STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
BUNCOMBE COUNTY	FILE NO.

JOSHUA H. STEIN, Attorney General, ex rel. DOGWOOD HEALTH TRUST, Plaintiff, v. HCA MANAGEMENT SERVICES, LP, MH MASTER HOLDINGS, LLLP, MH HOSPITAL MANAGER, LLC, MH MISSION HOSPITAL, LLLP, MH HOSPITAL HOLDINGS, INC., and MH MASTER, LLC, Defendants.	)	**COMPLAINT**

Plaintiff, Attorney General Joshua H. Stein on behalf of and in the name of Dogwood Health Trust, brings this action against Defendants HCA Management Services, LP, MH Master Holdings, LLLP, MH Hospital Manager, LLC, MH Mission Hospital, LLLP, MH Hospital Holdings, Inc., and MH Master, LLC (collectively, "HCA") for breach of the Asset Purchase Agreement memorializing the acquisition of Mission Health System. In support of this Complaint, Plaintiff alleges as follows:

INTRODUCTION AND SUMMARY

For decades, consumers in western North Carolina received reliable—and often exceptional—healthcare from Asheville's non-profit Mission

Hospital. The key to Mission's success was no secret: it provided doctors and nurses with the support and resources they needed to care for patients.

In 2018, Mission Health's Board of Directors voted to sell the system's assets to subsidiaries of HCA Healthcare, Inc., a for-profit, out-of-state healthcare corporation. This vote triggered a state law that grants the Attorney General authority to review transactions involving the transfer of a non-profit organization's assets to ensure that (1) the sale price is fair and (2) any charitable assets remain dedicated to a charitable purpose. N.C. Gen. Stat. § 55A-12-02(g). After a detailed review of the proposed transaction, the Attorney General confirmed that those two requirements were met.

Nevertheless, the Attorney General remained deeply concerned that HCA's profit-driven business model might lead them to slash essential medical services in western North Carolina. He therefore demanded that HCA commit to a range of additional protections and conditioned his non-objection to the acquisition on those protections. Those protections were ultimately memorialized in the Asset Purchase Agreement ("APA") that the parties signed consummating the acquisition.[1] Most critically, HCA promised

[1] The redacted, publicly available Executed Version of the APA, which includes the complete text of all provisions relevant to this Complaint, is attached as Exhibit 1. Plaintiff will file the unredacted, complete version of the executed APA under seal at the Court's convenience.

in the APA not to discontinue providing certain critical services for a 10-year period from 2019 to 2029, barring certain contingencies or extenuating circumstances. Those services included both emergency and trauma care and oncology services.

HCA has broken its promise and breached the APA. Mission Hospital's once efficient and orderly emergency department is now significantly degraded and unable to meet patients' needs. Doctors and nurses are forced to treat patients in the waiting room, without even the bare minimum equipment or patient privacy protections, let alone adequate staff. Surgeons lack sterile equipment because HCA refuses to pay staff to clean surgical instruments.[2] Local emergency management services are frustrated—and, in one county, have stopped sending ambulances to Mission—because of how long it takes for their patients to be transferred into the emergency department.

The unacceptable conditions are not limited to the emergency department. Mission has discontinued certain essential oncology services that

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[2] Andrew R. Jones, *Former Mission Chief of Staff: 'I Truly Felt Like It Was a Moral Injury;' to Work for Hospital*, Asheville Watchdog (Oct. 27, 2023), https://avlwatchdog.org/former-mission-chief-of-staff-i-truly-felt-like-it-was-a-moral-injury-to-work-for-hospital/ (recounting an interview with Mission's Former Chief of Staff Dr. Michael Frisch, who noted "I just don't really even trust that I'm getting sterile instruments up here to operate and I don't want to put my patients at risk," in response to a backup of 500 sets of operating room instruments that remained unsterilized on a particular weekend).

it provided before HCA acquired the hospital and has fewer available oncology beds overall. Before the acquisition, leukemia and lymphoma patients could receive chemotherapy treatment at Mission Hospital, close to their homes and support systems. Now, they must travel to Charlotte or the Triangle for that care. And the harm to oncology patients extends well beyond those with complex blood cancers. Mission Cancer Center, Mission Hospital's comprehensive cancer treatment facility, no longer employs a *single* medical oncologist, a failing that most harms uninsured and underinsured cancer patients.

Responsibility for this downward spiral rests entirely with HCA. For instance, long wait times at the hospital's emergency department are not because of an inadequate number of beds, but because of HCA's profit-focused *choices* regarding how to staff the beds it has. HCA does not fully staff its emergency department or certain in-patient units at Mission. The number of fully-staffed inpatient oncology beds has decreased from 44 at the time HCA acquired Mission to 24 today—even though community demand for inpatient oncology beds has not decreased. Meanwhile, the oncologists Mission used to employ resigned because HCA deprived them of the nursing and administrative staff necessary to run an oncology practice.

This reality is flatly inconsistent with the commitments that HCA made to the Attorney General and the people of western North Carolina.

These breaches, moreover, have inflicted significant harm on medical professionals, patients, and citizens throughout the region. HCA's gross mismanagement of the emergency and trauma and oncology departments is putting the medical professionals who work in those departments in an impossible position. These dedicated and hardworking healthcare providers must find ways to care for their patients without adequate support and resources, and sometimes in unsanitary or even unsafe conditions. Unsurprisingly, many medical professionals have simply opted to leave Mission Hospital, and those who remain are overwhelmed trying to care for their patients without sufficient support from the administration.

Patients are suffering from HCA's breach of the APA as well. Patients who go to the emergency department wait hours for a bed; some leave without treatment. Others are treated in the waiting room without the basic dignity and privacy of a room or even sufficient medical equipment. For example, HCA does not provide patients treated in the waiting room with heart rate monitors, even if they report with chest pains or heart palpitations.

HCA's gross incompetence also harms oncology patients. Some patients have had their carefully formulated chemotherapy treatment plans interrupted and delayed because HCA will not stock chemotherapy drugs. Other patients have been left in excruciating pain with no assistance because

HCA will not adequately staff the oncology unit. And patients with the most aggressive forms of cancer can no longer receive their chemotherapy treatments at Mission Hospital, forcing these ill patients to spend many extra hours on a regular basis traveling to receive treatment.

Finally, HCA's breaches burden the surrounding communities. The excessive delays for emergency care at Mission Hospital strain publicly-funded emergency services. The longer an ambulance idles outside Mission waiting to transfer a patient to the emergency room, the fewer paramedics are available to respond in a timely manner to life-or-death medical emergency calls. To get ambulance patients to a bed more quickly, some county-employed paramedics have resorted to cleaning Mission Hospital's emergency rooms *themselves*. In effect, HCA has coopted paramedics as employees of its own, but stuck local taxpayers with the bill. Moreover, in breaking its promise to continue providing emergency and trauma and oncology services at Mission Hospital, HCA is damaging western North Carolina's reputation as a desirable locale with access to adequate emergency and other medical services.

The APA forbids all of this. HCA cannot prioritize paying dividends to its shareholders over honoring its legal commitments to provide healthcare services to the people of western North Carolina. Accordingly, the Attorney General seeks a declaration that HCA has breached the APA by

discontinuing certain emergency and trauma and oncology services. Additionally, the Attorney General seeks permanent injunctive relief requiring HCA to honor its commitments under the APA.

The people of western North Carolina deserve the reliable health care that Mission Hospital once offered, that HCA contracted to continue, and that its highly qualified healthcare providers are more than capable of providing if given the necessary resources. Because HCA has broken the promises it made in the APA, the Attorney General is entitled to a declaration of HCA's breach and an injunction that compels HCA to honor its commitments.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Joshua H. Stein, Attorney General, on behalf of and in the name of Dogwood Health Trust, brings this action for breach of contract and to enforce HCA's obligations under Section 7.13 of the APA.

2. Dogwood Health Trust is a North Carolina non-profit corporation under Chapter 55A of the North Carolina General Statutes, with its principal office located in Asheville, North Carolina. Dogwood Health Trust is identified as the "Foundation" in the APA. On February 1, 2019, Dogwood Health Trust became the "Seller Representative" pursuant to Section 3.5(b) of the APA.[3]

[3] Press Release, Dogwood Health Tr., Dogwood Health Trust Now Operational with Close of $1.5 Billion Mission Health Asset Sale to HCA

3. Defendant HCA Management Services, LP is a limited partnership formed under the laws of the State of Delaware and registered with the North Carolina Secretary of State. Its principal place of business is in Nashville, Tennessee. It may be served with process through its registered agent, CT Corporation System, 160 Mine Lake Court, Suite 200, Raleigh, NC 27615.

4. Defendant MH Master Holdings, LLLP is a limited partnership formed under the laws of the State of Delaware and registered with the North Carolina Secretary of State. Its principal place of business is in Nashville, Tennessee. It maintains a place of business at 509 Biltmore Avenue, Asheville, NC 28801. It may be served with process through its registered agent, CT Corporation System, 160 Mine Lake Court, Suite 200, Raleigh, NC 27615.

