

STATE OF NEW HAMPSHIRE

COPY FOR SERVICE
ON RESPONDENT

STRAFFORD COUNTY

7TH CIRCUIT COURT
PROBATE DIVISION

ORDER OF NOTICE

Frisbie Memorial Hospital, Inc. and The Frisbie Foundation, Inc.

Case Number 319-2020-EQ-00053

The attached Verified Petition for Emergency Cy Pres Relief having been filed in the office of the 7th Circuit Court - Probate Division of this Court on January 21, 2020,

IT IS ORDERED that petitioners notify respondent to file a written Appearance Form with the 7th Circuit Court - Probate Division on or before the **Return Day of March 3, 2020**, OR BE FOUND IN DEFAULT, by causing an attested copy of this attached petition and this Order to be:


(X) given in hand to, or left at the abode of respondent, **on or before February 4, 2020**.

IT IS FURTHER ORDERED that each respondent file a plea, answer or demurrer within thirty days of the RETURN DAY, and deliver a copy thereof to counsel for petitioners, or to petitioners, if filing pro se; otherwise, the petition WILL BE TAKEN AS CONFESSED.

IT IS STILL FURTHER ORDERED that if the respondent shall timely file a written appearance and plea, answer, or demurrer in accordance with the foregoing orders, hearing on the merits shall be scheduled.

A TRUE COPY, ATTEST:

January 21, 2020
Date



Cheryll-Ann Andrews, Clerk
7th Circuit Court-Probate Division
259 County Farm Road, Suite 203
Dover, NH 03820
1-855-212-1234

STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

7th CIRCUIT-PROBATE DIVISION-DOVER

In re: Frisbie Memorial Hospital, Inc. and The Frisbie Foundation, Inc.
11 Whitehall Road
Rochester, NH 03867

Docket No. _____

VERIFIED PETITION FOR EMERGENCY *CY PRES* RELIEF

NOW COME Petitioners Frisbie Memorial Hospital (“Frisbie Memorial”) and The Frisbie Foundation (the “Frisbie Foundation”) (collectively, “Petitioners”), by and through their counsel, Nixon Peabody LLP, to petition this Court for *cy pres* relief: (1) from Petitioners’ respective charitable purposes to consummate the sale of substantially all their assets to FMH Health Service, LLC (“FHS”), an affiliate of HCA Healthcare, Inc., and (2) for the Frisbie Foundation to hold the net proceeds therefrom, and for Frisbie Memorial to hold the donor restricted funds that will remain thereafter, in trust until further *cy pres* relief is granted.

In support of this Petition, Petitioners state:

PRELIMINARY STATEMENT

1. This is an urgent petition for *cy pres* relief that is necessary for the continuation of essential health care services and the operation of a hospital in Rochester, New Hampshire. Petitioners, a non-profit corporation that currently owns and operates the hospital providing these services (the “Hospital”) and the non-profit foundation that supports it, are financially distressed and cannot sustain the Hospital’s operations.

2. After a process to consider potential strategic partners to address the situation, Petitioners entered into an asset purchase agreement with FHS, which is ready, willing, and able to continue operating the Hospital.

3. Over the last several months, Petitioners have provided voluminous submissions about this proposed transaction to the Director of Charitable Trusts of the New Hampshire Department of Justice (the “Director”) as required by RSA 7:19-b, III.

4. Obtaining relief from this Court is necessary because the proposed transaction, although ultimately aligned with the general principles of Petitioners’ respective charitable purposes, is not expressly authorized thereunder. Petitioners thus petition this Court for urgent *cy pres* relief, which they propose be granted in two stages.

5. First, Petitioners ask this Court to apply *cy pres* to (a) immediately authorize the transaction with FHS, and for (b) Petitioners to hold the net proceeds therefrom (the Frisbie Foundation) and existing donor restricted funds (Frisbie Memorial) in trust until Petitioners return for the second stage of *cy pres* relief.

6. Second, if the first stage of relief is granted, Petitioners will return to this Court with a post-transaction plan for any remaining charitable assets and donor restricted funds that require *cy pres* relief (the “Reconstituted Foundation”).

7. The first stage of the *cy pres* relief Petitioners seek is *emergent*. There is a finite window of time during which the transaction will close and where Petitioners will have net proceeds that satisfy their contractual obligations under their purchase agreement with FHS. Any delay in this already delicate process jeopardizes the transaction, and thus places the continued operation of the Hospital and essential hospital services to the Rochester community at immediate risk. Such a consequence is the antithesis of the charitable objects these Petitioners were designed to pursue and must be avoided if at all possible to avoid the clear and present threat to necessary health care services currently available to that community.

PARTIES

8. Frisbie Memorial is a New Hampshire nonprofit corporation and health care charitable trust, as that term is defined in RSA 7:19-b, I(d). Frisbie Memorial presently operates the Hospital, which is a 112 licensed bed acute-care hospital located in Rochester.

9. The Frisbie Foundation is a New Hampshire nonprofit corporation and health care charitable trust, as that term is defined in RSA 7:19-b, I(d), which supports Frisbie Memorial. The Frisbie Foundation owns the land on which the Hospital is situated.

10. The Director, under the supervision of the New Hampshire Attorney General, exercises all the “common law and statutory rights, duties, and powers of the attorney general in connection with the supervision, administration, and enforcement of charitable trusts, charitable solicitations, and charitable sales promotions.” The Director, as the Attorney General’s representative, is an indispensable party to this proceeding. *See Concord Nat’l Bank v. Haverhill*, 101 N.H. 416, 419 (1958). The Director represents all beneficial interests, “has the statutory power and duty to represent the public in the enforcement and supervision of charitable trusts,” and is the only party requiring notice of this Petition. *See In re Trust of Mary Baker Eddy*, 172 N.H. 266, 273 (2019).

JURISDICTION

11. This Court has jurisdiction over actions involving health care charitable trusts and, in particular, petitions for *cy pres* relief pursuant to RSA 547:3, II(a) and RSA 547:3-d.

12. Venue is proper in this Court because these health care charitable trusts are located and administered in Strafford County, which falls under the jurisdiction of the Seventh Circuit Probate Division.

BACKGROUND INFORMATION AND APPLICABLE LAW

Petitioners' charitable purposes

13. Frisbie Memorial was incorporated more than a century ago by legislative act under chapter 305 of the Laws of 1919. (Ex. 1, An Act to Incorporate the Rochester Hospital of the City of Rochester).¹ Its charitable purpose is as follows:

Said corporation is hereby authorized to establish and maintain in the city of Rochester an institution for such nursing, care, support, and medical and surgical treatment of sick and disabled people as are usually provided and furnished by similar institutions, and for such purposes acquire and hold by lease, purchase, donation, deed, will or otherwise, real and personal estate, not exceeding in value five hundred thousand dollars, and said institution being in the nature of a public charity its property shall be exempt from taxation.

(Id.).

14. Frisbie Memorial's charitable purpose was subsequently amended by legislative act to increase the value cap on real and personal estate from five hundred thousand dollars to five million dollars, then again to remove that cap entirely. (Ex. 3, An Act Relative to the Frisbie Memorial Hospital and to the Gafney Home for the Aged, ch. 473, 1965); (Ex. 4, An Act Relative to the Charter of Frisbie Memorial Hospital, ch. 29, 1979).

