

STATE OF NEW YORK
SUPREME COURTCOUNTY OF ALBANY

In the Matter of the Application of

REFUAH HELPLINE, PESSIE SCHLAFRIG,
CHAIM BEIGEL, ISRAEL MINKOFF,
CONGREGATION KHAL SHAAREI ZION BOBOV
INC., CONGREGATION KEHLIAS BELZ USA,
CONGREGATION YETEV LEV D'SATMAR and
KHAL BOBOV 45 INC.,

Petitioners,

-against-

JAMES V. McDONALD, M.D., M.P.H., in his
official capacity as COMMISSIONER OF HEALTH
OF THE STATE OF NEW YORK; THE NEW YORK
STATE DEPARTMENT OF HEALTH; MAIMONIDES
MEDICAL CENTER; AND NEW YORK CITY
HEALTH + HOSPITALS CORPORATION,

Respondents.

For a Judgment pursuant to CPLR Article 78
of the Civil Practice Law and Rules**DECISION, ORDER,**
AND JUDGMENT
*(Mot. Seq. #1)*Index No. 902792-26
May 12, 2026

HON. DENISE A. HARTMAN, JSC

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Hartman, J.

Petitioners, three nonprofit organizations, and several individuals, commenced this CPLR article 78 proceeding to challenge a determination of respondents New York State Department of Health and its Commissioner James McDonald (collectively Commissioner) dated November 10, 2025, which granted the Safety Net Transformation Program (SNTTP) application of respondents New York City Health + Hospitals Corporation (H+H) and Maimonides Medical Center (MMC) and awarded \$2,245,000,000 for their proposed project. Petitioners claim that the Commissioner, in granting the award, erred in determining that the project does not require the approval of the Public Health and Health Planning Council (Public Health Council). The Commissioner answered, contending that the determination is reasonable and not contrary to law, and raising objections in point of law.¹ The petition also

¹ The petition originally alleged article 78 claims and declaratory judgment claims against respondents-defendants. The Commissioner then asserted defenses of lack of personal jurisdiction based on untimely service of the order to show cause, petition, and supporting papers, and failure to serve a summons. The Commissioner has now withdrawn his defense base on the untimely service of the order to show cause (NYSCEF Doc. No. 63). And petitioners have now “withdraw[n] their declaratory judgment claim without prejudice and reserve[d] the right to commence a separate plenary action (NYSCEF Doc. No. 60, p 2, fn 2).

named H+H and MMC as respondents; both have answered and raised several affirmative defenses.²

For the reasons that follow, the petition is granted. Respondents' determination within the SNTP award letter that the Commissioner's review under that program satisfies the requirement for written approval by the Public Health Council under Public Health Law § 2801-a is arbitrary and capricious and affected by error of law.

Background

New York's Safety Net Transformation Program (SNTP) is a state grant program (effective April 1, 2024) overseen by the New York State Department of Health (DOH) designed to improve financial stability, quality, and access at safety-net hospitals serving large low-income and uninsured populations (*see* Public Health Law § 2825-i). The SNTP allows hospitals to partner with other entities to request funding and regulatory flexibility, subject to DOH review and scoring. MMC is a large, nonprofit, 711-bed teaching hospital in Brooklyn serving a diverse, largely low-income population, with most patients on Medicare or Medicaid. While MMC is non-sectarian, it provides services to

² MMC also moved to seal the Affiliation and Asset Transfer Agreement between it and H+H, and to redact certain references to its terms (NYSCEF Doc. Nos. 35-37 [Motion #2]). That motion being decided under separate Decision and Order.

members of the local Jewish community.³ New York City Health + Hospitals Corporation (H+H) is the nation's largest municipal hospital system, controlled by New York City.⁴

In September 2025, MMC and H+H applied jointly for participation in the SNTP, proposing a merger or acquisition in which H+H would form a new corporate entity or entities to take over and continue the operations of the hospital as H+H Maimonides. By an award letter dated November 10, 2025, the New York State Department of Health's (DOH) approved MMC and H+H's application and awarded funding under SNTP proposing approximately \$2.245 billion in funding over five years, subject to conditions (NYSCEF Doc. No. 4). In December 2025, MMC and H+H entered into an Affiliation and Asset Transfer Agreement (Agreement) to transfer substantially all of MMC's (and its affiliates) assets, liabilities, and operations to H+H (NYSCEF Doc. No. 5). The Agreement, inter alia, creates new H+H-controlled entities to operate the hospital, restructures MMC's governance, and transfers oversight and control and licensure to H+H.

