

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL



ANN M. RICE
DEPUTY ATTORNEY GENERAL

March 36, 2018

Tracy A. Uhrin, Esquire
Merrimack County Superior Court
PO Box 2880
Concord, NH 03302-2880

RE: In The Matter Of LRGHealthcare
Docket No.

Dear Clerk Uhrin:

Enclosed please find an Assurance of Discontinuance, signed by both parties, for filing in the above-referenced case.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink that reads "James T. Boffetti".

James T. Boffetti
Senior Assistant Attorney General
Consumer Protection & Antitrust Bureau
(603) 271-0302

JTB/mjt
Enclosure
cc: Mitchell Jean, Esquire

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

IN THE MATTER OF LRGHealthcare

ASSURANCE OF DISCONTINUANCE

The State of New Hampshire, by and through the Office of the Attorney General (the “State”), and LRGHealthcare (“LRGH”) hereby enter into the following Assurance of Discontinuance (“Assurance”) pursuant to RSA 358-A:7.

THE PARTIES

1. Gordon J. MacDonald is the Attorney General for the State of New Hampshire and is authorized to investigate allegations of unfair or deceptive trade practices under New Hampshire’s Consumer Protection Act, RSA 358-A, and to enter into this Assurance in accordance with RSA 358-A:7.

2. LRGH is a non-profit charitable trust headquartered in Laconia, New Hampshire, comprised of Lakes Region General Hospital, Franklin Regional Hospital and a number of affiliated medical practices.

INTRODUCTION

3. On or about November 1, 2017, the State issued a subpoena to LRGH in connection with an investigation into the circumstances surrounding the hiring of Patricia Strohla (“Strohla”) as LRGH’s Chief Nursing Officer on or about November 16, 2016.

4. LRGH cooperated fully with the State's investigation by, among other things, producing documents responsive to the subpoena.

5. As a result of the investigation, the State alleges that LRGH engaged in one or more unfair or deceptive acts or practices in the conduct of trade or commerce in New Hampshire in violation of the New Hampshire Consumer Protection Act (the "Allegations"). The Allegations are set forth fully below.

6. LRGH disputes the Allegations, and does not admit to any of the facts set forth in this Assurance. LRGH specifically disputes that it engaged in any unfair or deceptive acts or practices in violation of New Hampshire's Consumer Protection Act.

ALLEGATIONS

7. In August 2016, LRGH began recruiting Patricia Strohla to become its new Chief Nursing Officer (CNO). LRGH's CEO, Kevin Donovan, and Strohla had previously worked together at Mt. Ascutney Hospital in Vermont, where Strohla was part of the administrative leadership.

8. After offering Strohla the CNO position, LRGH learned on September 17, 2016, that she did not have an active nursing license. Strohla was previously licensed as a registered nurse in the State of Maine, and told LRGH that she would determine what needed to be done in order to bring her Maine license into active status so that it could be transferred to New Hampshire.

9. After learning that Strohla did not possess an active nursing license, LRGH modified the CNO job description by removing the requirement that the applicant possess an active New Hampshire nursing license. Instead, the newly modified job description incorrectly

required the applicant to obtain a New Hampshire nursing license within one year of the applicant's date-of-hire.

10. LRGH announced Strohla as the new CNO in an email to all staff on October 20, 2016. Strohla was described as a "RN" (registered nurse) in that email.

11. Strohla began working as the CNO of LRGH on November 16, 2016. At the time, LRGH was aware that Strohla did not possess a New Hampshire nursing license.

12. As is required by law, LRGH issued Strohla an employee badge on or about her date-of-hire. The badge identified Strohla as a RN. Contemporaneously, LRGH's website was modified to include the newly-hired Strohla. The website also identified Strohla as a RN.

13. At various points after her date-of-hire, Strohla reviewed and signed off on LRGH policies and procedures relative to various hospital administrative and clinical matters. Strohla identified herself as a RN in the signature line of those policies and procedures.

14. Strohla sought for the first time the reinstatement of her Maine nursing license so that it could be transferred to New Hampshire in June 2017. Strohla's request was denied because she no longer lived in Maine. However, Strohla later attempted to develop a plan with the New Hampshire Board of Nursing to obtain her New Hampshire nursing license.

15. On July 24, 2017, in response to a complaint made by a member of the LRGH staff, the Centers for Medicare & Medicaid Services (CMS) conducted an unannounced on-site survey of LRGH. Among other things, CMS found the following:

- a. that LRGH hired Strohla "with knowledge that she didn't possess an active license as is required by state law and federal regulation"; and
- b. that LRGH allowed Strohla to "serve in a senior nursing position and take part in nursing activities, such as, but not limited to endorsing of policy and

procedures and the advising of senior management on nursing matters from 11/16/16 to 7/24/17.”

