

MERRIMACK, SS

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

217-2025-CV-00012

In re Proposed Acquisition of Catholic Medical Center by Manchester Health Services, LLC

ASSURANCE OF DISCONTINUANCE

This Assurance of Discontinuance (“Assurance”) is entered into by the State of New Hampshire, by and through the Office of the Attorney General (“AGO”), Consumer Protection and Antitrust Bureau (“CPAB”); Manchester Health Services, LLC (“MHS” or “Buyer”), a Delaware limited liability company and a wholly owned Affiliate of HCA Healthcare, Inc. (“HCA”); and Catholic Medical Center (“CMC,” separately each a “Party” and together with MHS, the “Parties”) to resolve an investigation into a proposed transaction, whereby Buyer plans to acquire substantially all of the assets of CMC (the “Proposed Transaction”), and in particular whether the Proposed Transaction allegedly would constitute an unfair method of competition or otherwise harm competition in violation of the State’s consumer protection laws (N.H. Rev. Stat. Ann. § 358-A:1, *et seq.*) and State and Federal antitrust laws. (See N.H. Rev. Stat. Ann. § 356:1, *et seq.*)

In consideration of their mutual agreements to the terms of this Assurance, and other consideration described herein, the sufficiency of which is hereby acknowledged, the AGO, MHS and CMC hereby enter this Assurance and agree as follows:

I. BACKGROUND

1. The Parties, along with certain CMC Affiliates, have entered into an Asset Purchase Agreement (the “APA”) dated June 21, 2024, pursuant to which Buyer will acquire substantially all of the assets of CMC.

2. CMC is the owner of a 330-bed nonprofit acute-care Catholic hospital located in Manchester, New Hampshire, as well as certain other facilities, operations, business, services and practices described in the APA.

3. HCA is the owner of three other hospitals in New Hampshire: Parkland Medical Center in Derry; Frisbie Memorial Hospital in Rochester; and Portsmouth Regional Hospital in Portsmouth.

4. On June 28, 2024, CMC filed a notice of a proposed transaction with the New Hampshire Charitable Trusts Unit ("CTU"). In accordance with N.H. Rev. Stat. Ann. § 7:19-b, IV (a), CTU subsequently requested and obtained from CMC and MHS additional documentation and information regarding the APA. The deadline for CTU to issue its report is January 9, 2025.

5. CPAB conducted a contemporaneous investigation. CPAB's investigation identified concerns that the Proposed Transaction may: (1) substantially lessen competition for certain inpatient cardiac services in Southern New Hampshire; (2) increase the total cost of Health Care Services in the State of New Hampshire; and (3) have an adverse effect on access to Health Care Services, particularly for vulnerable populations, in violation of the State's consumer protection laws and State and Federal antitrust laws.

6. To resolve CPAB's concerns about the Proposed Transaction, the Parties have agreed to enter into and comply with this Assurance so as to avoid significant expense, inconvenience, and uncertainty, and to permit the Proposed Transaction to close without further delay.

7. CPAB represents that in the circumstances of this case, and particularly recognizing CMC's financial condition and the importance of CMC to the Manchester community, the terms

and remedies described herein are appropriate and in the public interest and, therefore, the CPAB is willing to accept this Assurance to resolve its concerns.

8. The Parties do not admit to nor agree with the allegations set forth by the CPAB and do not admit to any violation of law or liability arising from any federal, state, or local laws in stipulating to the entry of this Assurance, nor is such stipulation an admission to any of the concerns identified by the CPAB's investigation.

II. JURISDICTION AND VENUE

9. Pursuant to N.H. Rev. Stat. § 358-A:7, the AGO is authorized to enter into this Assurance and grants jurisdiction to this Court over the subject matter and the Parties hereto.

III. DEFINITIONS

For purposes of this Assurance, the following definitions apply:

10. **"Affiliate"** means any Person (other than an individual) that through one or more intermediaries controls, is controlled by, or is under common control with, another Person (other than an individual). As used in this definition, "control" includes the power to direct or cause the direction of the management and policies of a Person (other than an individual).

11. **"Anti-Tiering" or "Anti-Steering Clause"** means any agreement between a Health Care Provider and a Payor that prohibits the Payor from steering its members to a Hospital or Health Care Provider, including offering a tiered plan product. This includes a gag clause that would prevent a Payor from disclosing cost, provider network participation status, or quality information to its enrollees, patients or employers.

