

DISTRICT COURT, COUNTY OF BOULDER, COLORADO
Boulder Justice Center
1777 6th Street
Boulder, CO 80302

AMI SADLER; COMPASSION & CHOICES; COMPASSION
& CHOICES OF COLORADO; STEPHEN KREBS, MD;
SHANNON LEWIS; COLORADO RELIGIOUS COALITION
FOR REPRODUCTIVE CHOICE; AND ASSOCIATES IN
WOMEN'S HEALTH, P.C.,

Plaintiffs,

v.

COMMUNITY FIRST FOUNDATION f/k/a LUTHERAN
MEDICAL CENTER FOUNDATION; SISTERS OF
CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC.;
EXEMPLA, INC., in its corporate capacity and in its trade dress
of EXEMPLA LUTHERAN MEDICAL CENTER; EXEMPLA
GOOD SAMARITAN MEDICAL CENTER LLC; KAISER
HOSPITAL ASSET MANAGEMENT, INC.; and KAISER
FOUNDATION HEALTH PLAN OF COLORADO

Defendants.

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Case Number: 07CV1113

Div.: 2

Ctrm:

FIRST AMENDED COMPLAINT

Ami Sadler, Compassion & Choices, Compassion & Choices of Colorado, Stephen Krebs, MD, Shannon Lewis, Colorado Religious Coalition for Reproductive Choice, and Associates in Women's Health, P.C. (collectively the "Plaintiffs"), through their counsel, Koncilja & Associates, P.C. and Heizer Paul LLP, for their First Amended Complaint, pursuant to C.R.C.P. 15(a), against Community First Foundation ("CFF"), Sisters of Charity of Leavenworth Health System, Inc. ("SCLHS"), Exempla, Inc. ("Exempla"), Exempla Good Samaritan Medical Center, LLC ("Good Samaritan"), Kaiser Hospital Asset Management, Inc. ("Kaiser"), and Kaiser Foundation Health Plan of Colorado ("Kaiser Foundation") (Exempla, Good Samaritan, SCLHS, Kaiser, and Kaiser Foundation are referred to as the "Rule 57 Necessary Parties"), complain and allege as follows:

I. INTRODUCTION

1. In violation of Colorado law, which requires a judicial determination to be made *before* charitable assets are diverted from their original intended purpose, CFF has instead proceeded to enter into a proposed transfer of its sponsorship or membership interest, in Exempla Lutheran Medical Center ("Lutheran") and Good Samaritan, to SCLHS. This proposed transfer diverts Lutheran and Good Samaritan from their original intended purpose of providing broad non-sectarian health care, and will prohibit Lutheran and/or Good Samaritan from providing broad non-sectarian health care. Furthermore, as part of this proposed transfer, CFF will receive a reported \$311 million, which, it has indicated, it does not plan to dedicate exclusively towards the provision of broad non-sectarian health care.

2. CFF has not even attempted to comply with Colorado law. More importantly, CFF's proposed transfer is not permitted by Colorado law because the original intended purpose of Lutheran and Good Samaritan is not obsolete, inappropriate, or impracticable.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to Colorado Constitution Article 6, § 9.

4. Venue is proper in this Court pursuant to C.R.C.P. 98(c) for the following reasons: SCLHS and Kaiser are out of state corporations and may be sued where one or more plaintiffs reside; Ami Sadler lives in Boulder County, and as a Kaiser member she has been and expects to be treated at Good Samaritan in the future; and Good Samaritan, Kaiser, and Kaiser Foundation do substantial business in Boulder County.

5. Plaintiffs are proceeding on the basis of the Uniform Management of Institutional Funds Act ("UMIFA"), C.R.S. § 15-1-1101, *et seq.*; declaratory judgment, C.R.C.P. 57 and C.R.S. § 13-51-101, *et seq.*; and common law principles and doctrines of *cy pres* / breach of charitable trust.

6. Plaintiff is providing a courtesy copy of this First Amended Complaint to the Colorado Attorney General, in compliance with C.R.S. § 15-1-1109(2).

III. PARTIES

7. Ami Sadler (“Ms. Sadler”) is a resident of Boulder, Colorado.

8. Compassion & Choices is a nonprofit corporation with a Colorado registered address of 4100 E. Mississippi Ave., #700, Denver, CO 80246-3048.

9. Compassion & Choices of Colorado is a nonprofit corporation with its principal place of business at P.O. Box 101824, Denver, Colorado 80250.

10. Stephen Krebs, MD (“Dr. Krebs”) is an internist at Wheat Ridge Internal Medicine, P.C. (“WRIM”) in Wheat Ridge, Colorado, 7821 W. 38th Ave., 80033.