15. The Frisbie Foundation was incorporated on July 23, 1993 for "exclusively charitable and benevolent" activities that were "for the benefit and support of Frisbie Memorial Hospital." (Ex. 5, the Frisbie Foundation Articles of Agreement, as amended). Article III of the Frisbie Foundation's Articles of Agreement enumerates with specificity the objects that are in furtherance of that end:

¹ Frisbie Memorial was originally incorporated as Rochester Hospital. (Ex. 1). That name was changed by legislative act under chapters 306 and 335 of the Laws of 1929. (Ex. 2, An Act to Change the Name of Rochester Hospital of the City of Rochester to Frisbee Memorial Hospital; An Act Relating to the Frisbie Memorial Hospital).

- (1) To engage in and conduct charitable, educational and scientific activities, and to further such activities as may be deemed advisable for the advancement and improvement of health care.
- (2) To engage in activities and be operated as a not-for-profit corporation qualifying as a qualified supporting organization under Section 509(a)(3) of the Internal Revenue Code, which include the coordination, investment, distribution and receipt of funds raised for the benefit and support of Frisbie Memorial Hospital.
- (3) To assist in the performance of long-range planning and liaison or assistance to health care service organizations in the community in conjunction with the efforts of health care foundations.
- (4) To carry on any other lawful activity in connection with the foregoing which is expected, directly or indirectly, to advance the interests of Frisbie Memorial Hospital and to enhance value of Frisbie Memorial Hospital's assets.

(Id.).

Petitioners cannot sustain hospital operations.

16. In recent years, Petitioners have experienced many challenges typical of small independent hospitals. These included downward pressure on revenues and upward pressure on costs and expenses of operation. The negative impact on Petitioners has been overwhelming, and has left them with a current situation that is not sustainable.

17. In 2017 and 2018, Petitioners incurred operating losses of approximately \$23 million and \$20 million, respectively, due to decreased reimbursements and escalating costs of hospital services. These losses continue due to market trends, including reduced reimbursements from Medicaid and managed care payors, and reduced payments for services as more of the cost of care is shifted to patients by high deductible health insurance plans, thus increasing the amount of uncompensated care.

18. In addition, in 2017, Frisbie Memorial incurred substantial expenses implementing a computer conversion to provide needed clinical and financial systems, which depleted cash reserves and exacerbated the operating loss.

19. In 2018, Frisbie Memorial retained a revenue cycle management consultant to evaluate its operations. In an April 2018 presentation to the Frisbie Memorial Board of Trustees, the consultant projected that if nothing was done, Frisbie Memorial would not be able to sustain its capital needs, that its baseline cash would be completely depleted in 2018, and the estimated debt service coverage ratio of Petitioners would continue to stay negative over the next five years.

20. Even though Petitioners' implementation of some of the consultant's recommendations slowed the rate of losses, Petitioners continue to operate at a loss.

21. The operating losses and lack of cash flow have negatively impacted Petitioners' viability, their ability to attract and retain the best candidates to provide patient care, and their ability to purchase equipment needed for such care. The Hospital has also been unable to remain competitive in the labor market.

22. Recognizing its financial straits, in the summer of 2018, Petitioners began a process to identify a strategic partner to ensure that the health care needs of the community served could continue to be met. Frisbie Memorial issued a request for proposals and identified the following as the most important factors to be considered when evaluating a potential partner: access to capital, maintaining high quality care, the potential partner's commitment to the community, complementary services, reputation and culture, staff considerations, local board representation, the physician network, and not-for-profit status.

23. Petitioners initially received letters of interest from ten potential partners. Ultimately, only three parties submitted proposals.

24. After considering the three proposals, the Petitioners' Boards of Directors/Trustees concluded that it was in the Petitioners' best interests—in furtherance of their charitable health

care purposes and missions—to accept FHS’s proposal, the material terms of which are as follows (the “Transaction”):

- a. Petitioners will sell substantially all their respective assets to FHS for \$67 million, \$8 million of which would be held in escrow for two years.
- b. For a specific period following the sale, FHS will commit to maintaining certain uninsured and charity care policies and to continuing the following hospital services: emergency department; inpatient medical; inpatient surgical; behavioral; and labor and delivery.
- c. Following the sale, FHS will commit to the following capital investments:
 - i. Purchase of a new MRI machine (within one year);
 - ii. Construct a pod for psychiatric emergencies (within two years); and
 - iii. Construct a pharmacy “clean room” for compounding sterile preparations (within two years).
- d. FHS will offer employment to substantially all current Hospital employees.
- e. The parties will create an advisory board consisting of three members appointed by HCA and three members appointed by the Frisbie Foundation to:
 - i. Review annual reports;
 - ii. Monitor FHS’s compliance with its obligations following the sale; and
 - iii. Approve any changes to FHS services, capital projects, and uninsured and charity policies.
- f. For a period of ten years following the sale, the Frisbie Foundation or its successor will have the right to appoint a specific number of individuals who live or work in Strafford County to the FHS board of trustees.
- g. For five years following the sale, Petitioners will agree not to own or operate a healthcare facility within the catchment area of the Hospital or to solicit patients, physicians, or employees of the Hospital.
- h. For ease of administration, the Frisbie Foundation will act as the representative of Frisbie Memorial for purposes of accepting and dealing with closing proceeds.

- i. The use of the net proceeds after the closing will be subject to restrictions imposed by the transaction agreements with FHS, including restrictions on the use of the net proceeds as set forth in subparagraph g above.

25. Pursuant to RSA 7:19-b, III, Petitioners gave notice of the Transaction to the Director on October 23, 2019. (Ex. 6, Letter from Nixon Peabody LLP to the Director (Oct. 23, 2019)). Since providing notice and the detailed information required by RSA 7:19-b, II, Petitioners have also provided additional information to the Director in response to specific questions the Director posed about the Transaction.

26. On January 6, 2020, the Director held a public hearing at Spaulding High School in Rochester, New Hampshire, to present the Transaction to the community, to provide the community members an opportunity to ask questions of the representatives of the Petitioners and FHS, and to accept community members input.

27. The Director is reviewing the notice, additional information provided by Petitioners,² and the public comments, and considering whether the Petitioners' Boards of Trustees evaluated and approved the Transaction in conformance with the requirements of RSA 7:19-b, II, which are as follows:

- a. The [Transaction] is permitted by applicable law, including, but not limited to, RSA 7:19-32, RSA 292, and other applicable statutes and common law;
- b. Due diligence has been exercised in selecting [FHS], in engaging and considering the advice of expert assistance, in negotiating the terms and conditions of the [Transaction], and in determining that the [Transaction] is in the best interest of the [Petitioners] and the community which [they serve];

² Petitioners' submission to the Director are voluminous: exceeding 1,000 pages. Petitioners have included the information relevant to the relief sought directly in this Petition and exhibits, but note that additional information about the Transaction and the Director's review thereof is publically available on the New Hampshire Department of Justice, Office of Attorney General website at: <https://www.doj.nh.gov/charitable-trusts/frisbie-hospital.htm>.

- c. Any conflict of interest, or any pecuniary benefit transaction as defined in [RSA 7:1, *et. seq.*] has been disclosed and has not affected the decision to engage in the [Transaction];
- d. The proceeds to be received on account of the [Transaction] constitute fair value therefor;
- e. The assets of the [Petitioners] and any proceeds to be received on account of the [Transaction] shall continue to be devoted to charitable purposes consistent with the charitable objects of the [Petitioners] and the needs of the community which [they serve];
- f. If [FHS] is other than another New Hampshire health care charitable trust, control of the proceeds shall be independent of [FHS];
- g. Reasonable public notice of the proposed [Transaction] and its terms has been provided to the community served by the [Petitioners], along with reasonable and timely opportunity for such community, through public hearing or other similar methods, to inform the deliberations of the governing body of the [Petitioners] regarding the proposed [Transaction].

