

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA,
Department of Insurance, Securities
and Banking,

Petitioner,

v.

D. C. CHARTERED HEALTH PLAN,
INC.,

Respondent.

Civil Action No.: 2012 CA 008227 2

Judge: Wright

Calendar No.: 15

Next Event: Status – 6/20/13 at 9:30

Expedited Status Conference
Requested

PETITIONER'S RESPONSE TO DCHSI'S MOTION IN OPPOSITION

The District of Columbia and William P. White, Commissioner of the District of Columbia Department of Insurance, Securities and Banking (Petitioner), by and through their attorneys, the Office of the Attorney General of the District of Columbia, file this response to the motion in opposition filed by D.C. Healthcare Systems, Inc. (DCHSI) to *the Special Deputy's Second Status Report, Request for Expedited Status Conference and Petition for Order Approving the Asset Purchase Agreement, Plan of Reorganization and Related Matters* (Second Status Report and Petition). The Petitioner respectfully requests the Court to deny DCHSI's motion and set the *Second Status Report and Petition* for a status conference as quickly as possible so that, if the Court approves the transaction described in the *Second Status Report and Petition*, the closing can occur by April 1, 2013.

First, DCHSI is not a proper party to this litigation. On January 14, 2013, the day before the first status conference, David B. Killalea, Esquire, counsel for DCHSI, filed a Notice of Appearance "in order to receive copies of all pleadings, documents and correspondence that are served and filed in this matter." See the Notice of Appearance, generally. Therefore, the

Petitioner would move this Honorable Court to strike DCHSI's opposition and proceed with the requested relief.

If the Court determines that DCHSI should be heard then, if counsel for DCHSI has a scheduling conflict the week of March 5, then the Petitioner would suggest that the Court set the *Second Status Report and Petition* for status conference as early in the week of March 11 as possible, with DCHSI's response to the *Second Status Report and Petition* due no later than March 6. Further argument is detailed below:

The Petitioner is seeking expedited consideration because without it the transaction that he has proposed to salvage some value for Chartered's stakeholders simply cannot happen. That this poses some inconvenience to DCHSI is inevitable but not the Petitioner's intention in seeking expedited consideration. Given the announced schedule of the Department of Health Care Finance (DHCF) for awarding the new Medicaid contracts, and the fact that Chartered's existing Medicaid contract expires on April 30, 2013, the closing needs to occur by April 1 to ensure a smooth transition for Chartered's enrollees, employees and providers. The Petitioner's recommended opt-out process for providers would need to start at least 15 days before then, and there are a host of other matters that will need to be resolved after the requested Court approval and prior to closing. Because there are several misstatements in DCHSI's motion, the Petitioner is compelled to respond further as follows:

1. As the Court knows from the Special Deputy's First Status Report filed on January 11, 2013 (First Status Report), and the *Second Status Report and Petition* filed February 22, 2013, the court approval of the Asset Purchase Agreement and the Plan of Reorganization described in the Second Status Report and Petition is a critically important matter for Chartered's approximately 100,000 Medicaid and DC Alliance enrollees, 5,000 providers and

other creditors, and 160 employees and the District of Columbia. DCHSI, as Chartered's shareholder, has an interest in the rehabilitation proceeding, but not the priority interest that those other constituencies have. What the Rehabilitator has been doing since October 19, 2012, when rehabilitation began to protect those constituencies and deal with Chartered's challenges—legal, financial and other—in the face of significant time constraints is laid out in detail in the *First Status Report* and the *Second Status Report and Petition*. DCHSI cannot credibly claim surprise that this matter must be expedited so that the solution being recommended for approval to the Court can proceed.

2. To imply, as DCHSI does, that the Rehabilitator can somehow extend deadlines, even the expiration of Chartered's existing Medicaid contract with the DHCF when it expires on April 30, defies credulity. DCHSI cannot claim surprise about the timeline of the award of new Medicaid contracts as demonstrated by DCHSI's allegations in the Contract Appeals Board Case No. P-0930, specifically referenced in the *First Status Report* and the *Second Status Report and Petition*. The Rehabilitator must focus on the existing deadlines imposed by DHCF and get matters in front of this Court as quickly as possible.

