

**United Nurses &  
Allied Professionals**



Linda McDonald, RN  
President

Sent Electronically  
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Michael K. Dexter, Chief  
Center for Health Systems Policy & Regulation  
Rhode Island Department of Health  
3 Capitol Hill, Suite 410  
Providence, RI 02908

Re: Objection to Application for Change in Effective Control of Blackstone Valley Surgicare

Dear Mr. Dexter:

I am writing on behalf of the United Nurses and Allied Professionals (UNAP) to object to the pending Change of Effective Control (CEC) Application (The Application) of Prospect Blackstone Valley Surgicare, LLC (The Applicant, BVSC). By this application, BVSC seeks authority to control and provide the health care services of Blackstone Valley Surgicare (The SurgiCenter) in Johnston, RI.

BVSC is ultimately owned by Prospect Medical Holdings, Inc. (PMH) a large proprietary provider of health services in five states. PMH owns or controls many health provider subsidiaries throughout the country including hospitals and outpatient treatment centers. PMH is, in turn, owned by Leonard Green & Partners, LLP (LGP), a private equity investment firm located in Los Angeles.

The RI Department of Health, in determining whether to approve or deny this request, must consider the operating record of The Applicant and its affiliates. While BVSC, as a new entity, has no operating record, its many affiliates across the country have been substantially active. UNAP submits that The Application filed by BVSC lacks information on certain critical events and activities of these subsidiaries. These events, in turn, are material to The Department's assessment of certain statutory review criteria set forth in RI General Laws, Chapter 23, Section 23-17.3:

- The character, commitment, competence, and standing in the community of the proposed owner or operator, and
- The extent to which the facility will continue to provide care without effect on the viability of the facility, and
- The extent to which the facility will continue to provide safe and adequate treatment for the individuals receiving health care provided by the facility.

The Department of Health provides a very specific form (Change in Effective Control Application, version 09.2016) that CEC applicants, such as PMH, must complete fully in order to

file their requests. Many questions on this form seek broad information about applicants' backgrounds and experiences in providing health services. Two important examples include Questions 20 and 23 in part as follows:

20. Please identify and describe any and all instances and the status or disposition of each of the following within the past 3 years:
  - A. Citations, enforcement actions, violations, charges, investigations, or similar types of actions involving the applicant and/or its affiliates (including but not limited to actions brought forward by any governmental agency, accrediting agency or similar type of agency.)
  
23. Please provide a detailed description about the amount and source of the equity and debt commitment for this transaction. Additionally, please demonstrate the following:
  - A. The immediate and long-term financial feasibility of the proposed financing plan;
  - B. The relative availability of funds for capital and operating needs;
  - C. The applicant's financial capability.

UNAP has reviewed The Application as submitted to The Department and believes that the information provided in response to these questions is incomplete. This belief is based on information we have obtained from the public record that does not appear to be clearly or readily evident in The Application.

Moreover, we believe that the missing information is material and necessary for The Department's determination of The Applicant's qualifications, competence and capacity to sufficiently exercise the responsibilities of licensee for the SurgiCenter.

We are hereby submitting portions of this missing information. Our submission is intended to be exemplary of defects in The Application and is not intended to be complete or comprehensive. We urge that The Department consider this information and reject this Application for intentional or unintentional omissions of material information and failure to demonstrate The Applicant's qualifications with respect to the review criteria above.

We further request that we be allowed to present testimony regarding this issue at the public meeting to be held regarding this CEC request.

Respectfully,



Linda McDonald, President  
United Nurses & Allied Professionals

**Statement of Objections  
of the United Nurses and Allied Professionals (UNAP)  
to the Change in Effective Control Application (CEC)  
of Prospect Blackstone Valley Surgicare in Johnston RI.**

- 1) Rhode Island's licensing rules define nursing as "the provision of services that are essential to the promotion, maintenance and restoration of health throughout the continuum of life." They further identify nursing as "a distinct component of health services ...based on specialized knowledge, judgment, and skills" involving a wide range of scientific disciplines. As persons who are intimately familiar with healthcare delivery at the ground level, nurses and allied professionals play important roles in the provision of ambulatory surgery and have a great stake generally in the development of our healthcare system. As the largest group of highly trained professionals engaged in the provision of institutional health services in Rhode Island, we are qualified to comment on prospective changes.
- 2) **The Application by BVSC appears to be incomplete, and the information which appears to be missing is material to The Department's review.** While UNAP makes no claim or representation as to the cause or reasons for missing information, we believe that the Rhode Island Health Department should assess this situation in the course of its review. We raise this issue based on the following observations:
  - a) **The Application provides no apparent response to Appendix B, Question 1.** This question asks "*are the agencies/facilities currently licensed and in substantial compliance with all applicable codes, rules and regulations?*" This is a critically important question requiring a simple yes/no response. No answer, however, appears to be provided. The apparent lack of answer to this question creates doubt as to the current compliance status of The Applicant's affiliates.  
  
