STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

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| UNITED NURSES & ALLIED PROFESSIONALS<br>PLAINTIFF | :<br>: | |
| VS. | : | C.A. NO. PC-2017- |
| RHODE ISLAND DEPARTMENT OF HEALTH;<br>RHODE ISLAND DEPARTMENT OF ATTORNEY GENERAL;<br>MEMORIAL HOSPITAL OF RHODE ISLAND;<br>CARE NEW ENGLAND HEALTH SYSTEM<br>DEFENDANTS | :<br>:<br>:<br>:<br>:<br>: | |

# COMPLAINT

## PARTIES

1. Plaintiff, United Nurses & Allied Professionals, Local 5082 ("UNAP") is a non-profit corporation organized under the laws of the State of Rhode Island, having its principal place of business located at 375 Branch Avenue, Providence, Rhode Island.

2. UNAP is a party to a Collective Bargaining Agreement which provides the terms and conditions of employment for registered nurses and other licensed professionals at Memorial Hospital of Rhode Island ("MHRI").

3. Defendant, The Rhode Island Department of Health (the "Department of Health") is an agency of the State of Rhode Island established pursuant to R.I. Gen. Laws §42-18-1.

4. Defendant, Rhode Island Department of Attorney General (the "Department of Attorney General") is an agency of the State of Rhode Island established pursuant to R.I. Gen. Laws §42-9-1 *et seq.* (The Department of Health and Department of Attorney General may be collective referenced below as the "Departments").

5. Defendant, MHRI is non-profit corporation organized under the laws of the State of Rhode Island and having its principal place of business located at 111 Brewster Street, Pawtucket, Rhode Island.

6. Defendant, Care New England Health System ("CNE") is a non-profit corporation organized under the laws of the State of Rhode Island and having its principal place of business located at 45 Willard Avenue, Providence, Rhode Island.

7. CNE, upon information and belief, is the sole member, as that term is defined in R.I. Gen. Laws §7-6-1 *et seq.*, of MHRI's parent entity, Southeastern Healthcare System, Inc., which is a non-profit corporation organized under the laws of the State of Rhode Island having its principal place of business located at 111 Brewster Street, Pawtucket, Rhode Island.

## JURISDICTION

8. The Court has jurisdiction pursuant to R.I. Gen. Laws §8-2-13, R.I. Gen. Laws §9-30-1 *et seq.*, and R.I. Gen. Laws §23-17.14-30.

## GENERAL ALLEGATIONS

9. In or around 2012, MHRI and other transacting parties submitted an application to the Departments pursuant to the Rhode Island Hospital Conversion Act, R.I. Gen. Laws §23-17.14-1 *et seq*. (hereinafter, the "HCA") to affiliate MHRI within the CNE system.

10. On or about June 26, 2013, the Department of Health rendered a decision (the "HCA Decision") and MHRI affiliated with CNE pursuant to said proceedings. Therewith, MHRI, as affiliated within CNE, was licensed as an acute-care, community hospital.

11. In the HCA Decision, the Department of Health noted that MHRI is a 294-bed acute-care, community hospital serving a core service area with higher social deprivation measures as compared to other areas in the State of Rhode Island.

12. The Department of Health, in the HCA process, ruled that MHRI was a distressed Rhode Island hospital facing significant financial hardship that may impair its ability to continue to operate effectively absent a conversion to allow the affiliation within the CNE system.

13. The affirmative HCA Decision was based upon a "balanced healthcare" rationale.

14. The HCA Decision described a "balanced healthcare delivery system" as one that could be characterized as providing an optimal mix of primary and specialty services within a defined geographical area. Such a system would enable patients to receive care in their own communities.

15. In making the ruling based upon a "balanced healthcare" rationale, the HCA Decision specifically stated:

> "Care New England has committed to maintain services presently in place at Memorial Hospital, with the exception of the cardiac catheterization and some medical imaging services. Care New England represented that these services will be available at other hospitals within the Care New England system to residents in the Memorial Hospital service area."

16. In turn, the HCA Decision as a matter of law found a commitment to ensure the continuation of collective bargaining rights, retention of the workforce, an appropriate accounting of future employment needs, and workforce retraining.

