

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION**

BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

In the Matter of the Reorganization involving the Combination of St. Joseph Health System and Providence Health & Services, and subsidiaries Providence Health Plan & Providence Health Assurance))	Findings of Fact, Conclusions of Law and Order
		Case No. INS-FR 18-03-003

INTRODUCTION

On or about January 27, 2017, Providence St. Joseph Health (“PSJH”, “Applicant”) filed with the Oregon Department of Consumer and Business Services, Division of Financial Regulation, (“DFR”), a Form A Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer (as supplemented, the “Form A”). As required by ORS 732.517 through 732.546, the Form A provided notice of PSJH’s intent, by means of a termination of the Binding Letter (see below), a transaction in conjunction with Providence Health & Services (“PHS”)(including Providence Health & Services – Oregon (“PHS-OR”) and Providence Plan Partners (“PPP”)) and St. Joseph Health System (“SJHS”) to acquire a controlling interest in certain named domestic insurers (“Domestic Insurers”, “Providence”), Providence Health Plan (“PHP”) and Providence Health Assurance (“PHA”), which are domestic non-profit public benefit corporations with members, licensed under ORS chapter 750 to transact business in Oregon as health care service contractors. The proposed acquisition of control (“Proposed Acquisition”) described in the Form A is an activity described in ORS 732.521(1). A second amended Form A was filed on December 13, 2018.

The Director of the Department of Consumer and Business Services (“Director”), acting in accordance with the procedures set forth in Oregon Revised Statutes (“ORS”) chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750, and the administrative rules issued thereunder (“Insurance Code”), and specifically ORS 732.517 through 732.546, has reviewed the Form A. Notice of a public hearing was issued on October 3, 2017, and a public hearing on the Form A was held on October 24, 2017. A public

comment period was open from October 3, 2017 to November 7, 2017. The Form A, the presentation at the public hearing by the Applicant and Providence and public comments were posted on the DFR website.

Now, therefore, upon due consideration of the circumstances, including the said Form A, documentation filed in support of Form A, and testimony at the public hearing and public comment, the Director enters the following Findings of Facts, Conclusions of Law and Order.

FINDINGS OF FACT

The Director FINDS that:

- (1) PHS is a Washington non-profit corporation formed on March 19, 1992.
- (2) Providence Health & Services – Oregon (“PHS-OR”) is an Oregon non-profit religious corporation formed on February 20, 1934.
- (3) Providence Plan Partners (“PPP”) is a Washington non-profit corporation formed on June 12, 1997.
- (4) PHP is a tax-exempt 501(c)(4) and Oregon nonprofit public benefit corporation, with members, formed on February 1, 1984, that is organized to do business as a health care service contractor, under the provisions of ORS 750. PHP became an authorized health care service contractor on September 5, 1984. PHP provides commercial health and dental plans for groups and individuals. PHP also is the sole member of PHA, a tax-exempt 501(c)(4) and an Oregon nonprofit public benefit corporation, with members, that is authorized to do business as a health care service contractor, under the provisions of ORS 750.
- (5) PHA is a tax-exempt 501(c)(4) and Oregon nonprofit public benefit corporation, with members, formed on April 16, 2003, that is authorized to do business as a health care service contractor, under the provisions of ORS 750. PHA became an authorized health care service contractor on June 14, 2013. PHA offers Medicare Advantage plans, as well as Medicaid plan administration through a contract with Health Share of Oregon.
- (6) Health Share of Oregon is a non-affiliated Oregon corporation under contract with the Oregon Health

Authority as a Coordinated Care Organization that provides Medicaid services under the Oregon Health Plan.