The answer to this question is essential to The Department's consideration of the statutory review criteria and should be provided as requested.
  - b) **The Application appears to be incomplete with respect to Appendix B, Question 2.** This question seeks the identification of **all** of the Applicant's affiliates for the purpose of identifying recent enforcement actions against any. While the Applicant lists 18 existing hospital affiliates, it fails to identify health provider affiliates that are outpatient facilities or medical groups. Many such entities across the country are listed as subsidiaries of PMH on its website at *pmh.com*. These facilities do not appear to be listed in The Application.
  - c) **The Application also appears to be incomplete in its response to Question #20.** This question requires the "*identification, description, status or disposition of*

*any and all instances of citations, enforcement actions, violations, charges, investigations or similar types of actions involving the applicant and / or its affiliates within the past 3 years.*” While the Applicant has no operating history itself, it does have many affiliates that have extensively provided health services throughout the country. The Applicant’s response to Question 20 appears to be incomplete for several reasons:

- i) The Applicant provides Exhibit 20 in further response to Question #20. This exhibit is an eleven-page listing of various enforcement actions involving the partial list of affiliates that are identified in Appendix B. While this list is extensive, several relevant incidents, described in the public record, appear to be absent. These are as follows:

- (1) Fines, Sanctions and Enforcement Actions Involving Patient Death, Serious Injury or Regulatory Sanction: These include recent impositions of fines levied against two California hospital affiliates for regulatory infractions resulting in the exposure of patients to “Immediate Jeopardy” and including the death or serious injury to three patients on separate occasions. “Immediate Jeopardy” is a sanction applied to licensed health facilities by CMS when its agents (in this case, The California Department of Public Health (CDPH)) find that a situation exists in which *“the provider’s noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.”* (See 42 CFR Part 489.3.)

Declarations of Immediate Jeopardy have critical implications for a provider’s Medicare certification status: As stated in 42 CFR Section 488.410(a), *“If there is immediate jeopardy to resident health or safety, the State must (and CMS does) either terminate the provider agreement within 23 calendar days of the last date of the survey or appoint a temporary manager to remove the immediate jeopardy.”*

In practice, providers that incur declarations of Immediate Jeopardy frequently obtain abatement of this designation by immediately curing the jeopardy, if possible, or providing a temporary cure and plan of permanent correction immediately or within the 23-day period allowed.

In instances of Immediate Jeopardy, California law also allows for CDPH to further consider and levy, if warranted, an administrative fine of \$50,000 or more.

The following recent enforcement events involving the death or serious

injury and declaration of Immediate Jeopardy occurred at three California affiliates of The Applicant. In addition to these summaries, we have provided extensive documentation of these incidents all obtained from the CDPH public website at cdhp.ca.gov (see Attachment A).

**Incident 1: Serious Injury from Misuse of Medication and Requiring Immediate Resuscitation and Mechanical Ventilation.**

Facility:	Los Angeles Community Hospital	
Event:	Death from Failure to Follow Medication Protocols, Finding of Immediate Jeopardy, Fine	
<b>Enforcement Actions</b>		
Action 1	Investigation of Complaint	2/6/13
Action 2	<u>Immediate Jeopardy Condition Declared:</u> "The facility failed to ensure consistent implementation and establishment of policies and procedures for the effective use heparin drip. The facility's noncompliance with the above requirement has caused or is likely to cause serious injury or death to a patient and therefore constitutes an immediate Jeopardy within the meaning of the Health & Safety Code Section 1280.1"	2/6/13
Action 3	CDPH Issues Licensure Deficiency Statement	2/3/13
Action 4	Plan of Correction Submitted by Hospital	6/7/13
Action 5	Plan of Correction Accepted by CDPH	UNK
Action 6 - Resolution	Fine of \$50,000 Assessed by CDPH	2014
Refer to:	Appendix 1, Item 1	

