

IN THE MATTER OF  
ANNE ARUNDEL MEDICAL  
CENTER, INC.

\* BEFORE THE  
\* MARYLAND HEALTH  
\* CARE COMMISSION  
\* Docket No.: 15-02-2360

\* \* \* \* \*

**MOTION FOR RECUSAL AND TO STRIKE THE RECOMMENDED DECISION**

Interested Party Dimensions Health Corporation d/b/a/ Prince George's Hospital Center ("PGHC"), by its undersigned attorneys, and pursuant to COMAR 10.24.01.10 B(3)(d), files this Motion for Recusal and to Strike the Recommended Decision ("the Motion"), and states:

1. Given the subject matter and the public attention received thus far on the applications at issue, the importance of a fair, unbiased decision within the parameters of State law in this matter cannot be overstated. Maintaining the appearance of fair and unbiased proceedings is equally paramount. The Commission recognized "the importance of BWMC's and AAMC's applications". *See Amanda Yeager, Commission won't accelerate cardiac surgery approval for Anne Arundel, Capital Gazette, October 17, 2016. Exhibit A.* In a case where there is such heightened public attention, transparency regarding the potential for conflicts of interest is especially important.

2. This Motion is filed out of an abundance of caution to ensure that decisions in this important case are reached fairly and within the parameters of State law and are not the result of any personal biases or undue influence, nor present the appearance that they may be.

3. AAMC "describes the AAMC-Johns Hopkins Medicine cardiac surgery program partnership as a collaboration in which 'patients at AAMC will be offered access to JHM surgeons at the patient's own regional hospital, continuity of care under local cardiologists, and AAMC's high quality of care.'" Recommended Decision, at 17. It is apparent from the AAMC application that the proposed program is one that involves close collaboration between AAMC and Johns Hopkins cardiologists and cardiac surgeons.

4. It is likely, therefore, that Johns Hopkins cardiologists and cardiac surgeons will gain patients and related clinical income *if* AAMC's application is approved.

5. Jennifer W. Tanio, M.D. is a Johns Hopkins cardiologist (**Exhibit B**), and Commissioner Tanio's former wife. Upon information and belief, the two were divorced in 2013, and both are raising and contributing to the financial support of their minor children. PGHC did not become aware of the association between Commissioner Tanio and this Johns Hopkins cardiologist until February 10, 2017.

6. Based upon the information currently available, without additional explanation, the relationship between Commissioner Tanio and his former wife appears to present a potential conflict that should be and should have been addressed. At a minimum, it appears to be information that should have been disclosed to the parties at the outset of the review process.

7. Additionally, Commissioner Tanio holds a part time position with Johns Hopkins General Internal Medicine himself. **Exhibit C**. Thus, in addition to his former wife's relationship with Johns Hopkins Medicine, he also has a direct connection to the

institution. Both he and his former wife would likely have their standing within the Hopkins organization enhanced by approval of this project.

8. The parties understand that the Commissioners take conflict of interest concerns very seriously and, accordingly, would presume that the Commission would disclose potential conflicts rather than requiring that the parties investigate potential conflicts on their own. Commissioner Tanio himself apparently has recognized his potential conflict of interest in voting on applications involving Johns Hopkins. He abstained from voting on a Johns Hopkins application in September, 2016 (**Exhibit D**) and did not attend the meeting when there was a vote on a Suburban Hospital (owned by Johns Hopkins) application in May, 2016. **Exhibit E**. Although the reason for Commissioner Tanio's absence from the May, 2016 meeting is not noted on the record, it is clear that he has not voted on any application involving Johns Hopkins in the last two years, and his abstention in September, 2016 is an indication of his recognition of the conflict in doing so.<sup>1</sup>

9. The parties are entitled to a fair and impartial proceeding before the Commission. *See Regan v. State Bd. of Chiropractic Examiners*, 355 Md. 397, 409 (1999) (citations omitted). As the Court of Appeals has often stated "[p]rocedural due process, guaranteed to persons in this State by Article 24 of the Maryland Declaration of Rights, requires that administrative agencies performing adjudicatory or quasi-judicial

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<sup>1</sup> The minutes in the matter of Johns Hopkins Bayview Medical Center (Docket No. 13-24-0075WR) do not reflect that Commissioner Tanio recused himself or abstained from that vote. Based on the minutes, however, PGHC is unable to determine whether any potential conflict issue was raised or considered.

functions observe the basic principles of fairness as to parties appearing before them." *Id.* at 408 (quoting *Maryland State Police v. Zeigler*, 330 Md. 540, 559 (1993)).