28. Petitioners believe they have satisfied the requirements of RSA 7:19-b, II, and are hopeful that the Director will issue a no action letter shortly, subject to Petitioners' compliance with specifically delineated conditions.

CLAIMS FOR RELIEF

COUNT ONE

(Cy Pres Relief for Approval of the Transaction)

29. As stated above, the first stage of *cy pres* relief Petitioners seek is for approval of the Transaction.

30. Although the sale of substantially all of Petitioners' assets to an experienced and well established operator of health care facilities will result in continuation of hospital services in the Rochester area, it presents a fundamental change to Petitioners' respective charitable purposes. That is, if and when the Transaction closes, the Hospital will be run by a for-profit organization rather than a not-for-profit charitable trust.

31. Because of this fundamental change in ownership and to the actual operation of the Hospital, Petitioners seek *cy pres* relief from their original charitable purposes. The relief sought is only so much as is necessary to permit the Transaction, including the sale of substantially all Petitioners assets, with the net proceeds remaining in trust with the Frisbie Foundation until further plans are developed, thus enabling the continuation of essential health care services.

32. The doctrine of *cy pres* may be applied

[i]f property is or has been given in trust to be applied to a charitable purpose, and said purpose or its application is or becomes impossible or *impracticable* or illegal or obsolete or ineffective or prejudicial to the public interest to carry out, the trust shall not fail. Upon petition by the trustee or trustees or the attorney general, the probate court may direct the application of the property to some charitable purpose which is useful to the community, and which charitable purpose fulfills as nearly as possible the general charitable intent of the settlor or testator. In applying the doctrine of *cy pres*, the court may order the distribution of the trust assets to another charitable trustor to a charitable corporation to be held and administered by it in accordance with the terms of the governing instrument as said terms may be modified by the application of *cy pres* under this section and RSA 547:3-e.

RSA 547:3-d, I (emphasis added).

33. Two New Hampshire cases are instructive here. In *Trustees of Adams Female Academy v. Adams*, 65 N.H. 225 (1889), trustees were tasked with administering a trust that required the establishment and operation of an all-female academy in Londonderry. *Id.* The academy was operated for 60 years in accordance with that express charitable purpose. *See id.* The trustees petitioned for relief under the doctrine of *cy pres*, however, because the “original plan of administering the trust [was] no longer practicable” since they lacked the funding to continue operating the academy. *See id.* The trustees proposed to sell the trust’s real estate holdings—which included the land on which the academy was situated—to establish a fund that would support a school in the district where the female academy was located. *Id.* The New Hampshire Supreme Court applied the doctrine of *cy pres* to allow the trustees to implement their proposed plan, concluding “that when a definite charity is created the failure of the particular mode in which

it is to be effectuated does not destroy the charity; for equity will substitute another mode, so that the substantial intention shall not depend upon the formal intention.” *Id.*

34. Similarly, in *Adams v. Page*, 76 N.H. 96 (1911), a testamentary trust required its trustees to use monies left in remainder to establish and maintain a hospital in Franklin, New Hampshire. *Id.* At the time of the testator’s death, however, a hospital was already established and operating in Franklin, making the operation of a competing hospital impracticable. *See id.* The *Adams* court, applying the doctrine of *cy pres*, affirmed the diversion of the trust’s funds to creating a ward within the already-existing hospital in Franklin. *See id.* (*cy pres* is “the duty of the court when the donor’s scheme for administering a trust breaks down to devise one for that purpose as nearly (*cy pres*) like his as may be.”).

35. Here, it is entirely impracticable for Petitioners to continue operating and supporting the Hospital.

36. As was the case in *Trustees of Adams Female Academy and Adams*, this Court should conclude that the existing charitable purposes for Petitioners are impracticable given the economic realities of operating the Hospital in specific and providing hospital services in the health care industry in New Hampshire in general, and allow the sale of substantially all Petitioners’ assets to FHS, which is committed to operating a hospital in Rochester.

37. This plan is consistent with precedent and the general intentions of the legislature and incorporator for Frisbie Memorial and the Frisbie Foundation, respectively. *See City of Keene v. Eastman*, 75 N.H. 191 (1909) (“When the gift cannot be carried out in the precise mode prescribed by the donor, effect has been given to his general purpose by adopting a method which seemed to be as near his intention as existing conditions would permit.”); *see also* (Ex. 1; Ex. 5).

38. If the Transaction is approved, FHS will continue operating a hospital in Rochester for a specific period of time. The net proceeds of the purchase amount for Petitioners' assets will be held by the Frisbie Foundation, where they will remain in trust subject to both the Transaction's and the Director's terms and conditions. The existing donor restricted funds will stay with Frisbie Memorial, where they will remain subject to the donor restrictions. Neither the net proceeds nor the donor restricted funds will be used unless and until Petitioners return to this Court for further *cy pres* relief to do so, as necessary.

39. Absent the relief requested, Petitioners will be unable to consummate the Transaction, which would jeopardize the continued operation of the Hospital and the provision of needed health care services to the Rochester community. That outcome is at odds with the intent of the legislature and the incorporators regarding these charitable trusts.

40. Petitioners therefore respectfully request that the Court order the *cy pres* relief necessary so the Transaction may be approved and may close.

COUNT TWO
(Cy Pres Relief for the Donor Restricted Funds)

41. As part of granting the *cy pres* relief necessary to approve this Transaction, Petitioners also seek *cy pres* relief related to Frisbie Memorial's donor restricted funds.

42. Frisbie Memorial and the Director have reviewed and reconciled their records and accounts regarding the donor restricted funds held by Frisbie Memorial. This process identified that the aggregate amount of the original gifts totaled \$1,966,197.

43. Frisbie Memorial indicated that as of October 31, 2019, the donor restricted funds account balance was \$2,771,562, which the Director questioned.

44. The Director reviewed Frisbie Memorial's investments and expenditures of donor restricted funds in relation to the requirements of the Uniform Prudent Management of Institutional Funds Act, RSA 292-B.

45. Although Frisbie Memorial has maintained reasonably reliable records of the applicable gifts and the historic dollar value of these donor restricted funds, Frisbie Memorial has limited records of its investments and its spending relating to them.

46. Due to the foregoing issues, after discussions with the Director, Frisbie Memorial developed a methodology for reasonably determining the appropriate current account balance of the donor restricted funds.

47. For the income and investment returns on these donor restricted funds, Frisbie Memorial assumed that prior to 1985 they were invested in fixed income investments and that upon the advice of a wealth manager, Frisbie Memorial selected a proxy mutual fund, Vanguard Wellsley's Income Fund (VWINX), to estimate the income that could be assumed for the period thereafter. Frisbie Memorial further assumed that all income earned with respect to the Restricted Funds was expended. (Ex. 7, Letter from Nixon Peabody LLP to the Director (Dec. 31, 2019)).

48. Based on this methodology, Frisbie Memorial determined that as of October 31, 2019, the aggregate balance for the donor restricted funds should have been \$3,358,494.51 and the amounts allocated to each of the donor restricted funds should have been as indicated on the spreadsheets attached as Exhibit 8.

