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February 2, 2007

Honorable Margaret Mary McVeigh, J.S.C.
Passaic County Courthouse
71 Hamilton Street
Paterson, N.J. 07505

Re: Purchase of PBI Regional Medical Center
<u>by St. Mary's Hospital</u>

Dear Judge McVeigh:

This Office has completed its review of the application submitted by Beth Israel Hospital Association of Passaic d/b/a PBI Regional Medical Center ("PBI," the "Hospital" or the "Applicant,")[1] as well as the transcript of the public hearing conducted January 10, 2007 and the materials submitted by various public interest groups with respect to the proposed purchase of PBI by St. Mary's Hospital ("St. Mary's" or the "Purchaser").[2] On July 10, 2006 PBI filed a voluntary petition for relief pursuant to Chapter 11 of Title 11, United States Code (the "Bankruptcy Code"). PBI seeks the court's approval to sell substantially all of the assets comprising PBI Regional Medical Center to St. Mary's pursuant to an asset purchase agreement for a purchase price of approximately $36,700,000 in accordance with the Community Health Care Assets Protection Act ("CHAPA), <u>N.J.S.A</u>. 26:2H-7.10, <u>et seq</u>. (the "Proposed Transaction"). In accordance with <u>N.J.S.A</u>. 26:2H-

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1 Passaic Beth Israel Health System, Inc. ("PBIHS"), is the sole member/parent corporation of PBI.

2 St. Mary Health Corporation is the sole member/parent corporation of St. Mary's.

7.11(1), "[u]pon completion by the Attorney General of the review of the application required by this act, the nonprofit hospital shall apply to the Superior Court for approval of the proposed acquisition. In that proceeding, the Attorney General shall advise the court as to whether he supports or opposes the proposed acquisition, with or without any specific modifications, and the basis for that position."

The Proposed Transaction constitutes an "acquisition" of PBI by St. Mary's as that term is defined in CHAPA. In accordance with CHAPA, an acquisition of a licensed nonprofit hospital includes "the purchase ... of a substantial amount of assets or operations, whether through a single transaction or series of transactions, with one or more persons or entities." N.J.S.A. 26:2H-7.11. The Proposed Transaction constitutes a fundamental corporate change involving a transfer of control of a substantial amount of the operations and assets of PBI, requiring CHAPA review. N.J.S.A. 26:2H-7.11. CHAPA mandates the involvement of this Office, the New Jersey Department of Health and Senior Services ("DHSS" or "Department"), and the Superior Court in reviewing transactions of this kind. The Attorney General is required to ascertain whether appropriate steps have been taken to safeguard the value of the charitable assets of the hospital. The Commissioner of DHSS (the "Commissioner") must determine whether the Proposed Transaction is likely to result in the deterioration in the quality, availability or accessibility of health care services in the affected community. The Superior Court must approve the transaction.

We have examined the application filed by PBI (consisting of four volumes and supplemental materials) which was submitted in response to our requests for information concerning the Proposed Transaction under CHAPA (hereinafter discussed). We have also discussed the Proposed Transaction with counsel for the Applicant and representatives of DHSS, and heard testimony and reviewed written submissions from public interest groups and concerned citizens. Based on our independent examination of the above-referenced information and our review of the filings made with the Bankruptcy Court and the findings and conclusions of said Court concerning the sale of the assets of PBI, for the reasons set forth below, we support the proposed sale of the assets of PBI to St. Mary's as described herein, without any modifications.

In addition, the Commissioner has determined that the acquisition of PBI by St. Mary's, subject to the conditions set forth in his Certificate of Need approval letter dated February 2, 2007 (attached hereto), will not adversely affect access to or quality of health care in the Hospital's service area.

I. Transaction Overview.

This is the fifth transaction reviewed by this Office under CHAPA. The parties to the Proposed Transaction are PBI, a New Jersey non-profit corporation that owns and operates a 264-bed licensed acute care hospital located at 350 Boulevard in Passaic, New Jersey and St. Mary's Hospital, a New Jersey non-profit corporation, operating a 164-bed acute care hospital located at 211 Pennington Avenue also in Passaic. PBI's facility is currently located approximately 0.7 miles from St. Mary's. St. Mary's has submitted two concurrent Certificate of Need applications to the DHSS. One application is to transfer ownership of the assets of PBI from Beth Israel Hospital Association of Passaic to St. Mary's. After its purchase of the PBI facility at 350 Boulevard, St. Mary's will continue to operate as an acute care hospital offering the services it currently provides at its Pennington Avenue facility, plus several of those that PBI currently provides which St. Mary's does not, at the more modern facility located at 350 Boulevard. The hospital-based clinical services of St. Mary's offered at Pennington Avenue will also be integrated by St. Mary's at the 350 Boulevard facility. St. Mary's second Certificate of Need application is for the closure of 211 Pennington Avenue. St. Mary's states in its application that it plans to close the Pennington Avenue facility, sell it, and use the net proceeds to fund working capital for operations at 350 Boulevard.

Prior to January, 2004 there were three hospitals in the City of Passaic. In January, 2004 PBI purchased the assets of the General Hospital Center of Passaic (the "General") from Atlantic Health System ("AHS") and consolidated its operations at the 350 Boulevard facility. The geographic proximity of the three Passaic hospitals in a city with a population of approximately 68,000, plus 2 competing hospitals in the nearby City of Paterson, has made it impossible for any of the Passaic hospitals to operate without incurring substantial losses. At the time of the sale, both hospitals were experiencing annual operating losses. Following the consolidation of the operations of the General and PBI, PBI continued to generate substantial operating losses, amounting to about $8,532,000 in 2005.

State-established commissions in both 1988 and 1999 recommended the closing of hospitals in "over-bedded" areas, such as Passaic. In response to intense competitive pressure, AH, PBI and St. Mary's had engaged in negotiations, on and off, over the years to achieve sharing of expensive technologies to avoid duplication. Discussions were held to consider partnering, consolidation and merger.

St. Mary's avers in its Certificate of Need application that in order to operate one financially stable hospital in Passaic, the volume of all three hospitals then in existence in 2004 is necessary. Without consolidation of the last two remaining hospitals in the City of Passaic, both hospitals would continue to be financially at risk threatening the viability of both hospitals. St. Mary's advised DHSS that its proposal, which would close Pennington Avenue and move its operations and services to Boulevard under St. Mary's ownership, represents a significant opportunity to finally achieve consolidation of acute care services in the City of Passaic, a long held goal of DHSS, without negative impact. The transfer of St. Mary's Hospital to the PBI facility at 350 Boulevard is advantageous because the facility is larger, more modern and currently provides a broader scope of health care services, including cardiac and surgical care, outpatient care and dialysis treatment.

II. <u>Events Preceding the Proposed Transaction</u>.

The following is substantially based on our review of PBI's CHAPA application, as well as the Certificate of Need applications submitted by St. Mary's and PBI's Bankruptcy Court filings, all of which were submitted with the CHAPA filing.

On January 1, 2004, PBI Regional Medical Center was formed when Beth Israel Hospital Association of Passaic purchased the General from AHS and sold its existing facility to the State of New Jersey to be used for educational purposes. PBI's Report of Independent Auditors for the Year Ended December 31, 2004 states that PBI acquired the property, plant, equipment and supplies of the General. The Hospital did not purchase the General's business, nor did the Hospital assume any of the General's liabilities with the exception of the Hospital assuming certain operating leases for equipment in place at the General prior to the purchase. Total licensed beds increased to 264 from 210 with the move to the General's larger and more modern facility. The acquisition of the General by PBI decreased the number of hospitals in Passaic from three to two. The acquisition was reviewed by this Office in accordance with CHAPA and we commended its approval to this Court. The transaction was approved pursuant to a Consent Order For Leave To Proceed Summarily and Final Judgment filed on December 11, 2003.