³ Moses Maimonides was a renowned twelfth-century rabbinical scholar, philosopher, jurist, and physician (see *Moses Maimonides | Biography, Philosophy, & Teachings | Britannica*).

⁴ New York City Health and Hospitals Corporation was created by, and continues to be governed by, the Health and Hospitals Corporation Act (HHC Act) (L 1969, ch 1016, codified at NY Unconsolidated Laws sections 7381-7406).

In its November 10, 2025 award letter, the Commissioner addressed certain requirements with which a similar project outside the SNTP would ordinarily have to comply:

Regulatory Waivers:

Pursuant to this authority, the following waivers are authorized for a 5-year period:

Regulations governing financial feasibility review:

10 NYCRR 600.1(b)(3) (applicable only to establishment applications)

10 NYCRR 600.2(b)(3) (applicable only to establishment applications)

10 NYCRR 710.2(b)(6) (applicable only to construction applications)

Regulations governing public need review:

10 NYCRR Part 709

Regulation governing full review of construction projects:

10 NYCRR 710.1(c)(2)

Although the Department agrees to waive the aforementioned regulations, financial feasibility and public need review continues to be required pursuant to Public Health Law section 2801-a (relating to establishment) and section 2802 (relating to construction); approval of your [SNTP] Application by the Department satisfies these requirements.

Petitioners challenge as unlawful the final sentence of the above-quoted passage construing it as a determination that review by the Public Health Council is unnecessary because review by DOH under the SNTP satisfies these Public Health Law requirements.

Petitioners commenced this CPLR article 78 proceeding by order to show cause on or about March 9, 2026.⁵ Petitioners aver that Rafuah Helpline is a registered 501(c)(3) nonprofit organization that helps patients and their families facing medical crises by providing case management services, referrals, advocacy, and guidance, including several thousand patients using MMC and its affiliated physicians. Petitioners Beigel, Minkoff, and Schlafrig allege that they and their families have used and continue to use MMC for their medical care. Petitioners aver that Congregation Khal Shaarei Bobov Inc, Congregation Kehilas Belz USA, and Congregation Yetev Lev D'Satmar are nonprofit religious organizations that serve the Hasidic communities in Brooklyn, and assert that members of their congregations and their families regularly obtain care at MMC. The petition alleges that MMC “has historically provided robust culturally and religiously essential accommodations” to members of the Hasidic communities.

Petitioners challenge the Commissioner’s determination that the merger of MMC into H+H, with the creation of a new governing board and operational

⁵ The initiating submissions were filed both in support of their TRO and preliminary injunction requests, as well as in support of the verified petition. The Court held oral argument on the TRO and set deadlines for opposition. Respondents’ answering papers engaged on both the preliminary injunction and the ultimate merits. By letter dated March 24, 2026, petitioners advised the Court that the extreme exigencies have moderated, and suggested that the Court simply decide the merits without the need to address the motion for a preliminary injunction so long as the Court is able to do so expeditiously (NYSCEF Doc. No 44, p 1, fn 1).

entity, does not require the approval of the Public Health Council under public Health Law 2801-a after assessing various criteria, including public need, financial resources, and character and competence of the proposed directors, members and operators. Petitioners are particularly concerned about the lack of rigorous character and competence review by the Public Health Council. Petitioners claim that the Commissioner's determination waiving Public Health Council review is arbitrary and capricious, contrary to Public Health Law 2801-a, and in excess of jurisdiction.

The Commissioner denies that he waived Public Health Council review. He takes the position that Public Health Council review is not required by statute. He argues that the transaction is governed by Public Health Law § 2802, which pertains to the construction or substantial acquisition of hospitals, not Public Health Law 2801-a, which pertains to the establishment and operation of hospitals. And even if Public Health Law 2801-a were to govern, the Commissioner argues, subdivision 5 of Public Health Law 2801-a excepts from Public Health Council review because the new establishment entity is under the control of the City of New York. In short, the Commissioner submits that he did not waive Public Health Council review; it simply is not required by statute.