11. Shannon Lewis (“Ms. Lewis”) is a resident of Jefferson County, Colorado.

12. Colorado Religious Coalition for Reproductive Choice is a Colorado nonprofit corporation with its principal place of business at P.O. Box 37414, Denver, CO 80237, and is an affiliate of a national organization located in Washington DC.

13. Associates in Women’s Health, P.C. (“AWH”) is a Colorado company with its principal place of business at 3555 Lutheran Parkway, Suite 150, Wheat Ridge, CO 80033.

14. CFF is a Colorado nonprofit corporation with its principal place of business in Arvada, Colorado. Kenneth W. Eggeman, Ph.D. is the President and CEO of CFF. Vernon Ritzman, MD, is the Chair of the Board of CFF.

15. SCLHS is a Kansas not-for-profit corporation with a Colorado registered address of 2401 15th Street, Ste. 300, Denver, CO, 80202.

16. Exempla is a Colorado nonprofit corporation with a principal office address of 2420 W. 26th Avenue, Suite 100-D, Denver, Colorado, 80211. Exempla does business, in part, under the trade name of Exempla Lutheran Medical Center (“Lutheran”), which is located in the City of Wheat Ridge (Jefferson County), Colorado.

17. Good Samaritan is a Delaware limited liability company with its principal Colorado office address at 2420 W. 26th Avenue, Suite 100-D, Denver, Colorado, 80211, and owns Exempla Good Samaritan Medical Center located in Lafayette, Colorado (Boulder County). Exempla is the sole economic member of Good Samaritan.

18. Kaiser is a California nonprofit corporation with its registered address at 1560 Broadway, Suite 2090, Denver, CO 80202. Upon information and belief, Kaiser and Exempla collaborated to form Good Samaritan.

19. Kaiser Foundation is a Colorado corporation insurance company with its registered address at 1560 Broadway, Denver, CO 80202. Upon information and belief, and upon speaking with the Boulder County Assessor's Office, Kaiser Foundation is the record owner of the building in which Good Samaritan is located.

20. CFF and SCLHS have certain sponsorship or membership interests in Exempla that they refer to as "membership interests."

21. The Rule 57 Necessary Parties are joined as defendants herein because the proposed transaction at issue involves an agreement pursuant to which CFF is transferring its sponsorship or membership interest in Exempla to SCLHS, which will then exercise plenary authority and control over the operations of Lutheran and Good Samaritan. Consequently, their interests may be impacted by the relief requested in this action.

IV. FACTUAL ALLEGATIONS

A. Background - Plaintiffs

22. Ms. Sadler is a member of Kaiser, which has arranged for treatment of its members at Good Samaritan as to end-of-life choices, without restrictions.

23. Ms. Sadler was treated at Good Samaritan in 2006. Complications from that treatment resulted in a life-threatening staph infection. At that time, Ms. Sadler executed advanced directives regarding end-of-life choices. Such advanced directives would not be honored were she to face hospitalization at Good Samaritan if the proposed transfer of sponsorship or membership interest from CFF to SCLHS, discussed below, proceeds.

24. Compassion & Choices works to improve care and expand choice at the end of life. Compassion & Choices pursues legal reform, as well as the enforcement of laws, promoting optimal pain control and honoring patient treatment wishes as expressed through advance health care directives. Compassion & Choices works one-on-one with patients, providing them, their families, and their health care providers, with information about current legal options for optimal end-of-life care.

25. Compassion & Choices is a national organization that supports over 60 volunteer chapters located throughout the United States that act within their communities to advance such issues through education, support and advocacy work.

26. Compassion & Choices of Colorado is the local Colorado chapter of the national organization Compassion & Choices, and pursues the same issues, goals, and advocacy as

Compassion & Choices, as discussed above, by promoting Compassion & Choices members who reside within Colorado. Such support includes providing members with information and instruction on the completion of end-of-life care choices as expressed in a legal document commonly known as an advanced health care directive.

27. Dr. Krebs is an internist at WRIM. WRIM has a patient base of 15,000 active patients and the primary hospital for its practice is Exempla Lutheran Medical Center.

28. As an internist, Dr. Krebs sees patients ranging from ages 15 to 95 plus. Some diseases, such as system lupus erythmatosis (“SLE”) or primary pulmonary hypertension (“PPH”) pregnancy, present mortal danger to the mother. Should they occur, a termination of the pregnancy may be urgently necessary to save the mother. Under Dr. Krebs’ current care at WRIM are two patients with PPH and thirteen patients with SLE. As a result, at least fifteen patients under Dr. Krebs’ care at WRIM would be adversely affected if the proposed transfer of sponsorship or membership interest from CFF to SCLHS, discussed below, proceeds. Severely ill patients with PPH or SLE should only have these procedures done in a true hospital setting due to their burden of illness, frequent complication rates, and need for possible critical care service back-up.