Pursuant to that transaction, PBI transferred its operations to the facility at 350 Boulevard. At that time PBI provided a full complement of medical and community services, including cardiac diagnostic and treatment services, a full range of cancer treatment services, hemodialysis, women's health services, pain management, emergency care, respiratory therapy, and physical and occupational therapy. Its emergency services are part of the New Jersey Office of Emergency Management's emergency preparedness planning. In 2005, PBI treated approximately 113, 569 patients, including 11,647 inpatients and 101,922 outpatients, with an average length of stay of 5.2 days.

PBI financed the acquisition of the General by borrowing the proceeds of a series of revenue bonds totaling $30,600,000 (the "2003 Bonds") from the New Jersey Health Care Facilities Financing Authority ("HCFFA"), issued on December 30, 2003. Commerce Bank is the trustee and holder of the 2003 bonds. The loan to PBI of the 2003 Bond proceeds was evidenced by a promissory note dated December 30, 2003 in Commerce's favor. To secure its obligations to repay the 2003 Bond Debt, PBI granted Commerce a first-priority security interest in substantially all of PBI's assets. In or about June 2004, PBI refinanced a portion of the 2003 Bond debt by borrowing the proceeds of a second series of revenue bonds totaling $13.3 million that HCFFA issued on June 1, 2004.

The Report of the Hospital's Independent Auditors for the Years Ending December 31, 2005 and 2004, states that, "at December 31 2005, the Hospital has a working capital deficit of approximately $30,900,000 and losses from operations for the year ended December 31, 2005 of approximately $8,500,000. The Hospital is also in violation of certain debt covenants. These factors raise substantial doubt about the Hospital's ability to continue as a going concern." In the period between January 1, 2006 and July 9, 2006, PBI had a loss (change in fund balance) of $6,433.002.

PBI has stated that its losses are attributable to declining patient volumes (partly due to an industry-wide move to outpatient treatment and increased competition from ambulatory sites), as well as the departure of physicians and uncertainty about PBI's future in the community. Navigant Consulting, in a May 2006 report to the PBI Board of Trustees, determined that the Hospital was losing $1,000,000 per month, the Hospital was at great risk of losing key referring physicians, accounts payable was stretched to the point that day-to-day operations are being effected and the Hospital suffered from a lack of effective leadership. Apparently based in part on these findings, the Hospital terminated its Chief Executive Officer/President and its

Vice-President for Fiscal Affairs, (both of whom were part of the management team that acquired the General) and replaced them with a management team from Navigant.

On July 10, 2006, due to its inability to carry on operations and pay its bills, PBI filed a voluntary petition for relief pursuant to Chapter 11 of the Untied States Bankruptcy Code. The bankruptcy case has been and continues to be under the supervision of the U.S. Bankruptcy Court for the District of New Jersey, the Honorable Novalyn Winfield, U.S.B.J.

The Board minutes reveal that prior to the bankruptcy filing, as early as July, 2005, the Hospital's Trustees were notified by Commerce Bank and the HCFFA that the Hospital was in danger of defaulting on its bond covenants. Discussions regarding the Hospital's financial crisis continued throughout the following months. The Board minutes dated November 17, 2005 state that the HCFFA requested a resolution by the Board to acknowledge receipt of a report authored by the Accenture consulting group. This report, which was issued as early as the prior August, offered a "Turnaround Blueprint" for PBI. In December, 2005, the Trustees formed a Transition Committee to implement initiatives to improve the Hospital's financial condition, as well as to consider the ultimate acquisition of the Hospital's assets by sale or other transfer to another entity. The Board engaged Nemzoff & Company, LLC to present strategic options and ultimately authorized Nemzoff to solicit potential bidders based upon applicable criteria. These efforts were unsuccessful.

As of the date that PBI filed for bankruptcy, it owed Commerce approximately $21 million from the 2003 and 2004 Bond debt. In addition, as of May 31, 2006, PBI had general unsecured indebtedness totaling approximately $34.5 million. Of that total, approximately $33.2 million is owed to PBI's suppliers and services providers. The purchase price of $36.7 million being paid by St. Mary's for the assets will be insufficient to pay most, if not all of the unsecured indebtedness, including payment to suppliers of goods and services to the Hospital.

Since it filed for bankruptcy on July 10, 2006, PBI has continued operation of its business as a debtor-in-possession. It contracted with Cain Brothers to develop a sale process for the Hospital, screen prospective bidders, develop bid procedures, draft a Confidential Information Memorandum and solicit bids for substantially all of the Hospital's assets. As set forth in the Certificate of Thomas M. Barry, Managing Director of Cain Brothers ("Barry Certification"), his company worked with the Hospital to gather all documents and information, and set up an electronic data room to allow potential bidders access to certain books and records and facilities, and to perform due diligence in connection with a potential sale. Cain Brothers contacted over 100 potential purchasers, including not-for-profit local, not-for-profit national and for-profit entities. Cain Brothers received responses from 99 parties who were not interested in pursuing a transaction and ten parties who signed confidentiality agreements and who accessed the electronic data room. Five parties made site visits to the facility.

As set forth in the Barry Certification, on or about September 12, 2006, PBI received bids from three potential purchases, including St. Mary's, Beth Israel Regional Acquisition Company, LLC ("BIRAC") and Doctors Community Healthcare Corporation, a for-profit entity headquartered in Scottsdale, Arizona. At that time, St Mary's did not have financing arranged for its transaction. PBI negotiated an asset purchase agreement with BIRAC, a group of private investors and physicians. However, prior to a scheduled hearing in the bankruptcy court on PBI's request to designate BIRAC as the "Stalking horse" bidder, PBI was informed by Commerce, its secured lender, that "Commerce did not have confidence that the BIRAC transaction would close and that Commerce would not provide needed debtor-in-possession ("DIP") financing" to allow PBI to continue to operate during the bankruptcy proceeding if the deal continued with BIRAC. Because PBI would have run out of funds to finance payroll without continued financing from Commerce, the approval of Commerce was necessary for any transaction. Commerce made clear that it would not approve any bid or transaction that did not include payment of the money that PBI owes to Commerce, which loan is secured with a security interest on all of PBI's assets, including its hospital building and equipment.

In the interim, St. Mary's continued to pursue financing needed for a competing bid. In early November, St. Mary's submitted a bid which included tax-exempt financing through HCFFA, including bonds payable from annual appropriations by the State pursuant to the Hospital Asset Transformation Program, N.J.S.A. 26:2I-7(g)(1), capital leases, and other loans. After considerable negotiation, Commerce agreed to St. Mary's bid and agreed to participate in providing financing to allow PBI to continue operations for a limited time until February 28, 2007, the anticipated date of closing with St. Mary's. Without this DIP financing, PBI would have been required to close down because it would not have been able to meet its payroll obligations.

The DIP financing included a number of conditions tied to approval of bid procedures, designation of St. Mary's as the stalking horse bidder, and approval of a sale transaction with St. Mary's. One of the conditions is obtaining all of the regulatory approvals no later than February 15, 2007. Commerce is the lead lender under the DIP financing, and is advancing $2.5 million of the total, with $500,000 coming from St. Mary's deposit, and $1.5 million advanced by NJHCFFA. An Additional $500,000 was raised by the Chair of PBI's Board from Board members, medical staff members, and other citizens concerned with the continuity of care in Passaic.

