



**Statement of the Attorney General
as to the**

**Morton Hospital and
Medical Center Transaction**

September 7, 2011

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STATEMENT OF ATTORNEY GENERAL
AS TO THE
MORTON HOSPITAL AND MEDICAL CENTER, INC. TRANSACTION

SEPTEMBER 7, 2011

The Attorney General, in accordance with her statutory duties under G.L. c. 180, § 8A(d), issues this statement (the “Statement”) regarding the proposed transaction (the “Transaction”) by which Morton Hospital and Medical Center, Inc. (“Morton Hospital”) and its affiliated entities Morton Physician Associates, Inc. (“Morton Physician Associates”) and Morton Property, Inc. (“Morton Property”) (collectively, the “Morton Sellers”), propose to sell and transfer substantially all of their health care assets and operations to Morton Hospital, A Steward Family Hospital, Inc., f/k/a Steward Medical Holdings Subsidiary Three, Inc. (the “Steward Buyer”), an indirect subsidiary of Steward Health Care System LLC (the “Steward Parent”) (the Steward Buyer and the Steward Parent each individually and together, “Steward”), an affiliate of Cerberus Capital Management, L.P. (“Cerberus”), and, with respect to the assets of Morton Physician Associates only, Steward Medical Group, Inc. (“Steward Medical Group”).

The Attorney General notes that, effective November 6, 2010, the Steward Parent acquired the Caritas Christi health system, including its six Catholic faith-based hospitals in eastern Massachusetts (the “Caritas Transaction”).¹ See Statement of the Attorney General as to the Caritas Christi Transaction dated October 6, 2010 (the “AG Statement in the Caritas Transaction”). On May 1, 2011, Steward acquired two additional for-profit Massachusetts hospitals.² On July 8, 2011, the Attorney General received written notice pursuant to G.L. c. 180, § 8A(d), that Quincy Medical Center, Inc., which filed for bankruptcy on July 1, 2011, seeks to sell substantially all of its assets and operations to an affiliate of the Steward Parent.³ While the Attorney General’s review of this Transaction, consistent with Section 8A(d), necessarily is specific to Morton Hospital and its proposed sale to Steward, the Attorney General is mindful of the dynamic state of the Massachusetts hospital and health care markets, including market changes in light of Steward’s recent and relatively rapid expansion, and, in the public interest, the Attorney General has taken such factors into consideration in her review.

¹ These hospitals now operate as Steward Carney Hospital, Inc. (Dorchester), Steward Good Samaritan Medical Center, Inc. (Brockton), Steward Holy Family Hospital, Inc. (Methuen), Steward Norwood Hospital, Inc. (Norwood), Steward St. Elizabeth’s Medical Center of Boston, Inc. (Brighton), and Steward St. Anne’s Hospital Corporation (Fall River).

² These hospitals now operate as Merrimack Valley Hospital, A Steward Family Hospital, Inc. (Haverhill) and Nashoba Valley Medical Center, A Steward Family Hospital, Inc. (Ayer).

³ See Statement of the Attorney General in the Quincy Medical Center, Inc. Transaction dated September 7, 2011. In addition, Steward is in the process of acquiring two hospitals in Rhode Island, Landmark Medical Center in Woonsocket, and its subsidiary, Rehabilitation Hospital of Rhode Island in Smithfield. Steward also has entered an asset purchase agreement to acquire Saints Medical Center, Inc., in Lowell, Massachusetts, although the Attorney General has not yet received written notice pursuant to G.L. c. 180, § 8A(d) of such proposed transaction.

I. INTRODUCTION

1.1 Transaction Overview

Morton Health Foundation, Inc. (“Morton Health Foundation”) is the non-profit, charitable parent corporation of, and holds endowment funds for, the Morton health system (“Morton”). Morton Hospital, which has 133 licensed beds, is, and has operated for more than one hundred twenty years as, a non-profit, charitable acute care hospital in Taunton, Massachusetts. Morton Physician Associates is a non-profit, charitable physician practice organization with approximately eleven employed physicians who practice in the Morton service area. Morton Property is a for-profit organization that owns or leases real estate used by Morton.⁴

The Transaction is the culmination of a review and evaluation process by Morton to address its increasing financial difficulties, including outstanding debt, outdated facilities, need for capital, and unfunded pension liability. During this process, which started in approximately 2008, Morton engaged outside consultants and advisors and reviewed and explored its options, which included: (a) remaining a stand-alone hospital, (b) clinically affiliating with other non-profit entities, (c) becoming part of another non-profit system, and (d) transferring its assets to a for-profit entity.

On March 29, 2011, the Morton Hospital Board of Trustees (the “Board”)⁵ approved execution of the Asset Purchase Agreement with the Steward Buyer, which subsequently was amended by an Amendment No. 1 to Asset Purchase Agreement dated September 6, 2011 (as amended, the “APA”), which among other amendments described below, added Steward Medical Group as a buyer with respect to the assets of Morton Physician Associates. The Attorney General received formal notice of the Transaction from Morton Hospital, as required by G.L. c. 180, § 8A(d)(1), in a letter dated May 26, 2011 (“Transaction Notice”), which initiated this review.

Initial Terms of the APA and the Transaction

Key elements of the APA and the Transaction prior to the amendment of the APA are set forth below.

(a) The Steward Buyer will pay purchase consideration for the assets to be transferred of approximately \$53 million, consisting of the following: (i) assumption of Morton’s unfunded

⁴ Other affiliates in the Morton system that are excluded from the proposed transaction along with Morton Health Foundation are Morton Hospital Auxiliary, Inc. (“MHA”), a non-profit, charitable organization that fundraises on behalf of Morton Hospital, and Community Counseling of Bristol County, Inc., a non-profit, charitable corporation that provides outpatient behavioral health services.

⁵ The 26-member Board consists of 18 community representatives (including the MHA President who serves *ex officio*), seven Medical Staff members (including the Medical Staff President who serves *ex officio*), and the Chief Executive Officer (who serves *ex officio*).

pension plan liability of approximately \$36 million, which pension plan governs approximately 1,800 beneficiaries, (ii) payment of Morton’s outstanding debt, consisting of approximately \$28 million less \$11 million net cash on hand available for debt defeasement, and (iii) assumption of certain liabilities.

(b) The Steward Buyer will spend or commit to spend, within five years from the Transaction closing date (the “Closing”), no less than \$85 million in capital expenditures to improve, furnish, equip, and expand the services of the hospital post-Closing (referred to herein as “Steward Morton Hospital”), including no less than \$25.5 million within the first year post-Closing.⁶

(c) During years six through ten post-Closing, the Steward Buyer will spend or commit to spend another approximately \$25 million to \$35 million on additional capital expenditures and investments, based on an average of 100% to 125% of the annual depreciation expense of Steward Morton Hospital.

(d) The Steward Buyer will maintain an acute care hospital in Taunton and will not close, or limit the general purpose of, Steward Morton Hospital for ten years post-Closing, except that the Steward Buyer may close or limit the general purpose of Steward Morton Hospital in, effectively, years eight through ten post-Closing if it has experienced two consecutive fiscal years of negative operating margins and has given the Massachusetts Department of Public Health (“DPH”), with a copy to the Attorney General, prior written notice of at least 18 months of its financial performance and an additional six months notice of its intent to close; accordingly, the no-close commitment of the Steward Buyer is ten years post-Closing but is qualified in years eight through ten post-Closing (the “No-Close Period”).⁷

(e) The Steward Buyer will maintain charity care and community benefit expenditures at the current levels for Morton Hospital during the No-Close Period.

⁶ Within that capital expenditure obligation, the Steward Buyer shall, over the first twelve to eighteen months post-Closing, ensure the full deployment of Meditech 6.0 and Advance Clinical Systems and computerized physician order entry. In addition, the Steward Morton Hospital’s intensive care unit (“ICU”) beds will be rolled into Steward’s electronic ICU monitoring system, providing 24/7 remote intensivist coverage. The APA also provides that Steward shall, consistent with relevant law: (a) wire community-based physicians who become part of Steward Network Services, Inc., with electronic medical records; (b) afford physicians access to Steward’s managed care contracts, medical management/care management infrastructure, Steward quality and safety group’s medical management systems, and medical malpractice insurance through Steward’s off-shore company; and (c) afford opportunity for senior Morton Hospital physicians to take leadership positions on Steward’s system-wide committees for quality and safety. APA Section 11.6(e).

⁷ With respect to Steward Morton Hospital services, the APA also provides that the Steward Buyer’s capital expenditures will focus resources on building and developing, with input from the local governing board and management, such services as: women’s health, expanding obstetrics, replacing the mobile MRI and enhancing imaging, and creating a cancer care center, including the deployment of an on-campus linear accelerator, as well as recruiting specialists and providing a broader range of medical services locally, performed in the greater Taunton community with particular emphasis on neurosurgeons/spine surgeons and vascular medicine physicians.

(f) A local governing board for Steward Morton Hospital will be maintained, composed of medical staff members, community leaders, and appropriate executive officers, which shall be subject to the authority of the Steward Buyer's board of directors, certificate of incorporation, and bylaws, and which shall, subject to such authority, have responsibility, in accordance with DPH regulations, for the following decisions concerning Steward Morton Hospital: (i) approval of borrowings in excess of \$500,000, (ii) additions or conversions which constitute substantial changes in service, (iii) approval of capital and operating budgets, including prioritization of capital investments, (iv) approval of the filing of an application for Determination of Need, (v) development of strategic plans for the community served by Steward Morton Hospital, (vi) medical staff credentialing, and (vii) community benefit planning.

(g) The Steward Buyer will offer comparable employment and terms of employment for the approximately 1,200 Morton employees in good standing at the time of Closing, and Steward will recognize unions and collective bargaining agreements.

(h) Steward Morton Hospital will continue to use the "Morton Hospital" name or some reasonably similar name.

(i) Post-Closing, the Steward Parent will manage and bear the expense of, on behalf of the Morton Sellers, the winding down of the Morton Sellers' operations, which shall include the appropriate disposition of charitable assets, including endowment and other donor-restricted funds, as well as the reorganization or dissolution of charitable entities, as may be appropriate or necessary, subject to the oversight of the Attorney General and the review and approval of the Massachusetts Supreme Judicial Court.

Additional Terms of the Amended APA and the Transaction

In addition, at the urging of the Attorney General, Steward has agreed to the following.

(j) The Steward Buyer's capital expenditure obligation in years six through ten post-Closing has been clarified to include a minimum aggregate commitment of at least \$25 million, in addition to the estimated range of expenditure based on 100% to 125% of annual depreciation that shall be "no more than" \$35 million.

(k) If the Steward Buyer fails to meet its minimum capital expenditure obligations under the APA in the first five years post-Closing, the Steward Buyer shall donate such unspent amounts to a Massachusetts health care charity, after written notice to and approval by the Attorney General.

(l) During the No-Close Period, the Steward Buyer will not close or reduce the number of its 14 elder behavioral health service, inpatient psychiatric beds.

(m) For so long as the Steward Buyer operates Steward Morton Hospital, the Steward Buyer shall continue to provide the current Morton Hospital community benefit programs, including an adult uninsured clinic and school-based health centers, and to provide culturally and linguistically appropriate services consistent with those currently provided at Morton Hospital,

subject to such changes over time that may be necessary or appropriate to ensure that such community benefit programs remain properly aligned with the needs and interests of Steward Morton Hospital's patients and the community post-Closing.

(n) The "local governing board" obligation of the Steward Buyer shall apply for as long as it operates Steward Morton Hospital.

(o) The Steward Buyer's obligation to offer comparable employment to all active employees in good standing applies to those employees on short-term disability, maternity leave, vacation, or leaves of absence with a specified date of return.

(p) The Steward Buyer is obligated during the No-Close Period to maintain an acute care hospital that shall provide at least substantially the same services as currently provided by Morton Hospital.

(q) For as long as the Steward Buyer operates Steward Morton Hospital (not just during the ten-year No Close Period), Steward Morton Hospital shall maintain charity care and community benefit programs pursuant to the Attorney General's Community Benefits Guidelines for Non Profit Hospitals.

(r) For as long as the Steward Buyer operates Steward Morton Hospital (not just during the ten-year No Close Period), Steward Morton Hospital will adopt and implement charity care policies generally consistent with the current Morton Hospital charity care policies and will comply with the Recommended Hospital Debt Collection Practices set forth in the Attorney General's Community Benefits Guidelines for Non Profit Hospitals. In addition, the Steward Buyer will continue to accept Medicare and Medicaid patients consistent with current Morton Hospital practices and to accept emergency room patients regardless of ability to pay consistent with applicable law.

(s) The Steward Buyer, notwithstanding its for-profit status, will fully cooperate with any investigation, inquiry, study, report, or evaluation conducted by the Attorney General under her oversight authority of the non-profit charitable hospital industry to the same extent and subject to the same protections and privileges as if Steward were a public charity.

(t) The Steward Buyer agrees that all naming commitments made in the past to Morton donors will be honored.

(u) The Steward Buyer may not sell or transfer a majority interest in Steward Morton Hospital for five years post-Closing, except as part of an otherwise permitted sale of the Steward health system as a whole or Steward Medical Holdings LLC ("Steward Medical Holdings"), which holds the Steward secular hospitals, including the Steward Buyer.

(v) The Steward Buyer committed that following APA provisions will apply to any successor-in-interest to the Steward Buyer: (i) ongoing obligations for community benefit and charity care, including debt collection practices, (ii) the regulatory cooperation commitment, (iii) the no-closure commitments, including maintaining at least substantially the same services and

maintaining current community benefit and charity care expenditure levels for the No-Close Period, (iv) the capital expenditures commitment in years six through ten post-Closing; (v) the local governing board commitment, (vi) the donor-naming commitment; provided that only items (i) and (ii) apply if the Steward Buyer satisfies the No-Close Period criteria and otherwise could close the hospital rather than sell it. Also, the Steward Buyer will give the Attorney General at least 90 days prior notice of any sale.

(w) The Steward Parent’s obligation to assure and fund the reorganization or dissolution of Morton entities post-Closing, as may be appropriate or necessary, including to ensure that endowment and other donor-restricted funds are appropriately segregated and used for appropriate purposes shall be subject to a Transition, Windup, and Reorganization Agreement with the Attorney General (described in Section 5.3, below).

(x) The scope of the existing assessment and monitoring of Steward by the Attorney General and DPH has been clarified to include expressly monitoring, assessment, and evaluation of the impact of the Transaction on health care costs, access, and services within the communities served by Steward, consistent with an Assessment and Monitoring Agreement with the Attorney General (described in Section 5.2, below).

(y) The Attorney General shall have the right to enforce certain post-Closing provisions of the APA related to the public interest (e.g., No-Close Period, capital expenditures, community benefits, charity care), subject to an Enforcement Agreement with the Attorney General (described in Section 5.1, below).

(z) Any enforcement action brought by the Attorney General under the APA or any of the ancillary agreements (described in Section V, below) shall be brought in the courts of the Commonwealth of Massachusetts.