29. In addition, Accutane, a common medication prescribed for medically severe acne, has the propensity to produce severe birth defects for which a pregnant mother may choose to terminate a nonviable or horribly deformed fetus. Accutane is currently the single most commonly prescribed high potency therapy for acne and its use is widespread in the Jefferson County community. At present, Dr. Krebs can recommend and link with others to perform terminations of such pregnancies at Lutheran. Similarly, where appropriate, Dr. Krebs recommends surgical sterilization, if the severity of the disease dictates complete prevention. If the proposed transfer of sponsorship or membership interest from CFF to SCLHS proceeds, he will not be able to perform such services, to the detriment of his patients and others. Furthermore, post-rape emergency contraception, a service WRIM and Dr. Krebs currently provide at Lutheran, would also be prohibited.

30. Because WRIM also cares for severely ill elderly patients, Dr Krebs frequently addresses the withdrawal of futile care at end of life. Many of these discussions and procedures would be prohibited if the proposed transfer proceeds - thus limiting patients’ choices at end of life. These changes will result in and prohibit Dr. Krebs from applying his best medical judgment in providing medical services to his patients.

31. Ms. Lewis is currently pregnant and expects to give birth in or around the summer of 2008. Ms. Lewis and her doctors use Lutheran for her medical care, and specifically for medical care relating to Ms. Lewis’s pregnancy.

32. Ms. Lewis and her physicians have planned and arranged for her to have a tubal ligation at Lutheran to be performed contemporaneously with her planned C-Section delivery. However, Ms. Lewis’s plans and arrangements for a tubal ligation to be performed at Lutheran,

at the same time she gives birth, would not be honored if the proposed transfer of sponsorship or membership interest from CFF to SCLHS, discussed below, proceeds.

33. The purpose of Colorado Religious Coalition for Reproductive Choice is to ensure that every woman is free to make decisions about when to have children according to her own conscience and religious beliefs, without government interference. Colorado Religious Coalition for Reproductive Choice's primary role is to educate the public to make clear that abortion is moral, ethical, and religiously responsible decision.

34. AWH currently has three members: Dr. Debra Ganter, Dr. Heather Schoen, and Dr. Sarah Ellis. AWH provides patients in Jefferson County with the highest level of medical care. Specifically, AWH provides health services to women, including gynecological and obstetrical care. AWH has a current patient population of approximately 15,000 – 20,000 patients.

35. The physician members of AWH have hospital privileges at both Lutheran and St. Anthony's Hospital. However, 97% of the patients at AWH who require hospitalization are treated at Lutheran. In addition, St. Anthony's Hospital is run in accordance with the Ethical and Religious Directives for Catholic Health Care Services (the "Catholic Directives").

36. If the proposed transfer of sponsorship or membership interest from CFF to SCLHS proceeds, AWH will not be able to provide numerous services to their patients in an effective, timely, efficient, and medically responsible manner, including tubal ligations, tubal ligations for patients presently planning C-section deliveries, terminations of pregnancies (even when the fetus has lethal anomalies), contraception, end-of-life decisions, neonatal resuscitation issues, and treatment of ectopic pregnancies. These changes will result in and prohibit AWH from applying its best medical judgment in providing appropriate and medically indicated services to its patients.

37. In addition, upon information and belief, if the proposed transfer of sponsorship or membership interest from CFF to SCLHS proceeds, doctors can be arbitrarily penalized in their practice of medicine. If a physician performs a procedure that an observer, staff member, or other person believes violates the Catholic Directives, the physician must appear before a panel. Upon information and belief, the focus of this panel is not the propriety or the efficacy of the medical care provided, but only whether the treatment violated the Catholic Directives. Upon information and belief, the panel includes and may be controlled by representatives of the Catholic Church, and not the medical profession. Upon information and belief, if the panel determines that the procedure violates the Catholic Directives, the physician is penalized and may lose her/his privileges to practice at that particular hospital.

B. Background - Claims

38. Lutheran is a non-profit hospital that provides, and has historically provided, broad non-sectarian health care services to the public, including the Jefferson County

community. For most of its 100 years, Lutheran has been a full service, community based hospital. Lutheran is the only such health care facility in Jefferson County, Colorado's second most populace county. Lutheran is the hospital of first resort for most Jefferson County residents.