PBI and St. Mary's executed an asset purchase agreement dated November 9, 2006, by which St. Mary's will pay PBI $36,739,000 as set forth in Section 3.1 of the APA, plus assume the liability for cure amounts on any contracts that it elects to assume, in return for substantially all of PBI's assets. St. Mary's has provided a good faith deposit of $875,000, $500,000 of which was made available as a loan to PBI as part of the DIP financing approved by the Bankruptcy Court on November 13, 2006. St. Mary's has also agreed to lend PBI up to an additional $200,000 of its deposit in February, 2007 if necessary to help PBI cover certain operating expense. The balance of the deposit and purchase price will be delivered to PBI in cash at the closing, which is to occur by February 28, 2007, and will be used in large part to repay Commerce, as well as pay a portion of PBI's many other debts. The proceeds of the sale will not be sufficient to pay any of the pre-petition unsecured or priority debts.

The U.S. Bankruptcy Court for the District of New Jersey, Honorable Novalyn L. Winfield (Case No. 06-16186) on November 22, 2006 entered an order (the "Bid Procedures Order") (a) authorizing PBI to sell all or substantially all of its assets and to assume and assign certain related executory contracts and unexpired leases pursuant to Sections 363 and 365 of the Bankruptcy Code, (b) authorizing PBI to enter into a "stalking horse" agreement with St. Mary's, (c) scheduling an auction sale with respect to PBI's assets and (d) scheduling a sale hearing date to approve the sale to St. Mary's if no higher bids were received. The sale of the assets to St. Mary's was subject to higher and better offers, and PBI was authorized to solicit higher and better offers and to conduct an auction sale if other offers were received. Had a qualified bid been received by December 4th, an auction sale would have been held on December 7th to determine the highest and best bid. However, no others bids were received by PBI and on December 11, 2006, the Bankruptcy Court approved the APA with St. Mary's.

III. <u>CHAPA Review Process</u>.

Counsel for PBI notified this office of the proposed sale of the Hospital's assets by letter dated August 24, 2006. On September 20, 2006 the Attorney General's office advised that this transaction required review under CHAPA and provided PBI with a comprehensive list of questions designed to elicit the information needed to review the transaction. On December 8th PBI sent the first of a number of submissions, including copies of the Asset Purchase Agreement, Board and Finance Committee minutes, Bankruptcy Court filings and other materials describing the Proposed Transaction in detail, including the steps taken by PBI which led to the decision to declare bankruptcy, effectuate the sale and select the buyer. These materials were deemed to be the application called for under CHAPA. In view of the truncated time line imposed for the closing of the asset sale and the St. Mary's financing, we expeditiously reviewed the application and deemed it complete on December 26, 2006. Nevertheless, throughout the ensuing weeks we exchanged communications and engaged in telephonic conversations with counsel to discuss PBI's submissions and obtain supplemental information.

On January 10, 2007, in accordance with <u>N.J.S.A.</u> 26:2H-7.11(f), representatives from the Attorney General's Office and the DHSS conducted a joint open public meeting at Lincoln Middle School in Passaic to give members of the affected community and other interested parties an opportunity to comment on the Proposed Transaction. Notice of the public hearing was published in advance in The Star-Ledger and the Bergen Record and on the DHSS website. Notice was also published in the Spanish language newspapers, El Especial and El Diario.

At the hearing, representatives of PBI and St. Mary's, described the Proposed Transaction and the benefits they perceive it would bring to the Passaic community. Representatives of a number of public interest organizations, including New Jersey Appleseed, MergerWatch Project, NOW-NJ and the New Jersey Public Advocate, either voiced their concerns and/or submitted written testimony. They were generally concerned that the acquisition of the assets of PBI, a secular institution by St. Mary's, a Catholic hospital subject to the Ethical and Religious Directives for Catholic Health Care Services, would result in the loss to the community of the full range of women's reproductive services including, tubal ligations, infertility treatments and contraceptive and family planning services. Appleseed advocated for the "imposition on St. Mary's of an obligation to ensure the continuity of health care services that it will cease providing upon the acquisition of PBI due to religious doctrine and the appointment of a healthcare access monitor as provided for under CHAPA." <u>N.J.S.A</u>. 26:2H-7.11(i)(1).

The Hospital asserts in its Verified Complaint that many of the women's health services cited by the commenters had never been or were no longer being provided at PBI due to financial constraints. Robert Lyons, the Chief Operating Officer for PBI, testified at the public hearing that in October, 2006 PBI suspended its inpatient pediatric and obstetrical services because of low utilization rates and that it has not provided many of the referenced women's health services on an outpatient basis since the obstetrics clinic closed in 2005. PBI's view is that women in the Hospital's service area would generally have the same set of options for obtaining these services after the consummation of the Proposed Transaction as they did before. Further, neither SMH nor PBI have any additional funds to provide services that either party currently does not provide, including reproductive services.

Mr. Lyons and Gerald Gline, the Hospital's bankruptcy counsel, testified that if the Proposed Transaction is not approved and the sale to St. Mary's closed on February 28, 2007, the PBI facility will close. According to Mr. Lyons, closure of the facility will result in the loss of cardiac services and oncology services in Passaic, since these are services that St. Mary's does not have the capability of providing.

In his letter of February 2, 2007, attached hereto as Exhibit A and discussed below, the Commissioner has imposed certain conditions on the grant of a Certificate of Need to St. Mary's to acquire the license to operate PBI which are designed, in part, to address the concerns raised by the public interest groups.

IV. <u>Attorney General's Scope Of Review</u>.

Under CHAPA, it is the responsibility of the Attorney General's Office to review transactions of this nature, to obtain all material information, and to consider all of the applicable criteria enumerated in CHAPA before determining whether or not to recommend approval of a proposed acquisition. The Commissioner reviews the proposed acquisition to determine its effect upon the quality, availability, or accessibility of health care services in the affected communities. It is the Attorney General's duty under CHAPA to analyze the proposed hospital acquisition to determine its impact upon the public interest and to ensure that the process is open to public comment and public scrutiny. This open process is constructed to maximize the public's confidence in the final decision.

The historical role of the Attorney General's Office is to enforce the provisions of the charitable trust and charitable corporation laws to fully protect charitable assets for the benefit of the public. These laws recognize the principle that charitable trusts and charitable corporations unlike private, profit-making business entities, are created to benefit the public. CHAPA provides that the Attorney General's Office shall review the transaction in furtherance of the Attorney General's common law responsibilities as protector, supervisor, and enforcer of charitable trusts and charitable corporations. N.J.S.A. 26:2H-7.11.

The proposed hospital acquisition will not be considered in the public interest unless this Office determines that appropriate steps have been taken to safeguard the value of the charitable assets of the hospital being acquired and to ensure that such assets are irrevocably dedicated for charitable health care purposes. N.J.S.A. 26:2H-7.11(c) and (d) set forth a number of specific criteria that the Attorney General is to consider in making his recommendation to the Court. Since this transaction involves acquisition of a New Jersey non-profit hospital by another New Jersey non-profit hospital, both of which are organized for charitable purposes under N.J.S.A. 15A:1-1, et seq., only those criteria found at N.J.S.A. 26:2H-7.11(c) specifically apply to the Proposed Transaction.[3]

In accordance with CHAPA, the Attorney General will consider if the acquisition involves self-dealing or other conflicts of interest, whether the Trustees nonprofit hospital reached their decision to enter into the Proposed Transaction based upon appropriate expert assistance, and whether due diligence was exercised in effectuating the acquisition.

