STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: June 12, 2024]

PETER F. NERONHA, RHODE ISLAND ATTORNEY GENERAL, ***Petitioner,***	:	
v.	:	**C.A. No. PC-2023-05832**
PROSPECT MEDICAL HOLDINGS, INC., ***Respondent.***	:	

DECISION

STERN, J. Before the Court is Petitioner, Rhode Island Attorney General, Peter F. Neronha's (Petitioner or RIAG) Motion for a Preliminary Injunction to prevent Respondent, Prospect Medical Holdings, Inc. (Respondent or PMH) from continued violation of Petitioner's June 1, 2021 Decision regarding the sale of Ivy Holdings, Inc., Respondent's holding company that owns Prospect CharterCARE, LLC, which in turn owns and operates Roger Williams Medical Center (RWMC) and Our Lady of Fatima Hospital (OLF) (collectively, the Hospitals). Jurisdiction is pursuant to Super. R. Civ. P. 65(a), and G.L. 1956 §§ 8-2-13 and 23-17.14-28.

I

Facts and Travel

On November 8, 2023, Petitioner filed an action against Respondent that included a request to enjoin Respondent from failing to pay the Hospitals' supplies vendors, which caused its accounts payable[1] days outstanding to exceed ninety days for multiple quarters. *See* Pet. Petitioner

[1] According to Black's Law Dictionary, "accounts payable" means "an account reflecting a balance owed to a creditor." *Black's Law Dictionary* (11th ed. 2019).

requests that the Court order Respondent to pay accounts payable more than ninety days outstanding as of December 31, 2023 and continue quarterly compliance with its financial obligations to keep accounts payable under ninety days. (Pet'r's Suppl. Mem. in Supp. of his Mot. for Inj. (Pet'r's Suppl. Mem.) 10.)

Petitioner is tasked with preserving and protecting public and charitable assets by reviewing, monitoring, and enforcing hospital conversions pursuant to the Hospital Conversions Act (HCA). *See* G.L. 1956 chapter 17.14 of title 23. Petitioner is authorized to seek immediate relief in the Superior Court to enforce any conditions of approval of a hospital conversion pursuant to § 23-17.14-28.

Respondent is a healthcare services company incorporated in Delaware with its principal place of business in Los Angeles, California. (Pet'r's Ex. A., at 9.) Respondent owns and operates hospitals and health care entities, along with managing the provision of health care services for managed care enrollees through a network of specialists and primary care physicians. *Id.* One of the entities Respondent owns is PCC, a Rhode Island limited liability company that owns and operates the Hospitals. *Id.*

A

History of the Hospitals and Prior Conversions

OLF is a Rhode Island licensed 312-bed acute care hospital located in North Providence, Rhode Island that has served the surrounding community since 1954. (Resp't's Ex. 11 (Liebman Aff.) ¶ 4.) RWMC is a Rhode Island licensed 220-bed acute care hospital located in Providence, Rhode Island that has provided healthcare in Providence since 1922. *Id.* ¶ 3. The Hospitals treat a large number of individuals from low-income and underserved communities that rely significantly on Medicaid and may not have the same options for healthcare as those from more affluent

communities. (Hr'g Tr. 19:14-20; *see also* Pet'r's Ex. K, (Harvey Aff.) at Ex. 2.)

Petitioner and the Rhode Island Department of Health (RIDOH) are statutorily obligated to review every hospital conversion proposal and approve, deny, or approve with conditions each hospital conversion. Sections 23-17.14-3, 23-17.14-5, 23-17.14-5, 23-17.14-28(c). Prior to the Decision at issue in the present case, Petitioner approved two previous hospital conversions of the Hospitals. (Pet'r's Ex. A., at 16.) In 2009, Attorney General Patrick Lynch approved a conversion with conditions where the Hospitals affiliated through CharterCARE Health Partners (CCHP), a combined system created to stem losses suffered by both RWMC and OLF. *Id.*

While the first conversion allowed for more efficiency in operating the Hospitals, the system still struggled with "operating losses, aging plants, and capital needs." *Id.* CCHP began searching for a partner in 2011 and selected Respondent, proposing a joint venture with Respondent holding 85% ownership and CCHP owning the remaining 15%. *Id.* The joint venture also created a new governing structure, PCC, which was divided equally with half of the board appointed by Respondent's ownership interest and the other half appointed by CCHP's ownership interest. *Id.* The agreement required Respondent to directly fund a $50 million long-term capital commitment and PCC to provide an annual $10 million commitment. *Id.* at 16-17. Attorney General Peter F. Kilmartin approved the joint venture with conditions in 2014. *Id.*

After the 2014 conversion approval, RIAG continued to monitor Petitioner's activity using various consultants to ensure Respondent met its obligations. (Resp't's Ex. 1, at 3.) On December 23, 2020, a report by one such consultant, Affiliated Monitors Inc., stated:

> "In complying with the terms of the [2014] HCA Decision, as well as the related Asset Purchase Agreement, [Respondent] met its commitment to an important healthcare resource serving the Rhode Island community. They not only shored up aging buildings, they helped the hospitals sustain and grow their outreach services, attracted new physicians and established a business entity for the

physicians to negotiate with health insurance payors (including Medicare) thereby making the practices more accessible to local residents." (Resp't's Ex. 6 at 35.)

B

The 2021 Hospital Conversion

The most recent hospital conversion was initiated on December 13, 2019, when Respondent, along with Chamber Inc., Ivy Holdings Inc., Ivy Intermediate Holding Inc., Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE, LLC, Prospect CharterCARE SJHSRI, LLC, and Prospect CharterCARE RWMC, LLC (Transacting Parties) filed an initial application with Petitioner.[2] (Pet'r's Ex. A., at 8.) Ivy Holdings Inc. is the parent company of Respondent, and Respondent owns PCC, the entity that owns and operates the Hospitals. *Id.* at 8-9. The application proposed a buy-out of Ivy Holdings Inc. *Id.* At the time the application was filed, Samuel Lee (Lee), Respondent's Chief Executive Officer (CEO), and David Topper (Topper), Respondent's Senior Vice President, collectively owned approximately 40% of Ivy Holdings, Inc. *Id.* Under the proposal, Lee and Topper would purchase the remaining 60% of shares owned by Leonard Green & Partners (Leonard Green), a private equity investor, and other minority shareholders. *Id.* at 9. As a result, Lee and Topper would assume complete ownership of Ivy Holdings Inc. through a new entity called Chamber Inc. *Id.* at 8-9.

Over the course of a year and a half, Petitioner conducted a review of the application and an investigation of Respondent's owners at the time, including thousands of pages of documents,

[2] The application was resubmitted on February 4, 2020, and Petitioner informed the Transacting Parties of deficiencies in the application on March 4, 2020, requesting additional information. (Pet'r's Ex. A., at 20.) On March 25, 2020, Petitioner received a letter addressing the deficiencies, and Petitioner and RIDOH subsequently began the review process. *Id.*

hundreds of written questions, and multiple witness testimonies. *See* Pet. 4-5 ¶ 14; *see also* Pet'r's Ex. A. On June 1, 2021, Petitioner released his decision (Decision), approving the hospital conversion proposal subject to a set of conditions (Conditions).[3] *See* Pet'r's Ex. A. In the Decision, Petitioner stated that he found it appropriate to impose the Conditions because financial experts for Petitioner and RIDOH determined that Respondent's financial status and "'patterns in operational performance and recapitalization'" show its "'somewhat limited ability, in the form of current liquidity especially after recoupment of MAAP[4] funds, to weather additional or continued financial challenges.'" *Id.* at 6 (quoting Pet'r's Ex. A, App. D (PYA Expert Report) 16).

Petitioner also cited the "concerning" decisions by relevant boards and directors of the Transacting Parties, namely Respondent's boards, as a reason for imposing the Conditions. *Id.* at 6. Petitioner noted the boards also "employed no objective criteria, no outside or independent consultants, and no discernible analyses in the process of deciding upon the transaction [Petitioner] review[s]." *Id.* In one example, Petitioner averred that Respondent's Board of Directors assumed $1.12 billion in debt obligations in the Fiscal Year 2018, and subsequently authorized $457 million of the borrowed funds to be distributed as dividends. *Id.* at 4-5. The primary beneficiaries of the dividends were Leonard Green, Topper, and Lee. *Id.* at 5. Petitioner's expert James P. Carris, CPA, reported that "'the 2018 [dividend] transaction substantially weakened the balance sheet of

---

[3] On the same day, RIDOH released its own decision approving the application subject to an additional set of conditions. (Pet. at 5 ¶ 14.)

> [4] "[Respondent] received approximately $276 million in federal funds under the CARES Act as advances on Medicare reimbursement, which will be recouped by the federal government from Medicare reimbursements due to the hospitals under . . . CMS's Accelerated and Advance Payment Program or Medicare Advance Payment Program (the 'MAAP Program') . . . $27.5 million of these 'MAAP' funds are due to be recouped from the Rhode Island Hospitals." (Pet'r's Ex. A., at 5-6.)

[Respondent], benefitting the shareholders while providing minimal or no funds to any of the local operating entities.'" *Id.* (quoting Pet'r's Ex. A, App. C (Carris Report) 2-3).

Petitioner stated that, based on his findings from documents, expert analysis, and financial reports, as well as testimony from "people 'on the ground' at these hospitals," the

> "Transacting Parties[']financial decisions and choices remain a decisive factor, revealing as they do a focus on wealth that puts at risk the well-being of institutions and people who communities in five states rely upon for care, often (as is the case with healthcare) at the time of greatest need." *Id.* at 7.