39. Good Samaritan is a non-profit hospital that provides, and has historically provided, broad non-sectarian health care services to the public, including the Boulder County community, and its hospital is located in Boulder County.

40. CFF, via a complex hospital affiliation structure created in 1997, discussed further below, apparently holds a sponsorship or membership interest in both Lutheran and Good Samaritan.

41. On October 30, 2007, CFF and SCLHS notified the Colorado Attorney General that CFF intended to transfer its apparent sponsorship or membership interest in Lutheran and Good Samaritan to SCLHS, in exchange for payment by SCLHS to CFF in the reported amount of \$311 million - \$50 million on closing, a 10 year promissory note in the amount of \$200 million, and \$61 million in debentures (hereafter, the "Proposed Transaction").

42. CFF and SCLHS have indicated that one result of the Proposed Transaction will be that neither Lutheran nor Good Samaritan will continue to provide broad non-sectarian health care services to their communities. Instead, Lutheran and Good Samaritan will be run by SCLHS in accordance with the Ethical and Religious Directives for Catholic Health Care Services (the "Catholic Directives"). Thus, the Proposed Transaction will deprive the public, specifically the communities of Jefferson County and Boulder County, of the broad non-sectarian health care services to which those hospitals have always been dedicated. The provisioning of broad non-sectarian health care services by Lutheran and Good Samaritan is referred to hereafter as the "Original Charitable Purpose."

43. In addition, CFF does not plan to use all or materially all of the funds it will receive, as a result of the Proposed Transaction, to further the Original Charitable Purpose. Instead, CFF has indicated its intent to abandon its historical role as Lutheran's fundraising arm. CFF has indicated that it will use its charitable assets, including the reported \$311 million it will receive from the Proposed Transaction to "provide financial support and innovative education to improve quality of life and increase community generosity and involvement" – a purpose so vague as to be meaningless. Indeed, CFF's most recent Colorado Registration Statement does not even mention Lutheran in the description of its charitable purpose.

44. As a result, Plaintiffs seek a finding and expedited declaratory judgment, under common law principles of charitable trusts and the *cy pres* doctrine, UMIFA, and pursuant to C.R.C.P. 57 and C.R.S. § 13-51-101, *et seq.*, that: (a) Declares and finds that the Proposed Transaction cannot go forward and be consummated without Court approval; (b) Declares and finds that CFF has failed to properly investigate and demonstrate that the Original Charitable Purpose is obsolete, inappropriate, or impracticable; (c) Declares and orders that the Original

Charitable Purpose is not obsolete, inappropriate, or impracticable; (d) Declares and orders that after the Proposed Transaction, Lutheran and Good Samaritan must be operated to provide broad non-sectarian healthcare consistent with the Original Charitable Purpose; and (e) an Order imposing a resulting trust on the proceeds of the Proposed Transaction and declares and orders that all, or the substantial majority of all, of the proceeds of the Proposed Transaction be used by CFF to provide for broad non-sectarian medical services in Boulder County and Jefferson County consistent with the Original Charitable Purpose; or, *alternatively* (f) an Order imposing a resulting trust on the proceeds of the Proposed Transaction, and declares and orders that all, or the substantial majority of all, of the proceeds of the Proposed Transaction be directed to a charitable organization other than CFF, to provide for broad non-sectarian medical services in Boulder County and Jefferson County consistent with the Original Charitable Purpose; or, *alternatively* (f) if the Court determines that the Original Charitable Purpose is obsolete, inappropriate, or impracticable to carry out, the Court should determine to which independently existing or newly created foundation the proceeds from the Proposed Transaction should be directed.

C. The Affiliation Between CFF and SCLHS

45. In 1997, SCLHS and CFF (which, at the time, was named Lutheran Medical Center Foundation – and ultimately changed its name to Community First Foundation on September 24, 2007) entered into an affiliation agreement (“Affiliation Agreement”) dated October 1, 1997.

46. Pursuant to that Affiliation Agreement, SCLHS and CFF agreed to affiliate St. Joseph Hospital and Lutheran via the creation of a new entity - Exempla. SCLHS and CFF agreed that their respective religious and broad non-sectarian identities of the respective institutions were of equal and significant importance and would continue. Indeed, this affiliation would not have taken place without such an understanding.

47. St. Joseph is a Catholic hospital owned by SCLHS and run in accordance with the Catholic Directives, and is located in Denver, Colorado. Pursuant to the Affiliation Agreement and related documents, SCLHS maintained its ownership of St. Joseph, but agreed that Exempla would operate and manage St. Joseph. Pursuant to the Affiliation Agreement and related documents, St. Joseph would continue to operate under the Catholic Directives.