- (7) PHS is the sole member of PHS-OR. PHS-OR is now the sole member of PHP. PHP is the sole member of PHA. Thus, PHS is the ultimate controlling legal entity of PHP and PHA, and of their insurance holding company system, pursuant to ORS 732.548(2) and ORS 732.567.
- (8) Provincial Superior & Members of Provincial Council of the Sisters of Providence, Mother Joseph Province, a Roman Catholic order based in Montreal, Canada (the “Sisters of Providence”) received permission from the Vatican in 2010 to form a five-member Public Juridic Person (a Catholic organization comprised of a community of individual persons or “sponsors”) under the name Providence Ministries to be the sponsor of Providence Health & Services. These members, none of whom are employed by any Providence entity, assume some of the responsibilities of the Sisters of Providence, Mother Joseph Province in governing Providence Health & Services. Sisters of Providence will remain the ultimate controlling entity of the PHP and PHA, as they appoint the Providence Ministries members.
- (9) SJHS is a California non-profit public benefit corporation formed on February 19, 1981, under the elected leaders of the Sisters of St. Joseph of Orange, as sponsors of SJHS.
- (10) In 2008, sponsorship of SJHS transferred to a newly created civil and church corporation, the St. Joseph Health Ministry, a California nonprofit public benefit corporation (“SJHM”), which consists of six appointed members. The St. Joseph Health Ministry includes individuals, as well as members of the Congregation of the Sisters of St. Joseph of Orange, who join together in serving as sponsors of SJHS. The sponsors are the sole corporate member of SJHS.
- (11) The Sisters of St. Joseph of Orange is an established order of the Sisters of St. Joseph, and was founded in 1912. In 1920, the Sisters opened St. Joseph Hospital in Eureka, California.
- (12) The Sisters of St. Joseph is an order of Catholic religious women originally founded in France in the 17th Century.
- (13) Sisters of St. Joseph and Sisters of St. Joseph Orange remain the ultimate controlling entity of SJHS, because they appoint the St. Joseph Health Ministry members.

- (14) Providence St. Joseph Health (“PSJH”) is a Washington non-profit corporation, formed on December 2, 2015 in connection with the Proposed Acquisition, to serve as the parent corporation for PHS and SJHS.
- (15) On November 23, 2015, PHS and SJHS entered into a Health System Combination Agreement (the “Combination Agreement”), which provided that PSJH would become the parent company for PHS and SJHS upon closing.
- (16) On December 11, 2015, PHS, SJHS, and SJM entered into a binding letter agreement, RE: Health System Combination – Retained Governance and Control of the Oregon Insurance Subsidiaries (the “Binding Letter”). The Binding Letter provided, inter alia, that the SJHS or its appointees would not engage in any Prohibited Control Activities described in ORS 732.521(1) with respect to PPP, the Domestic Insurers, or the Oregon Health Plan Committee (which was formed pursuant to terms of the Binding Letter to control PPP and the Domestic Insurers). This provision ensured that the separate corporate governance of the entities was maintained during the pendency of the Form A approval process. The transactions contemplated by the Combination Agreement and the Binding Letter (together, the “Combination”) closed at the same time.
- (17) On the basis of certain terms agreed to in the Binding Letter, an Order of Exemption and Non-Affiliation (Case No. INS 15-12-004) (“Order 15-12-004”) was issued on January 6, 2016 granting the PHS (including PHS-OR) and PPP and SJHS request for exemption from the provisions of Oregon Revised Statutes (ORS) 732.521(1) pursuant to ORS 732.521(2) with regard to a combination of PHS and SJHS.
- (18) By letter dated April 4, 2016, PHS and SJHS filed a request for exemption from the provisions of ORS 732.521(2) to authorize the reorganization necessary to further the combination of PHS and SJHS including an amendment of the recitals of Order 15-12-004, which was approved under Order 16-05-016, as follows:
- a) PHP’s sole corporate member changed to PH&S-OR from PPP;
 - b) PHP’s Amended Bylaws and Articles of Incorporation became effective; and
 - c) PHA’s Amended Bylaws and Articles of Incorporation became effective.

