professor of Medicine at Johns Hopkins School of Medicine and a Senior Fellow in the Department of Health Policy at Jefferson Medical College. Dr. Tanio resides in Baltimore County. (Term Expires 9/30/16)

Garret A. Falcone, Vice-Chair, is the Executive Director of Heron Point of Chestertown, a CCRC on the Eastern Shore. He has over 35 years experience in acute and long term care. Commissioner Falcone is a graduate in Business Management from Fairleigh Dickinson University in New Jersey and earned his Master's Degree in Health Services Administration from Russell Sage College in Albany, New York. He was awarded the MAMPHA Chairman's Award in 2001 and the Special Chairmen's Award, AEGIS Inc., in 2001. Vice Chair Falcone resides in Kent County. (Term Expires 9/30/14)

Rev. Robert L. Conway is retired from the Calvert County Public School System where he was employed for more than thirty years, serving as an elementary school teacher and principal. He is a graduate of Bowie State, George Washington University, and the Howard University School of Divinity. Commissioner Conway, a member of the Board of Directors of Calvert Memorial Hospital for the past nine years, has also served on Maryland's Hospital Bond Project Review Committee for four years. A resident of Calvert County, Reverend Conway is the pastor of the United Methodist Church and resides in Southern Maryland. (Term Expires 9/30/13)

John E. Fleig is Chief Operating Officer for Mid Atlantic Health Plan for United Healthcare. He is responsible for the overall operations of the health plan and responsible for all aspects of the MAMSI/United integration. Before United Healthcare, he was the Senior Vice President for Mid Atlantic Medical Services, Inc. at MAMSI. Commissioner Fleig earned his undergraduate degree in Psychology from the University of Maryland and his accounting degree from Benjamin Franklin University. He is the former Director of the Maryland Small Group Reinsurance Pool. Commissioner Fleig is a resident of Calvert County. (Term Expires 9/30/16)

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Craig Tania, MD, MBA, Chair, is the Chief Medical Officer at JenCare, a physician owned group that is expanding an innovative global risk care model for moderate to low income seniors that emphasizes preventive and primary care. Previously, he was a partner at McKinsey & Company, a global management consulting firm and the Chief Operating Officer for Baltimore Medical System, a group of federally qualified community health centers serving the Baltimore area. Dr. Tania received his MD from UC San Francisco, his MBA from the Wharton School and completed internal medicine training at the Hospital of the University of Pennsylvania. He is a part-time Assistant Professor of Medicine at Johns Hopkins School of Medicine and a Senior Fellow in the Department of Health Policy at Jefferson Medical College. Dr. Tania resides in Baltimore County. (Term Expires 9/30/2016)

Garret A. Falcone, Vice-Chair, is the Executive Director of Heron Point of Chestertown, a CCRC on the Eastern Shore. He has over 35 years experience in acute and long term care. Commissioner Falcone is a graduate in Business Management from Fairleigh Dickinson University in New Jersey and earned his Master's Degree in Health Services Administration from Russell Sage College in Albany, New York. He was awarded the MANPHA Chairmen's Award in 2001 and the Special Chairmen's Award, AEGIS Inc., in 2001. Vice Chair Falcone resides in Kent County. (Term Expires 9/30/2014)

