

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of the Application of

SAINT VINCENT'S CATHOLIC MEDICAL  
CENTERS OF NEW YORK d/b/a SAINT  
VINCENT CATHOLIC MEDICAL CENTERS,

Petitioner,

For Disposition Of Funds For Charitable Purposes  
Pursuant To Section 555 of the Not-For-Profit  
Corporation Law and Section 8-1.1 of The Estates,  
Powers and Trusts Law of The State of New York.

**AFFIRMATION AMENDING  
AND SUPPLEMENTING  
VERIFIED PETITION**

Index No. 158296/2015

Hon. Debra A. James, JSC

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COLLEEN M. TARPEY, an attorney duly admitted to practice before the Courts of the  
State of New York, hereby affirms, under penalty of perjury, the following:

1. I am a senior attorney at Garfunkel Wild, P.C., counsel for Petitioner in the captioned matter. I submit this affirmation following our consultation with necessary party, the Office of the New York State Attorney General's Charities Bureau ("Charities Bureau"), to supplement and amend the Verified Petition as set forth herein.

2. This affirmation is submitted in lieu of an amended Petition because the Petition filed consists of 99 pages, containing 488 paragraphs and 208 exhibits. It would be unduly onerous at this juncture for Petitioner to reconfigure the Petition to accommodate the additional information set forth below, particularly to the extent that it would require Petitioner to renumber all exhibits and re-scan all of the renumbered exhibits for e-filing purposes. Accordingly, Petitioner respectfully requests that the Court accept this Affirmation in lieu of requiring an amended pleading herein.

3. Our office has, since shortly after Petitioner filed for bankruptcy protection in 2010, been in communication with the Charities Bureau regarding the preservation and eventual disposition of the restricted funds listed in the Petition. Set forth below is clarification regarding the restrictions on the use of certain of the funds and information on an additional fund that is being restored, as a result of those discussions, and discussions with donors and potential recipients of the funds.

4. As a general matter, there are a number of paragraphs in the Verified Petition in which Petitioner asserts that a restricted asset, once transferred to its proposed recipient, “should” be used for a particular purpose. We respectfully request that the Court deem those paragraphs to recite that the recipient “shall” use the restricted funds in the manner described therein. This global change reflects the fact that the restricted use set forth in the Verified Petition is mandatory, not permissive, with respect to the proposed recipients’ use of the funds.

**James McNerny Endowment Fund**

5. The Charities Bureau does not object to transferring the McNerny Fund to the Mount Sinai Health System’s Chelsea Village Program and Community Medicine Program, as set forth in Paragraph 114 of the Verified Petition.

6. However, as stated in the Verified Petition, the James McNerny Endowment Fund (the “McNerny Fund”) consists of multiple donations totaling \$2,168,750. (Verified Petition ¶ 110.) On information and belief, of this amount, \$1,350,000 was restricted to SVCMC’s SRO/Homeless Program. (Verified Petition exhibits IV-A-5-A, -F, -G and -I) Thus, more than three-fifths (62 percent) of the donations to the McNerny Fund (\$1,350,000) were to be used for the SRO/Homeless Program.

7. A letter from MSBI's President, Susan Somerville, RN, which SVCMC provided to the Charities Bureau (annexed as Exhibit 1; the "Somerville Letter"), states that Mount Sinai Beth Israel has become the new home of the CVHCP (the Chelsea Village House Call Program), which preserves the name and mission of SVCMC's former program.

8. CVHCP has provided multilingual interdisciplinary primary care to hundreds of homebound elders, approximately 350 patients annually, and conducts more than 1,000 home visits a year. In addition, it has renewed St. Vincent's prior relationship with St. Francis, consisting of three SRO residences, whose residents are homebound, and Encore 49 Residence, another SRO building housing previously homeless, mentally ill individuals.

9. Mount Sinai's Division of General Medicine continues the work of Dr. Philip W. Brickner, the founder of SVCMC's Department of Community Medicine, to control tuberculosis among the homeless population.

10. As a result of the foregoing, Petitioner hereby amends Paragraph 114 of the Verified Petition to seek an order of this Court transferring the McEnery Fund to Mount Sinai, with three fifths of the income from the fund to be used in support of care and treatment to the homeless and SRO residents (through CVHCP and/or the Department of Community Medicine), and the remaining two fifths of the income from the fund used to support the Chelsea Village Program and Community Medicine Programs' costs relating to care and treatment of the homebound elderly populations once served by SVCMC.

