

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

BOERUM HILL ASSOCIATION, BROOKLYN
HEIGHTS ASSOCIATION, CARROLL
GARDENS NEIGHBORHOOD ASSOCIATION,
COBBLE HILL ASSOCIATION, RIVERSIDE
TENANTS' ASSOCIATION, WYCKOFF
GARDENS ASSOCIATION, INC., AND KATE
MACKENZIE,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules,

-against-

STATE UNIVERSITY OF NEW YORK,
TRUSTEES OF STATE UNIVERSITY OF NEW
YORK, NEW YORK STATE DEPARTMENT
OF HEALTH, AND NIRAV R. SHAH, as
Commissioner of the New York State Department
of Health,

Respondents.

NEW YORK STATE NURSES ASSOCIATION,
1199SEIU UNITED HEALTHCARE WORKERS
EAST, CONCERNED PHYSICIANS OF LICH,
LLC, and CARL BIERS,

Petitioners,

NEW YORK STATE DEPARTMENT OF
HEALTH, NIRAV SHAH, MD, in his capacity as
Commissioner of the Department of Health,
STATE UNIVERSITY OF NEW YORK,
TRUSTEES OF STATE UNIVERSITY OF NEW
YORK, STATE UNIVERSITY OF NEW YORK
DOWNSTATE MEDICAL CENTER, STATE
UNIVERSITY OF NEW YORK DOWNSTATE

*Ento
Fordwith
Baynes*

Index No. 13007/13

Justice Baynes

**STIPULATION AND PROPOSED
ORDER**

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APPELLATE DIVISION
SECOND DEPARTMENT

Index No. 5814/13

Justice Baynes

**STIPULATION AND PROPOSED
ORDER**

FILED
FEB 25 2014

KINGS COUNTY CLERK'S OFFICE

MEDICAL CENTER COUNCIL AND JOHN F. WILLIAMS, MD, in his capacity as President of State University of New York Downstate Medical Center,

Defendants-Respondents.

In the Matter of the Application of

THE LONG ISLAND COLLEGE HOSPITAL
For an Order Approving the Sale of the Assets of
The Long Island College Hospital Pursuant to
Sections 510 and 511 of the Not-for Profit
Corporation Law.

LETITIA JAMES, in her capacity as the Public
Advocate For The City Of New York, BOERUM
HILL ASSOCIATION, BROOKLYN HEIGHTS
ASSOCIATION, CARROLL GARDENS
NEIGHBORHOOD ASSOCIATION, COBBLE
HILL ASSOCIATION, RIVERSIDE TENANTS'
ASSOCIATION, and WYCKOFF GARDENS
ASSOCIATION, INC,

Intervenors

Index No. 9188/2011

Justice Demarest

**STIPULATION AND PROPOSED
ORDER**

WHEREAS, the parties to these actions (the "Parties") have had the opportunity to litigate their claims; and

WHEREAS, these cases have attracted significant attention from local, state and federal officials, community groups, individuals, unions, and the media and social media, providing ample opportunity for parties and non-parties to litigate any factual and legal issues relating to the State University of New York's ("SUNY") intended closure of, or reduction of services or staff at, or exit from SUNY Downstate Medical Center at LICH

("LICH"), such that the Parties agree the doctrine of laches would apply to any subsequently filed actions related to the subject matter of this stipulation;

WHEREAS, the Parties wish to resolve all litigation in accordance with release provisions contained herein and the other terms of this settlement agreement (the "Stipulation and Order"); and,

WHEREAS, the Parties all agree to perform the obligations contained herein in good faith and to take no action inconsistent with this Stipulation and Order.

NOW, THEREFORE, THE PARTIES, BY THE SIGNATORIES BELOW, JOINTLY STIPULATE AND AGREE AS FOLLOWS:

1. SUNY shall issue a new Request for Proposals (the "New RFP"), which is attached hereto (with blanks for the RFP Number and certain dates to be inserted by SUNY prior to release), to all interested and eligible members of the public within three business days after the Effective Date, as defined herein, of this Stipulation and Order.¹
2. The content of the New RFP shall include:
 - a. Medical-services plan:
 - i. Stated elements of the New RFP response: Offers are strongly encouraged to include a facility with services/departments sufficient to support a full-service emergency room, an intensive care unit, and in-patient beds. Any Offer lacking these services will be subject to receiving a lower technical score.

