

**BEFORE THE ATTORNEY GENERAL**

**STATE OF COLORADO**

---

**IN THE MATTER OF THE JOINT OPERATING AGREEMENT BETWEEN SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC. D/B/A SCL HEALTH SYSTEM, SAINT JOSEPH HOSPITAL, INC., NATIONAL JEWISH HEALTH, AND NJH-SJH, INC.**

---

**JURISDICTION OF THE ATTORNEY GENERAL**

1. On July 10, 2014, the Sisters of Leavenworth Health System, Inc. d/b/a SCL Health System (“SCL Health”), Saint Joseph Hospital, Inc. (“Saint Joseph”), National Jewish Health (“National Jewish”), and NJH-SJH, Inc. (“NJH-SJH”) jointly presented the Joint Operating Agreement (“JOA”) between them, dated June 25, 2014, to the Attorney General for review. Under the JOA, the parties agree to combine certain operations between them under NJH-SJH. This opinion refers to the subject matter of the JOA 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. After an initial review of the proposed JOA and supporting documentation, the Attorney General determined on June 11, 2014, that the Act would apply to the Transaction if it was finalized by the parties. The parties have finalized the Transaction and the Attorney General 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 review of documentation relevant to the Transaction, 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. Sisters of Charity of Leavenworth Health System, Inc. d/b/a SCL Health*

7. Sisters of Charity of Leavenworth Health System, Inc. is a Kansas nonprofit corporation. It does business as SCL Health. The corporation was originally incorporated on December 19, 1972, with Amended and Restated Articles of Incorporation filed on February 14, 2011.

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

9. The stated purposes of SCL Health is to operate "exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended." Am. & Restated Articles of Incorporation of Sisters of Charity of Leavenworth Health System, Inc. art. III. In furtherance of those purposes, SCL Health will, among others, "[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." *Id.* art. III(3).

#### *ii. Saint Joseph Hospital, Inc.*

10. Saint Joseph is a Colorado nonprofit corporation. It was founded in 1873 and was incorporated on May 6, 1975, with Amended and Restated Articles of Incorporation filed January 24, 2005.

11. Saint Joseph has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

12. The stated purposes of Saint Joseph 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." Am. & Restated Articles of Incorporation of Saint Joseph Hospital, Inc. art. III. In furtherance of those purposes, Saint Joseph will, among others, "[m]anage, operate, maintain, develop and promote institutions, activities and programs to promote 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 Member, are appropriate in carrying out the charitable purposes of the Corporation and the Member and the health care mission of the Sisters of Charity of Leavenworth." *Id.* art. III(3).

13. SCL Health is the sole member of Saint Joseph.

iii. *National Jewish Health*

14. National Jewish Health is a Colorado nonprofit corporation that was originally formed in December 1899, as the National Jewish Hospital for Consumptives. The name was changed to National Jewish Health with the filing of Amended and Restated Articles of Incorporation, on August 4, 2008.

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

16. The stated purpose of National Jewish, as related to healthcare, is to “conduct patient care and education, clinical research, basic science research, and education and training of healthcare professionals and the lay public.” Am. & Restated Articles of Incorporation of National Jewish Health art. III(2).

iv. *NJH-SJH, Inc.*

17. NJH-SJH, Inc. is a Colorado nonprofit corporation that formed on June 24, 2014.

18. The Parties will seek tax-exempt status under Section 501(c)(3) of the Internal Revenue Code as soon as possible. Joint Operating Agreement § 4.02 [hereinafter JOA].

19. The stated purposes of NJH-SJH are to “operate exclusively for charitable, scientific and/or educational purposes as described in, and contemplated by, § 501(c)(3) of the Internal Revenue Code of 1986, as amended.” Articles of Incorporation of NJH-SJH, Inc., Art. III. § 3.1. In furtherance of those purposes, NJH-SJH will, among others, (1) “provide high quality, responsive, compassionate, comprehensive and technically state-of-the-art health care on a cost-effective basis to patients in the State of Colorado and the western United States;” (2) “operate for the benefit of, to perform the functions of and to carry out the tax-exempt purposes of [SCL Health], SCL Health’s controlled affiliate [Saint Joseph], and [National Jewish], each of which is recognized by the Internal Revenue Service (“IRS”) as tax-exempt within the meaning of § 501(c)(3) of the Code, and any other existing or future tax-exempt affiliates of SCL Health, [National Jewish] and/or the Corporation or any other tax-exempt entity that enters into, or becomes subject to, the Joint Operating Agreement entered into as of June 25, 2014 by and among SCL Health, [Saint Joseph], [National Jewish] and this Corporation, as the same may be amended in the future (the “JOA”) by advancing, supporting and performing the mission, programs and obligations contained in the JOA;” (3) “provide a joint, nonprofit, tax-exempt organization for strengthening the respective charitable missions of SCL Health and [National Jewish];” and (4) “serve as the point of coordination, collaboration and transformation of integrated health services offerings of [Saint Joseph] and [National Jewish] in order to further the general health of the communities served by the Corporation.” *Id.* § 3.1(a)–(d).

v. *Transaction Documents*

20. The JOA was entered into by and between SCL Health, Saint Joseph, National Jewish, and NJH-SJH (together the “Parties”) on June 25, 2014. The effective date of the JOA is the date the Parties agree “following such time as all material consents, approvals and preconditions to the implementation of [the JOA] have been met.” The Parties intend for the JOA to be effective as of August 1, 2014. JOA § 11.06.