5. MH Master Holdings, LLLP is identified as the "Buyer" in the APA. Pursuant to Section 7.10 of the APA, MH Master Holdings, LLLP is authorized to do business under brand names including "Mission Health," "Mission Health System," and "HCA."

Healthcare (Feb. 1, 2019), *available at* https://dogwoodhealthtrust.org/.dogwood-health-trust-now-operational-with-close-of-1-5-billion-mission-health-asset-sale-to-hca-healthcare/.

6. Defendant MH Hospital Manager, LLC is a limited liability company formed under the laws of the State of Delaware and registered with the North Carolina Secretary of State. Its principal place of business is in Nashville, Tennessee. It maintains a place of business at 509 Biltmore Avenue, Asheville, NC 28801. It may be served with process through its registered agent, CT Corporation System, 160 Mine Lake Court, Suite 200, Raleigh, NC 27615.

7. Defendant MH Mission Hospital, LLLP is a limited partnership formed under the laws of the State of Delaware and registered with the North Carolina Secretary of State. Its principal place of business is in Nashville, Tennessee. It may be served with process through its registered agent, CT Corporation System, 160 Mine Lake Court, Suite 200, Raleigh, NC 27615.

8. Defendant MH Hospital Holdings, Inc. is a corporation formed under the laws of the State of Delaware and registered with the North Carolina Secretary of State. Its principal place of business is in Nashville, Tennessee. It may be served with process through its registered agent, CT Corporation System, 160 Mine Lake Court, Suite 200, Raleigh, NC 27615.

9. Defendant MH Master, LLC is a limited liability company formed under the laws of the State of Delaware and registered with the North Carolina Secretary of State. Its principal place of business is in Nashville,

Tennessee. It may be served with process through its registered agent, CT Corporation System, 160 Mine Lake Court, Suite 200, Raleigh, NC 27615.

10. Defendants HCA Management Services, LP, MH Master Holdings, LLLP, MH Hospital Manager, LLC, MH Mission Hospital, LLLP, MH Hospital Holdings, Inc., and MH Master, LLC (collectively, "HCA") are all subsidiaries of HCA Healthcare, Inc.

11. HCA Healthcare, Inc. owns and operates more than 180 hospitals in 19 states. It is the largest for-profit hospital chain in the world, and had revenues exceeding $60 billion in 2022. The value of its stock, traded on the New York Stock Exchange, has nearly doubled since execution of the APA, and its present market capitalization is approximately $70 billion.

12. This Court has personal jurisdiction over Defendants because they have transacted business in the State relevant to this action.

13. The Court has subject matter jurisdiction over this dispute and venue is proper in Buncombe County under N.C. Gen. Stat. § 1-82.

14. The amount in controversy is in excess of $1,000,000, exclusive of interest and costs.

FACTUAL ALLEGATIONS

A. HCA acquired Mission in 2019—and made numerous commitments in the APA memorializing that acquisition.

15. Mission Health System is a six-campus hospital system serving western North Carolina.

16. The flagship hospital in that system is Mission Hospital. Since 1998, Mission Hospital has been western North Carolina's only tertiary care[4] facility.[5]

17. On March 21, 2018, HCA and Mission announced a deal in which HCA would acquire all of Mission Health System's assets, including Mission Hospital.

18. Over the remainder of 2018, HCA and Mission negotiated an agreement to address the many details necessary to consummate the announced acquisition.

19. That agreement—the APA—was executed in January 2019.

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[4] Tertiary care is highly specialized care provided to patients who are at risk of disability or death. *See* North Carolina Healthcare Association, https://www.ncha.org/glossary/tertiary-care/; National Library of Medicine, https://www.ncbi.nlm.nih.gov/mesh?Db=mesh&term=Tertiary+Care+Centers. The APA acknowledges that Mission is "the region's only tertiary healthcare center with a wide variety of complex patients." ¶ 7.18.

[5] Affidavit of Albert Quiery (Ex. 2), ¶ 8; Affidavit of Hannah Drummond (Ex. 5), ¶ 6.

20. Because Mission was a North Carolina non-profit corporation, the proposed transfer of its assets to HCA, a for-profit company, was reviewable by the Attorney General pursuant to N.C. Gen. Stat. § 55A-12-02(g).

21. The Attorney General had significant concerns about the proposed transaction—most notably, the risk that HCA might slash critical services that Mission Hospital had long provided, including emergency and trauma and oncology services. To assuage those concerns, HCA included in the APA promises to continue providing those services at Mission Hospital and granted the Attorney General the authority to enforce those promises.

22. Specifically, for the ten-year period immediately following the execution of the APA, HCA "shall not discontinue the provision" of certain enumerated services unless the Advisory Board provides written consent for them to do so.[6] APA ¶ 7.13(a).

23. These services are set forth in Schedule 7.13(a) of the APA. They include, *inter alia*, "Emergency and Trauma services generally consistent with the current Level II Trauma Program with emergency services for pediatrics and adults, ground/air medical transport services and forensic nursing services," as well as "Oncology Services – inpatient and outpatient

[6] The Advisory Board is an eight-member board created by the APA with four members appointed by HCA and four members appointed by Dogwood Health Trust. *See* APA ¶ 7.12(a).

cancer services, radiation therapy, surgery, chemotherapy, and infusion services."

24. An exception to the requirement that HCA continue these services at Mission Hospital is when a "[f]orce [m]ajeure mak[es] the provision of such services impossible or commercially unreasonable." APA ¶ 7.13(a).

25. The APA defines "force majeure" as "an event or effect that cannot be reasonably controlled by the Party affected and was not in existence as of the Effective Time," including, *inter alia*, acts of nature, war, terrorist activities, government prohibition, failure of utilities or other vital supplies, or rules, regulations, or orders issued by any governmental authority. APA ¶ 1.1.

26. Additionally, after the ten-year period following the execution of the APA, HCA must continue providing the services enumerated in Section 7.13(a) at Mission Hospital unless a "Contingency" is determined to have occurred. APA ¶ 7.13(a).

27. A "Contingency," includes, *inter alia*, a lack of "qualified, available physicians and/or clinical staff" needed to provide the service, a significant decrease in patient volume, or a significant change in the needs of the community. APA ¶ 1.1. HCA must give Dogwood Health Trust notice of a claimed contingency and must continue providing the requisite service until

Dogwood and HCA agree that a contingency has occurred. APA ¶¶ 7.13(a), 7.13(d).

28. Thus, for the ten years immediately following HCA's acquisition—until January 2029—HCA must continue providing emergency and trauma services and oncology services at Mission Hospital at substantially the same level as Mission provided those services before the acquisition, absent the Advisory Board allowing HCA to make a change or a force majeure. And even after ten years have passed, HCA must continue providing emergency and trauma services and oncology services at Mission Hospital at substantially the same level as Mission provided those services before the acquisition unless and until HCA and Dogwood Health Trust agree that a lack of medical staff or patient needs renders it commercially unreasonable for HCA to continue providing the service.

B. HCA has discontinued certain services in violation of Section 7.13(a) of the APA.

29. HCA has discontinued emergency and trauma services and oncology services that it is required to provide pursuant to Section 7.13(a) and Schedule 7.13(a) of the APA. As set forth in greater detail below, HCA is providing woefully inadequate emergency and trauma services that are inconsistent with the current Level II Trauma Program requirements for emergency services. In addition, HCA has discontinued certain inpatient and

outpatient cancer services, including critical chemotherapy treatment. By failing to provide these services commensurate with how these services were provided at the time the APA was executed—and failing to provide certain services at all—HCA is in breach of that agreement.

30. The failure to provide adequate, necessary healthcare to the citizens of western North Carolina is the fault of HCA alone. It is not a reflection of the dedicated, hard-working medical professionals who are doing their very best to provide excellent healthcare to their patients amid a mismanaged, profit-driven healthcare system.

1. HCA has discontinued "Emergency and Trauma services generally consistent with the current Level II Trauma Program" at Mission Hospital.

31. The APA requires HCA to provide "Emergency and Trauma services generally consistent with the current Level II Trauma Program with emergency services for pediatrics and adults, ground/air medical transport services and forensic nursing services." APA ¶ 7.13(a), Schedule 7.13(a).

32. To qualify as a Level II Trauma Program, North Carolina regulations require that a hospital has, *inter alia*, an emergency department staffed 24 hours/day by physically present physicians who specialize in emergency medicine and nursing personnel experienced in trauma care who

continually monitor trauma patients. *See* 10A NCAC 13P.0901(3).[7] A hospital's emergency department must also have a host of medical equipment and technology, including, by way of example only, an electrocardiograph-oscilloscope-defibrillator with internal paddles.

33. HCA's current practices are not consistent with the Level II Trauma Program regulations. In other words, HCA has discontinued the provision of emergency and trauma services at Mission, as defined in the APA—despite its commitment *not* to do so. HCA has therefore breached that agreement.