10. The Commission's regulations acknowledge that requirement, and allow a party to file a "challenge to a reviewer or other member of the Commission[.]" See COMAR 10.24.01.10 B(3)(d).

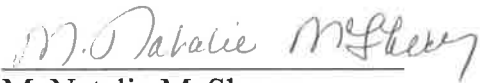
11. The Commission is an administrative agency. See *Adventist Health Care, Inc. v. Maryland Health Care Comm'n*, 392 Md. 103, 119 (2006). The Court of Appeals has also established that recusal of an administrative agency board member may be appropriate based upon an appearance of impropriety, rather than a showing of actual bias. *Regan*, 355 Md. at 410 ("[w]e shall assume, for purposes of this case, that the appearance of impropriety standard . . . is applicable generally to the participation of members of Maryland administrative agencies performing quasi-judicial or adjudicatory functions") (internal quotation marks omitted).

12. PGHC does not file this Motion lightly. The factual scenario described presents an appearance of impartiality that should have been disclosed, and an apparent conflict of interest. The proper remedy is to vacate the Recommended Decision and begin the application review anew. That is the only way to ensure public confidence in and a fair process.

**WHEREFORE**, for these reasons, PGHC respectfully requests that Commissioner Tanio recuse himself from review of or participation in any decision on these applications and strike the Recommended Decision.

Respectfully submitted,

Dated: February 20, 2017

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of February, 2017, a copy of the foregoing Motion for Recusal and to Strike the Recommended Decision was sent via email and first-class mail to:

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M. Natalie McSherry

# EXHIBIT A

## Commission won't accelerate cardiac surgery approval for Anne Arundel



Anne Arundel Medical Center in Annapolis. (by Joshua McKerrow / Capital Gazette)



By Amanda Yeager  
ayeager@capgaznews.com

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State health commission: cardiac surgery approval for Anne Arundel hospitals can't be accelerated

OCTOBER 17, 2016, 7:12 PM

A state commission deciding whether Anne Arundel County needs a local cardiac surgery program has declined County Executive Steve Schuh's request to speed the approval process, citing the importance of conducting an "appropriately prudent" review.

Schuh wrote to the Maryland Health Care Commission in mid-September asking the 15-member independent regulatory agency "why there has been such a delay" in deciding whether it will grant permission for doctors at Anne Arundel Medical Center in Annapolis and Baltimore Washington Medical Center in Glen Burnie to perform open heart surgeries.

The hospitals submitted their applications for a cardiac surgery certificate of need in February 2015, following a 2014 change to the state health plan for cardiac services that made the request possible.

The commission has to tread carefully because of the potential for legal challenges from competitors if one or both of those applications is approved, said MHCC Executive Director Ben Steffen.

"Health care systems with established cardiac surgery programs have taken a significant interest in the possibility that new cardiac surgery programs could be opened in Anne Arundel County," Steffen wrote in a letter dated Sept. 30 and received by the county Oct. 12.

Union Memorial Hospital, Washington Hospital Center, Sinai Hospital and Prince George's Hospital Center have all obtained interested party status to oppose one or both of the proposals.

The commission's decisions can be appealed through the judicial system, and procedural errors could lead a court to reverse them. Steffen said cardiac surgery decisions "are among the most likely to be appealed."

State standards require hospitals to show they can attract a minimum caseload of 200 cardiac surgeries to be considered for a cardiac program. They also have to demonstrate the new program wouldn't cause other regional providers to fall below 200 cardiac surgery cases a year.

Commission chairman Craig Tanio is conducting the certificate of need reviews for AAMC and BWMC "in recognition of the importance of these applications," Steffen wrote. He said there has been only one other time that the MHCC's chair served as reviewer for an application in the past decade.