1.2 Statutory Basis for Attorney General Review

Under G.L. c. 180, § 8A(d), the Attorney General reviews transactions involving the sale or transfer of non-profit hospital assets or operations to for-profit entities. Section 8A(d)(1) provides, in part:

“A nonprofit acute-care hospital . . . shall give written notice of not less than 90 days to the attorney general . . . before it enters into a sale, lease, exchange, or other disposition of a substantial amount of its assets or operations with a person or entity other than a public charity. . . . When investigating the proposed transaction, the attorney general shall consider any factors that the attorney general deems relevant, including, but not limited to, whether:

- (i) the proposed transaction complies with applicable general nonprofit and charities law;*
- (ii) due care was followed by the nonprofit entity;*
- (iii) conflict of interest was avoided by the nonprofit entity at all phases of decision making;*

- (iv) *fair value will be received for the nonprofit assets; and*
- (v) *the proposed transaction is in the public interest.”*

The results of her investigation and review inform her in responding to the Complaint to be filed by the Morton Sellers with the Supreme Judicial Court of the Commonwealth of Massachusetts seeking approval of the Transaction. Supreme Judicial Court approval is required for the Transaction to proceed.

1.3 Questions Posed

Consistent with the prior Section 8A(d) reviews by the Office of the Attorney General concerning the Caritas Transaction and the conversion of The Nashoba Community Hospital Corporation d/b/a Deaconess Nashoba Hospital (the “Nashoba Transaction”),⁸ in considering the above statutory factors, the Attorney General seeks to answer the following questions.

(a) Did the Board comply with applicable general non-profit and charities law in its decision to sell to a for-profit entity? Compliance with several aspects of applicable general non-profit and charities law are addressed in paragraphs (b) through (e), below. In addition, consistent with relevant charities law, public charities, which hold their assets in charitable trust for the benefit of the public, cannot sell their assets and operations to a for-profit entity simply because they may operate better or more effectively with private equity. Charitable board members considering for-profit conversion must act in accordance with the legal doctrine of *cy pres*.⁹ The record must support the Board’s application, based on the facts and circumstances in this case, of the relevant “impossible or impracticable” *cy pres* legal standard, namely, that: (i) Morton Hospital could not continue to survive in its current charitable form as a stand-alone community hospital, and (ii) the sole bid from a non-profit health care system was not a reasonably viable proposal for continuing Morton Hospital’s charitable mission of operating a full-service, acute care hospital for the residents of Taunton and its surrounding communities over the long term.

(b) Did Morton Hospital carefully, thoughtfully, and deliberately explore and evaluate available options? The Board’s determination to sell and transfer the assets and operations of Morton Hospital to a for-profit entity, where assets are held for the benefit of private owners and no longer held for the benefit of the public, must have been considered and approved in a deliberative manner that carefully evaluated all options.

(c) Did Morton Hospital appropriately and effectively assure disclosure of, and then manage, any conflicts of interest related to the Transaction? Consistent with relevant law, conflicts of interest concerning charitable organizations are not necessarily inappropriate or

⁸ See Statement of the Attorney General as to The Deaconess Nashoba Hospital Transaction dated December 20, 2002 (the “AG Statement in the Nashoba Transaction”).

⁹ *Cy pres* means “as near as possible” and is the legal principle that requires charitable funds to be used according to the charitable purposes for which they are held, unless it is impossible or impracticable to continue to do so. The application of this standard under charities law protects charitable assets, including non-profit hospitals subject to Section 8A(d) review, from improper diversion to for-profit entities.

harmful, but they must be disclosed and appropriately handled to assure that private or individual interests (e.g., including those of physicians, employees, management, unions, vendors, or other third parties) do not take priority over those of the institution and the public it serves.

(d) Is the purchase consideration, taken as a whole, fair and reasonable? Morton Hospital should receive fair value for the charitable assets it holds for the benefit of the public.

(e) Is the Transaction in the public interest? As set forth in Section 4.5, below, the Attorney General is authorized to, and did, consider a variety of factors to assess whether the Transaction is in the public interest.

1.4 Review Process

The Attorney General, principally through her Non-Profit Organizations/Public Charities Division, and also involving her Antitrust Division and Health Care Division, conducted an investigation of the Transaction in the context of the above statutory factors by, among other actions: (a) holding a public hearing in Taunton on June 30, 2011, (b) posting the Transaction Notice, the APA, and all other exhibits to the Transaction Notice on the Attorney General's website, (c) accepting comments from other health care providers, employees, unions, and members of the public, (d) obtaining information from health care providers interested in or potentially impacted by the Transaction, including meeting with and obtaining information from the sole non-profit bidder, Southcoast Health System, Inc. ("Southcoast"), (e) holding meetings and discussions with interested parties, (f) reviewing financial records, minutes, reports, and other documents provided in response to document production requests of the Attorney General, (g) submitting interrogatories to be answered under oath to all members of the Board and senior management, as well as non-Board physician committee members, and reviewing the responses to same, (h) interviewing key Board members and senior management, including the Chief Executive Officer and the Chief Financial Officer of Morton, (i) interviewing Steward's President and Chief Executive Officer, as well as Steward's Executive Vice President of Corporate Strategy and Management, (j) consulting with other state agencies and with local and state officials, and (k) retaining the services of consultants and outside counsel to assist the Attorney General in her analysis.

During her review, the Attorney General urged and Steward agreed to expand its commitments to the Attorney General and the public through amendments to the APA and Transaction enhancements as described in Sections 1.1(j) through (z), above. Among other commitments, Steward has agreed to clarify the scope of its existing agreement with the Attorney General to include expressly the monitoring, assessment, and evaluation of the impact of the Transaction on health care costs, access, and services within the communities served by Steward, as described in Sections 1.1(x), above.

II. FINDINGS: SUMMARY

For the reasons and with the conditions set forth in Sections IV and V of this Statement, the Attorney General makes the following findings.

2.1 As a threshold matter, the Attorney General finds that the Board was educated appropriately by its consultants and advisors concerning the “impossible or impracticable” standard under applicable general non-profit and charities law. Applying that standard, based on the facts and circumstances of this case, the Board determined that: (a) Morton Hospital could not continue to survive in its current charitable form as a stand-alone community hospital, and (b) the sole bid from a non-profit health care system was not a reasonably viable proposal for continuing Morton Hospital’s charitable mission of operating a full-service, acute care hospital for the residents of Taunton and its surrounding communities over the long term.

The Board based its determination in large part upon its findings that, under the non-profit proposal, Morton Hospital would not remain a full-service acute care community hospital over the long term, but rather, would become a fourth campus or branch of a regional community hospital system that developed “signature” services at the respective facilities to service, collectively, the health care needs of residents of the entire region, and further, that the non-profit proposal did not commit to the expansion and delivery of local (as opposed to regional) clinical services at Morton Hospital. In the Board’s judgment, the non-profit bid was not a viable proposal for the continuation of Morton Hospital’s continued operations and charitable mission, which the Board viewed as maintaining a full-service hospital in Taunton for the residents of that community. This judgment was based in part on the Board’s belief that residents of Taunton would be unlikely to travel to Fall River, New Bedford or Wareham for services not available at Morton Hospital, and further, the Board believed that the core mission of Morton Hospital was to retain the full array of services as an acute care community hospital for Taunton.¹⁰

The Board’s determination that Morton Hospital would not remain over the long term a full-service acute care hospital under the non-profit proposal was supplemented by its other findings, including that Steward’s proposal (unlike the non-profit proposal) had a long-term commitment to maintain a local governing board, that it had a larger, more front-loaded, and more specific capital commitment, and that it committed to a longer No-Close Period. The Attorney General finds that the record supports a reasonable basis for the Board’s determination, consistent with applicable general non-profit and charities law.

2.2 While noting the Attorney General’s process recommendations set forth in Appendix B, the Board complied with standards of due care. Starting in approximately 2008, the Board actively explored a variety of options, including the following: (a) remaining a stand-alone hospital, (b) clinically affiliating with other non-profit entities, (c) becoming part of another non-profit system, and (d) transferring its assets to a for-profit entity. In doing so, it retained the services of qualified, independent consultants and advisors and reached a decision only after a thoughtful and deliberative process directed by the Board and in which the Board was fully involved.

2.3 While noting the Attorney General’s process recommendations set forth in Appendix B, the Board and senior management appropriately disclosed and managed conflicts of

¹⁰ The Attorney General does not endorse or detract from the Board’s determination concerning the importance to its mission of retaining a full-service acute care hospital in Taunton (as opposed to a regional care approach, for example), but finds that it was not unreasonable for the Board to make such determination.

interest concerning the Transaction. Members of the Board and senior management had no existing financial interests or business relationships with Steward. Steward's obligation to offer all Morton Seller employees active and in good standing at the time of Closing, including senior management, comparable employment with Steward at Closing was an APA provision sought and negotiated by the Board. No financial terms and conditions have been negotiated between Steward and members of Morton senior management with respect to future service. No member of Morton senior management will receive an increase in salary, incentive payment or bonus, or other form of compensation as consideration for identifying or finding Steward or for negotiating, effectuating, or entering into the Transaction.¹¹ The interests of current Board members in future service on the Steward Morton Hospital board arises out of a local governance condition sought and negotiated by the Board. With respect to the selection of Board members to serve on the Steward Morton Hospital board, such individuals were not nominated by Morton Hospital or appointed by Steward until after the APA was executed (such appointments are to be effective upon Closing).

2.4 The purchase consideration for the assets and operations of Morton Hospital is fair and reasonable. Compensation for the charitable assets was the result of the evaluation of a bidding or Request for Proposals ("RFP") process, significant negotiations with interested parties, and final terms and conditions negotiated and determined in an arm's length manner unaffected by personal or other interests. From an industry benchmarking perspective (e.g., earnings before interest, depreciation, and amortization ("EBIDA") multiple), the compensation is above the range of comparables for similar transactions. While the approximately \$53 million purchase price consideration under the APA, in and of itself, is fair and reasonable, the additional Steward obligations under the APA, including commitments to charity care, community benefits, minimum operational period, and capital expenditures, also are of value to the public.

2.5 The Transaction serves the public interest. As noted in the AG Statement in the Caritas Transaction, there are risks to the public intrinsic in any change of control, including a non-profit to for-profit conversion. In making its determination, the Board considered such risks and attempted to mitigate them with APA post-Closing commitments in the public interest (see Sections 1.1 (a)-(i), above). In addition, consistent with the public interest, the Attorney General has worked to enhance the Transaction, including with additional protections and transparency (see Sections 1.1(j)-(z), above).

III. PUBLIC COMMENTS and PROCESS RECOMMENDATIONS

During the review process, the Attorney General received comments from a variety of sources, the majority of which were supportive of the Transaction. Attached in Appendix A is a summary of such sources and commentary, including at the June 30, 2011 public hearing.

During the review process, the Attorney General noted process recommendations as an educational tool for charitable organizations, which are set forth in Appendix B.

¹¹ See analysis in Section 4.3, below, including footnote 29.

IV. FINDINGS: DETAIL AND DISCUSSION

4.1. The Transaction complies with applicable general non-profit and charities law.

The record demonstrates that the Board appropriately, and repeatedly throughout the RFP process, was educated by its experienced consultants and counsel concerning the “impossible or impracticable” standard under relevant Massachusetts charities law, as well as the fiduciary obligations of Board members concerning the RFP process. The Board was informed of, among other things, the Attorney General’s oversight role concerning any non-profit hospital conversion, as well as the Attorney General’s Guidelines for Transfers of Nonprofit Acute Care Hospitals and HMOs (the “AG’s Section 8A(d) Guidelines”) and the AG Statement in the Caritas Transaction (both available on the Attorney General’s website). Applying the relevant standard under applicable general non-profit and charities law, the Board determined that: (a) Morton Hospital could not continue to survive in its current charitable form as a stand-alone community hospital, and (b) the sole bid from a non-profit health care system was not a reasonably viable proposal for continuing Morton Hospital’s charitable mission of operating a full-service, acute care hospital for the residents of Taunton and its surrounding communities over the long term. The Attorney General’s analysis concerning the first part of the Board’s determination is set forth in this Section 4.1. The Attorney General’s analysis concerning the second part of the Board’s determination is set forth in Section 4.2, below.

Analysis

In approximately August of 2010, Morton engaged Navigant Consulting and Navigant Capital Advisors (individually and together, “Navigant”), national firms with experience in merger and acquisition transactions specializing in advising health care clients facing strategic, financial, and other challenges. After conducting its initial strategic assessment, Navigant advised the Board at its October 6, 2010 meeting that, in Navigant’s opinion, Morton Hospital could continue to survive as a stand-alone community hospital for “at most” another five years. At the same meeting, Navigant also advised the Board that Morton Hospital had a short-term “window of opportunity” to arrange an affiliation or acquisition (e.g., when Morton Hospital still would be viable and valuable enough to attract potential partners). In addition, the Morton senior managers and Board members reported in interviews with the Attorney General’s office that, in their opinions, Morton Hospital could continue to survive on its own for only approximately two more years.

Regarding Morton Hospital’s ability to survive in its current charitable form as a stand-alone community hospital, the Attorney General requested and reviewed relevant documents and information, including financial, utilization, and market data pertaining to Morton and the markets served, as well as interrogatory responses from, and interviews with, Board members and senior management concerning Morton’s financial and operational viability. Such data included the following: audited and internal financial statements, including balance sheets, income statements, and cash flow statements, capital budgets, internal operating statements, data available from the Massachusetts Division of Health Care Finance and Policy and the Massachusetts Health Data Consortium, and Morton inpatient and outpatient utilization statistics.

The Attorney General engaged Health Strategies & Solutions, Inc. (“HS&S”) to assist with the review of this data, Morton, and the Transaction.

Below is a summary of utilization and financial information for Morton for the past several years, including data to support the Attorney General’s finding that the record shows a reasonable basis for the Board’s determination that it is impracticable for Morton Hospital to continue operations in its current charitable form as a stand-alone community hospital.

MORTON HOSPITAL (MHMC) UTILIZATION¹²

Measure	FY2007	FY2008	FY2009	FY2010	FY2011 (9 mos.)	FY2011 (ann.)	% Δ 2007-2010
MHMC discharges	7,202	7,021	7,408	7,661	5,705	7,139	6.4%
MA total discharges	855,570	857,055	862,233	N/A	N/A	N/A	0.8%
United States total discharges	35.35 M	35.76 M	N/A	N/A	N/A	N/A	N/A
Percentage of Admissions from Emergency Department (ED)	82.6%	81.6%	80.6%	80.9%	81.7%	81.7%	(2.1%)
MHMC total patient days	26,093	25,317	26,260	25,787	20,450	27,267	(1.2%)
MA total patient days	4,112,404	4,119,794	4,007,190	N/A	N/A	N/A	(2.6%)
MHMC ALOS	3.6	3.6	3.5	3.4	3.6	3.6	(7.1%)
MA ALOS	4.8	4.8	4.6	N/A	N/A	N/A	(4.2%)
Average Daily Census	71.5	69.2	71.9	70.6	74.7	74.7	(1.2%)
MHMC outpatient surgery cases	12,268	12,143	12,253	12,493	8,845	11,793	1.8%
MA Outpatient surgery cases	567,001	539,809	547,610	N/A	N/A	N/A	(3.4%)
MHMC ED visits	57,297	55,451	54,941	52,794	37,978	50,637	(7.9%)
MHMC Occupancy Percentage	46.4	44.9	46.7	45.8	48.5	48.5	(1.3%)
MA Median Occupancy Percentage	62.6	62.7	61.3	N/A	N/A	N/A	(2.0%)

- (a) Morton Hospital’s discharge volume has fluctuated over the past several years; after discharges increased by 3.4% from FY 2009 to FY 2010, FY 2011 discharges are projected to decline by more than 6% as compared to the previous year (based on annualized statistics).