12. **"Asset Purchase Agreement" or "APA"** means the contractual agreement by and among the Parties, and titled Asset Purchase Agreement, dated June 21, 2024, and any amendments thereto.

13. **"Catholic Medical Center"** means that certain hospital known as Catholic Medical Center, a 330-bed acute-care licensed hospital located in Manchester, New Hampshire

14. **"CMC"** means Catholic Medical Center, a New Hampshire nonprofit corporation with its headquarters in Manchester, New Hampshire, its successors and assigns, and Affiliates, and their respective directors, officers, managers, agents, and employees. Its Affiliates include Alliance Ambulatory Services and Catholic Medical Center Physician Practice Associates, as well as CMC real-estate holding companies, which include Alliance Resources, Inc.; Alliance Enterprises, Inc.; and McGregor Street Office Building, LLC.

15. **"Center of Excellence"** means a highly specialized program that aggregates expertise and resources for a particular category of Health Care Services to improve patient care and clinical outcomes or as that term otherwise is defined by a Payor or Health Care Provider for purposes of Payor-Provider Contracts.

16. **"Closing Date"** means the effective date when the Proposed Transaction is consummated pursuant to the APA.

17. **"Exclusivity Clause"** or **"Exclusive Contract"** means any agreement or provision in an agreement between a Health Care Provider and a Payor that makes any HCA facility in New Hampshire an exclusive Health Care Provider for a particular Payor in a region or prohibits the Payor from contracting with another Health Care Provider.

18. **"Facility Fee"** means an additional fee separate and distinct from a fee charged by a Health Care Provider for Health Care Services to cover the overhead costs or operational expenses of providing the Health Care Service.

19. **"Foundation"** means the New Hampshire charitable nonprofit corporation to be formed by CMC and its Affiliate sellers as described in the Recitals to the APA.

20. **"HCA Healthcare, Inc."** or **"HCA"** means HCA Healthcare, Inc., a Delaware corporation with its headquarters in Nashville, Tennessee.

21. **"Health Care Facility"** means any facility located in New Hampshire where Health Care Services are provided, and includes, but is not limited to, ambulatory surgical centers, birthing centers, freestanding emergency rooms, hospitals and specialty hospitals, non-emergency walk-in or urgent care clinics, outpatient clinics, skilled nursing facilities, laboratories, freestanding imaging facilities, and freestanding radiation therapy facilities.

22. **"Health Care Provider"** means a Person who provides Health Care Services and includes but is not limited to Mid-Level Providers, Physicians, other health care professionals, practices, networks, and other individuals providing Health Care Services, and Health Care Facilities.

23. **"Health Care Services"** means the provision of health or medical care by a Health Care Provider, including but not limited to inpatient and outpatient hospital services, physician and non-physician professional medical services, outpatient medical services, behavioral and mental health services, and ancillary services including but not limited to, laboratory, pharmacy, and imaging.

24. **"Hospital"** means a licensed acute care or other hospital, having a duly organized governing body with overall administrative and professional responsibility and an organized professional staff that provides 24-hour inpatient care, that may also provide outpatient services, and that has as a primary function the provision of inpatient services for medical diagnosis, treatment, rehabilitation, and care of the injured, disabled, or those with short-term or episodic health problems or infirmities.

25. **"Hospital-Based Outpatient Department"** or **"HOPD"** means a Hospital unit providing Health Care Services to registered hospital outpatients, that is reimbursed under Medicare as an HOPD pursuant to Centers for Medicare & Medicaid Services ("CMS") regulations.

26. **"Manchester Health Services"** or **"MHS"** or **"Buyer"** means Manchester Health Services, LLC, a Delaware limited liability company and a wholly owned Affiliate of HCA.

27. **"Mid-Level Provider"** means a non-physician provider who performs professional Health Care Services that can be billed independently from that of a Health Care Facility or Physician, including but not limited to advanced practice registered nurses, physician assistants, physical therapists, licensed clinical social workers, psychologists, and other behavioral health counselors, as applicable.

