

**BEFORE THE ATTORNEY GENERAL**

**STATE OF COLORADO**

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**IN THE MATTER OF THE RIGHTS AGREEMENT BETWEEN COMMUNITY FIRST FOUNDATION AND SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC. REGARDING EXEMPLA, INC.**

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**JURISDICTION OF THE ATTORNEY GENERAL**

1. On July 31, 2012, the Community First Foundation (“CFF”) and the Sisters of Charity of Leavenworth Health System, Inc. (“SCLHS”) jointly presented to the Attorney General for review the Rights Agreement between the parties, dated July 30, 2012. Under the Rights Agreement, the parties agree to make certain changes to Exempla, Inc. (“Exempla”), CFF agrees to assign its rights under certain contracts to SCLHS, and SCLHS agrees to make certain payments to CFF. This opinion refers to the subject matter of the Rights Agreement as the “Transaction.”
2. The Attorney General has reviewed the Transaction under the Hospital Transfer Act (the “Act”), C.R.S. §§ 6-19-101, *et seq.*, and under the Attorney General’s Common Law authority over charitable trusts. *See* C.R.S. §§ 24-31-101(5), 6-19-104(1).
3. The Attorney General determines that the Act applies to the Transaction and now issues this opinion with regard to this matter.
4. For a transaction involving a nonprofit hospital and another nonprofit entity, the Act requires the Attorney General to consider two factors:
  - a. whether the transaction will result in a material change in the charitable purposes to which the assets of the hospital have been dedicated, and
  - b. whether the transaction will result in a termination of the Attorney General’s jurisdiction over those assets caused by a transfer of a material amount of those assets outside of the state of Colorado. C.R.S. § 6-19-203(1).
5. If there is found to be no material change in charitable purpose and no termination of jurisdiction over the assets involved in the covered transaction, the transaction “*shall* proceed without further review.” C.R.S. § 6-19-203(1) (emphasis added).

## DECISION

6. After discussions with the parties and extensive review of documentation relevant to the Transaction, as well as review of comments submitted by the public, the Attorney General finds and determines that the Transaction involves a transfer or other disposition of the control of nonprofit hospitals to a nonprofit entity. The Attorney General further finds the Transaction will not result in a material change to the charitable purposes to which the assets of the hospitals have been dedicated. Finally, the Attorney General finds the Transaction will not result in a termination of the Attorney General's jurisdiction over those assets caused by a transfer of a material amount of those assets outside of the state of Colorado. Accordingly, the Transaction may proceed without further review.

### BASIS FOR DECISION

#### ***A. Factual and procedural background.***

##### ***i. Exempla, Inc.***

7. Exempla is a Colorado nonprofit corporation. The name Exempla, Inc. was adopted through the Amended and Restated Articles of Incorporation, effective October 1, 1997. The corporation was originally incorporated under the name Lutheran Hospital on February 24, 1988, as amended by Articles of Merger on September 23, 1997.

8. Exempla has tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

9. CFF and SCLHS are both members of Exempla.

10. The stated purposes of Exempla are to "engage directly or indirectly in activities related to healthcare provision, education, promotion, financing, research, development and related activities, including, but not limited to: the operation and management of clinics, medical practices and hospitals; health maintenance; managed care; the provision of ancillary services and products; and investment in related entities." Amended and Restated Articles of Incorporation of Lutheran Hospital, Art. III(a).

##### ***ii. Community First Foundation***

11. CFF is a Colorado nonprofit corporation. The name Community First Foundation was adopted through the Articles of Amendment, effective September 24, 2007. The corporation was originally incorporated under the name Lutheran Medical Center Foundation on February 27, 1975.

12. CFF has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

13. The stated purposes of CFF are to “operate exclusively for charitable, scientific and educational purposes within the meaning of § 501(c)(3) of the Internal Revenue Code of 1986, as amended.” Amended and Restated Articles of Incorporation of Community First Foundation, Art. Third. The purposes of CFF also include, among others, the specific purposes of educating the public in all aspects of mental health and welfare, sponsoring, developing, promoting, and encouraging public participation in public services and programs which are charitable, scientific or educational, owning or operating facilities for public use and the public’s health and welfare, and establishing, developing, owning, sponsoring, promoting, and conducting educational programs, scientific research, treatment facilities, community clinics, emergency centers, hospitals, and associated facilities, programs, or operations. *Id.*, at p. 2.

iii. Sisters of Charity of Leavenworth Health System, Inc.

