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February 24, 2017

VIA E-MAIL AND FEDERAL EXPRESS

Ms. Ruby Potter
Health Facilities Coordination Officer
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215

Re: Opposition of AAMC to Motion for Recusal and to Strike the
Recommended Decision

Dear Ms. Potter:

Enclosed please find Anne Arundel Medical Center's Opposition to Prince
George's Hospital Center's Motion for Recusal and to Strike the Recommended Decision.

Sincerely,



Jonathan Montgomery

Enclosure

M. Natalie McSherry, Esquire (via email)
Christopher C. Jeffries, Esquire (via email)
Louis P. Malick, Esquire (via email)
John T. Brennan, Esquire (via email)
Joel I. Suldan, Esquire (via email)
Thomas C. Dame, Esquire (via email)
Ella R. Aiken, Esquire (via email)
Jinlene Chan, M.D., MPH (via email)
Steve R. Schuh, Executive, Anne Arundel County (via email)

Suellen Wideman, AAG (via email)
Mr. Paul Parker (via email)
Mr. Kevin R. McDonald (via email)
AAMC Internal Distribution (via email)

IN THE MATTER OF

* BEFORE

ANNE ARUNDEL MEDICAL

* MARYLAND HEALTH

CENTER, INC.

* CARE COMMISSION

* Docket No.: 15-02-2360

* * * * *

OPPOSITION OF ANNE ARUNDEL MEDICAL CENTER, INC. TO MOTION FOR RECUSAL AND TO STRIKE THE RECOMMENDED DECISION

Anne Arundel Medical Center, Inc. (“AAMC”) opposes the Motion for Recusal and to Strike the Recommended Decision (the “Motion”) filed by Interested Party Dimensions Health Corporation d/b/a/ Prince George’s Hospital Center (“PGHC”). As more fully set forth below, the Commission should reject PGHC’s last ditch effort to derail this process after participating as an Interested Party in these proceedings for approximately a year and a half without complaint; only after receiving a recommended decision unfavorable to its position; without the factual support required under existing Maryland law; and based solely on implausible generalizations of some hypothetical conflict.

1. AAMC applied for a certificate of need (the “CON”) to establish cardiac surgery services. AAMC has an affiliation with Johns Hopkins; however, AAMC is not owned or operated by Hopkins. AAMC’s proposal is for Johns Hopkins surgeons to operate at AAMC (in Anne Arundel County) in collaboration with medical cardiologists on staff at AAMC.

2. PGHC intervened in these proceedings in June 2015, more than 18 months ago. By letter dated December 8, 2015, a copy of which is attached as Exhibit A, Commissioner Tanio advised the parties, including PGHC, that he was appointed to serve as the Reviewer of the applications for the CON.

3. PGHC opposed AAMC's request for the CON on the ground that it would have a negative impact on the number of cardiac cases at PGHC. Commissioner Tanio's December 30, 2016 recommendation, however, is that AAMC be awarded the CON. Commissioner Tanio concluded that AAMC and PGHC could simultaneously operate successful cardiac surgery programs.

4. PGHC's Motion is based on two facts: (1) Commissioner Craig Tanio holds a part-time faculty title in the Division of General Internal Medicine within the Johns Hopkins School of Medicine; and (2) his former wife (from whom he has been divorced since 2013) is a general non-invasive cardiologist at a Johns Hopkins satellite facility at Green Spring Station in Lutherville, Maryland. (Motion at ¶¶ 5 – 7).

5. Commissioner Tanio's limited affiliation with Johns Hopkins is disclosed on this Commission's website. The last sentence of his biography states: "He has academic appointments at Johns Hopkins, Thomas Jefferson, and Florida Atlantic University." <http://mhcc.maryland.gov/mhcc/pages/home/commissioners/commissioners.aspx>.¹ PGHC does not assert that it was unaware of Commission Tanio's limited affiliation with Johns Hopkins prior to the issuance of his recommendation on December 30, 2016.

6. Maryland's highest Court has rejected the use of a recusal motion as a sword only after an unfavorable decision has been entered. A motion to recuse must be filed timely. "A timely motion ordinarily is not one that represents 'the possible withholding of a recusal motion as a weapon to use only in the event of some unfavorable ruling.'" *Miller v. Kirkpatrick*, 377 Md. 335, 358 (Md. 2003)(quoting *Surratt v. Prince George's County*, 320 Md. 439, 468 – 69 (1990)). If PGHC really believed there was a conflict as to Commissioner Tanio, it should have,

¹ The link to this page is easily reached from the Commission's Home Page. All one needs to do is click on "Commissioners".

could have and would have investigated and raised the contention before being in this matter for eighteen months, knowing for over a year that Commissioner Tanio was conducting the review, and receiving a recommendation in favor of AAMC that it does not like.