**Incident 2: Drowning Death**

Facility:	Southern California Hospitals at Hollywood / Culver City	
Event:	Drowning Death, Finding of Immediate Jeopardy & Financial Penalty	
<b>Enforcement Actions</b>		
Action 1	Investigation of Complaint by Unannounced Visit	6/24/13
Action 2	<u>Immediate Jeopardy Condition Declared:</u> "The facility's failure to...ensure the minimum staffing in the ER overflow area is a deficiency that has caused or is likely to cause serious injury or death and is therefore constitutes an Immediate Jeopardy within the meaning of the Health & Safety Code Section 1280.1"	6/24/13
Action 3	CDPH Issues Licensure Deficiency Statement	6/27/13
Action 4	Plan of Correction Submitted by Hospital	1/22/16
Action 5	Plan of Correction Accepted by CDPH	2/3/16
Action 6 - Resolution	Fine of \$50,000 Assessed by CDPH	1/5/17
Refer to:	Appendix 1, Item 2	

**Incident 3: Death from Failure to Follow Chest-Pain Protocol**

Facility:	Los Angeles Community Hospital	
Event:	Death fr. Failure to Follow Chest-Pain Treatment Protocol, Finding of Immediate Jeopardy, Fine	
<b>Enforcement Actions</b>		
Action 1	Investigation of Complaint	5/8/13
Action 2	Immediate Jeopardy Condition Declared: "The facility's failure to follow its policies and procedures regarding the classification and management of a patient with chest pain is a deficiency that has caused or is likely to cause serious injury or death to a patient and therefore constitutes an immediate Jeopardy within the meaning of the Health & Safety Code Section 1280.1"	5/8/13
Action 3	CDPH Issues Deficiency Statement (See Appendix 1)	1/13
Action 4	Deficiency Letter Amended	12/11/15
Action 5	Plan of Correction Submitted by Hospital	12/22/15
Action 6:	Plan of Correction Accepted by CDPH	12/22/15
Action 6 - Resolution	Fine of \$75,000 Assessed by CDPH	2017
Refer to:	Appendix 1, Item 3	

(2) UNAP, in its review of the pending application, was unable to identify evidence of the disclosure of these serious adverse events, sanctions and extended enforcement actions set forth above.

d) **Other Extensive, Protracted Enforcement Incidents:** The Application appears further to be missing information on other extensive and protracted enforcement actions undertaken by CDPH with respect to The Applicant's California hospital affiliates. One important example of such an omission was an extended enforcement action, including multiple "IJ" sanctions with respect to three of The Applicant's California Affiliates including: 1) Southern California Hospital at Hollywood, 2) Southern California Hospital at Culver City and 3) Southern California Hospital at Van Nuys. This action is summarized as follows:

- i) This action was initiated in September, 2015 in response to a complaint received by CDPH. A "Complaint Validation Survey" was subsequently conducted from 9/21/15 – 9/25/15.
- ii) This initial survey was limited to certain "Conditions of Participation: Governing Body, Patient's Rights, Quality Assessment Performance Improvement (QAPI), Nursing Services, Physical Environment, Infection

*Control, Surgical Services and Emergency Services; and does not reflect the findings of a full survey of the hospital."*

- iii) On 9/22, "*an Immediate Jeopardy (IJ) was declared for the widespread pattern of potential ineffective sterility of equipment / instruments and surgical suites not meeting the regulatory temperature and humidity limits.*" In response to this finding, the hospitals undertook to abate it by 1) The Immediate Cessation of elective procedures, The immediate reprocessing of all surgical instruments at the Hollywood campus, reprocessing all endoscopes prior to use at the Hollywood campus 4) institution of temperature monitoring at the Culver City Campus every 24 hours and before each procedure, including maintenance of a constant temperature log, 5) storage of surgical instruments in certain specified areas only, and 6) assessment of room supplies for moisture. The hospital also undertook to provide a long term Plan of Correction.
- iv) The CDPH survey team concluded that the cumulative effect of the conditions observed resulted in the "*inability to provide patient care in a safe and effective manner.*"
- v) CDPH issued a 77-page Statement of Deficiencies on 9/25/15, (see Attachment B), and the Hospital submitted a Plan of Correction on December 10, 2015. UNAP has not determined when or if this Plan of Correction was approved, however, we note that CDPH initiated a second survey on 12/14/15 -- only 4 days after the receipt of the Plan of Correction.
- vi) The report of this second survey indicates that it was undertaken at the request of CMS and that, unlike the earlier survey, was a "Full Validation Survey" more generally assessing the complete range of Medicare conditions of participation.
- vii) On 12/14/15 another Immediate Jeopardy sanction was "*declared for the widespread pattern of ineffective cleaning, disinfection and lack of prevention of transference of infectious substances*" when substantial deficiencies were found in cleaning processes and equipment. The hospitals once again immediately undertook abatement steps -- similar to those taken to remediate the situation set forth in section iii above.
- viii) At the conclusion of this survey, CDPH provided the hospitals with a 144-page Statement of Deficiencies on 12/22/15, (see Attachment C). UNAP does not know whether a plan of correction was provided by the hospitals or approved by CDPH.

