

OFFICE OF THE CITY ATTORNEY

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April 9, 2024

Secretary Johnson
Deputy Secretary Standridge
Office of the Secretary
Department of Health Services
1 West Wilson Street, Room 650
P.O. Box 7850
Madison, WI 53707-7850

Re: *Hospital Sisters Health System (HSHS) Sacred Heart Hospital Closure*

Dear Secretary Johnson and Deputy Secretary Standridge:

Hospital Sisters Health System (HSHS) has demonstrated how abrupt and devastating a manner in which hospitals can be closed in Wisconsin. HSHS elected to close Sacred Heart in Eau Claire and St. Joseph's in Chippewa Falls with 60 days or less notice. The manner of closure elected by HSHS executives was absent reasonable notice or coordination with those affected and demonstrated a lack of sufficient regard for the safety, care, and well-being of their patients, their employees, fellow medical providers, and their communities. This should not have occurred. It cannot be allowed to occur again in other Wisconsin communities.

Hospitals are licensed in Wisconsin.¹ The Department of Human Services is the state agency responsible for licensing and hospitals are responsible to DHS, the State, and its residents when entrusted with a license to operate.² The department may "withhold, suspend or revoke the certificate of approval" of a hospital at any time it determines there has been a breach of trust by "failure to comply" with the applicable laws and regulations.³ The regulations exist "to ensure that hospital patients receive safe and adequate care and treatment and that the health and safety of patients and hospital employees are protected."⁴ The standards that apply include not only state laws and local ordinances, but also those federal conditions for Medicare that the "department shall use and enforce."⁵ Federal Medicare & Medicaid Services require hospitals have an effective governing body that ensures medical staff are accountable for quality care and that are hired and maintained in their positions based on "individual character, competence, training, experience, and judgment."⁶ This includes the chief executive officer responsible for the

¹ See e.g., Hospital Regulation and Approval Act, Wis. Stats. Subchapter II Hospitals, §50.32 et seq.

² "No hospital may operate in Wisconsin unless it is approved by the department." Wis. Adm Code. § DHS 124.03.

³ Wis. Adm Code. § DHS 124.03 (6).

⁴ Wis. Adm Code. § DHS 124.01.

⁵ Wis. Adm Code. § DHS 124.03 (2); Wis. Stats. § 50.36 (1).

⁶ "There must be an effective governing body..." The governing body must... "Ensure criteria for selection are individual character, competence, training, experience and judgment..." 42 C.F.R. § 482.12 (a)(6).

management of the hospital.⁷ The chief executive officer must also sign on behalf of the hospital the required Hospital Annual Report in which the CEO affirms and submits the information to DHS with required forthrightness to the “best of my knowledge.”⁸

President and CEO Damond Boatwright, his executive team, and the HSHS board went through what Mr. Boatwright recently described as a “thoughtful and formal discernment process to make this decision [to close HSHS Sacred Heart and HSHS St. Joseph’s hospitals] and that gives us comfort that we came to this decision in alignment with our mission and core values.”⁹ HSHS closed both hospitals with 60 days or less notice. Many hospital functions including critical patient and community needs, such as in-patient behavior health, regional substance abuse treatment, regional rehabilitation services, and a number of “service lines” were closed much sooner.¹⁰ It wasn’t lost on others that Mr. Boatwright’s comments throughout the article seemed to indicate a greater concern for his and HSHS leadership’s comfort than for that of his patients, employees and the communities the HSHS mission sought to serve, contrary to the requirements and expectations of DHS state licensure.¹¹

DHS, and our state, must take notice of the assertion made by Mr. Boatwright in this interview that other hospital administrators could do even worse by their patients, employees and communities, others, according to Mr. Boatwright “may have just cut and run.”¹² The comments are self-serving rationalizations of the patently terrible way in which he and HSHS elected to close these hospitals and terminate approximately 1,400 employees. But, the point remains that to the extent others can do the same, Wisconsin residents are at an unacceptable risk of losing critical emergency and primary medical care. A broad array of private and public emergency response and health care functions were put at risk unnecessarily by the manner of the HSHS closures. It was a “cut and run” and if others could do the same or worse, this should serve as a necessary wake up call to make changes in the law now. Hospitals operate under a license from the state, and must continue to meet that trust. We must hold HSHS, its executives and board accountable. If any believe this was the right way to close a hospital, it must be made clear they are wrong. We cannot change the outcome now, but we must ensure it cannot happen again.