Most notably, the Transacting Parties provided Respondent's audited financial statements from fiscal years ending September 30, 2015 through fiscal years ending in September 30, 2020, which revealed a trend of Respondent's growing liabilities. *Id.* at 4. In 2017, Respondent's assets exceeded its liabilities by approximately $67 million. *Id.* (citing PYA Expert Report at 12). However, by 2020, Respondent's liabilities exceeded its assets by over $1 billion, with total assets of $2,042,389,000 and total liabilities of $3,102,004,000. *Id.*

Ultimately, Petitioner concluded that the Transacting Parties' application would be approved subject to "conditions imposed to assure financially secure, continually operating, and better governed healthcare institutions here in Rhode Island, subject to effective monitoring to the full extent of the Attorney General's statutory authority." *Id.* at 7. The Conditions included requirements that Respondent and Leonard Green:

> "(1) immediately set aside $80 million in either escrow or letter of credit for the sole benefit of the Rhode Island Hospitals, payable at closing, which funds can only be accessed if PMH fails to comply with Conditions requiring payment of operating losses and capital expenditures, or in the event of insolvency; (2) pay all operating losses over the next five (5) years; (3) invest $72 million in capital expenditures through the end of fiscal year 2026 based on the schedule set forth in the Conditions below (at a minimum of $10 million each year); (4) forego any management fees; (5) amend the TRS Note to extend its maturity date and remove the sale/leaseback

> option for the Rhode Island Hospitals during such an extension, and thereafter only with the approval of the Attorney General; (6) assume payment of the MAAP and PACE liabilities of the Rhode Island Hospitals; (7) maintain essential health services throughout the PCC System; (8) take actions to reform Board practices and constitute the local Board with community members; and (9) provide monitoring and reporting to the Attorney General to ensure oversight and compliance with all Conditions." *Id.* at 7-8.

The Conditions include a "Monitoring Period," requiring Respondent to act in accordance with the Conditions through September 30, 2026 and allowing Petitioner to monitor Respondent during that time period to ensure compliance. *Id.* at 72.

C

Events Following the 2021 Conversion

Following the Decision, Respondent and Leonard Green complied with certain conditions in the Decision and received distributions totaling $35,208,887 in escrow funds (including accrued interest) from Petitioner as a result.[5] (Resp't's Ex. 1, at 5-6.) However, by the end of 2022, Respondent's unpaid bills to vendors began to pile up. According to days payable outstanding (DPO) calculations, Respondent's DPO was 99.47 at the end of the quarter on December 30, 2022.[6] (Harvey Aff., Ex. 8.) This failure to pay vendors violated Condition 7.2 of the Decision, which states: "PCC shall ensure its vendors are paid on a timely basis. In the event accounts payable days outstanding is greater than 90 days, PMH shall provide funding to PCC so that accounts payable

[5] Specifically, Petitioner has returned the entirety of the MAAP Escrow, which required $27,000,000 from Respondent that would be restored upon satisfaction of its MAAP obligations. (Resp't's Ex. 12 (Sabillo Aff.) ¶ 9; Pet'r's Ex. A, at 76.) Petitioner has also returned $8,000,000 from the CAPEX Escrow, which required $14,200,000 from Respondent to be reduced according to compliance with certain conditions set forth in Section 6.4 of the Decision. (Resp't's Ex. 1, at 5; Pet'r's Ex. A, at 76.)

[6] "DPO" is a term used in accounting and finance to represent the average number of days it takes to pay vendors and suppliers from invoice receipt to payment issued. (Sabillo Aff. ¶ 15.) DPO is calculated through dividing accounts payable by the cash operating expenses divided by the number of days in the period. *Id.* ¶ 16.

are less than 90 days at the next quarterly measurement."[7] (Pet'r's Ex. A, at 79.)

By March 30, 2023, the end of the following quarter, Respondent's DPO was still in violation of Condition 7.2 at 102.96. (Harvey Aff. Ex. 9.) Respondent managed to bring the DPO into compliance at 89.06 on the following quarter, June 29, 2023. *Id.* at Ex. 10. Supplier Balance Aging Reports (Supplier Reports) from June 29, 2023 show that RWMC owed vendors approximately $1,990,773 three months overdue and $2,361,451 *more than* three months overdue. (Pet'r's Ex. B) (emphasis added). On June 29, 2023, OLF owed vendors approximately $1,627,422 three months overdue and $2,786,156 *more than* three months overdue. (Pet'r's Ex. C) (emphasis added).

On August 1, 2023, Respondent's computer network, along with the networks of its subsidiaries, suffered a cyber-attack that purportedly rendered it unable to bill payors for eight weeks during August and September 2023. *See* Resp't's Ex. 9 (Kroll Report); *see also* Resp't's Ex. 13 (Pillari Aff.) ¶ 5. Respondent engaged numerous consultants, including Kroll, to remedy the attack, but it could not bill for over $450 million of its revenues during that period. (Pillari Aff. ¶¶ 5-6.) Respondent submitted a business interruption insurance claim for $48,647,630 and states that it expects its insurer will pay the claim in April or May 2024.[8] *Id.* ¶¶ 7-8; *see also* Resp't's

---

[7] While both parties refer to a violation of Condition 7.2 as two consecutive quarters with accounts payable exceeding ninety days, the Court notes that the language of Condition 7.2 states "PCC *shall* ensure its vendors are paid on a timely basis." (Pet'r's Ex. A, at 79) (emphasis added). The use of "shall" indicates that any failure to pay vendors on a timely basis could be considered a violation of Condition 7.2, whether it occurs over two consecutive quarters or not. *See In re Estate of Chelo*, 209 A.3d 1181, 1184 (R.I. 2019) (quoting *Castelli v. Carcieri*, 961 A.2d 277, 284 (R.I. 2008)) ("'[T]he use of the word shall contemplates something mandatory or the imposition of a duty.'").

[8] During depositions, George Pillari, Respondent's Senior Vice President, Chief Performance Officer, clarified that at the time he completed the affidavit, April or May was "the best estimate [Respondent] had" from its consultants and, as of the deposition on March 19, 2024, the insurer had not responded other than to acknowledge receipt of the claims. (Pet'r's Ex. P (Pillari Dep.)

Ex. 10. As of March 19, 2024, Respondent has collected approximately $400 million out of the estimated $450 million that it could not bill during the cyber-attack. (Pet'r's Ex. P (Pillari Dep.) 15:11-16.)

Respondent's debts to vendors continued to grow in 2023. Respondent's DPO as of September 30, 2023 was 118.34, placing it back in violation of Condition 7.2. (Harvey Aff. Ex. 11.) Supplier Reports from September 29, 2023 indicate that RWMC owed vendors approximately $2,378,621 three months overdue and $7,236,583 exceeding three months overdue. (Pet'r's Ex. D.) On September 29, 2023, OLF owed vendors $2,361,393 three months overdue and $6,997,877 exceeding three months overdue. (Pet'r's Ex. E.)

In October 2023, RIDOH visited the Hospitals as agents of CMS to review the Hospitals' compliance with the conditions of participation. (Hr'g Tr. 33:8-14.) Approximately 70% of the Hospitals' funding is provided by the Center for Medicare and Medicaid Services (CMS), which requires each hospital to remain in compliance with CMS's conditions of participation. *Id.* at 33:8-25, 34:1-10. The CMS survey was conducted in response to complaints received regarding nineteen cancelled elective surgeries.[9] *Id.* at 34:11-17, 37:11-18; *see also* Pet'r's Ex. U. These included cancelled surgeries at both hospitals for procedures like spinal, knee and eye surgeries, as well as endoscopies and ENT (ear, nose, and throat) operations intended to correct sleep apnea. *See* Pet'r's Ex. U.

In its findings, CMS attributed the cancelled surgeries to a lack of supplies caused by credit holds from vendors. *Id.* The survey first reviewed cancelled surgeries at RWMC, stating that the

---

20:8-11, 16:3-8.) At the hearing, Pillari further testified that he had not read the insurance carrier's response to the insurance claim prior to the deposition or the hearing. (Hr'g Tr. 399:5-10.)

[9] Eighteen of the surgeries have been rescheduled. One surgery was not rescheduled because the patient did not attend their pre-operative visit. (Resp't's Ex. 11 (Liebman Aff.) ¶ 20.)

Hospitals' CEO was unable to manage the hospital finances, "as evidenced by the number of vendors placed on credit hold due to lack of payment resulting in the failure to obtain necessary supplies/equipment necessary resulting in 6 surgical procedures being cancelled in October 2023." *Id.* at 12. The survey review of OLF stated that "the hospital's parent company failed to provided funding necessary for the Chief Executive Officer[,] who is responsible for managing the hospital, to make sufficient payments to its vendors resulting in several unpaid vendor accounts. This failure to pay these vendor accounts resulted in the cancellation of several scheduled surgeries." *Id.* at 22-23.

As corrective action, the Hospitals developed the "AP Task Force Group" ("AP Task Force"), which is charged with the comprehensive review of supplies in relation to payables and ensuring the "Supplies Status List" is constantly monitored to identify any possible interruption of services due to lack of supplies or funds. *Id.* at 3-4, 13-14. The AP Task Force consists of leading figures at PCC and the Hospitals, including the CEO, Chief Operating Officer (COO), Chief Nursing Officer, Chief Financial Officer (CFO), Vice President of Quality, AP Director, Executive Director of Surgery, Director of Pharmacy, Lab Director, and Director of Supply Chain. *Id.* at 4, 14. The AP Task Force is required to meet at least three times per week with mandatory attendance, although meetings are reported to occur daily. *Id.* at 3, 14; *see also* Hr'g Tr. 58:13-21; Resp't's Ex. 11 (Liebman Aff.) ¶ 19.

Still struggling to pay down its accumulating accounts payable outstanding, Respondent sent a letter to Petitioner through counsel on November 3, 2023 requesting a waiver of Condition 7.2. *See* Pet'r's Ex. H. Specifically, Respondent sought an extension and waiver of compliance with Condition 7.2 up to and including March 31, 2024. *Id.* Respondent stated that the cyber-attack affected its ability to pay vendors, but assured Petitioner that it would be able to address accounts

payable outstanding in the next three to four months and that its insurance claim regarding lost revenue during the cyber-attack was "near completion." *Id.* Rather than agreeing to Respondent's proposal, Petitioner chose to file an action in the Court.

D

Current Litigation and Events

On November 8, 2023, Petitioner filed to enforce the Decision pursuant to the HCA. *See* Petition. The Petition alleged that Respondent violated multiple Conditions under the Decision, namely Conditions 5.2, 7.1, 7.2, 10, 13, 14, 15, 16.2, 21, 23, and 33. (Petition ¶ 55.) Petitioner requested that the Court enter an injunctive order requiring Respondent to comply with all the Conditions; order Respondent to comply with all operating covenants under the Decision; and order Respondent to pay a penalty of up to two million dollars per violation of the HCA pursuant to § 23-17.14.30. *Id.* at 14-15 ¶¶ 1-4. Petitioner contemporaneously filed a Motion for a Temporary Restraining Order (TRO) and Preliminary Injunction. *See* Pet'r's Mot. for Temporary Restraining Order and Preliminary Injunction. On February 2, 2024, Petitioner submitted a supplemental memorandum withdrawing the request for a TRO and instead focusing the motion on injunctive relief for Respondent's alleged violations of Condition 7.2. *See* Pet'r's Suppl. Mem.

