

SEP 18 2013

### Certificate of Need

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September 18, 2013

#### VIA US MAIL AND E-MAIL

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Maine Department of Health and Human  
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Senior Healthcare Financial Analyst,  
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Division of Licensing & Regulatory Services  
Department of Health and Human Services  
State House Station #11  
41 Anthony Avenue  
Augusta, ME 04333

**RE: Mount St. Joseph and Management Services Agreement with Catholic  
Health East Senior Services Management – LOI/NSTR Filing**

Dear Ms. Powell and Messrs. Albert and Carbonneau,

This Letter of Intent (“LOI”) seeking a “Not Subject to Review” Ruling (“NSTR”) is filed pursuant to Section 71.05 of the regulations of the Division of Licensing and Regulatory Services (“DLRS”), Section 71, Certificate of Need (“CON”) for Nursing Facility Level of Care Projects. Mount St. Joseph (“MSJ”) proposes to enter a Management Services Agreement (“Agreement”) with Catholic Health East Senior Services Management (“CHESSM”). This Agreement is very similar to the Management Services Agreement that has been in place between CHESSM and St. Joseph Rehabilitation & Residence (“SJR”), which Agreement the CON Unit (“CONU”) deemed “Not Subject to Review” in 2008 and 2010. We request this NSTR as soon as practicable, as the parties seek to enter into the Agreement effective October 1, 2013.

#### Relevant Documents and Pertinent Precedent

As background, attached hereto please find the following:

- Draft Management Services Agreement between CHESSM and MSJ.

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- September 26, 2008 filing of SJR, submitted by Attorney Dobson, with respect to the Management Services Agreement between CHESSM and SJR.
- December 14, 2010 letter of Attorney Witham, counsel to SJR, to Ms. Cobb, then Director of DLRS.

Based upon this precedent and the substantial similarity between the two Management Services Agreements, we request that an NSTR be issued clearing the way for MSJ to enter into this Agreement. It would be most appreciated if this NSTR ruling can be issued in the near term so that the Agreement can be effective October 1, 2013.

### **Background and Review of Operative CON Law Provisions**

The key provisions of the CON law governing this matter are set forth in subsection 1 of Section 329 of the CON law, which states as follows:

- 1. Transfer of ownership; acquisition by lease, donation, transfer; acquisition of control. Any transfer of ownership or acquisition under lease or comparable arrangement or through donation or any acquisition of control of a health care facility under lease, management agreement or comparable arrangement or through donation that would have required review if the transfer or acquisition had been by purchase, except in emergencies when that acquisition of control is at the direction of the department;*

From a number of standpoints, the draft Agreement does not constitute a transfer of ownership or the acquisition of control within the meaning of the CON law. The ownership, control and governance of MSJ or its assets will not change as a result of the CHESSM Agreement, and will remain the Board and Members of MSJ.

MSJ is a Maine nonprofit corporation that is also recognized as a charitable, tax-exempt 501(c)(3) organization by the Internal Revenue Service. The Members of the MSJ Corporation are the Provincial and Council of the Congregation of the Sisters of St. Joseph of Lyons, United States Province. Under the Articles and Bylaws of MSJ, these Members will continue to have the authority to elect and remove directors (who are also Sisters of the Congregation) and to approve the sale, lease or other disposition of all or substantially all of the assets and property of MSJ, its dissolution, or its merger.

No provision in the Agreement constitutes a transfer of ownership or other form of change of control that could be considered subject to CON review. MSJ and its Members and Board retain control over the assets (including real estate), financial affairs and operations of

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MSJ. The authority granted to CHESSM relates strictly to the operation of MSJ's facility, which is also ultimately subject to control of the Board and Members.

The draft Agreement confirms and assures that significant control and governance functions are retained by the MSJ Board and are not being transferred to CHESSM:

- The capital and operating budgets of MSJ must be approved by the MSJ Board (Section 2.10).
- The Board of Directors of MSJ continues to serve as the governing body of MSJ and is responsible for overseeing the operation of its affairs and development of its policies, with the Board at all times maintaining ultimate authority over the affairs of MSJ, shall establish general operating policies to be carried out by CHESSM under the Agreement, and shall be accountable and responsible for all medical, professional and ethical affairs of MSJ (Section 3.01).
- CHESSM is not deemed to assume any liabilities or obligations of MSJ (Section 3.01).
- MSJ retains the right and obligation to review the operating decisions and to change, repeal or alter operating policies (Section 3.02).
- Initially, MSJ is designating the Chair of its Board as the Designee to work with CHESSM with respect to the implementation of the Agreement (Section 3.03).
- The MSJ Board retains the authority to adopt further policies and directives to govern the performance of CHESSM (Section 3.04).
- MSJ is solely responsible for meeting its financial obligations as they become due and payable. CHESSM is not liable for satisfying any of MSJ's financial obligations (Section 7.01).
- Finally, both CHESSM and MSJ have the right, without cause, to terminate the Agreement upon 90 days written notice (Section 9.01(D)).

On these several bases, and the prior CON precedent with respect to the SJR Agreement, we respectfully request an NSTR ruling.

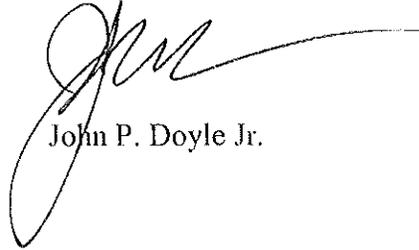
I will be contacting one of you later this week to confirm your receipt of this request, and to determine what further information, if any, you may need to complete your review. I will be away from September 23 through October 2, and have asked my colleagues Charlie Dingman

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and Kate Clearwater to be available to coordinate with you on this time sensitive matter in my absence.

Sincerely,

A handwritten signature in black ink, appearing to read 'John P. Doyle Jr.', with a long horizontal flourish extending to the right.

John P. Doyle Jr.

JPD:kms

Attachments

cc: William J. Healy, CHESM  
Sr. Sister Gilla Dubé, Provincial of Congregation and Board Chair  
Kerry Siros, Administrator, Mount St. Joseph  
Charles F. Dingman  
Katrina Clearwater