Michael S. Barr, MD, MBA, FACP is a board-certified internist and Senior Vice President, Division of Medical Practice for the American College of Physicians. He is involved in program and policy development including advocacy for the patient-centered medical home, medical home neighbor, inter-professional team-based care, and health information technology. Prior to joining the ACP staff, he was the Chief Medical Officer for Baltimore Medical System, Inc., on the faculty of the Division of General Internal Medicine at Vanderbilt University, and served in the United States Air Force. Dr. Barr received his MD from New York University School of Medicine and completed his residency in Internal Medicine at Rush-Presbyterian-St. Luke's Medical Center in Chicago, Illinois. He received a Masters of Business Administration from Vanderbilt Owen Graduate School of Management, and a Bachelor of Science degree in Forest Biology from the State University of New York, College of Environmental Science and Forestry. Dr. Barr holds part-time faculty appointments at Johns Hopkins University and The George Washington University. He currently Chairs the Board of Trustees for Baltimore Medical System, Inc., and is a member of the boards of Integrating the Healthcare Enterprise-USA (IHE-USA), and the National eHealth Collaborative (NeHC). Dr. Barr currently is a member of the IBM Watson Advisory Board and previously served on the Health Information Technology Policy Committee Meaningful Use Workgroup. Dr. Barr still practices internal medicine part-time in Columbia, Maryland. Commissioner Barr resides in Howard County. (Term Expires 9/30/2016)

Rev. Robert L. Conway is retired from the Calvert County Public School System where he was employed for more than thirty years, serving as an elementary school teacher and principal. He is a graduate of Bowie State, George Washington University, and the Howard University School of Divinity. Commissioner Conway, a member of the Board of Directors of Calvert Memorial Hospital for the past nine years, has also served on Maryland's Hospital Bond Project Review Committee for four years. A resident of Calvert County, Reverend Conway is the pastor of the United Methodist Church and resides in Southern Maryland. (Term Expires 9/30/2013)

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MHCC - Commissioners

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Craig Taniio, MD, MBA, Chair, is the Chief Medical Officer at ChemMed, a physician owned group that is expanding an innovative global risk care model for moderate to low income seniors that emphasizes preventive and primary care. Previously, he was a partner at McKinsey & Company, a global management consulting firm and the Chief Operating Officer for Baltimore Medical System, a group of federally qualified community health centers serving the Baltimore area. Dr. Taniio received his MD from UC San Francisco, his MBA from the Wharton School and completed internal medicine training at the Hospital of the University of Pennsylvania. He is a part-time Assistant Professor of Medicine at Johns Hopkins School of Medicine and a Senior Fellow in the Department of Health Policy at Jefferson Medical College. Dr. Taniio resides in Baltimore County. (Term Expires 9/30/2016)

Garret A. Falcone, NHA Vice-Chair, is the Executive Director of Heron Point of Chestertown, a CCRC on the Eastern Shore. He has over 35 years experience in acute and long term care. Commissioner Falcone is a graduate in Business Management from Fairleigh Dickinson University in New Jersey and earned his Master's Degree in Health Services Administration from Russell Sage College in Albany, New York. He was awarded the MANPHA Chairman's Award in 2001 and the Special Chairman's Award, AEGIS Inc., in 2001. Vice Chair Falcone resides in Kent County. (Term Expires 9/30/2014)

Michael S. McHale, MHA, NHA, has served as the President and CEO of Hospice of the Chesapeake since January 1, 2010. McHale originally joined Hospice of the Chesapeake in 2007 as the non-profit organization's Chief Operating Officer. Under McHale's leadership, Hospice of the Chesapeake has grown to serve the community by launching several new initiatives, including pediatric hospice care, perinatal/infant loss counseling, and Chesapeake Palliative Medicine. McHale has dedicated his professional career to healthcare with more than 15 years of management, marketing and customer service experience within the hospice and long-term care industry. He has held various leadership positions with hospices in California, Michigan, and prior to joining Hospice of the Chesapeake, McHale was the Vice President of Business Development and Sales for the Washington Home and Community Hospices. McHale holds a Masters of Health Care Administration from National University in San Diego. He currently serves on the Board of Directors for the National Hospice and Palliative Care Organization as well as the Hospice and Palliative Care Network of Maryland. Commissioner McHale resides in Anne Arundel County. (Term Expires 9/30/2014)

