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Working with the Community: Hospital Merger Compromises that Protect Patients

Community activism will not always stop a hospital merger from occurring, but can often result in a compromise that provides better protections for patients than were possible under the original merger proposal. Although the following compromises did involve an unfortunate loss of some health care services, these examples show that it is possible for nonsectarian hospitals to demand some compromises from Catholic hospitals and systems.

Location: Oak Park, Illinois

Result: *Local MergerWatch Coalition wins compromise to save some services; monitoring of the result is underway.*

Nonsectarian West Suburban Hospital announced in early 2003 that it was agreeing to be acquired by the Catholic-sponsored Resurrection Health Care System. The hospital said it was financially strapped and needed to join Resurrection in order to improve its ability to borrow money. In response, a broad coalition calling itself West Suburban Merger Watch was organized to protect patients' rights and access to vital health services, such as reproductive care, at West Suburban Hospital and three affiliated outpatient clinics.

Community concerns

The coalition -- composed of local community members, physicians and state and national organizations (including the MergerWatch Project and the National Women's Law Center) - was particularly concerned about health care services that were threatened with elimination because of Resurrection's insistence that West Suburban Hospital adopt restrictive Catholic health care doctrine.

Resurrection Health Care, like other Catholic hospitals, follows the *Ethical and Religious Directives for Catholic Health Care Services*, a set of 72 directives issued by the U.S. Conference of Catholic Bishops. Services commonly banned or restricted at hospitals governed by the Directives include abortion, sterilization (tubal ligations for women and vasectomies for men), contraceptive provision and counseling, provision of condoms to prevent the spread of HIV/AIDS and emergency contraception to prevent pregnancy for

rape victims. End-of-life choices, such as to refuse or remove artificial nutrition and hydration, may be barred if they do not conform to Catholic moral teachings. Any treatments that may be developed with embryonic stem cells, such as cures for juvenile diabetes, Parkinson's and spinal cord injuries, are likely to be banned in the future. Employee benefits often are affected by health care coverage that pays for only those services deemed acceptable by the Church. Contraceptive coverage, for example, is often excluded.

The coalition was also concerned about the potential impact of the acquisition on the availability of free care (sometimes referred to as charity care) at West Suburban for patients with no health insurance and no ability to pay. A study by the hospital workers union AFSCME had reported that Resurrection had a poor track record on providing free care.

Obstacles to be overcome

The West Suburban Merger Watch coalition was faced with the obstacle of a new state law that deregulated the state's oversight of hospital acquisitions, through what is known as a "certificate of exemption" process. The exemption process allows hospitals to change ownership without any state assessment of whether the change in ownership will negatively affect health care in the community. The new regulations, which were written by lobbyists for the hospital industry, worked to prevent the state from blocking the proposal, even though the coalition was able to show that the hospital's predictions of financial disaster without the acquisition were unfounded, and the merger would result in a loss of needed health services. The hospital also worked hard to scare residents of Oak Park by insisting the hospital would suffer and possibly even close if the acquisition did not go through.

The local coalition reached out to state legislators, the county health department, the state Health Facilities Planning Board (HFPB) that oversaw the exemption process and the state's attorney general. The group submitted formal comments to the HFPB and attended meetings at which the proposal was discussed. The group also raised community awareness through community forums, articles in the local papers and leafleting in community neighborhoods.

Compromises achieved

Through these efforts, the group was able to obtain the following legally binding protections for the patients:

- West Suburban Hospital gave independence to three primary care clinics (organized under an entity called the PCC) prior to the hospital's acquisition by Resurrection. The PCC was given buildings, equipment and a financial start through the forgiveness of debt and a grant of more than \$1 million. Family planning services and HIV/AIDS prevention counseling that mentions condoms will continue to be offered at these clinics because they are not restricted by Catholic doctrine. This freedom for the clinics was especially important because

they serve a low-income people of color community with few alternative sources of health care that are convenient and affordable.