7. Any procedural tactic that could delay the award of a CON to AAMC is in PGHC's self-interest, creating even more support for a conclusion that the Motion is being wielded as a pretext in response to the adverse recommendation.

8. The Motion should be denied on the ground that PGHC is using an untimely recusal request in an attempt to avoid a ruling unfavorable to it.

9. Maryland's highest Court has clearly set out that a recusal motion will not be granted on unsupported allegations of potential bias. "[T]he recusal motion must set forth facts in reasonable detail sufficient to show the purported personal misconduct; mere conclusions as to lack of impartiality will not suffice. And it should be supported by affidavit or testimony or both." *Surratt v. Prince George's County*, 320 Md. at 467. The Court of Appeals expressly rejected a test where an unsupported allegation of bias would be sufficient to find grounds to recuse. *Id.* at n. 9. PGHC has offered no authority for applying a different test under COMAR § 10.24.01.10 B(3)(D) than that adopted by the Court of Appeals for challenges to trial judges.

10. PGHC has offered no facts supporting Commissioner Tanio's supposed conflict. Rather, there is a statement that "Commissioner Tanio holds a part time position with Johns Hopkins" and therefore his "standing within the Hopkins organization" would likely be enhanced if he recommended AAMC. Motion at ¶ 7. PGHC offers no detail as to the specifics of Commissioner Tanio's position including whether he is paid, the extent or nature of the position, the duties the position entails, or how his "*standing*" could or would be "*enhanced*" in that position by a favorable recommendation on AAMC's application for a cardiac surgical CON. He

is one of about 185 part-time general internal medicine faculty at Johns Hopkins. PGHC has not proffered any factual nexus to support its position that Commissioner Tanio's title at Johns Hopkins would cause him to act impartially. PGHC clearly fails to meet the objective standard requiring reasonable detail to support a recusal motion.²

11. In fact, Dr. Tanio's relationship with Johns Hopkins is not the sort that would give rise to an appearance of impartiality in this matter, as evidenced by the affidavit of Janice E. Clements attached hereto as Exhibit B.

12. PGHC's contentions as to Commissioner Tanio's relationship with Dr. Jennifer Tanio are even more tenuous and unsupported by facts or logic. PGHC has attached an exhibit to its Motion showing Dr. Jennifer Tanio is a non-invasive general cardiologist at Johns Hopkins medical offices in Green Spring Station in Baltimore County. PGHC asserts the Tanios were divorced in 2013, four years ago. Motion at ¶ 5. When is the last time the Commission has heard of an ex-spouse making a recommendation because it might enhance the standing of their former spouse? How could Dr. Jennifer Tanio's standing within the vast Johns Hopkins organization be enhanced because her former spouse recommended that AAMC receive a CON for cardiac surgery in Anne Arundel County? To reach this untenable conclusion, the Commission would have to conclude, without evidence, that if AAMC receives the CON, the Hopkins organization will somehow financially reward a non-interventional cardiologist practicing at a removed

² Perhaps recognizing the lack of support for its position, PGHC tries to suggest that Commissioner Tanio has previously recused himself from Commission matters involving Johns Hopkins. Motion at 8. PGHC's effort fails as it acknowledges that in neither instance does the record support the conclusion that Commissioner Tanio's absence from a meeting or abstention was based on a conflict. But even if, *arguendo*, Commissioner Tanio believed he should recuse himself based on the facts and circumstances of the particular issue before the Commission in either of those matters, that does not mean he would or should recuse himself just because some part of the vast Hopkins system may receive some benefit from a possible outcome and where the applicant is not part of the Hopkins system.

satellite office with an increase in salary or compensation. The Commission should reject an invitation to recuse Commissioner Tanio on the basis of such an unsupported, attenuated and implausible premise.

Wherefore, AAMC respectfully requests that the Commission deny the motion to recuse, and reject PGHC's motion to derail and further delay this proceeding after two years of thorough, thoughtful and careful consideration.