Mr. Boatwright and fellow HSHS executive team members, by failing to disclose consideration of hospital closures for a year to two years, needlessly forced an emergency response from local, state and federal officials and community leaders. According to Mr. Boatwright, HSHS has considered closures of Sacred Heart and St. Joseph’s hospitals during an “18-month to two-year

⁷ “The governing body must appoint a chief executive office who is responsible for managing the hospital.” 42 C.F.R. § 482.12 (b).

⁸ “I affirm that all statements and information provided in this report and in any attachment are correct to the best of my knowledge and that I will comply with all the laws, rules, and regulations governing the licensing of Wisconsin facilities as defines in Wis. Stats. § 50.135(2)(a).” DHS Hospital Annual Report required per Wis. Adm Code. § DHS 124.03 (7).

⁹ As quoted in an interview Mr. Boatwright gave to Catholic World Health reported March 2024 by Julie Minda. {[Closure of rural facilities is ‘wake-up call’ for nation, says HSHS head \(chausa.org\)](#)}

¹⁰ Email from Robert Dubiel, Project Manager Marshfield Clinic Health System to Holly Kitchell and David Soens of DHS on February 7, 2024; The City also received multiple reports of operations and equipment closing or being removed from the hospitals within weeks of the announced closures prior to which nothing was said or known about the potential for such a major impact on emergency response and medical care in our communities.

¹¹ “Boatwright spent considerable time patting himself on the back for the ‘discernment’ process by which the system reached the decision to close. He praised himself for keeping ‘our governing and ministerial boards and the sisters’ informed during the process, consideration that apparently wasn’t due to patients or employees.” *Our View: Accidental Truth Points to Statewide Need*, Editorial of the Eau Claire Leader-Telegram, March 27, 2024. {[Our View: Accidental truth points to statewide need | Editorials | leadertelegram.com](#)}

¹² Catholic World Health reported March 2024 by Julie Minda.

discernment.” He failed to timely share that critical information with those most impacted. Prior to January 22, 2024: he didn’t tell patients; he didn’t tell most of his employees, including senior leaders at both hospitals, many of whom it was reported to us, learned of the closures and their job loss through the media; he didn’t tell Eau Claire Fire or other local EMS and first responders or law enforcement; he didn’t tell the City-County Health Department or colleagues in other local health systems that meet locally to discuss issues of shared importance and impact; and he didn’t tell the hospital licensing authority DHS and the state.¹³ And, even when HSHS was in discussions with DHS regarding a temporary closure of St. Joseph’s just this past fall in September of 2023, he, through his lawyers, failed to report this information to DHS or the Chicago office of CMS.¹⁴ There can be an internal planning period, but there must be sufficient notice provided to those that rely on hospitals. Applicable laws must be understood to apply to patients and employees, and also to private and public partners, such as first responders and those that maintain emergency rooms and rely on surgical suites. Sufficient notice was not provided by HSHS, and according to Mr. Boatwright, others could do even worse.