Because this case is now purely an article 78 proceeding challenging the Commissioner's determination, H+H and MMC are not true respondents,

although they would have been true defendants on the now-withdrawn declaratory judgment claim. Given the interest of H+H and MMC in the overall transaction at issue, however, the Court will consider their legal memoranda to the extent that they support the rationale of the Commissioner, whose position controls.

Statutory Framework

Article 28 of the Public Health Law establishes the statutory framework for regulating hospitals in the State of New York. “Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health” (PHL § 2800). The Public Health Council is a statutory body within the Department of Health consisting of the Commissioner and 26 members appointed by the Governor, with the advice and consent of the Senate, who reflect the State’s geographic and population diversity (Public Health Law 220; *see Hempstead Park Assoc., LLC v Sunshine Care Corp.*, 23 AD3d 234 [1st Dept 2005]). Bearing on the issue of the Public Health Council’s role in this case are three separate provisions of Article 28 of the Public Health Law:

Public Health Law § 2801-a (Establishment)

Petitioner’s position focuses on Public Health Law § 2801-a, entitled “Establishment” of hospitals. Subdivision 1 of § 2801-a provides:

1. No hospital, as defined in this article, shall be established except with the written approval of the public health and health planning council. No certificate of incorporation of a business membership or not-for-profit corporation shall hereafter be filed which includes among its corporate purposes or powers the establishment or operation of any hospital, as defined in this article, or the solicitation of contributions for any such purpose, or two or more of such purposes, except with the written approval of the public health and health planning council, and when otherwise required by law of a justice of the supreme court, endorsed on or annexed to the certificate of incorporation. No articles of organization of a limited liability company established pursuant to the New York limited liability company law which includes among its powers or purposes the establishment or operation of any hospital as defined in this article, shall be filed with the department of state except upon the approval of the public health and health planning council.

Subdivision 2 of § 2801-a goes on to provide the procedure for obtaining Public Health Council approval of the “incorporation or establishment of any hospital.” That subsection requires the submission of an application with supporting documentation, the circulation of the application to any health systems agency in the geographical jurisdiction, and opportunities for comment and a hearing. Subdivision 3 of § 2801-a sets forth the criteria for approval—public need, character and competence, and financial resources:

3. The public health and health planning council shall not approve a certificate of incorporation, articles of organization or application for establishment unless it is satisfied, insofar as applicable, as to (a) the public need for the existence of the institution at the time and place and under the circumstances proposed...; (b) the character, competence, and standing in the community, of the proposed incorporators, directors, sponsors, stockholders, members or operators ...; (c) the financial resources of the proposed institution and its sources of future revenues; and (d) such other matters as it shall deem pertinent.

Subdivision 4 of § 2801-a requires Public Health Council approval of changes in the operator of a hospital, as required for the establishment or incorporation of a hospital:

4. (a) Any change in the person who is the operator of a hospital shall be approved by the public health and health planning council in accordance with the provisions of subdivisions two and three of this section. Notwithstanding any inconsistent provision of this paragraph, any change by a natural person who is the operator of a hospital seeking to transfer part of his or her interest in such hospital to another person or persons so as to create a partnership shall be approved in accordance with the provisions of paragraph (b) of this subdivision.

And subdivision 5 of § 2801-a provides that governmental subdivisions, except the State and New York City, shall not create an agency concerned with the establishment of a hospital without Public Health Council approval:

5. Except as otherwise hereinafter provided, no county, city, town, village or other governmental subdivision shall establish or create any agency concerned with the establishment of any hospital as defined in this article without securing the written approval of the public health and health planning council in accordance with the requirements and procedures of subdivisions two and three of this section with respect to certificates of incorporation, articles of organization and establishment, except that the requirements relating to the proposed incorporators, directors and sponsors shall not apply. The preceding shall not apply to the establishment of state hospitals by the state of New York or to the establishment of municipal hospitals by the city of New York.