17. Further, the decision rendered by the Department of Attorney General in regard to the CNE/MHRI HCA application also highlights the condition that the hospital conversion must be implemented as detailed in the HCA Application and as approved by the Department of Health.

18. Concurrent with the HCA Decision, MHRI was issued a new license and in the licensure decision, the Department pointed out the following:

(a) CNE and MHRI would be a strategic partnership in which "MHRI would lead CNE in primary care and internal medicine;" and

(b) The Department pointed out that the strategic partnership with MHRI would amount to a "dedication to CNE community and a commitment to continue a full-service hospital presence".

19. Moreover, the licensure decision projected favorable financial data. This is in stark contrast to where MHRI and the workforce currently finds themselves.

20. Despite such conditions and projections, MHRI and CNE have undertaken a course of action designed to ensure that primary care services at MHRI are to be eliminated. MHRI would cease to operate as an acute-care, community hospital, and any remaining assets of MHRI would be transferred to a CNE affiliate without obtaining any regulatory approvals, addressing any workforce issues, or pursuing any alternatives under the supervision of the required, regulatory process.

21. In fact, CNE met with the Department of Health as early as February of 2016, to outline a "restructuring" of MHRI.

22. As far back as February of 2016, in various presentations to the Department of Health, CNE and MHRI indicated that MHRI would close obstetric services, close the intensive care unit, close medical and surgical units, and eliminate up to a 150 in-patient hospital beds.

23. In CNE's re-structuring memorandum submitted to the Department of Health in early February of 2016, CNE admitted to the Department of Health that in order to restructure MHRI, CNE and/or MHRI would need various regulatory approvals.

24. Furthermore, MHRI and CNE admitted that such a restructuring would be defined as a "conversion" under the HCA and require licensure under R.I. Gen. Laws §23-17-1 *et seq.* (the "Rhode Island Hospital Licensure Act").

25. On February 26, 2016, the CNE Board of Trustees (the "CNE Board") voted to transfer various services of MHRI to other CNE affiliates "pending the required regulatory approvals."

26. Furthermore, the CNE Board admitted that CNE was attempting to transfer primary and core health services from one licensed hospital to other licensed premises within the CNE system.

27. By undertaking that vote, the CNE Board has admitted that it was attempting to "convert" the assets of a licensed hospital in the State of Rhode Island without availing themselves to the requirements of any hospital conversion proceeding.

28. As far as UNAP is aware, there have been no changes to the regulatory structure as requested by CNE in early February of 2016. Furthermore, there have been no petitions for declaratory ruling filed by CNE and/or MHRI. In turn, there has been no request for any regulatory approvals seeking to convert or de-license MHRI as an acute-care, community hospital.

29. Thus, on or about March 11, 2016, UNAP filed a Petition for Declaratory Judgment with the Department of Health, pursuant to Section 18 of the Rules and Regulations Pertaining to Practices and Procedures Before the Rhode Island Department of Health, R42-35-PP, seeking a declaratory ruling as to whether MHRI and CNE's actions violated the HCA and Rhode Island Hospital Licensure Act.

30. On or about April 20, 2016, the Department of Health issued a decision in response to the Petition for Declaratory Ruling (the "Decision"), in which the Department of Health denied UNAP's request for a hearing.

31. On or about April 22, 2016, UNAP, in the matter of *United Nurses & Allied Professionals v. The Rhode Island Department of Health*, C.A. No. PC-2016-1826, filed an

administrative appeal with the Rhode Island Superior Court pursuant to R.I. Gen. Laws §42-35-15(a).

32. During proceedings before this Court, the Department of Health then issued what purported to be a "decision" on UNAP's Petition for a Declaratory Ruling. However, the Department of Health sidestepped all the legal issues raised by UNAP.

33. In essence, the Department refused to address the issues and set forth in a written decision why the admitted "re-structuring" of MHRI was being allowed without any form of regulatory hearings, approvals or compliance, including whether workforce issues have been addressed or alternatives have been, or should be, explored to preserve MHRI, or its workforce.

34. However, this Court on August 19, 2016, issued an Order requiring the Department of Health to issue a substantive decision on UNAP's request for declaratory ruling.