14. SCLHS is a Kansas not-for-profit corporation that was formed on December 19, 1972.

15. SCLHS has tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

16. The corporate offices of SCLHS are located in Denver, Colorado.

17. The stated purpose of SCLHS, as related to healthcare, is to “[m]anage, operate, maintain, develop and promote institutions, activities and programs supportive of the delivery of quality health services, educational programs, research activities, and any other activities designed to promote the general health, rehabilitation and social needs of individuals in need which, in the opinion of the Directors of the Corporation and of the Members, are appropriate in carrying out, and consistent with, the charitable purposes of the Corporation and the health care mission of Leaven Ministries.” Amended and Restated Articles of Incorporation of Sisters of Charity of Leavenworth Health System, Inc., Art. III(3).

iv. Transaction Documents

18. The Rights Agreement was entered into by and between CFF and SCLHS (together the “Parties”) effective as of July 30, 2012.

19. The organizational structure of the healthcare system operated by Exempla known as the “Exempla Healthcare System” is set forth in the Affiliation Agreement, dated October 1, 1997, as amended, and the Joint Operating Agreement (“JOA”), dated November 8, 2002, as amended.

20. Under the Rights Agreement, the Parties agree that certain rights under the Affiliation Agreement, the JOA, and other contracts will be assigned from CFF to SCLHS, other

agreements will be terminated, and the Articles of Incorporation and Bylaws of Exempla will be amended to confer certain rights on SCLHS. Rights Agreement ¶ D.

21. At closing, CFF will assign to SCLHS i) its rights to the Exempla name and its rights under ii) the Affiliation Agreement, iii) the JOA, iv) the Property Rights Agreement, dated January 1, 1998, between CFF and Exempla, v) the Amendment No. 1 to Affiliation Agreement, Joint Operating Agreement, Sisters of Charity of Leavenworth Health Services Corporation Property Transfer Agreement, Termination Agreement and Exempla Bylaws, dated November 8, 2002, between the Parties and certain other entities, vi) the Agreement Regarding Exempla Affiliation Documents and Subordination Agreement, effective as of April 14, 2010, by and among the parties and certain other entities, and vii) any other interests, rights, benefits, and assets that constitute obligations owing from Exempla to CFF. Rights Agreement § 3.1.

22. At closing, the Parties further agree that the following agreements will be terminated: i) the Second Amended and Restated Termination Agreement effective as of April 14, 2010 by and between the Parties, Exempla, and certain other parties, ii) the Credit Reserve Deposit Agreement, iii) the Noncompetition Agreement, dated October 1, 1997, by and between the Parties and certain other entities, and iv) the Memorandum of Transfer, dated August 19, 2009, by and between the parties. Rights Agreement § 3.2.

23. At closing, the Parties further agree that they shall execute and deliver a waiver waiving payment of "Sponsorship Fees" under the Affiliation Agreement. Rights Agreement § 3.3.

24. The parties further agree that SCLHS shall assume all of the obligations of CFF set forth under the terms of the Assigned Agreements to the extent that such obligations are attributable to the period following the closing. Rights Agreement § 3.4.

25. The parties further agree that at the closing, and effective as of the same date, the Articles of Incorporation and Bylaws of Exempla shall be amended. The amendments to the governing documents provide, among other changes, i) that SCLHS shall have 9 votes and CFF shall have 1 vote on all matters over which the members of Exempla are entitled to vote, ii) that SCLHS shall be entitled to appoint 9 directors to the board of directors and CFF shall be entitled to appoint 1 director to the board of directors of Exempla, iii) CFF shall no longer be entitled to receipt of assets on dissolution of Exempla, and iv) to expand SCLHS's direct powers as a member of Exempla. Rights Agreement § 3.5.

26. In consideration for the activities described in Paragraphs 20 through 25 above, SCLHS will pay CFF the sum of \$274,744,482.47. Rights Agreement § 1.2(a). The transaction will be funded with a \$44,744,482.47 initial cash payment with the balance paid

in the form of an interest-bearing promissory note providing for equal installments of principal with accrued interest, payable over 20 years. Rights Agreement § 1.2.