Since the beginning of the current action, further incidences of noncompliance with both the Conditions of the Decision and requirements from other agencies have been recorded at the Hospitals. On November 17, 2023, the Occupational Safety and Health Administration (OSHA) sent a letter to OLF reporting that it had received notice of alleged hazards at OLF, including mold; bedbug infestations; cockroaches unaddressed by a pest control service; mice in various areas; a lack of functioning buttons to monitor radiation exposure; and leaking ceilings and pipes causing slip and fall hazards. (Pet'r's Ex. U, at 27.) OSHA declined to investigate and instead required

OLF to investigate and report their findings before November 27, 2023.[10] *Id.* at 28.

Despite ongoing litigation regarding its failure to comply with Conditions, Respondent still failed to fund the payment of sums owed to vendors for another consecutive quarter. Respondent's DPO was higher than ever on December 30, 2023 at 127.51. (Harvey Aff. Ex. 12.) On December 30, 2023, "Supplier Reports" show RWMC owed vendors approximately $2,205,202 three months overdue and $8,339,791 more than three months overdue. (Pet'r's Ex. F.) On December 30, 2023, OLF owed vendors approximately $2,491,035 three months overdue and $8,439,663 more than three months overdue. (Pet'r's Ex. G.)

The Joint Commission (JC) completed accreditation reports for OLF on February 8, 2024 and RWMC on March 14, 2024. (Harvey Aff. Ex. K at Exs. 5, 6.) Each hospital received "Requirements for Improvement" following instances of noncompliance recorded at both facilities. *Id.* The JC's reports include rankings for the likelihood of an observed condition causing harm to a patient, visitor, or staff. *Id.* The report for RWMC featured two recorded conditions with a high likelihood to cause harm, while the report on OLF featured ten recorded conditions with a high likelihood to cause harm. *Id.*

Examples of incidents recorded by the JC at OLF included employees failing to follow proper risk assessments before and during operations; a lack of documentation of devices and inventory; expired filters on osmosis devices; water damage on walls and ceilings; a lack of competency assessments for nurses administering sedation and performing blood-glucose testing; improper sterilization techniques; unsecured supplies and medications that could be taken by unauthorized individuals; expired medications; improper sedation of patients; failure to record

[10] While these issues have been addressed by OSHA, there is no evidence before the Court that these alleged hazards have been remedied.

vital signs during blood transfusions; and a lack of proper inspection for AED devices. *Id.* at Ex. 5.

Examples of incidents recorded by the JC at RWMC included brown water flowing from an eye wash device; empty oxygen cylinders mixed in with full oxygen cylinders; failure to inspect and evaluate devices; black substances observed on walls; improper sterilization; failure to wear personal protective equipment for hazardous medications like chemotherapy; lack of education or evaluation regarding procedures for anesthesia staff; failure to record vital signs following blood transfusions; discharge instructions issued to patients in the wrong language; a lack of process for ensuring suppliers of implantation tissues are registered with the FDA; and failure to create and implement infection prevention and control. *Id.* at Ex. 6.

Following the JC reports, OLF was required to submit evidence of standards compliance within sixty calendar days from the final posted report date, and an unannounced Medicare Deficiency Survey would be conducted within 45 calendar days from the last day of the JC survey. *Id.* at 278. RWMC received the same requirements as a follow-up activity to resolve noncompliance for its hospital program. *Id.* at 316. RWMC was also required to submit evidence of standards compliance for its home care program within sixty calendar days from the final posted report date. *Id.*

On March 29, 2024, as the hearing for this motion was ongoing, RIDOH conducted a complaint investigation survey of RWMC and determined that the condition of the hospital posed an "Immediate Jeopardy" to the health and safety of patients based on the report. (Pet'r's Ex. CC, at 1-2.) RIDOH later verified that the condition that created the "Immediate Jeopardy"—water leaking through the ceiling and into a light fixture with live electrical wires—was removed, but substantial noncompliance with CMS conditions remained. *Id.* Examples of noncompliance

included failure to maintain emergency lighting systems; failure to maintain fire suppression systems in the hospital's kitchen; and extensive water leaks in multiple areas of the hospital. *Id.* The report stated that "the hospital failed to maintain the condition of the physical [building] and overall hospital environment in a manner to ensure the safety and well-being of patients." *Id.* at 13.

In the instant motion, Petitioner requests a preliminary injunction ordering Respondent to immediately fund the payment of the 90-day or more accounts payable of the Hospitals amounting to $21,475,691 as of December 30, 2023 and requiring Respondent's continued quarterly compliance to fund the accounts payable pursuant to Condition 7.2 of the Decision. (Pet'r's Suppl. Mem. 9-10.) On March 26 and April 3, 4, and 5, the Court held a hearing where both parties presented and examined witnesses and evidence. *See* Hr'g Tr. Closing arguments were heard on April 30, 2024. *See* Closing Arg. Hr'g Tr.

II

Standard of Review

"'[T]he decision to grant a preliminary injunction rests within the sound discretion of the hearing justice[.]'" *Vasquez v. Sportsman's Inn, Inc.*, 57 A.3d 313, 318 (R.I. 2012) (quoting *Town of Coventry v. Baird Properties, LLC*, 13 A.3d 614, 620 (R.I. 2011)).

> "Before granting a preliminary injunction, a trial justice must consider whether the party seeking an injunction: (1) has a reasonable likelihood of success on the underlying merits of its claim; (2) will suffer irreparable harm if the court refuses to grant the injunctive relief; (3) has the balance of equities, which includes an analysis of the possible hardships to each party and the public interest; and (4) has demonstrated that a preliminary injunction will preserve the status quo." *Griggs & Browne Pest Control Co., Inc. v. Walls*, 305 A.3d 1256, 1260 (R.I. 2024).

The hearing justice may grant a preliminary injunction if the moving party has "'established a

prima facie case warranting preliminary injunctive relief[.]'" *Finnimore & Fisher Inc. v. Town of New Shoreham*, 291 A.3d 977, 983 (R.I. 2023) (quoting *Gianfrancesco v. A.R. Bilodeau, Inc.*, 112 A.3d 703, 708 (R.I. 2015)). "When a preliminary injunction is mandatory in nature in—that it commands action from a party rather than preventing action—a stricter rule applies and such injunctions should be issued only upon a showing of very clear right and great urgency." *King v. Grand Chapter of Rhode Island Order of Eastern Star*, 919 A.2d 991, 995 (R.I. 2007) (citing *Giacomini v. Bevilacqua*, 118 R.I. 63, 65, 372 A.2d 66, 67 (1977).

III

Analysis

Mandatory Preliminary Injunction

A preliminary injunction is mandatory when "it commands action from a party rather than preventing action." *King*, 919 A.2d at 995. "'[W]hen an injunction mandatory in its nature is asked for, a stricter rule obtains. Owing to the extraordinary character of the remedy[,] it should be granted on preliminary application only in cases of great urgency and when the right of the complainant is very clear.'" *Giacomini*, 118 R.I. at 65, 372 A.2d at 67 (quoting *Smart v. Boston Wire Stitcher Co.*, 50 R.I. 409, 415, 148 A. 803, 805 (1930)). The Rhode Island Supreme Court discussed the standard for mandatory preliminary injunctions in *King*:

> "The trial justice properly articulated the onerous standard for granting a preliminary injunction that is mandatory in nature: 'Parties seeking such relief must establish first that there is a likelihood of success on the merits of the underlying complaint; second, that irreparable harm will result if injunctive relief is not granted; third, that the balance of the equities in the public interest is served by injunctive relief; and, fourth, that the status quo between the parties will most likely be maintained by the injunctive relief sought . . . When an injunction mandatory in its nature is asked for, a stricter rule obtains than when an injunction that preserves the status quo is sought. Owing to the extraordinary character of the remedy, it should be granted on preliminary application only in

> cases of great urgency, and when the right of the complainant is very clear[.]'" *King*, 919 A.2d at 1000.

The Court finds that Petitioner's injunctive request is mandatory in nature. While Petitioner seeks to prevent Respondent from violating Condition 7.2, Respondent would be required to pay down the outstanding accounts payable through an affirmative act. Because this is a request for a mandatory preliminary injunction, the Court considers the four elements of a preliminary injunction—likelihood of success on the merits, irreparable harm, balance of the equities, and status quo—and the two additional elements required for mandatory preliminary injunctions, very clear right and great urgency. *See Faraone v. Wood*, C.A. No. 84-3716, 1985 WL 663387 (R.I. Super. Feb. 1, 1985) (evaluating a request for a mandatory preliminary injunction using the four elements of a preliminary injunction first before applying the two elements of a mandatory injunction).

A

Elements of Preliminary Injunction

1

Reasonable Likelihood

Courts "do not require a certainty of success" to grant a preliminary injunction. *Fund for Community Progress v. United Way of Southeastern New England*, 695 A.2d 517, 521 (R.I. 1997). Rather, the moving party is only required to "'make out a prima facie case.'" *DiDonato v. Kennedy*, 822 A.2d 179, 181 (R.I. 2003) (quoting *Fund for Community Progress*, 695 A.2d at 521).

Petitioner argues he has a substantial likelihood of success given his requirement as the Attorney General to enforce the HCA and the Decision, and Respondent's repeated violations of Condition 7.2 of the Decision. (Pet'r's Suppl. Mem. 2-5.) Petitioner asserts that Respondent neglected to pay its accounts payable consecutively, with the September 29, 2023 quarter showing

a failure to pay since June 30, 2023, and the December 30, 2023 quarter showing a failure to pay since September 29, 2023. *Id.* at 6. Respondent argues that Petitioner has not demonstrated that he has a substantial likelihood of success on the merits because Respondent has claimed a defense of impracticability and Petitioner has not successfully rebutted the claim. (Resp't's Post-Hr'g Mem. 15-16.)