¹² In the data tables in this Section 4.1, the abbreviation “MHMC” means “Morton Hospital” as defined above, and the abbreviation “MHF” means “Morton” as defined above. Sources for the data in this chart include the following: Morton Hospital internal statistics, September 30, 2007 to April 30, 2011; Massachusetts Division of Health Care Finance and Policy: Study of the Reserves, Endowments, and Surpluses of Hospitals in Massachusetts, May 2010; and American Hospital Association Hospital Statistics (2010 edition based on 2008 annual survey). FY 2011 data are based on nine months (October 1, 2010 to June 30, 2011). Occupancy percentage is based on Morton Hospital’s total patient days and assumes 154 licensed beds (American Hospital Directory: www.ahd.com).

- (b) Over 80% of Morton Hospital admissions originate from the emergency department, which is very high as compared to industry norms.
- (c) Morton Hospital's average length of stay ("ALOS") and total patient days remained relatively constant between FY 2007 and FY 2010; Morton Hospital's ALOS was consistently below the Massachusetts median between FY 2007 and FY 2009.
- (d) Morton Hospital's outpatient surgery volume increased by 1.8% between FY 2007 and FY2010, but is projected to decline by more than 600 cases in FY 2011.
- (e) Emergency department visits at Morton Hospital decreased by 8.0% between FY 2007 and FY 2010.
- (f) Morton Hospital occupancy percentage for licensed beds is far below the Massachusetts median, and has declined since FY 2007.

MORTON (MHF) FINANCIAL PERFORMANCE¹³
(\$ in Thousands, with the exception of cost per discharge statistics)

Measure	FY2007	FY2008	FY2009	FY2010	FY2011 (9 Mos.)	FY2011 (Ann.)
MHF operating revenue	\$119,914	\$128,004	\$135,822	\$136,458	\$98,198	\$130,931
MHF operating expenses	\$118,568	\$130,119	\$133,564	\$138,551	\$100,551	\$134,068
MHF operating margin \$	\$1,346	(\$2,115)	\$2,258	(\$2,093)	(\$2,353)	(\$3,137)
MHF operating margin %	1.1%	(1.7%)	1.7%	(1.5%)	(2.4%)	(2.4%)
MHF net income	\$2,438	\$2,755	\$2,678	(\$1,044)	(\$1,075)	(\$1,433)
MHF total margin %	2.0%	2.2%	2.0%	(0.8%)	(1.1%)	(1.1%)
MA median total margin %	3.0%	1.4% ²	2.2% ²	2.6%	N/A	N/A
MHMC Adjusted Compensation Costs per Discharge	\$3,221	\$3,527	\$3,422	\$3,334	\$3,334	\$3,334
MA Median Adjusted Compensation Costs per Discharge	\$2,550	\$2,582	\$2,735	N/A	N/A	N/A
MHMC Adjusted Supply Costs per Discharge	\$1,687	\$1,840	\$1,871	\$1,897	\$1,905	\$1,905
MA Median Adjusted Supply Costs per Discharge	\$1,831	\$1,931	\$2,003	N/A	N/A	N/A
MHMC Adjusted FTEs per Occupied Bed	3.38	3.65	3.37	3.38	2.98	2.98
MA Median Adjusted FTEs per Occupied Bed	2.95	3.09	3.04	N/A	N/A	N/A

¹³ Sources for the data in this chart include the following: Morton Statement of Operations, September 30, 2007 to April 30, 2011; Ingenix Almanac of Hospital Financial and Operating Indicators, 2011; Massachusetts Division of Health Care Finance and Policy – Hospital Financial Performance Information, December 31, 2010; and Morton Hospital Consolidating Statement of Operations, September 30, 2010 to June 30, 2011. Net income includes adjustment to record (relieve) pension liability. FY 2011 data are based on nine months (October 1, 2010 to June 30, 2011).

- (a) Including annualized FY 2011, Morton has had a negative operating margin in three of the past four years.
- (b) Morton had both a negative operating margin and a negative total margin in FY 2010, and the losses in each category are projected to increase in FY 2011.

MORTON (MHF) FINANCIAL POSITION¹⁴
(\$ in Thousands)

Measure	9/30/07	9/30/08	9/30/09	9/30/10	6/30/11	%Δ 2007-2010
MHF cash and equivalents	\$3,315	\$4,546	\$9,547	\$6,238	\$5,699	88.2%
MHF current assets	\$22,760	\$26,093	\$31,097	\$23,286	\$23,323	2.3%
MHF total assets	\$64,723	\$68,362	\$76,769	\$70,488	\$69,013	8.9%
MHF accounts payable	\$6,232	\$6,540	\$9,538	\$11,665	\$4,721	87.2%
MHF current liabilities	\$22,518	\$26,656	\$28,672	\$23,306	\$23,038	3.5%
MHF total liabilities	\$62,098	\$73,107	\$78,348	\$81,723	\$81,761	31.6%
MHF total net assets	\$2,625	(\$4,744)	(\$1,579)	(\$11,233)	(\$12,747)	(527.9%)
MHF current ratio	1.01	0.98	1.08	1.00	1.01	(1.1%)
MA median current ratio	1.52 ²	1.46	1.50	1.55	N/A	2.0%
US median current ratio (100-199 beds)	2.05	1.89	1.98	N/A	N/A	N/A
MHF days cash on hand (all sources)	33	32	51	34	25	3.0%
Massachusetts median days cash (all sources)	62.9	69.9	78.7	N/A	N/A	N/A
United States median days cash (100-199 beds)	81.6	71.0	115.7	N/A	N/A	N/A

- (a) Morton's cash and equivalents increased from approximately \$3.5 million as of September 30, 2007 to over \$6.0 million as of September 30, 2010. However, accounts payable also increased over the same time period, from approximately \$6 million as of September 30, 2007 to over \$11.5 million as of September 30, 2010.
- (b) Morton's liquidity position is very poor. Morton's days cash on hand are less than one-half the median levels for hospitals in Massachusetts and in the United States. Morton's current ratio has been at or near 1.00 for the last five years, and is also significantly below industry medians.

¹⁴ Sources for the data in this chart include the following: Morton Consolidating Balance Sheet, September 30, 2010 to June 30, 2011; Ingenix Almanac of Hospital Financial and Operating Indicators, 2011; and Massachusetts Division of Health Care Finance and Policy – Hospital Financial Performance Information, December 31, 2010. The 51 days cash on hand as of September 20, 2009 includes a one-time adjustment for pool loans associated with an energy project.

- (c) Morton has had a negative net asset position since 2008. Morton's net asset position deteriorated substantially from September 30, 2009 to September 30, 2010, and continues to deteriorate in 2011.

MORTON (MHF) FINANCIAL POSITION (continued)

Measure	9/30/07	9/30/08	9/30/09	9/30/10	6/30/11	%Δ 2007-2010
MHF long-term debt to capitalization	78%	103%	102%	156%	175%	100%
Massachusetts median long-term debt to capitalization	31%	36%	38%	N/A	N/A	N/A
United States median long-term debt to capitalization (100-199 beds)	35%	35%	36%	N/A	N/A	N/A
MHF equity financing	4.1%	(6.9%)	(2.1%)	(15.9%)	(18.5%)	(492.9%)
Massachusetts median equity financing	48.9%	49.0%	38.1%	39.2%	N/A	(19.8%)
United States median equity financing(100-199 beds)	52.0%	45.9%	49.2%	N/A	N/A	N/A

- (a) Morton's long-term debt to capitalization, which measures the organization's reliance on debt, increased substantially between September 30, 2007 and September 30, 2010; the measure is nearly three times higher than the state and national medians and indicates that Morton is highly leveraged.
- (b) Morton's equity financing percentage declined from 4.1% as of September 30, 2007 to (15.9%) as of September 30, 2010; this is reflective of the organization's negative net asset position. State and national medians for equity financing were 38.1% and 49.2%, respectively, in 2009.

CAPITAL INDICATORS¹⁵ (\$ in Thousands)

Measure	9/30/07	9/30/08	9/30/09	9/30/10	6/30/11	%Δ 2007-2010
Capital expenditures	TBD	\$3,422	\$2,141	\$2,031	TBD	TBD
Depreciation expense	\$4,110	\$4,644	\$4,928	\$4,998	\$3,328	21.6%
Capital expenditures as % of depreciation	TBD	74%	43%	41%	TBD	TBD
MHMC average age of plant	18.5	17.3	17.3	17.2	18.7	(7.0%)
Massachusetts median average age of plant	10.7	10.6	9.3	N/A	N/A	N/A
United States median average age of plant (100-199 beds)	9.6	9.5	9.4	N/A	N/A	N/A

¹⁵ Sources for the data in this chart include the following: Morton Hospital internal data; Ingenix Almanac of Hospital Financial and Operating Indicators, 2011; and Massachusetts Division of Health Care Finance and Policy – Hospital Financial Performance Information, December 31, 2010.

- (a) Morton’s average age of plant has been above 17 years since FY 2007; this is considerably higher than state and national medians and indicates that Morton requires substantial investment in facilities and equipment.
- (b) Morton has invested less than \$4 million per year in capital investments over the past several years (all of which was reportedly designated for “emergency capital needs”).

Financial Capacity of Steward

In her review of the Transaction, the Attorney General also considered the financial capacity of Steward. Steward management reports that the organization has in excess of \$100 million in unrestricted cash availability, and access to an additional \$400 million through approved financing. Steward management also reports that the organization has a forward commitment of \$400 million from the Steward Parent, out of a fund with approximately \$2.5 billion available.¹⁶

Steward expects to receive an additional \$50 million by 2016 in government funding, by achieving “meaningful use” of IT, including electronic health records. Steward also has current annual earnings before interest, taxes, depreciation and amortization of more than \$80 million. Accordingly, Steward’s reportedly available resources are more than sufficient to finance the Transaction and fund post-Closing commitments.

Key Findings

Morton Hospital is heavily reliant on volume originating from its emergency department. A relatively low percentage of patients self-select Morton Hospital for inpatient health care services. Morton’s financial performance is weak and not sufficient to generate the positive margins necessary to reinvest in facilities, operations, and infrastructure. Morton Hospital’s financial position is tenuous and deteriorating. Without a capital partner to stabilize operations and fund necessary capital investments, Morton Hospital’s financial performance and position will deteriorate further and the organization will eventually become insolvent. In sum, it is impracticable for Morton Hospital to remain as an independent organization. In addition, Steward’s reportedly available resources are more than sufficient to finance the Transaction and fund post-Closing commitments.

4.2 The Board and senior management complied with standards of due care.

Members of the Board, as well as senior managers, are fiduciaries and must at all times in their dealings with Morton act in a manner consistent with their obligations of due care and loyalty. The duty of care means that these individuals must act prudently, act in good faith, and exercise reasonable judgment. For the reasons set forth below, the Attorney General finds that the Board and senior management acted consistent with that duty.

The Attorney General requested and reviewed relevant documents and information, including financial data, organizational and governance documents, transactional documents,

¹⁶ Steward’s capital commitment in the Caritas Transaction is \$400 million by November 6, 2014.

business records, and minutes of Board and committee meetings, as well as interrogatory responses from, and interviews with, Board members and senior management concerning Morton's consideration of alternative transactions as well as the Transaction.

Below is a summary of the record evidencing due care by the Board, including Morton's initial exploration of a clinical affiliation, transition to consideration of a potential merger or acquisition and related RFP process, and, ultimately, the Board's evaluation and determination that the non-profit bid was not a reasonably viable proposal for continuing Morton Hospital's current operations and charitable mission over the long term as a full-service acute care hospital for the residents of Taunton and its surrounding communities.

Exploration of Clinical Affiliations (2008-2010)

By 2007-2008, Morton was experiencing financial pressures, including increasing debt, increasing unfunded pension plan liability (including in light of the 2008 market downturn), outdated facilities, deferred capital expenditures, declining patient utilization, and shrinking market share. (See Section 4.1, above.) Morton Hospital is the only hospital in its primary service area, and Taunton has been designated a Health Professional Shortage Area by the federal Department of Health and Human Services. By 2008-2009, Morton began exploring options for improving its performance while remaining a stand-alone community hospital, including contracting with one or more teaching hospitals in the Boston area. Morton's initial efforts to explore such clinical affiliation began with a subset of the Finance Committee of the Board and resulted in a contractual arrangement with Tufts Medical Center ("Tufts") to supply pediatric hospitalists to Morton Hospital. At this time, Board members, including the Chair of the Finance Committee, questioned the ability of Morton Hospital to survive long term.

In 2009, Morton underwent a leadership transition. Morton's prior President and Chief Executive Officer ("CEO"), Thomas C. Porter, had served Morton Hospital for more than thirty years, the last twenty-two years as its President and CEO. Effective July 1, 2009, Maureen Bryant, who had served since 1999 as Morton's Vice President and Chief and Operating Officer, transitioned to the position of President and Chief Operating Officer. Upon Mr. Porter's retirement, Ms. Bryant became Morton's President and CEO effective October 1, 2009.

By the Fall of 2009, Morton had engaged a health care consulting firm, Hinckley, Allen & Tringale ("HAT"), to assist with Morton's efforts to pursue a clinical affiliation. A November 2009 HAT presentation to Morton outlined a process to pursue a clinical, or physician/hospital, affiliation, including the following Morton goals of any such clinical affiliation: (a) improve contracting, (b) provide infrastructure, (c) co-branding opportunities, (d) capital support, and (e) service-line clinical support. Overall goals were stated as: (w) maintain and improve access to services in the local community, (x) support local practitioners, clinically and financially, (y) maintain physician and hospital cohesion, and (z) improve hospital case mix, increase revenue. Four non-profit health systems, each with its respective physician network, were identified as preferred partners: Beth Israel Deaconess Medical Center, Caritas Christi (the non-profit health system that was acquired by Steward the following year, effective November 6, 2010), Partners HealthCare, and Tufts. HAT proposed a timeline from the Fall of 2009 to the Spring of 2010.

Morton established an “Affiliation Taskforce” to work with HAT and to continue the exploration of a clinical affiliation initiated by Finance Committee members. This Affiliation Taskforce was composed of ten members: the President and CEO (Ms. Bryant), five community Board members (including the Board Chair, the Finance Committee Chair, and the Governance Committee Chair), and four physicians (two of whom were Board members, two of whom were not).

