



C A L I F O R N I A

DEPARTMENT OF JUSTICE

Rob Bonta
Attorney General

1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 210-7522
Facsimile: (916) 322-8288
E-Mail: Neli.Palma@doj.ca.gov

September 30, 2024

Michael J. Sarrao, Esq.
Law Offices of Michael J. Sarrao
22431 Antonio Parkway, Suite B160-457
Rancho Santa Margarita, California 92688
msarrao@sarraolaw.com

Sent via email

RE: Waiver Request by Hayward Sisters Hospital and Saint Rose Medical Building, Inc.

Dear Mr. Sarrao:

On August 7, 2024, Hayward Sisters Hospital, a California nonprofit corporation doing business as St. Rose Hospital (St. Rose), and Saint Rose Medical Building, Inc., a California nonprofit corporation (SRMB), submitted a request for waiver of the Attorney General's notice and consent to a proposed transaction by and between St. Rose and Alameda Health System (AHS), an intracounty public hospital authority, with hospitals devoted to service of the most indigent and vulnerable within the county, which will result in the transfer of control of St. Rose and SRMB to AHS.

In determining whether to grant a waiver of the notice and consent requirements in Corporations Code section 5920, the Attorney General reviews the decisional factors set forth in Corporations Code section 5923. A waiver shall be denied if any of the decisional factors require full Attorney General review. (Cal. Code Regs., tit. 11, § 999.5, subd. (a)(5)(B).)

This office has reviewed the decisional factors in light of the documentation submitted and the representations made by St. Rose and AHS and has taken into consideration public comments and the unique circumstances that this proposed transaction presents. The Attorney General has concluded that the decisional factors do not require full Attorney General review.

St. Rose has represented that it is a standalone nonprofit safety net hospital serving the most indigent and vulnerable populations in Hayward, that it has faced substantial financial difficulties for several years, and that it has received a loan under the recently enacted Distressed Hospital Loan Program. It has further represented that St. Rose will continue to face substantial financial difficulties in the future unless it becomes part of an integrated healthcare system, and

that the viability of St. Rose remains in doubt and reductions in services and/or closure will be an issue if such transaction is not completed.

Accordingly, St. Rose has entered into the proposed transaction with AHS that consists of the Membership Issuance Agreement dated August 19, 2024, by and between St. Rose and AHS and the Transitional Planning Agreement dated August 19, 2024, by and between St. Rose and AHS (Agreements). With respect to the operations of St. Rose, the parties have made the following representations in the August 7, 2024, waiver request:

1. After the closing, St. Rose will continue to be operated as a duly licensed general acute care hospital with a 24/7 emergency department, critical care and ICU beds, cardiac services, labor and delivery, medical/surgical services, sub-acute/skilled nursing services, and mammography services.
2. “After the closing, St. Rose will continue to employ all of the individuals who were employed prior to the closing, subject to ordinary course employment decisions, and the Medical Staff will remain in place as an independent medical staff. In addition, the four labor organizations that currently represent employees at St. Rose (California Nurses Association, Teamsters Local No. 856, ESC Local 20, and Stationary Engineers Local 39) will continue to be recognized as the exclusive bargaining representative of their bargaining units and the collective bargaining agreements will remain in place;” and
3. “After the closing, St. Rose will continue to offer a charity care and financial assistance policy no less favorable than those currently maintained by St. Rose and St. Rose will continue to provide community benefits. Given AHS’ commitment to charity care and financial assistance and community benefit programs, St. Rose expects the Anticipated Transaction will serve to enhance St. Rose’s financial assistance and charity care programs and community benefit programs. This is especially true since St. Rose expects that patient volumes will grow under AHS and increase the opportunity for charity care.”

In accordance with these representations, the Agreements have provisions related to the continuation of clinical services at St. Rose (Provision 11.2 of the Affiliation Agreement), Medicare and Medi-Cal participation (Provision 11.3 of the Affiliation Agreement), and retention of all employees and medical staff at closing (Provision 11.1 and 11.8 of the Affiliation Agreement). Moreover, in provision 11.6, AHS acknowledges that St. Rose provides certain levels of financial assistance for care provided to indigent and low-income patients, and further states that “AHS shall adopt, maintain, and adhere to [St. Rose’s] current policies on charity and indigent care or adopt other policies and procedures that are at least as favorable to the indigent and uninsured as [St. Rose’s] existing policies and procedures, and in all cases as required by applicable law. AHS shall provide care through community-based health programs, including cooperation with local organizations that sponsor healthcare initiatives to address identified community needs and disparities in health and improve the health status of the elderly, poor, and other at-risk populations in the community.”

With respect to labor and delivery services at St. Rose, the parties have represented that there are currently 15 to 20 deliveries at the hospital per month. According to AHS, due to concerns regarding the continued viability of St. Rose Hospital and studies showing that low-volume labor and delivery programs can present a higher risk to patients for both low-risk and high-risk pregnancies, AHS has represented it will work with key local stakeholders, including the City of Hayward, regarding any changes to those services in their current form and that AHS already presented on this subject to the County of Alameda Board of Supervisors Health Committee meeting on September 23, 2024. AHS states it also intends to present this issue to the AHS Board of Trustees in an open session, providing the public with a further opportunity for comment. AHS has further represented that it will provide notification to employees and medical staff, as well as relevant governmental agencies and regulatory bodies, comply with all rules and regulations concerning changes, and engage in bargaining as required by collective bargaining agreements and law regarding any alternative models. Those alternative models could include: 1) obstetrics (OB) call coverage in the emergency department (ED), 2) establishing a primary care OB clinic in the existing vacant Medical Office Building space, and 3) developing a freestanding midwifery birthing center that is co-located to the hospital for low-risk deliveries. AHS has further represented that work will commence immediately on primary care services for OB in the Hayward community, with a potential low-risk delivery center at or near the hospital to be evaluated over the next 12 months. In the interim, AHS has also represented it will maintain call coverage for OB services in the ED indefinitely for the 5% of emergency deliveries (compared to 95% planned deliveries), develop a program for the transfer of non-emergent deliveries arriving through the ED, facilitated by a coordinator or liaison, and provide transportation if needed to laboring patients.

It is not often that parties work out a deal to transfer control of a hospital to give the community an opportunity to save the services it provides. In rendering this decision, the Attorney General has considered (1) the nature of AHS as an intra-county safety-net system that is affiliated with Alameda County and serves the same population as St. Rose, including those residing in the flatlands of Hayward; (2) the nature of St. Rose as suffering from chronic underinvestment that AHS will address; (3) the commitment by AHS to continue acute care services, including emergency department, critical care and ICU beds, cardiac services, medical/surgical services, sub-acute/skilled nursing services, and mammography services; and (4) the expectation of the Office that in the event any services like labor and delivery are reduced from their current form, they will be adequately provided by AHS elsewhere within the system with support for those who live in and throughout Hayward to commute to other facilities in

///

///

///

September 30, 2024

Page 4

AHS. In light of the foregoing, the Attorney General hereby grants the waiver of written notice of, and the Attorney General's written consent, to the proposed transaction.

Thank you for your attention to this correspondence.

Sincerely,

Neli Palma

NELI N. PALMA

Senior Assistant Attorney General

For ROB BONTA
Attorney General

cc: Ahmad Azizi, General Counsel, Alameda Health System, sazizi@alamedahealthsystem.org

LA2012108514
38411592.docx