Before evaluating the reasonable likelihood of success prong, the Court will address the parties' disagreement regarding the method that should be used to determine whether Condition 7.2 was violated, as well as the amount of money required to bring accounts payable outstanding into compliance. To determine whether Condition 7.2 was violated, Petitioner references the quarterly Supplier Reports, which feature a chart with entries for money owed to vendors with separate columns for "3 Months Overdue" and "Over 3 Months Overdue." *See* Pet'r's Exs. B-G. Petitioner asserts that Condition 7.2 does not contain language requiring a DPO calculation, but rather notes that the Respondent shall provide funding so that accounts payable are less than ninety days at the next quarterly installment. (Closing Arg. Tr. 10:1-9.) Using Petitioner's method, Respondent must pay $21,475,691 in order to render accounts payable less than ninety days as of December 30, 2023. (Pet'r's Post-Hr'g Mem. 15.)

Respondent argues that Petitioner's method of computing accounts payable is incorrect because the plain language of Condition 7.2, specifically the term "accounts payable days outstanding," indicates that the number of *days* must be below ninety. (Resp't's Mem. 26.) Respondent asserts that "accounts payable days outstanding" is a recognized accounting term where the average number of days it takes a business to pay its bills is determined by an accounting formula. *Id.* at 25. Respondent avers that Petitioner does not assert that Respondent's accounts payable days outstanding exceeded ninety days, but rather alleges that Respondent had certain

accounts payable that exceeded ninety days outstanding at various quarters. *Id.* at 25-26. Respondent uses DPO calculations instead of the Supplier Reports to assess its compliance under Condition 7.2. *Id.* at 8 ("[A]t the next quarterly measurement, June 30, 2023, Prospect CharterCARE's DPO was 89.06."). Using Respondent's DPO calculations, Respondent would need to pay $17,326,526 in order to render accounts payable less than ninety days as of December 30, 2023. (Harvey Aff. at 5.)

For the purposes of deciding this motion, the Court will apply the DPO calculations as suggested by Respondent to determine whether Condition 7.2 was violated. The Court will definitively decide whether DPO calculations or another method should be used to calculate accounts payable days outstanding at the time of the hearing. If the Court finds that the factors for a mandatory preliminary injunction are met, Respondent will be required to pay $17,326,526, which is the amount necessary to bring accounts payable below ninety days as of December 30, 2023. *Id.*

Considering the evidence presented by Petitioner, there is more than a reasonable likelihood that Petitioner will succeed on the merits. Petitioner produced various documents showing that Respondent violated Condition 7.2 because its accounts payable exceeded ninety days multiple times, and, in at least two instances, for consecutive quarters. (Harvey Aff. Exs. 8-12.) Respondent's DPO calculations, which were completed for the end of each quarter, show it was out of compliance with Condition 7.2 on December 30, 2022; March 30, 2023; September 30, 2023; and December 30, 2023. *Id.* at Exs. 8, 9, 11, 12. Petitioner also produced Respondent's Supplier Reports—likewise issued on a quarterly basis—from June 30, 2023; September 29, 2023; and December 30, 2023 that document the increasing millions of dollars owed to vendors quarter after quarter. (Pet'r's Exs. B-G.)

Moreover, counsel for Respondent sent a letter to Petitioner on November 3, 2023 admitting that the accounts payable days outstanding exceeded ninety days on September 30, 2023—purportedly due to the cyber-attack, although the accounts payable outstanding already exceeded ninety days for quarters ending on December 30, 2022 and March 30, 2023. In the letter, it was noted that accounts payable must be less than ninety days at the next quarterly measurement on December 31, 2023, but Respondent failed to pay down the accounts payable outstanding by that date. *Id.* at Ex. 12. Respondent's own admissions and DPO calculations show its repeated violations of Condition 7.2 and confirm Petitioner's likelihood of success on the merits at trial.

2

Irreparable Harm

"'A party seeking injunctive relief must demonstrate that it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position." *Nye v. Brousseau*, 992 A.2d 1002, 1010 (R.I. 2010) (quoting *National Lumber & Building Materials Co. v. Langevin*, 798 A.2d 429, 434 (R.I. 2002)). "Such irreparable injury must be either presently threatened or imminent. Injuries which are prospective in nature, or which might not occur, cannot form the basis for injunctive relief." *In re State Employees' Unions*, 587 A.2d 919, 925 (R.I. 1991). "The moving party seeking a preliminary injunction must demonstrate that it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position." *Fund for Community Progress*, 695 A.2d at 521.

i.

The HCA and the Attorney General

Pursuant to § 23-17.14-3, the HCA's purpose is, *inter alia*, to "assure the viability of a safe, accessible and affordable healthcare system that is available to all of the citizens of the state" and "to assure that standards for community benefits continue to be met . . . ." Section 23-17.14-3. Importantly, after the attorney general reviews and approves a conversion, the conversion "shall remain subject to the authority of the attorney general pursuant to § 23-17.14-21 hereof." Section 23-17.14-5. Moreover,

> "If any person knowingly violates or fails to comply with any provision of this chapter or willingly or knowingly gives false or incorrect information:
>
> "(1) The director or *attorney general* may, after notice and opportunity for a prompt and fair hearing to one or more transacting parties, deny, suspend, or revoke a license, or in lieu of suspension or revocation of the license, may order the license to admit no additional persons to the facility, to provide health services to no additional persons through the facility, or *to take any corrective action necessary to secure compliance under this chapter*, and impose a final of not more than two million dollars ($2,000,000)." Section 23-17.14-30 (emphasis added).

In *R.I. Turnpike & Bridge Authority v. Cohen*, our Supreme Court proffered that "[i]n limited instances, courts have recognized that, by statute, the Legislature may abrogate the irreparable-harm requirement." *R.I. Turnpike & Bridge Authority v. Cohen*, 433 A.2d 179, 182 n. 5 (R.I. 1981) (citing *Fleming v. Salem Box Co.*, 38 F. Supp. 997, 998-99 (D. Or. 1940); *Arizona State Board of Dental Examiners v. Hyder*, 562 P.2d 717, 719 (Ariz. 1977)). Here, Petitioner argues "the General Assembly . . . has effectively abrogated the requirement of irreparable harm in seeking injunctive relief." (Pet'r's Mem. 14 (citing § 23-17.14-28(d)(4)). According to Petitioner, immediate injunctive relief is the only means to enforce his decision under the HCA. *Id.*

The Court finds Petitioner's argument as to irreparable harm and his citation to *R.I. Turnpike & Bridge* persuasive. In a recently decided case, the Rhode Island Superior Court surveyed neighboring states and their disposal of the proof of irreparable harm requirement during injunctive proceedings. *State v. BTTR, LLC*, No. PC-2022-04492, 2023 WL 3183738, at *3 (R.I. Super. Apr. 24, 2023) (McHugh, J.) The *BTTR, LLC* Court—albeit in the context of a different statute—stated that other courts have held "that their legislatures presumed irreparable harm by authorizing their attorney[s] general[] to seek injunctions for violations of the statute. *Id.* (citing *Commonwealth v. Massachusetts CRINC*, 466 N.E.2d 792, 798-99 (Mass. 1984) ("The Attorney General is not required to demonstrate irreparable harm . . . the judge who decides whether an injunction should issue needs to consider specifically whether there is a likelihood of statutory violations and how such statutory violations affect the public interest."); *Department of Transportation v. Pacitti*, 682 A.2d 136, 139 (Conn. App. Ct. 1996) ("Irreparable harm need not be shown in a statutory interpretation injunction case . . . enactment of the statute by implication assures that no adequate alternative remedy exists and that the injury was irreparable[.]")

Beyond the cases addressed by *BTTR, LLC*, there is other caselaw in which the irreparable harm requirement for a preliminary injunction was waived in actions brought under statute by a state's attorney general. *See e.g.*, *City of New York v. Golden Feather Smoke Shop, Inc.*, 597 F.3d 115, 120 (2nd Cir. 2010) ("In certain circumstances, generally when the party seeks a statutory injunction, [the Second Circuit has] dispensed with the requirement of showing irreparable harm, and instead employ[s] a presumption of irreparable harm based on a statutory violation"); *Department of Financial Institutions v. Mega Net Services*, 833 N.E.2d 477, 485-86 (Ind. Ct. App. 2005) ("When the per se rule is invoked, the trial court has determined that the defendant's actions have violated a statute, and, thus, that the public interest is so great that the injunction should issue

regardless of whether the plaintiff has actually incurred irreparable harm . . . .")

While the HCA does not expressly allow for the issuance of injunctive relief for violation of the statute, it provides that Petitioner is authorized "to take any corrective action necessary to secure compliance under this chapter[,]" and "the attorney general may seek *immediate relief in the superior court to enforce any conditions of approval of a conversion*[.]" Section 23-17.14-28(d)(4) (emphasis added). The Court finds that the language of the statute is sufficiently broad to encompass injunctive relief as one of the remedies available to Petitioner to ensure compliance with the HCA. *See id.* Accordingly, Petitioner need not prove that irreparable harm was caused by Respondent. Notwithstanding this, Petitioner has made a sufficient irreparable harm showing.

ii.

Evidence of Irreparable Harm

a.

Petitioner's Statutory Authority

Petitioner asserts that the high amount of outstanding accounts payable has not meaningfully improved since the Hospitals incurred the supply shortages and that vendors faced with unpaid bills cannot be expected to indefinitely supply the Hospitals while they are in arrears. (Pet'r's Suppl. Mem. 8.) Petitioner argues that irreparable harm is shown by the nineteen cancelled surgeries that occurred in October 2023 and the reported deficiencies discovered by the Department of Health and Human Services Centers for Medicare and Medicaid in November 2023. *Id.* at 7. Respondent argues that there is no risk of irreparable harm because Respondent and the Hospitals are constantly managing the supplies to ensure continued safe clinical care. (Resp't's Mem. in Supp. of its Obj. to Pet'r's Mot. for Inj. (Resp't's Mem.) 17.) Respondent also asserts that Petitioner can access the escrows and use the funds to pay down the accounts payable outstanding

if Respondent violates certain conditions. *Id.* at 19.

"In Rhode Island, the attorney general is vested with all the powers that that office possessed at common law. *State v. Lead Industries Association, Inc.*, 951 A.2d 428, 471 (R.I. 2008) (citing *Suitor v. Nugent*, 98 R.I. 56, 58, 199 A.2d 722, 723 (1964)). "Indeed, the Rhode Island constitution recognizes the Office of the Attorney General and provides for its continued existence with all the powers inherent at common law; it also provides that the General Assembly may imbue the Attorney General with powers in addition to those common law powers." *Lead Industries Association, Inc.*, 951 A.2d at 471 (citing *Suitor*, 98 R.I. at 58, 199 A.2d at 723)).