28. **"Most Favored Nations Clause"** means any agreement or provision in an agreement between a Health Care Provider and a Payor that allows the Payor to receive the benefit of a better payment rate that the Health Care Provider gives to another Payor, that requires a Payor to pay a Health Care Provider a payment rate at least as high as the highest rate paid by the Payor to any other Hospital or Health Care Provider, or that requires a Health Care Provider to accept a payment rate at least as low as the lowest rate paid to the Health Care Provider by any other Payor.

29. **"Net Worth Threshold"** shall have the meaning assigned to it in Section 7.17(a) of the APA.

30. **"Payor"** means any organization or entity that contracts with Health Care Providers and other health care organizations to provide or arrange for the provision of Health Care Services to any person or group of persons and that is responsible for payment to such Health

Care Providers and other health care organizations of all or part of any expense for such Health Care Services, including but not limited to commercial insurance companies, health maintenance organizations, preferred provider organizations, union trust funds, multiple employer trusts and self-insured health plans. For the avoidance of doubt, **"Payor"** shall not include any government program, government payor or managed care organization contracted to administer the government program, including but not limited to Medicare, Medicaid, the Veterans Administration, TRICARE, Medicare Advantage, or NH Medicaid Care Management.

31. **"Payor-Provider Contract"** means a contract or agreement for Health Care Services between a Health Care Provider and a Payor, including but not limited to rates, definitions, terms, conditions, policies, and pricing methodologies (*e.g.*, per diem, discount rate, and case rate) that relates to the payment of or reimbursement for the Health Care Provider's provision of Health Care Services to the Payor's members or enrollees.

32. **"Person"** means any individual, partnership, association, corporation, business trust, legal representative, any organized group of persons, or government entity, and any subsidiaries, divisions, groups, or Affiliates thereof.

33. **"Physician"** means a doctor of allopathic medicine ("M.D.") or a doctor of osteopathic medicine ("D.O.").

34. **"Physician Practice"** means a practice of Physicians enrolled as a Medicare Part B group practice on form CMS-855B.

35. **"Population Health Arrangement"** means a Payor-Provider Contract involving capitated or other form of risk sharing taken across a population of defined members or as that term otherwise is defined by a Payor or Health Care Provider for purposes of Payor-Provider Contracts.

36. **"Pre-Existing Contract"** means a Payor-Provider Contract between a Payor and HCA or its Affiliates that is in effect on the date that this Assurance is entered.

37. **"Proposed Transaction"** means the proposed acquisition of substantially all of the assets of CMC by MHS as provided for in the APA.

38. **"Third Party"** means a Person other than the State of New Hampshire, CPAB or the Parties.

39. **"Tying Clause," "Must Have Clause," or "All-or-Nothing Clause"** means any agreement or provision between a Health Care Provider and a Payor that requires the Payor to contract with one or more, or all, of such contracting Health Care Provider's Affiliates or requires such Health Care Provider to contract with one or more of all of the contracting Payor's Affiliates.

40. **"Value-Based Payment Arrangement"** means a Payor-Provider Contract under which a Party or its Affiliates or subsidiaries are paid or assume risk based on patient health outcomes or some form of quality metrics, instead of being paid on a fee-for-service basis, including, but not limited to, alternative payment models, shared savings programs, pay for performance, bundled payments, capitation, or accountable care organizations or as that term otherwise is defined by a Payor or Health Care Provider for purposes of Payor-Provider Contracts.

IV. ASSURANCES

41. The duties, responsibilities, burdens, and obligations undertaken in connection with this Assurance shall apply to, and be binding upon, the Parties and their assigns and successors for a period of ten (10) years from the Closing Date, except for Paragraph 45 related to the payment of Funds to the State, which shall be for a period of twelve (12) years from the Closing

Date. In addition, the Parties shall cause their directors, officers, employees and Affiliates to comply with such Parties' obligations, and such Parties' Affiliates applicable obligations, under this Assurance.

CONVERSION TO PHYSICIAN PRACTICES

42. **Exhibit A** to this Assurance contains a list of all HOPDs operated by CMC as of the Closing Date.

43. As of the Closing Date, Buyer shall convert the HOPDs identified as "HOPDs: Physician Practices" set forth in **Exhibit A** to Physician Practices that will be separately enrolled as Medicare Part B group practices on a form CMS-855B.

