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Andrew B. Eills, Esquire
Sheehan, Phinney, Bass & Green, PA
PO Box 3701
Manchester, NH 03105-3701

Re: Notice of Discontinuation of Labor and Delivery Services at Frisbie Memorial Hospital

Dear Attorney Eills:

Thank you for providing our office with a copy of Frisbie Memorial Hospital's ("FMH's") July 29, 2022, letter to the Greater Rochester Community Health Foundation ("GRCHF"), notifying GRCHF of FMH's decision to discontinue labor and delivery services at the hospital. The decision of FMH to discontinue labor and delivery services and the notice it provided to GRCHF implicate conditions set forth in the February 3, 2020, Report of the Director of Charitable Trusts on the Proposed Acquisition Transaction of Frisbie Memorial Hospital ("Report"). This letter is to inform you that our office has some concerns and intends to initiate a review of FMH's compliance with conditions in the Report.

Condition 3 of the Report requires that FMH abide by the terms of the Asset Purchase Agreement ("APA") with respect to its commitment to continue labor and delivery services at the hospital. The APA requires that FMH continue to offer labor and delivery services at the hospital for a period of at least 5 years following the closing of the transaction except in the event of a "Contingency." *See* APA §7.11; definition of "Contingency." If the Contingency is based on "actual Financial Loss" within the meaning of the APA, FMH is required to give notice to GRCHF, describing in "reasonable detail" the Contingency and the calculations underlying FMH's determination that a Contingency occurred. *See* APA §7.11 (b). While it is not explicitly stated in the APA, FMH has an implied obligation to act in good faith in the performance of its duties under the APA. *See Centronics Corp v. Genicom Corp.*, 132 N.H. 133, 143 (1989) (discussing the implied obligation of good faith in an agreement that invests one party with a degree of discretion in performance).

As part of our review, we intend to explore whether FMH made a good faith effort to avoid the Contingency that led to the decision to close labor and delivery services short of FMH's 5 year commitment. We are particularly interested in whether FMH took advantage of

Andrew B. Eills, Esq.
Page 2 of 2

CARES Act funds and whether FMH has already begun referring its prenatal patients to Portsmouth Hospital.

We also intend to review FMH's compliance with the provisions set forth in §7.11 of the APA. As a preliminary matter, we are concerned that the July 29, 2022, notice to GRCHF does not describe in "reasonable detail" the basis for FMH's determination that a Contingency has occurred. For example, the Financial Summary attached to the notice contains undefined terms and does not provide any detail with respect to the "indirect" costs to which the summary refers.

Please contact me at your earliest convenience to schedule a meeting to discuss this matter. I look forward to hearing from you.

Sincerely,



Diane Murphy Quinlan
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cc: Bradford E. Cook, Esq.