16. On July 24, 2017, as a result of the unannounced CMS audit, LRGH reassigned Strohla as the Interim Vice President of Operations and named a new interim CNO. All LRGH policies and procedures bearing Strohla’s name were reviewed and approved by the interim CNO, and modified such that Strohla was no longer identified as a RN.

17. By purportedly engaging in the conduct described above, the State alleges that LRGH engaged in unfair and deceptive acts or practices in the conduct of any trade or commerce in New Hampshire in violation of the New Hampshire Consumer Protection Act, RSA 358-A.

RECITALS

WHEREAS, the State has concluded its investigation into the circumstances surrounding the hiring of Patricia Strohla as LRGH’s Chief Nursing Officer on or about November 16, 2016 (hereafter the “Matters Investigated”);

WHEREAS, the State, by and through the Consumer Protection and Antitrust Bureau of the New Hampshire Department of Justice (the “Bureau”), is authorized to enter into this Assurance pursuant to RSA 358-A:4, III;

WHEREAS, the State is willing to accept the terms of this Assurance and settle all potential civil claims it might have against LRGH relative to the Allegations and the Matters Investigated;

WHEREAS, the State and LRGH (together “the Parties”) wish to avoid the expense, uncertainty and inconvenience of litigation;

WHEREAS, the Parties agree there is no just reason for delay and consent to the entry of this Assurance without a trial or adjudication of any issue of fact or law;

NOW, THEREFORE, THE PARTIES STIPULATE AND AGREE AS FOLLOWS:

COMPLIANCE OBLIGATIONS

1. LRGH shall not employ anyone as its Chief Nursing Officer, Director of Nursing Services, or in any other equivalent position unless that person possesses an active New Hampshire nursing license and is otherwise qualified to hold such a position pursuant to applicable state and federal laws, regulations and administrative rules.

2. Within seven (7) business days of the hiring of a full-time Chief Nursing Officer, LRGH shall notify the Bureau in writing of the identity of such person, provide the Bureau with a copy of the person's CV, and provide the Bureau with written verification that the person possesses an active license to practice nursing in New Hampshire. This obligation shall remain in place from the date of the acceptance of this Assurance by the Attorney General until December 31, 2019.

3. LRGH shall ensure and verify that all of its employees who are engaged in the practice of nursing as defined by New Hampshire's Nurse Practice Act, RSA 326-B:12, have an active New Hampshire nursing license. For each such employee, LRGH shall make such a determination *before* the employee's official date-of-hire. LRGH shall continuously monitor the licensure status of its nursing personnel (including, but not limited to, the Chief Nursing Officer) to ensure that they continue to maintain an active nursing license. LRGH shall continue to implement a reminder process that electronically notifies all of its nursing personnel and their managers at least thirty (30) days before the expiration of the employee's nursing license.

4. LRGH and its employees or agents shall not knowingly use, in connection with an individual's name, any designation tending to imply licensure as a registered nurse unless that

person is, in fact, so licensed. This prohibition shall apply to any oral or written communication whatsoever by LRGH, whether internal or external.

SETTLEMENT PAYMENT

5. Within 120 business days of the acceptance of this Assurance by the Attorney General, LRGH shall pay the sum of \$40,000 to the State of New Hampshire, to be deposited by the State in the Consumer Protection Escrow Account in accordance with RSA 7:6-f as funds received by the Attorney General on behalf of the State as a result of a settlement or a claim, suit, petition or other action under RSA 358-A, or related consumer protection statutes (the "Settlement Payment"). The Settlement Payment can be made in either a single or multiple installments.

6. Nothing in this Assurance shall prevent LRGH from classifying and/or characterizing the Settlement Payment as LRGH deems appropriate under applicable federal and state tax laws and regulations.

RELEASE

7. This Assurance constitutes a settlement of a disputed matter. It shall not be considered an admission by LRGH of any violation of state or federal law, or of any other matter of fact or law, or of any liability or wrongdoing by LRGH, all of which LRGH expressly denies. This Assurance does not constitute an admission or concession by LRGH for any purpose, nor does this Assurance constitute evidence of any liability, fault, or wrongdoing, all of which LRGH expressly denies. LRGH enters into this Assurance for the sole purpose of resolving any and all claims the State may have relating to the Allegations and the Matters Investigated. LRGH does not admit to violating any laws, including, but not limited to, the New Hampshire

Consumer Protection Act, and does not admit to any wrongdoing that is or could have been alleged by the State in this Assurance. LRGH and the State agree that no provision of this Assurance operates as a penalty, forfeiture, or punishment under the Constitution of the United States, under the Constitution of the State of New Hampshire, or under any provision of state or federal law.