27. At the closing, CFF will establish two restricted funds. The first fund of \$20,000,000 will fund community health and wellness initiatives within the Exempla Lutheran Medical Center service area. The second fund of \$5,000,000 will support charitable activities of Exempla Lutheran Medical Center. Rights Agreement § 3.6.

***B. The Transaction does not result in a material change in the charitable purposes to which the assets of the hospitals have been dedicated.***

28. The Attorney General finds and determines that the Transaction does not result in a material change in the charitable purposes to which the assets of the hospitals have been dedicated.

29. The stated mission of Exempla is divided into two purposes. It has as stated specific purposes to “engage directly or indirectly in activities related to healthcare provision, education, promotion, financing, research, development and related activities, including, but not limited to: the operation and management of clinics, medical practice and hospitals; health maintenance; managed care; the provision of ancillary services and products; and investment in related entities.” Amended and Restated Articles of Incorporation of Lutheran Hospital, Art. III(a). Exempla also has the stated general purpose to “engage in and conduct charitable, educational and scientific activities within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.” *Id.*, at Art. III(b).

30. Lutheran Hospital was renamed Exempla in 1997. *Id.*, at Art. I. Lutheran Hospital is the surviving entity in a merger between itself and Lutheran Medical Center, effective September 23, 1997. Articles of Merger of Lutheran Hospital and Lutheran Medical Center.

31. Lutheran Hospital was itself incorporated as a Colorado nonprofit corporation on February 23, 1988. Articles of Incorporation of Lutheran Hospital. The original stated purposes of the corporation are to “operate exclusively for charitable, scientific and educational purposes within the meaning of § 501(c)(3) of the Internal Revenue Code of 1986, as amended.” *Id.*, at Art. Third, ¶ (a). The corporation also listed specific purposes, including the ability to “establish, develop, own, sponsor, promote and/or conduct educational programs, scientific research, treatment facilities, community clinics, emergency centers, hospitals, home health agencies, nursing homes and homes for the aged, rehabilitation centers, nursing centers, pharmacies, laboratories, and other facilities or programs incident thereto, consulting and management services, human services programs, and other charitable activities devoted to improving and protecting the health and welfare of all persons, including providing opportunities to restore, reclaim or aid persons suffering from physical, mental or emotional disabilities, promoting access to community resources

aimed at promoting life and health and assign persons to lead full and meaningful lives.” *Id.*, at p. 2. The specific purposes also included the support of the hospital, enhancing the public in all aspects of physical and mental health and welfare, owning or operating facilities for public use, health, and welfare, to contract and associate with other organizations to support the activities, and to “engage in any lawful activities within the purposes for which a corporation may be organized under the Colorado Nonprofit Corporation Act and which are not inconsistent with the purposes set forth in the articles of incorporation and Bylaws of this corporation.” *Id.*, at pp. 2-3.

32. The Exempla bylaws do not limit the powers or purposes set forth in the articles of incorporation.

33. After the closing, SCLHS has agreed, so long as it has outstanding obligations under the promissory note, i) not to take any action to list or designate all or any portion of the Exempla Lutheran Medical Center Facility, Exempla Good Samaritan Medical Center Facility, Collier Hospice, or Colorado Lutheran Home as Stable Patrimony on the Inventory of Stable Patrimony, ii) not to take any action to request, and to use reasonable efforts to prevent, those properties from being listed in the Official Catholic Directory, and iii) not to change or permit to be changed, without the consent of CFF, the names of those facilities, provided that the names may be maintained with or without the Exempla designation. Rights Agreement § 9.2(a)-(d).

34. From the proceeds of the Transaction, CFF will establish the Lutheran Legacy Fund and the Lutheran Dedicated Fund. The Lutheran Legacy Fund will fund community health and wellness initiatives within the Exempla Lutheran Medical Center service area. The fund is established to promote health and wellness and the prevention of sickness and disease in the communities served by Exempla Lutheran Medical Center. Priority consideration will be given to community-based initiatives that address emerging community needs and in which Exempla Lutheran Medical Center is directly involved as either a participant or a direct or indirect funding source. Lutheran Legacy Fund, at 7. Distributions from the Lutheran Legacy Fund will be made based on recommendations from a Community Advisory Board, which will include members from the community including representatives such as the Jefferson County School System, the Jefferson County Department of Human Services, the West Metro Chamber of Commerce, mental health, senior, and youth services providers in Jefferson County, persons knowledgeable about women’s health issues in Jefferson County and members of the faith community. The Lutheran Legacy Fund will be funded with \$20,000,000 from the proceeds of the Transaction.