Public Health Law § 2802 (Construction)

Respondent Commissioner takes the position that Public Health Law § 2802, entitled “Approval of Construction,” governs this transaction. It provides:

“The construction of a hospital, whether public or private, incorporated or not incorporated, shall require the prior approval of the Commissioner.”

“Construction” is defined in Public Health Law § 2801(5) to include “the erection, building, or substantial acquisition, alteration, reconstruction, improvement, extension or modification of a hospital” The Commissioner classifies the proposed MMC/H+H transaction as a “substantial acquisition.”

Public Health Law § 2802 provides for the filing of a construction approval application to the DOH (Public Health Law § 2802[1])). The DOH is required to forward a copy of the application and accompanying documents to the Public Health Council (*id.*). The Commissioner may not act upon an application for construction of a hospital “until the public health and health planning council . . . [has] had a reasonable time to submit their recommendations, and unless (a) the applicant has obtained all approvals and consents required by law for its incorporation or establishment (including the approval of the public health and health planning council pursuant to the provisions of this article)” (Public Health Law § 2802 [2]). The Commissioner may approve the construction application “after considering the availability of and need for services and financial resources of the applicant” (Public Health Law § 2802 [3]-[6]).

Public Health Law 2825-i (SNTF)

Also relevant to this case, the Legislature, in 2024, enacted Public Health Law § 2825-i to establish a “statewide health care safety net transformation program” within the Department of Health. Its purpose is to “support[] the transformation of safety net hospitals to improve access, equity, quality, and outcomes while increasing financial sustainability of safety net hospitals” (Public Health Law § 2825 [1][a]). Subdivision 5 of § 2825-i gives the Commissioner the limited power to waive “regulatory requirements” in connection with SNTF awards:

5. Notwithstanding any provision of law to the contrary, the commissioner may waive regulatory requirements to allow applicants to more effectively or efficiently implement projects awarded through the healthcare safety net transformation program, provided, however, that regulations pertaining to minimum standards for hospitals for patient safety, patient autonomy, patient privacy, patient rights, quality of care, safe staffing, adverse event reporting, due process, scope of practice, professional licensure, environmental protections, infection control, provider reimbursement methodologies, character and competence, or occupational standards and employee rights shall not be waived, nor shall any regulations be waived if such waiver would risk patient safety. Such waiver shall not exceed the life of the project or such shorter time periods as the commissioner may determine. Any regulatory relief granted pursuant to this subdivision shall be specifically described and requested within each project application and be reviewed by the commissioner.

Analysis

Standing

Respondent raises as a threshold issue that petitioners lack standing to challenge the SNTP award and its concomitant determination that Public Health Council approval after assessing public need, character and competence and financial resources is not required. The Commissioner asserts that petitioners lack standing to challenge the Commissioner's determination because petitioners have not established a concrete injury in fact distinct from the public at large. Petitioners maintain they have standing because they will be impacted by changes to the operations, character and competence, services, and quality of care that the Public Health Council is mandated to consider; they are deprived of an opportunity to submit comments and have them considered by the Public Health Council; the transaction without review by the Public Health Council threatens the health and safety of the individual petitioners and congregation members; and the change in operator is expected to impact cultural and religious accommodations MMC has heretofore provided.

"Standing is a threshold determination, resting in part on policy considerations, that a person should be allowed access to the courts to adjudicate the merits of a particular dispute that satisfies the other justiciability criteria" (*Matter of Assn. for a Better Long Is., Inc. v New York*

State Dept. of Envtl. Conservation, 23 NY3d 1, 6 [2014] quoting *Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 769 [1991]). "A petitioner challenging government agency action pursuant to [a CPLR] article 78 petition has the burden of demonstrating an injury[-]in[-]fact and that the alleged injury falls within the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the government has acted in order to have standing to challenge that action" (*Matter of Common Cause N.Y. v. Kosinski*, 241 AD3d 1036, 1038 [3d Dept 2025], quoting *Matter of Stevens v New York State Div. of Criminal Justice Servs.*, 40 NY3d 505, 515, [2023] [internal quotation marks omitted]). "The injury-in-fact requirement necessitates a showing that the party has an actual legal stake in the matter being adjudicated and has suffered a cognizable harm that is not tenuous, ephemeral, or conjectural but is sufficiently concrete and particularized to warrant judicial intervention" (*id.* quoting *Matter of Borrello v Hochul*, 221 AD3d 1484, 1485 [4th Dept 2023] [internal quotation marks omitted]). And an "organization may establish organizational standing on behalf of its members, provided that at least one of its members would have standing to sue, that it is representative of the organizational purposes it asserts and that the case would not require the participation of individual members" (*id.* quoting *Matter of Mental Hygiene Legal Serv. v Daniels*, 33 NY3d 44, 51 [2019] [internal quotation marks omitted]).