- ii. Desired elements of medical-services plan: full-service hospital with at least 100 in-patient beds. Any Offer including these medical services will be eligible for a higher technical score.
- iii. Offers that include a teaching hospital or an affiliation with a teaching hospital will be eligible for a higher technical score.
- iv. Offers providing a realistic method to continue health care operations after SUNY exits from health care operations as contemplated by paragraph 6 of this Stipulation and Order, and thereby avoid any gap in the provision of health care services at the LICH campus at no additional cost to SUNY, are preferred. While Offers with more comprehensive health care services are preferred, Offers that provide for maintenance of some health care operations during the interim period prior to a closing of a transaction resulting from an Offer will be eligible for a higher technical score. The Dormitory Authority of the State of New York may determine that such Offer would require defeasance of Personal Income Tax bonds (estimated defeasance amount of \$118,000,000). If so, such Offer must provide for the defeasance of said bonds by a person or entity other than SUNY. .

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¹ The term "Offeror" used herein refers to any party responding to the New RFP, and such party's submission is referred to herein as an "Offer."

- v. Specific elements of offered medical-services plan: To be considered, any Offer must specify the medical services anticipated in the medical-services plan, including (a) for proposed in-patient services, the expected number of beds, if any; (b) the medical specialties (e.g., obstetrics, oncology) to be included in the medical-services plan; and (c) how the medical-services plan will meet the needs of the community.
- b. Distribution of Proceeds/Inclusion of Assets:
 - i. No award shall be made to any Offeror whose proposal provides for less than \$210,000,000 in non-contingent sales proceeds (the “Minimum Purchase Price”); such Minimum Purchase Price to be paid at closing. Any requirement in an Offer that requires SUNY or its affiliates to: make any payments as part of the proposed transaction; issue or provide any credits to the Offeror as part of the proposed transaction (except for a credit based on a liability assumed by the Offeror for the benefit of SUNY); or deduct any amount from the amount otherwise payable by the Offeror in connection with the proposed transaction shall have the amount of such payments, credits or deductions subtracted from the non-contingent sales proceeds otherwise to be paid by or on behalf of the Offeror to SUNY or its affiliates for purposes of determining whether the Minimum Purchase Price has been met. After closing of a transaction as a result of which more than \$240,000,000 in net

non-contingent sales proceeds is paid to or on behalf of SUNY, SUNY and a not-for-profit entity (the “Entity”) whose purpose is to support the provision of health care in Brooklyn, selected by the Public Advocate in consultation with the Petitioner Community Groups² and Concerned Physicians of LICH LLC (“Concerned Physicians”), shall split proceeds in excess of \$240,000,000, when and if paid. Such split shall be 75% to SUNY and 25% to the Entity, provided, however, that (a) no use by the Entity shall violate the Federal anti-kickback or Stark laws and (b) no money shall be paid to or on behalf of any Petitioner.

- ii. The LICH core property, non-core property, plant and equipment, identified in the Attachment to the New RFP, in their then-current state (but excluding any equipment that is not currently at LICH) will be available for sale in the New RFP (the “Property”). To the extent any Offeror excludes any of the real property included in the New RFP from its Offer, the fair market value of such excluded Property will be deemed to be added to the non-contingent sales proposed price in that proposal for purposes of the determination made in clause (i) above with respect to the Minimum Purchase Price. For these purposes, to the extent the excluded real property constituting part of the Property is covered by the appraisals

² Boerum Hill Association, Brooklyn Heights Association, Carroll Gardens Neighborhood Association,
(Cont'd on next page)

referenced in the New RFP, the average of such appraisals shall be used to determine fair market value. SUNY will provide to the Petitioners the written reports to the Office of the Attorney General described in that certain letter dated October 26, 2010, from Clifford D. Stromberg, Esq., Counsel to SUNY Downstate, to Paula Gellman, Esq., Assistant Attorney General, and her response thereto (the "Report"), for calendar years 2013 and 2014, up to the date of the cessation of operations by SUNY. Within 90 days of the transfer of ownership, SUNY will deliver the 2013 Report to the Petitioners. The 2014 Report shall be delivered on the first anniversary of delivery of the 2013 Report.