A. **Review of The Asset Purchase Agreement**.

Unlike prior transactions reviewed under CHAPA, in this case the APA was negotiated as part of the bankruptcy process and was approved by the Bankruptcy Court prior to CHAPA review. The

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[3] The criteria found in Sections (d), (g) and (h) of CHAPA generally apply to an acquisition by a person or entity that is not a corporation organized in the State of New Jersey for charitable purposes under Title 15A.

APA was subject to the Seller's consideration of higher or better competing bids. This did not occur. The agreement provides for the purchase by St. Mary's of substantially all of the assets of PBI, including real property, equipment, furnishings, vehicles and inventory and supplies and accounts receivable.[4] The purchase price for the assets is $36,739,000. PBI will retain substantially all of its liabilities currently estimated at $60 million in secured and unsecured debt. The APA includes standard buyers and sellers representations and warranties.

We take exception to one item in the APA. The definition of "Purchased Assets" in Section 2.1 includes "the reasonable efforts of Seller (PBI) to designate Purchaser (St. Mary's) as the successor in interest to funds remaining in the custody and or control of the PBI Foundation as of the Closing Date." The PBI Foundation, which is incorporated under the name "the Passaic Beth Israel Hospital Foundation, Inc.", is an independent non-profit tax exempt organization whose parent corporation is Passaic Beth Israel Health System, Inc. The three Trustees of the PBI Foundation also serve on the Board of PBI. The purposes of the PBI Foundation, as set forth in its Certificate of Incorporation, permits it to support PBI and such other organizations which "directly or indirectly support the provision of health care in the region." In November, 2006, the PBI Foundation donated $280,000 to PBI to keep the Hospital running. As of December 31, 2006, the PBI Foundation has assets totaling $15,997. It appears likely that any funds remaining in the PBI Foundation at this time will be transferred to the Hospital prior to the closing of the Proposed Transaction on February 28, 2007 or shortly thereafter. However, we respectfully submit that to the extent any funds remain in the PBI Foundation after the closing of the Proposed Transaction, any disposition of said funds should be made by its Trustees in accordance with their fiduciary duty of loyalty and in accordance with the mission and purposes of the PBI Foundation. The disposition of charitable funds should not be influenced by the aforesaid provision of the APA. In the event that the trustee's ability to act independently has been eroded by their dual roles as foundation and hospital Trustees, they should resign in favor of a group of independent Trustees.

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[4] Excluded from PBI's assets are five residential properties valued at approximately $1.5 million which the Hospital will sell separately. It is our understanding that the proceeds of the sale will be used for administrative and, if sufficient, priority expenses in accordance with the provisions of the bankruptcy code and proceedings.

Except as set forth above, and as discussed in detail in Section (IV, E) below, we have reviewed the APA and we are satisfied that the charitable assets that are being purchased from PBI will continue to be used by St. Mary's for the benefit of the Passaic Community.

B. **Selection of St. Mary's As the Acquirer.**

In regard to our review of this proposed acquisition, two significant criteria are found at N.J.S.A. 26:2H-7.11(c)(2) and (3) as follows:

> (2) Whether the nonprofit hospital exercised due diligence in deciding to effectuate the acquisition, selecting the other party to the acquisition and negotiating the terms and conditions of the acquisition;
>
> (3) The procedures used by the nonprofit hospital in making its decision, including whether appropriate expert assistance was used.

These statutory criteria do not require our office to decide whether, as a factual matter, a hospital has made an optimal decision or the best possible choice in pursuing this transaction. Instead, the statute simply requires, in part, that we ascertain whether the PBI Board exercised its duty of care in deciding to pursue this course of action and in the process it used to effectuate it. Although the term, "due diligence," is not defined in CHAPA, the New Jersey Nonprofit Corporation Act provides at N.J.S.A. 15A:6-14:

> Trustees and members of any committee shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

The voluminous documentary material submitted as part of the CHAPA application process reveals that the PBI Board considered different options to resolve the Hospital's dire financial picture. Discussions and debate concerning the Hospital's financial situation and proposed solutions can be found in the minutes of every meeting of the Board. The Board established a task force to explore alternative approaches for turning around the fiscal situation and then a Transition Committee to seek information on the Hospital's financial condition and alternatives regarding the acquisition or other disposition of the Hospital's assets. Management questioned the scope of authority being granted to the Transition Committee and the Chief Executive Officer raised concern that his role was being restricted. In February, 2006 the Hospital hired a Chief Restructuring Officer. The minutes include references to presentation materials and analyses that were presented to the Board by Navigant Consulting. The Board contracted with Nemzoff in an attempt to find a buyer prior to the bankruptcy filing and, when its attempts to negotiate additional financing and locate an acquirer failed, it filed for bankruptcy under Chapter 11.

Once the Hospital filed bankruptcy, the procedures to be followed in attempting to find a buyer for the Hospital's assets and the selection of the buyer came under the auspices of the Bankruptcy Court. The Hospital hired Cain Bros to assist them in this undertaking and employed special bankruptcy counsel to represent them before the Court.

In her December 13, 2006 Order authorizing PBI to sell its assets to St. Mary's free and clear of all liens, claims and interests, Judge Winfield made the following findings and determinations:

- proper, timely, adequate and sufficient notice of the Motion and the Sale Hearing has been provided in accordance with the Sections 363 and 365 of the Bankruptcy Code and Fed. R. Bank. P. 2002, 6004, 6006 and 9014 and the Procedures Order;

- As demonstrated by (i) the testimony and/or other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the sale hearing, the debtor [PBI] has marketed the assets and conducted the sale process in compliance with the Bidding Procedures Order;

- Buyers (St. Mary's') offer, as memorialized in the APA, to purchase the assets (as defined in the APA) is the highest and best offer received for the Assets. The purchase price to be paid by buyer pursuant to the APA (the "Purchase Price") is fair and reasonably equivalent value for the assets;

- Buyer is a purchaser in good faith, as that term is used in Section 363(m) of the Bankruptcy Code, with

> respect to the assets. The APA was negotiated, proposed and entered into by the parties in good faith, from arms' -length bargaining positions and without collusion and, therefore, Buyer is entitled to the protection of 363(m) of the bankruptcy Code with respect to the assets.

Based upon our review of the information submitted to us, we are reasonably satisfied that the Board engaged in a decision-making process that was valid under the circumstances of this case. It used both its own internal resources, as well as legal and financial expertise, in arriving at its decision to enter into voluntary bankruptcy and sell the Hospital's assets. The minutes reveal a certain reluctance on the part of the Hospital to act decisively until the situation turned dire. For reasons which are unclear, there was a substantial delay in adopting the Accenture "Turnaround Blueprint". Nevertheless, on the whole the materials demonstrate that PBI's Trustees applied a reasonable degree of diligence in their activities leading up to the bankruptcy filing.

Further, in consideration of the procedures followed by the Hospital in selecting St. Mary's as the buyer in accordance with a bidding process sanctioned by the Bankruptcy Court and the findings of the Bankruptcy Court with respect to the selection of the St. Mary's as buyer, as set forth above, we have no reason to question that the procedures used to select the buyer and the negotiation of the APA were rational.

We conclude that the actions of the PBI's Board and management demonstrate that it exercised a reasonable degree of diligence in regard to the sale of the assets of PBI in accordance with the criteria of subsections (c)(2) and (c)(3) of CHAPA, quoted above.