- e) **Medicare Penalties for Hospital Performance:** Passage of The Affordable Care Act (2010) enabled CMS to broadly enforce the quality of care provided by Medicare & Medicaid providers. This entails annual reviews and assessments of fines against hospitals failing to meet certain quality measures. Penalties are deducted from government payments to underperforming hospitals in the year after they are assessed. Several such actions have been taken against The Applicant's affiliate providers in recent years. Examples are as follows:

<b>Examples of Fines Levied Against The Applicant's Hospital Affiliates by CMS</b>			
<b>Fiscal Year*</b>	<b>Provider</b>	<b>Location</b>	<b>% of Total Payments Deducted*</b>
<b>Regulatory Penalty for High Patient Readmission Rates</b>			
2017	Nix Health Care System	San Antonio, TX	-0.15%
2017	Los Angeles Community Hospital	Los Angeles, CA	-0.35%
2016	Los Angeles Community Hospital	Los Angeles, CA	-0.26%
2015	Los Angeles Community Hospital	Los Angeles, CA	-0.21%
2014	Los Angeles Community Hospital	Los Angeles, CA	-0.28%
2017	Southern California Hospital at Hollywood	Los Angeles, CA	-0.82%
2016	Southern California Hospital at Hollywood	Los Angeles, CA	-0.14%
2015	Southern California Hospital at Hollywood	Los Angeles, CA	-0.03%
2014	Southern California Hospital at Hollywood	Los Angeles, CA	0.01%
2017	East Orange General Hospital	East Orange, NJ	-1.44%
2016	East Orange General Hospital	East Orange, NJ	-0.75%
2015	East Orange General Hospital	East Orange, NJ	-1.20%
2014	East Orange General Hospital	East Orange, NJ	-1.12%
2017	Delaware County Memorial Hospital	Drexel Hill, PA	-0.86%
2016	Delaware County Memorial Hospital	Drexel Hill, PA	-1.16%
2015	Delaware County Memorial Hospital	Drexel Hill, PA	-1.30%
2014	Delaware County Memorial Hospital	Drexel Hill, PA	-0.59%
2017	Crozer-Chester Medical Center	Upland, PA	-0.52%
2016	Crozer-Chester Medical Center	Upland, PA	-0.92%
2015	Crozer-Chester Medical Center	Upland, PA	-1.02%
2014	Crozer-Chester Medical Center	Upland, PA	-0.57%
<b>Regulatory Penalty for High Rate of Patient Injuries **</b>			
2017	Nix Health Care System	San Antonio, TX	-1.0%
2016	Nix Health Care System	San Antonio, TX	-1.0%
2016	Nix Community General	Dilley, TX	-1.0%
2017	Southern California Hospital at Hollywood	Los Angeles, CA	-1.0%
2017	Foothill Regional Medical Center	Tustin, CA	-1.0%
2017	Roger Williams Medical Center	Providence, RI	-1.0%
2016	Roger Williams Medical Center	Providence, RI	-1.0%
* Penalties are paid in the subsequent fiscal year. Fiscal Year begins in October.			
** E.g., includes high rates of avoidable complications, certain infections, blood clots, bed sores & spread of drug resistant bacteria.			
Source – HealthCare Finance News website – <a href="http://healthcarefinancenews.com">healthcarefinancenews.com</a>			