21. After entering into the Transaction, the existing tangible assets of the Parties, including all property, plant, and equipment, will remain as presently titled between the Parties. JOA § 7.05.

22. The Transaction involves the consolidation of the “Combined Clinical Operations.” JOA § 1.06. Those operations include:

- a. Saint Joseph inpatient and outpatient clinical services;
- b. Saint Joseph and National Jewish clinical ancillary business (e.g., clinical and reference labs, imaging and pharmacy);
- c. National Jewish’s inpatient and outpatient clinical services;
- d. Patient care services for patients participating in clinical trials;
- e. Preventive health, health promotion, and outreach programs (excluding those specified in Section 1.12(iii)) as well as research that the Parties choose to jointly undertake;
- f. Graduate medical education programs (IME/DME);
- g. Customary support services (as specified in Section 8.03) necessary to the preceding clinical services (e.g., IT, housekeeping, dietary, security, revenue cycle, HR, supply chain, etc.);
- h. Development and maintenance of joint intellectual property created in the operations of NJH-SJH joint programs;
- i. Marketing/branding in a sustained effort to substantially increase market recognition;
- j. Developing new services and lines of business and participating in such other joint ventures as the Parties may agree to place under the management and control of NJH-SJH, consistent with the terms hereof; and
- k. EPN and National Jewish physician services provided at Saint Joseph, National Jewish or NJH-SJH practice sites.

23. The JOA specifies that “the Combined Clinical Operations shall be managed, supervised and operated by and under the authority of, the [NJH-SJH] Board, subject only to the provisions of this Agreement, applicable laws, the reserved powers of the Corporate Members and the Articles and Bylaws of [NJH-SJH].” JOA § 5.03.

24. Further, “the [NJH-SJH] Board shall have, and be delegated, all of the authority set forth in Section 5.03 to direct and coordinate the business and affairs of the Combined Clinical Operations. This delegation and assignment of powers and authority contemplated in Section 5.03 and Section 6.03 may not be amended or revoked except by a duly authorized amendment of this Agreement.” JOA § 6.03.

25. An amendment to the JOA may be made only upon recommendation of the NJH-SJH board and unanimous written consent of SCL Health and National Jewish Health. JOA § 6.04(xiii). The JOA also states that to “the maximum extent reasonably feasible, the financial arrangements of [NJH-SJH] are intended to promote the functioning of the Hospitals’ Combined Clinical Operations as a unified enterprise that is financially integrated with a single bottom line with [NJH-SJH] in control of such unified enterprise so as to cause the Parties to become jointly controlled and related to one another through [NJH-SJH].” JOA § 7.01.

26. The NJH-SJH board will be composed of (1) two directors appointed by National Jewish; (2) three directors appointed by SCL Health; (3) the CEO of National Jewish; and (4) the CEO of Saint Joseph. JOA § 5.02.

27. The “business, property, affairs and working capital of [NJH-SJH] and the Combined Clinical Operations shall be managed, supervised and operated by and under the authority of the [NJH-SJH] Board, subject only the provisions of [the JOA], applicable laws, reserved powers of the Corporate Members and the Articles of Incorporation and Bylaws of [NJH-SJH].” JOA § 5.03.

**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 purposes of SCL Health, as it relates to hospital functions, 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.” Am. & Restated Articles of Incorporation of Sisters of Charity of Leavenworth Health System, Inc. art. III(3).

30. Similarly, the stated purposes of Saint Joseph, as it relates to hospital functions, is to “[m]anage, operate, maintain, develop and promote institutions, activities and programs to promote 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 Member, are appropriate in carrying out the charitable purposes of the Corporation and the Member and the health care mission of the Sisters of Charity of Leavenworth.” Am. & Restated Articles of Incorporation of Saint Joseph Hospital, Inc. art. III(3). SCL Health is the parent corporation of Saint Joseph.

31. The National Jewish Articles of Incorporation state its purpose, as it relates to hospital functions, is to “conduct patient care and education, clinical research, basic science research, and education and training of healthcare professionals and the lay public.” Am. & Restated Articles of Incorporation of National Jewish Health art. III(2).