[7] To receive a Level II designation, a hospital must "meet the verification criteria for designation as a . . . Level II . . . Trauma Center[] as defined in the 'American College of Surgeons: Resources for Optimal Care of the Injured Patients,' which is incorporated by reference, including subsequent amendments and editions." 10A NCAC 13P.0901(3). The American College of Surgeons standards requires a Level II Trauma Center to have a "board-certified or board eligible emergency medicine physician" present in the emergency department "at all times." Am. Coll. of Surgeons, Resources for Optimal Care of the Injured Patients 2022 Standards § 4.8 (Rev. Dec. 2022), *available at* https://www.facs.org/quality-programs/trauma/quality/verification-review-and-consultation-program/standards/. Alternatively, "physicians who completed primary training prior to 2016 and are board-certified in a specialty other than emergency medicine or pediatric emergency medicine" may provide coverage in an emergency department of a Level II trauma center. Am. Coll. Of Surgeons, Dec. 2023 Change Log § 4.8, *available at* https://www.facs.org/media/5jdls0x1/2022-standards-change-log-for-dec-2023-revision.pdf.

a. HCA is not providing care "generally consistent with the current Level II Trauma Program with emergency services for . . . adults" at Mission Hospital.

34. Mission's emergency department fails to meet the requirements of a Level II Trauma Program. What was once a top-notch hospital and a source of pride for western North Carolina is now insufficient to satisfy the needs of the region.

35. HCA is solely responsible for this failure. It has chosen not to fully staff the emergency department with an adequate number of nurses, auxiliary staff, or physicians. This has caused patients to spend inordinate amounts of time waiting to be seen in and, in some cases, waiting to even enter the emergency department. In addition, HCA has manufactured a bed shortage at Mission Hospital that has led to further overcrowding of the emergency department. Rather than devoting adequate resources to resolving these problems, HCA has instead opted to create an Internal Processing Area in the emergency department. This processing area is nominally used to triage patients. In reality, it results in the provision of healthcare in an improper fashion and in an inappropriate setting.

(i) There is a significant staffing crisis in Mission's emergency department.

36. Per North Carolina regulations, a patient-to-nurse ratio for the intensive care unit at a Level II Trauma Program should be no more than

two patients to one nurse.[8] Mission's intensive care unit ("ICU"), where critically ill patients are treated, often has a patient-to-nurse ratio of three or even four patients to every nurse.[9]

37. The patient-to-nurse ratio at Mission's emergency department regularly exceeds four patients to every nurse, which is the generally accepted standard.[10] Providers have observed even higher patient-to-nurse ratios in Mission's emergency department.[11]

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[8] 10A NCAC 13P .0901(3); Am. Coll. of Surgeons, *supra* n. 7, § 4.8 ("In all trauma centers, the patient-to-nurse ratio in the ICU must be 1:1 or 2:1, depending on patient acuity as defined by the hospital policy for ICU nursing staffing.").

[9] Andrew R. Jones & Barbara Durr, *Mission Patients Endangered by Emergency Department Transfer Procedures, Nurses Say*, Asheville Watchdog (Aug. 24, 2023), https://avlwatchdog.org/mission-patients-endangered-by-emergency-department-transfer-procedures-nurses-say/; Drummond Aff., Ex. 5, ¶ 9; Affidavit of Tucker Richards (Ex. 12), ¶¶ 13, 15; Affidavit of Mark Klein (Ex. 13), ¶ 17.

[10] Affidavit of Scott Joslin (Ex. 8), ¶¶20, 23; Richards Aff., Ex. 12, ¶¶ 13-14; Klein Aff., Ex. 13, ¶ 16; *see also* Jones & Durr, *Mission Patients Endangered by Emergency Department Transfer Procedures, Nurses Say*, *supra* n. 9 (interviewing Kerri Wilson, a registered nurse at Mission Hospital, who almost every shift files an Assignment Despite Objection, a formal complaint nurses submit when they believe an assignment puts patients at risk. "My unit is pretty much always short-staffed. . . . Anytime I have more than four patients, which is our recommended nurse-to-patient ratio for our level of care, I fill one out and I would say several units in the hospital every day fill those out.").

[11] Joslin Aff., Ex. 8, ¶¶ 20-23; Richards Aff., Ex. 12, ¶ 14; Klein Aff., Ex. 13, ¶ 16.

38. Without adequate staffing, patient care suffers. Patients in the emergency department sometimes wait hours to receive the medications they need.[12]

39. Patients feel the effects of the staffing shortages most dramatically in the evening hours, when they can wait hours just to receive basic attention and care from their assigned nurses.[13]

40. HCA struggles to retain qualified nurses to staff Mission's emergency department. In 2023, around 60% of first-year nurses staffed in the emergency department left Mission.[14] As of October 31, 2023, there were 30 vacant nursing positions at Mission's emergency department.[15]

41. By not employing an adequate number of nurses in Mission's emergency department, HCA is putting patients' health at risk. For instance, patients have been found dead in emergency department beds many hours after they passed.[16] Other patients have gone hours without being seen by their assigned nurse.[17]

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[12] Richards Aff., Ex. 12, ¶ 6; *see also* Joslin Aff., Ex. 8, ¶ 25; Affidavit of William Kehler (Ex. 15), ¶ 10.

[13] Richards Aff., Ex. 12, ¶ 6.

[14] Klein Aff., Ex. 13, ¶ 18.

[15] *See id.* ¶ 24 (averring that Mission Hospital had 451 registered nurse openings across all units in October 2023).

[16] Joslin Aff., Ex. 8, ¶ 25; Klein Aff., Ex. 13, ¶ 32.

[17] Richards Aff., Ex. 12, ¶¶ 6-7; Klein Aff., Ex. 13, ¶ 14.

42. The short-staffing of nurses is also negatively impacting the mental well-being of the remaining nurses, who feel dejected and down-trodden because of a fear that they are not providing adequate care to patients.[18] These nurses, of course, are doing the very best they can under the conditions imposed by HCA.

43. HCA also struggles to adequately staff certified nursing assistants (CNAs) and technicians in Mission's emergency department.[19] As a result, there are periods of time where certain diagnostic equipment (*e.g.*, an MRI machine) is not staffed and cannot be used to diagnose and treat patients.[20]

44. It is not just nursing staff that is insufficiently staffed at Mission's emergency department. HCA has also made cuts to housekeepers,

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[18] Mark Barrett, *Mission Criticized on Staff Shortages, Patient Care*, Mountain Xpress (Feb. 12, 2020), https://mountainx.com/living/mission-criticized-on-staff-shortages-patient-care/ (quoting ER nurse Jennifer Kirby: "Every single department in that hospital that is designed to help the patient . . . is critically and unethically and inhumanely understaffed."); Brian Gordon, '*Critically understaffed': Asheville crowd vents frustrations with Mission Health and HCA*, Asheville Citizen Times (Nov. 13, 2020), https://www.citizen-times.com/story/news/local/2020/02/11/asheville-crowd-vents-hca-mission-health-independent-monitor-meeting/4650215002/ (quoting ER patient Chris Jennings: "We had one nurse that told us she cries every single night because she knows she is not giving appropriate, competent patient care."); *see also* Affidavit of Claire Siegel (Ex. 6), ¶ 20; Richard Aff., Ex. 12, ¶¶ 19-20.

[19] Klein Aff., Ex. 13, ¶¶ 17, 25.

[20] *Id*. ¶ 25.

food service providers, and other auxiliary staff in its emergency department.[21] As a result, the department is often unclean and unsterile.[22] Moreover, the nurses—who are already overworked trying to attend to their patients—are left to mop up messes, empty trash bins, and deliver food to patients.[23]

45. Because of the chaos that has enveloped the emergency department, Mission Hospital is rapidly losing emergency department physicians. In this calendar year alone, thirteen full-time emergency department physicians and thirteen advanced care providers (*i.e.*, nurse practitioners) have left employment at Mission.

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[21] Barbara Durr, *Quality of Care Concerns Rise at Mission Hospital*, Asheville Watchdog (May 20, 2021), https://avlwatchdog.org/quality-of-care-concerns-rise-at-mission-hospital/ (recounting numerous complaints of staffing issues, including those of an emergency department nurse, who stated that due to housekeeping cuts, "There's urine on the floor, there's no cleanliness to the environment."); Richards Aff., Ex. 12, ¶ 9.

[22] Durr, *Quality of Care Concerns Rise at Mission Hospital*, *supra* n. 21; Affidavit of Jessica Clements (Ex. 14), ¶ 16.

[23] Barbara Durr, *Mission Nurses Overburdened, Patients Suffer*, Asheville Watchdog (Mar. 31, 2022), https://avlwatchdog.org/mission-nurses-overburdened-patients-suffer/ (noting how "[n]urses have taken on other tasks as HCA cut back on support staff, including housekeeping."); Erika Fry, *America's Largest Hospital Company Is Booming. So Why Is One Community Trying to Run It Out of Town?*, Fortune (Mar. 31, 2022), https://fortune.com/longform/hca-hospital-chain-mission-health-care-north-carolina/ (describing nurses "delivering food and emptying trash bins after HCA outsourced the hospital's food service and janitorial functions."); Richards Aff., Ex. 12, ¶ 9.