49. The proposed increased balance and interim plan for the donor restricted funds set forth above is acceptable to the Director. (Ex. 9, Letter from the Assistant Director to Nixon Peabody LLP (Jan. 13, 2020)). Frisbie Memorial has thus increased the current balance of the donor restricted funds to \$3,358,494.51.

50. Frisbie Memorial has also committed to the Director that it will maintain the donor restricted funds in the existing investment account with BNY Mellon, its current investment advisor, after the closing of the Transaction until such time as the Director and this Court approve further plans regarding them.

51. Petitioners thus additionally request that the Court order the *cypres* relief necessary related to these donor restricted funds so the Transaction may be approved and may close.

PRAYER FOR EMERGENCY ACTION

52. It is critical that the Court act on this Petition no later than February 14, 2020.

53. The Hospital is inextricably operating at a loss, and Petitioners' financial condition is precarious.

54. Each day until closing reduces the net proceeds that will be preserved for the Reconstituted Foundation. Because the Transaction agreement requires a minimum amount of net proceeds as a closing condition, any delay in approving the Transaction threatens the actual closing.

55. If a February 29, 2020 closing is not achieved, the next available date would be March 31, 2020, due to legal and practical accounting and financial reporting requirements applicable to Petitioners and FHS, and the terms of the Transaction agreement.

56. Petitioners therefore believe that a February 29, 2020 closing is critical.

57. Due to the complexity of closing the Transaction—a \$67 million sale of substantially all of the assets of a 112 licensed bed acute-care hospital—Petitioners, FHS, their counsel, and advisors need 15 days to prepare for the closing.

58. The Petitioners therefore respectfully request that this Court emergently act on this Petition no later than February 14, 2020.

PRAYER FOR RELIEF

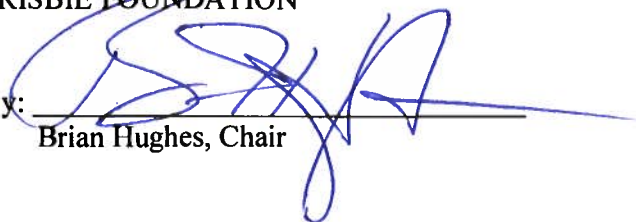
WHEREFORE, Petitioners respectfully request that this Court enter a final order as to this matter:

- A. Granting this Petition;
- B. Ordering that a hearing be held on the relief requested hereunder as soon as the Court's schedule permits;
- C. Awarding initial *cy pres* relief from Petitioners' original charitable purposes necessary to authorize the Transaction to sell substantially all their assets to FHS;
- D. Awarding *cy pres* relief so that Petitioners may transfer the net proceeds from the Transaction to the Frisbie Foundation;
- E. Ordering Petitioners to hold in trust the Transaction's net proceeds and all existing donor restricted funds until further *cy pres* relief is granted;
- F. Ordering Petitioners to file a post-transaction plan for further *cy pres* relief necessary on any remaining charitable assets and donor restricted funds held in trust post-Transaction;
- G. Awarding *cy pres* relief to approve the following:
 - a. the methodology described above used to determine the aggregate amount of the donor restricted funds and the allocation to each of the donor restricted funds;
 - b. \$3,358,494.51 as the proper aggregate amount of the donor restricted funds;
 - c. the amounts allocated to each of the donor restricted funds indicated on the spreadsheets attached to Exhibit 8; and
 - d. upon the closing of the Transaction, the maintenance of the donor restricted funds in Frisbie Memorial's investment account with BNY Mellon until such time as the Director and this Court approves further plans regarding the donor restricted funds.
- H. Granting such other and further relief as is just and equitable.

Respectfully submitted,

Date: January 15, 2020

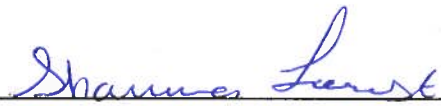
FRISBIE MEMORIAL HOSPITAL AND THE
FRISBIE FOUNDATION

By: 
Brian Hughes, Chair

California
STATE OF ~~NEW HAMPSHIRE~~ *sf*
COUNTY OF ~~STRAFFORD~~ *sf*
Riverside


Brian Hughes appeared before me on behalf of Petitioners, and made an oath that the facts and exhibits included in and as part of this Verified Petition are true and accurate to the best of his belief as of the date above.




Notary Public
Commission Expires 11.13.2020

By their counsel,

NIXON PEARBODY LLP


By: /s/ W. Scott O'Connell
W. Scott O'Connell, Esq. (Bar No. 9070)
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DATE: 1/21/2020

STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

7th CIRCUIT—PROBATE DIVISION—DOVER

In re: Frisbie Memorial Hospital, Inc. and The Frisbie Foundation, Inc.

Docket No. _____

INDEX OF EXHIBITS

- Exhibit 1: An Act to Incorporate the Rochester Hospital of the City of Rochester
- Exhibit 2: An Act to Change the Name of Rochester Hospital of the City of Rochester to Frisbee Memorial Hospital; An Act Relating to the Frisbie Memorial Hospital
- Exhibit 3: An Act Relative to the Frisbie Memorial Hospital and to the Gafney Home for the Aged, ch. 473, 1965
- Exhibit 4: An Act Relative to the Charter of Frisbie Memorial Hospital, ch. 29, 1979
- Exhibit 5: The Frisbie Foundation Articles of Agreement, as amended
- Exhibit 6: Letter from Nixon Peabody LLP to the Director (Oct. 23, 2019)
- Exhibit 7: Letter from Nixon Peabody LLP to the Director (Dec. 31, 2019)
- Exhibit 8: Spreadsheet detailing allocation of donor restricted funds.
- Exhibit 9: Letter from the Assistant Director to Nixon Peabody LLP (Jan. 13, 2020).

EXHIBIT 1

CHAPTER 304.

AN ACT IN RELATION TO THE MANUFACTURERS & MERCHANTS MUTUAL INSURANCE COMPANY, OF NEW HAMPSHIRE.

SECTION

- 1. Powers of corporation extended. Guaranty capital authorized. Stockholders' and policyholders' rights.

SECTION

- 2. Takes effect on passage.

Be it enacted by the Senate and House of Representatives in General Court convened:

SECTION 1. The Manufacturers & Merchants Mutual Insurance Company, of New Hampshire, organized under the general laws of New Hampshire, December 29th, 1885, may establish a guaranty capital of not less than \$10,000, nor more than \$100,000, divided into shares of \$100 each. Said company shall be subject to tax in accordance with provisions of chapter 65 of the Public Statutes relative to the taxation of stock fire insurance companies. The stockholders of the guaranty capital shall not receive dividends amounting to more than twelve per cent. of the paid in capital in any one year and, except as otherwise herein provided, the rights and liabilities of policyholders shall be governed by all the provisions of law relating to mutual fire insurance companies.

SECT. 2. This act shall take effect upon its passage.

Takes effect on passage.

[Approved March 28, 1919.]

CHAPTER 305.

AN ACT TO INCORPORATE THE ROCHESTER HOSPITAL OF THE CITY OF ROCHESTER.

SECTION

- 1. Corporation created.
- 2. Powers and liabilities. May hold property not exceeding \$500,000. Exemption from taxation.
- 3. Constitution, by-laws, etc.

SECTION

- 4. First meeting.
- 5. Right to alter, amend or repeal, reserved.
- 6. Takes effect on passage.

