

EXHIBIT H

**ATTORNEY GENERAL OF THE STATE OF NEW YORK**

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**In the Matter of****Prospect Park Nursing Home, Inc.  
d/b/a Integral Guardianship Services****Assurance No.: 15-231**

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**ASSURANCE OF DISCONTINUANCE  
UNDER EXECUTIVE LAW  
SECTION 63. SUBDIVISION 15**

Pursuant to the provisions of Section 63 and Article 7-A of the New York Executive Law, the New York Not-for-Profit Corporation Law, and Section 8-1.4 of the New York Estates, Powers and Trusts Law, Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain practices of Prospect Park Nursing Home, Inc. d/b/a Integral Guardianship Services ("Integral") relating to compliance with its legal obligations as a New York not-for-profit corporation, including its governance, operations and internal controls, along with its provision of guardianship services. Based upon the inquiry, the New York State Office of the Attorney General ("OAG") has made factual and legal findings, summarized in this Assurance of Discontinuance ("Assurance"). In response, Integral has agreed to modify and/or discontinue certain practices that are referenced in this Assurance, and to institute measures ensuring that the relief agreed to by this Assurance will fully be accomplished. Integral and the OAG may each be referred to individually as a "Party," and collectively as the "Parties."

**I. BACKGROUND**

1. Prospect Park Nursing Home, Inc. ("PPNH") was formed in 1976 as a New York not-for-profit corporation. Following a court order pertaining to the sale of PPNH, issued by New York State Supreme Court, Kings County, under Index Number 7352 of 2007 (the "Court

Order”), Integral received a substantial portion of the assets of PPNH so that it could provide guardianship services to incapacitated individuals,<sup>1</sup> including the elderly and disabled.<sup>2</sup>

2. Integral is located at 1650 Coney Island Avenue, Brooklyn, New York 11230. It began its guardian services in 2006 immediately prior to the sale of the predecessor nursing home.

3. Integral currently is responsible for approximately 382 wards. Courts in New York City and Westchester and Nassau counties have appointed Integral as guardian. (A guardian is a person or entity, appointed by a court, with the authority to make decisions regarding financial management and/or personal needs of an individual lacking the capacity to do so for him or herself.)

## **II. RELEVANT LAWS AND LEGAL DUTIES**

4. As a not-for-profit corporation, Integral is bound by numerous provisions of the New York Not-for-Profit Corporation Law (N-PCL) and the New York Estates, Powers and Trusts Law (EPTL). For example, under N-PCL § 717, Integral’s officers and directors owe fiduciary duties to the corporation, including duties of loyalty, care and obedience. Under EPTL § 8-1.4, Integral’s officers and directors are trustees of its charitable assets, with duties, inter alia, to responsibly administer its assets and to avoid wasting them. Further, N-PCL § 716 prohibits a not-for-profit corporation from making loans to its directors and officers.

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<sup>1</sup> “Incapacitated person” and “ward” will be used interchangeably in this Assurance.

<sup>2</sup> Specifically, PPNH sought approval from the court to sell its assets, and to transfer the net proceeds to three New York not-for-profit organizations for charitable purposes consistent with PPNH’s charitable and social service activities related to its care for the elderly, disabled, ill, infirm, handicapped and convalescent persons. Pursuant to the March 2007 court order, most of PPNH’s property and assets relating to operations of the nursing home were sold to Prospect Park Operating, LLC d/b/a Brooklyn Center for Rehabilitation and Residential Health Care. The proceeds of the sale were distributed to three successor New York not-for-profit organizations, Integral Social Services Agency, Inc., Prospect Park Senior Day Care Center, Inc., and Rabbi Abraham and Shirley Kelman Foundation, Inc.

5. Integral's legal responsibilities as guardian are also dictated by the provisions of each court order that appoints a guardian, and by Article 81 of the New York Mental Hygiene Law (MHL), which details a guardian's powers and duties.

