

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X

In The Matter of the Application of :

INTERFAITH MEDICAL CENTER, :

KINGSBROOK JEWISH MEDICAL CENTER :

and :

THE BROOKDALE HOSPITAL MEDICAL CENTER :

Petitioners, :

For an Order Under Section 907 of the Not-for-Profit Corporation Law Approving the Plan of Merger of Interfaith Medical Center and Kingsbrook Jewish Medical Center with and into The Brookdale Hospital Medical Center Authorizing the Filing of the Certificate of Merger Under Section 904 of said Law. :

-----X

**EMERGENCY ATTORNEY  
AFFIRMATION IN SUPPORT  
OF ORDER TO SHOW CAUSE**

Index No.

**MARC A. SITTENREICH**, an attorney admitted to practice law before the courts of the State of New York, hereby affirms the following under the penalty of perjury and pursuant to CPLR § 2106:

1. I am associated with the law firm of Garfunkel Wild, P.C., attorneys for Petitioners Interfaith Medical Center (“Interfaith”), Kingsbrook Jewish Medical Center (“Kingsbrook”), and The Brookdale Hospital Medical Center (“Brookdale”) in this proceeding. As such, I am familiar with the matters set forth in this Emergency Attorney Affirmation.

2. The limited purpose of this Emergency Attorney Affirmation is to explain to the Court why the contemplated merger of Interfaith and Kingsbrook with and into Brookdale,

pursuant to Not-for-Profit Corporation Law (“NFPCL”) § 907, must be completed as of January 1, 2021.

3. As set forth in detail below, the effective date of January 1, 2021 is critical for two reasons: First, it is necessary to preserve vital resources for the communities that Interfaith, Kingsbrook, and Brookdale serve, whose residents are experiencing significant levels of health care disparities and health care needs compared to other communities within Kings County. If the merger is not effective as of January 1, 2021, it would impose considerable administrative and financial burdens on these already financially struggling facilities, resulting in greater need for State subsidies. Second, a delay in the contemplated merger would reduce the anticipated revenues from reimbursements, which would in turn impact patient care and safety in the lower income communities that Petitioners serve, which is particularly problematic in light of the COVID-19 pandemic.

4. I respectfully refer the Court to the accompanying Joint Verified Petition, and the Exhibits annexed thereto, for the substantive basis for the relief sought. Importantly, the Attorney General, the only interested party in this transaction, fully consents to the merger.

5. In light of the exigent circumstances, Petitioners respectfully request that the Court expedite the Order to Show Cause so that the merger is formally approved on the earliest date possible, to be effective as of January 1, 2021.

**The Merger Must Be Effective on January 1, 2021  
in Order to Preserve Vital Public Resources**

6. As set forth in further detail in the Joint Verified Petition, Interfaith, Kingsbrook, and Brookdale are subsidiaries of One Brooklyn Health System, Inc. (“OBHS”), which they

collectively formed in order to apply for a substantial monetary grant under the Kings County Health Care Facility Transformation Program (the “Transformation Program”), as established by N.Y. Public Health Law § 2825-a. The purpose of the Transformation Program is to “provide capital funding in support of projects that replace inefficient and outdated facilities as part of a merger, consolidation, acquisition or other significant corporate restructuring activity intended to create a financially sustainable system of care.” N.Y. Pub. Health Law § 2825-a(1). The grant was awarded to OBHS, and restructuring of services and consolidation has begun, with OBHS working closely with the New York State Department of Health (the “DOH”) and other regulatory agencies to achieve the goals of the Transformation Program.

7. The DOH has determined that Petitioners’ further integration, pursuant to a merger, into a single entity established under Article 28 of the New York Public Health Law is needed for ongoing eligibility for the grant. Thus, if Petitioners are unable to complete the contemplated merger quickly, they may lose access to the grant funds that were previously awarded to them.

8. Notably, the DOH provides considerable subsidies to Petitioners in order to sustain their operations in the lower income communities where they provide necessary care. The DOH has determined that further integration will reduce this burden on the State by allowing Petitioners to attain greater operating efficiencies and financial independence.

9. In particular, the DOH anticipates (as do Petitioners) that following the merger, Interfaith, Kingsbrook, and Brookdale will benefit from more favorable reimbursement rates for their services from Medicaid and other payors. As many of these rates reset on January 1, 2021,

it would cause a significant administrative burden and financial loss if Petitioners were not able to complete the merger as of that date.