- The protocol for providing rape victims with emergency contraception (EC) to prevent pregnancy was downgraded from the policy that had been in place at West Suburban prior to the acquisition. West Suburban had routinely offered and dispensed EC to rape victims. However, the new compromise policy is better than policies at other Resurrection hospitals. Although the hospital will do ovulation testing and deny EC to those women believed to be ovulating, those rape victims will receive EC through an arrangement with the PCC. A PCC physician will be contacted and will then call in a prescription to a local pharmacy. If the patient cannot afford the prescription, it will be charged to the PCC. The hospital will provide transportation to a pharmacy to those who need it.
- Resurrection has agreed to maintain the charity care (free care) policies in place at West Suburban prior to the acquisition.

The West Suburban Merger Watch coalition remained intact following the acquisition and has been monitoring the hospital's compliance with the patient protections that were achieved. The group also plans to host community forums to educate the community about the loss of services that has occurred; the questions they need to ask before receiving care at a religiously restricted hospital and where they can obtain the services banned by Resurrection.

Location: Nassau and Suffolk Counties, New York

Result: *Long Island coalition uses community pressure and the state regulatory process to save services, win disclosure requirements.*

Save Our Services on Long Island (SOS-LI) worked to establish new levels of protections for New York consumers when Catholic health care systems take over bankrupt non-Catholic hospitals, nursing homes and medical office buildings in suburban areas.

SOS-LI was organized in 1998 as the four-hospital Catholic Health Services of Long Island (CHS) system began rapidly expanding. By June of 2000, CHS had assumed partial financial control over previously-secular Mid-Island Hospital in Nassau County, become the landlord of secular Massapequa Hospital, also in Nassau County, and purchased outright the entire Episcopal Health System campus in Suffolk County (including St. John's Hospital, a nursing home, a medical office building and a home health agency). Through these actions, CHS gained control of 25 percent of the health care market on Long Island.

CHS imposed the Catholic Ethical and Religious Directives at all of these facilities, and steadfastly opposed SOS-LI attempts to encourage "creative solutions" that would preserve contraception, abortion and sterilization services in separately-incorporated areas of the hospitals.

By stepping forward to prop up or buy failing hospitals, CHS became viewed by state health officials (and by some patients and hospital employees) as a "white knight." As a result, CHS got priority "fast track" state processing of its Certificate of Need (CON) application to take over the Episcopal Health System facilities. No public notice was given and no community input was sought. State health officials recommended swift approval, dismissing concerns about the loss of reproductive services by suggesting that patients could go to one of the other, non-Catholic hospitals, located on Long Island. Despite these obstacles, SOS-LI, working with the MergerWatch project, effectively utilized the CON process to gain protections for patients in both Nassau and Suffolk counties. After holding public forums to gather comments from the affected community, SOS-LI members traveled to New York City and Albany to present testimony to the State Hospital Review and Planning Council and Public Health Council, which had to approve the CHS applications. SOS-LI also submitted extensive written comments and suggestions for contingencies to the expected CON approval.

Through these actions, SOS-LI was able to build on the so-called Seton Protocol established through the 1996 settlement of a lawsuit challenging the loss of reproductive services at Leonard Hospital in Troy, NY, when it merged with St. Mary's Hospital to form Seton Health System. That settlement required the hospital to provide "informational" referrals to patients by making available lists of other providers and following up to make sure patients were able to obtain the services. In the Long Island cases, the following additional protections were achieved:

- In the Mid-Island case, SOS-LI ensured that rape victims appearing at the hospital's emergency room would be offered and actually provided with emergency contraception. The hospital also agreed to provide HIV prevention counseling that includes discussion of condoms. These guarantees then became known as the "Mid-Island protocols" and were required up front by Health Department officials when CHS applied to purchase the Episcopal Health Services facilities.
- Also in the Mid-Island case, SOS-LI won an agreement that the hospital would notify patients about the new Catholic governance of the hospital by prominently disclosing the Catholic Health Services sponsorship on the sign in front of the hospital. Seven months of dogged monitoring by SOS-LI, and repeated appeals to state officials were required before CHS made good on this promise. The same requirement was then applied to the Episcopal Health Services purchase, and CHS officials further pledged they would list the new ownership in hospital advertising and brochures.
- In the Episcopal Health Services cases, SOS-LI secured additional pledges from CHS that physicians with admitting privileges at St. John's Hospital (renamed St. Catherine of Siena by Catholic Health Services) be free to discuss all reproductive services confidentially with their patients and to take these patients to nearby non-

Catholic hospitals to perform abortions or sterilizations without fear of punishment or loss of privileges.