3. The Special Deputy and the Rehabilitator's outside counsel have met with DCHSI's counsel regularly throughout the rehabilitation and shared as much information as the Rehabilitator reasonably could share. These are complex and sensitive matters, including the negotiation of the Asset Purchase Agreement, as well as the other legal and financial matters described in the *First Status Report* and in the *Second Status Report and Petition*. Moreover, given the parent company, affiliate and related party matters described on page 7 of the *First Status Report* and on pages 3-4 of the *Second Status Report and Petition*, either DCHSI or its owner or both owes Chartered millions of dollars and answers that have not been provided either

before or after the Emergency Consent Order of Rehabilitation. It ill becomes DCHSI to claim a lack of disclosure going the other way.

4. Moreover, DCHSI had plenty of opportunities before this rehabilitation proceeding began to come up with a plan to recapitalize Chartered, to find a new owner and a solution to its financial and legal problems, and to deal with Chartered's regulatory issues. DCHSI was unable to resolve any of these matters and in fact, the situation only worsened with the passage of time, leaving the Rehabilitator with little remaining value and few alternatives upon taking over Chartered on October 19, 2012. Here is the timeline of key events:

- (a) After being granted an extension, on April 13, 2012, Chartered filed with the Department of Insurance, Securities and Banking (Department), its 2011 unaudited annual financial statement. The financial statement revealed that, as of December 31, 2011, (1) Chartered had capital and surplus of just \$1.4 million and sustained a 2011 operating loss of \$15.0 million and (2) Chartered's Risk-Based Capital ("RBC") level was only 10.3%, significantly below the 200% RBC minimum level required by D.C. Official Code § 31-3851.01 et seq.
- (b) Chartered's RBC level triggered a Mandatory Control Level Event ("MCLE") pursuant to D.C. Official Code § 31-3851.06, which provides that "the Commissioner shall take such action as is necessary to place the health organization under regulatory control" under Chapters 13 or 34 of Title 31 of the D.C. Official Code. As permitted under D.C. Official Code § 31-3851.06(c), the Commissioner gave Chartered 90 days to eliminate the MCLE by, among other things, submitting an RBC plan.

- (c) On May 5, 2012, Chartered notified the Commissioner's office that the independent certified public accounting firm auditing Chartered's 2011 annual statement had resigned.
- (d) Chartered filed its RBC plan with the Commissioner in two installments: on May 5, 2012, and on May 29, 2012.
- (e) On June 6, 2012, Commissioner White met with Chartered's CEO and Board of Directors to discuss Chartered's RBC plan and strategy to address the MCLE, including a surplus contribution to Chartered by DCHSI in the form of the office building where Chartered was located, issuance by Chartered of a surplus note of \$5,000,000 and DCHSI's efforts to secure capital providing 200% RBC level through a purchase transaction. On June 29, 2012, Chartered informed the Department that DCHSI was in discussions with several acquisition candidates for Chartered, and that the surplus note and possibly the building contribution were being reconsidered in light of the potential acquisition.
- (f) On September 27, 2012, Brown Smith Wallace provided an audit update to the Department, including:
- (1) Audit findings resulted in a reduction of capital and surplus of more than \$3.7 million for 2011, which would produce a negative capital and surplus.
 - (2) Additional anticipated audit adjustments of \$2.3 million based on collectability analysis of receivables.

(3) Questions regarding receivables from a former affiliate and subsequent debt write-off of over \$1 million.

(g) On October 1, 2012, Chartered reported that its CFO and Controller had been dismissed as a result of audit findings by Brown Smith Wallace.

(h) As of October 19, 2012, the date on which the Rehabilitator filed his Emergency Consent Petition and over 120 days after Chartered submitted its RBC plan, Chartered had not received the surplus contribution of the building from DCHSI, issued any surplus notes or entered into a transaction which would provide new capital and new ownership.

DCHSI had six months and more to come up with a suitor, and was unable to do so. DCHSI cannot now claim surprise, prejudice and ill treatment as a result of a solution that the Rehabilitator has proposed in the face of the obvious deadlines, challenges and realities created, in no small measure, by DCHSI or its owner.

For the reasons stated above, the Petitioner moves this Honorable Court for an order striking DCHSI's opposition and for the Court to proceed with the requested relief. The Court should not permit DCHSI to delay the consideration of a solution that the Rehabilitator believes is the best one for the Medicaid population in the District of Columbia, the providers providing care, creditors and employees.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 2013, a copy of the foregoing was filed
and served by email upon:

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