### **Medical Treatment & Research Endowment Fund**

11. The Medical Treatment and Research Fund was intended “to support ‘education and research in oncology and related disciplines.’” (Verified Petition ¶ 154). Petitioner has suggested the transfer of this fund to “The Mount Sinai Comprehensive Health Program-Downtown.” Upon information and belief, “The Mount Sinai Comprehensive Health Program-Downtown” was formerly affiliated with SVCMC, and continues to operate as one of the largest HIV programs in the country, offering full service, quality health care to the residents of lower Manhattan. (Verified Petition, Exhibit IV-A-7-D.)

12. We understand that the However, the Petitioner did not initially request that the fund’s use by The Mount Sinai Comprehensive Health Program-Downtown be limited to its use in support of either HIV and cancer research or education. Accordingly, Petitioner hereby amends Paragraph 161 of the Verified Petition to restrict the use of the fund by The Mount Sinai Comprehensive Health Program-Downtown to HIV and cancer research and education.

### **Ethics Chair Permanent Endowment Fund**

13. Paragraph 189 of the Verified Petition suggested transfer of this Fund to the Sisters of Charity, restricted such that the amount is endowed and the income from the endowment is used to provide Nursing Sisters with a “place of spiritual retreat... and for guests of said Nursing Sisters engaged in similar devoted service to the sick poor.”

14. Upon further investigation, however, it has become apparent to Petitioner that the Sisters of Charity will be unable to use the fund for the purpose designated.

15. Accordingly, having consulted with the Charities Bureau to identify a more appropriate recipient for this fund, Petitioner respectfully requests transfer of this fund to St. Joseph's Medical Center, restricted in its use to the support a medical ethicist or medical ethics program.

**The Brian Wert C.H.I.L.D. Fund**

16. Based on the following documents (all of which are included in Verified Petition exhibit IV-A-10-Q), in 1993 George and Marie Doty, through the Doty Family Foundation, contributed \$1.5 million to SVCMC: \$500,000 for the Pediatric Fund (permanently restricted fund number 10, *supra*, Verified Petition ¶¶ 162-176) and \$600,000 to establish the Brian Wert Child Health, Intervention, Learning and Development ("C.H.I.L.D.") Center:

- a) A September 23, 1993 letter to Mr. and Mrs. George Doty, Sr. from J. Rock Tonkel, SVCMC President and CEO, proposed that \$600,000 of the Doty Foundation's \$1.5 million newly pledged gift be used to support C.H.I.L.D., a new project that would use a multi-disciplinary team approach to screen, manage, treat and refer children with a wide range of developmental problems, including cerebral palsy, mental retardation, autism, muscular dystrophies, seizure disorders, hearing and visual impairments, speech and language disorders and learning problems. *Evaluations, consultations and services would be provided in a central location off-site from the hospital.* SVCMC anticipated that the C.H.I.L.D. Center would require a \$600,000 annual operating budget and that it would be self-sustaining by the second year of its operation. The Dotys' gift was seen as start-up funds for the project. Mr. Tonkel told the Dotys that if the C.H.I.L.D. "materializes," *i.e.*, the Doty's agreed to this use of their planned gift, SVCMC intended to name the Center after them. (emphasis added)
- b) On September 28, 1993 George E. Doty wrote to J. Rock Tonkel confirming that \$1.5 million would be given through the Doty Family Foundation "to be used in accordance with your letter of September 23, 1993," and

requesting that the C.H.I.L.D. Center, "if it materializes" be named after the Dotys' deceased grandson Brian Wert. Mr. Doty's reference to the C.H.I.L.D. Center "materializing" tracked Mr. Tonkel's solicitation letter. Upon information and belief, this reference to the C.H.I.L.D. Center "materializing" was not meant to suggest that SVCMC could unilaterally decide to use this \$600,000 gift for another purpose.

- c) On October 21, 1993, J. Rock Tonkel wrote to Mr. and Mrs. George E. Doty, Sr., stating, "As presented to you in our proposal, and in accordance with your wishes, \$600,000 of new funds will be designated to create the Brian Wert Children's Health, Intervention, Learning and Developmental (C.H.I.L.D.) Center, named in memory of your grandson. The Center will utilize a multi-disciplinary team to screen, manage, treat and refer children with a wide range of developmental problems."

17. In a letter to Attorney General Eric Schneiderman, George Doty's executor, his son William Doty, recited his parents' \$600,000 gift to establish the C.H.I.L.D. Center and noted that virtually all of their philanthropic giving was directed toward Catholic organizations and institutions, primarily in the New York City metropolitan area. *See* Exhibit 2.

18. As of the date of the filing of the Verified Petition, however, Petitioner had no fund whose description or use by SVCMC matched the proposed use suggested by the Doty family, to create the Brian Wert C.H.I.L.D. Center, and had no additional information how such funds were spent.

19. As a result of its consultation with the Charities Bureau on this issue, Petitioner hereby amends the Verified Petition to reestablish the Brian Wert C.H.I.L.D. Center Fund, as set forth below.