- (19) SJHM and PM, two public Juridic persons (each a Catholic organization comprised of a community of individual persons or “sponsors”), joined together to form PSJH and called their joint community of sponsors the Co-Sponsors’ Council (CSC). The CSC was established just prior to the establishment of Providence St. Joseph Health, on March 15, 2016. The CSC is comprised of all members of each board (SJHM and PM) as described in Co-Sponsorship Covenant, Article Two, Section 1 and 3.
- (20) The Sisters of St. Joseph and Sisters of St. Joseph Orange involvement is limited to participation by some members in the CSC.
- (21) PSJH filed the Form A, dated January 27, 2017, seeking permission for the acquisition of control, effectively, of the remaining fifty percent, indirect controlling interest in PHP and PHA, via termination of the Binding Letter. An Amended Form A was filed on March 28, 2018. A second amended Form A was filed December 13, 2018. Upon termination of the Binding Letter, members of the PSJH Board of Directors that were appointed from the SJHS Board of Directors will be able to vote on matters concerning PHP and PHA.
- (22) The stated purpose of the Proposed Acquisition of control is to allow SJHS and PHS to form an expanded, integrated healthcare delivery system.
- (23) The Combination Agreement, envisions SJHS obtaining a fifty percent controlling interest in PSJH through the composition of the PSJH board (PSJH would become the ultimate holding company of PHP and, indirectly, of PHA, with governing rights as a member equal to those previously held by PHS, and requires the parties to take a series of actions in that regard).
- (24) Upon completion of the actions, and upon closing of the Proposed Acquisition of Control via the termination of the Binding Letter, PSJH will be the sole member of PHS with governing rights.
- (25) After closing via the termination of the Binding Letter, PSJH will have indirect control over PHS-OR, which holds the right to approve the directors of PHP and PHA.
- (26) The Combination Agreement and Binding Letter have been approved by the parties, through their respective Boards of Directors, sole member or shareholder, with legal and other counsel of their choosing.
- (27) Although the structure and organizational relationships between PSJH, PHS, SJHS, PHS-OR, PPP,

PHP and PHA will change as a result of the Proposed Acquisition of Control, the parties state that they are not contemplating any material changes to the entity structure, management or operation of PHP or PHA after the closing of the Proposed Acquisition.

CONCLUSIONS OF LAW

The Director CONCLUDES that:

1. The Form A is supported by the required documentation and meets the requirements of the Oregon Insurance Code for approval with respect to acquisitions and mergers pursuant to ORS 732.517 to 732.546.
2. The Director finds that there is no evidence that:
 - (a) The activity is contrary to law or would result in a prohibited combination of risks or classes of insurance.

The acquisition of control of Domestic Insurers by Applicant is permissible under ORS 732.517 to 732.546. No prohibited combination of risks or classes of insurance is provided through this transaction.

- (b) The activity is inequitable or unfair to the policyholders or shareholders of any insurer involved in, or to any other person affected by, the proposed activity.

The Proposed Acquisition of control will not alter the operations or the capital support of the Domestic Insurers. The combination of the two entities does not call for any monetary consideration or changes. Shareholders, policyholders and members, as applicable, will become participants in a larger, more integrated healthcare system.

- (c) The activity would substantially reduce the security of and service to be rendered to policyholders of any domestic insurer involved in the proposed activity, or would otherwise prejudice the interests of such policyholders in this state or elsewhere.

The Proposed Acquisition should provide for the ability of an expanded geographic relationship with the newly affiliated providers for the Domestic Insurers, but would otherwise, not reduce the security of and services to be rendered to policyholders. The parties intend to continue the business of the Domestic Insurers without material change.

- (d) The activity provides for a foreign or alien insurer to be an acquiring party, and the insurer cannot satisfy the requirements of this state for transacting an insurance business involving the classes of insurance affected by the activity.

The Proposed Acquisition does not provide for a foreign or alien insurer to be an acquiring party.

- (e) The activity or its consummation would substantially diminish competition in insurance in this state or tend to create a monopoly.

Applicant's strongest market presence is in hospital and provider markets. SJHS's presence is limited to states in which PHA and PHP do not have a presence. The only lines of insurance (or insurance like) business written by the Domestic Insurers are commercial individual and group (by PHP) and Medicare & Medicaid (by PHA). The Proposed Acquisition will not affect the market share of the Domestic Insurers, substantially diminish competition in insurance in this state or tend to create a monopoly. Nevertheless, DFR will continue to monitor the evolution of health care system integration to assure against anti-competitive practices.