- c. Submission of Proposal: The date for submission of Offers shall be fifteen (15) business days after the latter of the date an advertisement appears in the New York State Contract Reporter and the date the New RFP is published on SUNY's Website. An advertisement will subsequently appear, no later than three (3) business days after the New RFP's issuance, or as soon as reasonably practicable, in one other periodical selected by petitioners (at a cost to SUNY of no more than \$2500).
- d. Method of Evaluation: Offers will be evaluated based only upon the criteria set forth in the New RFP. SUNY will not exercise any rights that are reserved to it

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Cobble Hill Association, Riverside Tenants' Association and Wyckoff Gardens Association, Inc.

in the New RFP in any way that is contrary to the terms of this Stipulation and Order.

- i. The qualified Offeror whose proposal meets all mandatory requirements in the New RFP and that receives the highest final composite score (technical plus financial) (the “Initial Successful Offeror”) will be awarded the initial opportunity to enter into the transaction with SUNY. If SUNY and the Initial Successful Offeror are unable to enter into an agreement in accordance with the terms in the New RFP within thirty (30) days of such award (provided that SUNY must notify the Initial Successful Offeror of such thirty (30) day time limit before commencing negotiations with such Initial Successful Offeror), then SUNY may, in its sole discretion, terminate such negotiation, and the qualified Offeror whose proposal meets all mandatory requirements in the New RFP and that receives the next highest final composite score (technical plus financial) will be awarded the next opportunity to enter into the transaction with SUNY with the same time constraints as applied to the Initial Successful Offeror. This process will continue until either an agreement is reached with a qualified Offeror whose proposal meets all mandatory requirements in the New RFP or until SUNY determines, in its sole discretion, that it is not reasonable or not consistent with the objectives of the New RFP to award to any other Offeror the opportunity to enter into a transaction with SUNY.

If no proposal is received that meets all mandatory requirements in the New RFP, including the Minimum Purchase Price, or if, after complying with the foregoing process, no agreement is entered into with any such qualified Offeror whose proposal meets all mandatory requirements in the New RFP, then SUNY shall be entitled to dispose of the Property without further compliance with this Stipulation and Order. If SUNY shall enter into an agreement with any Offeror and the Offeror is unable for any reason to close the transaction in accordance with the terms of the New RFP and the agreement within six (6) months, SUNY may terminate the agreement and shall be entitled to dispose of the Property without further compliance with this Stipulation and Order.

The RFP will require that the submission of an Offer constitutes an irrevocable, binding offer to provide health care services and purchase the Property, which binding offer shall be firm and irrevocable for a period of sixty (60) days from proposal opening. The RFP will also provide that Offerors should include with their proposals evidence of financing and equity, in the form of executed financial commitments and statements of the availability of dedicated funds, certified by the appropriate officer of Offeror, in an aggregate amount that is sufficient to satisfy the non-contingent purchase price. Subsequent to such sixty (60) days, any Offer will

be subject to withdrawal upon prior written notice to SUNY from the Offeror.

- ii. Petitioners shall be entitled to designate members of the Technical Evaluation Committee such that their combined, weighted score shall equal 49% of the total score of such Committee, irrespective of the number of serving members, not later than February 28, 2014.
- iii. Petitioners' designated members of the Technical Evaluation Committee shall comply with the CODE OF ETHICAL CONDUCT, Business or Professionals Activities by State University of New York Officers, dated May, 2007 (and as may be amended). Petitioners agree that half of their designated members shall be, by operation of law, subject to New York State's Public Officers Law. For the remaining designees who are not subject to the Public Officers Law, such designated members shall sign a certification obligating them to perform their duties on the Evaluation Committee consistent with the requirements of and subject to the provisions of the Public Officers Law.
- iv. All members of the Evaluation Committee must agree to be bound by the obligations required by state policy and procedures for such participation on the Technical Committee.
- e. Determining the Final Score: The technical score for any Offer shall have a maximum of 70 points, and the financial score for any Offer shall have a maximum of 30 points. The final composite score shall be the total of the

technical score plus the financial score. Evaluation of the Offers shall be concluded within seven (7) days of the date for submission of the Offers.