In January, 2010, HAT reported to Morton that all four non-profit organizations contacted had reported an interest in potential affiliation and thus, there was no need to approach the additional six organizations (five non-profit and one for-profit) that also had been identified by HAT as potential partners. In April, 2010, HAT reported to Morton that all four non-profit organizations had made proposals concerning clinical affiliation but that the programs varied significantly in terms of the following factors: (a) commitment to Morton Hospital as a key component of each potential partner’s regional presence and strategy, (b) timing for hospital/physician agreements, and (c) availability of capital for Morton Hospital.

In May of 2010, Morton’s President and CEO, along with a HAT representative, met with the Attorney General’s Non-Profit Organizations/Public Charities Division to report on Morton’s then current deteriorating financial situation and the status of its clinical affiliation efforts to date. Morton needed substantial investment capital to maintain its facility and essential services. Consistent with a HAT report in May 2010, Morton had at the time an aging facility (approximately 18 years age of plant), an approximately \$32 million pension liability, declining operating margin and liquidity, and no additional debt capacity; and further, HAT reported that local primary care and other physicians were the target of larger health systems.

By the July 14, 2010 Board meeting, the Board determined that the contractual non-profit affiliation was not viable as a long-term survival plan. One concern was that such potential affiliations appeared to be focused on increasing patient referral streams from Morton Hospital to Boston facilities and thus, would not improve Morton Hospital’s prospects for long-term survival as a full-service community hospital. The Chair of the Affiliation Taskforce (also the Chair of the Finance Committee) reported that the Affiliation Taskforce had considered, at its meeting earlier that day, that a merger or acquisition might best serve the long-term interests of Morton Hospital and the community, as an alternative to the type of contractual affiliations that had been considered to date, and further, that a few of the potential partners had expressed an interest in pursuing such an option. The Board authorized the Affiliation Taskforce to further investigate potential merger or acquisition options as a survival plan that would best serve the long-term interests of Morton Hospital and the community, as an alternative to the proposed contractual affiliation option. At this meeting, the Board also discussed and considered the potential impact of the pending Caritas Transaction on the market and on Morton Hospital (which had been discussed by the Executive and Governance Committees of the Board as early as March, 2010). The Board, recognizing Morton’s worsening financial situation, also discussed potential ways to cut the hospital’s costs, including freezing the defined benefit pension plan (implemented in November 2010 for non-union employees) and the closure of the Transitional Care Unit and the Occupational Health Services program (both effective in the Fall of 2010). The Board believed that Morton Hospital faced an uncertain future as a stand-alone community hospital. Thus, the

focus of Morton's efforts at this time turned from clinical affiliation to potential merger or acquisition.

RFP Process regarding Merger/Acquisition (2010—2011)

To assist with the new direction Morton was taking to consider potential merger and acquisition options, Morton, through its President and CEO working with Board leadership, engaged experienced independent advisors. Morton engaged its outside legal counsel, Peter Braun, Esq., of Ankner & Levy, P.C., to advise the Board concerning the process and related matters, including the fiduciary obligations of Board members and relevant charities law.

Morton issued an RFP for the services of a healthcare consulting firm with specialized experience in managing mergers and acquisitions.¹⁷ RFP responses were received from two national firms, and, with Board member input, Morton selected Navigant. The basis for Morton's selection of Navigant included Navigant's experience advising on similar projects, including advising Caritas Christi in the Caritas Transaction. Morton viewed Navigant's experience, not only with health care mergers and acquisitions generally, but also with the specific regulatory and court approval processes required under Massachusetts law, to be a determinative factor. Morton also engaged the consulting firm of Denterlein Worldwide Public Affairs to assist Morton with its communications strategy concerning the RFP process and its financial condition.

In an August 29, 2010 email to the Board, the Morton President and CEO updated the Board on the process since the last Board meeting on July 14, 2010, including the engagement of consultants and counsel. At the next Board meeting on September 8, 2010, the Affiliation Taskforce was thanked for its efforts, and its work was acknowledged as completed. Navigant and Mr. Braun each made their first of numerous presentations to the Board that emphasized: (a) the Board's fiduciary duties of care, loyalty, and confidentiality concerning the process and the Board's consideration of alternative transactions and proposals, and (b) the distinctions between Morton Hospital potentially merging with a non-profit organization versus Morton Hospital potentially being acquired by a for-profit organization, including the "impossible or impracticable" standard under applicable general non-profit and charities law. At the October 6, 2010 meeting, the Board discussed, among other matters, the issuance that day of the AG's Statement in the Caritas Transaction and the application of the relevant legal standard in that hospital conversion case. The minutes show that the Board was reminded of its obligation to "engage in a deliberative, well-documented, thoroughly debated process of considering all alternatives, as well as the requirement that the Board determine that there is no reasonable nonprofit alternative if the Board opts to sell the Hospital's assets to a for-profit entity."

In the Fall of 2010, Board members were focused on the necessity of preserving essential services to the local community, as well as Morton Hospital's declining financial condition. At the October 6, 2010 meeting, Navigant made a presentation to the Board that contained a number of conclusions, including that Morton did not have the cash flow to fund the pension, continue to support physician practices, make a minimum of capital expenditures, and service its debt. Navigant concluded that Morton Hospital could survive in its current state for no more than five

¹⁷ Morton discontinued its engagement with HAT in the summer of 2010.

years and that, while the situation would likely continue to deteriorate, there was a limited window in which Morton still was an attractive target of a merger or acquisition.

Also at its October 6, 2010 meeting, the Board voted to authorize its Chair to recommend, and then appointed consistent with the Chair's recommendation at the meeting, Board members to serve as members of an Affiliation Subcommittee (the "Committee") to work with Morton's consultants and counsel and report to the full Board concerning and throughout the process. The eight members of the Committee, all Board members, were as follows: five community Board members, two physician Board members (one the Medical Staff President), and the President and CEO (who served ex officio). The Committee was co-Chaired by two community Board members: (a) the Finance Committee Chair (a financial advisor practicing in Taunton), and (b) the Governance Committee Chair (an attorney practicing in Taunton).

On October 6, 2010, Navigant presented Morton with a list of ten potential partners, eight non-profit and two for-profit. At the October 28, 2010 meeting, the Committee, with the advice of Navigant, outlined Morton's criteria to be considered in the RFP, which included a commitment to continuing an acute care hospital in Taunton, capital commitments, local representation in governance, assumption and payment of debt and pension liabilities, and the retention of Morton Hospital's medical staff (the "Medical Staff"), management, and employees. In November, 2010, Morton had identified five potential partners who were interested and who had signed confidentiality agreements, three of whom were non-profit hospital systems and two for-profit (including Steward, which acquired Caritas Christi effective November 6, 2010). After Board review and approval of the RFP criteria, the RFP was issued to these five potential partners. Three of them submitted a response: Southcoast, Vanguard Health Systems, Inc. ("Vanguard"), and Steward. Southcoast is a Massachusetts non-profit health care system that operates one licensed acute care hospital, with three hospital facilities, in Fall River, New Bedford, and Wareham. Vanguard is a national operator of for-profit hospitals, including two licensed Massachusetts hospitals, with three hospital facilities, in Worcester, Framingham, and Natick.

At its December 20, 2010 meeting, the Board considered all three RFP responses. Navigant presented a summary of the process to date, and counsel presented a summary of relevant Massachusetts law, including Board fiduciary duties and the "impossible or impracticable" standard. Consistent with the application of that standard, Southcoast was deemed to be the preferred option, or, as stated in the minutes, the "first option," because it is a non-profit health care system and also because its RFP response included the highest initial bid on the table for a minimum capital expenditure commitment. At that meeting, the Board determined to pursue due diligence and negotiation with Southcoast as its preferred option and also to select one for-profit entity to pursue due diligence and negotiation. The Committee's recommendation to consider Steward as the for-profit alternative was presented. It was based, in part, on Steward's more Massachusetts-based presence, with corporate offices in Boston and (at the time) six hospitals in eastern Massachusetts, with two additional Massachusetts hospital acquisitions pending. After deliberation, the Board voted to pursue due diligence and negotiation with Southcoast and to select Steward as the for-profit alternative only if the non-profit proposal was, as noted in the minutes, "determined unviable."

By early February, 2011, negotiations with the non-profit (but not the for-profit) had begun in earnest. After reviewing the non-profit's proposal with Navigant, the Committee expressed some concerns and highlighted some additional requests. These included: (a) a request that the agreement not to close the hospital be extended from five years after closing to ten, (b) a desire for specific capital expenditure commitments, including concerning the timing and the purpose, (c) a request for a more locally-focused and locally-controlled governing body, (d) a desire to strengthen the commitment to the pension liability, and (e) concerns regarding the unforeseen circumstances provision, which would excuse performance on the capital, pension, and non-closure commitments under certain circumstances and give enforcement of these commitments to a review committee with no independent funds. By late February, after further negotiation with the non-profit, including meetings with its representatives and each of the two Committee co-Chairs, the Committee's concerns about the Board's priority elements of the non-profit's proposal remained. Accordingly, Morton both continued negotiations in earnest with the non-profit and began discussions with the for-profit.

The Board and Committee welcomed and received input from the Medical Staff. On March 14, 2011, both suitors made (separate) presentations to the Medical Staff. At a March 15, 2011 Committee meeting, two physicians each reported to the Committee concerning such presentations. One was a physician Board and Committee member (the "Board Physician") and the other was not, but rather, was a former physician member of the 2009-2010 Affiliation Taskforce. After the March 14, 2011, presentations to the Medical Staff, the Board Physician requested that Medical Staff members submit their opinions to the Board concerning the proposals from the Medical Staff perspective. This request generated Medical Staff comments by email or letter in March 2011, most of which were distributed to the Committee. The Attorney General interviewed the Board Physician. The Attorney General also reviewed such Medical Staff written comments and finds that they reflected the reasoned input of Medical Staff members on proposed transactional issues relevant to physician practices, such as IT, electronic medical records, contracting opportunities, physician recruitment and retention, and accountable care organization ("ACO") readiness. Most, but not all, responses reflected a preference for Steward, on these grounds.

In mid-March, 2011, the Morton President and CEO, the Board Chair, and counsel met with the Attorney General's Non-Profit/Public Charities Division to discuss the RFP procedure and the role of the Attorney General concerning her review of non-profit hospital conversions. At the March 17, 2011 Board meeting, the Board was educated about the reviews of the Attorney General in both the Caritas Transaction and the Nashoba Transaction. On March 23, 2011, both suitors made (separate) and final presentations to the Board. In addition, Navigant made a presentation to the Board on its ACO readiness assessment of the two potential partners, which analyzed five criteria (i.e., leadership and development, quality and risk management, care integration and coordination, physician alignment, and technology). On each of these criteria, Navigant ranked the for-profit entity higher, as being relatively more developed.¹⁸ The Board

¹⁸ In recounting the Board's reasoning and process, the Attorney General is not endorsing Navigant's or the Board's determinations about factors contributing to ACO readiness (or the appropriateness of regional care delivery models; see footnote 10, above), and is instead describing the basis for the Board's decisions.

Physician made a presentation to the Committee on March 24, 2011 and to the Board on March 25, 2011 concerning the above-described consensus of the Medical Staff regarding the proposals.

At its March 25, 2011 meeting, the Board reviewed and continued its discussion concerning the two proposals and the suitors, with the recognition that the Committee would deliberate at its next meeting to make a recommendation to the full Board for consideration at the Board's next meeting.

Committee and Board's Evaluation and Determination

Based on its March 28, 2011 meeting deliberations, the Committee, with the assistance of Navigant, prepared an 18-page presentation of its recommendation, which was presented by the two co-Chairs of the Committee and considered by the Board at its March 29, 2011 meeting. The Board discussed and acknowledged the similarities between the two proposals.¹⁹

As noted in Section 2.1, above, the Board based its determination in large part upon its threshold finding that, under the non-profit proposal, Morton Hospital would not remain a full-service acute care community hospital, but rather, would become a fourth campus or branch of a regional community hospital system that developed "signature" services at the respective facilities to service, collectively, the health care needs of residents of the entire region, and further, that the proposal did not commit to the expansion and delivery of local (as opposed to regional) clinical services. The three Southcoast hospital facilities are in Fall River, New Bedford, and Wareham. As noted by the Board and consistent with a proposal summary by Navigant (Transaction Notice, Ex. H at p. 16), each Southcoast hospital facility is developed to have a "signature" service for the region. In the Board's judgment, patients in Taunton's primary service area would be unlikely to travel to Fall River, New Bedford, or Wareham for treatment that they could not receive at Morton Hospital. The Board determined that, in its judgment, the regional approach to care envisioned for Morton Hospital and the community it serves under the non-profit proposal was: (a) not likely to be viable for Morton Hospital in the long term, and (b) would not result in the continued operation over the long term of full-service acute care hospital services at Morton Hospital for the residents of Taunton and its surrounding communities, which was the Board's vision of Morton Hospital's mission and for meeting the needs of the local community.

Consistent with the above findings, the Board deliberated and determined, including on the following and other factors valued by the Board and after diligent and arms-length negotiations to attempt to enhance the elements of priority to the Board in the non-profit proposal, that the sole bid from a non-profit health care system was not a reasonably viable proposal for continuing Morton Hospital's charitable mission of operating a full-service, acute care hospital for the residents of Taunton and its surrounding communities over the long term.

¹⁹ The Committee and Board noted that proposal similarities included the following: (a) assumption or defeasance of debt, (b) assumption of pension liability, (c) maintaining current community benefit levels, (d) maintaining current charity care levels, (e) offering employees, including senior management, comparable positions at Closing, and (f) use of the Morton Hospital name.