10. For example, due to the requirements for annual cost reporting for Medicare and Medicaid purposes, delay would result in lower reimbursement for Kingsbrook's outpatient services, which represents a significant portion of its revenues. Delay would also result in a reduction in reimbursement for Kingsbrook due to the restructuring of its services and closure and transfer of many of its medical-surgical beds to Brookdale in anticipation of the merger. If Kingsbrook's bed complement (*i.e.* the number of hospital beds it has available) is calculated independently for cost report purposes as of January 1, 2021, its reimbursement could be negatively impacted by approximately \$25,000,000.

11. Similarly, Interfaith is restructuring its services in anticipation of the merger, which will result in a reduction of its medical-surgical census (*i.e.* the number of medical and surgical patients that it treats per day) in comparison to behavioral health census (*i.e.* the number of behavioral health patients that it treats per day). If Interfaith's medical-surgical census, in comparison to its total census, for cost report purposes is calculated independently as of January 1, 2021, on a stand-alone basis or absent a merger, it would reduce or possibly eliminate Medicaid reimbursement for mental health services, which are the bulk of Interfaith's remaining services.

12. This reduction in both Kingsbrook's and Interfaith's revenues would be avoided if the merger is effective as of January 1, 2021.

13. Given that Petitioners receive a significant portion of their operating costs through New York State grants and other subsidies, these increased costs would result in a greater need

for State funding, which would waste vital public resources and could jeopardize funding for the care of a vulnerable and underserved patient population.

**A Delay in the Merger Could Negatively Impact Patient Care and Safety**

14. In the event that Petitioners suffer a loss of revenue as a result of a delay in the contemplated merger, it could lead to a reduction in quality health care and patient safety in the Brooklyn communities that they serve.

15. For instance, Petitioners all rely heavily on residents and interns to provide clinical care, which is subsidized by the Centers for Medicare and Medicaid Services (“CMS”). Eligibility for graduate medical education (“GME”) reimbursement is calculated on a calendar year basis, and missing the target date of January 1, 2021 would result in reduced indirect medical education (“IME”) reimbursement of approximately \$8,000,000. This would, in turn, have a substantial impact on the Petitioners’ ability to provide quality care to their patients.

16. As the Court is likely aware, the current COVID-19 pandemic had imposed markedly increased demands on hospitals across the country. This is particularly true for Interfaith, Kingsbrook, and Brookdale, which all serve lower income communities that have been disproportionately impacted by the novel coronavirus.

17. These increased demands on Petitioners make it even more pressing that the contemplated merger be completed effective January 1, 2021.

18. Accordingly, Petitioners respectfully request that the return date for this application, and any hearing required under NFPC § 907-a(b), be scheduled for the earliest possible date, and that an Order approving the Plan of Merger be issued forthwith.

**The Attorney General Consents  
to the Petition and Proposed Order**

19. The Charities Bureau of the Attorney General's Office, by Assistant Attorney General Paula Gellman, has reviewed and formally approved the Joint Verified Petition and the accompanying proposed Order Approving Plan of Merger and Filing Certificate of Merger. The Attorney General's Office has advised that it does not intend to appear on the return date for the Order to Show Case.

20. In addition, the consent and approval of each person required to consent to the filing of the Certificate of Merger, *i.e.* the DOH, the Office of Addiction Services and Supports, and the Office of Mental Health, as well as the consent of the Dormitory Authority of the State of New York, as lender to Petitioners, has been obtained and is attached to the Petition.

21. Assistant Attorney Gellman, on behalf of the Attorney General of the State of New York, has agreed to accept a copy of the Order to Show Cause, together with the papers on which it was granted, by email.

22. Upon information and belief, there are no other persons that have an interest in the merger for whom notice would be required under NFPCL § 907-a(b).

**No Prior Relief Sought**

23. There has been no prior request for any of the relief sought herein.

**Conclusion**

24. For the reasons set forth herein and in the accompanying Joint Verified Petition, Petitioners respectfully request that this Court enter an Order (a) authorizing the merger of Interfaith and Kingsbrook with and into Brookdale pursuant to NFPCL § 907, to be effective as

of January 1, 2021; (b) authorizing the filing of the Certificate of Merger pursuant to NFPCL § 904; and (c) awarding Petitioners such other immediate relief as the Court deems just, equitable, or proper.

Dated: Great Neck, New York  
December 10, 2020

*/s/ Marc A. Sittenreich*  
\_\_\_\_\_  
MARC A. SITTENREICH