48. Lutheran, as noted, has no religiously based restrictions on the services it provides. As part of the affiliation, Exempla took ownership of Lutheran.

49. Also, pursuant to the Affiliation Agreement and related documents, CFF and SCLHS became the two sole members of Exempla. Thus, as a consequence of the affiliation, CFF acquired an apparent sponsorship or membership interest in Lutheran.

50. In 2004, SCLHS and CFF, as partners pursuant to their 1997 affiliation, developed and opened Good Samaritan, which, as noted, is operated as a broad non-sectarian

facility with no religiously based restrictions. Upon information and belief, Good Samaritan was built in partial reliance that it would obtain a contract from Kaiser for the provision of broad non-sectarian healthcare. Exempla operates and manages Good Samaritan. CFF, through Exempla, acquired an apparent sponsorship or membership interest in Good Samaritan.

D. Lutheran and Good Samaritan are Financially Healthy and Successful

51. Upon information and belief, Lutheran and Good Samaritan are successful and financially sound hospitals.

52. Upon information and belief, Exempla has sufficient capital and debt capacity to meet the future needs of Lutheran and Good Samaritan.

53. Upon information and belief, 2006 was the best year in the history of Exempla or its predecessors -- with net income from operations of \$47.1 million, 5.8% of revenues of \$816 million. Upon information and belief, restated to include unrealized investment income, Exempla had a net income of \$72 million. Furthermore, upon information and belief, Exempla's bonds are rated A1 by Moody's, which is the highest rating of any hospital system with all of its operations located in Colorado. Moreover, upon information and belief, these financial results are consistent with previous years – as Exempla's net income has exceeded \$40 million every year since 2002.

E. The Proposed Transaction

54. Approximately one year ago, SCLHS and CFF began discussing plans to sell CFF's sponsorship or membership interest in Exempla to SCLHS in exchange for the approximate amount of \$311 million in cash, debentures, and other consideration.

55. The Board of Exempla attempted to negotiate with CFF and SCLHS in order to preserve the Original Charitable Purpose, such that access to all services currently provided by Good Samaritan and Lutheran would be preserved after the Proposed Transaction. However, these efforts were rebuffed. Subsequently, the Board of Exempla opposed the Proposed Transaction, in large measure because of the detrimental impact it will have on health care access and the diversion of health care resources from Jefferson and Boulder counties.

56. CFF, however, is proceeding with the Proposed Transaction.

57. Despite the fact that \$311 million will apparently be derived from the Proposed Transaction, CFF has refused to commit the future use of these funds in a manner that is consistent with the Original Charitable Purpose.

58. CFF has indicated that it intends to use the proceeds derived from the Proposed Transaction to support various charitable purposes other than broad non-sectarian health care in the affected communities.

59. Under the Proposed Transaction, with SCLHS holding membership or sponsorship interest in St. Joseph, Lutheran, and Good Samaritan, these hospitals will all be governed by Catholic health care restrictions, as expressed in the Catholic Directives, in violation of the Original Charitable Purpose and contrary to the historical operating precepts of Lutheran and Good Samaritan.

60. Upon completion of the Proposed Transaction and adoption of the Catholic Directives, Lutheran and Good Samaritan will be required to eliminate access to a range of services formerly provided by the institutions, including end-of-life care and reproductive health choices, among others, thereby reducing health care access in Jefferson and Boulder counties.

F. Lutheran and Good Samaritan’s Purposes are to Provide Broad Non-Sectarian Healthcare

61. As stated, Lutheran and Good Samaritan are charitable hospitals – i.e., they provide health care services to the public – and both hospitals’ core purpose has always been the provision of broad non-sectarian health care to the communities they serve.

62. Lutheran’s broad non-sectarian purpose is clearly reflected in the documents relating to its affiliation with St. Joseph. In the Affiliation Agreement, the parties agreed that the affiliation would “retain [both] -the Catholic identity, Sisters of Charity of Leavenworth sponsorship and religious and community heritage of Saint Joseph Hospital and the community heritage of Lutheran Hospital.”

63. Furthermore, Exempla’s Bylaws, which were amended in 2002 and 2005, and were agreed upon by CFF and SCLHS, consistently recognize the secular community purposes of Lutheran and Good Samaritan. For example, Exempla’s Board of Directors cannot make any changes that would curtail Lutheran or Good Samaritan’s ability to provide broad non-sectarian health care, as follows:

Any act of the Board, including any adoption, amendment or restatement of the Articles of Incorporation or bylaws that results in the operation of any material portion of the corporation’s business in a manner which does not further the secular community purposes of the corporation . . .(Emphasis supplied).