Respectfully submitted,



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Attorneys for Anne Arundel Medical Center

Exhibit A

STATE OF MARYLAND

Craig P. Tanlo, M.D.
CHAIR



Ben Steffen
EXECUTIVE DIRECTOR

MARYLAND HEALTH CARE COMMISSION

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215
TELEPHONE: 410-764-3460 FAX: 410-358-1236

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December 8, 2015

By E-Mail and USPS

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Jinlene Chan, MD, MPH
Health Officer
Anne Arundel County Department of Health
3 Harry S. Truman Parkway
Annapolis, Maryland 21401

Re: Requests for Interested Party Status
Baltimore Upper Shore Cardiac Surgery Review
Anne Arundel Medical Center – Docket No. 15-02-2360
Baltimore Washington Medical Center – Docket No. 15-02-2361

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

I have been appointed, pursuant to COMAR 10.24.01.09A(1)(b), to serve as Reviewer of the above-referenced applications for Certificate of Need (“CON”) filed by Anne Arundel Medical Center (“AAMC”) and University of Maryland Baltimore Washington Medical Center (“BWMC”) to establish cardiac surgery services. These applications will be reviewed on a comparative basis. I recognize both AAMC and BWMC as interested parties in this comparative review.

Counsel, Neil Meltzer, and Jinlene Chan, M.D.
December 8, 2015
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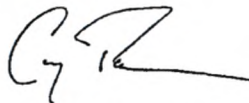
I have considered the requests for interested party status filed by four non-applicant general hospitals. They are MedStar Union Memorial Hospital ("UMH"), MedStar Washington Hospital Center ("WHC"), Prince George's Hospital Center ("PGHC"), and Sinai Hospital of Baltimore ("SHB"). UMH, WHC, and SHB have requested interested party status for both applications. PGHC has requested interested party status for the AAMC application. For reasons noted below, I find that, pursuant to COMAR 10.24.01.08F and COMAR 10.24.01.01B(2) and (20), each of these hospitals qualifies for interested party status in the review of the application(s) for which it seeks that status because each is authorized to provide the same service as that proposed by each applicant in the same planning region used for purposes of determining need under the State Health Plan or in a contiguous planning region, as provided in COMAR 10.24.17 and COMAR 10.24.01.01B (20)(e) and (1).

I have also considered the request for interested party status filed by the Anne Arundel County Department of Health. As provided in COMAR 10.24.01.01B(20), I recognize the Anne Arundel Department of Health as an interested party in this review because it is a local health department in the jurisdiction in which the proposed service is to be offered.

Going forward, I request that all filings in this review also be submitted via e-mail in Portable Document Format ("PDF") format to all of the parties in this review, to Ms. Ruby Potter, and to others copied on this letter ruling or on the e-mail by which this ruling is also sent. In addition, I request that all filings be sent separately to Ms. Potter in Word format, since having the filing in Word format will assist me in this review. The Word filings will remain internal documents of the Commission.

I will rule on the pending request for an evidentiary hearing at a later date. I want to remind all parties that this is 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 Tanio, M.D.
Chair/Reviewer

cc: 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, R.S., Harford County Health Officer
Maura J. Rossmann, 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
Steven R. Schuh, Executive, Anne Arundel County
Paul Parker
Kevin McDonald
Suellen Wideman, AAG

Exhibit B

ANNE ARUNDEL MEDICAL CENTER * MARYLAND
 OPPOSITION TO MOTION FOR * HEALTH CARE COMMISSION
 RECUSAL AND TO STRIKE THE *
 RECOMMENDED DECISION * DOCKET NO.: 15-02-2360
 * * * * *

**AFFIDAVIT OF DR. JANICE E. CLEMENTS IN SUPPORT OF
 OPPOSITION OF ANNE ARUNDEL MEDICAL CENTER, INC. TO MOTION FOR
 RECUSAL AND TO STRIKE**

I, Janice E. Clements, being over 18 years of age and competent to testify as to the matters set forth herein, state as follows:

1. I am Vice Dean for Faculty for the Johns Hopkins University School of Medicine.
2. Craig Tanio has a part-time general internal medicine faculty appointment at Johns Hopkins University School of Medicine.
3. Craig Tanio does not receive any financial remuneration from Johns Hopkins University School of Medicine in connection with his faculty role.
4. Craig Tanio has not recently been active in his faculty role at Johns Hopkins. For example, Craig Tanio does not currently teach any classes at Johns Hopkins. Moreover, Johns Hopkins University School of Medicine regularly surveys its faculty, and Craig Tanio has not responded to that survey.

I SOLEMNLY DECLARE UNDER THE PENALTIES OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE FOREGOING AFFIDAVIT IS TRUE AND CORRECT.

Executed on February 24, 2017 in Baltimore City, Maryland.

Janice E. Clements
 Janice E. Clements