Be it enacted by the Senate and House of Representatives in General Court convened:

SECTION 1. That Rolland H. Spaulding, William H. Champlin, Albert H. Linscott, Louis L. Gilman, J. Levi Meader, John H. Bates, Ira G. Studley, William E. Jacobs, Horace L. Worcester,

John E. Fisher, John Greenfield, John N. Emerson, Timothy J. Manning, Frank L. Kendall, Nathaniel T. Kimball and their successors in office be and shall be a corporation under the name of the Rochester Hospital of the city of Rochester and by such name may sue and be sued and acquire and hold property as provided by this act.

Powers and liabilities. May hold property not exceeding \$500,000. Exemption from taxation.

SECT. 2. Said corporation is hereby authorized to establish and maintain in the city of Rochester an institution for such nursing, care, support, and medical and surgical treatment of sick and disabled people as are usually provided and furnished by similar institutions, and for such purposes acquire and hold by lease, purchase, donation, deed, will or otherwise, real and personal estate, not exceeding in value five hundred thousand dollars, and said institution being in the nature of a public charity its property shall be exempt from taxation.

Constitution, by-laws, etc.

SECT. 3. Said corporation may establish and adopt a constitution and by-laws, rules and regulations, and from time to time alter the same, choose honorary members, constitute officers, committees, agents and sub-agents, servants, and have and exercise all the powers and privileges incident to corporations of like nature and not contrary to the constitution and laws of this state.

First meeting.

SECT. 4. The first meeting of said corporation for the acceptance of this act and for organization under the same shall be called by the first incorporator by notice in writing to each of the persons named in this act five days at least prior to said meeting.

Right to alter, amend or repeal reserved.

SECT. 5. The legislature may alter or amend this charter whenever in their opinion the public good may require it.

Takes effect on passage.

SECT. 6. This act shall take effect on its passage.

[Approved March 28, 1919.]

CHAPTER 306.

AN ACT TO AUTHORIZE THE CITY OF SOMERSWORTH TO ISSUE BONDS.

SECTION 1. Somersworth authorized to issue bonds for school buildings. Details.

Be it enacted by the Senate and House of Representatives in General Court convened:

Somersworth authorized to issue bonds for school buildings. Details.

SECTION 1. The city of Somersworth is hereby authorized, for the purpose of improving and enlarging its high school building, to raise, appropriate and borrow money to an aggregate amount not exceeding eighteen thousand dollars (\$18,000) and to issue its bonds therefor on the credit of the city. Said issue of bonds shall

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EXHIBIT 2

CHAPTER 305.

AN ACT TO PREVENT THE DEPOSIT OF WASTE IN MASCOMA RIVER
IN LEBANON.

SECTION

1. Dumping rubbish.

SECTION

2. Takes effect.

*Be it enacted by the Senate and House of Representatives in
General Court convened:*

1. **Dumping Rubbish.** It shall be unlawful for any person to cause or allow any oil, ashes, cans, papers, boxes, metals or other bulky waste or rubbish to be deposited, placed or dumped or to escape into the Mascoma river or its tributaries within the limits of the town of Lebanon; provided however, that nothing in this act shall be construed to prohibit the discharge of sewage in the ordinary way below the point of intake of the Lebanon water works. Oil shall not be considered as sewage for the purposes of this act. Whoever violates the provisions hereof shall be fined not more than fifty dollars for each offense.

2. **Takes Effect.** This act shall take effect upon its passage.

[Approved March 7, 1929.]

CHAPTER 306.

AN ACT TO CHANGE THE NAME OF ROCHESTER HOSPITAL OF THE
CITY OF ROCHESTER TO FRISBEE MEMORIAL HOSPITAL.*

SECTION

1. Name changed.

SECTION

2. Takes effect.

*Be it enacted by the Senate and House of Representatives in
General Court convened:*

1. **Name Changed.** The name of the Rochester Hospital of the city of Rochester, incorporated under chapter 305 of the Laws of 1919, is hereby changed to the Frisbee Memorial Hospital in accordance with the terms of the will of Jessie F. Frisbee of Newton, Massachusetts, and subject to all the terms and conditions therein stated; and all property now held by

*Amended, chapter 335, *post*.

the said Rochester Hospital shall be held by the said Frisbee Memorial Hospital subject to the terms of the various bequests and donations in any instrument creating the same, with the same powers, duties and obligations of the Rochester Hospital.

2. **Takes Effect.** This act shall take effect when approved by the board of trustees and by the board of incorporators of said Rochester Hospital.

[Approved March 13, 1929.]

CHAPTER 307.

AN ACT RELATING TO THE BALD PEAK COUNTRY CLUB.

SECTION

1. Authority granted.

SECTION

2. Takes effect.

Be it enacted by the Senate and House of Representatives in General Court convened:

1. **Authority Granted.** The Bald Peak Country Club, a voluntary corporation organized under the laws of New Hampshire, is hereby granted authority to hold property not exceeding one million five hundred thousand dollars in value.

2. **Takes Effect.** This act shall take effect upon its passage.

[Approved March 13, 1929.]

CHAPTER 308.

AN ACT LEGALIZING THE PROCEEDINGS OF THE SPECIAL TOWN MEETING HELD IN THE TOWN OF JACKSON.

SECTION

1. Proceedings legalized.

SECTION

2. Takes effect.

Be it enacted by the Senate and House of Representatives in General Court convened:

1. **Proceedings Legalized.** The votes and proceedings of the special town meeting held in the town of Jackson on the seventh day of January, 1929, are hereby legalized and confirmed.

said corporation, the sum of six thousand dollars," so that said section as amended shall read: SECT. 3. Said corporation shall be capable of receiving and holding such buildings and real estate as shall be necessary and convenient for managing their affairs; and the said corporation shall be further able to take, hold and dispose of any real estate whatever, which may be *bona fide* conveyed to or taken by said corporation in satisfaction or discharge of debts, demands or liabilities which shall have been previously contracted or incurred.

2. Takes Effect. This act shall take effect upon its passage.

[Approved April 18, 1929.]

CHAPTER 335.

AN ACT RELATING TO THE FRISBIE MEMORIAL HOSPITAL.

SECTION 1. Correction of spelling of names.	SECTION 2. Takes effect.
--	-----------------------------

Be it enacted by the Senate and House of Representatives in General Court convened:

1. Correction. Amend section 1 of an act passed at the present session, approved March 13, 1929,* by striking out the name "Frisbee" where it occurs in the said section and inserting in place thereof the name Frisbie and by striking out the name "Jessie" and inserting in place thereof the name Jesse, so that said section as amended shall read as follows:

1. Name Changed. The name of the Rochester Hospital of the city of Rochester, incorporated under chapter 305 of the Laws of 1919, is hereby changed to the Frisbie Memorial Hospital in accordance with the terms of the will of Jesse F. Frisbie of Newton, Massachusetts, and subject to all the terms and conditions therein stated; and all property now held by the said Rochester Hospital shall be held by the said Frisbie Memorial Hospital subject to the terms of the various bequests and donations in any instrument creating the same, with the same powers, duties and obligations of the Rochester Hospital.

2. Takes Effect. This act shall take effect upon its passage.

[Approved April 18, 1929.]

*Chapter 306, *ante*.