35. Unfortunately, the Department of Health refused to do so and brought a Petition for a Writ of Certiorari before the Rhode Island Supreme Court which was never granted.

36. To this day, the Department of Health continues to refuse to address the issue of why the admitted "re-structuring" of MHRI was being allowed without any form of regulatory hearings, approvals or compliance, including whether alternatives have been, or should be, explored to preserve MHRI or its workforce.

37. Thereafter, MHRI and CNE acknowledged a renewed commitment to the community and at least, for public consumption, moved away from the restructuring.

38. In early 2017, CNE initiated a search for parties interested in the acquisition of Memorial.

39. Upon information and belief, a Letter of Intent was executed between Prime Healthcare Foundation ("Prime") and CNE in April 2017.

40. On October 17, 2017, MHRI released a statement that the CNE Board authorized the termination of negotiations with Prime. The CNE Board also authorized management to prepare necessary plans and filings with the Department of Health to maintain vital access to primary care and outpatient services in the community while closing MHRI's inpatient units and Emergency Department.

41. Soon after October 17, 2017, and before filing any required closeout plans, MHRI and CNE took steps to ensure MHRI's closure.

42. However, it was not until November 2, 2017, when MHRI submitted a form of application to the Department of Health requesting to close MHRI's Emergency Department (herein the "Emergency Department Closure").

43. On November 3, 2017, MHRI sent notices to all affected employees advising them that MHRI intended to close.

44. On November 6, 2017, the Department of Health informed MHRI that the Department had received the Emergency Department Closure. However, the Department requested that MHRI continue services at MHRI, including, but not limited to, inpatient, emergency and intensive care services.

45. Further, the Department of Health, by letter, mandated that MHRI must remain open and fully staffed in a routine manner, meeting all applicable state and federal statutes and regulations until such time as the Director of Health received formal notification of closure and issued final approval of an orderly plan of closure, and until the Director of Health issued a final decision on MHRI's plan to cease providing Emergency Department services. That letter informed MHRI of the minimum requirements that must be included in the orderly plan of closure for the hospital.

46. Regardless, on November 8, 2017, CNE informed the Department of Health by letter that it could no longer accept patients in need of ICU services at MHRI due to limited physician and nurse availability and the inability to address the clinical needs of ICU patients. The letter also stated that is was no longer financially reasonable, nor clinically responsible, for CNE to continue to staff the ICU at MHRI. Finally, the letter stated MHRI would stop admitting patients to the ICU on November 12, 2017 and that should any patients remain in the ICU as of November 13, 2017, they would be notified of the need to transfer to another hospital.

47. Despite the lack of a complete closure plan, on November 9, 2017, the Department of Health informed MHRI by letter that the administrative review of the Emergency Department Closure would commence on November 10, 2017 and would conclude within 90-days of that date.

48. It was not until November 10, 2017, however, that MHRI submitted a draft of its "Voluntary Closure Plan" to the Department of Health, which contained responses to the requirements set forth in the Department of Health's November 6, 2017 letter. The plan stated that MHRI intended to reduce or stop providing elective surgery, surgery, and anesthesia services effective December 1, 2017.

49. Absent any approvals, on November 11, 2017, MHRI sent a memorandum to EMS providers notifying them of the clinical changes occurring at MHRI and that effective November 13, 2017, the ICU would be closing and not accepting further patients. The memorandum also identified a list of medical conditions and diagnoses for which patients should not be transported to the MHRI Emergency Department, effective November 13, 2017, and stated that elective surgeries would only be performed at MHRI for low risk patients.

50. Again, despite the incomplete application, on November 20, 2017, the Department of Health notified the public that on November 27, 2017 a public informational meeting would be held concerning MHRI's Emergency Department Closure request, and that the Department of Health would accept written comments regarding the request until December 11, 2017.

51. On November 21, 2017, MHRI submitted a letter to the Department of Health stating, among other things, that it would not be possible for MHRI to continue to adequately staff the Operating Room and anesthesia services, that only elective surgeries would be scheduled after December 1, 2017. and that it would be a costly and unnecessary hardship for MHRI to continue to provide surgery and anesthesia services after December 1, 2017.