46. Several other emergency department physicians have reduced the hours they are willing to work at Mission or have chosen to work exclusively at other Mission Health System facilities and not Mission Hospital.

47. HCA's refusal to adequately staff Mission Hospital is often cited by physicians as their reason for leaving the hospital.[24]

48. In addition to failing to adequately staff Mission Hospital, HCA also refuses to offer competitive pay to staff. For example, when faced with a nurse staffing crisis, HCA refused to "amend its pay scale for the nursing staff so that the ratios could be brought under control."[25] Nurses therefore left Mission Hospital to work at other nearby facilities offering better pay.[26]

49. In addition to being too cheap to adequately staff its emergency department long-term, HCA is also too stingy to adequately staff its emergency department short-term. Although HCA offers premium pay to

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[24] Barbara Durr, *How Many Doctors Have Left Mission? HCA Won't Say*, Asheville Watchdog (Mar. 23, 2022), https://avlwatchdog.org/how-many-doctors-have-left-mission-hca-wont-say/ ("A common complaint among doctors, nurses and patients is that Mission under HCA has skimped on staffing . . . . A source of many complaints . . . is Mission's emergency room.").

[25] Joslin Aff., Ex. 8, ¶ 18.

[26] *Id*. ¶ 19.

nurses on other hospital floors who are willing to work additional shifts, it does not offer these bonuses for nurses in the emergency department.[27]

50. HCA knows how to adequately staff its emergency department; it just chooses not to. According to public reports, surveyors from the North Carolina Department of Health and Human Services inspected Mission Hospital's emergency department last month. While the surveyors were onsite, HCA encouraged nurses to pick up shifts "any day that they wanted for any amount of time."[28] As soon as surveyors left for the Thanksgiving holiday, however, HCA reduced staffing in the emergency department again.[29]

(ii) The wait times for Mission's emergency department are inexcusably long and dangerous for patients.

51. The emergency department at Mission Hospital is frequently overcrowded with patients who are desperately seeking medical care.

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[27] Richards Aff., Ex. 12, ¶ 22 & Ex. A. (Letter from Emergency Department Nurses to Tiffany Vincent, Emergency Department Vice President, Chad Patrick, CEO, Melanie Wetmore, CNO, and Wyatt Chocklett, COO (November 28, 2023)).

[28] Andrew R. Jones, *As State Inspects Mission for CMS, Hospital Makes Changes to Emergency Department*, Asheville Watchdog (Nov. 22, 2023), https://avlwatchdog.org/as-state-inspects-mission-for-cms-hospital-makes-changes-to-emergency-department/.

[29] *Id.*

52. This overcrowding, coupled with the significant staffing shortages discussed above, has caused both (a) full assessments of patients to take too long and (b) incredibly long wait times for beds at Mission's emergency department.[30]

53. Nationwide, the average time patients spent at an emergency department before leaving from the visit in 2022 was 161 minutes. Across emergency departments in North Carolina, the average time spent before leaving was 175 minutes. At Mission, the average time spent was *236 minutes*.[31]

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[30] Drummond Aff., Ex. 5, ¶¶ 11, 13; Joslin Aff., Ex. 8, ¶¶ 23-25; Richards Aff., Ex. 12, ¶¶ 6-8; Klein Aff., Ex. 13, ¶¶ 20-21, 40.

[31] Centers for Medicare & Medicaid Services, *Timely and Effective Care – National*, https://data.cms.gov/provider-data/dataset/isrn-hqyy (Oct. 5, 2023); Centers for Medicare & Medicaid Services, *Timely and Effective Care – State*, https://data.cms.gov/provider-data/dataset/apyc-v239 (Oct. 5, 2023); Centers for Medicare & Medicaid Services, *Timely and Effective Care – Hospital*, https://data.cms.gov/provider-data/dataset/yv7e-xc69 (Oct. 5. 2023). Other research has shown that patients experience longer wait times at Mission Hospital. *See* Hosp. Compare, *Memorial Mission Hospital and Asheville Surgery Ce: Average Time Spent in Emergency Department*, https://hospitalcompare.io/profile/memorial-mission-hospital-and-asheville-surgery-ce-nc (measuring average time spent emergency departments as 143 minutes nationwide, 156 minutes in North Carolina, and 187 minutes at Mission times using CMS data); Kimberly King, *Data: Mission ER Patients Have Longer Wait Times than State, National Averages*, ABC 13 News (February 27, 2023), https://wlos.com/news/local/mission-hospital-emergency-room-department-wait-time-hca-higher-average-north-carolina-nation-asheville-buncombe-county-spokeswoman-nancy-lindell (reporting on the same).

54. In other words, the average Mission Hospital emergency department patient spends 75 more minutes at the emergency department compared to patients across the country, and 61 more minutes compared to her neighbors in North Carolina.

55. At times, laboratory test results can take five to seven hours to come in. The more time these results take to come in, the longer it will take to diagnose and treat a patient.

56. Moreover, it is not uncommon for patients to have to wait incredibly long periods of time—including over *16 hours*—to even be admitted to the emergency department at Mission. One leukemia patient—who was forced to go to Mission's emergency department waiting room because the oncology department could not directly admit her given staffing limitations and bed shortages—waited *30 hours* to be admitted.[32]

57. Even patients with unmonitored cardiac dysrhythmias are subject to extremely long wait times.[33]

58. Mission has also resorted to treating patients *in* the emergency department waiting room. Some patients have received intravenous ("IV") treatments behind thin curtains placed, presumably, to provide those

[32] Clements Aff., Ex. 14, ¶¶ 14-5.

[33] *Cf.* Drummond Aff., Ex. 5, ¶ 16 ("[P]atients have gone into cardiac arrest in Mission's lobby numerous times.").

individuals a modicum of privacy. Other patients are not even afforded that smidge of privacy and instead receive their IV treatments and life support medications in areas where they can be observed by others in the waiting room or walking through hallways.[34]

(iii) HCA has manufactured the bed shortages at Mission's emergency department.

59. When HCA acquired Mission Hospital, the hospital was nearing completion of construction of a new tower that would expand the emergency department from 68 beds to 94 beds.[35] HCA committed to completing this project. APA ¶¶ 6.2, 7.14(e)(i). The new tower expansion, including the expansion of the emergency department, was completed in October 2019.[36]

60. Despite the nearly 40% increase in Mission's emergency department capacity shortly after HCA acquired the hospital, the amount of time ambulances spend waiting to admit their patients to the emergency department is over 30% *longer* today than before HCA took over.[37]

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[34] Affidavit of David Leader (Ex. 7), ¶¶ 9-11; *see also* Drummond Aff., Ex. 5, ¶ 14; Klein Aff., Ex. 13, ¶ 41.

[35] Leslie Boyd, *Mission Health unveils new North Tower*, Mountain Xpress (Oct. 12, 2022), https://mountainx.com/living/state-of-the-art-technology-with-a-view/; Affidavit of Landon Miller (Ex. 9), ¶ 11.A.

[36] Boyd, *Mission Health unveils new North Tower*, *supra* n. 35.

[37] Miller Aff., Ex. 9, ¶ 10.E & Exs. A, G.

61. HCA claims that it is forced to treat emergency department patients outside of the actual emergency department itself because all the beds in the emergency department are full. But, for two reasons, that is not true.

62. First, HCA is actively choosing not to staff all of the beds in the emergency department in order to boost profits. It is not the case that *all* of the beds in Mission's emergency department are full. Rather, all of the beds *that Mission chooses to staff* are full.[38]

63. HCA frequently chooses to close a section, or "pod," of Mission's emergency department—composed of 12 to 24 beds—entirely.[39]

64. Second, of the remaining emergency department pods, HCA uses at least one pod to board patients awaiting beds on Mission's patient floors rather than to treat emergency department patients.[40]

65. Generally speaking, close to 100 of the beds on Mission Hospital's patient floors are closed because they are unstaffed.[41] When HCA chooses to close those beds rather than staff them, it often houses non-emergency

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[38] Drummond Aff., Ex. 5, ¶ 11; Joslin Aff., Ex. 8, ¶¶ 16-17, 31; Klein Aff., Ex. 13, ¶ 21.

[39] *See* Joslin Aff., Ex. 8, ¶ 16.

[40] Drummond Aff., Ex. 5, ¶ 11; Joslin Aff., Ex. 8, ¶ 16; Klein Aff., Ex. 13, ¶ 28.

[41] Drummond Aff., Ex. 5, ¶ 11; Joslin Aff., Ex. 8, ¶ 17.

patients in the emergency department.[42] This strategy burdens the emergency department, which has fewer beds available for those who present with emergent conditions.[43]

66. Boarding non-emergency patients in Mission's emergency department at this scale and with this frequency is a relatively recent phenomenon. Prior to the acquisition by HCA, non-emergency patients were rarely, if ever, boarded in Mission's emergency department.[44]

67. In addition, HCA's transfer policies artificially inflate the number of patients who are in Mission's emergency department.