(a) *Scope of services.* The Board determined that the non-profit proposal, including its model of service delivery, was not committed to maximizing the services available locally in Taunton and focusing capital and other system resources on Morton Hospital specifically (as opposed to a larger region that included Morton’s service area). The Board determined that the non-profit proposal would not result in the preservation of full-service acute care hospital services at Morton Hospital for the residents of Taunton and its surrounding communities; the Board believed that such a result under the non-profit proposal was not consistent with either Morton Hospital’s current charitable operations or the mission of Morton Hospital. The Board noted and valued Steward’s commitment to maintain Morton Hospital as a full service community hospital, including its more specific commitment to the expansion and delivery of a full-range of acute care services at Morton Hospital. As detailed in footnote 7, above, Steward committed in the APA, Section 11.6(d) to focus its capital expenditures and resources on building and developing services such as women’s health, obstetrics, imaging, and creating a cancer care center. Steward committed to “recruiting specialists and providing a broader range of medical services locally, performed in the greater Taunton community with particular emphasis on neurosurgeons/spine surgeons and vascular medicine physicians.” APA, Section 11.6(d). Steward also committed to working with the local governing board and management concerning the planning and development of such services.²⁰

(b) *Capital Commitment.* The Board noted and valued Steward’s larger, more front-loaded, and more specific, minimum capital commitment. Steward has committed to spend at least \$110 million in capital expenditures and investments at Steward Morton Hospital over the next 10 years post-Closing, with at least \$85 million in the first five years post-Closing, and with at least \$25.5 million in the first year post-Closing. Steward’s specific commitments, as set forth in the APA, Section 11.6(e), concerning its minimum capital expenditures are detailed in footnote 6, above.²¹

(c) *Local Governing Board.* The Board noted and valued Steward’s commitment to maintain over the long term a more locally-focused board post-Closing, with more governance participation and control by residents of Morton’s primary service area. Steward committed (APA Section 11.8) to maintaining post-Closing a local hospital board, comprised of medical staff members, community leaders, and executive officers. The Steward Morton Hospital local governing board, which shall operate subject to the authority of the Steward Buyer’s board, shall be responsible, subject to such authority, for the following decisions, consistent with DPH regulations: (i) approval of borrowings in excess of \$500,000, (ii) additions or conversions that

²⁰ Southcoast’s proposal was not as specific in regards to the type or timetable of service development and delivery. Southcoast committed to engage in a six-month strategic planning process and to implement as soon as reasonably possible strategic initiatives, including the development at Morton Hospital of one or more “signature” services offered at each of the Southcoast facilities. The Board determined that the Southcoast model of service delivery had a regional focus (e.g., with each Southcoast hospital facility having one or more “signature” services designed for the delivery of care to the region served by all of Southcoast) and, accordingly, was not committed to maximizing the services available locally in Taunton and focusing capital and other system resources on Morton Hospital specifically.

²¹ Southcoast committed to spend \$84 million in capital expenditures over the next seven years post-closing, but did not commit to any specific minimum up-front amount or any specific use of such capital expenditures at the Morton Hospital facility.

constitute changes in service, (iii) approval of capital and operating budgets, including prioritization of capital expenditures, (iv) approval of the filing of an application for Determination of Need, (v) development of strategic plans for the community, (vi) medical staff credentialing, and (vii) community benefit planning. Its members initially shall be nominated by the Board, and later self-nominated, subject to appointment by the Steward Buyer's board and approval by the Chairman of the Steward Parent.²²

(d) *No-Close Period.* The Board noted and valued Steward's longer commitment not to close Morton Hospital. As set forth in Section 1.1(d), above, Steward committed to a ten-year No-Close Period, which is qualified in years eight through ten.²³

(e) *ACO Readiness Factors.* Relying on the advice of Navigant and its ACO readiness assessment of the two suitors, the Board noted and valued input that Steward has pursued more advanced efforts concerning ACO development and implementation, including its leadership experience and human resources, its \$100 million investment in IT that would be available to Steward Morton Hospital post-Closing, as well as its physician recruitment and retention practices, including Steward's captive insurance company available to employed and non-employed physicians, its IT clinical and operating systems, and EMR compatibility and development.²⁴

At its March 29, 2011 meeting, the Board (meeting jointly with the Morton Health Foundation, Morton Physician Associates, and Morton Property boards) voted unanimously (with one voting Board member absent) to approve the Transaction as set forth in the APA.

Key Findings

The record reviewed by the Attorney General demonstrates engaged and committed Committee and Board involvement over an extended period of time. The Board carefully evaluated all options consistent with the relevant legal standard and engaged in an in-depth understanding of both the non-profit and for-profit proposals. While noting the Attorney General's process recommendations set forth in Appendix B, the Attorney General finds that, in approving the Transaction, the Board acted diligently, deliberatively, and in the best interests of Morton, consistent with its fiduciary duty of care (and with its duty of loyalty, which is described further in Section 4.3).

²² Southcoast committed to having two Morton Hospital appointed directors on the 19-member Southcoast board, which has a broader, more regional focus than solely Morton's service area. These two Morton-appointed directors would serve for two years and then Southcoast's standard board practices would control the composition of the Southcoast board. Additionally, Southcoast would create a transitional local governing board (with five Southcoast representatives and four Morton representatives), which was intended to ease the integration of Morton Hospital into Southcoast post-Closing and which would not be permanent.

²³ Southcoast committed to a seven-year no-close period in its proposal (see Transaction Notice, Ex. H at p. 14).

²⁴ See footnote 18 concerning the ACO readiness determination by the Board.

The Attorney General finds that the Board appropriately was educated by its consultants and advisors concerning the “impossible or impracticable” standard under applicable general non-profit and charities law. Applying that standard, the Board determined that: (a) Morton Hospital could not continue to survive in its current charitable form as a stand-alone community hospital, and (b) the sole bid from a non-profit health care system was not a reasonably viable proposal for continuing Morton Hospital’s charitable mission of operating a full-service, acute care hospital for the residents of Taunton and its surrounding communities over the long term.²⁵ The basis for the first part of the Board’s determination is set forth in Section 4.1, above. The basis for the second part of the Board’s determination is set forth in this Section 4.2, above. The Attorney General finds that the Board made its determination consistent with the appropriate standard under applicable general non-profit and charities law, including the Board’s determination that the non-profit bid was not a reasonably viable proposal for maintaining Morton Hospital over the long term as a full-service community hospital.

As noted in Section 2.1, above, the Board based its determination in large part upon its finding that, under the non-profit proposal, Morton Hospital would not remain a full-service acute care community hospital, but rather, would become a fourth campus or branch of a regional community hospital system that developed “signature” services at the respective facilities to service, collectively, the health care needs of residents of the entire region, and further, that the proposal did not commit to the expansion and delivery of local (as opposed to regional) clinical services. In the Board’s judgment, residents of Taunton would be unlikely to travel to Fall River, New Bedford or Wareham for services not available at Morton Hospital; the Board determined that the preservation of a full-range of acute care services at Morton Hospital was in the best interests of the charity and the community it serves and would not be accomplished under the non-profit proposal. The Board’s determination in this regard was supplemented by its other findings, including that Steward’s proposal (unlike the non-profit proposal) had a long-term commitment to maintain a local governing board, that it had a larger, more front-loaded, and more specific capital commitment, and that it committed to a longer No-Close Period.

As noted in the AG’s Section 8A(d) Guidelines (p. 13), appropriate factors for the Board to consider in making its determination include Morton Hospital’s “continued financial viability (both short-term and long-term); its ability to carry out its charitable mission under each of the proposed alternatives; and the desire and need for local community input and/or control of the charitable assets and operations.” The record shows that the Board considered these, and other, factors in making its determination to approve the Transaction. While the Attorney General notes that the facts of this case arguably require a closer scrutiny of the application of the relevant legal standard than in other Section 8A(d) reviews, the Attorney General finds that the record supports a reasonable basis for the Board’s determination to approve the Transaction consistent with applicable general non-profit and charities law, including the Board’s determination that the non-profit bid was not a reasonably viable proposal for the long-term operation of a full-service community hospital in Taunton.

²⁵ The Board’s determination is consistent with the corporate purposes of Morton Hospital, which include: “[t]o establish and maintain a Hospital for the care of persons suffering from illness or disabilities which require that the patients receive in- or out-patient hospital care.” See also, footnote 10, above.

Finally, in making its determination to enter into the Transaction, the Board reasonably relied on the advice of qualified, independent consultants and advisors. The Attorney General notes that is consistent with the fiduciary obligations of a Board member, including the duty of care, to rely on information, opinions, and reports of professional third parties as to matters which the Board member reasonably believes to be within the competence of such professional or expert. *See* G.L. c. 180, § 6C.

4.3 The Board and senior management complied with standards for disclosure and managing conflicts of interest.

Consistent with the duty of loyalty, the members of the Board and senior management, as fiduciaries, must act in the best interests of the organization rather than themselves. When their personal interests are implicated, the interests must be disclosed and appropriately handled to assure that decisions are truly made in the interests of the charity. For the reasons set forth below, the Attorney General finds that the Board and senior management acted consistent with those standards.

The Attorney General requested and reviewed relevant documents and information, including the Morton conflict of interest policy, special conflict of interest disclosure forms developed for the RFP process, completed by Board members in the Fall of 2010 and updated in March 2011, and Board and Committee minutes, as well as interrogatory responses from, and interviews with, Board members and senior management, as well as non-Board physician committee members, concerning conflict of interest disclosures and the Transaction.

In approximately August of 2010, the Board engaged its outside legal counsel to assist with, among other things, its management of the RFP process, including the disclosure and management of potential conflicts. In the Fall of 2010, counsel sent an email addressed to all Board members requesting that they complete an attached conflict of interest disclosure memorandum.²⁶ The disclosure memorandum asked about any financial or business, or personal or professional, relationships between Board members and their family members on the one hand, and various parties potentially negotiating an affiliation or acquisition with Morton on the other hand. Results were submitted to counsel for review, and only five (of twenty-six) Board members responded with anything other than “none.”²⁷ In March of 2011, the Board members

²⁶ By what Morton explained as an administrative oversight, the Morton President and CEO, who sits ex officio as a voting Board member, did not receive or complete either the 2010 or 2011 conflicts disclosure form concerning the RFP process and potential partners. The interview and interrogatory answers of the Morton President and CEO confirm that neither she nor any family member had an existing business or financial relationship with Steward, and further, Board members were aware of the terms of her current employment agreement and deferred compensation plan with Morton and that, like all Morton employees active and in good standing at the time of Closing, she would be offered a comparable employment position by whichever of the two final bidders the Board selected.

²⁷ The five disclosures included: (a) a Board member whose child was a nurse at a potential partner; (b) a Board member whose child was a physician on the medical staff of a potential partner; (c) a physician Board member who had participated in meetings with representatives from two potential partners as a member of the Affiliation Taskforce; (d) a physician Board member who had participated in negotiations with a potential partner concerning Morton’s pediatric hospitalist program; and (e) a Board member who had performed professional consulting work for three potential partners or their affiliates more than five, ten, and twenty years ago, respectively.

were asked to review their prior disclosures and update the responses if necessary; there was one additional disclosure at this time.²⁸

Prior to the APA execution, no Board member, or any family member of any such individual, had any direct or indirect financial relationship with or business interest in Steward or Cerberus. Consistent with a desire by the Board for local participation in governance post-Closing, members of the Board will be nominated by Morton Hospital and appointed by Steward to serve as members of the Steward Morton Hospital local governing board effective upon Closing. In an interview of Steward senior management, the Attorney General was informed that Steward does not compensate the members of its local governing boards and does not intend to do so with respect to individuals serving on the Steward Morton Hospital board.

Prior to the APA execution, no member of the Morton senior management team, or any family member of any such individual, had any direct or indirect financial relationship with or business interest in Steward. As noted in footnote 19, above, the President and CEO, along with the current Morton senior management team, are expected to be employed by Steward post-Closing. However, no financial terms and conditions have been negotiated between Steward and members of Morton senior management with respect to future employment. Based on interrogatory responses from and interviews with Morton representatives, no member of Morton senior management will receive an increase in salary, incentive payment or bonus, or other form of compensation as consideration for identifying or finding Steward or negotiating, effectuating, or entering into the Transaction.²⁹

As set forth in Section 4.2, above, medical staff members who do not serve as an officer or director of a non-profit hospital do not have fiduciary obligations to the hospital and thus, are free to act consistent with their private interests as physicians. With respect to consideration of Medical Staff input in the Board's deliberations, the Board was advised, including at the first Board meeting that Navigant and counsel attended on September 8, 2010, about the avoidance of personal conflicts of interest, including, as reported in the minutes, "conflicts that might arise regarding the interactions of physician-members of the Board and potential acquirers of the Hospital." Ultimately, a charitable board's determination, consistent with the fiduciary duty of loyalty, must be made by the board in the best interests of the charity (and not in the best interests of any single individual or constituency). The Attorney General finds that the Board's consideration of feedback from (non-Board) members of the Medical Staff in its deliberation process concerning the RFP responses and the Transaction was not inconsistent with its duty of loyalty to Morton or otherwise inappropriate.

²⁸ A physician Board member disclosed that he and his business partner had met with a representative of one of the two final bidders to discuss the potential transaction and its impact on physician practices, that the information provided was similar to information provided at the March 14, 2011 presentations to the Medical Staff by the two final bidders, and that the physician had had no negotiations or follow up meetings with such bidder. The Attorney General notes her process recommendations concerning medical staff input and transparency in Appendix B.

²⁹ The Morton President and CEO has an employment agreement and a deferred compensation plan, both of which are being assumed by the Steward Buyer at Closing. The deferred compensation plan contains a change of control provision that may accelerate payments otherwise due to her in 2011. In any event, the timing of the Closing mitigates any incremental benefit provided by any such accelerated payment.

Key Findings

While noting the Attorney General's process recommendations set forth in Appendix B, the Attorney General finds that conflicts of interest were appropriately disclosed and managed, that there was no undue influence on the Board members concerning their review, negotiation, and consideration of the proposals, and that the Board acted in the interests of Morton (and not any private individual or group of individuals) in establishing the criteria for, negotiating, and entering into the APA and the Transaction.

4.4 The Transaction purchase price is consistent with fair market value.

The duty of care, to which the Board and senior management are subject, obligates the organization to obtain the best possible arrangement for its assets. The Attorney General requested and reviewed relevant documents and information, including documents and information referenced in Sections 4.1, 4.2, and 4.3, above, as well as interrogatory responses from, and interviews with, Board members and management concerning the value of Morton.

The Transaction purchase consideration is defined to be the sum of: (a) the repayment, discharge, defeasance, or release of outstanding Morton debt, and (b) the assumption of outstanding liabilities of Morton, including the underfunded pension plan liability (which is not a fixed, negotiated number, but rather, to be determined on an actuarial basis, based on the present value of the expected future benefit obligations of the pension plan less the value of plan assets, which amount may change before Closing due to market conditions). APA, Section 2.5(a).

The APA, executed March 29, 2011, estimated that the purchase price consideration to be determined by an agreed upon methodology applied at Closing and to be paid by Steward would be "approximately \$60 million." APA Section 2.5(a). In the Transaction Notice (p. 14), dated May 26, 2011, Morton estimated the purchase price consideration to be "approximately \$53 million." The difference is attributed to a recalculation of Morton's estimated pension plan liability to \$36 million as of May 9, 2011.³⁰ The \$53 million consists of approximately \$28 million for repayment of debt, less \$11 million net cash on hand available to defease debt, plus \$36 million for assumption of the pension plan liability.

As set forth in the AG Statement in the Caritas Transaction, this does not suggest or mandate that the "purchase price" is the sole determinant of what is fair and reasonable. Other material commitments, such as those negotiated by the Board for this Transaction and that are not technically part of the purchase price, may also be taken into account in determining overall fairness. See generally, Section 1.1, above. Indeed, the APA acknowledges in Section 2.5, entitled "Purchase Consideration and Commitments," the inherent value of Steward's post-Closing commitments with respect to the No-Close Period and capital expenditures. As detailed in Section 4.2, above, the Board considered both purchase price consideration, as well as post-Closing commitments of value to Morton and the community it serves, in assessing valuation.