"Unlike other attorneys who are engaged in the practice of law, the Attorney General 'has a common law duty to represent the public interest.'" *Id.* (quoting *Newport Realty, Inc. v. Lynch*, 878 A.2d 1021, 1032 (R.I. 2005)). "The Attorney General of the State of Rhode Island holds a constitutional office with specific and significant responsibilities to the people of Rhode Island." *Mottola v. Cirello*, 789 A.2d 421, 424 (R.I. 2002) (citing *State v. Peters*, 82 R.I. 292, 297, 107 A.2d 428, 431 (1954) ("[The Attorney General] is in effect the representative of the people and not an advocate in the ordinary meaning of that term . . . . He represents all the people of the [state] . . . .").

"It is the duty of the Attorney General to see to it 'that justice shall be done' . . . while he or she carries out all the functions of that high office-including engagement in litigation in the civil arena." *Lead Industries Association, Inc.*, 951 A.2d at 473 (citing *Berger v. United States*, 295 U.S. 78, 88 (1935)). "Accordingly, the Attorney General in Rhode Island has broad powers and responsibilities pursuant to the Rhode Island Constitution, several Rhode Island statutes, and the common law. *Id.* "In view of the Attorney General's position as a constitutional officer and in view of his or her considerable discretionary powers, [our Supreme Court] has historically tended,

whenever appropriate, to give deference to the strategic and tactical decisions made by those who hold that high office." *Id.* at 474 (citing *Mottola*, 789 A.2d at 425).

An examination of the Decision supports the Court's conclusion that Respondent is not in compliance with Condition 7.2, hindering Petitioner's statutory enforcement power. Specifically, Petitioner emphasized the necessity of the financial conditions in the Decision, stating "[w]hether PMH will continue to subsidize PCC and its Rhode Island Hospitals is a major concern." (Pet'r's Ex. A, at 28.) The Decision also provided that Petitioner was apprehensive about the difference in the Hospitals' revenue and expenses in 2021, given that RWMC and OLF experienced $16.6 million and $8.7 million in losses, respectively. *Id.* at 27. Auditors for the Hospitals, and PCC categorized the entities as "'financially dependent on [their] parent company.'" *Id.* Petitioner's grim prediction that Respondent may be without a long-term strategy when "the light starts (or continues) flickering in Rhode Island[]" seems to have come to fruition. *Id.* at 29.

The Court finds that Petitioner's regulatory enforcement power as a government agent has been irreparably harmed by Respondent's repeated failure to adhere to Condition 7.2 in the Decision. *See generally* Pet'r's Ex. A. In accordance with § 23-17.14-28(d), the acquiror under the HCA must comply with the conditions set by the Attorney General for five years following the conversion. Petitioner carefully crafted various conditions to protect the Hospitals as invaluable sources of healthcare for Rhode Island's vulnerable populations. Petitioner credibly established that Respondent failed to uphold Condition 7.2 of the Decision on multiple instances, undermining Petitioner's regulatory authority and causing Petitioner harm.[11]

[11] The Court's finding of irreparable harm based on hindrance of the Attorney General's statutory enforcement power finds support in other jurisdictions. The Court believes this conclusion is akin to an attorney general not needing to prove irreparable harm because the harm is presumed. *See Commonwealth*, 466 N.E.2d at 799; *State ex rel. Office of Attorney General, Bureau of Consumer*

b.

Respondent's Use of Accounts Payable

Beyond its defiance of the Petitioner's regulatory regime pursuant to the HCA, Respondent is effectively using the Hospitals' accounts payable as a line of credit to pay the bills for its other hospitals around the country. In the Decision, Petitioner warned that "Rhode Islanders can ill afford their healthcare infrastructure serving as a private bank for private investors." (Pet'r's Ex. A, at 50.) Petitioner's trepidation in approving Respondent's purchase of the Hospitals has proven to be well-placed as Respondent benefits from the Hospitals' government assistance while refusing to pay the Hospitals' expenses.[12]

The Hospitals' AP Director, Steve Salisbury, requests funding weekly from Respondent, but the amount received in return is constantly lower than the amount necessary to keep the Hospitals well-stocked and in good standing with suppliers. (Pet'r's Ex. S, at 6 ("Steve Salisbury discussed uncertainty of the amount of money he will receive for this week. Last week $730,000 was released[,] but some payment agreement plans were not paid."); 7 ("There have only been [two] payment plans paid both last week and none were the large surgical vendors. [Salisbury] continued to be concerned with the uncertainty of the amount of money he will receive for this

---

Protection v. NOS Communications, Inc., 84 P.3d 1052, 1054 (Nev. 2004); *United States v. Barnes*, 912 F. Supp. 1187, 1195-96 (N.D. Iowa).

[12] Petitioner noted in the Decision that Respondent benefitted from federal and state aid provided to the Hospitals, especially during the COVID-19 pandemic. (Pet'r's Ex. A, at 33, 38.) Petitioner quoted Leonard Green Partner John Baumer's own description of Respondent's pattern of acquiring hospitals that are "'often losing money and going out of business'" and "load[ing] [them] up with debt." *Id.* at 38 ("PMH and its subsidiaries received hundreds of millions of dollars in financial aid from federal and state governments in 2020, and are hoping for more.")

week. Last week . . . he asked how the hospital can get more money."); 10 ("We currently owe [$]42 million, of that, [$]22 million are over 90 days and [$]8 million is over 120 days. [Two] weeks ago[,] we only received $730,000 and last week $990,000 for bills."); 23 ("There was no money received yesterday. Today's ask was $1.6 million, and Steve does not think it will be received. Many non-surgical vendors as well as physicians are in need of payment."); 25 ("The hospital owes $43 million to 726 vendors. $1.2 million is over 365 days, $9.4 million is over 210 days. $24.4 million is over 90 days.").)

While its Rhode Island ventures struggle, Respondent prioritizes its California investments. Respondent states that, in order to meet regulatory requirements for licensing by the California Department of Managed Healthcare, it must have over $130 million in cash or cash equivalents available. (Hr'g. Tr. 364:11-14.) Specifically, Alfredo Sabillo (Sabillo), CFO of PMH, testified that "in the last year our regulator, the California regulators and the Department of Managed Healthcare and our lenders have required us to replace our collateral into cash for what is being needed to meet [California Department of Managed Healthcare] requirements." *Id.* at 364:22-25. When asked whether Respondent could use any of the $138 million in cash to pay the accounts payable, Sabillo responded "[u]nfortunately, no. We cannot." *Id.* at 364:7-9.

Although the Court understands Respondent's position that it must stay in compliance with California's regulations to keep its operations in Rhode Island ongoing, the Court is troubled at Respondent's prioritization of its entities in one state over another, particularly to Rhode Islanders' detriment. Respondent agreed to certain financial conditions to take ownership of the Hospitals in 2021. Respondent's obligation to comply with regulatory requirements imposed upon it by Rhode Island is no less important or stringent than its obligation to comply with California requirements.

The Hospitals are not the only medical facilities that have been neglected under

Respondent's ownership. On March 12, 2024, the Delaware County Court of Common Pleas ordered Respondent to provide adequate security—$20 million in escrow—for the rent, taxes, and other costs associated with hospitals Respondent owns in Springfield, Pennsylvania through its subsidiary, Crozer Health. (Pet'r's Ex. BB, at 3.) The Foundation for Delaware County brought a motion requesting the order because Respondent owed $490,000 in back rent and fees as well as $1.6 million in taxes for its Springfield campus properties as of November 2023. *Id.*

Respondent's actions in Pennsylvania match its pattern of noncompliance and financial maneuvering in Rhode Island. In 2022, Respondent attempted to close Delaware County Memorial Hospital to convert it to a behavioral health hospital in violation of the conditions of its purchase agreement of Crozer Health, which required that Crozer hospitals be kept open as acute care hospitals until 2026. *Id.* In another parallel between its Pennsylvania and Rhode Island entities, Respondent is both seeking a buyer for Crozer Health in Pennsylvania and waiting on a pending HCA application to sell PCC and the Hospitals to the Centurion Foundation, Inc. in Rhode Island. *See id.*; Harvey Aff. at Ex. 7.

Respondent's use of the Hospitals as a private bank and treatment of accounts payable as a credit facility loan in violation of the Conditions and the HCA constitutes irreparable harm. Petitioner imposed financial conditions on Respondent because he noted Respondent's history of using safety-net hospitals to avoid taxes, benefit from government subsidiaries, and provide debt-financed dividends to private investors. (Pet'r's Ex. A, at 38, 49.) Petitioner decided financial conditions were "necessary to protect the State and its citizens from the fallout of such previous practices and from the practices themselves going forward." *Id.* at 50. Respondent cannot be permitted to dig the Hospitals into deeper debt and pocket profits created through operating crucial healthcare facilities with bare minimum funding.

Moreover, Respondent claims that funding the Hospitals' debts would induce its bankruptcy, despite the fact that its 2023 liability figures indicate that it is already operating with a $2 billion deficit. *See* Hr'g Tr. 376:15-19, 377:1-17 (Sabillo discussing Respondent's total assets of $2 billion and total liabilities of $4 billion). Requiring Respondent to fulfill financial conditions by paying the Hospitals' debts to vendors in the amount of $17 million would be negligible in comparison. It is difficult to categorize compliance with Condition 7.2 as the proverbial straw breaking the camel's back when Respondent is already operating in debt and recently received a court order for payment of a similar amount to its Pennsylvania entities. *See* Ex. CC.

c.

The Hospitals' Supply Issues

Finally, the lack of reliable supplies at the Hospitals is causing irreparable harm through interrupting important services; threatening the Hospitals' licensing and accreditation; diverting resources to manage supplies and payments to vendors; and ruining the Hospitals' reputation with suppliers. The consequences of Respondent's debts to vendors manifested in October 2023 when nineteen surgeries were cancelled due to lack of supplies. (Pet'r's Ex. U (Spooner Aff.) 6-19.) During an investigation by CMS, the Director of Supply Chain was interviewed:

> "[T]he last 4-6 weeks they have had an increase in the number of vendors on credit holds. He stated that there were currently 251 vendors who had placed the hospital on credit holds due to unpaid accounts. He stated that there have been credit holds on accounts for approximately the past 13-14 months. He stated that some of the vendors will release some supplies, some will send a portion of the requested orders, and some will not send any more until the past due accounts are paid. He stated that it changes weekly depending on what companies are paid." *Id.* at 8-9.