- f. Deed Restrictions: For any land identified in the contract for sale for the provision of the medical-services plan of the successful Offeror, deed restrictions will be placed on those lots restricting the use of the property for health services for 20 years.
- g. Confidentiality: Other than information specifically designated as confidential by an Offeror, all Offers will be made public within five (5) business days of submission, provided that, if any Offer is submitted before the deadline, all Offers will be released together.
- h. Prequalification Criteria: All prospective Offerors must agree to meet with designated Petitioners' representatives who are in attendance on Monday, March 3, 2014, at 5 pm at a SUNY facility in Brooklyn or Manhattan (which shall be specified in the New RFP), for Petitioners to make a presentation concerning the community's medical needs. Any Petitioner unavailable during such presentation herein waives its rights under this paragraph. Such meeting shall be recorded electronically, and promptly posted on SUNY's Website. In no event may any member of any Evaluation Committee be part of these discussions or be provided by Petitioners with any information ascertained from the same. If SUNY chooses to provide any information from this meeting to any member of the Evaluation Committee, it must provide the same information to all Committee members.

3. SUNY agrees to pay retired Judge Thompson the sum of \$61,200, to pay Ombudsman Berall the sum of \$3,200, and to pay to Ombudsman Manheimer the sum of \$5,000. SUNY agrees to pay \$300,000 to be divided as determined by 1199SEIU United Healthcare Workers East (“1199”), the New York State Nurses Association (“NYSNA”), and Concerned Physicians (all of whom agree that \$6,500 shall be applied to pay out of pocket expenses incurred by Gibson, Dunn & Crutcher), subject to any required approval by the Office of the Attorney General of the State of New York. Gibson, Dunn & Crutcher waives any claims to legal fees. This will resolve all attorneys-fee claims in the litigation, including the Open Meetings Law litigation (*New York State Nurses Association et al. v. State University of New York et al.*, Kings County Supreme Court, Index No. 3057/13).

4. Releases:

(a) Letitia James in her capacity as the Public Advocate of the City of New York, Boerum Hill Association, Brooklyn Heights Association, Carroll Gardens Neighborhood Association, Cobble Hill Association, Riverside Tenants’ Association, Wyckoff Gardens Association, Inc., Kate MacKenzie, NYSNA, 1199, Carl Biers, and Concerned Physicians, on behalf of themselves and each of their respective heirs, agents, executors, administrators, officers, directors, trustees, members (owners) of any limited liability company, transferees, assigns, and successors (collectively the “Releasers”), do hereby absolutely and irrevocably release, acquit, and forever discharge State University of New York (including but not limited to its facilities and operations known as State University of New York

Downstate Medical Center, or as State University of New York Health Science Center at Brooklyn, including its hospital facilities University Hospital of Brooklyn and SUNY Downstate Medical Center at LICH, sometimes known as Long Island College Hospital or LICH), Trustees of State University of New York (individually and as a public body), Downstate at LICH Holding Co. Inc., StaffCo, LLC, State University of New York Downstate Medical Center Council, John F. Williams, MD, individually and as President of State University of New York Downstate Medical Center (together, for purposes of this paragraph 4, "SUNY"), New York State Department of Health, and Nirav R. Shah, MD, individually and as Commissioner of the New York State Department of Health (together the "Department"), and each of SUNY's and the Department's respective administrators, officers, directors, trustees, employees, members, affiliates, attorneys, transferees, assigns, and successors (collectively the "Releasees"), of and from any and all claims, actions, causes of action (under any theory of law, whether actionable in federal or state court), controversies, suits, debts, demands, rights, accounts, interests, guarantees, covenants, contracts, promises, trespasses, damages, injuries, judgments, losses, expenses, costs, attorneys' fees (except as otherwise provided in Paragraph 3 of this Stipulation and Order) compensation, liabilities, and obligations of any kind or nature whatsoever, both in law and equity, in any judicial proceeding, administrative proceeding, or arbitration, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, material or immaterial, absolute or contingent, direct or indirect or nominally or beneficially possessed or claimed by any of the Releasers, which the Releasers or any of them