³⁰ The pension liability was calculated by The Angell Pension Group, Inc. as of May 9, 2011, based on a termination assumption. (Transaction Notice at p.14.)

In evaluating the fairness of the purchase price and the value to Morton, the Attorney General's review included the above, as well as the following issues.

Industry Benchmarks

In 2010, Morton had EBIDA of approximately \$4.1 million. This is based on a net loss of (\$2 million), interest of \$1.4 million (added back), and depreciation/amortization of \$4.7 million (added back). Based on the purchase price of approximately \$53 million, the purchase price is estimated at approximately 13 times EBIDA. This is significantly higher than the typical range for hospital acquisitions. Based on data for hospital mergers and acquisitions compiled by Irving Levin Associates in August 2011, the 13-times EBIDA multiple in this Transaction is higher than the EBIDA multiple for each of six comparable hospital acquisitions that are in process or have recently been completed.

In addition, in 2010, Morton had patient service revenue of approximately \$132 million. The purchase price of \$53 million is approximately 0.4-times patient service revenue. The referenced data compiled by Irving Levin Associates for six comparable transactions indicates a range for purchase price at 0.2- to 1.0-times annual patient service revenue. The Transaction price as a multiple of annual patient service revenue falls within the range of the comparable transactions.

Market Response

The purchase price is the result of a diligent and active search for a partner or buyer that would address the problems facing Morton. Absent process failures, including mismanaged conflicts of interest, none of which have been identified in the Attorney General's review (see Sections 4.1, 4.2, and 4.3, above), it is such a process that is the best indicator of market value. As set forth in the AG Statement in the Caritas Transaction, the best determinant of fair market value, particularly in the complex marketplace of health care where sellers may have significantly divergent conditions and negotiating positions, is neither opinions nor industry ranges, but rather, the market response to a carefully designed and managed sale process.

Facing deteriorating financial condition, Morton engaged Navigant in 2010 to reach out to other non-profit and for-profit organizations that may have had an interest in an affiliation with or acquisition of Morton, in a broad-based, systematic, and comprehensive manner, including the RFP process described in Section 4.2, above. Board members on the Committee, as well as Morton's advisors and Morton's senior leadership, communicated and negotiated with several parties regarding a potential transaction involving Morton, including diligent and arms-length negotiations concerning the final two proposals. Although Morton did not engage Navigant or any other third party to provide a separate fairness opinion, Morton did rely on Navigant to provide market data concerning the Transaction purchase consideration, including Navigant's reporting on median financial consideration for recent hospital acquisitions as being "approximately 6.7 times EBIDA." (Transaction Notice at p. 14, citing to Transaction Notice Ex. H at pp. 6, 10, and 13).

Other

The Attorney General's financial advisor, HS&S, reviewed the Transaction, as well as the indicators of value. HS&S advised the Attorney General that: (a) the purchase consideration for the Transaction is commercially reasonable and is consistent with the fair value of Morton, and (b) there is no compelling need to complete an independent financial valuation of Morton. As such, the Attorney General has concluded that a separate fairness opinion is not necessary.

Moreover, there is substantial independent support for the fairness of the purchase consideration of the Transaction inherent in: (a) a review of industry experience for health systems in a distressed financial position, (b) the restrictions placed on the future use of the assets, and perhaps most importantly, (c) the RFP process that Morton undertook to explore alternatives to the Transaction.

Key Findings

The Attorney General finds that the Transaction affords Morton, and the public it serves, fair value for the assets and operations of Morton. The purchase consideration for the Transaction is commercially reasonable and is consistent with the fair value of Morton. There is no compelling need to complete an independent financial valuation of Morton.

4.5 The Transaction is in the public interest.

For the reasons set forth above and below, the Attorney General finds that the Transaction is in the public interest.

The Attorney General requested and reviewed all of the documents, information, and interrogatory responses previously disclosed, as well as interviews with key Board members and members of both Morton and Steward senior management.

As noted in Section III, above, much of the public commentary that the Attorney General received was supportive of the Transaction. As noted in Section 1.1, above, components of the Transaction that are beneficial to and consistent with the public interest include: (a) assuming the unfunded pension plan liability for approximately 1,800 Morton beneficiaries, (b) satisfying outstanding Morton debt, (c) committing no less than \$85 million in Steward Morton Hospital capital expenditures within five years post-Closing, with \$25.5 million to be expended in the first year post-Closing, (d) committing no less than an additional \$25 million in capital expenditures in years six through ten post-Closing, (e) not closing Morton Hospital and maintaining an acute care hospital that shall provide substantially the same scope of services as Morton Hospital currently provides during the No-Close Period, which is essentially seven years unqualified and an additional three years qualified post-Closing, subject to certain performance and notice criteria for the final three years, (f) maintaining charity care pursuant to the Attorney General's Community Benefits Guidelines for Non Profit Hospitals for as long as the Steward Buyer operates Steward Morton Hospital, including maintaining the current levels of charity care during the No-Close Period, (g) maintaining community benefit programs pursuant to the

Attorney General's Community Benefits Guidelines for Non Profit Hospitals for as long as the Steward Buyer operates Steward Morton Hospital, including maintaining the current levels of community benefit expenditures during the No-Close Period, (h) not closing or reducing the number of the 14 elder behavioral health service, inpatient psychiatric beds during the No-Close Period, (i) maintaining its adult uninsured clinic and school based health centers, as well as providing culturally and linguistically appropriate services consistent with those currently provided at Morton Hospital, subject to such changes over time that may be necessary or appropriate to ensure that such community benefit programs remain properly aligned with the needs and interests of Steward Morton Hospital's patients and the community post-Closing, (j) not selling or transferring a majority interest in Steward Morton Hospital for five years post-Closing, except as part of an otherwise permitted sale of the Steward health system as a whole or Steward Medical Holdings, (k) offering comparable employment positions to the approximately 1,200 Morton employees active and in good standing at the time of Closing, as well as recognizing Morton Hospital unions and collective bargaining agreements, (l) honoring naming commitments made by Morton in the past to donors, (m) for as long as the Steward Buyer operates Steward Morton Hospital, maintaining a local governing board for Steward Morton Hospital, with designated responsibilities consistent with DPH requirements, subject to the authority of the Steward Buyer's board of directors, organizing documents, and bylaws, (n) adopting and implementing charity care policies generally consistent with the current Morton Hospital charity care policies and complying with the current debt collection practices of Morton Hospital and the Recommended Hospital Debt Collection Practices set forth in the Attorney General's Community Benefits Guidelines for Non Profit Hospitals, (o) for as long as the Steward Buyer operates Steward Morton Hospital, continuing to accept Medicare and Medicaid patients consistent with current Morton Hospital practices and to accept emergency room patients regardless of ability to pay consistent with applicable law, (p) committing that the following APA provisions will apply to any successor-in-interest to the Steward Buyer (after 90 days prior notice of such sale to the Attorney General): ongoing obligations for community benefit and charity care, including debt collection practices; regulatory compliance; the no-closure commitments, including maintaining at least substantially the same services and maintaining current community benefit and charity care expenditure levels for the No-Close Period; the capital expenditures commitment in years six through ten post-Closing; the local governing board commitment; and the donor-naming commitment; provided that only the community benefit/charity care and regulatory cooperation obligations will apply if the Steward Buyer satisfies the No-Close Period criteria and otherwise could close the hospital rather than sell it, (q) agreeing that the Attorney General shall have the right to enforce certain post-Closing provisions of the APA related to the public interest, (r) agreeing that any enforcement action brought by the Attorney General under the APA or any of the ancillary agreements shall be brought in the courts of the Commonwealth of Massachusetts, (s) assuring and funding the reorganization or dissolution of the Morton entities, including assuring that endowment and other donor-restricted funds are appropriately segregated and used for appropriate purposes, (t) confirming that the Steward Buyer, notwithstanding its for-profit status, will fully cooperate with any investigation, inquiry, study, report, or evaluation conducted by the Attorney General under her oversight authority of the non-profit charitable hospital industry to the same extent and subject to the same protections and privileges as if Steward were a public charity, (u) clarifying that the existing assessment and monitoring of Steward by the Attorney General and DPH includes the impact of the Transaction on health care costs, access, and services within the

communities served by Steward, and (v) agreeing that if Steward fails to meet its minimum capital expenditure obligations under the APA in the first five years post-Closing, Steward shall donate such unspent amounts to a Massachusetts health care charity, after written notice to and approval by the Attorney General.³¹

During its RFP deliberations the Committee and Board were sensitive to the for-profit status of Steward (in contrast to the non-profit bidder) and considered that difference, including the inherent risks of selling to a for-profit entity, when it voted to approve the Transaction. As stated in the AG Statement in the Nashoba Transaction (at pp. 19-20):

The change of ownership structure from a non-profit community based organization to a for-profit organization ultimately answerable to the shareholders creates a significant alteration in the amount of local control and input the community will have in the hospital's future direction and operations. This change also raises question about the level of charity care provided by [the for-profit] and the disposition of restricted funds held by the hospital to be used for the provision of health related services.

As in the Nashoba Transaction, the Board was aware of and attempted to mitigate against these risks by prioritizing and negotiating certain post-Closing obligations of Steward, including concerning local governing board (APA Section 11.8), charity care (APA Sections 11.6(c) and (f)), community benefits (APA Sections 11.6(c) and (f)), No-Close Period (APA Section 11.6(c)), and wind-down of Morton operations, including proper distribution of endowment and other restricted funds, which are excluded assets from the sale (APA Section 11.11). As part of her review process, the Attorney General was able to confirm enhanced commitments from Steward with respect to each of these APA post-Closing commitments in the public interest. See Section 1.1(j)-(z), above.

As noted in the preamble, above, the Attorney General, as part of the review required under Section 8A(d) and her assessment of whether the Transaction is in the public interest, took into consideration Steward's recent and relatively rapid expansion in the marketplace. Both the Antitrust Division and the Health Care Division of the Office of the Attorney General, along with the Non-Profit Organizations/Public Charities Division, participated in this review. The Antitrust Division conducted a non-public antitrust review of the Transaction to determine if the Transaction had the potential to substantially lessen competition in violation of state and federal antitrust laws and harm the public interest. The Antitrust Division concluded, based upon its interviews of market participants, review of relevant documents and data, and consultations with its economic expert, that the Transaction poses little present antitrust risk and that no

³¹ Steward estimates that its payments of local property tax and sales tax by Steward Morton Hospital will be "approximately \$11 million over the first five years." (Transaction Notice at p. 14). Presumably, the capital expenditure projects will generate economic activity. As stated in the AG Statement in the Caritas Transaction (p. 25, footnote 11): "The Attorney General does not dispute the value of those jobs and revenues to employees, contractors, and local communities. Nevertheless, all of those expenditures, as with virtually any expenditure by a health care provider, will eventually be paid for by the public through state and federal taxes that support Medicare, Medicaid, and other state and federal payer programs, as well as by premium dollars. As such, these factors were not necessary to the Attorney General finding that the Transaction is in the public interest."

enforcement action is warranted at this time. Nor does the Attorney General conclude that the Transaction is against the public interest based on this antitrust analysis.³²

The Attorney General is committed to monitoring and evaluating the impact of the Transaction, as well as the Caritas Transaction and any other Steward acquisitions, on the relevant marketplace. As stated in the AG Statement in the Caritas Transaction (Appendix A, p. A-9), in the event that Steward, a community-hospital based health care system, can provide effective care in a local setting without raising costs to the public, reducing services, or limiting access or choice, the public would be well-served, and the Attorney General wants to document and understand the basis of that success. In the event the effort is not successful, the Attorney General wants to document and understand the basis of that failure. While some would prefer that the Attorney General use this Section 8A(d) review process to, in essence, regulate the conduct of Steward, the Attorney General strongly supports transparency, believes solutions must be system-wide, and views her role as working, with others, to better inform the executive branch, the Legislature, policy makers, and the public. The evaluations undertaken as part of the Assessment and Monitoring Agreement will further that objective, consistent with the provisions of G. L. c. 180 § 8A(d)(5). The Attorney General is conducting its assessment and monitoring of Steward, which runs until November 6, 2015, through its Health Care Division.³³

Key Findings

The Transaction serves the public interest. As noted in the AG Statement in the Caritas Transaction, there are risks to the public intrinsic in any change of control, including a non-profit to for-profit conversion. In making its determination, the Board considered those risks and attempted to mitigate them with APA post-Closing commitments in the public interest (see Section 1.1 (a)-(i), above). In addition, consistent with the public interest, the Attorney General has worked to enhance the Transaction, including with additional protections and transparency (see Section 1.1(j)-(z), above).

³² It should be noted that many health care providers in the Commonwealth are exploring various new business arrangements. While such arrangements have the potential to benefit consumers if they seek to contain costs and achieve quality goals, they also have the potential to harm consumers if such arrangements result in markets that enable the merged entity to seek to extract supra-competitive price increases which will be passed on to patients and their employers. The Attorney General will continue to aggressively enforce the antitrust laws to ensure that any projected benefits of consolidation among health care providers are not outweighed by anticompetitive effects.

³³ As noted in the AG Statement in the Caritas Transaction (Appendix A, p. A-8), “Steward’s stated objective is to improve and further develop a community-hospital based health care system capable of (i) managing risk, (ii) providing high quality, local, and accessible care, and (iii) reducing out-migration of patients who now obtain services, otherwise available at a Caritas Hospital, at higher cost, less accessible settings. By keeping significantly more of that patient care, and the associated revenues, within the Steward system, Steward states it will provide an appropriate return to its investors while providing a lower-cost alternative to the public. If achieved in the manner described, this model may well provide an attractive alternative to systems centered around academic medical centers or large physician groups. A community-hospital based health care system is, however, untested in Massachusetts, and the Attorney General is not in a position to evaluate or predict Steward’s likelihood of success.” With less than one year of Steward operating performance in Massachusetts, the impact of Steward’s market presence in the Commonwealth has not yet been measured.

V. ANCILLARY AGREEMENTS

In connection with her review of the Transaction, the Attorney General, consistent with the authority of her office and G.L. c. 180, § 8A(d), has required the various parties to enter into the following agreements to better ensure compliance with Transaction matters related to the public interest.

5.1 An Enforcement Agreement, materially in the form attached hereto as Exhibit 5.1, by and among the Attorney General, the Morton Sellers, and the Steward Buyer, and with the Steward Parent as guarantor, with respect to the enforcement of certain post-Closing provisions of the APA. Subsequent to the Closing, Morton may not be in a position, nor have the resources, to monitor and enforce the post-Closing obligations of Steward. The Attorney General's findings of public interest are expressly predicated on those obligations and, as such, she obtained from Steward and Morton the right to enforce those provisions on behalf of the public.

5.2 An Assessment and Monitoring Agreement, materially in the form attached hereto as Exhibit 5.2, by and among the Attorney General, Morton Hospital, and Steward clarifying that the scope of the existing assessment and monitoring agreement with the Attorney General concerning Steward includes monitoring, assessment, and evaluation of the impact of the Transaction on health care costs, access, and services within the communities served by Steward, certain aspects of which will be conducted by DPH consistent with G.L. c. 180A § 8A(d)(5).