64. Lastly, upon information and belief, Kaiser entered into a hospital services agreement with Good Samaritan and/or Exempla in which Good Samaritan and/or Exempla promised to provide broad non-sectarian healthcare at Good Samaritan, healthcare that is explicitly prohibited by the Catholic Directives.

G. The Catholic Directives Severely Curtail Hospital Care Contrary to the Original Charitable Purpose.

65. The Catholic Directives are promulgated by the United States Catholic Conference of Bishops.

66. The Catholic Directives broadly impact the care a hospital may provide to its patients and to its community. The application of the Catholic Directives will result in a material change to a range of services available at Lutheran and Good Samaritan. Effected services include reproductive health care (including family planning and contraceptive services, services for rape victims, services related to HIV/AIDS, and infertility treatment) and end-of-life choices. The Catholic Directives also prohibit any counseling, information and referrals pertaining to those services, such as advising a patient who wants to participate in a clinical treatment study about the need to use contraception, or advising someone about to undergo cancer treatment on the possibility of preserving gametes in order to have a genetically-related child.

67. The Catholic Directives broadly impact the care a hospital may provide to its patients and to its community, including, in the following ways:

- a. The Catholic Directives prohibit all family planning services, referrals and counseling, including contraception, contraceptive counseling, tubal ligation and vasectomy. This prohibition also extends to counseling individuals with HIV and AIDS on the use of condoms to reduce transmission.
- b. Some hospitals have interpreted the Catholic Directives prohibition on abortion to also prohibit treating women with ectopic pregnancies (non-viable tubal pregnancies) until they actually show signs of infection, subjecting women to additional health risks, infertility and death.
- c. Some Catholic hospitals have also interpreted the abortion Catholic Directive to delay the treatment of women having miscarriages. While the standard treatment for placenta previa or ruptured membranes is to perform a uterine evacuation, some Catholic hospitals forbid this treatment until doctors can no longer detect a fetal heartbeat, often subjecting women to unnecessary blood transfusions, infections, infertility and death, despite the non-viability of the pregnancy.
- d. The Catholic Directives subject patients to fragmented care. A woman who has a cesarean section at a Catholic hospital and wishes to have a tubal ligation at the same time cannot do so. Instead, she must have the tubal ligation elsewhere, at a later date. Thus, she must undergo two separate surgeries, rather than combining the procedures as is medically advised.

- e. A rape victim who is treated at a Catholic hospital may be denied emergency contraception, the standard treatment to prevent pregnancy following rape. While Colorado law requires that a victim be given information about the medication, it does not require the provider to dispense it, direct her to another resource, or write a prescription (required for women 17 and under). The rape victim is forced to seek it elsewhere, often late at night, and after an incredibly traumatizing experience. Failure to provide emergency contraception in the emergency room as a standard part of treatment delays women's access to the medication, and greatly reduces its effectiveness, placing women at greater risk of pregnancy.
- f. The Catholic Directives prohibit the use of infertility treatments. This prohibition extends to counseling and referrals, so a person undergoing treatment for a fertility threatening disease, such as prostate cancer, would not be told of the possibility of storing and freezing sperm.
- g. The Lutheran-affiliated Estes Street Community Clinic, which serves homeless and uninsured adults and teens, may also come under the restrictions of the Catholic Directives. While the clinic currently provides the full spectrum of reproductive health care service, including medically accurate sex education, a change in ownership would leave this needy population with no alternatives for critically needed health care.
- h. The Catholic Directives also limit patient access to clinical trials, since patients must be directed to use birth control in order to limit the potentially harmful effects of experimental medication and to remain in the trial.
- i. The Catholic Directives allow providers to ignore patient wishes for end-of-life treatment as specified in an advance health care directive or by a patient appointed proxy. This includes ignoring a patient's request not to be kept alive by artificial means when there is no medical probability the patient will ever regain consciousness as well as disregarding U.S. Supreme Court rulings that allow patients to refuse unwanted medical treatment.
- j. As a condition of admitting privileges, doctors may be required to sign a statement agreeing to abide by the Catholic Directives at all times, and not just when on Catholic hospital grounds. Such agreements severely limit access to the prohibited services in a wide geographic area beyond the Catholic hospital. Service restrictions may also be placed on any property leased or sold by the Catholic hospital.