The verified petition alleges that petitioners Chaim Beigel and Israel Minkoff are residents of Borough Park, Brooklyn, New York, and that their families, including their parents, in-laws, children, and grandchildren, have used and continue to use MMC for their medical care. Both Chaim Beigel and Israel Minkoff independently verified the allegations in the petition.

In addition, the verified petition alleges that petitioner Pessie Schlafrig is resident of Brooklyn, New York 11204, and that she is the Director of Chaim Medical Resource, a registered 501(c)(3) non-profit organization that provides support to individuals and families facing medical crises. The petition alleges that Chaim Medical Resource serviced approximately 33,000 patients in 2025, several thousand of whom were patients at MMC. And it alleges that Ms. Schlafrig has used and continues to use MMC for her medical care, and directs the counseling of many patients who do so as well. Pessie Schlafrig likewise independently verified the allegations in the petition.

As to injury, petitioners allege that the proposed change in MMC's corporate and operational leadership, if not properly vetted, will have a harmful effect on the services they, their families, and their members and advisees receive and will receive in the future. Specifically, petitioners seek Public Health Council assessment of the character and competence of the corporate entities that will guide and operate MMC going forward. The Court

finds that these three individual petitioners, at the very least, have sufficiently alleged injury-in-fact necessary for standing.

The Court further finds that their alleged injuries fall within the zone of interests sought to be protected by the Public Health Law's provision requiring review and/or approval by the Public Health Council. That is precisely the harm that petitioners allege -- without the Public Health Council's assessment of public need, finances, and especially character and competence, their ability to receive quality medical services will be compromised.

In examining the threshold issue of standing, the Court is mindful of Public Health Law § 2801-c, which addresses injunctions for violations or threatened violations of Public Health Law article 28 or the regulations thereunder. Section 2801-c provides relaxed standing to individuals to seek injunctive relief in an effort to secure compliance with article 28.

Moreover, the organizational petitioners have sufficiently demonstrated associational standing. Organizational petitioners allege harm to persons to whom they regularly provide services, counseling, advocacy and support to individuals and families who receive medical treatment at MMC and who will continue to avail themselves of MMC services. (*see generally Matter of Mental Hygiene Legal Serv. v Daniels*, 33 NY3d 44, 51 [2019]).

The Commissioner Has Finally Determined that Public Health Council Approval Under Public Health Law §§ 2801-a and 2802 Is Unnecessary.

As a second threshold issue, there is some ambiguity as to whether the Commissioner's November 10, 2025 SNTP award letter contains a final determination waiving compliance with Public Health Council review and/or approval under article 28, as petitioner's argue, or whether Public Health Council approval is not required in the first place, as respondents argue. The relevant language in the SNTP award letter states:

Although the Department agrees to waive the aforementioned regulations, financial feasibility and public need review continues to be required pursuant to Public Health Law section 2801-a (relating to establishment) and section 2802 (relating to construction); approval of your [SNTP] Application by the Department satisfies these requirements.

The Court construes this language as follows: The Commissioner waived compliance with *regulations* under Public Health Law § 2825 [1][a], but he did not expressly waive compliance with the statute. Instead, the Commissioner deemed approval under the SNTP as satisfying the statutory financial feasibility and public need requirements of Public Health Law § 2801-a (establishment) and Public Health Law § 2802 (construction). And petitioners are correct, Public Health Law § 2825-i authorizes waivers only of regulations, not the statute.