5.3 A Transition, Windup, and Reorganization Agreement, materially in the form attached hereto as Exhibit 5.3, by and among the Attorney General, Morton Health Foundation, and the Steward Buyer with respect to the identification, segregation, and future use of donor-restricted funds, including endowment funds, and other corporate transition, windup, and reorganization matters concerning charitable entities and assets, as may be appropriate or necessary. Because Morton Hospital and the other surviving Morton entities likely will not have the resources or staff to assure an orderly reorganization and provision for future use of those assets, the Steward Buyer, consistent with its original APA obligations, has agreed to participate in that process and to fund it consistent with the terms of the Transition, Windup, and Reorganization Agreement (Exhibit 5.3).

VI. CONCLUSION

For the reasons and subject to the conditions set forth above, the Attorney General finds that: (1) it is impracticable for Morton Hospital to continue to survive in its current charitable form and that the Transaction complies with applicable general non-profit and charities law, (2) while noting the Attorney General's process recommendations set forth in Appendix B, due care was followed by the Board and senior management, (3) while noting the Attorney General's process recommendations set forth in Appendix B, the Board and senior management appropriately disclosed and managed such conflicts of interest as existed, (4) the Transaction affords Morton fair value for its assets and operations, and (5) the Transaction is in the public interest.

Based on the foregoing, and subject to the security and transparency afforded by the agreements set forth and described in Section V, above, the Attorney General states her intent to assent to a Complaint to be filed by Morton with the Supreme Judicial Court seeking the Court's approval of the Transaction as contemplated by and consistent with this Statement.

APPENDIX A **PUBLIC COMMENTARY**

As referenced in Section III of her Statement, the Attorney General received comments from a variety of sources concerning the Transaction, including those summarized below.

The June 30, 2011 public hearing was conducted jointly by the Attorney General and DPH; it was held at the Benjamin Friedman Middle School in Taunton and lasted approximately three hours. Approximately 60 individuals testified concerning the Transaction. Almost all speakers were unequivocally in support of the Transaction. Elected or municipal officials who spoke in favor of the Transaction included the Mayor of the City of Taunton, a state Senator, two state Representatives, the Taunton Assistant Superintendent for Finance and Operations (who read a statement from the Taunton Public Schools Superintendent), a selectman of the Town of Raynham, and representatives of a Congressman's office, the Taunton Municipal Council, Taunton Planning Board, and the Taunton Housing Authority. Other individuals from the community who spoke in favor of the Transaction included representatives from the Taunton Nursing Home, the Community Advisory Board for Cancer Care, the Center for Wound Healing, Community Counseling of Bristol County, and the Taunton Area Chamber of Commerce, as well as Morton and Steward senior management, Board members, physicians, employees, including union representatives, and nurses from both Morton Hospital and Steward-affiliated hospitals.

The only constituency at the public hearing who expressed some reservation about the Transaction were members of the Massachusetts Nurses Association ("MNA"), including nurses who work at Steward hospitals. While generally supportive of the Transaction, the MNA representatives expressed concerns arising primarily from their view that Steward was not honoring the terms of a contractual agreement with the MNA concerning a defined benefit pension plan. Interpreting and enforcing the terms of collective bargaining agreements, and related contractual disputes between labor and management, is not the role or within the authority of the Office of the Attorney General concerning Section 8A(d) reviews of non-profit hospital conversions, which are conducted under the authority of Massachusetts non-profit and charities law and principally by the Attorney General's Non-Profit Organizations/Public Charities Division. With the active encouragement of the Attorney General, Steward and the MNA are pursuing the due process options available to them to resolve this management/labor dispute, including arbitration.

In addition, some health care providers expressed concerns to the Attorney General's Office regarding the Transaction, including ensuring the proper application by charitable boards of the appropriate *cy pres* legal standard in non-profit hospital conversions. The Attorney General addresses such concern in Appendix B(1).

APPENDIX B **PROCESS RECOMMENDATIONS**

As referenced in Section III of her Statement, the Attorney General noted the following process recommendations, which she sets forth below as an educational tool for charitable organizations.

1. Process Recommendation – Board Awareness of Applicable General Non-profit and Charities Law and Application of the “Impossible or Impracticable” Cy Pres Standard

The Attorney General emphasizes that board members must be aware of and act consistent with applicable general non-profit and charities law. In the context of a non-profit hospital conversion to a for-profit entity, this means not only awareness of the board’s fiduciary duties, but also awareness and application of the “impossible or impracticable” *cy pres* standard under charities law. *Cy pres* means “as near as possible” and is the legal principle that requires charitable funds to be used according to the charitable purposes for which they are held, unless it is impossible or impracticable to continue to do so. The application of this standard under charities law protects charitable assets, including non-profit hospitals subject to Section 8A(d) review, from improper diversion to for-profit entities.

In sum, public charities, operating through their governing bodies and committees, must have (and the record must show) an understanding that they are non-profit, charitable organizations (as opposed to for-profit organizations) and that a public charity cannot sell its assets and operations to a for-profit entity unless it first has evaluated and determined, and there is a reasonable basis in the record to support, that: (a) it is impossible or impracticable for the charity to continue its current operations in its current, charitable form, and (b) there is no reasonably viable non-profit option for the continuation of the charity’s current operations.

As noted in Section 4.2, above, the Board was educated repeatedly by consultants and counsel of their fiduciary duties and the application of the relevant “impossible or impracticable” standard. While the Attorney General notes that the facts of this case arguably require a closer scrutiny of the application of the relevant legal standard than in other Section 8A(d) reviews, as noted in Sections 4.1 and 4.2, above, the Attorney General found that the record supports a reasonable basis for the Board’s determination consistent with the relevant standard under applicable general non-profit and charities law, including the Board’s determination that the non-profit bid was not a reasonably viable proposal for the long-term continued operation of a full-service community hospital in Taunton.

2. Process Recommendation – Medical Staff Input – Transparency

The Attorney General recognizes that hospitals may and often should consider input from various constituencies (e.g., physicians, management, employees, unions, vendors, and other third parties) when evaluating and processing significant decisions. The Attorney General also recognizes the unique relationship between a community hospital and its medical staff and that the support of physicians, including both hospital-based physicians and community-based

physicians with their patient referral streams, is essential to the continued viability of a community hospital.

The record does not demonstrate any undue influence by any constituency, including physicians, in the Board's evaluation and decision-making. As described in Section 4.3, above, the Board recognized and utilized procedures for identifying and managing actual or potential conflicts of interest of Board members who ultimately participated in the evaluation of RFP responses and determinations concerning the Transaction approval. The Attorney General notes, however, that transparency with respect to the financial interests of others who contribute significantly to a board's deliberations, evaluations, and assessments, even though they do not participate in the decision-making and do not owe the same fiduciary duties, would enhance the integrity of the process. In this case, the two non-Board physician members on the 2009-2010 Affiliation Taskforce owed no fiduciary duties to Morton (e.g., the duties of loyalty, care, and confidentiality). In addition, neither the Board nor the Affiliation Taskforce considered or disclosed potential conflicts of interests that Affiliation Taskforce members may have had with respect to the potential partners to be considered. Indeed, some physician members of the Affiliation Taskforce had or were pursuing financial or business relationships with one or more potential suitors during and around the time of their service on the Affiliation Taskforce. Transparency concerning such physician/provider relationships and physician financial interests (e.g., employment, consulting services, practice acquisition, landlord/tenant, or participation in physician provider network) is important for the integrity of the process and to ensure that, ultimately, board members make fully-informed decisions in the best interests of the charitable organization.

The Attorney General recommends, when non-profit hospitals are considering a merger or acquisition, particularly one that may or does include for-profit suitors, that: (a) potential and actual conflicts of interests concerning participation in such evaluation and review process should be considered, disclosed (including to the full board, committee, or other decision-making body), and managed appropriately, and (b) the ultimate decision-making concerning the RFP or similar process should be conducted by board members, who have the obligation to perform such service consistent with their legal obligations as fiduciaries.

3. *Process Recommendation – Conflicts of Interest Disclosures/Voting*

The Attorney General recommends that charitable organizations conduct a specific, updated, and timely conflict of interest disclosure process concerning the management of potential conflicts, particularly in potential conversion situations. The Attorney General reminds all charitable organizations that the fact of completing such disclosure forms is only the first step to managing such disclosures appropriately. The Attorney General acknowledges the efforts that Morton made to disclose and document actual and potential conflicts of interest concerning the Committee and the Board. However, the Attorney General recommends the following two process enhancements: (a) charities should ensure that the results of such conflict disclosure forms are shared with the full board, committee, or other decision-making body and documented in the minutes; and (b) all board members, including any management and ex officio members, should be requested to complete such forms, along with community board members.

Additionally, the Attorney General recognizes that the APA contains no specific management provision regarding the employment of the Morton President and CEO post-Closing, other than the general obligation of Steward to offer all Morton employees active and in good standing at the time of Closing comparable employment positions. Compensated members of the Board, who will be compensated by the Steward Buyer post-Closing, included the President and CEO and also physicians who may be paid for professional services. The Attorney General recommends that board members of charitable organizations who expect to have a significant, direct employment or other financial relationship with a potential partner post-closing should disclose such relationship to the decision-making body, and, consistent with the organization's conflict of interest policy, a determination should be made by the disinterested members of the decision-making body as to whether a conflict exists and whether any such individual should abstain from voting on the proposed transaction. Such determination should be documented in the minutes.

4. *Process Recommendation - Minutes*

The Attorney General notes that minutes of the Committee were generated and reviewed by counsel; however, due to the confidentiality of the content, Committee minutes were not posted on the Board governance intranet site, like other Board and committee minutes. Committee minutes were produced to the Attorney General in draft form, as they never were presented to and approved by the Committee. The Attorney General recommends that the draft minutes of a committee or board should be reviewed and approved by the respective body at its next meeting or otherwise in a reasonably timely manner. This is particularly true in the case of a charitable committee or board focused on a pursuing a merger or acquisition, including a potential hospital conversion.

TABLE OF EXHIBITS

- Exhibit 5.1 Enforcement Agreement
- Exhibit 5.2 Assessment and Monitoring Agreement
- Exhibit 5.3 Transition, Windup, and Reorganization Agreement

Exhibit 5.1 Enforcement Agreement

ENFORCEMENT AGREEMENT

This Enforcement Agreement (the “Agreement”) is entered into as of the ____ day of September, 2011 by and among **MARTHA COAKLEY**, as she is the Attorney General of the Commonwealth of Massachusetts (hereinafter on behalf of herself and her successors and assigns, the “Attorney General”), **MORTON HOSPITAL AND MEDICAL CENTER, INC.** a Massachusetts not-for-profit corporation, and its affiliates **MORTON PROPERTY, INC.** and **MORTON PHYSICIAN ASSOCIATES, INC.** (collectively the “Sellers”), **MORTON HOSPITAL, A STEWARD FAMILY HOSPITAL, INC.**, a Delaware corporation f/k/a **STEWARD MEDICAL HOLDINGS SUBSIDIARY THREE, INC.** (“Steward Morton”), **STEWARD MEDICAL GROUP, INC.**, a Massachusetts not-for-profit corporation (together with Steward Morton, collectively, the “Purchaser”) and **STEWARD HEALTH CARE SYSTEM, LLC**, a Delaware limited liability company, as Guarantor (the “Guarantor”).

RECITALS

The Sellers and the Purchaser are parties to an Asset Purchase Agreement, dated March 29, 2011, as amended by an Amendment No. 1 to Asset Purchase Agreement, dated September 6, 2011 (as so amended, the “Asset Purchase Agreement”), pursuant to which the Sellers are selling substantially all of their assets used in the operation of a health care system to the Purchaser.

The transactions contemplated by the Asset Purchase Agreement are required to be reviewed by the Attorney General pursuant to G.L. c.180, § 8A(d). In connection with such review, the Attorney General has identified certain provisions of the Asset Purchase Agreement that relate to the public interest, which include certain post-closing commitments of the Purchaser, and wishes to have the right to enforce such provisions as a third party beneficiary thereof, as more specifically set forth herein.

TERMS

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, it is agreed as follows:

1. Defined Terms. All capitalized terms used herein and not otherwise defined herein shall have their meanings as defined in the Asset Purchase Agreement.
2. Enforcement of Certain Provisions. Notwithstanding the provisions of Section 13.13 of the Asset Purchase Agreement, the Attorney General shall be a third-party beneficiary of, and shall have the right to enforce Section 10.1(a) (Employees), Section 11.6 (a)-(d) and (f)-(i) (Post-Closing Capital Expenditures), and Section 11.8 (Local Governing Board) of the Asset Purchase Agreement (the “AG’s Enforceable Provisions”), in each case in accordance with the terms and conditions of the Asset Purchase Agreement.
3. Consent Required. The written consent of the Attorney General shall be required for any waiver of, or amendment to, Section 2.3 (d) (Assumed Liabilities) or Section 10.1(c) of

the Asset Purchase Agreement, any amendment to the AG's Enforceable Provisions, or any other amendment to the Asset Purchase Agreement that affects the Attorney General's rights hereunder.

4. Effect on Agreement. All of the terms, conditions, covenants, provisions, representations, and warranties contained in the Asset Purchase Agreement and any documents executed in connection therewith shall remain in full force and effect except as modified hereby.

5. Remedies. Each of the Purchaser and the Guarantor recognizes that monetary damages will be inadequate for the Purchaser's breach of the AG's Enforceable Provisions and this Agreement. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court of competent jurisdiction may deem appropriate, without the requirement to post any bond in connection therewith.

6. Enforceability. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement or contained in the Asset Purchase Agreement.

7. Amendment. This agreement may be amended only by a writing executed by each of the parties.

8. Waiver. Any waiver by any party of any breach hereof by another party shall not be deemed to be a waiver of any subsequent or continuing breach or breach of any other provision hereof, by such party.

9. Execution. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any one counterpart.

10. Contract Under Seal. This Agreement shall be deemed to be a contract under seal, to be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

11. Jurisdiction/Venue. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought against any of the parties solely in the courts of the Commonwealth of Massachusetts and each of the parties (a) consents to the jurisdiction of such courts in any such action or proceeding and (b) waives any objection to venue laid therein and any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the first day above written.

**ATTORNEY GENERAL OF THE
COMMONWEALTH OF MASSACHUSETTS**

By: _____
Name:
Title:

**MORTON HOSPITAL AND MEDICAL
CENTER, INC.**

By: _____
Name:
Title:

MORTON PROPERTY, INC.

By: _____
Name:
Title:

MORTON PHYSICIAN ASSOCIATES, INC.

By: _____
Name:
Title:

**MORTON HOSPITAL, A STEWARD FAMILY
HOSPITAL, INC., f/k/a STEWARD MEDICAL
HOLDINGS SUBSIDIARY THREE, INC.**

By: _____
Name:
Title:

STEWARD MEDICAL GROUP, INC.

