

PRESENTED AT
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AFFILIATIONS, SALES, AND CONVERSIONS AMONG NON-PROFIT AND FOR-PROFIT HEALTHCARE ORGANIZATIONS

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Introduction

This past year marked a year of seismic shift in the health care industry with cross sector transactions (e.g., CVS/Aetna and Cigna/Express Scripts). This activity also continued with health systems, hospitals and other providers. This horizontal consolidation of hospitals and health systems is largely due to the desire to obtain efficiencies and economies of scale and the desire to innovate and increase quality of care.

A few of the transactions completed in the last year include:

- In February 2019, Dignity Health and Catholic Health Initiatives (CHI) combined to create CommonSpirit Health, a \$29 billion non-profit health system with 142 hospitals and 700 sites of care
- In February 2019, HCA acquired non-profit Mission Health for \$1.5 billion
- In April 2018, Advocate Health Care and Aurora Healthcare merged, creating the 10th largest non-profit health system in the U.S. with 27 hospitals
- For-profit health systems LifePoint Healthcare Partners merged with RCCH Healthcare Partners (backed by Apollo Global Management LLC) including 84 hospitals in 30 states

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Non-Profit Board Fiduciary Duty Issues

- Duty of care and loyalty
- Decision-making process
- Consider alternatives
- Community benefit issue
- Reliance on third party and outside advisors opinions
- Fair Market Value Issue
 - RFP/Auction Process
 - Outside third party valuation
- Fairness Opinion – necessary?
- Board documentation (See Attachment A)

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Non-Profit/Non-Profit Transactions

- Board fiduciary duty
- Community benefit issue
- Documentation requirement (See Attachment A)
- Relevance (if any) of “FMV”
- Texas Attorney General interest (if any)
- Other States
 - California Attorney General’s Conditions to Change of Control Relating to Dignity Health/Catholic Health Initiatives (November 21, 2018) (including requirements relating to homeless health initiative, financial assistance policy, ER care, trauma services, multiple notice requirements, women’s health care service, charity care, and community benefit services)

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Texas Attorney General – Overview/Process

- Jurisdiction and Relevance
- Statutory Approval – Failed Texas Legislation
- Texas AG Concerns and Potential AG Remedies
- Initial Decision: Approach to Take/Options
 - Option 1: Ignore
 - Option 2: Inform and cooperate
 - Option 3: Request “letter of no objection”
- Initial Discussions
 - Texas Public Information Act Issue
- AG “Request to Examine”
- Confirming FMV and addressing concerns
- Closing letter (if any)

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Texas Attorney General – Request to Examine

- Directed to non-profit
- Multiple categories of requested documents
- Typical documents requested:
 - Governing documents
 - Financial statements and information
 - Operating statistics
 - Any appraisal/valuation
 - Charity care numbers
 - Transaction documents
 - Board documents
 - Post-closing commitments
 - Donor gift information
 - Information relating to surviving entity (if any)

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