now have, ever had, or shall later have against the Releasees or any of them, arising from, upon, by reason of, or relating to any matter, cause, or thing whatsoever from the beginning of the world up to and including the Effective Date of this Stipulation and Order that relates to or arises out of the purchase, sale, assumption, operation, or closure of LICH or any of its assets by SUNY or any of its affiliates (collectively, the “Claims”), including, but not limited to, claims for, under, by reason of, challenging, or relating to, with regard to LICH: (i) 10 N.Y.C.R.R. § 401.3 or any of its subparts; (ii) the United States Constitution; (iii) the New York State Constitution; (iv) New York Public Health Law; (v) New York Education Law; (vi) New York Public Officers Law; (vii) New York Judiciary Law; (viii) New York Penal Law; (ix) Article 78 of the New York Civil Practice Law and Rules; (x) contempt of any order of any court or tribunal; (xi) SUNY’s and/or Releasees’ prior, actual, or planned operation of, exit from, reduction of services or staff at, or closure of LICH pursuant to this Stipulation and Order or otherwise; (xii) the Department’s role in connection with SUNY’s and/or Releasees’ prior, actual, or planned operation of, exit from, reduction of services or staff at, or closure of LICH pursuant to this Stipulation and Order or otherwise; (xiii) Chapter 56, Part Q of the Laws of 2013-14 (“Part Q”) or any sustainability plan submitted by SUNY and/or Releasees or approved by the Department pursuant to Part Q; (xiv) SUNY’s and/or Releasees’ operation of LICH including, without limitation, with regard to its use and disbursement of funds and its conduct pursuant to SUNY’s and/or Releasees’ purchase of LICH; and (xv) any and all matters concerning the Othmer fund or funds.

(b) The SUNY Releasors³ and the Department Releasors⁴ release the Releasors of and from any and all claims, actions, causes of action (under any theory of law, whether actionable in federal or state court), controversies, suits, debts, demands, rights, accounts, interests, guarantees, covenants, contracts, promises, trespasses, damages, injuries, judgments, losses, expenses, costs, attorneys' fees, compensation, liabilities, and obligations of any kind or nature whatsoever, both in law and equity, in any judicial proceeding, administrative proceeding, or arbitration, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, material or immaterial, absolute or contingent, direct or indirect or nominally or beneficially possessed or claimed by any of the SUNY Releasors or the Department Releasors, which the SUNY Releasors or the Department Releasors or any of them now have, ever had, or shall later have against the Releasors or any of them, arising from, upon, by reason of, or relating to any matter, cause, or thing whatsoever from the beginning of the world up to and including the Effective Date of this Stipulation and Order that relates to or arises out of the Releasors' conduct in connection with any pending litigation related to the Claims, except that this release does not include any act the SUNY Releasors or the Department Releasors are required to take pursuant to any law, statute, rule or

³ The SUNY Releasors refer to State University of New York (including but not limited to its facilities and operations known as State University of New York Downstate Medical Center, or as State University of New York Health Science Center at Brooklyn, including its hospital facilities University Hospital of Brooklyn and SUNY Downstate Medical Center at LICH, sometimes known as Long Island College Hospital or LICH), Trustees of State University of New York (as a public body), Downstate at LICH Holding Co. Inc., StaffCo, LLC, State University of New York Downstate Medical Center Council, John F. Williams, MD, as President of State University of New York Downstate Medical Center.

administrative order.