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EXHIBIT 3

472:3 Further Authority. At such time as said McIntosh College, Inc. shall have met the qualifications for granting the degree of Bachelor of Business Science according to the standards of the coordinating board of advanced education and accreditation said board may recommend said McIntosh College, Inc. to the general court for power to grant said degree.

472:4 Takes Effect. This act shall take effect upon its passage.

[Approved June 23, 1965.]

[Effective date June 23, 1965.]

CHAPTER 473.

AN ACT RELATIVE TO THE FRISBIE MEMORIAL HOSPITAL AND TO THE GAFNEY HOME FOR THE AGED.

Be it Enacted by the Senate and House of Representatives in General Court convened:

473:1 Frisbie Memorial Hospital. Amend section 2, chapter 305 of the Laws of 1919, by striking out the words "five hundred thousand" in the seventh line and inserting in place thereof the words, five million, so that said section as amended shall read as follows: Sect. 2. Said corporation is hereby authorized to establish and maintain in the city of Rochester an institution for such nursing, care, support, and medical and surgical treatment of sick and disabled people as are usually provided and furnished by similar institutions, and for such purposes acquire and hold by lease, purchase, donation, deed, will or otherwise, real and personal estate, not exceeding in value five million dollars, and said institution being in the nature of a public charity its property shall be exempt from taxation.

473:2 Gafney Home for the Aged. Amend section 2, chapter 280 of the Laws of 1901, as amended by chapter 374, Laws of 1949 and chapter 393, Laws of 1957, by striking out the words "to an amount not exceeding one million dollars," so that said section as amended shall read as follows: Sect. 2. Said corporation is hereby authorized to establish and maintain in the city of Rochester an institution for the support and maintenance of aged people of both sexes, and for that purpose may take and hold real and personal estate by donation, bequest, purchase, or otherwise, and may sell, convey, and dispose of the same at pleasure, and may erect and maintain such buildings and appurtenances as may be deemed necessary for the purposes of the corporation.

473:3 Takes Effect. This act shall take effect upon its passage.

[Approved June 23, 1965.]

[Effective date June 23, 1965.]

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EXHIBIT 4

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CHAPTER 29

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lies purchased by said principal and used in carrying out said contract, and for labor and parts furnished upon the order of said contractor for the repair of equipment used in carrying out said contract. Said bond shall be negotiated for, procured from and the premium therefor paid to a resident agent of an insurance company registered and licensed to do business in this state. No such insurance company or resident agent, personally or by another, shall allow, give or pay, directly or indirectly to any non-resident agent or non-resident broker any part of the commission on the sale of said bond. The insurance commissioner may suspend or revoke the license of any resident agent or insurance company violating the provisions hereof.

28:2 Effective Date. This act shall take effect 60 days after its passage.

[Approved April 6, 1979.]

[Effective Date June 5, 1979.]

CHAPTER 29 (SB 20)

AN ACT RELATIVE TO THE CHARTER OF THE FRISBIE MEMORIAL HOSPITAL.

Be it Enacted by the Senate and House of Representatives in General Court convened:

29:1 Property Holding Limitation. Amend 1919, 305:2, as amended by 1929, 335:1 and 1965, 473:1 by striking out in line 7 the words "not exceeding in value five million dollars," so that said section as amended shall read as follows:

Sect. 2. Said corporation is hereby authorized to establish and maintain in the city of Rochester an institution for such nursing, care, support, and medical and surgical treatment of sick and disabled people as are usually provided and furnished by similar institutions, and for such purposes acquire and hold by lease, purchase, donation, deed, will or otherwise, real and personal estate and said institution being in the nature of a public charity its property shall be exempt from taxation.

29:2 Effective Date. This act shall take effect upon its passage.

[Approved April 6, 1979.]

[Effective Date April 6, 1979.]

CHAPTER 30 (HB 40)

AN ACT PROHIBITING THE PROMOTION AND EXHIBITION OF FIGHTING ANIMALS.

Be it Enacted by the Senate and House of Representatives in General Court convened:

30:1 New Section. Amend RSA 644 by inserting after section 8 the following new section:

644:8-a Exhibitions of Fighting Animals.

I. No person shall keep or train any bird, dog, or other animal, with the intent that it shall be engaged or used in an exhibition of fighting, or shall establish or promote an exhibition of the fighting thereof. Whoever violates

EXHIBIT 5

FILED

ARTICLES OF AGREEMENT
OF
THE FRISBIE FOUNDATION

JUL 23 1993
WILLIAM M. GARDNER
NEW HAMPSHIRE
SECRETARY OF STATE

We, the undersigned, being persons of lawful age, do hereby associate together for the purpose of forming a corporation under and by virtue of Chapter 292 (Voluntary Corporations and Associations) of the Revised Statutes Annotated of New Hampshire, and any amendments thereof, under the following Articles of Agreement.

ARTICLE I

NAME

The name of this corporation shall be THE FRISBIE FOUNDATION.

ARTICLE II

PLACE OF BUSINESS

The principal place of business of the corporation shall be Whitehall Road, Rochester, New Hampshire.

ARTICLE III

PURPOSES

The purposes for which the corporation is formed are exclusively charitable and benevolent in nature, are exclusively for the benefit and support of Frisbie Memorial Hospital and are further described as follows:

- (1) To engage in and conduct charitable, educational and scientific activities, and to further such activities as may be deemed advisable for the advancement and improvement of health care.
- (2) To engage in activities and be operated as a not-for-profit corporation qualifying as a qualified supporting organization under Section 509(a)(3) of the Internal Revenue Code, which include the coordination, investment, distribution and receipt of funds raised for the benefit and support of Frisbie Memorial Hospital.
- (3) To assist in the performance of long-range planning and liaison or assistance to health care service organizations in the community in conjunction with the efforts of health care foundations.

Articles of Agreement of
The Frisbie Foundation
Page 2

(4) To carry on any other lawful activity in connection with the foregoing which is expected, directly or indirectly, to advance the interests of Frisbie Memorial Hospital and to enhance the value of Frisbie Memorial Hospital's assets.

ARTICLE IV

POWERS AND DUTIES

The corporation shall have, among others, the following powers in furtherance of its corporate purposes:

(1) The corporation may purchase, receive or take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated, in an unlimited amount.

(2) The corporation may solicit and receive contributions from any and all sources and may receive and hold, in trust or otherwise, funds received by gift or bequest.

(3) The corporation may sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage, pledge, encumber or create a security interest in, all or any of its real or personal property, or any interest therein, wherever situated.

(4) The corporation may purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer or otherwise dispose of, mortgage, pledge, use and otherwise deal in and with, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities.

(5) The corporation may make contracts, give guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or encumbrance of, or security interest in, all or any of its property or any interest therein, wherever situated.

(6) The corporation may lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(7) The corporation may make donations in such amounts as the shareholders or directors shall determine, irrespective of corporate benefit, for the public welfare or for community fund, hospital, charitable, religious, educational, scientific, civic, or similar purposes, and in time of war or other national emer-

Articles of Agreement of
The Frisbie Foundation
Page 3

gency in aid thereof; provided, however, that, as long as the corporation is entitled to exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code, it shall make no contribution for other than religious, charitable, scientific, testing for public safety, literary or educational purposes or for the prevention of cruelty to children or animals.

(8) The corporation shall have and may exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed; provided, however, that no such power shall be exercised in a manner inconsistent with the laws of the State of New Hampshire; and provided, further, that the corporation shall not engage in any activity or exercise any power which would deprive it of any exemption from federal income tax which the corporation may receive under Section 501(c)(3) of the Internal Revenue Code.