8. This Assurance does not create a waiver or limit LRGH's legal rights, remedies, or defenses in any other action, and does not waive or limit LRGH's right to defend itself from, or make any argument in, any other matter, claim or suit, including, but not limited to, any investigation or litigation relating to the subject matter or terms of this Assurance or the Matters Investigated. This Assurance is made without trial or adjudication of any issue of fact or law, or any finding of liability of any kind.

9. This Assurance shall be inadmissible in any case against LRGH, and shall not otherwise be used to support any claim, cause of action, right asserted or request for relief of any kind in any action against LRGH, except in an action to enforce this Assurance. This Assurance shall not create a private cause of action or confer any right to any third party for violation of any federal or state statute or law except that the Bureau may file an action to enforce the terms of this Assurance.

10. This Assurance settles and resolves the State's investigation of LRGH concerning the hiring of Patricia Strohla as LRGH's Chief Nursing Officer in November 2016 and the Matters Investigated.

11. In consideration of the remedies, payments and undertakings provided for in this Assurance, and upon LRGH satisfying the Settlement Payment in full, the State releases and forever discharges, to the fullest extent permitted by law, LRGH and its past and present officers,

directors, employees, representatives, agents, affiliates, attorneys, assigns, successors and transferees of any of the foregoing (collectively the "Releasees") from the following: all criminal and civil claims, causes of action, *parens patriae* claims, damages, restitution, civil or criminal fines, costs, fees and/or civil or criminal penalties ("Released Claims") of any kind known or unknown, that were or could have been asserted against the Releasees through the date of this Assurance that arise from or relate to in any way the Allegations and/or the Matters Investigated, and which are not expressly reserved or excluded.

12. Notwithstanding the terms of this Assurance, specifically reserved and excluded from the Released Claims as to any entity or person, including Releasees, are any and all of the following:

- a. Any claims arising under state tax laws;
- b. Any claims for violations of securities laws;
- c. Any civil claims unrelated to the Matters Investigated; and
- d. Any action to enforce this Assurance, as well as any subsequent, related orders or judgments.

BREACH OF THIS ASSURANCE

13. If the Bureau reasonably suspects that LRGH has failed to comply with any of the terms of this Assurance, the Bureau shall notify LRGH and its attorney (Scott O'Connell at Nixon Peabody LLP, 900 Elm Street in Manchester, New Hampshire) in writing. The notice shall advise LRGH of the precise manner in which the Bureau believes that LRGH violated the Assurance. LRGH shall have fifteen (15) business days from the receipt of such written notice to provide a written response. The response shall include an affidavit containing, at a minimum, either:

- a. A statement explaining why LRGH believes it is in compliance with the Assurance; or
- b. An explanation of how the alleged violation occurred along with either:
 - i. a statement that the alleged violation has been cured and how; or
 - ii. a statement that the alleged breach cannot be reasonably cured within fifteen (15) business days from receipt of the notice, but that LRGH has begun to take corrective action to cure the alleged violation, LRGH is pursuing such action with reasonableness and due diligence, and LRGH has provided the Bureau with a reasonable timetable for curing the alleged breach.

14. Nothing herein shall prevent the Bureau from agreeing in writing to provide LRGH with additional time beyond fifteen (15) business days to respond to the notice of failure to comply with the Assurance.

15. This Assurance shall be filed in the Merrimack County Superior Court. This matter may be reopened by the Attorney General at any time it is in the public interest to do so. Evidence of a violation of this Assurance shall constitute prima facie evidence of an act or practice declared to be unlawful by RSA 358-A in any action thereafter commenced by the Attorney General.

MISCELLANEOUS

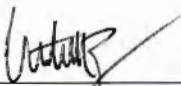
16. The Parties acknowledge that no other promises, representations, or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this Assurance constitutes the entire agreement amongst the Parties, and that it is not severable or

divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue to operate in full force and effect.

17. This Assurance may not be changed, altered or modified except in writing by both the State and LRGH.

18. This Assurance is effective upon being accepted by the Attorney General, the date of such acceptance to be recorded below.

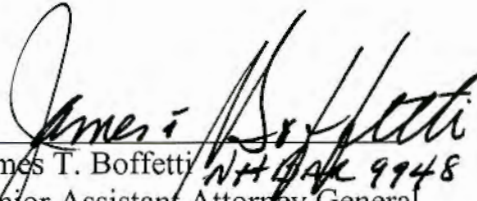
LRGHealthcare



Mitchell B. Jean, Esq.
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22 March 2018
Date

**THE STATE OF NEW HAMPSHIRE
GORDON J. MACDONALD**



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3/30/2018
Date