- (c) The Releasors and the SUNY Releasors and the Department Releasors represent and warrant that none of them has assigned, transferred or conveyed any Claims to any other individuals, corporations, businesses, associations, entities, or any third parties.
- (d) The Releasors shall not (i) take any legal action adverse to consummation of a transaction resulting in accordance with this Stipulation and Order; (ii) commence or prosecute any future legal proceeding, or related legal proceeding, to interfere with consummation of such transaction, including but not limited to Department approval of a closure plan in relation to LICH; or (iii) support, encourage, advise, or participate in any way with any third party in any legal proceeding adverse to the consummation or approval of such transaction by SUNY or the Department, including the Public Health and Health Planning Council, and the Community Releasors, as defined below, shall not participate any further as Intervenors in the *In re: Long Island College Hospital* action pending before Justice Carolyn Demarest.
- (e) The Releasors shall immediately withdraw their motions for contempt with prejudice, and agree to discontinue with prejudice all pending litigation, cross-appeals, labor grievances, and any other actions, motions or proceedings of any nature related to the above-captioned actions, subject to Paragraph (f) below.

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⁴ The Department Releasors are the New York State Department of Health and Nirav R. Shah, MD, as Commissioner of the New York State Department of Health.

SUNY, Old LICH, and the Department agree to withdraw their pending appeals.

AND
WRIT OF
Prohibition

(f) Notwithstanding anything provided herein, nothing in this Stipulation and Order shall: (i) constitute or be construed as a waiver or release of claims to enforce the terms of this Stipulation and Order, (ii) constitute or be construed as a waiver or release of claims by 1199 and NYSNA for accrued compensation, benefits, notice or furlough pay, tuition, other reimbursements or other similar economic claims under their respective collective bargaining agreements, or (iii) preclude any Petitioner from asserting claims in relation to any hospital or health care facility other than LICH as operated by SUNY, or in relation to any action or inaction by the Department other than with respect to LICH as operated by SUNY.

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(g) Except as provided herein, nothing in this Stipulation and Order shall be interpreted to interfere, impede, limit or restrict in any way the Office of the Public Advocate and the Public Advocate's performance of duties and responsibilities under the New York City Charter and their obligations under law.

(h) Letitia James in her capacity as the Public Advocate of the City of New York, Boerum Hill Association, Brooklyn Heights Association, Carroll Gardens Neighborhood Association, Cobble Hill Association, Riverside Tenants' Association, Wyckoff Gardens Association, Inc. on behalf of themselves and each of their respective heirs, agents, executors, administrators, officers, directors, trustees, members (owners) of any limited liability company, transferees, assigns, and successors (collectively the "Community Releasers"), do hereby absolutely and irrevocably release, acquit, and forever discharge the Not for Profit Corporation known as Long Island College Hospital ("Old LICH") and each of its

respective administrators, officers, directors, trustees, parents, employees, members, affiliates, attorneys, transferees, assigns, and successors (collectively the “Old LICH Releasees”), of and from any and all claims, actions, causes of action (under any theory of law, whether actionable in federal or state court), controversies, suits, debts, demands, rights, accounts, interests, guarantees, covenants, contracts, promises, trespasses, damages, injuries, judgments, losses, expenses, costs, attorneys’ fees, compensation, liabilities, and obligations of any kind or nature whatsoever, both in law and equity, in any judicial proceeding, administrative proceeding, or arbitration, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, material or immaterial, absolute or contingent, direct or indirect or nominally or beneficially possessed or claimed by any of the Community Releasers, which the Community Releasers or any of them now have, ever had, or shall later have against the Old LICH Releasees or any of them, arising from, upon, by reason of, or relating to any matter, cause, or thing whatsoever from the beginning of the world up to and including the Effective Date of this Stipulation and Order that relates to or arises out of the purchase, sale, assumption, operation, or closure of LICH or any of its assets by SUNY or any of its affiliates (collectively, the “Claims”), including, but not limited to, claims for, under, by reason of, challenging, or relating to, with regard to LICH, the prior transfer of the assets of Old LICH to SUNY; SUNY’s and/or the Old LICH Releasees’ operation of LICH including, without limitation, with regard to its use and disbursement of funds and its conduct pursuant to SUNY’s purchase of LICH from Old LICH; and any and all matters concerning the Othmer fund or funds.