44. For the ten (10) year period following the Closing Date, Buyer shall not charge a separate Facility Fee at any of Physician Practices identified as "HOPDs: Physician Practices" set forth on **Exhibit A** or at any future Physician Practice operated by Buyer.

FINANCIAL COMMITMENT TO THE STATE OF NEW HAMPSHIRE

45. The Parties agree the Foundation shall pay a total of seven million five hundred thousand dollars (\$7,500,000.00) (the "Funds") directly to the State of New Hampshire and/or the AGO in equal installments of seven hundred fifty thousand dollars (\$750,000.00) per year for ten (10) years (each, an "Installment Payment"). Each Installment Payment shall be due on the anniversary of the Closing Date with the first payment being due on the second anniversary of the Closing Date.

46. The applicable Net Worth Threshold shall be reduced dollar for dollar on the date that the Foundation makes each Installment Payment.

47. The Funds shall be held in the Health Care Consumer Protection Trust Fund established pursuant to N.H. Rev. Stat. Ann. § 7:6-g. The AGO shall distribute half of the Funds

to the Poisson Dental Clinic and Healthcare for the Homeless programs. The remaining half of the Funds shall be used and dispersed by the State in a manner consistent with applicable laws for the benefit of New Hampshire health care consumers.

PAYOR CONTRACTS / PROHIBITED PAYOR TERMS

48. Buyer would not assume the pre-existing CMC Payor-Provider Contracts. If HCA has a Pre-Existing Contract with a Payor governing payment for Health Care Services provided in New Hampshire, and such Pre-Existing Contract provides a process for transitioning Catholic Medical Center as a new HCA Affiliate, then the agreed-upon process set forth in the applicable Pre-Existing Contract shall apply.

49. If either (i) HCA has a Pre-Existing Contract with a commercial Payor that does not provide a process for transitioning Catholic Medical Center as a new HCA Affiliate, or (ii) HCA does not have a Pre-Existing Contract with a commercial Payor, then Buyer shall maintain Catholic Medical Center's contracted rates or fee schedules as of the Closing Date until the end of the remaining term in CMC's Pre-Existing Contract with the Payor or September 30, 2025, whichever is earlier, all of which would be subject to agreement between Buyer and each such commercial Payor.

50. Following the Closing Date, and solely with respect to Payor agreements governing payment for Health Care Services provided in New Hampshire, HCA and Catholic Medical Center shall not enter into any commercial Payor-Provider Contract, whether directly or through an HCA Affiliate, including any separate physician agreements, that includes the following terms or provisions:

A. Anti-Tiering or Anti-Steering Clause

B. Exclusivity Clause or Exclusive Contract

C. Most Favored Nation Clause

D. Tying Clause, "Must Have Clause," or "All-or-Nothing Clause"

Provided, however, that (i) HCA and Catholic Medical Center may enter into a commercial Payor-Provider Contract that contains the foregoing prohibited terms if HCA or Catholic Medical Center and a Payor mutually agree, and the clause is reasonably required to achieve a favorable discount based upon volume expectations for the purposes of effectuating a Population Health Arrangement or a Value-Based Payment Arrangement, or establishing a Center of Excellence, or other beneficial healthcare needs of the community and (ii) this paragraph shall not apply to HCA's or Catholic Medical Center's Payor-Provider Contracts with any government program, government payor or managed care organization contracted to administer the government program, including but not limited to Medicare, Medicaid, the Veterans Administration, or TRICARE.

CLAIMS DATA

51. No later than sixty (60) days after the Closing Date, and for the duration of this Assurance, CMC and HCA shall "opt in" and submit, or cause their third-party administrator to submit, all Payor claims data regarding its self-insured health benefits plan to the New Hampshire Comprehensive Health Care Information System ("NH CHIS") in accordance with N.H. Rev. Stat. Ann. § 420-G:11, related regulations including N.H. Code Admin R. Ins. 4005.03, guidance, and reporting forms (including any amendments or updates thereto).

V. ENFORCEMENT

52. The AGO, through CPAB, shall have exclusive authority to enforce the provisions of this Assurance.

53. In the event the AGO moves to enforce any provision of this Assurance, the AGO and the Parties agree to submit to the jurisdiction and transfer of the enforcement action to the New Hampshire Business and Commercial Dispute docket, provided such docket has jurisdiction; otherwise, such action shall be filed in Merrimack Superior Court.