ARTICLE V

CAPITAL STOCK; NO PRIVATE INUREMENT

(1) The aggregate number of shares that the corporation shall have authority to issue is Three Hundred (300) shares of no par value common stock. No part of the assets of the corporation and no part of any net earnings of the corporation shall be divided among or inure to the benefit of any shareholder, member, officer, trustee or director of the corporation or any private individual or be appropriated for any purposes other than the purposes of the corporation as herein set forth; and no substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation except to the extent that the corporation makes expenditures for purposes of influencing legislation in conformity with the requirements of section 501(h) of the Internal Revenue Code; and the corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office. It is intended that the corporation shall be entitled to exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code and shall not be a private foundation under Section 509(a) of the Internal Revenue Code.

(2) Upon the liquidation or dissolution of the corporation, after payment of all of the liabilities of the corporation or due provision therefor, all of the assets of the corporation shall be disposed of to one or more organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as the Board of Directors shall determine, and all certificates of the stock of the corporation shall be cancelled.

Articles of Agreement of
The Frisbie Foundation
Page 4

(3) In the event that the corporation is a private foundation as that term is defined in Section 509 of the Internal Revenue Code, then notwithstanding any other provisions of the articles of agreement or the By-laws of the corporation, the following provisions shall apply:

(a) The governing board shall distribute the income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code.

(b) The governing board shall not engage in any act of self dealing as defined in Section 4941(d) of the Internal Revenue Code; nor retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code; nor make any investments in such manner as to incur tax liability under Section 4944 of the Internal Revenue Code; nor make any taxable expenditures as defined in Section 4045(d) of the Internal Revenue Code.

ARTICLE VI

GOVERNANCE

Provisions governing the shareholders and directors of the corporation and the rights, duties and terms of office of same shall be set forth in the By-laws of the corporation.

ARTICLE VII

LIMITATION OF LIABILITY

No officer or director of this Corporation shall be personally liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, an officer, or both, except with respect to:

(a) any breach of the director's or officer's duty of loyalty to the corporation;

(b) acts or omissions which are not in good faith or which involve intentional misconduct or a knowing violation of law;

(c) any transaction from which the director, officer, or both, derived an improper personal benefit; or

Articles of Agreement of
The Frisbie Foundation
Page 5

(d) any act or omission occurring before January 1, 1992.

ARTICLE VIII

BYLAW AMENDMENT

The By-laws of the corporation may be altered, amended or repealed, in whole and in part, only by vote of the majority of the issued and outstanding shares held by the shareholders present and voting at a meeting of the shareholders, duly called for that purpose.

IN WITNESS WHEREOF, we have hereunto subscribed our names this 21 day of July, 1993.

SIGNATURES AND NAMES

P.O. ADDRESSES

Joseph Behre
Signature

Joseph Behre
Name (please print)

P.O. Box 5002
Street

Rochester, NH 03867
City/Town State Zip

Gerard R. Gravel
Signature

Gerard R. Gravel
Name (please print)

P.O. Box 1326
Street

Rochester, NH 03867
City/Town State Zip

James Foss
Signature

James Foss
Name (please print)

P.O. Box 240
Street

Rochester, NH 03867
City/Town State Zip

Marilyn Berry
Signature

Marilyn Berry
Name (please print)

26 Tingley Street
Street

Rochester, NH 03867
City/Town State Zip

Articles of Agreement of
The Frisbie Foundation
Page 6

James R Dalton
Signature
James Dalton
Name (please print)

15 Sunset Drive
Street
Somersworth, NH 03878
City/Town State Zip

Robert Gustafson
Signature
Robert Gustafson
Name (please print)

P.O. Box 5002
Street
Rochester, NH 03867
City/Town State Zip

CERTIFICATE OF RECORDING

City Clerk's Office, City of Rochester. Received and
recorded this 21 day of July, 1993.

Book M
Page 545

Gail M. Varney
City Clerk's Signature

GAIL M. VARNEY
City Clerk's Name (PRINT)

[Mail \$25 filing fee payable to N.H. Secretary of State together
with DUPLICATE ORIGINALS to Secretary of State. Must be recorded
with City/Town Clerk's office prior to recording with the Secre-
tary of State.]

STATE OF NEW HAMPSHIRE

Recording Fee: \$²⁵10.00 (Note 1)
Use black print or type.
Leave 1" margins both sides.

Form No. NP 3
RSA 292:5 & 7
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DEC 13 1993

WILLIAM E. GARDNER
NEW HAMPSHIRE
SECRETARY OF STATE

AFFIDAVIT OF AMENDMENT
OF

THE FRISBIE FOUNDATION

A NEW HAMPSHIRE NONPROFIT CORPORATION

I, Alvin D. Felgar, the undersigned, being the President (Note 2) of the above named New Hampshire non-profit corporation, do hereby certify that a meeting was held on November, 19 93, in Rochester, New Hampshire (Note 3), for the purpose of amending the articles of agreement and the following amendment(s) were unanimously approved by the corporation:

VOTED: Pursuant to RSA 292:7, to amend the Articles of Agreement of the Corporation by deleting Paragraph (2) of Article V and replacing it with the following:

"(2) Upon the liquidation and dissolution of the corporation, after payment of all the liabilities of the corporation or due provision therefor, all of the assets of the corporation shall be distributed to Frisbie Memorial Hospital, and all certificates of the stock of the corporation shall be cancelled; provided, however, that in the event that Frisbie Memorial Hospital does not exist at the time of the dissolution of this corporation, or said Hospital does not then qualify as an organization exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986 as now in force or afterward amended, then all of the assets of the corporation shall, after payment of all liabilities of the corporation or due provision therefor, be distributed to one or more organizations exempt under Code Section 501(c)(3), or corresponding provisions of subsequent Federal tax laws, as the Board of Directors shall determine, and all certificates of the stock of the corporation shall be cancelled."

A true record, attest: Alvin D. Felgar
(Signature)

Date signed November 30, 19 93

- Notes:
1. Make check payable to N. H. Secretary of State.
 2. Clerk, secretary or other officer.
 3. Town/city and state.

Mail fee and DUPLICATE ORIGINALS (ORIGINAL SIGNATURES ON BOTH) to: Secretary of State, State House, Rm. 204, Concord, NH 03301-4989.

File a copy with Clerk of the town/city of the principal place of business.

EXHIBIT 6



NIXON PEABODY LLP
ATTORNEYS AT LAW
NIXONPEABODY.COM
[@NIXONPEABODYLLP](https://twitter.com/NIXONPEABODYLLP)

Laurie T. Cohen
Partner
T 518-427-2708
lauriecohen@nixonpeabody.com

677 Broadway, 10th Floor
Albany, NY 12207-2996
518-427-2650

October 23, 2019

Via Federal Express and E-Mail

Thomas J Donovan
Director of Charitable Trusts
Department of Justice
33 Capital Street
Concord, New Hampshire 03301

**RE: Notice of Proposed Transaction to Sell Charitable Assets of Frisbie Memorial Hospital to FMH Health Services, LLC
PUBLIC COPY**

Dear Mr. Donovan:

On behalf of Frisbie Memorial Hospital, we are providing notice of the proposed transaction to sell the charitable assets of Frisbie Memorial Hospital to FMH Health Services, LLC. Certain confidential information related to this application has been redacted and will be submitted under separate cover.