The Commissioner's determination appears to be premised on his view that Public Health Law § 2801-a and § 2802 do not require Public Health

Council approval for the project, but in any event, the Commissioner's assessment of financial resources and public need in making the SNTP award is functionally equivalent to Public Health Council assessment. Notably, the Commissioner's November 10, 2025 award letter does not expressly state that his SNTP approval satisfies the statutory requirement that Public Health Council evaluate the "character and competence" provisions required for the establishment of construction of a new hospital. But the Commissioner and the DOH in their answering submissions have taken the position the award letter reflects his determination that Public Health Council approval under Public Health Law § 2801-a and § 2802 is not required at all. The Court, therefore, will proceed to determine whether the Commissioner's determination is arbitrary and capricious or affected by error of law.

*Public Health Law § 2801-a (Establishment) and
§ 2802 (Construction) Both Apply to This Transaction.*

Respondents take the position in their answer and supporting papers that Public Health Law § 2802, related to construction projects governs, not Public Health Law § 2801-a, related to the establishment and operation of hospitals. Regardless, respondents argue, even if § 2801-a applies, subdivision 5 excludes hospital projects undertaken by the City of New York. However, the Commissioner's November 10, 2025 SNTP award letter reflects his

determination contemporaneous with the award that § 2801-a (Establishment) and § 2802 (Construction) are both relevant to this transaction.

The Commissioner's primary argument now is that the transaction constitutes "construction," specifically a "substantial acquisition" governed by Public Health Law § 2802 (*see* Public Health Law § 2801[5]). Even if that is so, Public Health Law § 2802 requires, at the very least, that the Commissioner forward a copy of the application and accompanying documents to the Public Health Council and to refrain from acting upon the application until the Public Health Council has had a reasonable time to submit their recommendations (Public Health Law § 2802 [2]). Only then can the Commissioner approve the construction application after considering the availability of and need for services and financial resources of the applicant (Public Health Law § 2802 [3]-[6]).

But § 2802 recognizes that a construction application may also require compliance with § 2801-a. The Commissioner may not act on the construction application "unless the applicant has obtained all approvals and consents . . . for its incorporation or establishment (including the approval of the [Public Health Council])" (*id.* at § 2802 [2]). Indeed, the Commissioner's November 10, 2025 award letter reflects his original determination that approvals would ordinarily be required for incorporation and establishment as well as for construction, since he cites both provisions as being satisfied.

The Court agrees that Public Health Council approval would ordinarily be required for a transaction like this which calls for the establishment and incorporation of new entities to continue hospital operations. Section § 2801-a (1) provides that “no hospital shall be established except with the written approval” of the Public Health Council. Similarly, “no certificate of incorporation of a business membership or not-for-profit corporation shall be filed which includes among its corporate purposes or powers the establishment or operation of any hospital except with the written approval” of the Public Health Council. And under § 2801-a (4), “[a]ny change in the person who is the operator of a hospital shall be approved” by the Public Health Council.

Here, MMC and H+H entered into an Affiliation and Asset Transfer Agreement to establish a hospital entity to be known as H+H Maimonides to exist within the H+H hospital system. The Agreement calls for the transfer of substantially all of MMC’s (and its affiliates) assets, liabilities, and operations to H+H; creates new corporate entities to operate the H+H Maimonides hospital and restructures MMC’s governance board; and transfers operational oversight and licensure to H+H. Ordinarily, the creation of new corporate entities to own and operate a hospital to be licensed under article 28 of the Public Health Law would require Public Health Council approval. Respondents argue, however, that the transaction falls within the exclusion

set forth in subdivision (5) of § 2801-a for hospitals established by the City of New York.

Subdivision (5) of Public Health Law § 2801-a Does Not Exclude This Transaction from Public Health Council Approval.

Subdivision (5) of section 2801-a provides that “no county, city, town, village or other governmental subdivision shall establish or create any agency concerned with the establishment of any hospital as defined in this article without securing the written approval of the [Public Health Council]. Subdivision (5) then states: “The preceding shall not apply to the establishment of state hospitals by the state of New York *or to the establishment of municipal hospitals by the city of New York*” (italics added).