54. By virtue of N.H. Rev. Stat. Ann. § 358-A:7, evidence of violation of this Assurance shall constitute prima facie evidence of an act or practice declared to be unlawful by New Hampshire Statutes Chapter 358 in any action thereafter commenced by the AGO. Matters thus closed may be reopened by the AGO at any time it is in the public interest.

VI. GENERAL PROVISIONS

55. This Assurance contains the complete agreement between the Parties and CPAB concerning the matters addressed herein. The Parties and CPAB have made no promises, representations, or warranties other than what is contained in this Assurance. This Assurance supersedes any prior agreement, understandings, or stipulations between the Parties and CPAB regarding the subject matter thereof. Provided, however, that this Assurance shall not be construed to supersede or preclude any other agreements, understandings or stipulations between the Parties and CTU.

56. **Exhibit A** is incorporated herein and is fully part of this Assurance and binding upon the Parties.

57. This Assurance should be construed pursuant to the laws of the State of New Hampshire; provided, however, that nothing contained herein shall be construed as amending Section 13.2 of the Asset Purchase Agreement with respect to the governing law of the Asset Purchase Agreement.

58. This Assurance should be construed to give full effect to the procompetitive purposes of consumer protection and antitrust laws and to protect against the harms that the AGO contends may be caused by the Proposed Transaction.

59. For purposes of construing the Assurance, this Assurance will be deemed to have been drafted collectively by the AGO and the Parties.

60. The titles in this Assurance have no independent legal significance and are used merely for the convenience of the Parties.

61. This Assurance shall be filed in Merrimack Superior Court, which shall retain jurisdiction over this Assurance.

62. This Assurance shall not create a private cause of action or confer any right to any Third Party for violation of any state or federal law by any Party except that the AGO, acting through CPAB, may file an action for a violation of this Assurance as described in Article V.

63. Nothing contained in this Assurance shall be construed to alter or modify any existing legal rights of any consumer or to deprive any person or entity of any existing private right under the law.

64. Nothing contained in this Assurance shall be construed to relieve the Parties of the obligation to comply with all state and federal laws, nor shall it be construed as approval by the AGO of any conduct or practices of the Parties.

65. Nothing in this Assurance shall be construed to limit the authority or ability of the AGO to protect the interests of the State of New Hampshire or the people of New Hampshire. This Assurance will not bar the AGO or any other governmental entity from enforcing laws, regulations, or rules against the Parties for conduct or practices not covered by this Assurance.

66. This Assurance may be executed by any number of counterparts and by different signatories on separate counterparts, each of which will constitute an original counterpart thereof and all of which together will constitute one and the same document. One or more counterparts of this Assurance may be delivered by facsimile or electronic transmission with the intent that it or they will constitute an original counterpart thereof.

67. This Assurance is entered into voluntarily and solely for the purpose of resolving potential claims and causes of action against the Parties relating to the Proposed Transaction. The Parties and each signatory to this Assurance represent that they are duly authorized to execute this Assurance and to bind the respective Party to all applicable provisions of this Assurance, and that on behalf of that Party they voluntarily enter into this Assurance without any degree of duress or compulsion.

68. This Assurance will not be construed to waive any claims of sovereign immunity the AGO may have in any action or proceeding.

69. If any portion of this Assurance is held invalid or unenforceable, the remaining terms of this Assurance will not be affected and will remain in full force and effect.

70. This Assurance shall be effective upon approval of the AGO. In the event the Parties notify the AGO that the Proposed Transaction will not occur and has been abandoned, this Assurance shall terminate, and the rights and obligations of the Parties hereto shall thereafter be null and void.

71. Except as otherwise provided herein, any notice or other documents to be sent to the Parties or any Party pursuant to this Assurance shall be sent by e-mail and United States Mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that

provides for tracking services and identification of the person signing for the documents and

electronic mail. The notices and/or documents shall be sent to the following addresses:

For the New Hampshire Attorney General:

Brandon H. Garod
Senior Assistant Attorney General
Office of the New Hampshire Attorney General
One Granite Place South
Concord, NH 03301
PH: (603) 271-1217
brandon.h.garod@doj.nh.gov

For MHC:

c/o HCA Healthcare, Inc.
One Park Plaza, Bldg. 1
Nashville, TN 37203
Attention: General Counsel
Email: mike.mcalevey@hcahealthcare.com