This packet contains confidential commercial, financial, and/or proprietary information that is protected from misappropriation under RSA §350-B and exempted from disclosure under RSA §91-A:5, IV. Accordingly, the Applicant respectfully request that the confidential information be afforded confidential treatment pursuant to all applicable provisions of law. Should the Department receive any request for the materials described above, the Applicant respectfully requires that (i) the Applicant be notified in advance of any proposed disclosure by the Department and (ii) the Applicant be given a reasonable opportunity to seek a protective order or take other action to prevent or limit any such disclosure. Enclosed herewith please find a copy of the following information:

In accordance with N.H. REV. STAT. ANN. § 7:19-b, we are providing the following information regarding the proposed transaction:

1. All parties to the transaction. See Exhibit 1.
2. The transaction summary which describes the material terms of the transaction, including, without limitation, any changes in control or ownership of assets, any acquisition price,

any change in the capital structure and management, and any and all compensation paid or to be paid in connection therewith. See Exhibit 2.

3. Copies of the minutes and other documents evidencing the decision of the governing body of Frisbie. See Exhibit 3.
4. A summary of steps taken by Frisbie to comply with the public notice requirement of the statute and any changes in the proposed transaction resulting therefrom. See Exhibit 4.
5. A copy of Frisbie's most recent community needs assessment. See Exhibit 5.
6. A copy of the asset purchase agreement. See Exhibit 6.
7. The financial statements of all parties. See Exhibit 7.1 (Frisbie) and Exhibit 7.2 (HCA).
8. The certification signed by the members of Frisbie's governing body. See Exhibit 8.
9. A statement from the acquirer specifying the manner in which it proposes to continue to fulfill the charitable objects of the health care charitable trust. See Exhibit 9.

We appreciate your consideration of the transaction. The parties are available to respond to any questions and/or meet to review the materials submitted.

Sincerely,



Laurie T. Cohen
Partner

LTC/db
Enclosures

EXHIBIT 7



NIXON PEABODY LLP
ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

Laurie T. Cohen
Partner
T 518-427-2708

lauriecohen@nixonpeabody.com

677 Broadway, 10th Floor
Albany, NY 12207-2996
518-427-2650

December 30, 2019

Thomas J Donovan
Director of Charitable Trusts
Department of Justice
33 Capital Street
Concord, New Hampshire 03301

Diane Murphy Quinlan
Assistant Director of Charitable Trusts
Department of Justice
33 Capital Street
Concord, New Hampshire 03301

Dear Mr. Donovan and Ms. Quinlan:

On behalf of Frisbie Memorial Hospital (“Frisbie”), I am writing to follow-up on our recent call regarding the donor restricted funds currently held by Frisbie. Frisbie’s acting CFO, Jim Hutchinson, and Terry Knowles, formerly of your office, previously determined that the aggregate amount of the original donor restricted gifts received by Frisbie totaled \$1,966,197. The current balance of Frisbie’s donor restricted funds is \$2,771,562.

As discussed in our recent call, Frisbie has limited records documenting its investments and its spending, dating back to when it received each gift. In an effort to validate the reasonableness of the current balance of its donor restricted funds, Frisbie, with the advice of a wealth manager, selected a proxy mutual fund, Vanguard Wellsley’s Income Fund (VWINX), to estimate a reasonable amount of capital appreciation of its donor restricted funds.

In utilizing the Vanguard Wellsley Income Fund, Frisbie used the assumptions that, prior to 1985, its donor restricted funds were in fixed income investments, and all income earned was spent. Applying these assumptions, Frisbie calculated that as of 10/31/19, the projected appreciated balance for the Frisbie donor restricted funds should be \$3,358,494.51. Please see the attached spreadsheets documenting the projected aggregate value and individual value of Frisbie’s donor restricted gifts.

At this time, Frisbie proposes to increase the current balance of its donor restricted funds to \$3,358,494.51. Pending the completion of its transaction with FMH Health Services, LLC, Frisbie proposes to maintain the donor restricted funds in a fixed instrument account with BNY

December 30, 2019

Page 2

Mellon, its current investment advisor, until such time as the Attorney General and the Strafford County Probate Court approve a plan for Frisbie's sale proceeds, any proceeds from other Frisbie assets and Frisbie's donor restricted funds.

Frisbie is seeking confirmation that the proposed appreciated balance and interim plan for its donor restricted funds as set forth above is acceptable to the Charitable Trusts Division. We look forward to receiving your reply.

Respectfully Submitted:



Laurie Cohen

Enclosure

EXHIBIT 8

FRISBIE MEMORIAL HOSPITAL
DONOR RESTRICTED FUNDS

<u>DONOR</u>	<u>CALCULATED BALANCE</u>
AMERICAN LEGION	\$ 4,246.29
RICKER	\$ 1,436,127.03
EVANS	\$ 3,762.32
SOMERSWORTH	\$ 2,104.21
FELKER	\$ 161,165.36
RINDGE	\$ 11,352.19
SALINGER	\$ 47,445.64
WHITEHOUSE	\$ 29,408.39
HUDON	\$ 4,208.41
OSGOOD	\$ 40,646.52
James Thayer	\$ 75,846.37
KENDALL	\$ 41,558.07
DAVIS	\$ 28,812.90
LAWES	\$ 2,000.00
VARNEY	\$ 70,049.02
AINSLEE	\$ 21,042.06
Rochester Women's Club	\$ 4,208.41
Raizes	\$ 15,033.91
Richards	\$ 26,302.58
Hayes	\$ 2,636.57
Champlin	\$ 50,000.00
Smith	\$ 37,635.83
Mary Felker	\$ 31,201.00
Sanders	\$ 70,049.02
Burtman	\$ 10,521.03
Chase	\$ 31,563.09
Charles Felker	\$ 12,673.63
McMillan	\$ 50,000.00
Elmer Thayer	\$ 12,625.24
Philbrick	\$ 4,950.00
Parlin	\$ 21,042.06
Sarah Varney	\$ 2,104.21
Greenfield	\$ 10,626.24
Brock	\$ 10,521.03
Sidney Hayes	\$ 2,735.47
Morrison	\$ 105,210.31
Buzzell	\$ 40,274.51
Neal	\$ 21,042.06
Wallace	\$ 31,563.09
Harry Hayes	\$ 95,417.33
Edgerly	\$ 110,477.14
Roberts	\$ 568,305.96
TOTAL	\$ 3,358,494.51

EXHIBIT 9

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

January 13, 2020

Laurie T. Cohen, Esquire
Nixon Peabody, LLP
677 Broadway, 10th Floor
Albany, NY 12207-2996

Re: Frisbie Memorial Hospital - HCA Acquisition

Dear Attorney Cohen:

Thank you for your letter dated December 30, 2019, regarding the donor-restricted funds held by Frisbie Memorial Hospital. Your proposal to increase the balance of the donor-restricted funds as of January 10, 2020, to \$3,358,494.51 to account for unrealized capital appreciation is acceptable to the Director of Charitable Trusts. Although it is not required, the Director and I recommend that Frisbie request the court's approval of your valuation of the donor-restricted funds in the cy pres petition Frisbie intends to file, should it receive a no-action report from us. The Director will, of course, assent to the valuation in such a proceeding.

Feel free to contact me with any questions.

Very truly yours,

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<http://doj.nh.gov/charitable-trusts/>