Tanio has said he will release his recommendations this fall. The full commission will take them up.

Anne Arundel is the third largest county in Maryland without a cardiac surgery program, according to Schuh. In his September letter, he noted 300 patients were transferred out of Anne Arundel Medical Center for heart surgery last year.

He pointed to a rising senior population as well as a 21 percent increase in the number of cardiac cases in Maryland over the past three years as evidence that Anne Arundel needs a heart surgery program.



Schuh also asked commissioners to visit AAMC and BWMC before making a decision. Steffen said Tanio is already familiar enough with cardiac programs.

"On-site reviews are time-consuming and extremely disruptive to patient care," he wrote.

Despite speculation that a certificate of need application for a new regional hospital in Prince George's County could be in competition with the Anne Arundel cardiac surgery applications, Steffen said that concern is "unwarranted" and that "each project must stand on its own merit."

Schuh spokesman Owen McEvoy said the county executive disagrees with the timeline for the decision, despite Steffen's letter.

"They had over 500 days to make this decision," McEvoy said. "The county executive feels this is an issue of vital importance to the county. The letter indicates they're going to take their time, but we feel it's an issue that should be handled expeditiously."

Steffen noted the commission, which is appointed by the governor, is intentionally distanced from the political arena.

"Reviewers understand and respect that elected leaders hold strong positions on applications before the MHCC," he wrote. "Although elected leaders' opinions are welcome, the General Assembly was wise in insulating MHCC from excessive political pressure."

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This article is related to: Hospitals and Clinics, Medical Procedures, Anne Arundel Medical Center, University of Maryland Medical Center, Union Memorial Hospital, Washington Hospital Center, Sinai Hospital in Baltimore

# EXHIBIT B



## Find an Expert

### Jennifer Williams Tanio, M.D.



Assistant Professor of Medicine

Female

**Expertise:** Cardiology, Cardiovascular Disease, Cardiovascular Diseases, Heart Disease, Preventive Cardiology

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### Locations

#### Johns Hopkins Medicine - Green Spring Station

Appointment Phone: 443-997-0270

10755 Falls Road  
Pavilion I  
Lutherville, MD 21093 [map](#)  
Phone: 410-583-2740



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## Background

Dr. Jennifer Tanio is a cardiologist at the Johns Hopkins Health Care and Surgery Center at Green Spring Station and an assistant professor of medicine in the Division of Cardiology.

Dr. Tanio received her B.A. from Johns Hopkins University and her M.D. from the University of Pennsylvania School of Medicine. She completed her residency at the University of Pennsylvania and pursued cardiology fellowships at the University of Pennsylvania and the Johns Hopkins University School of Medicine. Dr. Tanio worked in private practice before joining the Johns Hopkins cardiology faculty.

Dr. Tanio's clinical expertise includes preventive cardiology and heart disease.

Titles	Departments / Divisions	Centers & Institutes
<ul style="list-style-type: none"> <li>Assistant Professor of Medicine</li> </ul>	<ul style="list-style-type: none"> <li><a href="#">Medicine - Cardiology</a></li> <li><a href="#">Medicine - Cardiovascular</a></li> </ul>	<ul style="list-style-type: none"> <li><a href="#">Heart and Vascular Institute</a></li> </ul>

## Education

### Degrees

- MD, Hospital of the University of Pennsylvania (1989)

### Residencies

- Hospital of the University of Pennsylvania / Internal Medicine (1992)

### Fellowships

- Hospital of the University of Pennsylvania / Cardiology (1993)
- Johns Hopkins University School of Medicine / Cardiology (1996)

### Board Certifications

- American Board of Internal Medicine / Cardiovascular Disease (1997)

## Research & Publications

### Selected Publications

Pauly, D. F., Morss, S. E., Tanio, J. W., Irani, K., Cameron, D. E., Schulmam, S. P., & Hare, J. M. (1999). Reduced left ventricular dimension and normalized atrial natriuretic hormone level after repair of aortic coarctation in an adult. *Clinical Cardiology*, 22(3), 233-235.