35. From the proceeds of the Transaction, CFF will also establish the Lutheran Dedicated Fund. The Lutheran Dedicated Fund will be established to support the charitable activities of the Exempla Lutheran Medical Center. The Lutheran Dedicated Fund will be funded with \$5,000,000 from the proceeds of the Transaction.

36. The corporate purpose of SCLHS, as related to healthcare, is to “[m]anage, operate, maintain, develop and promote institutions, activities and programs supportive of the delivery of quality health services, educational programs, research activities, and any other activities designed to promote the general health, rehabilitation and social needs of individuals in need which, in the opinion of the Directors of the Corporation and of the Members, are appropriate in carrying out, and consistent with, the charitable purposes of the Corporation and the health care mission of Leaven Ministries.” Amended and Restated Articles of Incorporation of Sisters of Charity of Leavenworth Health System, Inc., Art. III(3).

37. The Attorney General considered whether there was any reduction in the availability or accessibility of health care services as a result of the Transaction and finds and determines that there is not.

***C. The Transaction will not result in a termination of the Attorney General’s jurisdiction over the hospital assets caused by a transfer of a material amount of those assets outside of the State of Colorado.***

38. The Attorney General finds and determines that the Transaction does not result in a termination of the Attorney General’s jurisdiction over the hospital assets caused by a transfer of a material amount of those assets outside of the State of Colorado.

39. The terms of the Transaction provide for changes in overall majority control of the Exempla hospital system and the reallocation of rights between the Parties.

40. The terms of the Transaction do not result in any changes to the manner in which the Exempla hospitals have been run since at least the December 2009 amendments to the Exempla bylaws. Further, the terms of the Transaction contain no direct changes to the operations of the Exempla hospital system going forward.

41. The terms of the Transaction provide for the continuation of the Exempla system as a Colorado nonprofit hospital system.

42. Accordingly, the nonprofit hospital assets will remain in the State of Colorado and will remain subject to the Attorney General’s continuing jurisdiction.

43. These facts satisfy the Attorney General that the Transaction does not result in the termination of jurisdiction over the hospital assets involved in the Transaction. The Attorney General retains the right to exercise his common-law and statutory authority over the nonprofit hospital assets in the future should it be necessary due to a change in circumstances.

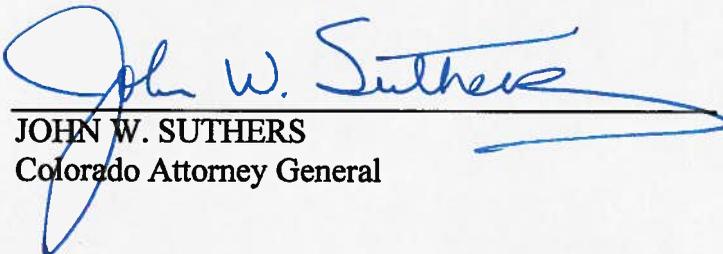
## CONCLUSION

44. The Office of the Attorney General received 11 public comments in connection with the Transaction. Those comments came from private citizens, community health providers, direct health providers, and local governments. Ten of the comments supported the transaction. One comment opposed the transaction. The Attorney General reviewed and considered all of the materials submitted and the public comments in reviewing the Transaction.

45. In reaching this decision, the Attorney General considered the specific charitable purposes of the nonprofit hospitals as set forth in the articles of incorporation and other organic documents of Exempla. The Attorney General also considered whether as a result of this transaction there was any evidence of reductions in the availability or accessibility of health care services in the communities served by the hospitals.

46. Based on the foregoing, and pursuant to the discretion granted to the Attorney General under the Act for review of transactions involving a nonprofit hospital and another nonprofit entity, the Attorney General determines that the Transaction may proceed without further review.

Issued this 1st day of October, 2012.

  
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JOHN W. SUTHERS  
Colorado Attorney General

**CERTIFICATE OF DELIVERY**

This is to certify that I have duly served the within IN THE MATTER OF THE RIGHTS AGREEMENT BETWEEN COMMUNITY FIRST FOUNDATION AND SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC. REGARDING EXEMPLA, INC. upon all parties herein by mailing copies of same to their office this 1st day of October, 2012 addressed as follows:

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