As a licensee of the state, HSHS and Mr. Boatwright as a signatory, attested to hospital annual reports. He owes a duty of care to patients and employees, a duty of honesty and forthrightness, as well as of character, competence and judgment to the state on the condition of hospital facilities including the capacity of their boards and president to carry out ongoing operations.¹⁵ The governing body, through its chief executive officer, failed to manage the hospital in a manner demonstrating character, competency, and judgment. Decisions of the president, and approved by the board, not only led to hospital closure, but a decision to conduct closure in a manner that failed to sufficiently consider the well-being of patients, employees, the local community and residents of our state. That is an actionable failure to meet licensing requirements. HSHS and Mr. Boatwright, so long as he remains in a leadership role with HSHS, should be thoroughly investigated and prosecuted to the extent allowed by law.¹⁶

¹³ In his Catholic World Health interview, Mr. Boatwright claims, “We reached out early to elected officials to give them a heads-up that this was occurring so they wouldn’t be caught off guard and so they could hopefully provide calm, reassuring messaging to our community members.” According to Eau Claire City Council President Emily Berge, “this is not true at all.”

¹⁴ Attorney Sandra DiVarco, on behalf of HSHS, informed Thomas Rylander, DHS Licensing & Certification Specialist for Hospitals, in a high importance designated email on September 8, 2023, at 1:55 p.m. that in regard to HSHS St. Joseph’s Hospital – Chippewa Falls “the plan to temporarily suspend inpatient services will be implemented” as of September 11 at 5 p.m. In an email between the same parties that same day, time stamped 12:17 p.m., Attorney DiVarco indicated that HSHS St. Joseph’s would close later that day at 5 p.m. with the explanation that backup patient care would be provided by HSHS Sacred Heart, stating: “If an ED patient requires inpatient admission or care that the ED cannot provide, the patient will be transported to HSHS Sacred Heart Hospital – Eau Claire, or to another hospital consistent EMS protocols and patient choice.” There is no mention in these or, to the extent DHS records were provided and are available to the City, in any communications by HSHS to DHS, that both facilities were and had long been in consideration for closure through what Mr. Boatwright described as an 18-24-month discernment period and may have been already decided for closure yet not disclosed to the state or others in critical need of that information until January 22, 2024.

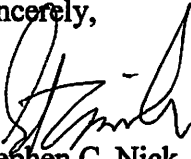
¹⁵ “There must be an effective governing body...” The governing body must: “Ensure criteria for selection are individual character, competence, training, experience and judgment...” 42 C.F.R. § 482.12(a) “The governing body must appoint a chief executive office who is responsible for managing the hospital.” 42 C.F.R. § 482.12(b).

¹⁶ DHS through state and applicable federal regulations has not only the authority to “suspend or revoke the certificate of approval” of hospitals under DHS 124.03 (6), but also authority to “impose additional requirements if they are found necessary in the interest of health and safety of the individuals who are furnished services in hospitals.” 42 C.F.R. § 482.1(a)(1)(ii). This authority should be explored and used as found applicable and lawful by DHS and the Attorney General to ensure those responsible for the closure of HSHS Sacred Heart and HSHS St. Joseph’s, and thought it a responsible manner in which to close two hospitals, are not in a position to do so again.

The City of Eau Claire requests that DHS thoroughly investigate whether HSHS, under its current executive and board leadership, met and can continue to meet all state, local, and federal requirements and expectations for continued licensure at their remaining facilities in Wisconsin. Further, if it is determined that under current laws and regulations a hospital closure conducted in this manner is beyond recourse, that executive and legislative steps be taken to change Wisconsin law so that the closures of hospitals, as it was done by HSHS in Eau Claire and Chippewa Falls, can never be repeated upon other Wisconsin patients, employees or communities.

Thank you for your time and thoughtful attention to this matter of importance to Eau Claire and the state of Wisconsin.

Sincerely,



Stephen C. Nick
City Attorney

SCN:mlw

cc: Representative Moses; Representative Summerfield; Representative Van Orden; Senator Cabral-Guevara; Senator James; Senator Baldwin; Senator Johnson; Governor Evers; City Attorney Robert Ferg; City Attorney Bungert; City Attorney Hoffmann; Council President Berge; Director Giese; City Manager Hirsch; Deputy City Manager Solberg