- i) CMS undertakes these penalties to enforce compliance with certain defined measures of patient care quality. Such enforcement actions are material to The Department's consideration of the pending application. The apparent lack of this information in The Application makes The Application deficient and incomplete and prevents The Department from conducting a thorough review.
- f) **Finally, the pending Application by BVSC appears to be incomplete in its response to Question #23.** This question seeks relevant information for assessing The Applicant's financial ability to ensure the continuity of care and future viability of The SurgiCenter.
  - i) The Applicant submits various financial reports in response to Question 23 including consolidated statements for Prospect CharterCARE, LLC (per 9/30/15 and 2014) and for Prospect Medical Holdings, Inc. (per 12/15). These statements are expressed at an extremely high level of aggregation and are of little use in evaluating The Applicant's financial capabilities with respect to the pending transaction. This information does, however, raise concerns regarding the company's fiscal strength. This question involves PMH's extensive reliance on debt financing. UNAP could identify no additional information in The Application that addresses this question.
  - ii) Given this concern, UNAP sought information regarding the financial capabilities of PMH and its holdings. In doing so, UNAP learned that Moody's Investor Service (Moody's) had reviewed and rated PMH in 2016. Moody's, a subsidiary of the New York Stock Exchange, provides economic analysis, research and credit ratings for investors and others concerned with credit risk. Moody's routinely monitors the financial soundness of companies that participate in debt markets and the likelihood that they can support debt.
  - iii) On June 3, 2016 Moody's rated a recent debt issue offered by PMH identifying it as "*senior secured debt*" to be used to "*refinance Prospect Medical's existing debt and fund three previously announced acquisitions in Connecticut and Pennsylvania.*" After analysis, Moody's designated this debt as follows: Ba3/LGD-3. The "Ba" in this rating signifies obligations considered speculative and subject to high risk.
  - iv) The "LGD" portion of this notation expresses Moody's opinion about the percentage of loss to be expected in the event of default. The "3" signifies obligations for which there is an "acceptable" ability to repay. While the term "acceptable" is applied in this rating, it should be noted that this term is used

as opposed to the alternative terms "Superior" (LGD-1) and "Strong" (LGD-2) and expresses an "Acceptable" but relatively greater expectation of loss.

- v) Moody's rated certain existing debt held by the company that appears to remain in place in the event the new debt offer was successfully subscribed. This latter debt was assigned a rating of "Corporate Family –B1" which designates "speculative grade debt."
- vi) Finally, Moody's changed the Credit Outlook for PMH from "Stable" to "Negative." A negative watch rating is assigned to a Company to advise the public that a ratings agency is contemplating a downgrade of the company's credit rating. Moody's reports from June, 2016 are attached hereto and marked as Attachment D.
- vii) While UNAP does not know if the new debt issue described above was ever finalized, the details of Moody's 2016 analysis of the financial structure of PMH are helpful in assessing its ability to ensure the viability of itself and its subsidiaries.
- viii) This analysis notes the current strengths and weaknesses of the company in maintaining or improving its ratings in the future. However, the weaknesses cited therein are significant and should be weighed in consideration of PMH's ability to ensure the future viability of The SurgiCenter. These particular weaknesses are briefly summarized as follows:
  - (1) PMH relies very heavily on debt, operating in March, 2016 with a Debt to Earnings (EBIDA) Ratio of 5.3. That is, Moody's estimates at the time of its report, that annual debt payments of PMH were more than five times annual earnings (before taxes, depreciation and amortization.) Moody's considers this a weakness, advising that this "*high leverage*" ... "*decreases the company's ability to absorb setbacks or disruptions in operating results given the current rating level.*" Moody's advises further that this ratio must be lowered to 4.5 to avoid a potential credit downgrade or improved to 3.5 to obtain a potential upgrade.
  - (2) Moody's also advises further that PMH must maintain a measured approach to acquisitions and shareholder distributions in order to improve its outlook rating -- noting that "*new partnerships and acquisitions may include binding capital commitments over a number of years*" but that in some of these cases "*commitments limit the amount of cash that is required to be paid upfront*" leaving behind transactions that are not "*complete.*"
  - (3) Moody's notes as well that PMH is overly dependent on the California market (which accounts for "more than 25% of PMH's revenue but 65% of its profit (EBITA).") The report cites "*the risk that adverse events in the local area in which Prospect conducts the majority of its business,*

*including such things as weather, changes in the local economy or demographics, could have a significant impact on the company's operations."*

- (4) Moody's further recommends that PMH reduce its over-dependency on government programs which carry the risk of sudden changes in reimbursement and conditions of participation – more difficult to manage at its current liquidity level.
  - (5) While pointing out that the company can be expected to pursue growth and acquisitions, Moody's emphasizes that it must strike a balance between its growth and its focus on integration of recent acquisitions.
- ix) These weaknesses are pertinent to the pending review in as much as Moody's notes that "*substantially all of the company's assets are pledged in support of Prospect Medical's secured debt.*" This means that the SurgiCenter, if acquired by PMH, could be at risk in the event of a PMH default. While PMH clearly has strengths that could offset its financial weaknesses, in the absence of a frank and detailed presentation and examination of these issues, the extent of risk to the SurgiCenter's viability and services cannot be fully assessed given PMH's financial challenges.