Tanio, J. W, Fortuin, N.J.: Mitral regurgitation. In Lima JAC:Diagnostic Imaging In Clinical Cardiology, Martin Dunitz, London, 1996.

Tanio, J.T., Basu, C.B., Albelcia, S.M., Eisen, H.J.: Differential Expression of the Cell Adhesion Molecules ICAM-1, VCAM-1, and E-Selection in Normal and Post-Transplantation Myocardium. *Circulation* 89:1760, 1994.

Tanio, J.W., Eisen, H.J.: Medical Aspects of Cardiac Transplantation. *Hospital Practice* 28:61-74, 1993.

Tanio, J.W., Belland, S.E., Newton, N., Raju, G.P., Humen, N., Eisen, H.J.: Noninvasive Detection of Myocarditis Using Radiolabeled Monoclonal Antibodies

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immune myocarditis in rats. *Circulation*

88:1- 553, 1993.

Tanio, J.W., Albelda, S.M., Tomaszewski, LB., Eisen, I-II: Endothelial Cell Adhesion Molecule Expression in Endomyocardial Biopsy Specimens Following Cardiac Transplantation. *Clinical Research* 1\_1: 198A, 1993.

Basu, C., Williams, LT., Belland, S.E., Mull, R.L., Eisen, I-LT: Intercellular Adhesion molecule-1 Levels Cannot Detect Significant Rejection in Cardiac Transplant Patients. *J Heart Transplant* 12:S97, 1993.

Eisen, H.J., Belland, S.E., Williams, JJ., Raju, G.P.: In Vivo Thymic Transfection in Rats Using Direct Injection of Plasmid DNA Without Vectors. *Circulation* 86:1-627, 1992.

Williams, J.J., Eisen, I--LT, Tomaszewski, LE., Albelda, S.M.: Expression of Intercellular Adhesion Molecule-1 in Viral Myocarditis. *Circulation* 86:1-57, 1992.

Eisen, H.J., Belland, S.E., Williams, .T.T., Matiuck, N.G., Raju, G.P.: *In Vivo* Gene Transfer into Thymuses and Cardiac Transplants in Rats. *J Heart Transplant* 11:211, 1992.

Eisen, H.J., Belland, S.E., Williams, J.J., Schwartz, M.B., Razju, G.P., Perloff, L.J.: Noninvasive Detection of Cardia Transplant Rejection using Radiolabeled Monoclonal Antibodies to SpecificMHC Class II Antigens. *Journal of the American College of Cardiology* 19:82A, 1992.

## Activities & Honors

### Honors

- Fellow, American College of Cardiology, 2003

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# EXHIBIT C

**CRAIG TANIO**

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<b>Division</b>	School of Medicine
<b>Department</b>	Medicine-General Internal Medicine
<b>Title</b>	Assistant Professor
<b>Affiliation</b>	Faculty

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# EXHIBIT D



**MARYLAND HEALTH CARE COMMISSION**

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

**Tuesday, September 20, 2016**

**Minutes**

Chairman Tanio called the meeting to order at 2:00 p.m.

Commissioners present: Carr-York, Fleig, Metz, Moffit, O'Connor, O'Grady, Phillips, Sergent, Thomas, Tomarchio, and Weinstein. Commissioner Metz participated via telephone.

**ITEM 1.**

**Approval of the Minutes**

Commissioner Fleig made a motion to approve the minutes of the July 21, 2016 meeting of the Commission, which was seconded by Commissioner Thomas and unanimously approved.

**ITEM 2.**

**Update of Activities**

Linda Cole, Chief of Long Term Care Policy and Planning, provided an update on the Home Health Agency Chapter of the State Health Plan. Ms. Cole said the Chapter was adopted and became effective in April of this year. She said that the Chapter focuses on a new approach based on the determination by the Commission that consumers need a choice of high quality HHA providers. Ms. Cole noted that, in accordance with the regulations, staff has posted for public comment draft quality measures and performance thresholds to be used in CON reviews. She also noted that a background paper has been posted and that public comments are due by September 22. Staff will review comments received and present analysis and recommendations to the Commission in October.

