

The Takeover of the National Maternity Hospital

A Briefing Document for Members of the Oireachtas

Dr Peter Boylan

BACKGROUND

IN 2008 the consultancy firm KPMG published a report recommending colocation of Maternity Hospitals with acute General Hospitals. In 2013 Minister for Health James Reilly announced that the National Maternity Hospital (NMH) would move to Elm Park, to colocate with St Vincent's Hospital (SVH). In 2014 the SVH Group demanded 'dissolution of NMH' and full ownership of new hospital. In the next three years arguments about ownership and governance delayed the project. St Vincent's wanted integration rather than colocation, i.e., NMH would become the maternity wing of SVH.

In 2016 the New Deputy Chair of NMH, Mr Nicholas Kearns, and then Master, Dr Rhona Mahony, agreed to the transfer of 100% ownership of NMH to the Sisters of Charity. "We are willing to dissolve the Charter and agree that the ownership of NMH will transfer to SVHG, a private company owned by the Sisters of Charity... the new NMH will be a 100% subsidiary of SVHG." The Board and Governors of NMH were not consulted. The Mulvey Report recommends the transfer of 100% ownership of NMH to Sisters of Charity, and was accepted by the NMH Board.

In 2017 there was public outrage when news of the ownership proposal became public knowledge. 104,000 signed a petition objecting. In 2017 the Sisters of Charity announced they are to 'gift' SVHG to 'the People of Ireland'. The Sisters in fact planned the transfer of ownership to St Vincent's Holdings, not 'the people of Ireland'.

In 2018 the Catholic Bishops' published a *Code of Ethical Standards for Healthcare*. In 2019 the Sisters confirmed that Vatican permission was required under Canon Law for transfer (alienation), despite denials from NMH. On 16th March 2020, the Sisters received permission to transfer their shareholding [called alienation under Canon Law], with the proviso that certain Canon Laws "are to be observed". There was an obligation to ensure that alienation would not lead to oversight, management or performance of 'immoral procedures'.

SISTERS OF CHARITY/ST VINCENT'S HOLDINGS

The HSE is currently deciding whether to approve or reject transfer of SVHG by the Sisters of Charity to St Vincent's Holdings for €1.00 (one). In 2018 the SVHG was valued at €661 million, virtually all state funded. At present the Sisters of Charity remain the sole shareholders of SVHG. St Vincent's Holdings, incorporated 2020, is a private company with charitable status. The Directors are the sole shareholders. Currently it has three interim directors, due to step down in August

2021, (Mr James Menton, Ms Sharon McCabe, Mr John Compton). There are to be no less than three, and no more than ten directors, all self appointed. There is *no provision* for a public interest director/ministerial representative, a women's interest director, HSE representative, or any representation from the NMH itself on the Board.

Directors will be appointed for a fixed term of three years, and may be reappointed for two further three-year terms for a maximum term of office of nine years. There is provision for directors to serve for up to fourteen years if they are also a director of SVHG.

Core values are virtually identical to Sisters of Charity/SVH:

(a) Human Dignity: Respect the dignity and uniqueness of each person.

(b) Compassion: Accept people as they are, bring empathy and care to all.

(c) Justice: Act with integrity which respects the rights of all.

(d) Quality: Strive for excellence in all aspects of care.

(e) Advocacy: Speak for the voiceless, act with and for them to achieve the appropriate quality of care.

The 2018 SVHG accounts state that the new St Vincent's company is obliged "to uphold the values and vision of Mother Mary Aikenhead". The SVHG is still today governed by the 2010 'Health Service Philosophy and Ethical Code' of the Sisters of Charity and does not provide contraception, sterilisation, IVF, abortion and other procedures prohibited by Catholic teaching.

Powers of the Directors include –

"5.11 To acquire, hold, sell, manage, lease, mortgage, exchange or dispose of all or any part of the property of the Company with a view to the promotion, protection or encouragement of its Main Object and to vary investments".

In the past SVHG mortgaged the entire site as collateral for a loan to build the private hospital. The Bank is still owed approximately €180 million

"5.29 To establish and maintain links with international and national organisations having similar objectives".

The Bon Secours Group, already established as a Catholic 'Public Juridic Person' out of the reach of the State, recently merged with their American counterpart.