- k. Because insurance plans and Medicaid limit where patients can receive treatment, patients whose provider networks include only hospitals and physicians subject to Catholic health care restrictions are left without options for the services, unless they are able to pay for them at providers who are outside of their health plan networks.
- l. The Catholic Directives can be revised at any time, so additional restrictions may be imposed on the hospitals in the future. The Catholic Directives would likely prohibit any new therapies derived from research on fetal stem cells.
- m. It is the Archbishop who has final say in how the Catholic Directives will be interpreted, thus allowing more restrictions on services at the hospitals in the future, even if assured otherwise by CFF.

68. In addition to the Catholic Directives, the Vatican recently issued pronouncements on the use of feeding tubes in patients in a persistent vegetative state, which requires doctors to ignore living wills. Upon information and belief, such pronouncements, promulgated by the Congregation for the Doctrine of the Faith and approved by the Pope, would be binding upon hospitals operating under the Catholic Directives.

69. The Proposed Transaction, if consummated, will severely impact the quality of and access to health care services in Jefferson and Boulder counties, and is, or should be prohibited, by law, as follows.

**FIRST CLAIM FOR RELIEF
(Violation of UMIFA and Declaratory Judgment)**

70. Paragraphs 1-69 are incorporated in this First Claim for Relief as if set forth herein.

71. CFF holds as assets apparent sponsorship or membership interests in Lutheran and Good Samaritan. CFF holds these assets in trust for the benefit of the public.

72. Monies raised from community donors and others for Lutheran were raised under By-Laws, Articles of Incorporation, and affiliation agreements that expressed the Original Charitable Purpose.

73. Upon information and belief, Good Samaritan was, in part, constructed, operated and financed using community donations and/or leverage generated from community donations. When Good Samaritan was constructed and financed, its stated purpose was the provisioning of broad non-sectarian health care, a purpose that was and is consistent with the Original Charitable Purpose.

74. Under Colorado law, Lutheran and Good Samaritan are “institutional funds” held by CFF. *See* C.R.S. § 15-1-1103(6).

75. Colorado law contemplates that the Affiliation Agreement, and related organizational documents, resulting in the formation of Exempla, as well as Exempla’s By-laws and Good Samaritan and Lutheran’s Articles of Incorporation, each of which express the Original Charitable Purpose, constitute “gift instruments.” *See* C.R.S. § 15-1-1103(2).

76. The proceeds that CFF will secure from the Proposed Transaction are and will constitute “institutional funds” held by CFF. *See* C.R.S. § 15-1-1103(6).

77. CFF is one of two members of Exempla, which in turn controls Lutheran and Good Samaritan.

78. The organizational documents, including the Affiliation Agreement and related documents generated during the affiliation that created Exempla impose restrictions on CFF, Lutheran and Good Samaritan – namely that Lutheran and Good Samaritan provide broad non-sectarian health care to their respective communities consistent with the Original Charitable Purpose and that St. Joseph provide health care pursuant to the Catholic Directives.

79. CFF’s proposed transfer of its sponsorship or membership interest in Exempla, and by extension, Lutheran and Good Samaritan, to SCLHS will result in the failure of Lutheran and Good Samaritan to provide broad non-sectarian health care consistent with the Original Charitable Purpose.

80. Pursuant to UMIFA and the doctrine of *cy pres*, before CFF may transfer its interest in Lutheran and Good Samaritan to SCLHS in a manner that changes the Original Charitable Purpose, CFF must seek and secure the approval of a Colorado district court. *See* C.R.S. § 15-1-1109(2).

81. In order to effectively alter the Original Charitable Purpose explicit and implicit in the gift instruments, CFF must demonstrate that the requirement that provision by Lutheran and Good Samaritan of broad non-sectarian health care is obsolete, inappropriate, or impracticable. *See* C.R.S. § 15-1-1109(2).

82. Lutheran and Good Samaritan’s provision of broad non-sectarian health care is consistent with the Original Charitable Purpose and is not obsolete, inappropriate, or impracticable.

83. Upon information and belief, the Proposed Transaction is not necessary for the continuance of Lutheran and Good Samaritan as vibrant, broad non-sectarian community assets, because Lutheran and Good Samaritan are part of an Exempla healthcare system that is financially healthy.

84. The Plaintiffs have special interests in enforcement of the Original Charitable Purpose because they have sought or provided broad non-sectarian healthcare at Lutheran or Good Samaritan; they have paid for treatment at these facilities, through insurance or otherwise, with the understanding that the facilities would continue to provide broad non-sectarian healthcare; and they represent a particular segment of the public who needs, and wants, broad non-sectarian healthcare to be available in their communities.