David Sharp, Director for the Center for Health Information Technology and Innovative Care Delivery, provided a brief overview of the report *Ensuring the Privacy and Security of Electronic Health Information – Keeping Pace with an Evolving HIE Landscape*. He mentioned that, over the last several years, a number of health care providers and commercial carriers have raised concerns about the narrow definition of an HIE in statute, at Md. Code Ann, Health-Gen. §4-301(h). Mr. Sharp stated that the revision to the definition that is recommended in the report would ensure enhanced privacy and security standards that would apply to all HIEs operating in Maryland.

**ITEM 3.**

**ACTION: Certificate of Need – Sheppard Pratt at Elkridge (Docket No. 15-13-2367)**

Sheppard Pratt Health System, Inc. applied for a Certificate of Need to replace and relocate its 78 bed inpatient psychiatric hospital from Ellicott City to Elkridge. Kevin McDonald, Chief of Certificate of Need, presented the staff recommendation. Mr. McDonald said that the replacement hospital will be approximately four miles from the existing facility and will have 85 beds in a three-level building of 155,707 gross square feet. He said that the total estimated project cost is \$96,532,906. Mr. McDonald said that Sheppard Pratt proposes to fund this project with \$14.86 million in cash, \$7.5 million in philanthropic gifts, \$66.7 million in debt, and \$7.5 million in the state grant funding. Mr. McDonald noted that the project, as described, was modified as a result of a status conference with Commission staff. The applicant agreed to reduce the bed capacity of the replacement hospital to 85 beds by eliminating approximately 16,000 gross square feet, which reduced the project cost estimate by approximately \$6 million. Staff recommended approval of this project. Commissioner Moffit made a motion to adopt staff's recommendation and issue the Certificate of Need, which was seconded by Commissioner O'Connor and unanimously approved.

**ACTION: Sheppard Pratt at Elkridge's Certificate of Need is hereby APPROVED.**

**ITEM 4.**

**ACTION: Certificate of Need – Green Spring Station Surgery Center (Docket No. 15-03-2369)**

Johns Hopkins Surgery Center Series applied for a Certificate of Need to establish an ambulatory surgical facility at Green Spring Station in Lutherville, Maryland. Mr. McDonald presented the staff recommendation. He said that the project will occupy 27,238 square feet of newly constructed medical office building space and will have five operating rooms and four non-sterile procedure rooms, as well as shell space for an additional operating room. He said that the total estimated project cost is \$16,340,840, funded with \$1,896,000 in cash, \$13,082,940 provided through loan agreements with Johns Hopkins Health System, and \$1,361,900 in "tenant allowances" from John Hopkins Suburban Health Center, LP. Staff recommended approval of this project. Commissioner Fleig made a motion to adopt staff's recommendation and issue the Certificate of Need, which was seconded by Commissioner O'Grady and unanimously approved. Chairman Tanio abstained from this action.

**ACTION: Green Spring Station Surgery Center Certificate of Need is hereby APPROVED.**

**ITEM 5.**

**ACTION: Approval of Release of MCDB Data to University of Maryland, School of Public Health, Health Services Administration**

Leslie LaBrecque, Chief of Database and Application Development, presented the staff recommendation regarding the the request of the University of Maryland, School of Public Health, Health Services Administration for access to the MCDB under the Commission's data release policy. Ms. LaBrecque said that the University's data request is for commercial data for calendar years 2010-2014. She noted that the "MCDB Standardized Research Identifiable" file to which access is requested contains eligibility records and claims files (professional services, institutional, and pharmacy), but had no direct identifiers in the data such as name, SSN, birthdate, address. Ms. LaBrecque provided an overview of University of Maryland, College Park's application, noting that its IRB is registered with the US Department of Health and Human Services and has an approved Federalwide Assurance for the Protection of Human Subjects,, which is a commitment to comply with the FWA Terms including the Federal Policy for Protection of Human Subjects ('Common Rule') and other relevant federal regulations. The University of Maryland, College Park's IRB determined that the project has minimal risk based on an appropriate risk/benefit ratio

and a project design wherein the risks have been minimized. Ms. LaBrecque said that staff will continue ongoing reviews for compliance under the data use agreement that requires oversight and protection of released data. Commissioner Fleig made a motion to recognize the University of Maryland, School of Public Health, Health Services Administration's IRB, which was seconded by Commissioner O'Connor and unanimously approved. Commissioner Metz made a motion to approve the release of the data to University of Maryland, School of Public Health, Health Services Administration, which was seconded by Commissioner Weinstein and unanimously approved.

