



Department of Health  
and Human Services

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John E. Baldacci, Governor

Brenda M. Harvey, Commissioner

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Division of Licensing and  
Regulatory Services

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September 23, 2009

Joseph M. Kozak, Esq.  
Kozak & Gayer, P. A.  
160 Capitol Street, Suite 4  
Augusta, Maine 04330

RE: Reconsideration of decision to grant with conditions the CON application for transfer of ownership of St. Joseph Healthcare Foundation and St. Joseph Hospital

Dear Mr. Kozak:

On July 2, 2009, I granted St. Joseph Healthcare Foundation's and St. Joseph Hospital's request for a certificate of need but imposed conditions; the condition relevant to this reconsideration related to the deferral or reduction of a management fee owed to Covenant should excess revenue over expenditures be less than 1.2% in any given year. In my letter dated September 3, 2009, I agreed to reconsider that one condition. A hearing was held on September 10, 2009, at which time testimonial and written evidence was accepted into the record to form a basis for my reconsidered decision.<sup>1</sup> I have reviewed that evidence to determine if the condition relating to management fees is supported by the whole record.

As a result of my reconsideration, I change the management fee condition (numbered 1) in my approval letter and substitute the following condition: Modify the terms of the agreement so that, for the three year period following implementation, that portion of the management fee owed by St. Joseph Healthcare to Covenant shall be deferred to the extent that the excess of revenues over expenditures for the last year on which audited financial statements are available is less than the management fee designated for that year in which the fee is owed. The deferred fee will be owed in the following year in an amount equal to the lesser of the excess of revenues over expenditures for such year or the amount deferred, and if any deferred fee balance remains unpaid, such deferred fee will continue to be deferred in the same manner until paid in full.

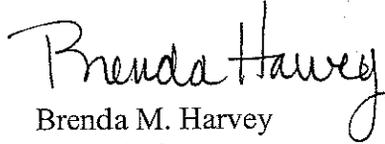
I accept the hospital's arguments that the declaration by Covenant it would not accept the transfer of sponsorship of St. Joseph Healthcare and Hospital if the management fee condition remained the same represents a significant change in the factors or circumstances considered by the department in reaching the decision to grant the CON application with conditions.

Please note that I do not accept the hospital's arguments that the department lacks authority under the certificate of need statute to establish conditions with effects that may last beyond a three-year period following implementation of CON approval. Although 22 MRSA §332(1) refers to a three-year period in which the commissioner may initiate a subsequent review process, I interpret the CON statute to allow other enforcement actions to be taken beyond the three-year period if an applicant fails to meet the conditions stated in a decision

<sup>1</sup> The additional items accepted into the record are listed in the memorandum sent by James D. Bivins, Esq., Chief Hearing Officer to me following the reconsideration hearing and copied to all parties.

made under the CON statute. It should be noted that 22 MRSA §335(8), authorizing the department to issue a decision with conditions, imposes no three-year time limit on the effect of such conditions.

Sincerely,



Brenda M. Harvey  
Commissioner

cc: ✓ Catherine M. Cobb, Director, Licensing and Regulatory Services  
Assistant Attorney General Janine Raquet  
John P. Doyle, Jr., Esq., Preti Flaherty Beliveau & Pachios  
Stephen R. Conlin, Esq., Archstone Law Group