85. If the Proposed Transaction is allowed to go forward without either (1) a condition that Lutheran and Good Samaritan must continue to provide the full panoply of health care services, including services prohibited by the Catholic Directives; and/or (2) a condition that CFF must use all or materially all of the proceeds of the Proposed Transaction for the Original Charitable Purpose, the Plaintiffs and other members of the public will be injured because they will be deprived of access to medical services their physicians have determined are approved and/or deprived of services they have chosen with respect to beginning-of-life and end-of-life care, and Plaintiffs will no longer be able to receive or provide broad non-sectarian healthcare at Lutheran or Good Samaritan; Plaintiffs will need to seek other venues to seek or provide services; Plaintiffs will no longer have information available through the Exempla health care database, such as information on family planning, contraception, and end-of-life concerns, which Plaintiffs and the public currently rely upon; and Plaintiffs' funds, whether in the form of payments for medical care or in the form of donations, or the proceeds therefrom, will be diverted to a purpose inconsistent with the Original Charitable Purpose.

86. CFF has not sought or secured the written consent of donors who gave donations to support the broad non-sectarian purposes of Lutheran and Good Samaritan.

87. Upon information and belief, all necessary parties under C.R.C.P. 57(j) have been joined in this proceeding and are before the court.

SECOND CLAIM FOR RELIEF
(Cy Pres / Breach of Charitable Trust Against CFF)

88. Paragraphs 1-87 are incorporated in this Second Claim for Relief as if set forth herein.

89. CFF is a non-profit, charitable organization that holds Lutheran and Good Samaritan in trust for the public, so that Lutheran and Good Samaritan may provide broad non-sectarian healthcare to their respective communities.

90. Lutheran and Good Samaritan's charitable purpose is to provide broad non-sectarian healthcare to their respective communities.

91. The Proposed Transaction will materially breach the trust CFF holds in Lutheran and Good Samaritan because it materially changes Lutheran and Good Samaritan's charitable purpose without judicial approval pursuant to the doctrine of *cy pres*.

92. Moreover, the doctrine of *cy pres* prohibits the Proposed Transaction because Lutheran and Good Samaritan's provision of broad non-sectarian health care is consistent with the Original Charitable Purpose and is not obsolete, inappropriate, or impracticable. Moreover, upon information and belief, the Proposed Transaction is not necessary for the continuance of Lutheran and Good Samaritan as vibrant, broad non-sectarian community assets, because Lutheran and Good Samaritan are part of an Exempla healthcare system that is financially healthy.

93. Similarly, the Proposed Transaction will materially breach the trust CFF holds in Lutheran and Good Samaritan because CFF does not plan to use the proceeds from the Proposed Transaction exclusively for the provision of broad non-sectarian healthcare in the Jefferson and Boulder Counties.

WHEREFORE, Plaintiffs respectfully request this Court to enter a declaratory judgment, on an expedited basis, as follows:

- (a) Declare and find that the Proposed Transaction cannot go forward and be consummated without Court approval;
- (b) Declare and find that CFF has failed to properly investigate and demonstrate that the Original Charitable Purpose is obsolete, inappropriate or impracticable;
- (c) Declare and find that the Original Charitable Purpose is not obsolete, inappropriate, or impracticable
- (d) Declare and order that after the Proposed Transaction, Lutheran and Good Samaritan must be operated to provide broad non-sectarian healthcare consistent with the Original Charitable Purpose; and
- (e) Impose a resulting trust on the proceeds of the Proposed Transaction, and declare and order that all, or the substantial majority of all, of the proceeds of the Proposed Transaction be used by CFF to provide for broad non-sectarian medical services in Boulder County and Jefferson County consistent with the Original Charitable Purpose; and
- (f) Alternatively, impose a resulting trust on the proceeds of the Proposed Transaction, and declare and order that all, or the substantial majority of all, of the proceeds of the Proposed Transaction be direct to a charitable organization other than CFF, to provide for broad non-sectarian medical services in Boulder County and Jefferson County consistent with the Original Charitable Purpose;

- (g) Alternatively, if the Court determines that the Original Charitable Purpose is obsolete, inappropriate, or impracticable to carry out, the Court should determine to which independently existing or newly created foundation the proceeds from the Proposed Transaction should be directed; and
- (h) Award the Plaintiffs such other and further relief as the Court deems just and proper.

DATED this 5th day of February, 2008.

Respectfully submitted,

KONCILJA & ASSOCIATES, P.C.

In accordance with C.R.C.P. 121 §1-29(9), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

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CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2008, I caused a true and correct copy of the above and foregoing **FIRST AMENDED COMPLAINT** to be served upon the following via the method indicated for each:

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