52. In the letter dated November 21, 2017, MHRI requested a waiver from the requirements of Sections 4.6.19 and 4.6.20 of 216-RICR-40-10-4, to no longer maintain a surgical service and anesthesiology services as a requirement for the provision of Emergency Department services effective December 1, 2017.

53. Of critical importance, on November 22, 2017, MHRI and CNE affirmatively stated to the Department of Health that CNE will close MHRI and then transfer MHRI's assets to one of its affiliates, Kent Hospital, if CNE determines that plan to be "clinically and financially feasible" (the "MHRI Restructuring Plan").

54. Furthermore, CNE admitted that the MHRI Restructuring Plan would be done through a transfer of MHRI assets relative to internal medicine and family medicine located at 111 Brewster Street, Pawtucket, Rhode Island, as well as pediatric medicine sites located at 555 Prospect Street, Pawtucket, Rhode Island, to Kent Hospital through an application under the Rhode Island Hospital Licensure Act.

55. In turn, it was not until November 22, 2017, that MHRI submitted its request to eliminate the provision of primary care services (herein the "Primary Care Closure") currently provided under the MHRI license located at 111 Brewster Street, Pawtucket, Rhode Island 02860, and transfer primary care services to the licenses of other CNE hospitals. Also, MHRI provided the Department of Health with additional information pertaining to its request to cease operations. That letter provided information to address the requirements noted in Section 10.1.2 of the Rules and Regulations pertaining to Hospital Conversions (R23-17.14-HCA).

56. Admitting that MHRI and CNE's filings were incomplete, on November 22, 2017, the Department of Health sent an email to MHRI stating that required information was missing from the Primary Care Closure, and requested that the missing information be delivered.

57. On November 24, 2017, MHRI resubmitted its Primary Care Closure to the Department of Health.

58. On November 24, 2017, the Department of Health informed MHRI that an administrative review of the Primary Care Closure would commence on November 25, 2017 and would concluded within ninety (90) days of that date. The Department of Health also amended its November 20, 2017 notice to the public regarding the public informational meeting and written comment period to include the Primary Care Closure.

59. On November 30, 2017, the Department of Health issued a Consent Order that detailed instructions on how MHRI will function until decisions can be made on the Primary Care Closure and the Emergency Department Closure. Most notably:

a. MHRI shall not admit patients after November 30, 2017;

b. MHRI shall not perform any scheduled non-emergency inpatient or outpatient surgical procedures after November 30, 2017;

c. MHRI shall not provide any anesthesia services after November 30, 2017;

d. MHRI shall maintain its Emergency Department in compliance with all other requirements set forth in 216-RICR-40-10-4; 4.6.7;

e. MHRI shall maintain 24/7 Emergency Department supportive services including but not limited to radiology services, computed tomography, magnetic resource imaging, clinical laboratory services, blood transfusion services, and pharmacy services, all in accordance with all applicable requirements by the Hospital license;

f. MHRI shall continue to maintain all other hospital services as required in 216-RICR-40-10-4;

g. MHRI shall maintain the appropriate staffing, equipment, pharmaceutical and supply levels required and set forth in 216-RICR-40-10-4; 4.6.7;

h. MHRI shall revert to "internal disaster" mode, diverting all ambulance services from its Emergency Department effective November 30, 2017;

i. MHRI shall maintain ambulance services on-site 24/7 to transport patients who arrive at MHRI and cannot be treated at MHRI, to the nearest hospital, until the Department of Health issues its decision in response to MHRI's request to discontinue Emergency Department services;

j. MHRI shall triage patients presented to the MHRI Emergency Department in accordance with EMTALA standards;

k. CNE and MHRI shall notify the public of all changes to hospital operations by means of press release, social media, local signage in English, Spanish and Portuguese. All notifications must be preapproved by the Department of Health;

l. MHRI must include prominent language at the hospital notifying the public of the services that are no longer available at MHRI;

m. MHRI must promptly notify affected professional, paraprofessional, ancillary and support staff of effects of the closure of services on their employment as well as provide support to affected staff in finding future employment.