On October 30, 2023, CMS investigators interviewed the CEO of the Hospitals, Dr. Liebman:

> "[H]e revealed that he was unaware that surgical cases were cancelled due to credit holds. He further revealed that the hospital receives an 'allowance' every week and he doesn't know how much money that will be from week to week, and that he can request a certain amount of money but may only receive half of that amount. He indicated that he does not have enough money in the 'allowance' to pay all the vendors that are owed money." *Id.* at 25.

On November 1, 2023, Dr. Liebman was interviewed a second time:

> "[H]e stated that he was unaware of the endoscopy cases cancelled. He was also unaware that the cases were cancelled due to a credit hold on the company Boston Scientific which provides the supplies necessary to complete the procedures. Additionally, he reports he has daily meetings relative to the finances and that the hospital is on credit holds with some vendors as the hospital does not receive enough money from 'California' to cover all the expenses." *Id.* at 9.

At the hearings, Dr. Liebman was asked if the surgeries were cancelled because the Hospitals did not pay vendors to release the supplies. (Hr'g Tr. at 43:6-10.) Dr. Liebman was reluctant to admit that the lack of supplies was caused by unpaid vendors withholding service: "I don't know that for a fact. So[,] there are times we have delays in supply delivery, for example. All I know is that the supplies weren't there." *Id.* at 43:11-13. Regardless of Dr. Liebman's hesitancy to discuss the credit holds during his testimony, it appears the statements he made to CMS in 2023 that "California" (Respondent) does not send enough money to cover the Hospitals' expenses are still pertinent, as evidenced by Steve Salisbury's repeated reports in AP Task Force meeting minutes through 2024 that Respondent does not provide requested funding. *See* Pet'r's Ex. S.

The AP Task Force was formed to address supply shortages that caused surgery cancellations in October 2023. However, rather than creating a reliable stock of supplies at the Hospitals, the AP Task Force seems to divert resources away from patient care or staffing management and towards balancing the ever-growing list of accounts on hold due to outstanding

debt, mitigating supply shortages by chasing down supplies from other hospitals, and pleading for funding from Respondent, who rarely provides the money requested. *See* Pet'r's Ex. S, at 27 ("There is constant balancing to try to pay surgical needs as well as keeping other disciplines up and running smoothly."). The AP Task Force requires significant time and energy from some of the Hospitals' most important figures: the Hospitals' CEO, CFO, COO, Chief Nursing Officer, Vice President of Quality, AP Director, Executive Director of Surgery, Director of Pharmacy, Lab Director, and Director of Supply Chain. *See* Pet'r's Ex. O.

AP Task Force meeting minutes repeatedly show that there are critically low supplies or no supplies at all at both Hospitals. (Pet'r's Ex. S, at 5 ("Critical: Arthrex continues on credit hold, risk of inability to book ACL."); 6 ("Critical: Arthrex continues on credit hold at both sites. They are on list for payment this week;" "MTF – Order not released and currently on credit hold."); 7 ("Lynn Leahey shared with the group that if Arthrex is not paid by next Monday, 2 cases of Dr. Mirrer's, both shoulder, may need to be cancelled."); 23 ("Stryker and Globus are major concerns. Both are continuing to support cases but are requesting large payments per payment plan. There is no supply on shelves as these supplies are ordered as cases are booked."); 28 ("Implant vendors [] are a major concern requiring large payment because these are not stocked items and the hospital will have no advance notice if on credit hold until the companies do not deliver.")).

Each week, the AP Task Force reviews spreadsheets compiled by hospital employees, like the Supply Chain Manager or Surgical Service Director, documenting the status of surgical, lab, and medsurge[13] supplies at the Hospitals. *See* Pet'r's Ex T; Hr'g Tr. 63:6-11. Spreadsheets from

[13] "Medsurge supplies" refers to medical surgical supplies used to support patients before and after surgery. *See* Hr'g Tr. 16:23-24 ("[The supplies] support a number of different departments in the hospital, and that's the same for MedSurge, what happens after you get out of surgery[.]); *id.* at 87:18-20 ("[Medsurge] means that anywhere that we might have a medical surgical type of patient in the entire breadth of service.").

November 2023 through February 2024 show multiple instances of "red" urgent matters claiming supplies have ran critically low or are completely out of stock at the Hospitals.[14] *See* Pet'r's Ex. T. The spreadsheets are rife with phrases like "none on hand," "cannot outsource," "cannot pull records till paid," "orders on hold," and "need payment to release orders." *Id.* at 8, 9, 15, 20, 104, 120. In every spreadsheet, the column for the total amount owed to vendors ranges from $5,000 or less to over $350,000, with "$0" appearing as a rarity. *See* Pet'r's Ex. T.

Some spreadsheet entries are particularly disturbing, like the red cells documenting the status of vendor BioCare on the Lab Supply Review spreadsheet for December 12, 2023: "stains and antibody tests for patient diagnosis . . . will turn away cancer patients 12/15/2023 . . . Orders are not being released; the entire balance needs to be paid to release orders." *Id.* at 96. Another alarming entry from a February 28, 2024 spreadsheet shows a "Run Out Date" of supplies from vendor Immucor on "1/19/2024," stating "[c]an't give out blood or perform surgeries without this vendor . . . NEED TO RECEIVE CHECK BEFORE ORDERS ARE RELEASED." *Id.* at 182.

As Petitioner stated during the hearing, these supply spreadsheets show that "[the AP Task Force] ha[s] rung the urgency bell more than 300 times in three months[.]" (Closing Arg. Tr. 18:23-25.) Respondent argued that the spreadsheets "aren't accurate," were created by "someone in accounts payable" who was "overzealous maybe in some of their entries," and included "repeat[s] of the same entry." (Closing Arg. Tr. 45:6-8, 45:22-25, 46:7-13.) Assuming Respondent's assertions are true, the Court finds it troubling that a task force created to address deficiencies discovered by CMS and meet conditions of participation for Medicare and Medicaid services is

[14] The spreadsheets are color-coded: entries in red cells indicate the need for supplies to ensure procedures are completed as scheduled is "urgent," yellow cells convey a "warning" that the demand for supplies on schedule may be greater than what the Hospitals have in stock; and green cells mean there are no issues looking forward. (Hr'g Tr. 64:10-14, 64:23-25, 65:1-7.)

frequently meeting to review inaccurate spreadsheets and produce meeting minutes reporting the same inaccurate information contained in the spreadsheets.

Respondent claims that there is no threat of irreparable harm because the escrow funds "would cover the alleged accounts payable" and promotes the use of the escrow as a solution to pay down its debts to vendors. (Resp't's Mem. 19.) Section 6.4(b) of the Decision provides:

> "The funds in the Escrows shall, at the written direction of the Attorney General, be distributed to the Agent/Trustee, *if, as determined by the Attorney General* (1) Prospect fails to comply with its obligations under II. Financial Conditions (Conditions 5-11) or Condition 22 (Continuity of Services), and/or (ii) an Insolvency Event occurs." (Pet'r's Ex. A, at 77.) (emphasis added).

The language of Section 6.5(a) places the discretion in Petitioner's hands regarding disbursal of the escrow funds in the event of noncompliance or insolvency. *Id.* In this case, Petitioner has determined that "[t]his $45 million [in escrow funds] is to keep these hospitals afloat." (Hr'g Tr. 36:8-9.)

Furthermore, Petitioner stated in the Decision that the escrow funds served a two-fold purpose: (1) to protect hospital operations in the case of an insolvency event and (2) to prevent Respondent from using the Hospitals "like it has those in other states: as assets available for encumbrance by [Respondent] in order to forestall a liquidity crunch or insolvency crisis brought on by a business model that has prioritized returns on investment over the needs of safety-net hospitals." *Id.* at 50. If escrow funds were used to pay debts Respondent accrued in violation of Condition 7.2, it would reward Respondent for the very conduct that the escrow was designed to prevent.

3

Balance of the Equities

In balancing the equities, "the relief which is sought must be weighed against the harm which would be visited upon the other party if an injunction were to be granted . . . In connection with any such balancing equation, the court is obliged to consider, as an integral factor, the public interest." *In re State Employees' Unions*, 587 A.2d at 925. The Rhode Island Supreme Court has stated that:

> "'in considering the equities, the hearing justice should bear in mind that 'the office of a preliminary injunction is not ordinarily to achieve a final and formal determination of the rights of the parties or of the merits of the controversy, but is merely to hold matters approximately in status quo, and in the meantime to prevent the doing of any acts whereby the rights in question may be irreparably injured or endangered.'" *Fund for Community Progress*, 695 A.2d at 521 (quoting *Coolbeth v. Berberian*, 112 R.I. 558, 564, 313 A.2d 656, 659 (1974)).

Petitioner argues an injunction will advance the public interest of Rhode Islanders and safeguard the quality of medical care provided by the hospitals to the public and patients. (Pet'r's Suppl. Mem. 8.) Petitioner asserts that Respondent would suffer no meaningful harm if it were compelled to maintain compliance with its obligations under Condition 7.2. *Id.* Respondent asserts that the balance of equities tips in its favor because a preliminary injunction requiring Respondent to pay outstanding accounts payable could result in Respondent's bankruptcy and the subsequent closure of the Hospitals. (Resp't's Mem. 26.) Respondent argues that granting the injunction would result in a loss of faith in Respondent and the Hospitals, meaning medical staff would leave, academic affiliations would end, patients would choose not to visit, and vendors would no longer provide supplies. *Id.* at 27.

In 2021, Respondent assumed full ownership of the Hospitals with the understanding that

the transaction was subject to the Conditions established by Petitioner under the HCA. The Rhode Island legislature promulgated the HCA "because hospitals in Rhode Island that have provided and continue to provide important services to communities [] submit[ted] that their survival may depend on the ability to enter into agreements that result in the investment of private capital and their conversion to for-profit status" and the Rhode Island General Assembly had "concerns that hospital networks may engage in practices that affect the quality medical services in the community as a whole and for more vulnerable members of society in particular." Section 23-17.14-2(6)-(8). The purpose of the HCA is "to protect public health and welfare and public and charitable assets" through establishing the necessary "standards and procedures for hospital conversions." Section 23-17.14-2(9).