Barbara Gill McLean, NA, retired in 2007 from the position of Senior Policy Fellow in the Office of Policy and Planning at the University of Maryland School of Medicine. Prior to joining the School in January 2005, Ms. McLean served as the Executive Director of the Maryland Health Care Commission (MHCC) from 2000-2004 and as Deputy Director of Performance and Benefits at MHCC and one of its predecessor commissions from 1996-2000. Responsibilities included the design and continued development of a standard benefit plan for small employers, implementation of a system to annually evaluate the quality and performance of HMOs, hospitals and nursing homes for public reporting and oversight of the Certificate of Need program. Ms. McLean also led the State's initiative for improving patient safety including the creation of the Maryland Patient Safety Center. Ms. McLean received a Masters in Sociology and completed doctoral studies in policy sciences program, specializing in health policy at the University of Maryland. She also served as principal analyst for the Environmental Health Committee in the Maryland House of Delegates from 1983 to 1991 and as Senior Legislative Analyst for the University of Maryland.



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Craig Tanio, MD, MBA, Chair. Is the Chief Medical Officer at JenCare, a physician owned group that is expanding an innovative global risk care model for moderate to low income seniors that emphasizes preventive and primary care. Previously, he was a partner at McKinsey & Company, a global management consulting firm and the Chief Operating Officer for Baltimore Medical System, a group of federally qualified community health centers serving the Baltimore area. Dr. Tanio received his MD from UC San Francisco, his MBA from the Wharton School and completed internal medicine training at the Hospital of the University of Pennsylvania. He is a part-time Assistant Professor of Medicine at Johns Hopkins School of Medicine and a Senior Fellow in the Department of Health Policy at Jefferson Medical College. Dr. Tanio resides in Baltimore County.
(Term Expires 9/30/2016)

John E. Fleig is Chief Operating Officer for Mid Atlantic Health Plan for United Healthcare. He is responsible for the overall operations of the health plan and responsible for all aspects of the MAMS/United integration. Before United Healthcare, he was the Senior Vice President for Mid Atlantic Medical Services, Inc. at MAMS. Commissioner Fleig earned his undergraduate degree in Psychology from the University of Maryland and his accounting degree from Benjamin Franklin University. He is the former Director of the Maryland Small Group Reinsurance Pool. Commissioner Fleig is a resident of Calvert County.
(Term Expires 9/30/2016)



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The Commission is composed of fifteen members appointed by the Governor, with the advice and consent of the Senate, for a term of four years. A short biography of each Commission member follows:

Craig Tanio, MD, MBA, Chair, is the CEO and Founder, Rezilir Health an innovative clinical group that is partnering with real estate companies to create resilient health communities and better connect health care with health. Previously he led a joint venture with Humana that scaled a primary care model accepting full global risk payments from Medicare Advantage to 26 centers across the Southeast. He was a partner at McKinsey & Company, a global management consulting firm and the Chief Operating Officer for Baltimore Medical System, a group of federally qualified community health centers serving the Baltimore area. Dr. Tanio received his MD from UC San Francisco, his MBA from the Wharton School and completed internal medicine training at the Hospital of the University of Pennsylvania. He has academic appointments at Johns Hopkins, Thomas Jefferson, and Florida Atlantic University. Dr. Tanio resides in Baltimore County. **(Term Expires 9/30/2016)**

Frances B. Phillips, Vice-Chair, RN, MHA, is a consultant focusing on community health improvement and population health innovation after retiring from the Maryland Department of Health and Mental Hygiene where she held the position of Deputy Secretary for Public Health Services from 2008 to 2013. Prior to her appointment as Deputy Secretary, Ms. Phillips was the Health Officer for Anne Arundel County, Maryland from 1993-2008, including a term in 2004 when she served as Interim County Fire Chief. Ms. Phillips holds an undergraduate degree in community health nursing from The Catholic University of America and a master's degree in health care administration from The George Washington University. She is an Adjunct Assistant Professor in the University of Maryland's School of Nursing and an Associate in the Department of Health Policy and Management at Johns Hopkins University Bloomberg School of Public Health. Ms.