68. Typically, when an emergency department patient is transferred to another hospital for admission, that patient is admitted to an inpatient floor at the second hospital, rather than to an(other) emergency department.[45]

69. But HCA does not follow this common practice used by other health systems. Instead, it requires patients who are transferred to Mission Hospital from an emergency department at another Mission facility to first be

[42] Drummond Aff., Ex. 5, ¶ 11; Joslin Aff., Ex. 8, ¶ 17.

[43] Drummond Aff., Ex. 5, ¶ 11; Joslin Aff., Ex. 8, ¶ 17.

[44] Joslin Aff., Ex. 8, ¶¶ 20, 31.

[45] *See* Klein Aff., Ex. 13, ¶ 27.

admitted to Mission Hospital's emergency department rather than to a patient floor.[46]

70. This was not always the case. Prior to HCA instituting this policy, patients admitted to Mission Hospital from another facility's emergency department were almost always directly admitted from that hospital's emergency department to a patient floor at Mission Hospital.

71. As a result of these transfer policies, patients who do not actually need emergency services are nonetheless taking up beds in Mission's emergency department, depriving patients who legitimately need emergency services of a bed while allowing HCA to falsely assert that there are bed shortages.

(iv) HCA now examines and treats many emergency patients in an inappropriate venue for providing emergency services.

72. HCA has created an Internal Processing Area ("IPA") in the emergency department of Mission Hospital to triage patients for that emergency department.[47] The IPA takes up a sizable portion of the floor

[46] Klein Aff., Ex. 13, ¶ 27; Affidavit of Adrienne Rivera Jones (Ex. 17), ¶ 12; *see also* Leader Aff., Ex. 7, ¶ 15.

[47] Drummond Aff., Ex. 5, ¶¶ 14-15; Richards Aff., Ex. 12, ¶¶ 7, 13, 19; Klein Aff., Ex. 13, ¶¶ 38-41.

space of the waiting room in Mission's emergency department.[48] It consists of a series of bays, separated by small dividers, where patients can be assessed.[49] Across from those bays is a row of roughly twenty chairs where patients can receive IV treatments.

73. Patients sitting in the bays can see and be seen by patients sitting in the chairs, and vice versa.

74. The IPA lacks basic privacy protections for patients. Although the bays are all separated by frosted glass walls, patients in those bays can still see and hear healthcare professionals talking to the patients in adjacent bays.[50] Patients can also see when other patients are transferred from a bay to a chair to receive IV treatment.

75. Nurses have raised concerns about patient privacy to HCA, but their concerns have been ignored.

76. There are no patient beds in the IPA. All patients are examined while sitting in a chair. This hinders examinations of patients who report symptoms that are best assessed while the patient is lying down, like

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[48] *See* Drummond Aff., Ex. 5, ¶ 14; Klein Aff., Ex. 13, ¶ 39. *Cf.* Leader Aff., Ex. 7, ¶ 9; Joslin Aff., Ex. 8, ¶ 26.

[49] Drummond Aff., Ex. 5, ¶ 14; Richards Aff., Ex. 12, ¶ 7.

[50] Drummond Aff., Ex. 5, ¶ 14; Leader Aff., Ex. 7, ¶ 9; Joslin Aff., Ex. 8, ¶ 28; Klein Aff., Ex. 13, ¶ 41.

abdominal pain.[51] Likewise, nurses cannot readily use ultrasound to guide IV placement for patients who are sitting upright. Additionally, patients in the IPA cannot be intubated.

77. Sometimes, only one nurse staffs the IPA. If the IPA is full, this means that *one* nurse is responsible for the care of *28* patients.[52]

78. Patients in the IPA are not put on heart monitors—even if they report chest pain or heart palpitations. That is because the IPA, unlike a real emergency room, lacks heart monitors.[53] Nurses need heart monitors to perform their jobs and ensure patient safety.[54]

79. Patients in the IPA are not put on pulse oximeters—even if they are on an oxygen tank.[55] That is because the IPA, unlike a real emergency room, lacks pulse oximeters. Nurses in the IPA have no way to actively monitor patients' oxygen levels without checking on each patient one at a

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[51] Leader Aff., Ex. 7, ¶¶ 5, 10.

[52] Richards Aff., Ex. 12, ¶¶ 7, 13; *see also* Drummond Aff., Ex. 5, ¶ 15 ("Patient-to-nurse ratios [in the IPA] can get as bad as 30 to 1. This is far too many patients for only a couple of nurses to manage. Some mornings begin with 0 nurses available in the IPA for patient care.").

[53] Klein Aff., Ex. 13, ¶ 42.

[54] Siegel Aff., Ex. 6, ¶ 26; Klein Aff., Ex. 13, ¶ 42.

[55] Drummond Aff., Ex. 5, ¶¶ 17-18.

time.[56] But in the IPA, there are far too many patients for nurses to directly monitor each one.[57]

80. The IPA does not have its own "code cart,"—a cart that includes emergency medical equipment like a defibrillator—even though it treats emergency department patients. Rather, the IPA uses the emergency department's code cart. But the emergency department code cart is kept far from where HCA has set up the IPA. That means that when a patient who is being treated in the IPA needs equipment from the code cart, a nurse must waste valuable time going to get that equipment.

81. But that is not even the biggest problem. Sometimes equipment on the code cart, including the defibrillator, is missing or does not work.[58]

82. The IPA lacks basic sanitation procedures and mechanisms. The IPA does not have sinks for physicians and nurses to wash their hands. Unlike rooms in the emergency department that are sanitized after a patient leaves, the patient bays and chairs in the IPA are not sanitized between patients, creating a significant risk of infection or cross-contamination. Bodily fluids—including blood, urine, feces, and vomit—are frequently seen on the floor.

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[56] *Id.* ¶ 18.

[57] *Id.* ¶ 15; Klein Aff., Ex. 13, ¶ 40.

[58] Klein Aff., Ex. 13, ¶ 12.

83. Several medical professionals have stated that the IPA is a wholly inappropriate venue for providing emergency services. For example, Dr. Scott Joslin, a hospitalist, left Mission Hospital earlier this year because "the examination of patients in public areas" like the IPA "did not meet the standard of care."[59] Mark Klein, a registered nurse at Mission Hospital for over two decades, explained that "Mission cannot provide adequate emergency services within the IPA."[60] And Hannah Drummond, a registered nurse who works in the IPA is not aware of any other "hospital of similar size and location to Mission" having anything resembling the IPA.[61] In her opinion, "the IPA should not exist."[62]

84. Because the IPA does not have adequate staffing or supplies, it does not meet the standards of an emergency department associated with a Level II Trauma Program. Yet many patients who enter the Mission emergency department never make it beyond the IPA. Accordingly, HCA has discontinued the provision of emergency and trauma services generally consistent with the requirements of a Level II Trauma Program, and it is in breach of the APA.

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[59] Joslin Aff., Ex. 8, ¶ 28.

[60] Klein Aff., Ex. 13, ¶ 39.

[61] Drummond Aff., Ex. 5, ¶ 19.

[62] *Id*.

b. HCA is not providing ground/air medical transport services "generally consistent with the current Level II Trauma Program" at Mission Hospital.

85. Schedule 7.13(a) of the APA requires HCA to provide "ground/air medical transport services" that are generally consistent with the "current Level II Trauma Program."

86. HCA is not providing ground or air medical transport services to or from Mission Hospital that comply with this commitment. To the contrary, HCA is *impeding* local governments' efforts to provide those services.

87. Emergency personnel who transport patients to hospitals must be able to complete the administrative procedures necessary to effectuate the transfer of the patient from the transportation vehicle to the hospital in as efficient a manner as possible. Otherwise, these paramedics are unable to respond to calls to help other individuals in need.[63]

88. It should take only 20 minutes to offload a patient from an ambulance to a bed in an emergency department.[64] Fairview Fire and Rescue

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[63] Letter from William J. Kehler IV, McDowell Cnty. Dir. Emergency Srvs., to Wyatt Chocklett, Mission Hosp. Chief Operating Officer (Oct. 30, 2023) ("Kehler Letter"), *available at* https://wlos.com/resources/pdf/73a5be07-4ffe-40c7-b876-9dabc3204b42-McDowellCountyEMSLetter103023.pdf; Staff Reports, *McDowell EMS Pauses Non-emergency Transfers of Patients to Mission in Asheville*, McDowell News (Nov. 1, 2023), https://mcdowellnews.com/news/local/mcdowell-ems-pauses-non-emergency-transfers-of-patients-to-mission-in-asheville/article_2da6836a-78f3-11ee-af5a-2ffb40987d22.html.

[64] *Id.*; *see also* Miller Aff., Ex. 9, ¶ 10.A (describing a turnaround time of 18 minutes as the "golden standard nationwide").

Emergency Medical Services ("EMS"), an emergency medical services provider in Buncombe County, reports that the average turnaround time at Mission Hospital in 2023 is 32 minutes and 28 seconds—or more than 60% longer than expected.[65] For some patients, that period of time stretches to *hours*.[66]

89. By way of example, in 2023 a patient with bleeding in the brain who was transported to Mission's emergency department by ambulance had to wait 80 minutes for a bed.[67] Another patient with a broken neck had to wait over two hours for a bed. Yet another patient experiencing stroke-like symptoms had to wait almost three hours for a bed.