5. Procedural Steps:

- a. So that the Parties may effectuate the terms of this Stipulation and Order, the following Orders and Decisions of the Supreme Court of the State of New York, Kings County, shall be and hereby are vacated, upon approval by the Court of this Stipulation and Order pursuant to paragraph (b) of this Section:
(i) in *New York State Nurses Association et al. v. New York State Dep't of Health et al.*, No. 5814-2013 (a) the Decision, dated September 12, 2013, and (b) the Orders dated April 1, 2013, June 19, 2013, August 16, 2013 and October 11, 2013; (ii) in *de Blasio et al. v. State University of New York et al.*, No. 13007-2013 (a) the Decision, dated September 12, 2013, and (b) the Orders dated July 19, 2013 (as modified), July 22, 2013 (as modified), August 16, 2013 and October 11, 2013; and (iii) in *In the Matter of the Application of Long Island College Hospital*, No. 9188-2011, the Orders dated August 20, 23, and 28, September 4, and October 1, 2013, and the Order granting Intervenor status to the Intervenor Releasors dated Septemeber 25, 2013.
- b. The Effective Date of this Stipulation and Order shall be the date of the last approval of the Stipulation and Order by Justice Baynes and Justice Demarest. This Stipulation and Order shall not be effective unless and until approved, in its entirety, by Justice Baynes and Justice Demarest and, in the event no such approval is obtained by February 28, 2014, this Stipulation and Order shall be null and void and the parties shall be restored to the same position as they currently are in all pending litigation.

- c. The parties shall take such other steps and execute such further documents as may be necessary promptly and with a minimum of delay and expense to effectuate the foregoing.
- 6. Maintenance of services: Notwithstanding any other provision of this Stipulation and Order or any law, rules, regulation, ruling, order, certification or other document, SUNY may close LICH on or after May 7, 2014, unless a reduction in force is implemented as part of the hospital closure, in which case SUNY may close LICH only on or after May 22, 2014. SUNY shall maintain the current level of medical services at LICH between the execution date hereof and such closure date as provided for above, absent an act of force majeure. In no event shall any reduction in force be effectuated before 45 days of the notice of layoff. SUNY agrees to cooperate with the Successful Offeror in obtaining any licensing and/or permits.
- 7. The Parties agree that the Supreme Court, Kings County, Justice Johnny Lee Baynes, shall maintain jurisdiction to enforce the terms of this Stipulation and Order. This Stipulation and Order shall be governed by New York law.
- 7a. 8. This Stipulation and Order (including exhibits) constitutes the complete understanding and agreement among the parties in Index No. 13007/13 and Index No. 5814/14 with respect to the subject matter hereof, and supersedes any and all prior understandings or agreements among those parties.
- 9. The Parties acknowledge that they are not relying on any promises or representations not contained in this Stipulation and Order.

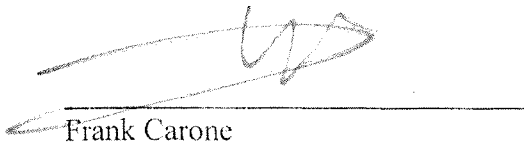
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 Nothing in this Stipulation & Order modifies the Order of Justice Carolyn Denarest dated 5/13/11 under Index No 9188/2011 OR ALTERS the RETENTION OF JURISDICTION THEREUNDER.

10. This Stipulation and Order does not, and is not intended to, create any rights in any third party.

Respectfully submitted,

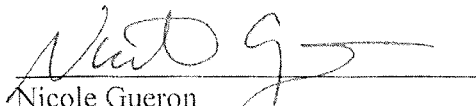
Dated: February 21, 2014



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FENSTERMAN, EISMAN, FORMATO,
FERRARA & EINIGER, LLP
1111 Marcus Avenue, Suite 107
Lake Success, NY 11042
Tel: (516) 328 2300

Attorneys for SUNY


Dated: February 21, 2014



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Attorneys for DOH and Commissioner Shah