32. The stated purposes of NJH-SJH, as it relates to hospital functions, is to: (1) “provide high quality, responsive, compassionate, comprehensive and technically state-of-the-art health care on a cost-effective basis to patients in the State of Colorado and the western United States;” (2) “operate for the benefit of, to perform the functions of and to carry out the tax-exempt purposes of [SCL Health], SCL Health’s controlled affiliate [Saint Joseph], and [National Jewish];” (3) “provide a joint, nonprofit, tax-exempt organization for strengthening the respective charitable missions of SCL Health and [National Jewish];” and (4) “serve as the point of coordination, collaboration and transformation of integrated health services offerings of [Saint Joseph] and [National Jewish] in order to further the general health of the communities served by the Corporation.” Articles of Incorporation of NJH-SJH, Inc. art. III. § 3.1(a)-(d). The NJH-SJH Bylaws reiterate those declared purposes. Bylaws of NJH-SJH, Inc. § 2.

33. The Parties have agreed that the JOA will “preserve and foster the charitable purpose of each Party.” JOA 3. Further, NJH-SJH was “organized and at all times will be operated exclusively for charitable, scientific and/or educational purpose and otherwise to support, benefit and perform the functions of and carry out the purposes of each of SCL Health and [National Jewish].” JOA § 4.01.

34. Certain changes may only be made with a supermajority vote of the NJH-SJH board. Any change in mission statement by NJH-SJH may only be made by a 75% of the board and unanimous written consent by SCL Health and National Jewish. JOA §§ 6.03(i), 6.04(i); NJH-SJH Bylaws § 4(a).

35. Further, unanimous written consent is required under section 6.04 of the JOA and section 5 of the NJH-SJH Bylaws in order to complete, among others:

- a. “Any substantial relocation from the [Saint Joseph] Hospital or relocation to other facilities, truncation or reduction of the [National Jewish] respiratory or related programs within the Combined Clinical Operations;”
- b. A “Change in [NJH-SJH]’s status as a 501(c)(3) public charity (once Qualification is obtained from the IRS);”
- c. “Any material changes to the charity care policies of either [National Jewish] or [Saint Joseph];”
- d. “Sale, transfer or disposal of all or substantially all of [NJH-SJH]’s capital assets, including real estate;”
- e. “Merger, consolidation, or Change of Control of [NJH-SJH];”
- f. “Transfer by any Party to a third party of any interest in [NJH-SJH];”
- g. “Admission of a new member to [NJH-SJH];”
- h. “Approval of any change to [NJH-SJH]’s Articles of Incorporation or Bylaws;”
- i. “Approval of any amendment to [the JOA];”
- j. “Dissolution of [NJH-SJH].”

36. 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.**

37. 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.

38. The terms of the Transaction provide for changes in overall control of SCL Health and National Jewish over the Combined Clinical Operations of Saint Joseph and National Jewish.

39. The terms of the Transaction do not result in any material changes to the manner in which Saint Joseph and National Jewish have been run. Further, the terms of the Transaction contain safeguards to ensure that the mission of each hospital will be protected.

40. The terms of the Transaction provide for the continuation of Saint Joseph and National Jewish as Colorado nonprofit hospitals. SCL Health is headquartered in Colorado and Saint Joseph, National Jewish, and NJH-SJH are all Colorado corporations.

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

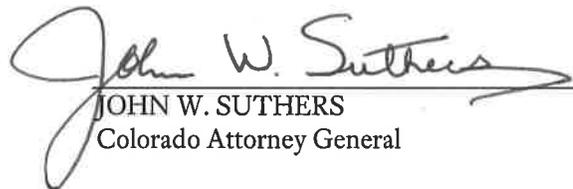
42. These facts satisfy the Attorney General that the Transaction does not result in the termination of jurisdiction over the hospital assets involved in the Transaction. The Attorney General retains the right to exercise his common-law and statutory authority over the nonprofit hospital assets in the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

### CONCLUSION

43. 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 the Parties. 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.

44. 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 31st day of July, 2014.

  
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 JOINT OPERATING AGREEMENT BETWEEN SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC. D/B/A SCL HEALTH SYSTEM, SAINT JOSEPH HOSPITAL, INC., NATIONAL JEWISH HEALTH, AND NJH-SJH, INC. upon all parties herein by mailing copies of same to their office this 31st day of July, 2014 addressed as follows:

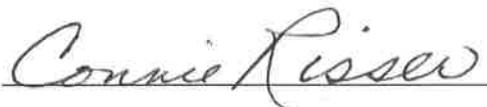
Michael A. Slubowski  
President and CEO  
Sisters of Charity of Leavenworth Health System,  
Inc. d/b/a SCL Health  
2420 West 26th Avenue, Suite 100-D  
Denver, CO 80211

Michael Salem, MD  
President and CEO  
National Jewish Health  
1400 Jackson Street  
Denver, CO 80206

Bain J. Farris  
President and CEO  
Saint Joseph Hospital, Inc.  
c/o SCL Health  
2420 West 26th Avenue  
Suite 100-D  
Denver, CO 80206

NJH-SJH, Inc.  
Michael Salem, MD  
Chairperson of the Board of Directors  
1400 Jackson Street  
Denver, CO 80206

Troy A. Eid  
Greenberg Traurig, LLP  
1200 17th Street, Suite 2400  
Denver, CO 80202

  
\_\_\_\_\_