

# CMC court filing points to AG approval of 2005 affiliation

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**MANCHESTER** – Catholic Medical Center and Dartmouth-Hitchcock Health asked the probate court to overrule the state attorney general's objection to their proposed affiliation, in papers filed this week.

"To the extent that the attorney general objects to the transaction as a representative of the public interest, he or she carries the burden of demonstrating that the affiliation is in any way improper," according to a joint petition filed by attorneys Joshua M. Wyatt of Devine Millimet for CMC and Michael J. Connolly of Hinckley, Allen and Snyder for DHH.

The attorney general erred as a matter of law on two points, the filing said -- first that the DHH reserved powers are in and of themselves improper as they diminish the fiduciary duties of the boards of directors of CMC entities -- and secondly, that probate court approval of the transfer of control through the doctrine of deviation is required.

Associate Attorney General Richard Head said yesterday afternoon the state still had not seen a copy of the pleading, but would reply in court.

## **A similar affiliation**

CMC's filing said the Attorney General's Office had previously approved a similar affiliation in 2005 between Dartmouth-Hitchcock Alliance and New London Hospital.

Bishop John B. McCormack has given conditional approval to the affiliation but has not seen a final document and is reserving comment until he sees that, a spokesman said.

"The bishop is intent on encouraging Catholic health care to flourish in the state of New Hampshire," Diocese of Manchester spokesman Kevin Donovan said yesterday,

"He's supporting Catholic Medical Center and St. Joseph Hospital in Nashua in their mission to provide Catholic health care," he said.

Rep. Joel Winters, D-Manchester, who sponsored a legislative resolution this spring encouraging the hospitals to submit the affiliation for probate court review, said, "I think getting it before the probate court was a good solution to make sure that somebody can gather all the facts and make an informed decision before the transaction goes forward."

## **Doctrine of deviation**

The hospital's attorneys argued that the "doctrine of deviation" applies to a narrower set of circumstances involving "a restrictive administrative term of a trust" and shouldn't be applied to the CMC-DHH affiliation.

"Contrary to the attorney general's view of the law, charitable corporations have the statutory authority and flexibility to amend their administrative and membership provisions as they see fit ... within the strictures of corporate law," according to court papers.

They also argued:

-- CMC and DHH exercised due diligence in reaching their affiliation agreement;

-- Their agreement delivers fair value;

-- The post-affiliation surplus has sufficient safeguards in place to prevent manipulation or abuse.

"The calculation of the post-affiliation surplus remains subject to review on an ongoing basis by the attorney general," the petition said.

A court date has not been set, nor has a judge been assigned to the case.

### **Catholic health care**

In the final draft of a Professional Services Agreement between DHC-Manchester and CMC, services banned by Catholic teaching are excluded from payment by CMC.

But the document doesn't seem to bar them from being performed in Dartmouth-Hitchcock's East Side building.

For example, a section of the document dealing with protocols to ensure compliance with the Ethical and Religious Directives for Catholic Health Care Services (ERDs), the document says training materials must specify: " ... (2) those services which must be conducted outside of the Manchester System but which may be conducted by DHC-Manchester in the 'Excluded Portion' of its facilities as described in Section 4 of the PSA (Professional Services Agreement; ... "

"Under the proposed affiliation, Catholic Medical Center will lease only the services of providers at Dartmouth-Hitchcock Manchester that comply with the Ethical and Religious Directives for Catholic Health Care Services ("ERDs")," Peter Cataldo, director, Office of Catholic Identity, said in a statement released by CMC.

"Catholic Medical Center will not govern, finance, manage, or otherwise be involved in any activities that Dartmouth-Hitchcock may do independent of the affiliation," Cataldo said.

"The ERDs permit partnerships between Catholic hospitals and other-than-Catholic health care organizations so long as this separation is maintained. CMC is in full compliance with this provision of the ERDs," he said.