C. Compliance With The Nonprofit Corporations Act.

Pursuant to N.J.S.A. 26:2H-7.11(c) (1), the Attorney General's Office shall consider, "[W]hether the acquisition is permitted under the 'New Jersey Nonprofit Corporation Act,' title governing nonprofit entities, trusts or charities." Based upon our review of the materials submitted and applicable law, the transaction is permitted by the New Jersey statute governing nonprofit corporations.

D. Conflicts of Interest.

To investigate potential conflicts of interest in satisfaction of N.J.S.A. 26:2H-7-11 (c)(4), this Office reviewed the conflict of interest statements of almost all of the officers, directors, Trustees, and senior management of the transacting parties. In addition, the Bankruptcy Court found that the APA was negotiated and entered into by the parties in good faith from arms length bargaining positions and without collusion..." Based upon our review, there appear to be no conflicts of interest or self-dealing relating to the proposed acquisition among officers, directors, Trustees, senior management, or consultants of the transacting parties.

E. Use of Acquisition Proceeds for Charitable Health Care Purposes.

Under CHAPA, the Attorney General's Office must determine that "the appropriate steps have been taken to safeguard the value of the charitable assets of the hospital and to ensure that any proceeds from the proposed acquisition are irrevocably dedicated for appropriate charitable purposes." N.J.S.A. 26:2H-7.11(b). In addition, N.J.S.A. 26:2H-7.11(C) (6), in pertinent part, requires the Attorney General's Office to determine, "(w)hether the acquisition proceeds will be used for appropriate charitable health care purposes consistent with the non-profit hospital's original purpose or for the support and promotion of health care."

We are satisfied that the assets being acquired by St. Mary's, will continue to be used to serve the public in PBI's historic service area centered in the City of Passaic. The parties have averred that PBI's facility will remain intact and all of the services that St. Mary's currently provides at its facility at Pennington Avenue will continue to be provided at the Boulevard facility, supplemented by certain services which were only previously available at PBI's facility. Thus, we are assured that the appropriate steps have been taken to safeguard the value of PBI's charitable assets. We expect that appropriate mechanisms will be put in place by St. Mary's so that its management will be able to avoid the fate of the prior operators of this facility.

In accordance with the APA, PBI will pay AHS $36,739,000 at closing for substantially all of the assets of GHCP. It is plain from the materials that the purchase price for the assets was arrived at through a bidding process approved by the Bankruptcy Court intended to arrive at the highest and best price for the Hospital. Notice of the proposed sale was provided to potential buyers and more than one bid was received. The purchase price exceeds the value of the Hospital established in a Summary Appraisal Report dated July 10, 2006 performed by the Schonbraun McCann Group, LLP. In its report, the appraiser opined that the highest and best use for the Hospital's property is for "adaptive reuse as multi-family development" and that the value of the property, using either a cost approach or sales comparison valuation methodology, was $20,100,000.[5]

Further, pursuant to the Certification of Neil Luria, Director of Navigant Consulting, Inc., the price paid under the APA exceeds the liquidation value of the Hospital's assets, estimated to be between $26,543,000 and $32,311,000, including the sale of the Hospital facility for condominium development. The liquidation value does not take into account the costs necessary to wind down the Hospital's operations estimated at $5,000,000 to $5,800,000 and potential liability under the Worker Adjustment and Retraining Notification Act ("WARN Act"), 29 U.S.C. 2101, et seq., in the event the Hospital was suddenly forced to close, estimated at $5,000,000 to $6,000,000.

It is evident that the entirety of the proceeds of the sale will be used to pay off a portion of PBI's liabilities, including $22,000,000 for payment of its debt to Commerce Bank, $5,239,000 for repayment of the debtor in possession financing, $2,469,000 to pay accrued professional fees, $1,406,000 to pay for estimated account's payable, $1,884,000 to pay for accrued payroll, an estimated $1,110,000 to pay post-petition liabilities arising from cost reports, with the remainder used to pay other liabilities.

In this case, where the value of the assets being sold was established in a bidding process sanctioned by the Bankruptcy Court and the purchase price exceeds the appraisal value and the liquidation value of the assets, we are satisfied that the process was an acceptable method to arrive at the purchase price.

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[5] The "Cost Approach" is based on the principle of substitution that a prudent and rational person would pay no more for a property than the cost to construct a similar and competitive property, assuming no undue delay in the process. The "Sales Comparison Approach" compares sales of similar properties with the subject property. Each comparable sale is adjusted for its inferior or superior characteristics. The values derived from the adjusted comparable sales form a range of value for the subject. By process of correlation and analysis, a final indicated value is derived.

F. **Management Contracts.**

N.J.S.A. 26:2H-7.11(C)(5) is inapplicable to this transaction, since it does not involve any management contracts.

IV. The PBI Foundation and The General Hospital Foundation, Inc.

In December 2003, when PBI purchased the assets of the General, the General was supported by The General Hospital Foundation, Inc. (the "General Foundation") and PBI was supported by the PBI Foundation. In our letter to the Court date of December 8, 2003 approving that transaction, we noted that with the closing of the General, control of the General Foundation would be transferred to PBI or an affiliate thereof. We also noted that the purposes of the General Foundation were sufficiently broad to allow for it to continue to support the consolidated health care facility that would remain at the location currently occupied by the General. Each of the foundations is now an affiliate of the Hospital or its parent corporation, the three Trustees of each foundation are identical, and each trustee also serves on the Hospital's Board. On November 1, 2006, each foundation resolved that it was within its purposes to reimburse the Hospital for capital improvements to the Hospital and to service the Hospital's existing debt. The amount donated was $500,000 in accordance with the DIP Agreement; $280,000 from the PBI Foundation and $220,000 from the General Foundation. We have been advised that after these transfers the PBI Foundation has $15,997 and the General Foundation has $392,741 remaining. Of the $392,741 remaining in the General Foundation, $338,000 is budgeted to be donated to the Hospital in February, 2007 to allow the Hospital to continue to operate until the February 28, 2007 closing. This will leave approximately $54,000 in the General Foundation, a portion of which is being set aside to honor a restricted gift made to the General prior to its closing.[6] Thus, each of the foundations will be left with a relatively small amount of funds with the distinct possibility that these funds will be needed by the Hospital so that it can continue to operate until the February 28th closing. Since neither of these foundations has as its sole purpose to benefit PBI or the General, but rather may benefit the health care of the community,

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[6] This donation from the Karen Binaso Fund to the General has been held in a certificate o deposit at First Union Bank with a market value as of 5/1/2006 of $18,171.00. It is our understanding that this money was to be held until an appropriate project was selected by the donors.

the disposition of any remaining funds is at the discretion of the Trustees acting in accordance with the purposes and mission of the respective foundation. Thus, we find no reason for either foundation to seek review from this Office or court approval of its actions at this time. The ultimate dissolution of PBI will require a change in the sole member/parent corporation or dissolution of each of the foundations.[7]

V. Findings and Requirements Of the Commissioner of Health and Senior Services.

In a letter dated February 2, 2007, the Commissioner wrote, beginning on page 5, as follows:

"I am approving the SMH application to transfer ownership [of PBI], close and relocate [SMH] subject to the following conditions:

1. The applicant shall commit to continue the existing transportation plan instituted by PBI and shall perform an assessment to determine if additional transportation is needed. A more comprehensive transportation system plan would be based on these assessment results. This plan shall be submitted to the Department within 18 months of the date of certificate of need approval. This plan shall remain in effect for five years after licensure. Any changes in this plan require Department approval and shall require 120-day prior notice. A self-evaluation of the implementation of the plan shall also be done on a yearly basis for five years after licensure to measure effectiveness of this initiative and submitted to the Department.