By: _____
Name:
Title:

The undersigned Guarantor hereby guarantees the obligations of the Purchaser under the AG's Enforceable Provisions and this Agreement.

STEWARD HEALTH CARE SYSTEM LLC

By: _____
Name:
Title:

Exhibit 5.2 Assessment and Monitoring Agreement

ASSESSMENT AND MONITORING AGREEMENT

This Assessment and Monitoring Agreement (the “Assessment and Monitoring Agreement”) is entered into as of the ____ day of September, 2011 by and among **MARTHA COAKLEY**, as she is the Attorney General of the Commonwealth of Massachusetts (hereinafter on behalf of herself and her successors and assigns, the “Attorney General”), **MORTON HOSPITAL AND MEDICAL CENTER, INC.**, a Massachusetts non-profit, charitable corporation (“Morton”), for itself and on behalf of Morton Property, Inc. and its non-profit charitable affiliate Morton Physician Associates, Inc. (collectively, together with Morton, the “Morton Entities”), and **STEWARD HEALTH CARE SYSTEM LLC**, a Delaware limited liability company (together with its current and future affiliates, successors and assigns, collectively, “Steward”).

RECITALS

The Morton Entities and a subsidiary of Steward are parties to an Asset Purchase Agreement, dated March 29, 2011, as amended by an Amendment No. 1 to Asset Purchase Agreement, dated September ____, 2011 (as so amended, the “APA”), pursuant to which the Morton Entities are selling substantially all of their assets used in the operation of a health care system to a Steward subsidiary.

The Attorney General and Steward are also parties to an Assessment and Monitoring Agreement, dated October 20, 2010 (the “Caritas Monitoring Agreement”), pursuant to which the Attorney General, on behalf of the public, is overseeing and studying the impact of a prior transaction in which Steward acquired certain Massachusetts hospitals.

The transactions contemplated by the APA (the “Transaction”), are required to be reviewed by the Attorney General, pursuant to G.L. c.180, § 8A(d). In connection with such review, which review includes consideration of the public interest, as well as the health care assessment provisions of G.L. c. 180, § 8A(d)(5), the Attorney General wishes to evaluate, assess, and monitor the impact of certain aspects of the Transaction, and wishes to better enable the Department of the Public Health (the “Department”) to evaluate, assess, and monitor the impact of certain other aspects of the Transaction on the availability, access, and cost of health care services within the communities served by Steward’s acute care hospitals, including the hospital being acquired in the Transaction, and any other Massachusetts hospitals acquired by Steward (the “Communities”) for the time period covered by the Caritas Monitoring Agreement, subject to the rights and responsibilities of a subsidiary of Steward under Section 11.6 of the APA, all as more specifically set forth herein.

TERMS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Attorney General Monitoring Responsibilities. The Attorney General shall, on behalf of the public, (a) oversee Steward's compliance with certain post-Closing conditions of the APA pursuant to that certain Enforcement Agreement by and among the Attorney General, Steward, and the Morton Entities, dated as of September____, 2011, including, without limitation, establishing a baseline for the commitments set forth in Section 11.6(c) of the APA, and (b) evaluate, assess, and monitor the impact of the Transaction on (i) the cost of health care, by price, total medical expense, or other appropriate measures of cost impact as determined by the Attorney General, (ii) changes in treatment and referral patterns including, without limitation, those related to physician recruitment and contracting, and (iii) consumer options and choice within the Communities, all in accordance with the terms and conditions of this Assessment and Monitoring Agreement. Notwithstanding the foregoing, the parties hereto acknowledge that (x) the health care system is rapidly changing and the Attorney General may, in consultation with Steward but otherwise in her sole discretion, determine that additional metrics or areas of inquiry, not otherwise under the primary responsibility of the Department pursuant to Section 4 hereinafter, are required to adequately measure and assess the impact of the Transaction on the provision of health care services to the Communities, and (y) certain aspects of the evaluation and assessment may incorporate, rely upon, or support otherwise independent investigations by the Attorney General of costs within the Massachusetts health care system. For purposes of this Assessment and Monitoring Agreement, the evaluation, assessment, and monitoring undertaken by the Attorney General, including all responsibilities referenced in this Assessment and Monitoring Agreement, shall be referred to as the "Attorney General Study." While focused on the Communities, the Attorney General Study will take into account, incorporate, and provide comparisons to broader regional and state trends and use, to the extent possible, publicly available information.

2. Cooperation with Attorney General. Steward shall cooperate, at its sole cost and expense, in providing information reasonably required by the Attorney General, and any individual or firm retained by the Attorney General, in connection with the Attorney General Study. Consistent with applicable law including, without limitation, that governing public records, information provided shall be subject to appropriate safeguards with respect to the confidentiality of information that Steward provides and nothing in this Assessment and Monitoring Agreement is to be construed as a waiver by Steward of any rights it may have to assert that information it provides pursuant hereto is not subject to public disclosure under applicable law. Notwithstanding the foregoing, Steward recognizes and acknowledges that the purpose and intent of this Assessment and Monitoring Agreement and the Attorney General Study conducted hereby is to periodically inform the public about the impact of the Transaction and, in the furtherance thereof, information and data provided by Steward may be used in an aggregated form in reports released to the public. Steward shall be provided with a draft copy of any report prior to its issuance and shall have a reasonable opportunity to comment on the form or content of the aggregated information released therein. The provisions of this Section 2 relate only to information requested and provided with respect to the Attorney General Study and do not alter, restrict, limit, waive, expand, or further define any rights or obligations of the Attorney General, with respect to information demanded, requested,

obtained from, or delivered by, Steward pursuant to the authority of her office under existing law in matters other than the Attorney General Study.

3. Payment of Costs, Fees and Expenses of the Attorney General Study. The costs, fees, and expenses of the Attorney General in undertaking the Attorney General Study including, without limitation, the fees and expenses of any individuals or firms retained by the Attorney General to assist in conducting the Attorney General Study shall be payable from the trust account or accounts funded by Steward and established pursuant to Section 3 of the Caritas Monitoring Agreement. Steward shall have no further obligation to the Attorney General or any individual or firm retained by the Attorney General under this Assessment and Monitoring Agreement for such costs, fees and expenses.

4. Department Monitoring Responsibilities under G.L. c.180 § 8A(d)(5). The Attorney General, Steward, and Morton acknowledge that the Department will conduct an evaluation, assessment, and monitoring of the impact of the Transaction on the availability of, and access to, health care services within the Communities in accordance with the provisions of G.L. c. 180, § 8A(d)(5) (the “Department Study”). The costs, fees, and expenses of the Department in undertaking the Department Study including, without limitation, the fees and expenses of any individuals or firms retained by the Department to assist in conducting the Department Study shall be payable from the trust account or accounts funded by Steward and established pursuant to Section 4 of the Caritas Monitoring Agreement. Steward shall have no further obligation to the Department, or any individual or firm retained by the Department, under G.L. c.180 § 8A(d)(5), for such costs, fees and expenses. By his signature hereinafter, the Commissioner of the Department of Public Health hereby acknowledges the provisions of this paragraph 4.

5. Enforceability/No Assignment. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement. This Agreement may not be assigned by Morton or Steward without the written consent of the Attorney General or by the Attorney General without the written consent of Morton and Steward. The terms hereof shall be binding upon any successor to the interests of Morton or Steward.

6. Amendment. This Assessment and Monitoring Agreement may be amended only by a writing executed by each of the parties.

7. Waiver. Any waiver by any party of any breach hereof by another party shall not be deemed to be a waiver of any subsequent or continuing breach or breach of any other provision hereof, by such party.

8. Execution. This Assessment and Monitoring Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Assessment and Monitoring Agreement by signing any one counterpart.

9. Contract Under Seal. This Assessment and Monitoring Agreement shall be deemed to be a contract under seal, to be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

10. Jurisdiction/Venue. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Assessment and Monitoring Agreement shall be brought against any of the parties solely in the courts of the Commonwealth of Massachusetts and each of the parties (a) consents to the jurisdiction of such courts in any such action or proceeding and (b) waives any objection to venue laid therein and any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the first day above written.

**ATTORNEY GENERAL OF THE
COMMONWEALTH OF
MASSACHUSETTS**

By: _____
Name:
Title:

**MORTON HOSPITAL AND MEDICAL
CENTER, INC.**

By: _____
Name:
Title:

**STEWARD HEALTH CARE SYSTEM
LLC**

By: _____
Name:
Title:

Acknowledged:

John Auerbach, Commissioner
Department of Public Health

Exhibit 5.3 Transition, Windup, and Reorganization Agreement

TRANSITION, WINDUP, AND REORGANIZATION AGREEMENT

This Transition, Windup, and Reorganization Agreement (the “Agreement”) is entered into as of the ____ day of September, 2011 by and among **MARTHA COAKLEY**, as she is the Attorney General of the Commonwealth of Massachusetts (hereinafter on behalf of herself and her successors and assigns, the “Attorney General”), **MORTON HEALTH FOUNDATION, INC.** a Massachusetts non-profit, charitable corporation (“Morton Foundation”), for itself and on behalf of its non-profit charitable affiliates, including Morton Hospital and Medical Center, Inc., (collectively, together with Morton Foundation, the “Morton Entities” and each a “Morton Entity”), and **MORTON HOSPITAL, A STEWARD FAMILY HOSPITAL, INC.**, a Delaware corporation f/k/a **STEWARD MEDICAL HOLDINGS SUBSIDIARY THREE, INC.** (“Steward”).

RECITALS

Certain of the Morton Entities and Steward are parties to an Asset Purchase Agreement, dated March 29, 2011, as amended by an Amendment No. 1 to Asset Purchase Agreement, dated September ____, 2011 (as so amended, the “Asset Purchase Agreement”), pursuant to which the Morton Entities are selling substantially all of their assets used in the operation of a health care system to Steward.

The Attorney General, through her Non-Profit Organizations/Public Charities Division (the “Division”) wishes to establish a framework for the orderly dissolution or reorganization of the Morton Entities and the handling of all funds donated to a Morton Entity and held for charitable purposes (the “Morton Endowment Funds”) following the closing of the transactions contemplated by the Asset Purchase Agreement (the “Closing”) and in accordance with Section 11.11 of the Asset Purchase Agreement, all as more specifically set forth herein.

TERMS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Effective Date; Termination. This Agreement shall be effective as of the date hereof. This Agreement (a) shall automatically terminate if the Asset Purchase Agreement is terminated prior to the Closing and (b) may be terminated in writing by the Attorney General if she determines that the obligations of the parties hereunder have been fulfilled.

2. Windup, Dissolution, Consolidation, or Merger. On or prior to the first anniversary of the Closing date, Morton Foundation shall, consistent with the applicable provisions of G.L. c. 180, other public charities law, and federal and state tax law, cause the windup and dissolution, or the consolidation or merger, of the Morton Entities, such that only those Morton Entities with remaining assets, missions, and purposes shall

survive, including Community Counseling of Bristol County, Inc. (each, a “Surviving Morton Entity”).

3. Reorganization. On or prior to the first anniversary of the Closing date and as may be appropriate or necessary, Morton Foundation shall cause each Surviving Morton Entity to be reorganized consistent with its mission and purpose. Any change to the mission or purpose of any Surviving Morton Entity shall be approved by the Division, and, if required, by order of the appropriate Massachusetts court.

4. Morton Endowment Funds. On or prior to the first anniversary of the Closing date, Morton Foundation, and to the extent held by Steward, Steward shall cause all Morton Endowment Funds, together with all applicable donor instruments and use and financial documentation, to be (a) transferred to, or retained by, the appropriate Surviving Morton Entity and (b) thereafter held and used for the donor-specified purposes and term. Any changes in the ownership, management, or use conditions of any fund constituting a Morton Endowment Fund shall be approved by the appropriate Massachusetts court, with the prior assent of the Attorney General, or as otherwise provided by G.L. c. 180A, § 5.

5. Retention and Payment of Advisors. Morton Foundation shall retain the services of an accounting firm and a law firm to assist it with the performance of its obligations hereunder. Any and all fees, costs, and expenses of such services, shall be assumed and paid for by Steward. Such accounting firm and law firm shall be designated by Morton Foundation in a writing provided to the Division prior to the Closing, which designation may be changed at any time by Morton Foundation by similar written notice.

6. Support Staff. Morton Foundation and Steward shall retain and dedicate sufficient administrative and support staff to effectively and efficiently carry out and support their obligations under this Agreement. The costs of such staff shall be paid for by Steward.

7. Schedules. Attached hereto are the following schedules, each of which is incorporated herein by reference. Morton Foundation shall provide the Division with any updates and amendments of and to such schedules within two calendar weeks of any changes, and shall provide information to supplement such schedules as may be reasonably requested by the Division from time to time.

7.1 Morton Entities. A listing of all Morton Entities together with their principal address, EIN, AGO registration number, and principal contact person.

7.2 Morton Endowment Funds. A listing of all Morton Endowment Funds held by each Morton Entity together with the name of the fund, the purpose, restriction or other limitations on the fund, the value of the fund at the last date of determination, and the location where information regarding the fund, including donor, use and financial history, are maintained.

7.3 Remaining Assets. A listing of all other assets held by each Morton Entity subsequent to the Closing, including, by category and Morton Entity, a description of the assets and their estimated aggregate value.

8. Segregation of Documents and Instruments. Notwithstanding the provisions of Section 4, all instruments and other documents evidencing the donation of any part of the Morton Endowment Funds and any reports of activities involving the Morton Endowment Funds shall be segregated by the Morton Entities from the assets being sold pursuant to the Asset Purchase Agreement. To the extent any such instruments, documents, or reports are transferred to Steward, Steward shall use its best efforts to maintain such assets separately until they are transferred to a Morton Entity pursuant to Section 4 hereof.

9. Enforceability/Assignment. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement. This Agreement may not be assigned by Morton Foundation or Steward without the written consent of the Attorney General or by the Attorney General without the written consent of Morton Foundation and Steward. The terms hereof shall be binding upon any successor to the interests of Morton Foundation or Steward.

10. Amendment. This agreement may be amended only by a writing executed by each of the parties.

11. Waiver. Any waiver by any party of any breach hereof by another party shall not be deemed to be a waiver of any subsequent or continuing breach or breach of any other provision hereof, by such party.

12. Execution. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any one counterpart.

13. Contract Under Seal. This Agreement shall be deemed to be a contract under seal, to be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

14. Jurisdiction/Venue. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought against any of the parties solely in the courts of the Commonwealth of Massachusetts and each of the parties (a) consents to the jurisdiction of such courts in any such action or proceeding and (b) waives any objection to venue laid therein and any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the first day above written.

**ATTORNEY GENERAL OF THE
COMMONWEALTH OF
MASSACHUSETTS**

By: _____
Name:
Title:

**MORTON HEALTH FOUNDATION,
INC.**

By: _____
Name:
Title:

**MORTON HOSPITAL, A STEWARD
FAMILY HOSPITAL, INC., f/k/a
STEWARD MEDICAL HOLDINGS
SUBSIDIARY THREE, INC.**

By: _____
Name:
Title: