

EXECUTIVE ORDER NO. 32

WHEREAS, in 2012, the "New Jersey Medical and Health Sciences Education Restructuring Act", P.L.2012, c.45 ("Restructuring Act"), among other things, established University Hospital, which had previously been a component of the University of Medicine and Dentistry of New Jersey ("UMDNJ"); and

WHEREAS, pursuant to N.J.S.A. 18A:64G-6.1a, University Hospital is an instrumentality of the State, and is established as a body corporate and politic of the State and treated and accounted for as a separate legal entity; and

WHEREAS, N.J.S.A. 18A:64G-6.1a further provides that the exercise by University Hospital of its powers shall be deemed to be public and essential governmental functions necessary for the welfare and health of the State and the people of New Jersey; and

WHEREAS, University Hospital is one of three Level 1 Trauma Centers in New Jersey; and

WHEREAS, in 1968, in connection with the transfer of the hospital from Newark to UMDNJ, Newark and UMDNJ entered into "Agreements Reached Between Community and Government Negotiators Regarding New Jersey College of Medicine and Dentistry and Related Matters of April 30, 1968" ("1968 Agreement") to provide a comprehensive health program to the community in Newark, including ensuring access to all essential health care services provided by the hospital are upheld, as referenced in N.J.S.A. 18A:64G-6.1b; and

WHEREAS, pursuant to N.J.S.A. 18A:64G-6.1a (d), University Hospital receives appropriations from the State pursuant to the annual Appropriations Act, which are intended to be sufficient to maintain the level of community services provided on the effective date of the Restructuring Act, which was August 22, 2012, and to maintain University Hospital as an acute care facility and trauma center; and

WHEREAS, N.J.S.A. 18A:64G-6.1b(a) established a nine-member advisory board, to be designated as the University Hospital Community Oversight Board ("Oversight Board"), to ensure that the mission of the hospital and the intent of the 1968 Agreement are upheld; and

WHEREAS, N.J.S.A. 18A:64G-6.1 established an eleven-member Board of University Hospital ("UH Board") that, among other things, has the power and duty to exercise general oversight over the affairs of University Hospital, including the power to direct and control expenditures of Hospital funds, and hire, fire and fix salaries for all employees of University Hospital; and

WHEREAS, in December 2017, University Hospital expressed to the New Jersey Department of Health ("DOH") its intent to close its Emergency Pediatric Unit ("EPU") and Pediatric Intensive Care Unit ("PICU"); and

WHEREAS, pursuant to N.J.A.C. 8:33-1.1 et seq., a hospital must receive written approval from DOH before it may reduce or eliminate essential healthcare services; and

WHEREAS, representatives from DOH advised University Hospital that to close its EPU and PICU, the facility must apply for DOH's approval and provide justification as to why the units should cease operations; and

WHEREAS, on April 2, 2018, DOH received University Hospital's application for closure of the PICU; and

WHEREAS, while University Hospital's application was pending before DOH and without approval from DOH, University Hospital took steps to dramatically reduce the number of EPU beds on site and transfer those services to Newark Beth Israel Medical Center, an affiliate of RWJBarnabas Health, and to consolidate the PICU beds into the adult Intensive Care Unit; and

WHEREAS, as part of the Spring 2018 announcement of hospital safety reports by The Leapfrog Group, University Hospital was given a grade of "F," the only one in New Jersey, for failing to prevent infections, patient falls, surgical deficiencies, medical errors, and staff communication and responsiveness; and

WHEREAS, University Hospital entered into a Loan Agreement, dated December 1, 2015, with the New Jersey Health Care Facilities Financing Authority ("Authority") by which the Authority loaned the Hospital the proceeds of its Revenue and Refunding Bonds, University Hospital Issue, Series 2015A ("Bonds"), and the Hospital granted a security interest to the Authority in its gross receipts, including funds appropriated to the Hospital by the State Legislature subject to certain exceptions; and

WHEREAS, in connection with the issuance of the Bonds, a lockbox arrangement ("Lockbox") was instituted pursuant to which all State appropriations flow to the Trustee for the Bonds who deducts amounts required for debt service for the Bonds prior to releasing the remaining appropriated funds to University Hospital for its operations; and

WHEREAS, in July 2018, Fitch Ratings downgraded the Bonds to "BB-," a four-notch downgrade, citing the Hospital's pension liability, "weak leverage profile," and "thin operating performance" as the basis for this lowered rating; and

WHEREAS, at the June 26, 2018 meeting of the UH Board, the members voted to renew the employment contract of the Chief Executive Officer for a three-year term, and increased his salary to \$900,000 per year, in spite of the fact that University Hospital remains in poor financial condition; and

WHEREAS, pursuant to the Fiscal Year 2019 Appropriations Act, the State Legislature: (1) appropriated \$43,341,000 as a grant-in-aid for institutional support to University Hospital based on 2,923 State-funded staff; (2) appropriated \$10,000,000 for the University Hospital Self-Insurance Reserve Fund; and (3) included a provision which states that, in addition to the amounts herein appropriated for University Hospital, there are appropriated such additional amounts as are necessary to maintain the core operating functions of the Hospital, subject to the approval of the Director of the Division of Budget and Accounting (collectively, the "FY 2019 UH Appropriations"); and

WHEREAS, pursuant to N.J.S.A. 52:27B-31, the Governor may impound certain funds by freezing or prescribing the terms upon which a spending agency may expend State funds to ensure that appropriations are not used to support waste, mismanagement or extravagance; and

WHEREAS, University Hospital has mismanaged its appropriated funds because it failed to comply with the State statutes and regulations governing healthcare facilities when it took steps to close its EPU and PICU without DOH's approval, thereby depriving the City of Newark of essential healthcare services; received the only failing grade in New Jersey for patient safety by the nationally-recognized Leapfrog Group; suffered a bond rating downgrade during this time as a result of its lack of financial stability; and executed a contract with its CEO for \$900,000 while these financial struggles continue to grow; and

WHEREAS, it is necessary to preserve the security of the Bonds while at the same time putting conditions on the use of the FY 2019 Appropriations by University Hospital to ensure that the Hospital complies with its statutory mission;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, determine based on the facts above and by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Upon the release by the Trustee of the FY 2019 Appropriations to University Hospital, after deducting such amounts as are required for debt service on the Bonds, such amounts are subject to the conditions set forth below:

a. DOH shall appoint a Monitor who will be assigned to work directly with University Hospital and shall be responsible for assessing the level and quality of care provided to the community.

b. The Monitor shall also assess the financial health of the hospital and any other matters related to the hospital's functions that arise during the course of this review.

c. In carrying out these responsibilities, the monitor shall: i) have full access to any and all records and information at University Hospital in order to gain an understanding of the prior and current level of care provided, as well as the financial decisions of the Hospital, ii) have full access to the senior management team and staff to determine, among other things, how strategic and patient care decisions are made, such as the attempted closure of the pediatric services, iii) attend all meetings of the UH Board and have full access to brief these members as a group or individually, and iv) report to the Commissioner of Health to facilitate the regulatory relationship.

d. University Hospital shall consult with the Oversight Board as required by the Restructuring Act and shall report the findings of the Oversight Board to DOH.

2. Until such time as this current state of affairs at University Hospital is resolved, I reserve the right to take such additional actions as may be necessary, including placing more conditions on the FY 2019 Appropriations, in order to ensure that University Hospital fulfills its mission as required by the Restructuring Act.

3. This Order shall take effect immediately and shall remain in full force and effect until rescinded, modified, or supplemented in response to the ongoing situation at University Hospital.

GIVEN, under my hand and seal this
27th day of July,
Two Thousand and Eighteen,
and of the Independence of
the United States, the Two
Hundred and Forty-Third.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Mary K. E. Maples

Deputy Chief Counsel to the Governor