2. SMH shall surrender its license for the existing location to the Department's Certificate of Need of Healthcare Facility Licensure Program within 10 days of operations at the hospital's new location.

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[7] After dissolution of PBI, Trustees of any independently held charitable trusts for the sole benefit of the General or PBI will have to apply to the Chancery Court, with notice to our office, in a separate cy pres proceeding to amend their charitable purposes.

3. Sixty days prior to the anticipated date of the relocation of services to the PBI site, SMH shall submit to the Department for review and approval, a communication plan for informing all residents of Passaic and surrounding communities, as well as local governments and emergency services providers, of the dates of the cessation of inpatient services at the current site and the implementation of services at the new site. The plan shall include a mechanism for responding to questions from the public regarding project implementation and transportation/access concerns. This communication plan requirement shall also pertain prior to the relocation of psychiatric and same day surgery services.

4. An outreach effort shall be placed into effect to ensure that all residents of the hospital service area, especially the medically indigent, have access to the available services at the new location. A self-evaluation of this effort shall be conducted on a yearly basis for five years after licensure to measure its effectiveness and submitted to the Department for review and comment.

5. The hospital shall continue compliance with N.J.A.C. 8:43G-5.21(a), which requires all hospitals provide on regular and continuing basis, out-patient and preventive services, including clinical services for medically indigent patients, for those services provided on an in-patient basis.

6. The applicant shall periodically reassess its bed inventory by category to ensure that an adequate number of beds for each would be available. In the first year after approval, this reassessment shall be done on a quarterly basis and the results reported to the Department within ten business days of completion. This report shall include admissions, patient days, and percent of occupancy, average daily census and average length of stay. In the second year after approval, this reassessment shall be completed on a biannual basis and the results reported to the Department within ten business days of completion. If any reassessment indicates the need for additional beds, SMH shall file the appropriate licensing application to increase beds.

7. SMH shall work with other area health care providers to develop a plan to assure that all women reproductive

health services previously provided at PBI prior to January of 2005 will remain in the City of Passaic. This plan shall be provided to the Department within ten business days of this approval. SMH shall continue to provide existing women's reproductive health services through out-patient and in-patient services including maintaining and building referral networks with other area health care providers and clinics so as to provide options for the full range of reproductive health services.

8. Within one year of the approval, the applicant shall relinquish ownership and control of its off-site general medicine, HIV Early Intervention Program, prenatal and pediatric clinics to a non-profit provider that will provide the full range of services offered at similar clinics, including all women's reproductive services. This non-profit provider shall be independent from SMH, and shall provide services and make referrals consistent with the healthcare professional/patient relationship. In relinquishing ownership and control, the applicant must negotiate in good faith and in a manner which is reasonably calculated to identify a qualified non-profit provider. The applicant shall continue to meet all conditions for access and service during its ownership and control of the referenced clinics. SMH shall report quarterly to the Department on its progress. The Department, at the request of the applicant and with documentation of substantial progress, may extend this condition by no more than six months.

9. Within three months of approval of this application, the applicant shall develop and participate in a Community Advisory Group (CAG) to provide ongoing community input to the CEO and SMH's Board of Trustees on ways that Saint Mary's can meet the primary, preventive, reproductive health service needs and emergency health needs of all residents in its service area.

   a. Subject to the provisions below SMH shall determine the membership, structure, governance, rules, goals, time frames, and the role of the CAG in accordance with the primary objectives set forth above, and shall provide a written report setting forth same to the SMH Board of Trustees, with a copy to the Department, within 60 days from the date of formation of the CAG.

b. SMH shall minimally seek participation from the City of Passaic and each town in the service area of SMH and PBI sending more than 50% of its residents who were hospitalized in CY 2005 to either SMH or PBI by offering a seat on the CAG to each town's mayor or his/her designee. Membership on the CAG shall include patient advocates, including patient advocates whose mission is to ensure that New Jersey residents are provided fully-integrated and comprehensive reproductive services, local health officials, clinical practitioner's, including but not limited to, obstetricians, internists and other health care providers such as hospitals and clinics.

c. SMH's shall designate co-chairs of the CAG, one of whom shall be a member of SMH's Board of Trustees and one of whom shall be a community member who is neither employed by SMH nor related to anyone employed by SMH.

d. The co-chairs of the CAG shall jointly submit to the SMH Board of Trustees, with a copy to the Department, a semi-annual report of the progress toward the goals of the CAG.

e. The co-chairs of the CAG shall jointly transmit to the SMH Board of Trustees, with a copy to the Department, the quarterly and any special reports relative to these conditions.

f. Although I believe the CAG can be beneficial to the communities and SMH indefinitely, SMH may petition the Department to disband the CAG not earlier than three years from the date of this letter and on showing that all conditions in this letter have been satisfied for at least one year.

10. SMH shall immediately appoint a representative of the new Jersey Health Care Facilities Financing Authority as a non-voting member of the Finance Committee of the SMH Board of Trustees.

11. Within 90 days of this approval SMH shall reimburse the Northern New Jersey Maternal/Child Health Consortium for membership dues currently in arrears and shall maintain membership in good standing thereafter.

VI. Conclusion.

In summary, it is clear to us that if PBI and St. Mary's do not obtain all of the necessary regulatory approvals for the Proposed Transaction, the Hospital will have to close, the Passaic community will lose the health care services provided by the Hospital and St. Mary's will forfeit the opportunity to move to a more modern facility and expand its services. It is apparent that it is this deal or no deal and when we compare the Proposed Transaction to the only other alternative, we are satisfied that under the circumstances taken as a whole, the Proposed Transaction is in the public interest.

Thus, when the proposed acquisition is viewed in its entirety, this Office finds that, under all the circumstances, it appears to be in the public interest and accordingly it receives our support, without further modification; provided that, the conditions set forth in Section V above by the Commissioner shall be incorporated into the Superior Court's Order approving the transaction.

Respectfully submitted

STUART RABNER,
ATTORNEY GENERAL OF NEW JERSEY

By: [signature]
Robert A. Romano
Assistant Attorney General

Encl.

Exhibit A

State of New Jersey
DEPARTMENT OF HEALTH AND SENIOR SERVICES
PO BOX 360
TRENTON, N.J. 08625-0360

JON S. CORZINE
Governor

www.nj.gov/health

FRED M. JACOBS, M.D., J.D.
Commissioner

February 2, 2007

VIA UNITED PARCEL SERVICE

Patricia Peterson
President & CEO
St. Mary's Hospital
211 Pennington Avenue
Passaic, NJ 07055

Re: St. Mary's Hospital
CN# FR 061201-16-01
Project Cost: $39,254,000
Expiration Date: February 2, 2012

Dear Ms. Peterson:

I am pleased to inform you that I am approving St. Mary's Hospital's (SMH) certificate of need (CN) application, submitted pursuant to N.J.A.C. 8:33-3.1, for the transfer of ownership of Passaic Beth Israel (PBI) Regional Medical Center (which is in bankruptcy and will soon be forced to cease operations) from Beth Israel Hospital Association of Passaic (BIHAP) to SMH and to close and relocate SMH. Both sites are located in Passaic County within 0.7 miles of each other. This application is being approved at the total project cost noted above.

This CN approval is limited to transfer of ownership of PBI from BIHAP to SMH, the closure of SMH and its relocation to the former licensed PBI location. SMH would become the owner of the PBI facility and move from its current site location of 211 Pennington Avenue into the former PBI facility located at 350 Boulevard in Passaic. SMH is currently licensed to operate 140 medical/surgical, 12 obstetric & OB/GYN, 10 ICU/CCU and 38 psychiatric beds (23 Adult Acute Open Psych beds and 15 Adult Acute Closed Psych beds). The revised bed capacity at SMH would mirror PBI's current number of licensed beds at 246 excluding their 38 psychiatric beds. The amended license for SMH would include 213 medical/surgical beds, 16 obstetric & OB/GYN beds, 10 pediatric beds, 25 ICU/CCU, 5 intermediate bassinets and 38 psychiatric beds. SMH would also expand their service complement to include additional operating rooms, cardiac surgery, acute hemodialysis, hyperbaric chambers, a linear accelerator, MRI and CT scan.

The standards for reviewing a CN application are set forth in statutory criteria contained in the Health Care Facilities Planning Act, as amended, at N.J.S.A. 26:2H et seq. and in administrative rules at N.J.A.C. 8:33 et seq. I must be satisfied that the project submitted by SMH is consistent with those requirements. Therefore, for the reasons that follow, I am approving the application submitted by SMH for the transfer of ownership of PBI from BIHAP to SMH, the closure of SMH site on Pennington Avenue and the relocation of SMH to the former PBI location at the Boulevard address. I note for the record that my decision to approve SMH application is consistent with the recommendation of the State Health Planning Board (SHPB), which recommended approval of the project at its February 1, 2007 meeting. In response to the exigent circumstances related to the CN application, I reviewed the applications, the transcript of the public hearing, written comments, and received a briefing from department staff concerning the SHPB meeting, presentations, comments and findings.

I also note that a public hearing was conducted on this application to allow as much public comment as possible. This public hearing took place in Passaic on January 10, 2007 during the evening hours in order to maximize public participation in the review process. Twelve people spoke during the hearing. Among those members of the public who spoke, four favored the approval of this application with no conditions; six people approved the application with strict conditions related to women's reproductive health issues and end of life issues. Two people urged the denial of this application.

N.J.S.A. 26:2H-8, as well as N.J.A.C. 8:33-4.9(a), provides for the issuance of a certificate of need only where the action proposed in the application for such certificate is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, will not have an adverse economic or financial impact on the delivery of health services in the region or statewide, and will contribute to the orderly development of adequate and effective health care services. In making such determinations, I must take into consideration a) the availability of facilities or services which may serve as alternatives or substitutes, b) the need for special equipment and services in the area, c) the possible economies and improvement in services to be anticipated from the operation of joint central services, d) the adequacy of financial resources and sources of present and future revenues, e) the availability of sufficient manpower in the several professional disciplines, and f) such other factors as may be established by regulation. A review of the aforementioned statutory criteria must be undertaken to demonstrate a need for the transfer of ownership of PBI, closure and relocation SMH as requested in their application. As previously mentioned, I have also taken into consideration the recommendations made by the SHPB to approve this application.

As to the specifics of this application, N.J.S.A. 26:2H-8(a) requires that I consider the availability of facilities or services, which may serve as alternatives or substitutes. I believe the applicant carefully and thoroughly examined its available options before deciding to close its existing licensed site and relocate to the physical plant site formerly occupied by PBI. The applicant concluded that it was logical, particularly considering PBI's bankruptcy and imminent closure, to close the SMH facility on Pennington and relocate to the larger facility on the Boulevard where the hospital could accommodate more volume, services and increase its level of technology. SMH asserted that upon licensure at its relocated site, it would have adequate bed capacity to serve both service areas covered by SMH and PBI thereby preserving the current level of health care services for the Passaic area. I do not foresee this relocation as having any likely adverse impact on the market share of the other Passaic area hospitals nor causing them significant harm. Thus, I am satisfied that this criterion is met.

I also find that the requirement at N.J.S.A. 26:2H-8(b) to consider the need for special services or equipment within the area would be met. SMH is relocating its services that are similar to those already being provided at the existing PBI site, which has a physical plant more equipped to support these services. This integration should not require any additional need for special equipment. With respect to N.J.S.A. 26:2H-8(c), regarding the possible economies and improvement in services to be anticipated from the operation of joint services, the transfer of ownership of PBI to SMH and the closure and relocation of SMH would create one hospital in the City of Passaic allowing SMH to reposition itself in the marketplace to become more financially viable.

N.J.S.A. 26:2H-8(d) requires consideration of the adequacy of financial resources and sources of present and future revenues. Financial analysis of the SMH application undertaken by Department of Health and Senior Services' (Department) staff reveals that SMH has adequate financial resources to undertake and sustain the proposed project. With respect to N.J.S.A. 26:2H-8(e), which requires consideration of the availability of sufficient manpower in the several professional disciplines, I am satisfied that there will be sufficient qualified personnel to staff the relocated hospital, since there will be adequate staff available from the two hospitals involved proposed project.

N.J.S.A. 26:2H-8(f) requires consideration of such other factors as may be established by regulation; therefore, I have taken into consideration the applicable regulations for the services subject to full review (i.e., N.J.A.C. 8:33-1.1 et seq.). SMH is in compliance with the access requirements set forth in N.J.A.C. 8:33-1.1 et seq. Specifically, SMH states it provides care to all patients regardless of their ability to pay, and is committed to removing artificial barriers to care ensuring diversified services are available and accessible for all New Jerseyans. N.J.A.C. 8:33-4.10(a) requires accessibility of services to low income persons, racial and ethnic minorities, women, disabled persons, the elderly, and persons with HIV infection and other persons who are unable to obtain care. Specifically, SMH accepts all patients regardless of their ability to pay, provides a longstanding commitment to providing services to medically underserved populations in their service area and complies with all State and Federal laws that preclude any health care provider from discriminating against low income persons, minorities and disabled individuals. I note that there are certain reproductive health services that SMH, as a Catholic facility, has not provided. However, I believe that the conditions on approval recommended by the SHPB on February 1, 2007, and publicly accepted at that meeting by representatives of SMH, appropriately and effectively alleviate this concern.

In addition, N.J.A.C. 8:33-4.9(a) requires a demonstration that the relocation shall not have an adverse impact on the population being served in regards to access and quality of care. Specifically, the relocation of SMH from its existing site to a new location that is only 0.7 miles away within the same city, will not adversely affect the ability of patients historically served by both SMH and PBI. SMH would continue to offer its existing outpatient services as well as those offered at PBI.

Finally, I find that SMH has provided an appropriate project description, which includes information as to the total project cost, operating costs and revenues, services affected, equipment involved, source of funds, utilization statistics, and justification for the proposed project (8:33-4.10(b)); assurance that all residents of the area, particularly the medically underserved, will have access to services (8:33-4.10(a)); and documentation that it will meet appropriate licensing and construction standards (8:33-4.10(d) and N.J.A.C. 8:43G- 1.1 et seq.). Furthermore, SMH has demonstrated a track record of substantial compliance with the Department's licensing standards (8:33-4.10(d)).

Based on the foregoing, I am approving the application for transfer of ownership of PBI to SMH as described above and the closure of SMH and its relocation to the current PBI site. The replacement facility, by providing a larger and more appropriate physical plant, would allow SMH to better prepare to address demographic changes and growth in their service area. I believe that the changes planned for SMH are crucial for developing enhanced medical technology and clinical services necessary to remain competitive with other area health care providers. This approval also consolidates hospital resources and enhances the level of services available to their service area. I believe that the approach proposed by SMH is one that will help to ensure quality and comprehensive care into the future.

My decision to allow the relocation of SMH is based on the fact that the proposed new location is only 0.7 miles of the existing hospital and the relocation would be beneficial to all of its patients. I believe that this approval will not cause significant harm to any hospital in Passaic County or the surrounding areas. I also believe this relocation would afford SMH with the ability to expand services in both complexity and number to prepare for serving the health care needs of a changing and growing population.