Petitioner is positioned to enact and enforce conditions to protect the public interest:

> "[a]ny approval of a conversion involving a for-profit corporation as an acquiror shall be subject to any conditions as determined by the attorney general, provided those conditions relate to the purpose of this chapter. The conditions may include, but not be limited to, the acquiror's adherence to a minimum investment to protect the assets, financial health, and well-being of the new hospital and for community benefit." Section 23-17.14-28(c).

Petitioner is also charged with protecting the public interest under the HCA and brought the current action against Respondent to enforce the Conditions he established to maintain accessible and quality care for the communities that benefit from the Hospitals. *Id.* It is clear to the Court that Petitioner has proved that Respondent failed to adhere to its obligations as set forth in the Conditions multiple times. *See* Harvey Aff. Exs. 8-12. Respondent's multitude of explanations purportedly justifying these failures are unavailing.

To this point, Respondent's insistence that paying down its debts would result in a loss of faith in the Hospitals is difficult to believe. Evidence provided, including Respondent's own

records, shows that vendors are refusing to provide supplies until Respondent funds the Hospitals' unpaid bills. *See* Pet'r's Exs. S, T. In one example, AP Task Force supply sheets from the week of November 27, 2023 reported that Respondent owed $272,000 to Access RN, a vendor that provides nurse staffing, and that Access RN would stop services on the same day due to Respondent's debt. (Pet'r's Ex. T, at 39; Hr'g Tr. 192:4-25; 193:1.) The most recent supply sheet available to the Court, dated February 29, 2024, shows that Respondent finally paid $53,700 to Access RN on January 15, 2024, but still owed $214,250 to Access RN as of February 29, 2024, $102,925 of which was owed past sixty days. (Pet'r's Ex. T, at 244.) Moreover, at several AP Task Force meetings the minutes relay that "physicians are in need of payment" and "[p]ayments are being made to physicians who complain along with payment plan which are overpromising some physicians but not others." (Pet'r's Ex. S, at 23, 32.)

It does not logically follow that paying vendors for outstanding debts would result in the same vendors refusing to provide supplies, or that employees would abandon the Hospitals if payments were issued resulting in access to supplies and staffing. To the contrary, it seems more likely that medical staff, patients, and vendors would recover confidence lost in the Hospitals if Respondent paid its debts. During the CMS investigation in October 2023, a surgeon was interviewed about the cancellation of two surgeries for his patients and stated, "it is embarrassing to tell patients that their surgery is being cancelled because the hospital is not paying the supplier."[15] (Spooner Aff. Ex. 1, at 19.) He also said that "one of the [cancelled] cases has multiple health issues and that the patient's Primary Care Physician, Cardiologist, and family are anxious for the patient to have the procedure." *Id.* Respondent's inability to timely pay its debts appears to

[15] The surgeon also reported that he had spoken with other surgeons that were impacted by vendors placing the hospital on credit holds. (Spooner Aff. 20.)

negatively affect both medical staff and patients.

The Court does not consider requiring Respondent's compliance with Conditions that it is already obliged to follow as a significant hardship on Respondent. In comparison, if Respondent does not pay its debts and an insolvency event or an unforeseen circumstance occurs, Petitioner would likely suffer hardship in finding the funds to settle Respondent's debts while keeping the Hospitals open and functioning. With Respondent's accounts payable outstanding alone amounting to approximately half of the remaining escrow funds, such an event, compounded by additional debt, would leave the Hospitals in jeopardy. Finally, the "integral factor" of public interest weighs in favor of the Petitioner by nature of the HCA and its compelling mission to protect Rhode Island communities that rely on the Hospitals.

4

Status quo

In a preliminary injunction, courts determine the status quo and subsequently weigh whether granting the requested relief will preserve that status quo. *See Fund for Community Progress*, 695 A.2d at 521 (quoting *Coolbeth*, 112 R.I. at 564, 313 A.2d at 659) ("'the office of a preliminary injunction is not ordinarily to achieve a final and formal determination of the rights of the parties or of the merits of the controversy, but is merely to hold matters approximately in status quo[.]'"). However, in this case, where the Court finds that Petitioner is entitled to a mandatory preliminary injunction, the status quo is the least important factor to be weighed. *See King*, 919 A.2d at 995 (explaining that a preliminary injunction becomes mandatory when it "commands action from a party rather than preventing action[.]"). Accordingly, this Court moves forward to assess the elements of a mandatory preliminary injunction.

B

Elements of Mandatory Preliminary Injunction

1

Very Clear Right

Petitioner argues his right is very clear in this case because he is required to enforce the Conditions set forth in the Decision that Respondent has subsequently violated. (Pet'r's Suppl. Mem. 7.) Petitioner asserts that it is undisputed Respondent failed to fulfill its obligations under the Decision. *Id.* at 5. Respondent argues Petitioner does not have a right to relief because the doctrine of impracticability excuses Respondent's alleged inability to perform under the conditions; Petitioner failed to follow the enforcement provision set forth in the Conditions that it seeks to enforce; Petitioner failed to accurately allege damages; and there is no irreparable harm. (Resp't's Mem. 12.) Respondent asserts that the Hospitals are successfully monitoring and securing necessary supplies and have not canceled any surgeries for a lack of supplies or inability to perform such procedures since the referenced procedures in October 2023. *Id.* Respondent also notes that the Petitioner holds escrow funds that exceed the amount at issue. *Id.*

The HCA was intended to address concerns about the exact situation before the Court today: a hospital network "engage in practices that affect the quality medical services in the community as a whole and for more vulnerable members of society in particular." Section 23-17.14-2(8).

The Petitioner is expected to use the HCA to protect communities during a hospital conversion from non-profit to for-profit, and enforce the HCA when noncompliance occurs in order to promote the public interest. *Id.* These Hospitals serve socioeconomically disadvantaged, vulnerable, and underserved communities, with 70-75% of the patients at both hospitals relying

on Medicare and Medicaid. (Hr'g Tr. 52:3-14; *see also* Harvey Aff. at Ex. 2.) CMS, which approves and accredits hospitals for Medicare and Medicaid, found significant noncompliance with its conditions for participation in Medicare and Medicaid programs during both the October 2023 and April 2024 surveys at the Hospitals. *See* Pet'r's Ex. CC; Spooner Aff. 6-19.

It is undisputed that Respondent violated Condition 7.2 through its failure to pay vendors resulting in accounts payable outstanding exceeding ninety days for consecutive quarters in September and December 2023. *See* Harvey Aff. Exs. 11-12. Condition 7.2 of the Decision unambiguously states Respondent: "shall ensure its vendors are paid on a timely basis. In the event accounts payable days outstanding is greater than 90 days, PMH shall provide funding to [Respondent] so that accounts payable are less than 90 days at the next quarterly measurement." (Pet'r's Ex. A, at 79.) Given Respondent's concession that it allowed its accounts payable to exceed ninety days outstanding in violation of Condition 7.2, it follows that Petitioner has satisfied the "very clear right" element required to issue a mandatory injunction. *See King*, 919 A.2d at 1001.

2

Great urgency

Petitioner argues that great urgency exists because the patients of the hospitals suffer irreparable harm due to Respondent's continued noncompliance with Condition 7.2. (Pet'r's Suppl. Mem. 8.) Petitioner asserts that the unpaid vendors cannot be expected to indefinitely supply hospitals that continue to be in arrears. *Id.* Petitioner notes that the General Assembly has conferred upon him statutory authorization to seek immediate relief from the Court to maintain compliance with hospital conversion conditions. *Id.* at 7. Respondent contends there is no great urgency because the hospitals have continued to successfully operate and provide quality care and

have performed 5,624 inpatient and outpatient surgeries and procedures since November 1, 2023 through February 29, 2024 without a single cancellation for lack of supplies or equipment. (Resp't's Mem. 12.) Respondent asserts that Petitioner can access escrow funds in excess of the amount at issue, indicating there is no great urgency. *Id.*

One indicator of the great urgency in this case is the continuous claims that the Hospitals are relying on borrowing supplies from other hospitals. *See* Hr'g Tr. 73:22-25, 74:1 ("We trade supplies in between hospitals especially in the city, the greater city of Providence all the time. We trade lab supplies. We trade surgical supplies with other institutions."). In the November 2023 CMS Report, the Operating Director and the Administrator of Surgical Services discussed borrowing supplies: "[She] indicated that the hospital can obtain some supplies and equipment from other facilities and from other hospitals that they have working relationships with. Additionally, she indicated that the hospital is also trying to obtain the necessary equipment from other vendors who have similar products." (Pet'r's Ex. U, at 21.)

The November 2023 CMS Report also emphasized that the Hospitals' Governing Body meeting minutes failed to include information relative to the hospital[s] borrowing supplies and equipment from other facilities to perform certain procedures and surgeries. *Id.* at 4. Despite the adoption of the AP Task Force to address supply shortages, it appears there are no methods in place to track whether the Hospitals have borrowed supplies from other facilities. *See* Hr'g Tr. 212:7-8 ("It says that we didn't have any inventory on hand, but it doesn't say whether or not we were borrowing from others.") (referring to the supply spreadsheets).[16] Moreover, some supply

[16] It should be noted that many of the supplies that are purportedly "borrowed" are single-use products, like COVID-19 tests. *See* Hr'g Tr. 117:24-25; 118:1-4 (Q: "Is this line telling us that [RWMC] and [OLF] had no COVID tests as of January 5, 2024?" A: "No, I think what it's telling you that we may not have our own, but we could have borrowed it and continued testing that

spreadsheets reviewed by the AP Task Force mention an inability to outsource or borrow certain supplies: "they will not ship the part until past due balances are paid and we cannot outsource this testing, out of stock." (Pet'r's Ex. T, at 9.)