If the HSE approve transfer, St Vincent's Holdings will own St Vincent's University Hospital, St Michael's Hospital, both publicly funded, and St Vincent's Private Hospital. In 2018 SVHG received €286 million in —>

State funding and NMH received €58 m. If the arrangement goes through, ownership of NMH will transfer 100% to St Vincent's Holdings. The Master of the NMH will report to the Clinical Director of SVHG. This represents full integration of the NMH into SVHG. It cannot be described as co-location.

CAUSE FOR CONCERN

Should this dilution of clinical and corporate authority for the Master be a source of concern? Yes, very much so. When it comes to the safe medical care of women, I have come over forty years to believe in two fundamental and essential principles. First, that maternity hospitals need their own governance and budgetary independence, and second, that religious teaching or belief should have no role in determining the care given to women.

In the past few years alone, I have given evidence at the inquests into the deaths of Savita Halappanavar in Galway and Dhara Kivlehan and Sally Rowlett in Sligo. I chaired the 2017 HSE Review of 153 adverse incidents in Irish maternity services which resulted from the RTE *Prime Time Investigates* report into adverse pregnancy outcomes in Portlaoise. I have contributed to reviews of adverse incidents that have included maternal and infant deaths in the maternity units in Portlaoise, Portiunucula, Cavan, Drogheda, Portlaoise and Clonmel. All these units are integrated into the general hospitals, and this was a key factor in the problems that arose.

In my direct experience of working in Ireland, the UK and United States, and indirectly in other hospitals I have reviewed around the world, women's health services are regularly the first area to suffer cuts and resource re-allocation when there is pressure on funding or clinical capacity. In practical terms this can mean that operating theatres are taken over for e.g. cardiology or orthopaedic procedures, because gynaecology is not prioritised. However, delayed operations can leave women in pain, incapacitated and with undiagnosed cancers.

In the design of the new hospital the operating theatres are directly linked to the operating theatres in St Vincent's. The Board of the NMH will be chaired every three years by SVH. There will be no public interest representative on NMH Board, and no women's health representative on NMH Board. NMH Board will be 4 SVH/4 NMH, one independent to be chosen by a committee of 3 from SVHG and 2 from NMH.

OWNERSHIP STRUCTURE

The ownership structure has been described by legal advisors as 'unusual', 'not standard'.

- A. The sole owners of the NMH, St Vincent's Holdings, will lease the new hospital facility to the HSE for 99 years. There is no provision for what will happen after the expiry of the 99 years.

- B. Licences are to be granted by the HSE to both NMH DAC and SVHG DAC for the operation of the new hospital. The duration of these operating licences is planned to be 98 years, comprising four consecutive periods of 25 years, 25 years, 25 years and 23 years. The documents I have seen so far are silent on what is planned after 98 years. Governance will remain with the Holding company. It is not at all clear what in fact the HSE will acquire.
- C. Options exist for both HSE and SVHG DAC to acquire each other's legal interest in the new hospital.
- D. A legal arrangement to effect the unwinding of the legal structure is to be agreed between the HSE and SVHG DAC should it be triggered by a failure by either party to comply with their respective obligations or in the case of "certain insolvency events".

RELIGIOUS ETHOS

Does a religious ethos remain a concern for the new NMH? There can be no certainty on this point unless the NMH is a fully independent hospital. Note that the Values section of the proposed St Vincent's Holdings Constitution is virtually identical to the stated values of the current Healthcare Regulations of the Religious Sisters of Charity, under which as of today procedures prohibited by the Catholic Church are not performed at any SVHG hospitals despite reassurances to the contrary. NMH will be subject to the Core Values of St Vincent's Holdings.

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CONCLUSION

The bottom line is that the State must not approve the transfer of SVHG to St Vincent's Holdings for two reasons –

1. NMH would be owned by St Vincent's Holdings, the successor to the Sisters of Charity with the same, Catholic, core values. Women's reproductive healthcare would not be served by this.
2. The State would be acquiescing to the ownership of a large, publicly funded, hospital group by a private company, with all the implications that has for Slaintecare. □

• *Peter Boylan is an Irish consultant obstetrician and former Master of the National Maternity Hospital, Dublin (Holles Street Hospital). His opposition to the plans to transfer ownership of the National Maternity Hospital to the Religious Sisters of Charity led him to resign from the board of the hospital over the issue. He campaigned for a Yes vote in the 2018 Irish Abortion Referendum, and participated in several TV debates.* ◆