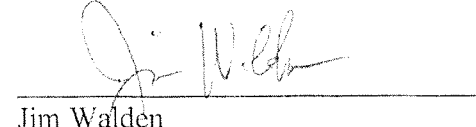
Dated: February 21, 2014



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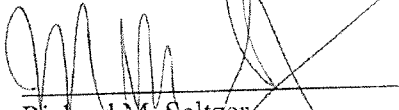
Dated: February 21, 2014



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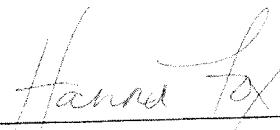
*Attorneys for Boerum Hill Association,
Brooklyn Heights Association, Cobble Hill
Association, Riverside Tenants'
Association, and Wyckoff Gardens
Association, Inc., the Public Advocate for
the City of New York and Kate MacKenzie*

Dated: February 21, 2014


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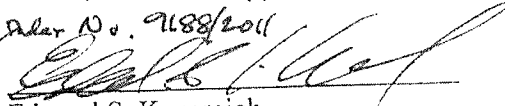
Dated: February 21, 2014


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Attorneys for Concerned Physicians


Dated: February 24, 2014

*As to provisions applicable to
Order No. 9188/2011*


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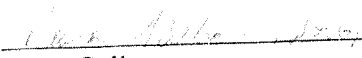
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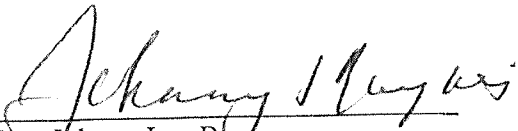
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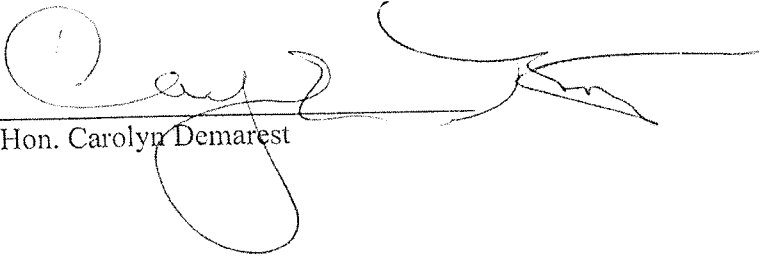
*As Secretary party pursuant to
N.P.C. 88 Sec. 511 as to provisions
applicable to Order No. 9188/2011*

IT IS SO ORDERED.

Dated: 2/24/2014



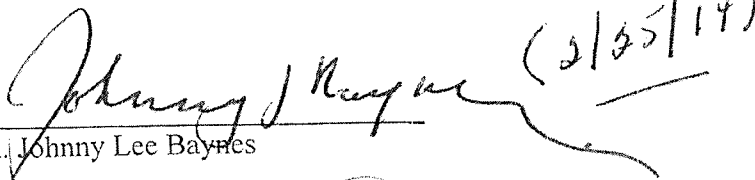
Hon. Johnny Lee Baynes



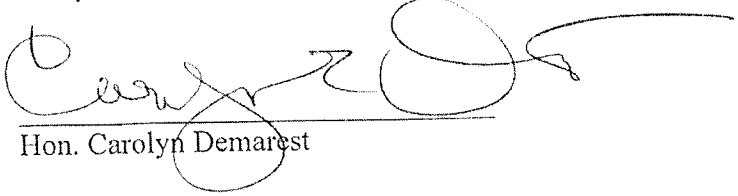
Hon. Carolyn Demarest

IT IS SO ORDERED.

Dated: 2/24/2014

 (2/25/14)

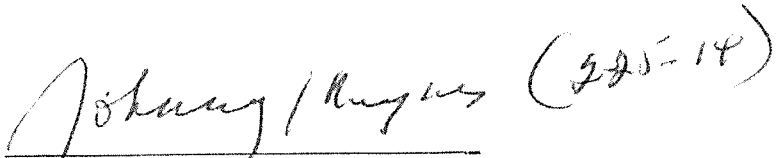
Hon. Johnny Lee Baynes




Hon. Carolyn Demarest

IT IS SO ORDERED.

Dated: 2/24/2014



Hon. Johnny Lee Baynes



Hon. Carolyn Demarest