Dr. Liebman testified during the hearing that he was unaware of cancelled surgeries and critical failures in the supply chain in October 2023. (Hr'g Tr. 35:8-11, 59:22-25, 60:1-2.) The corrective plan mandated by the November 2023 CMS Report does not seem to have increased Dr. Liebman's awareness of the supply chain, despite his mandated attendance of AP Task Force meetings and review of supply spreadsheets. Dr. Liebman repeatedly stated that he "didn't recall" particular solutions for urgent supply issues where spreadsheets reported that the items would run out in a few days or had already run out, and resorted to assuming "[w]e probably borrowed[.]" (Hr'g Tr. 74:14-19, 161:2-10; 79:7-11.) Dr. Liebman admitted that no documents actually indicate supplies were on hand and being used at times where the supply spreadsheets reported they had run out, but stated that he "know[s] services continued" and the Hospitals must have obtained the supplies, because the labs, services, and Hospitals did not "shut down." *Id.* at 141:17-25, 142:1-13, 215:6-10; *see also id.* at 79:16-19 ("It means the hospital borrowed supplies because we're continuing to do the testing. Obviously, they didn't have supplies on hand so they went and they found supplies from some place else.").)

While Dr. Liebman claimed that no interruptions have occurred because any supply or services issue "should have been reported" and if a critical item was not supplied he "would have

---

way.") By the nature of these supplies, they cannot be borrowed because they are not returned after use. The Court finds this "borrowing" concerning, as Respondent is taking single-use supplies from other Rhode Island hospitals, like Miriam Hospital in Providence. *Id.* at 118:23-25. ("I could have borrowed supplies from Miriam Hospital, for example, who is given the same [COVID] tests[.]") Such frequent "borrowing" places the burden on other hospitals in Rhode Island to fill the gaps created by Respondent's debts and threatens to deplete the supplies of facilities that actually pay their vendors in a timely manner.

known because that would have impacted the whole hospital," there appears to be no confirmation available to prove that numerous documented urgent supply matters were resolved. *Id.* at 79:7-9, 84:1-4.) With many vendors on credit hold due to outstanding accounts payable and services relying on an untraceable system of borrowing to fill widening gaps in supplies, it appears that the Hospitals are operating under a state of "great urgency" around the clock.

Beyond supply issues, the conditions in the Hospitals themselves have been labeled as urgent by government agencies and reflect a lack of funding from Respondent. On April 2, 2024, while hearings were ongoing for this action, CMS inspected the Hospitals and determined that the conditions at RWMC posed an "Immediate Jeopardy" to the health and safety of patients. (Pet'r's Ex. CC, at 1.) The condition identified as causing "Immediate Jeopardy" was a recessed light fixture which was surrounded by wet ceiling titles and accumulating leaking water. *Id.* at 13. The condition was fixed after the survey was conducted, but CMS stated that "substantial noncompliance" remained, which could result in the termination of the facility from the Medicare Program if not addressed through a plan of correction and subsequent remedial actions. *See* Pet'r's Ex. CC, at 1-3.

Aside from the light fixture, CMS observed that the RWMC generators were not properly maintained for emergency power; emergency lighting was not in compliance; fire suppression systems in the kitchens were non-compliance; electrical wiring was not up to code; and there were multiple areas of leaking water, often accompanied by a waste basket collecting water, blankets sopping with water, or covered barrels collecting water through hoses. *Id.* at 4-21. According to one Operating Room ("OR") Nurse Manager, barrels collecting water that were found in operating room suites had been there since July 2023—prior to the August cyber-attack. *See id.* at 19 ("During surveyor interview with the OR Nurse Manager, at the time of the observation, she

informed the surveyor that the barrels have been in the OR since she started to work at the hospital in *July of 2023*. She states that the maintenance department takes care of emptying the barrels when needed.") (emphasis added).

Combined with the defiance of Petitioner's financial conditions and its use of accounts payable as a bank mentioned as part of irreparable harm, Respondent has created a situation of great urgency at the Hospitals by refusing to provide proper funding quarter after quarter. Not only are the Hospitals scrambling to obtain supplies day to day, but other areas of the Hospitals are falling into disrepair. Both employees of the Hospitals themselves and outside agencies investigating the Hospitals have attested to the urgent situation caused by Respondent. This Court finds that great urgency exists that requires Respondent to fund outstanding accounts payable to mitigate the risk of losing the Hospitals as reliable healthcare facilities for Rhode Islanders.

C

Impracticability

"A party's performance under a *contract* is rendered impracticable upon the occurrence of an event or a manifestation of a circumstance the nonoccurrence of which was a basic assumption on which the contract was made." *Iannuccillo v. Material Sand & Stone Corporation*, 713 A.2d 1234, 1238 (R.I. 1998) (citing to 2 Restatement (Second) *Contracts* § 261 (1981)) (emphasis added). "A valid contract requires competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation." *DeAngelis v. DeAngelis*, 923 A.2d 1274, 1279 (R.I. 2007). "When evaluating the sufficiency of contractual consideration, [the Rhode Island Supreme Court] employ[s] the bargained-for exchange test." *Andoscia v. Town of North Smithfield*, 159 A.3d 79, 82 (R.I. 2017) (quoting *DeLuca v. City of Cranston*, 22 A.3d 382, 384 (R.I. 2011)).

Respondent argues that the doctrine of impracticability excuses it from any alleged inability to perform under Condition 7.2 of the Decision. (Resp't's Post-Hr'g Mem. 16.) Respondent asserts that it was the subject of a massive and unexpected cyber-attack in August 2023 that prevented Respondent from accessing electronic medical records and billing systems for forty-five days. *Id.* at 17. Respondent states that more than $450 million of its revenues could not be billed over an eight-week period in August and September due to the cyber-attack. *Id.* Respondent contends that it was temporarily impractical to perform under Condition 7.2. *Id.* at 18.

Petitioner did not address the cyber-attack in his Post-Hearing Memorandum, but did state in closing arguments that impracticability is a contract-based defense and this case involves compliance with an enforcement order of an agency of a court. (Closing Arg. Hr'g Tr. 10:16-25, 11:1-3.) Petitioner argues that Respondent attempts to invoke a temporary impracticability defense, which has never been adopted as a defense in Rhode Island. *Id.* at 11:4-23. Petitioner asserts that this cyber-attack is foreseeable and requires a system in place for prevention, meaning that Respondent must show the standard practice for safeguarding a hospital system against a cyber-attack in 2023 and must show they acted pursuant to the standard practice to display they were without fault for the cyber-attack. *Id.* at 12:5-20. Petitioner also states that Respondent does have the funding to pay the outstanding accounts payable, but chooses not to as a priority preference rather than an impracticability. *Id.* at 16:9-17.

Respondent provides no legal support for its conclusion that the contractual defense of impracticability applies when no contract exists. (Resp't's Mem. 16-18.) In fact, Respondent's plethora of case citations discuss impracticability in the context of a breach of contract action. *Id.* (citing *United States v. Winstar Corporation*, 518 U.S. 839, 904 (1996) (analyzing impracticability on contractual grounds); *Iannuccillo*, 713 A.2d at 1238 (discussing impracticability in a breach of

contract action); *Opera Co. of Boston, Inc. v. Wolf Trap Foundation for Performing Arts*, 817 F.2d 1094, 1100 (4th Cir. 1987) (addressing impracticability in contractual dispute); *International Minerals and Chemical Corp. v. Llano, Inc.*, 770 F.2d 879, 886 (10th Cir. 1985) (examining impracticability in a breach action)).

The elements of a contract cannot be met by the Decision. The HCA provides for review and approval of hospital conversions by Petitioner and RIDOH, and allows Petitioner to impose conditions where he deems them necessary. Sections 23-17.14-5, 23-17.14-7. There is no mutuality of obligation or bargained-for exchange between Respondent and Petitioner. Respondent was an applicant in a hospital conversion and Petitioner reviewed and approved the application with conditions as directed by statute. Based on the HCA and the law of contracts, the Decision does not function as a contract between Petitioner and Respondent, but rather an application approval and enforcement order from a state legal agency.

Assuming *arguendo* that the impracticability defense is available to Respondent and the cyber-attack excused Respondent's DPO of 118.34 on September 30, 2023, Respondent was already out of compliance months before the incident occurred. *Id.* at Exs. 8, 9 (showing DPO of 99.47 on December 30, 2022 and 102.96 on March 30, 2023). Moreover, the cyber-attack against Respondent occurred on August 1, 2023, rendering Respondent unable to bill $450 million in revenue for an eight-week period. (Resp't's Ex. 12 (Sabillo Aff.) ¶ 19.) As of March 19, 2024, Respondent recovered $400 million of the $450 million through delayed billing. (Hr'g Tr. 18:1-5; Pet'r's Ex. P (Pillari Dep.) 14:8-21.)

Despite recovering from the cyber-attack, Respondent was still in violation of Condition 7.2 on December 30, 2023, with a DPO of 127.51. (Harvey Aff. Ex. 12.) Minutes from an AP Task Force meeting on December 4, 2023 reveal the Hospitals' worsening arrears and Respondent's

reluctance to provide necessary funds: "[w]e currently owe 42 million, of that, 22 million are over 90 days and 8 million is over 120 days. 2 weeks ago we only received 730,000 and last week 990,000 for bills. We are currently spending 1.6-1.7 million per week which is adding to the deficit." (Pet'r's Ex. S, at 10.) Accordingly, the Court rejects Respondent's argument that the cyber-attack made performance of the accounts payable condition in the Decision impracticable because there is no contract between the parties, Respondent was in violation of Condition 7.2 prior to the cyber-attack, and Respondent has almost fully recovered from the cyber-attack.

IV

Conclusion

For the reasons outlined herein, Petitioner's Motion for a Preliminary Injunction is **GRANTED**. Respondent is ordered to pay the accounts payable equal to or exceeding ninety (90) days for the Hospitals as of December 30, 2023, amounting to $17,326,526, within ten (10) days of this Decision. In addition, the Respondent shall comply with Section 7.2 through trial. Counsel shall prepare the appropriate order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Peter F. Neronha, Rhode Island Attorney General v. Prospect Medical Holdings, Inc.**
CASE NO:	**C.A. No. PC-2023-05832**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**June 12, 2024**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**Julia Harvey, Esq.; Richard L. Gemma, Esq.; Sarah Rice, Esq.; Miriam Weizenbaum, Esq.; Dorothea R. Calvano Lindquist, Esq.**
For Defendant:	**Patricia K. Rocha, Esq.; Richard R. Beretta, Jr., Esq.; Leslie D. Parker, Esq.; Patrick N. Sampson, Esq.; R. Bart Totten, Esq.**
Interested Party:	**Julia Wyman, Esq.; Theodore Orson, Esq.; Justin J. Sullivan, Esq.**