Finally, I acknowledge SMH's long-standing commitment to the residents of Passaic, and concur with them that this approval will better enable the SMH to maintain and enhance this commitment into the foreseeable future. Based on the foregoing, and noting the approval of the SHPB, I am approving the SMH application to transfer ownership, close and relocate subject to the following conditions:

1. The applicant shall commit to continue the existing transportation plan instituted by PBI and shall perform an assessment to determine if additional transportation is needed. A more comprehensive transportation system plan would be based on these assessment results. This plan shall be submitted to the Department within 18 months of the date of certificate of need approval. This plan shall remain in effect for five years after licensure. Any changes in this plan require Department approval and shall require 120-day prior notice. A self-evaluation of the implementation of the plan shall also be done on a yearly basis for five years

after licensure to measure effectiveness of this initiative and submitted to the Department.

2. SMH shall surrender its license for the existing location to the Department's Certificate of Need of Healthcare Facility Licensure Program within 10 days of operations at the hospital's new location.

3. Sixty days prior to the date of the relocation of services to the PBI site, SMH shall submit to the Department for review and approval, a communication plan for informing all residents of Passaic and surrounding communities, as well as local governments and emergency services providers, of the dates of the cessation of inpatient services at the current site and the implementation of services at the new site. The plan shall include a mechanism for responding to questions from the public regarding project implementation and transportation/access concerns. This communication plan requirement shall also pertain prior to the relocation of psychiatric and same day surgery services.

4. An outreach effort shall be placed into effect to ensure that all residents of the hospital service area, especially the medically indigent, have access to the available services at the new location. A self-evaluation of this effort shall be conducted on a yearly basis for five years after licensure to measure its effectiveness and submitted to the Department for review and comment.

5. The hospital shall continue compliance with N.J.A.C. 8:43G-5.21(a), which requires all hospitals provide on regular and continuing basis, out-patient and preventive services, including clinical services for medically indigent patients, for those services provided on an in-patient basis.

6. The applicant shall periodically reassess its bed inventory by category to ensure that an adequate number of beds for each would be available. In the first year after approval, this reassessment shall be done on a quarterly basis and the results reported to the Department within ten business days of completion. This report shall include admissions, patient days, and percent of occupancy, average daily census and average length of stay. In the second year after approval, this reassessment shall be completed on a biannual basis and the results reported to the Department within ten business days of completion. If any reassessment indicates the need for additional beds, SMH shall file the appropriate licensing application to increase beds.

7. SMH shall work with other area health care providers to develop a plan to assure that all women reproductive health services previously provided at PBI prior to January of 2005 will remain in the City of Passaic. This plan shall be provided to the Department within ten business days of this approval. SMH shall continue to provide existing women's reproductive health services through out-patient and in-patient services, including maintaining and building referral networks with other area health care providers and clinics so as to provide options for the full range of reproductive health services.

8. Within one year of the approval, the applicant shall relinquish ownership and control of its off-site general medicine, HIV Early Intervention Program, prenatal and pediatric clinics to a non-profit provider that will provide the full range of services offered at similar clinics, including all women's reproductive services. This non-profit provider shall be independent from SMH, and shall provide services and make referrals consistent with the health care professional/patient relationship. In relinquishing ownership and control, the applicant must negotiate in good faith and a manner, which is reasonably calculated to identify a qualified non-profit provider. The applicant shall continue to meet all conditions for access and service during its ownership and control of the referenced clinics. SMH shall report quarterly to the Department on its progress. The Department, at the request of the applicant and with documentation of substantial progress, may extend this condition by no more than six months.

9. Within three months of approval of this application, the applicant shall develop and participate in a Community Advisory Group (CAG) to provide ongoing community input to the CEO and SMH's Board of Trustees on ways that Saint Mary's can meet the primary, preventive, reproductive health service needs and emergency health needs of all residents in its service area.

   a. Subject to the provisions below SMH shall determine the membership, structure, governance, rules, goals, timeframes, and the role of the CAG in accordance with the primary objectives set forth above, and shall provide a written report setting forth same to the SMH Board of Trustees, with a copy to the Department, within 60 days from the date of formation of the CAG.

   b. SMH shall minimally seek participation from the City of Passaic and each town in the service area of SMH and PBI sending more than 50% of its residents who were hospitalized in CY 2005 to either SMH or PBI by offering a seat on the CAG to each town's mayor or his/her designee. Membership on the CAG shall include patient advocates, including patient advocates whose mission is to ensure that New Jersey residents are provided fully-integrated and comprehensive reproductive services, local health officials, clinical practitioner's, including but not limited to, obstetricians, internists and other health care providers such as hospitals and clinics.

   c. SMH's shall designate co-chairs of the CAG, one of whom shall be a member of SMH's Board of Trustees and one of whom shall be a community member who is neither employed by SMH nor related to anyone employed by SMH.

   d. The co-chairs of the CAG shall jointly submit to the SMH Board of Trustees, with a copy to the Department, a semi-annual report of the progress toward the goals of the CAG.

   e. The co-chairs of the CAG shall jointly transmit to the SMH Board of

Trustees, with a copy to the Department, the quarterly and any special reports relative to these conditions.

f. Although I believe the CAG can be beneficial to the communities and SMH indefinitely, SMH may petition the Department to disband the CAG not earlier than three years from the date of this letter and on showing that all conditions in this letter have been satisfied for at least one year.

10. SMH shall immediately appoint a representative of the New Jersey Health Care Facilities Financing Authority as a non-voting member of the Finance Committee of the SMH Board of Trustees.

11. Within 90 days of this approval SMH shall reimburse the Northern New Jersey Maternal/Child Health Consortium for membership dues currently in arrears and shall maintain membership in good standing thereafter.

Please be advised that this approval is limited to the proposal as presented and reviewed. An additional review by the Department may be necessary if there is any additional change in scope, as defined at N.J.A.C. 8:33-3.9. However, effective August 5, 2002, a change in cost of an approved certificate of need is exempt from certificate of need review subject to the following:

1. The applicant shall file a signed certification as to the final total project cost expended for the project at the time of the application for the replacement facility with the Certificate of Need and Healthcare Facility Licensure.

2. Where the actual total project cost exceeds the certificate of need approved total project cost and is greater that $1,000,000, the applicant shall remit the additional certificate of need application fee due to the Certificate of Need and Healthcare Facility Licensure. The required additional fee shall be 0.25 percent of the total project cost in excess of the certificate of need approved total project cost.

3. The Department will not issue a licensure for beds/services until the additional fee is remitted in full.

This approval is not intended to preempt in any way any municipality's authority to regulate land use within its borders and shall not be used by you to represent that the Department has made any findings or determination relative to the use of any specific property. Finally, please be advised that services may not commence in the replacement facility until such time as a license has been issued by the Certificate of Need and Healthcare Facility Licensure Program. In addition, any alteration, renovation, or new construction of the physical plant requires the submission of plans to the Department of Community Affairs, Division of Codes and Standards, Health Care Plan Review for review and approval prior to the initiation of any work.

We look forward to working with you and helping you to provide a high quality of care to your patients. If you have any questions concerning this certificate of need, please do not hesitate to telephone Mr. John A. Calabria, Director, Certificate of Need and Health Care Facility Licensure Program, at (609) 292-8773.

Sincerely,

Fred M. Jacobs, M.D., J.D.
Commissioner

C: John A. Calabria, Director