60. The provisions of the Consent Order only apply to the period beginning December 1, 2017 and ending on the date when the Department of Health issues its decisions on the Primary Care Closure and the Emergency Department Closure.

61. Accordingly, it is truly remarkable what MHRI and CNE have done. MHRI and CNE have taken steps without any regulatory approvals to force MHRI to close and have admitted on several occasions, including in February of 2016 and in November of 2017, that such a plan is a "conversion" under Rhode Island law which also requires approvals under the Rhode Island Licensure Act.

62. Yet, CNE has not had to proceed through any review process.

63. Such an undertaking establishes a very interesting public policy, as the regulated entity sets in motion a series of events which are admittedly regulated and subject to approval, but places the regulator in a position where it has no choice but to accept the outcome without any review, as required by statute.

64. As pursuant to the HCA and the Rules and Regulations Pertaining to Hospital Conversions (R-22-17.14-HCA), Section 1-10 states that a "conversion" is defined as any transfer of the assets of a hospital, by any form of disposition, which results in a change of ownership, control or possession of 20% of the assets of the hospital.

65. The MHRI Restructuring Plan, set in motion by MHRI and CNE without any regulatory approvals, is defined as a conversation under the HCA and can only take place if an appropriate application is filed and certain approvals are rendered after advisory opinions are issued by the Rhode Island Health Services Council.

66. In addition, the MHRI Restructuring Plan will require a licensure proceeding under the Rhode Island Hospital Licensure Act.

67. Had MHRI and/or CNE complied with, or if they are required by this Court to comply with, applicable statutory provisions and regulations promulgated thereunder, those entities would have had to demonstrate to what degree the transacting parties are prepared to commit to ensure the continuation of collective bargaining rights, and the retention of workforce.

68. Moreover, those transacting parties would have to demonstrate that they have properly accounted for the future employment needs of the facility and to address workforce retraining needed as a consequence of any proposed restructuring.

69. Absent this statutory protection, MHRI's workforce, including UNAP's members, are deprived of such statutory protections and thus, face the threat of irreparable injury for which there is no adequate remedy at law.

70. Furthermore, MHRI and CNE set in motion a series of events designed to eliminate the MHRI Emergency Department and primary care services at MHRI without submitting appropriate applications and plans to the Department of Health.

71. In turn, the Department of Health has stated publicly that the plans submitted are not in the form and content acceptable for review by the Department of Health.

72. Furthermore, the Department of Health has determined, and cannot determine otherwise, that the services affected by the proposed elimination do significantly serve uninsured and/or underinsured individuals.

73. Therefore, the Director of the Department of Health (the "Director") cannot deem the plan in the form and content acceptable for review. Accordingly, the ninety (90) day period under Regulations Section 10.1.4, has not started to run as a matter of law.

74. Furthermore, the Director has deemed appropriate to issue public notice and allow for public comment, which must run for a period of sixty (60) days from the receipt of a written plan in form and content acceptable for review.

75. As a matter of law, the Director has not received a written plan in form and content acceptable for review.

**76.** Nevertheless, MHRI and CNE have undertaken actions that were designed, and in fact, did accomplish the termination of the MHRI Emergency Department and primary care services, all without the filing of a written plan in form and content acceptable for review by the Department of Health and without the Director's approval thereof.

**Count I**
**(Petition for Declaratory Injunction and Injunctive Relief)**

77. UNAP and its members are persons affected by the HCA and the Rhode Island Hospital Licensure Act.

78. UNAP and its members seek to have determined the question of construction under the HCA and the Rhode Island Hospital Licensure Act.

79. Under the Rhode Island Uniform Declaratory Judgment Act, the Court possesses the power to declare such rights, status, and other legal relations regardless of whether other relief could be claimed.

80. The purpose of the Rhode Island Declaratory Judgement Act is to render such a dispute concerning legal rights under the applicable statutes and regulations be justiciable without proof of a wrong committed by any one party against another and thus, facilitate the termination of the controversy.

81. As a result of the controversy alleged herein, UNAP seeks to obtain a declaration of rights, status and/or other legal relations as it relates to the HCA, the Rhode Island Hospital Licensure Act, the regulations promulgated thereunder and the MHRI Restructuring Plan.