Respondents argue that New York City Health and Hospital Corporation is, for these purposes, the alter ego of the City of New York, and therefore Public Health Council approvals under § 2801-a are not required. In support, respondents note that the New York City Health and Hospital Corporation was created by the Health and Hospitals Corporation Act (HHC Act) in 1969 (*see* HHC Act § 2 “[A] public benefit corporation, to be known as the New York City health and hospital corporation, should be created to provide such health and medical services and health facilities . . . ; that the creation and operation of the New York city health and hospitals corporation, as hereinafter provided, is in all respects for the benefit of the people of the state of New York and of the

city of New York, and is a state, city and public purpose; and that the exercise by such corporation of the functions, powers and duties as hereinafter provided constitutes the performance of an essential public and governmental function.”)]. Section 2801-a, and the exclusion set forth in subdivision 5, they argue, was enacted in 1970 after H+H had already been created to establish and control New York City municipal hospitals. Prior to the enactment of article 28, former Social Welfare Law § 35, *see* L. 1940, ch. 619, § 1, governed the establishment of hospitals. The written approval requirement was consolidated into the Public Health Law in 1970 as amended (*see* L. 1970, ch. 617, § 1) and the exclusionary language in subdivision (5) of § 2801-a has been part of Public Health Law § 2801-a since its enactment in 1970.

The Court is not convinced that subdivision (5) excludes from Public Health Council approval the establishment or incorporation of a hospital entity within the H+H system that will be governed by a newly created governing board, albeit under the umbrella of H+H. The meaning and scope of subdivision (5) are, to say the least, unclear. What is the meaning of the phrase “*agency concerned with the establishment of any hospital*”?⁶ What does the word “*preceding*” reference - the requirements for establishing an “agency concerned

⁶ “Health systems agency” is a term of art defined in Public Health Law Public Health Law § 2904; but it is unclear whether that is the sense of the term “agency” in subdivision 5.

with the establishment of a hospital” as set forth in the preceding sentences of § 2801-a(5), or the “establishment” of a “hospital,” as set forth in § 2801-a(1).

Even if the exclusionary language of subdivision (5) applies to the establishment of a new hospital within H+H's system, the statute does not on its face exclude from Public Health Council approval changes in the operational governance of a hospital under Public Health Law § 2801-a(4). As petitioners point out, the requirement for Public Health Council approval of a change in operating entity in subdivision (4) of Public Health Law § 2801-a was added in 1970, one year after H+H was created and imbued with functionality under the HHC Act. Nevertheless, the legislature did not amend subdivision (5) to reflect the new HHC Act or the additional requirement of Public Health Council approval of changes in operating entities.

Nor is the Court persuaded by respondents' retort that it would make no sense to exclude from Public Health Council approval the “establishment” of hospitals, while still requiring such approval for changes in operational control. The legislature could have thought it entirely appropriate that oversight by the Public Health Council remains necessary when change in operational control over an article 28 facility is transferred to a new facility, especially with regard to the assessment of character and competence of the entity that will exercise day-to-day control over patient care, staffing, and

other hospital operations, and for it to issue its written approval of the new operational entity.

Accordingly, the Commissioner's determination that his evaluation under the SNTP satisfied Public Health Council review and/or approval under Public Health Law § 2801-a and § 2802 is arbitrary and capricious and affected by error of law. To the extent this transaction constitutes a substantial acquisition, the statute requires the Public Health Council's review of the merger of MMC into H+H. To the extent the transaction constitutes a change in operating entity, the statute requires Public Health Council approval of the creation of a new subsidiary entity to operate H+H Maimonides.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is granted to the extent set forth herein; and it is further

ORDERED and ADJUDGED that respondents' determination that review conducted pursuant to the SNTP satisfied the approval/review requirements of Public Health Law 2801-a and 2802 is annulled; and it is further

ORDERED that the matter is remitted to respondents for further proceedings not inconsistent with this Decision and Order; and it is further

ORDERED that any relief not specifically addressed herein has nonetheless been considered and is denied.

This constitutes the Decision, Order, and Judgment of the Court, the original of which is being uploaded to NYSCEF for electronic entry by the Albany County Clerk. Upon such entry, counsel for petitioners shall promptly serve notice of entry on all other parties entitled to such notice.

Dated: Albany, New York
May 12, 2026



HON. DENISE A. HARTMAN
Justice of the Supreme Court

Papers Considered

NYSCEF Doc Nos. 1-7, 17-56 and 59-63