20. Although all of Petitioner's restricted assets are maintained in a single account, prior to the filing of this action and in the wind-down of its affairs following the bankruptcy

filing, Petitioner located a bank account entitled the "Cummings Account" comprised of \$236,052.75 in cash and stock certificates worth approximately \$32,018.25, for a total of \$268,071.00. Because the Cummings Foundation was the Petitioner's largest donor before its closure, Petitioner determined that the money and stocks in the Cummings Account were, upon information and belief, donated funds unavailable to Petitioner's creditors in the bankruptcy and should, instead, be added to the funds in this Petition.

21. A portion of the Cummings Account (\$35,671) was used to reestablish the Holy Family Home Fund (Verified Petition ¶¶ 424-429), which Petitioner had acknowledged to the Charities Bureau had inadvertently been swept up in the bankruptcy and paid out to creditors.<sup>1</sup> The remaining \$232,400 was spread evenly across the remaining restricted funds, in an effort to restore some of the market losses sustained by Petitioner to the remaining restricted funds. (Verified Petition ¶¶ 47-58.)

22. In addition to the foregoing, SVCMC received an unexpected wire transfer from BNY Mellon on or around December 29, 2015, in the amount of \$5,853.00. The wire was titled "SVCMC Reserve/Cummings."

23. SVCMC investigated the wire to the extent possible, through BNY Mellon, and has come to understand that the transfer was related to a class action settlement involving shares of stock. Additionally, BNY Mellon advised that the "name" of the transfer may just have been used as a repeat of earlier transfers, but may not relate to the actual identity or purpose of the funds transmitted.

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<sup>1</sup> That single fund had been held by the Holy Family Home separate and apart from all other restricted assets, which were otherwise, as set forth above, maintained in a single account by Petitioner. That separate treatment resulted in the inadvertent payout of that fund to Petitioner's creditors in the course of the bankruptcy proceedings.

24. As it is possible (even if not likely) that the wire from BNY Mellon relates to restricted Cummings Foundation funds, SVCMC has agreed to add the \$5,853 to the Brian Wert C.H.I.L.D. fund, to further restore its value.

25. In consultation with the Charities Bureau and the Doty family, accordingly, Petitioner has agreed to restore The Brian Wert C.H.I.L.D. Fund, in the cash amount of \$380,537.

26. Annexed hereto as Exhibit 3, are revised dollar figures for the temporarily and permanently restricted (endowed) funds. Exhibit 3 replaces Exhibit IV (total Restricted Net Assets), Exhibit IV-A (list of permanently restricted net assets), Exhibit IV-B (list of temporarily restricted net assets), and Exhibit IV-C (list of temporarily restricted net assets for SVCMC Westchester). The revised dollars reflect the impact of the above-stated additional cash located by SVCMC, additional cash accrued in the restricted assets account, and the restoration of the Brian Wert C.H.I.L.D. fund to a cash value, relative to the value of the original \$600,000 donation, that is on par with all other restricted funds.

27. Upon information and belief, the Dotys' donation was intended to create the Brian Wert C.H.I.L.D. Center, to be named in memory of the Dotys' grandson. The Center was to have utilized a multi-disciplinary team to screen, manage, treat and refer children with a wide range of developmental problems.

28. Similar to the mission envisioned by the Doty's in making their donation to Petitioner for establishment of the Brian Wert C.H.I.L.D. Fund, Elizabeth Seton Pediatric Center currently serves children with a wide range of developmental problems, through care by an interdisciplinary team consisting of pediatricians, nurses, certified nursing aides, physical



therapists, occupational therapists, speech therapists, recreation staff, Child Life, social workers, teachers, nutritionists, psychologists, and specialty consultants. See <https://setonpediatric.org/delivery-of-care>, annexed as Exhibit 4.

29. Petitioner respectfully suggests that the Court direct the transfer of the reestablished Brian Wert C.H.I.L.D. Fund to the Elizabeth Seton Pediatric Center, restricted to its use to screen, manage, treat and refer children with a wide range of developmental problems using a multi-disciplinary team approach. In addition, although the funds are insufficient to establish a separate "Center" named after Brian Wert, the Dotys' grandson, it is respectfully suggested that the Brian Wert C.H.I.L.D. Fund be transferred to the Elizabeth Seton Pediatric Center conditionally upon its agreement to appropriately commemorate Brian Wert, in accordance with the donors' original intent.

### **Conclusion**

30. The Petitioner respectfully requests that the Court incorporate the supplementation and amendment of the Verified Petition as set forth herein, and in the annexed Exhibits, into the Verified Petition, for the reasons set forth herein.

Dated: Great Neck, New York  
February 25, 2016

  
COLLEEN M. TARPEY