90. On November 1, 2023, Reems Creek Fire Department in Weaverville, North Carolina reported that, because of HCA's management of

[65] *Id.* ¶ 10.E & Exs. B, G.

[66] Staff Reports, *McDowell EMS Pauses Non-emergency Transfers of Patients to Mission in Asheville*, McDowell News, *supra* n. 63; Miller Aff., Ex. 9, ¶ 10.C & Ex. G (showing that 28 of the 406 patients transported to Mission Hospital by Fairview Fire and Rescue between January 1 and October 12, 2023 had turnaround times longer than an hour); Kehler Aff., Ex. 15, ¶ 14 (recounting wait times of 85 minutes, 114 minutes, 124 minutes, and 164 minutes at Mission Hospital for patients in need of emergent care); Rivera Jones Aff., Ex. 17, ¶ 11 (recounting a wait time of three hours).

[67] Miller Aff., Ex. 9, ¶ 9.C.1.

Mission Hospital, the department was experiencing "2 and 3 hour wait times to get EMS trucks back" from Mission Hospital.[68]

91. These lengthy wait times are a new phenomenon at Mission Hospital. Prior to the acquisition by HCA, the offloading time for patients transported to Mission's emergency department was much shorter.[69]

92. For example, Fairview Fire and Rescue reported the average turnaround time at Mission Hospital increased by 8 minutes and 40 seconds from 2018, the year before HCA acquired Mission Hospital, to 2023.[70] In other words, the average turnaround time increased by over 30% during this period.

93. In fact, as the table below shows, the average turnaround time at Mission Hospital for Fairview Fire and Rescue has increased *every year* since HCA acquired Mission Hospital.[71]

Year	**Average Turnaround Time at Mission Hospital**
2018	23 minutes and 48 seconds

[68] Reems Creek Fire Department, Facebook (Nov. 1, 2023), https://www.facebook.com/people/Reems-Creek-Fire-Department/100064466963151/.

[69] Miller Aff., Ex. 9, ¶ 9 ("My main concern after the HCA acquisition [of Mission Hospital] is the significantly increased wait times at the Emergency Department."); Rivera Jones Aff., Ex. 17, ¶ 10 ("I noticed an increase in turnaround time after HCA took over Mission Hospital."); *see also* Kehler Aff., Ex. 15, ¶¶ 8, 10, 14 (observing an increase in wait times after HCA acquired Mission Hospital).

[70] Miller Aff., Ex. 9, ¶ 10.E & Exs. B, G.

[71] Miller Aff., Ex. 9, ¶ 10.C & Exs. B-G.

2019	25 minutes and 50 seconds
2020	28 minutes and 1 second
2021	30 minutes and 21 seconds
2022	30 minutes and 28 seconds
2023	32 minutes and 28 seconds

94. "Wall time" is a part of turnaround time.[72] Specifically, wall time is the time a patient who arrives to an emergency department by ambulance must wait for an emergency department bed on the ambulance's stretcher next to a wall in the hospital.

95. Wall times are abnormally long at Mission Hospital under HCA's management. In 2018, 4.4% of wall times exceeded 20 minutes for Buncombe County EMS, which takes 95% of its transports to Mission Hospital.[73] That year a total of four patients waited on the wall for more than an hour. In the second quarter of 2023, 24% of wall times exceeded 20 minutes for Buncombe County EMS. During that time, 104 patients waited on the wall for more than an hour.[74]

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[72] *See* Kehler Aff., Ex. 15, ¶ 9 ("[W]all time includes the time we are in the hospital waiting to turn the patient over to medical personnel for care . . . .").

[73] Mitchell Black, *Patients Arrive at Mission Hospital in Ambulance, Then the Waiting Begins*, Asheville Citizen Times (July 25, 2023), https://www.citizentimes.com/story/news/local/2023/07/25/mission-hospital-ambulance-patients-wait-hours-for-care/70401738007/.; Affidavit of Taylor Jones (Ex. 16), ¶ 8.

[74] Black, *Patients Arrive at Mission Hospital in Ambulance*, *supra* note 74.

96. The amount of time it takes to offload patients from an ambulance to a bed in Mission's emergency department is unusually long for North Carolina hospitals.[75]

97. Almost daily, Buncombe County EMS, which has over a dozen ambulances, finds itself without available ambulances, in part because most or even all of its ambulances are waiting at Mission Hospital.[76] The paramedics staffing those ambulances have to continue to provide medical care, including the administration of medication, for the patients they are transporting while they wait for an available bed and an assigned nurse at the emergency department, rather than responding to additional calls for emergency medical care.[77]

98. McDowell County paramedics, who frequently transfer patients from Mission Hospital McDowell in Marion, North Carolina to Mission Hospital, have waited as long as *2 hours and 44 minutes* to effectuate the transfer of a patient from their ambulance to Mission's emergency department.[78]

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[75] *See* Kehler Aff., Ex. 15, ¶ 15.

[76] Jones Aff., Ex. 16, ¶¶ 12-13.

[77] Kehler Aff., Ex. 15, ¶¶ 10, 12.

[78] Kehler Letter, *supra* n. 63.

99. McDowell County EMS's repeated frustrations and complaints about these long wait times have gone unheeded. Its director described HCA as having "shown little to no interest in collaborating with EMS agencies and engaging in meaningful conversations to find solutions to these serious issues."[79] McDowell County EMS recently announced that it was implementing a 45-day "pause" on non-emergency transfers between Mission Hospital McDowell and Mission Hospital because of the protracted delays at Mission Hospital.[80]

100. By discontinuing the provision of medical transport services—and by impeding other entities from providing those services—HCA has breached the APA.

2. HCA has discontinued certain "inpatient and outpatient cancer services" at Mission Hospital.

101. Mission Hospital is the only advanced hospital facility in western North Carolina and is the closest hospital offering oncology services for residents of 17 counties.

102. For that reason, HCA committed in the APA not to discontinue oncology services, including "inpatient and outpatient cancer services,

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[79] *Id*.

[80] Staff Reports, *McDowell EMS Pauses Non-emergency Transfers of Patients to Mission in Asheville*, *supra* n. 63.

radiation therapy, surgery, chemotherapy, and infusion services." APA Schedule 7.13(a).

103. Despite that commitment, HCA has discontinued providing certain of these oncology services and is not providing others to the same extent that these services were provided in January 2019, when the APA was executed.[81]

a. HCA employs no medical oncologists at Mission Cancer Center.

104. To the detriment of patients in western North Carolina, HCA no longer employs any medical oncologists at Mission Cancer Center.[82]

105. As of November 27, 2023, HCA does not employ a single medical oncologist at Mission Cancer Center. As recently as 2021, there were five medical oncologists on the staff at that facility.[83] Three of those oncologists

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[81] Affidavit of Sharon Boyter (Ex. 11), ¶ 9 ("Since I began working at Mission, I have seen fewer patients over time whose primary provider came from Mission's medical oncology department. I do not believe Mission's medical oncology department has its own oncology providers any more.).

[82] Medical oncologists use medications like chemotherapy or immunotherapy to treat cancer. They are often viewed by patients as the primary cancer doctor. Radiation oncologists, on the other hand, use radiation therapy tailored to a specific cancer to treat the disease. *See, e.g.*, Cleveland Clinic, Oncologist, https://my.clevelandclinic.org/health/articles/22145-oncologist.

[83] Letter of Greg Lowe, CEO, HCA N.C. Div., to Llogan Walters, Assistant Attorney General (Oct. 4, 2023), *available at* https://drive.google.com/file/d/1qadPLSqiH7WcXOzO5Nxjmy9ZLMtub86b/view ("Lowe Letter"); Andrew R. Jones, *Mission to Lose Last Remaining Medical Oncologist*,

have left Mission' Hospital's comprehensive cancer treatment facility within the last seven months. These oncologists were burned out from HCA's profit-driven management of the hospital. HCA did not provide them sufficient support staff to triage patients or complete paperwork.[84] And when these oncologists raised their legitimate concerns to HCA leadership, they were dismissed.[85]

106. As a result of this reduction in staff, Mission was forced to cancel 45 medical oncology appointments between January and June 2023. To put that figure in perspective, Mission cancelled 60 medical oncology appointments for the entirety of the calendar year 2022, 51 medical oncology appointments for the entirety of the calendar year 2021, and 45 medical oncology appointments for the entirety of the calendar year 2020.[86]

107. Patients who had been under the care of Mission's medical oncologists have been advised to visit alternative hospitals or treatment

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Asheville Watchdog (Oct. 6, 2023), https://avlwatchdog.org/mission-to-lose-last-medical-oncologist/; *see* Quiery Aff., Ex. 2, ¶¶ 11, 15.

[84] Quiery Aff., Ex. 2, ¶¶ 11.A.1-4.

[85] *Id*. ¶¶ 11.C.1-3.