**ACTION: Request to Recognize the IRB of University of Maryland College Park is hereby APPROVED**

**ACTION: Request by University of Maryland, School of Public Health, Health Services Administration for Release of MCDB Data is hereby APPROVED.**

#### ITEM 6.

**ACTION: COMAR 10.24.15 – State Health Plan for Facilities and Services: Organ Transplant Services Chapter – Proposed Regulations**

Eileen Fleck, Chief of Acute Care Policy and Planning, discussed the draft regulations. She noted that a draft Organ Transplant Services Chapter was posted for informal public comment in May 2016 and two organizations commented on the draft Chapter. Staff provided analysis and recommendations regarding the comments received at the July public meeting, and were asked by the Commission to reconvene the Organ Transplant Workgroup to discuss issues raised. Those issues included: whether the draft Chapter could be revised further to address the disparity between the demand and supply of organs; whether the docketing rules potentially shut out programs that could reduce the disparity between the demand and supply of organs; and whether the draft docketing rule's threshold volume are appropriate for determining whether to allow consideration of applications for new transplant programs. Ms. Fleck said that the Workgroup was reconvened and was attended by Commissioner O'Grady. Ms. Fleck said that, with regard to the disparity between supply and demand, the Workgroup concluded that organ procurement organizations and the United Network for Organ Sharing (UNOS) can better address the issue. She noted that one Workgroup member described a national initiative that may increase the number of kidney transplants through reducing the number of kidneys discarded. Ms. Fleck said that work group members, including those who do not represent an existing transplant program, concluded that the draft docketing rules were acceptable and did not believe that the draft docketing rules would negatively affect patients' access to transplant services. For these reasons, the Workgroup did not recommend changes to the draft docketing rules. Commissioner Carr-York made a motion to approve the proposed permanent regulations, which was seconded by Commissioner Thomas. After a lengthy discussion, a motion to amend the pending motion was made and adopted. Commissioner Moffit made a motion to approve the proposed regulation striking Regulation .04, which was seconded by Commissioner Metz and unanimously approved.<sup>1</sup>

**ACTION: COMAR 10.24.15 – State Health Plan for Facilities and Services: Organ Transplant Services Chapter – Proposed Permanent Regulations were adopted.<sup>2</sup>**

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<sup>1</sup> Note that, subsequent to the September 20, 2016 meeting, Chairman Tanio decided that, because incidental changes to another regulation in the Chapter would be necessary, the Commission should again consider the adoption of COMAR 10.24.15 as proposed permanent regulations at the next Commission meeting.

<sup>2</sup> See footnote 1.

## **ITEM 7.**

### **ACTION: Rural Health Workgroup Status and Membership Update**

Erin Dorrien, Chief of Government and Public Affairs, discussed the status of the Rural Health Workgroup and presented an update to the Workgroup's membership that was recommended by its Chairs. Ms. Dorrien noted that the Memorandum of Understanding (MOU) with the University of Maryland School of Public Health (UMSPH) and the Walsh Center for Rural Health Analysis was executed. She said that the Workgroup held a Rural Health Summit on August 31, 2016 at Chesapeake College in Wye Mills, Maryland. The Workgroup discussed establishing advisory groups and decided that the following advisory groups would be helpful: Workforce Development; Transportation/Access to Care; Economic Development/Economic Impact of Health Facilities Changes; and Vulnerable populations/Health Disparities. Ms. Dorrien said that the leaders of the advisory groups were chosen by the Chairs of the Workgroup and it is expected that the groups will meet in October. She noted that staff is working with the advisory group leaders to develop the agendas. Ms. Dorrien stated that the Rural Health Workgroup will meet on November 1 in Cambridge, Maryland. At that November 1 meeting, the UMSPH and the Walsh Center will present their study plan, and five county region health systems will present. The Workgroup will also report on its progress. Ms. Dorrien provided the list of proposed new members requested by the Chairs of the workgroup: Anna Sierra, Dorchester County Department of Emergency Services; Frieda Wadley, Talbot County Health Department; Roger Harrell, Dorchester County Department of Health; and Doris Mason, Upper Shore Regional Council. Following discussion, Commissioner Metz made a motion to approve the new membership, which was seconded by Commissioner Fleig and approved by ten Commissioners. Commissioner O'Connor opposed the motion, and Commissioner Thomas abstained.