With simultaneous copy (which
shall not constitute notice) to:

HCA Healthcare, Inc.
One Park Plaza, Bldg. 1
Nashville, TN 37203
Attention: Chadd Tierney, Vice President, Legal Development
Email: chadd.tierney@hcahealthcare.com

For CMC:

Catholic Healthcare Trust (f/k/a Catholic Medical Center)
c/o Diocese of Manchester
153 Ash Street
Manchester, New Hampshire 03104
Attn: Meredith Cook, Esq., Chancellor

With simultaneous copy (which shall not constitute notice) to:

Devine, Millimet & Branch, Professional Association
111 Amherst Street
Manchester, New Hampshire 03101
Attn: Jon Sparkman, Esq.

[Signature pages follow]

CMC:

CATHOLIC MEDICAL CENTER

By:  _____

Alexander J. Walker, its duly authorized
President & CEO

MHS:

MANCHESTER HEALTH SERVICES, LLC

By: _____

Name: _____

Title: _____

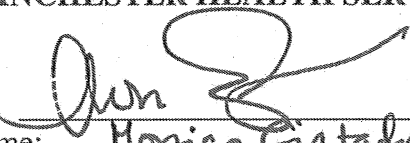
CMC:

CATHOLIC MEDICAL CENTER

By: _____
Alexander J. Walker, its duly authorized
President & CEO

MHS:

MANCHESTER HEALTH SERVICES, LLC

By: 
Name: Monica Cintado
Title: Vice President

APPROVED:

THE STATE OF NEW HAMPSHIRE
JOHM M. FORMELLA
ATTORNEY GENERAL

By: 

Date: 1/6/2025

Alexandra C. Sosnowski
Assistant Attorney General
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Office of the Attorney General
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Concord, NH 03301-6397
Alexandra.C.Sosnowski@doj.nh.gov

Counsel for the State of New Hampshire

EXHIBIT A: CURRENT CMC HOPDS**HOPDS: PHYSICIAN PRACTICES**

Practice Name	Practice Address
Pain Management	88 McGregor Street Suite 301 Manchester NH 03102
Behavioral Health Services	88 McGregor Street Suite 105 Manchester, NH 03102
New England Weight Management Institute	769 South Main Street Manchester, NH 03102
Bedford Center Internal Medicine & Pediatrics	188 Route 101 Bedford, NH 03110
Family Physicians of Manchester	57 Webster Street Suite 110 Manchester, NH 03104
Goffstown Family Practice	17A Tatro Drive Suite 201 Goffstown, NH 03045
Granite State Internal Medicine	188 Route 101 Bedford, NH 03110
Hooksett Internal Medicine	11 Kimball Drive Hooksett, NH 03106
Lakeview Internal Medicine	27 Londonderry Turnpike Hooksett, NH 03106
Willowbend Family Practice	5 Washington Place Suite 1A Bedford, NH 03110
North End Internal Medicine	1750 Elm Street Suite 201A Manchester, NH 03101
New England Heart and Vascular Institute	100 McGregor Street Level B Manchester, NH 03102
Center for Cardiometabolic Health & Preventive Cardiology	195 McGregor Street Suite 312 Manchester, NH 03102
New Hampshire Gastroenterology	9 Washington Place Suite 204 Bedford, NH 03110
Comprehensive Neurological Care	1 Highlander Way Manchester, NH 03103
Women's Wellness and Fertility Center	88 McGregor Street Suite 201 Manchester, NH 03110

OTHER HOPDS

Practice Name	Practice Address
Breast Care Center	9 Washington Place, Suite 203, Bedford, NH 03110
Infusion Services	87 McGregor Street, Suite 4100, Manchester, NH 03102
New England Sleep Center	2280 Brown Avenue, Manchester, NH 03103
Outpatient Physical Therapy at Bedford	188 Route 101, Bedford, NH 03110
Outpatient Physical Therapy of Hooksett	27 Londonderry Turnpike, Hooksett, NH 03106
Outpatient Rehab Services	769 South Main Street, Manchester, NH 03102
Wound Care Center	88 McGregor Street, Suite 101b, Manchester, NH 03102
Goffstown PT	558 Mast Road, Goffstown, NH 03045

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