[86] Lowe Letter, *supra* n. 83; Jones, *Mission to Lose Last Remaining Medical Oncologist*, *supra* n. 83.

centers for continuation of care.[87] The delay in receiving care frustrates patients and puts their health at risk.[88]

108. Previously, the medical oncologists that HCA employed at Mission Cancer Center supervised the start of chemotherapy treatment in the outpatient setting for patients who could not receive chemotherapy from other outpatient oncology providers in the area. These patients were typically uninsured, underinsured, or insured by government payors like Medicaid or Medicare.[89]

109. This was an important service for a safety-net hospital like Mission: it is considered best practice for a physician to supervise a patient's first chemotherapy treatment.[90] Thus, the medical oncologists that HCA employed at Mission Cancer Center ensured that uninsured, underinsured, and Medicaid- and Medicare-insured cancer patients could still receive chemotherapy treatment.

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[87] Affidavit of Ann Howell (Ex. 3), ¶ 12.

[88] *Id.* ¶ 14 ("It was frustrating to be transitioned from Mission Hospital to Messino Cancer Center while experiencing a major health concern . . . ."); Affidavit of Martin Palmeri (Ex. 10), ¶ 31 ("This delay [in starting chemotherapy treatment] is potentially devastating to patients with fast-spreading cancers.").

[89] *See* Palmeri Aff., Ex. 10, ¶¶ 26-31.

[90] *Id.* ¶ 27.

110. Because HCA no longer employs any medical oncologists at Mission Cancer Center, uninsured or underinsured patients who cannot receive chemotherapy from other outpatient oncology providers in the area have nowhere to turn for their first chemotherapy treatment.[91]

111. These patients must delay treatment, risking the spread of their cancer.[92]

112. It is atypical for a safety-net tertiary care hospital in a city the size of Asheville to not offer supervision of new chemotherapy treatments.[93]

b. HCA has drastically reduced the number of oncology beds and oncology nurses at Mission Hospital.

113. HCA has reduced the number of available, staffed in-patient oncology beds at Mission Hospital by 45%: from 44 beds in 2019 to 24 beds today.[94]

114. That is a woefully inadequate number to address community demand. Oncology patients seeking medical care at Mission Hospital often

[91] *Id.* ¶¶ 27-28, 31.

[92] *Id.* ¶ 30.

[93] *Id.* ¶ 31.

[94] Boyter Aff., Ex. 11, ¶ 15.

cannot be directly admitted to the oncology floor and instead must be boarded in the emergency department until an oncology bed opens up.[95]

115. One leukemia patient tried multiple times to be admitted directly to Mission's oncology department when she experienced flare-ups and complications from her cancer but was repeatedly rebuffed and informed that the department was at capacity.[96] When pressed, a physician's assistant informed the patient that there were technically beds available, just no nurses to staff them.[97]

116. That patient's experience is unfortunately common for those in need of inpatient oncology services in the area. Since HCA decided to staff only 24 oncology beds, the number of oncology patients boarded in the emergency department awaiting an inpatient room has increased.

117. Despite reducing the number of inpatient oncology beds, the patient-to-nurse ratio in the inpatient oncology unit remains inexcusably high.

118. Generally speaking, the ratio for patients to nurses on an oncology floor should be four patients for every nurse.[98] In addition, there

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[95] *Id*. ¶ 16; *see also* Affidavit of Ed Jenest (Ex. 4), ¶¶ 11-14; Clements Aff., Ex. 14, ¶¶ 14-15.

[96] Clements Aff., Ex. 14, ¶ 14-15.

[97] *Id*. ¶ 14.

[98] Palmeri Aff., Ex. 10, ¶ 17: Boyter Aff., Ex. 11, ¶ 10.

should be a charge nurse, at least two CNAs to provide support, and a nursing coordinator to supervise all the nursing care.

119. That ratio should be smaller—three patients to every nurse—for patients with acute cancers receiving complex chemotherapy.[99]

120. The ratio for oncology patients to nurses needs to be low because of the very high standards of care that nurses must provide to oncology patients. These patients need round-the-clock care. Subtle changes or declines in these patients' conditions can occur quite rapidly and may have critical consequences.[100]

121. During a typical day, the Mission Health oncology department has a patient-to-nurse ratio of, at best, four patients to every nurse. But that best-case scenario includes requiring the charge nurse to staff patients rather than oversee the other nurses. Additionally, there is at best one CNA rather than two, and a single nursing coordinator. At times, that patient-to-nurse ratio has been as high as eight patients to every nurse.[101]

122. The inadequate staffing of nurses poses significant risks and consequences for patients. Multiple oncologists have reported that patients

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[99] Palmeri Aff., Ex. 10, ¶ 17; Boyter Aff., Ex. 11, ¶ 10.

[100] *See* Palmeri Aff., Ex. 10, ¶ 11; Boyter Aff., Ex. 11, ¶¶ 6, 12.

[101] Siegel Aff., Ex. 6, ¶ 19 (describing an eight-to-one ratio); Palmeri Aff., Ex. 10, ¶ 18 (describing an eight-to-one ratio); *see also* Boyter Aff., Ex. 11, ¶ 11 (describing a six-to-one ratio).

have not received pain medication on a timely basis because the overworked, understaffed nurses are responsible for the care of more patients than they can reasonably handle. As a result of HCA's deliberate understaffing these oncology patients suffer excruciating pain.[102]

123. The inadequate staffing also imposes unsustainable burdens on the nurses themselves. These devoted and committed healthcare practitioners are overburdened and struggling to care for more patients than best practices would dictate. Perhaps not surprisingly, many of the oncology nurses are leaving employment at Mission Hospital.

c. Complex hematology patients can no longer receive chemotherapy treatments at Mission.

124. When HCA acquired Mission, complex hematology patients—patients with acute leukemia or lymphomas—were able to receive chemotherapy at Mission Hospital. Today, they no longer can.[103]

125. In September 2023, Messino Cancer Center announced that it would no longer treat complex hematology cancer patients—*e.g.*, those patients with acute leukemias requiring induction therapy and primary

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[102] Durr, *How Many Doctors Have Left Mission? HCA Won't Say*, *supra* n. 24.

[103] Andrew R. Jones, *Citing 'System Failures,' Messino to Stop Providing Acute Leukemia Chemotherapy at Mission*, Asheville Watchdog (Sept. 21, 2023), https://avlwatchdog.org/citing-system-failures-messino-to-stop-providing-acute-leukemia-chemotherapy-at-mission/; Palmeri Aff., Ex. 10, ¶¶ 23-24.

(central nervous system) lymphomas—in the inpatient setting at Mission Hospital.[104] In other words, Messino would no longer provide acute hematology chemotherapy at Mission.[105]

126. HCA's refusal to provide adequate nurse staffing is one reason for the elimination of this service.[106] Another reason is that HCA does not provide an adequate supply of, nor adequate staff to mix, the complex chemotherapy drugs that are administered to acute leukemia and lymphoma patients.[107]

127. Mission presently employs only *one* chemotherapy-trained pharmacist. That means there is *one* person tasked with mixing, assembling, and preparing chemotherapy, infusion treatments, and other medications for all oncology patients admitted to Mission Hospital.[108]

128. That pharmacist is not super-human: he cannot work nights or

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[104] Jones, *Citing 'System Failures,' Messino to Stop Providing Acute Leukemia Chemotherapy at Mission*, *supra* n. 103; Palmeri Aff., Ex. 10, ¶¶ 23-24.

[105] Jones, *Citing 'System Failures,' Messino to Stop Providing Acute Leukemia Chemotherapy at Mission*, *supra* n. 103; Palmeri Aff., Ex. 10, ¶¶ 23-24; Boyter Aff., Ex. 11, ¶ 13 ("[P]atients who come to Mission for oncology treatment related to hematological malignancies are now sent to academic centers in areas such as Charlotte or the Triangle, as Messino providers cannot trust Mission to meet the level of care Messino expects.").

[106] Palmeri Aff., Ex. 10, ¶ 23.

[107] *Id.* ¶ 23.

[108] *Id.* ¶¶ 13-14.

weekends, and he sometimes takes sick or personal leave. When he is not at Mission, there is no one else who can mix the chemotherapy and other medications for oncology patients.[109] It is unusual for a hospital the size of Mission to employ only one chemotherapy-trained pharmacist.[110]

129. Moreover, there is frequently a shortage in the supply of necessary pharmaceutical components. HCA does not maintain an adequate supply of either key chemotherapy drugs or chemical reagents necessary to run laboratory tests on oncology patients.

130. HCA has been made aware of these shortages but is unwilling to rectify the problem by maintaining backup supply.[111] It is committed to using a "just-in-time" supply chain model through which—it hopes—that its current vendors will supply all of the medications and pharmaceutical products that its patients demand in a timely fashion such that HCA does not need to have extra products at Mission Hospital. Purchasing more pharmaceutical products than Mission requires at any given point would, of course, increase overhead costs for HCA.

131. Even though its current vendors cannot provide sufficient supply to meet demand, HCA is reluctant to try to order them from any other

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[109] *Id.* ¶¶ 14-15.

[110] *Id.* ¶ 13.