## **ITEM 8.**

### **Overview of Upcoming Initiatives**

Mr. Steffen said that the October meeting would include a presentation on Preauthorization Benchmark Attainment; recommendations for proposed permanent regulations regarding State-Regulated Electronic Health Record incentives; a presentation on the findings on the annual hospital health IT report; consideration of the adoption of the proposed Freestanding Medical Facility Chapter as final regulations; consideration of approval of quality measures and performance thresholds for use in the review of home health agency Certificate of Need applications.

## **ITEM 9.**

### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 3:40 p.m. upon motion of Commissioner Fleig, which was seconded by Commissioner O'Connor and unanimously approved.

# EXHIBIT E

Craig P. Tanio, M.D.  
CHAIR

Ben Steffen  
EXECUTIVE DIRECTOR



STATE OF MARYLAND

## MARYLAND HEALTH CARE COMMISSION

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

Thursday, May 19, 2016

### Minutes

Vice Chair Phillips called the meeting to order at 1:05 p.m.

Commissioners present: Fleig, Metz, Moffit, O’Grady, Phillips, Pollak, Sergent, Thomas, and Weinstein

### ITEM 1.

#### Approval of the Minutes

Commissioner Fleig made a motion to approve the minutes of the April 21, 2016 meeting of the Commission, which was seconded by Commissioner Thomas and unanimously approved.

### ITEM 2.

#### Update of Activities

Ben Steffen, Executive Director, stated that SB 707 – Freestanding Medical Facilities - Certificate of Need, Rates, and Definition – was signed by Governor Hogan on May 10, 2016, and that Commission staff has begun the process of forming a Workgroup on Rural Health Care Delivery. He noted that staff would be recommending that the Commission appoint a chair and workgroup members in June.

The Commission is awarding a grant of \$251,000 to CRISP to continue support for the provider search function on the Maryland Health Benefit Exchange’s website. This feature will be featured on the MHCC’s quality and reporting website and will benefit the consumers who use the MHCC’s guides.

Mr. Steffen provided the Commissioners with an update on the use of its CCIIO grant award, noting that one of the objectives included in MHCC’s approved grant application was a project to help clinicians reduce the use of inappropriate imaging. He stated that staff, in consultation with Commissioner Pollak, who was on the development team, decided to produce a CME course in partnership with colleagues from the St. Louis Business Coalition on Health. The no-cost, online course will focus on reducing use of inappropriate imaging in patients with low back pain, and is planned for release in late 2016. It will include utilization and cost information. Two versions of the course will be offered — one for primary care clinicians and one for emergency and urgent care clinicians.

Mr. Steffen also noted that the Commission is working with HSCRC, DHMH, and payer and provider communities to submit an application for the Center for Medicare and Medicaid Services' Comprehensive Primary Care Plus program. He stated that the deadline for payers to submit applications is June 8<sup>th</sup>.

Vice Chair Phillips thanked Ben Steffen for his leadership in the Primary Care Council.

### **ITEM 3.**

**ACTION:** Certificate of Need: Suburban Hospital – Docket No. 15-15-2368

Kevin McDonald, Chief of Certificate of Need, presented staff's recommendation regarding a Certificate of Need application filed by Suburban Hospital to construct a 300,000 square foot building addition as part of a larger campus modernization effort. Following discussion, Commissioner Moffit made a motion to adopt staff's recommendation and issue the Certificate of Need, which was seconded by Commissioner Pollak and unanimously approved.