82. Declaratory relief is sought herein in which a judgment or decree will terminate the controversy and remove any uncertainty as to the regulatory requirements triggered by the MHRI Restructuring Plan.

83. UNAP and its members have suffered injury in that their collective bargaining rights, employment relation rights, accounting for employment needs, and employment retraining rights, as required by the HCA, have been completely ignored in the MHRI Restructuring Plan.

84. As a result thereof, UNAP and its members are threatened with irreparable injury for which there is no adequate remedy of law.

85. A balancing of the equities, including the public interest, requires that MHRI and CNE be subject to the review process required by the HCA and the Rhode Island Hospital Licensure Act.

WHEREAS, UNAP requests an order granting declaratory relief and having the force and effect of a final judgment herein as follows:

a. Declare that MHRI and CNE failed to comply with the HCA and regulations promulgated thereunder, when those entities took steps designed to, and in fact,

have caused the closure of MHRI's Emergency Department and primary care services without MHRI and/or CNE being required to submit a written closure plan in form and content acceptable for review by the Department of Health;

b. Declare that the ninety (90) day review period and the sixty (60) day public comment period relative to the closure of MHRI's Emergency Department and primary care services have not commenced, because MHRI and/or CNE have failed to submit a written plan in form and content acceptable for review by the Director of the Department of Health;

c. Declare that MHRI and CNE cannot secure approval from the Director of the Department of Health of any Emergency Department Closure and/or Primary Care Closure until a written plan acceptable in form and content for review by the Department of Health is submitted, the Director deems such written plan to be complete, and the sixty (60) day public comment period passes;

d. Declare that the restructuring plan prepared by CNE and/or MHRI is a "conversion" as that term is defined under the HCA and the regulations promulgated thereunder;

e. Declare that as a "conversion," the Restructuring Plan prepared by MHRI and/or CNE is required to undertake immediate review in accord with the HCA and regulations promulgated thereunder;

f. Declare that any licensing procedure relative to the entity that receives the transfer of MHRI assets, must proceed under R.I. Gen. Laws §23-17-1 *et seq.* (the "Rhode Island Hospital Licensure Act");

g. Order that CNE and MHRI are temporarily, preliminarily and permanently enjoined from securing any further approvals and from filing any further applications under the HCA and/or the Rhode Island Hospital Licensure Act until an application is filed, a review is completed, a decision is rendered with regard to the restructuring of MHRI, an evidentiary hearing is concluded, and a decision is rendered pursuant to Count II, hereof;

h. An award of reasonable attorneys and expert fees and expenses as necessary to enforce such right, title and interest herein;

i. An award of costs under the Rhode Island Uniform Declaratory Judgment Act; and

j. Such other relief as this Court deems fair and appropriate.

**Count II**
**(Request for an Evidentiary Hearing of Imposition of Fines pursuant to Section 30 of the HCA**

86. Plaintiff hereby re-alleges and incorporates by reference Paragraphs 1 through 85 of its Complaint as if the same was set forth more fully herein.

87. Beginning in February of 2016, MHRI and CNE have undertaken a course of action designed to eliminate primary care services and convert hospital assets purposely and admittedly without abiding by applicable statutes and regulations promulgated thereunder.

88. Specifically, MHRI and CNE have admittedly and purposely failed to avail themselves and abide by the statutory provisions of the HCA and the regulations promulgated thereunder.

89. Section 30 of the HCA and Section 14 of the Rules and Regulations Pertaining to Hospital Conversations (R23-17.14-HCA), provides that in such a situation, the Superior Court

shall afford an evidentiary hearing and the potential imposition of fines up to One Million Dollars.

WHEREFORE, UNAP requests an Order appointing a Special Master under R.I. Super. Ct. R. Civ. P. 53 to oversee discovery, conduct a hearing and report to the Court regarding alleged violations of the HCA and the regulations promulgated thereunder. Moreover, UNAP requests that any fines imposed be structured to offset the violations arising from the failure to abide by statutory and regulatory protections regarding collective bargaining rights, workforce retention, accounting for future workforce needs, and workforce retraining.

Submitted by,

United Nurses & Allied Professionals

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