[111] *Id.* ¶ 13.

vendors. Instead, it prefers to source products solely from its current vendor, Parallon—a wholly-owned subsidiary of HCA.

132. As a result of this failure to have adequate supplies of chemotherapy drugs, cancer patients at Mission have had to miss chemotherapy treatments.[112] This complicates their treatment plans and presents significant risks to their overall health.

133. These conditions have become the regular state of affairs since shortly after HCA bought Mission. Although Messino's oncologists tried to safely administer chemotherapy treatments to complex hematology patients until September 2023, the medical oncologists HCA hired at Mission Cancer Center decided as early as 2020 that HCA had not given them the resources necessary to safely induce chemotherapy treatments for acute leukemia patients at Mission Hospital.[113]

134. Those same oncologists put together a proposal for safely resuming chemotherapy treatments at Mission Hospital, but HCA never followed through on the proposal.

135. Accordingly, the medical oncologists HCA employed at Mission did not provide any chemotherapy treatments to complex hematology

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[112] *Id.* ¶ 15 ("Thus, there are times when Mission Hospital is unable to prepare the chemotherapy drugs.").

[113] Quiery Aff., Ex. 2, ¶ 11.B.1.

patients between 2020 and when Mission ceased to employ any medical oncologists in November 2023.[114]

136. Because Messino Cancer Center had been the *only* provider of chemotherapy treatments for complex hematology patients at Mission,[115] its decision had significant consequences for the dozens of complex hematology patients in western North Carolina. Those patients were faced with the option of either continuing treatment at Mission—knowing that their physicians wanted to cut ties with that hospital—or travel hours to alternative medical centers for treatment.[116]

C. The Advisory Board did not consent to HCA discontinuing these services and no force majeure occurred.

137. The APA allows HCA to discontinue certain services, including the emergency and trauma services and oncology services discussed above, before January 2029 only if it obtains prior, written consent from the Advisory Board or if "[f]orce [m]ajeure mak[es] the provision of such services impossible or commercially unreasonable." APA ¶ 7.13(a).

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[114] *See id*. ¶ 11.B.1.

[115] Jones, *Citing 'System Failures,' Messino to Stop Providing Acute Leukemia Chemotherapy at Mission*, Asheville Watchdog (Sept. 21, 2023), *supra* n. 103; Boyter Aff., Ex. 11, ¶ 13.

[116] Jones, *Citing 'System Failures,' Messino to Stop Providing Acute Leukemia Chemotherapy at Mission*, Asheville Watchdog (Sept. 21, 2023), *supra* n. 103

138. The Advisory Board never consented to the discontinuance of emergency and trauma services or oncology services.

139. A "force majeure" is defined as "an event or effect that cannot be reasonably controlled by the Party affected and was not in existence as of the Effective Time." APA ¶ 1.1. It includes, *inter alia*, acts of nature, terrorist activities, labor disputes, or acts or omissions of a governmental authority. *Id*.

140. There was no force majeure that made providing emergency and trauma services or oncology services at Mission Hospital impossible or commercially unreasonable.

141. Therefore, HCA's discontinuance of emergency and trauma services and oncology services runs afoul of the clear language of the APA.

142. The APA acknowledges that "irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached." APA ¶ 10.10(a). It therefore provides that, if any provision is breached or threatened to be breached, the appropriate remedy is specific performance of the commitments in the APA and an injunction restraining that breach or threatened breach. *Id*.

143. If the Attorney General determines that HCA is not complying with certain contractual obligations in the APA—including Paragraph

7.13(a)—then the Attorney General is obligated to inform Dogwood Health Trust. APA ¶ 13.13(b). Dogwood Health then has 40 days after receiving that notice to enforce those contractual obligations. If the breach is not cured within those 40 days, the Attorney General has the right to enforce the obligation on behalf of and in the name of Dogwood. *Id*.

144. On October 31, 2023, the Attorney General's Office notified Dogwood Health Trust that it had concluded that HCA was not complying with its obligations pursuant to Paragraph 7.13(a) of the APA.

145. The 40-day period to cure HCA's breach concluded on December 12, 2023.

146. Despite its best efforts, Dogwood Health Trust was not able to fully enforce HCA's contractual obligations and get the company to cure its alleged breaches. The failure to cure is solely the fault of HCA, who refuses even to acknowledge a breach.

CLAIM FOR RELIEF
COUNT I: BREACH OF CONTRACT
(Emergency and Trauma Services at Mission Hospital)

147. Plaintiff incorporates by reference the allegations set forth in all of the above paragraphs and re-alleges each of the foregoing paragraphs as if fully set forth herein.

148. The Asset Purchase Agreement memorializing HCA's acquisition of all of Mission's assets, including Mission Hospital, was executed in January 2019.

149. Pursuant to Paragraph 7.13(a) of that Asset Purchase Agreement, HCA was forbidden from discontinuing the provision of certain services set forth in Schedule 7.13(a) of the Asset Purchase Agreement for the ten-year period immediately following the closing date of the transaction, unless otherwise consented to in writing by the Advisory Board or if "[f]orce [m]ajeure mak[es] the provision of such services impossible or commercially unreasonable."

150. The services enumerated in Schedule 7.13(a) include, *inter alia*, "Emergency and Trauma services generally consistent with the current Level II Trauma Program with emergency services for pediatrics and adults, ground/air medical transport services and forensic nursing services."

151. The Asset Purchase Agreement is a valid contract.

152. HCA has breached the Asset Purchase Agreement by discontinuing the provision of certain emergency and trauma services at Mission Hospital at substantially the same level as Mission provided those services before the acquisition. HCA's conduct in effectuating this breach includes, but is not limited to:

(a) Failing to provide emergency services for adults in a manner consistent with a Level II Trauma Program; and

(b) Failing to provide ground/air medical transport services.

153. The Advisory Board did not consent to HCA's discontinuation of certain emergency and trauma services at Mission Hospital.

154. There was no force majeure that made providing emergency and trauma services at Mission Hospital impossible or commercially unreasonable.

155. The discontinuation of certain emergency and trauma services at Mission Hospital has caused irreparable damage and should be remedied through specific performance and an injunction restraining the breach. APA ¶ 10.10(a).

COUNT II: BREACH OF CONTRACT
(Oncology Services)

156. Plaintiff incorporates by reference the allegations set forth in all of the above paragraphs and re-alleges each of the foregoing paragraphs as if fully set forth herein.

157. The Asset Purchase Agreement memorializing HCA's acquisition of all of Mission's assets, including Mission Hospital, was executed in January 2019.

158. Pursuant to Paragraph 7.13(a) of that Asset Purchase Agreement, HCA was forbidden from discontinuing the provision of certain services set forth in Schedule 7.13(a) of the Asset Purchase Agreement for the ten-year period immediately following the closing date of the transaction, unless otherwise consented to in writing by the Advisory Board or if "[f]orce [m]ajeure mak[es] the provision of such services impossible or commercially unreasonable."

159. The services enumerated in Schedule 7.13(a) include, inter alia, "Oncology Services – inpatient and outpatient cancer services, radiation therapy, surgery, chemotherapy, and infusion services."

160. The Asset Purchase Agreement is a valid contract.

161. HCA has breached the Asset Purchase Agreement by discontinuing the provision of certain oncology services at Mission Hospital. HCA's conduct in effectuating this breach includes, but is not limited to:

(a) Employing no medical oncologists;

(b) Reducing the number of beds and nurses for oncology patients admitted to Mission Hospital; and

(c) Discontinuing certain forms of chemotherapy treatment.

162. The Advisory Board did not consent to HCA's discontinuation of certain oncology services at Mission Hospital.

163. There was no force majeure that made providing certain oncology services at Mission Hospital impossible or commercially unreasonable.

164. The discontinuation of certain oncology services at Mission Hospital has caused irreparable damage and should be remedied through specific performance and an injunction restraining the breach. APA ¶ 10.10(a).

PRAYER FOR RELIEF

WHEREFORE, for the reasons outlined above, Plaintiff requests that the Court:

1. Issue a Declaration that HCA has breached Paragraph 7.13(a) of the Asset Purchase Agreement;

2. Issue a Permanent Injunction restraining such breach, pursuant to Paragraph 10.10(a) of the Asset Purchase Agreement;

3. Issue a Decree or Order of specific performance to enforce the observance and performance of Paragraph 7.13(a) of the Asset Purchase Agreement by requiring HCA to continue providing emergency and trauma services and oncology services at the level they were provided at Mission at the time of the acquisition, pursuant to Paragraph 10.10(a) of the Asset Purchase Agreement; and

4. Award any and all further legal and equitable relief as may be just and proper.

This the 14th day of December 2023.

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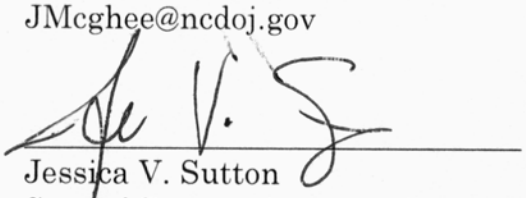

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