**ACTION: Certificate of Need Application: Suburban Hospital – Docket No. 15-15-2368 is hereby APPROVED.**

### **ITEM 4.**

**ACTION:** Approval of Release of MCDB Data – The Lewin Group

Vice Chair Phillips thanked Srinivas Sridhara, Chief of Cost and Quality Analysis, for his service with the MHCC, first in the Center for Quality Reporting and Measurement and, most recently, as Chief for Quality and Cost Analysis in the Center for Analysis and Information Systems. She commended Mr. Sridhara for his efforts in accelerating the collection and the release of data from the Maryland MCDB, his work in health care workforce studies, and his commitment in working with our State partners at DOIT to develop, release, and award a contract to continue the MCDB database. On behalf of the Commission, she wished him the very best in his new position.

Mr. Sridhara then presented staff's recommendation regarding The Lewin Group's request for access to the MCDB under the Commission's data release policy. Commissioner O'Grady made a motion that the Commission approve release of MCDB data to the Lewin Group, which was seconded by Commissioner Weinstein, and unanimously approved.

**ACTION: Release of MCDB Data – The Lewin Group is hereby APPROVED.**

### **ITEM 5.**

**ACTION:** Privately Insured Spending Report for 2014

Vice Chair Phillips announced that Kenneth Yeates-Trotman, Methodologist for the Cost and Quality Analysis Division, has been appointed acting Chief of Quality and Cost Analysis and will assume many of Srinivas Sridhara's duties. She noted that Mr. Yeates-Trotman is an actuary by training and has been working with our partners at the MIA to support expanded rate review using the MCDB.

Mr. Yeates-Trotman then presented the highlights of spending and utilization patterns for Maryland residents insured through the individual, small employer, and large employer markets. The Commission members requested an executive summary and discussed proposed additional analyses for inclusion in next year's report. Staff agreed to provide an executive summary with the Commission prior to release of the report.



**ITEM 6.**

**ACTION:** COMAR 10.25.18 – Health Information Exchanges: Privacy and Security of Protected Health Information – Final Regulations

Vice Chair Phillips stated that the Commission adopted amendments to COMAR 10.25.18, the Commission's regulations regarding privacy and security of protected health information, as proposed permanent regulations at its February 2016 meeting. Angela Evatt, Chief of Health Information Exchange, presented the proposed regulations for adoption as final regulations of the Commission. Commissioner Thomas made a motion that the Commission approve the regulations as final, which was seconded by Commissioner O'Grady and unanimously approved.

**ACTION: COMAR 10.25.18 – Health Information Exchanges: Privacy and Security of Protected Health Information – Final Regulation is hereby APPROVED.**

**ITEM 7.**

**PRESENTATION:** Maryland Healthcare Quality Report Website: 2015 HAI Results and Plans for Promotion

Theresa Lee, Director of the Center for Quality Measurement and Reporting, and Eileen Witherspoon, Chief of Hospital Quality Initiatives, presented background information regarding the new Maryland Health Care Quality Reports website, and detailed staff's plans to promote consumer awareness and engagement. The members of the Commission discussed strategies for improving Maryland's national ranking regarding occurrence of healthcare-associated infections.

**ITEM 8.**

**PRESENTATION:** Draft COMAR 10.24.15 - State Health Plan Chapter for Organ Transplant Services

Vice Chair Phillips said that, over the last six months, the MHCC has held meetings of stakeholders to discuss modifications to the Organ Transplant Services Chapter of the State Health Plan. Eileen Fleck, Chief of Acute Care Policy and Planning, presented the draft changes to this State Health Plan Chapter, which was released for informal public comment on May 5.

**ITEM 9.**

**Overview of Upcoming Initiatives**

Ben Steffen, Executive Director, reported that the Commission's June agenda may include: Approval of Release of MCDB Data for the University of Maryland School of Public Health; proposed amendments to COMAR 10.25.16: Electronic Health Record Incentive; announcement of the Round 4 Telehealth Grants; appointment of the Rural Health Workgroup members and chair; and a Certificate of Need action.

**ITEM 10.**

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 3:52 p.m. upon motion of Commissioner Pollak, which was seconded by Commissioner Thomas and unanimously approved.