- SOS-LI broke new ground on end-of-life choices in the Episcopal Health Services case. Under pressure from State Public Health Council members, CHS agreed to disclose to patients being admitted to St. John's Hospital (now St. Catherine of Siena Hospital) or the Bishop Sherman Nursing Home that they might not be able to refuse or remove feeding tubes if their wishes conflicted with Catholic moral teaching.

SOS-LI is a coalition that includes Planned Parenthood affiliates in Nassau and Suffolk Counties and more than 20 other organizations, such as the League of Women Voters, the American Jewish Congress, American Association of University Women and the National Organization for Women. The coalition continues to monitor the hospitals for compliance with the conditions of approval.

Location: Seattle, Washington

Result: *"Creative Solution" Saves Abortions in Seattle.*

Pro-choice advocates succeeded in winning a creative solution to preserve abortion services at Swedish Medical Center in Seattle, WA, after it began a business venture with Catholic-owned Providence Health System in 2000.

Officials at Swedish had agreed that the facility would stop performing "non-therapeutic/elective" abortions at its campuses on both First Hill and Ballard. In response to this news, Pro Choice Washington (a coalition of women's organizations that advocate on behalf of choice and women's health issues) began discussions with Swedish Hospital, in an attempt to find solutions that would allow women continued access to all reproductive health care services at the state's largest hospital.

As a result of these ongoing discussions with PCW, as well as from community outcry over the news, Swedish officials recently agreed to establish an independent Reproductive Health Services Center that will allow patients and doctors continued, full access to all abortion services post-merger. The center will provide "non-therapeutic/elective" abortions only; it will not be responsible for all reproductive health care services.

This center will be a separate legal entity outside of the Providence/Swedish alliance. Although the center will not be directly owned or controlled by Swedish, it will be physically located within the existing Swedish campuses. There will be a separate board of directors -- members of which may be members of the Swedish Hospital Board -- that will be responsible for the governance, operations and management of the center. The center will then contract back with Swedish to provide the necessary abortion services. Providence will have no relationship to the Center. Swedish will continue to offer the full range of abortion services pending the formal creation of the Reproductive Health Services Center.

Location: Springfield, Ohio

Result: “*Creative solution*” shows compromises to preserve reproductive health services can be negotiated.

After several years of negotiations, Community Hospital and Mercy Medical Center of Springfield, Ohio, merged in 2004 after a creative solution was crafted to preserve access to reproductive health services. Merger talks between Springfield's two hospitals had failed twice in the past, due largely to the Catholic hospital's insistence on limiting women's reproductive health services. With encouragement from the community group Clark Countians for Choice, the board of Community Hospital remained steadfast in its insistence that it would not agree to a merger unless the Catholic system agreed to a solution that would preserve hospital based reproductive services in the community.

The merger created a new health system, called Community Mercy Health Partners (CMHP). The system will construct a new hospital that will be governed by the *Ethical and Religious Directives for Catholic Health Care Services*. A nonsectarian entity, Community Hospital Health Services Foundation (CHF), will be responsible for providing reproductive services banned by the *Directives*.

In phase I of the merger, before the new hospital is constructed, CHF will own and operate rooms in the former Community Hospital where banned reproductive services will be provided. According to a summary of the merger that was prepared by Community and Mercy hospitals, both hospitals provide rape victims with emergency contraception when victims are treated in the emergency department. That policy will continue following the merger in phases I and II.

In phase II of the merger, a new hospital will be built. A separate unit, owned and operated by CHF will provide tubal ligations. This unit will be leased to CMHP when not in use by CHF and will be contiguous to the new hospital. CHF will also receive a charitable asset-like settlement of \$5 million. In order to keep the unit financially viable, it will also provide dialysis services. A medical office building will be built when the new hospital is constructed. This building will be owned by CHF and therefore will not be subject to the Directives. It too, will be contiguous to the new hospital and CHF unit.