- (f) After change of control or ownership, the domestic insurer to which the activity applies would not be able to satisfy the requirements for the issuance of a certificate of authority to transact the line or lines of insurance for which the insurer is currently authorized.

The parties intend to continue the business of the Domestic Insurers without material change. The ability of the Domestic Insurers to satisfy the requirements for issuance of a certificate of authority will not be impacted by the Proposed Acquisition.

- (g) The financial condition of any acquiring party might jeopardize the financial stability of the insurer.

The Proposed Acquisition of Control will not have a negative financial impact upon the Domestic Insurers.

- (h) The plans or proposals that the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in the insurer's business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

Applicant does not plan or propose to materially change the business of the Domestic Insurers. The changes to corporate structure or management that have been proposed are consistent with expectations in moving to a shared control structure.

- (i) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of the policyholders of the insurer and of the public to permit the activity or its consummation.

As a result of the Proposed Acquisition, ultimate control of the Domestic Insurers will shift from the current Board of PHS to a newly constituted Board of PSJH. PSJH will control PHS and SJHS, and, indirectly, the Domestic Insurers. Operationally, the current officers of PHS and the Domestic Insurers will, at least initially, be retained. Due to the participation of SJHM, The Sisters of St. Joseph and Sisters of St. Joseph Orange in the CSC and the ability of the CSC to appoint the board members of PSJH, The Sisters of St. Joseph and Sisters of St. Joseph Orange are deemed to be controlling parties, pursuant to ORS 732.548(2) and 732.567. The competence, experience and integrity of persons who would control the operation of the Domestic Insurers do not indicate that the acquisition would not be in the interest of the policyholders or the public.

- (j) The activity or its consummation is likely to be hazardous or prejudicial to the insurance-buying public.

The Proposed Acquisition will not be hazardous or prejudicial to the insurance-buying public.

- (k) The activity is subject to other material and reasonable objections.

After consideration of all relevant information, the DFR finds that no material or reasonable

objections to the Proposed Acquisition exist.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that:

- (1) The acquisition of control of the Domestic Insurers by the Applicant is approved;
- (2) The Combination Agreement, together with the termination of the Binding Letter, is approved;
- (3) The Applicant shall provide DFR with a definitive set of the final closing documents within thirty (30) days following the closing of the Proposed Acquisition;
- (4) The Applicant shall deliver biographical affidavits and required third party background checks to DFR for any proposed changes to officers or members of its Board of Directors that are intended to occur prior to the closing of the Proposed Acquisition, within 30 days of the issuance of this order or proposal to appoint an officer or board member, whichever is later;
- (5) The Applicant shall notify DFR if the Proposed Acquisition does not close within ninety (90) days following the date of this Order;
- (6) The Applicant shall cause to be paid the fees of any actuaries, accountants and other experts not otherwise a part of DFR's staff that DFR incurred in connection with the Proposed Acquisition;
- (7) Within thirty (30) days of the closing of the Proposed Acquisition, the Domestic Insurers shall file an amended holding company registration statement;
- (8) The Domestic Insurers shall submit enterprise risk reports, under ORS 732.569, for each year during which the Applicant controls said Domestic Insurers, and an acknowledgment that the Domestic Insurers and any affiliates that are within the Applicant's control will provide, at the Director's request, any information the Director needs to evaluate enterprise risk to the Domestic Insurers.
- (9) The effective date of this transaction will be December 31, 2018, pursuant to ORS 732.528(6).

SO ORDERED this 2nd day of January, 2019.



Andrew Stolfi
Administrator, Division of Financial Regulation
Department of Consumer and Business Services

NOTICE

Pursuant to ORS 732.528(6), any insurer or other Party to the proposed activity, including the Domestic Insurer, within 60 days after receipt of a notice of approval or disapproval, may appeal the final order of the Director as provided in ORS 183.310 to 183.550. For purposes of the judicial review, the specifications required to be set forth in the written notice from the Director will be deemed the findings of fact and conclusions of law of the Division of Financial Regulation.