6. A guardian may be granted authority over an incapacitated person's financial resources, and must then preserve, protect, and account for those resources, and use them to maintain and support the incapacitated person. MHL § 81.21.

7. A guardian may also be granted those powers necessary to provide for the ward's personal needs, which include food, clothing, shelter, and health care. MHL § 81.22.

8. A guardian is required to meet with each ward at least four times per year. MHL § 81.20.

9. A guardian must make an initial report to the court within 90 days of receiving its commission, and must make an annual report regarding the condition of its ward and the ward's financial situation. MHL § 81.30.

10. At the termination of a guardianship, the guardian must file a final report with the court before being relieved of its duties. MHL § 81.33.

11. One of the primary duties of a guardian is to afford the incapacitated person the greatest amount of independence and self-determination in light of, and tailored to, that person's limitations, abilities and preferences. Returning or maintaining the incapacitated person in the least restrictive setting, as medically and otherwise indicated, should be an utmost priority of guardians. MHL § 81.01.

### **III. THE OAG'S FINDINGS**

12. Among the findings made by the OAG in the course of its investigation are the following:

13. Integral failed to meet some of the most basic governance obligations of a not-for-profit organization:

- a. Integral gave a series of loans to the chief operating officer, Alan Shapiro, totaling in excess of \$225,000 and a series of loans totaling approximately \$26,000 to the chief financial officer, Jack Feldman<sup>3</sup>. Integral also gave a series of loans to Sarah Samet, an employee, totaling an amount in excess of \$25,000. These loans were not made in accordance with the N-PCL.
- b. Integral identified a nominal list of board of directors, but did not convene meetings of the board of directors as required by law.
- c. Integral failed to make and maintain adequate financial books and records.
- d. Integral engaged in related-party transactions with other entities without the requisite board review and approval.<sup>4</sup>
- e. Integral failed to register with the OAG's Charities Bureau, pursuant to Section 8-1.4 of the EPTL, and failed to submit annual financial reports.<sup>5</sup>

14. Integral repeatedly failed to timely file initial, annual and final reports with the court.

15. Integral was inadequately staffed and was unable to fully meet certain of its guardianship obligations, as set by the court and Article 81 of the New York Mental Hygiene Law.

<sup>3</sup> The current outstanding principal balance of the loan to Jacob Feldman is \$0. Unpaid balances remain on the loans to Mr. Shapiro and Ms. Samet. The outstanding aggregate principal balance of (a) Mr. Shapiro's loans is \$13,430.65, and (b) Ms. Samet's loans is \$17,716.54.

<sup>4</sup> For example, Integral regularly engaged a moving company with whom it had a special relationship, to provide services to its wards.

<sup>5</sup> Most organizations that hold property of any kind for charitable purposes or engage in charitable activities in New York State are required to register with the Attorney General's Charities Bureau. Under New York Law, charity is defined very broadly to include purposes such as education, relief of poverty, cultural programs, promotion of health and research to cure disease, and many other purposes that are beneficial to the community. The Attorney General's Charities Bureau is responsible for supervising charitable organizations to protect donors and beneficiaries of those charities from unscrupulous practices in the solicitation and management of charitable assets. The Bureau also maintains a registry of charities, to provide the public with valuable information about nonprofit organizations in New York.

16. Integral typically had only one nurse and one licensed social worker oversee visits to its wards, and the visits were largely performed by a small number of graduate students enrolled in Masters of Social Work programs in New York City. No written agreement was in place between Integral and the schools that the social work students attended.

17. Integral's failure to act in a timely manner resulted in delays in the return of wards from residential facilities to their homes in the community, contrary to its fiduciary duties to its ward. For example, Integral was slow to pay arrears in rent so the ward could return home after a stay in a nursing facility.

NOW, WHEREAS, INTEGRAL admits the OAG's findings of fact, above, and the OAG is willing to accept the terms of this Assurance under Executive Law § 63(15) and to discontinue this inquiry; the Parties each believe that the obligations imposed by this Assurance are prudent and appropriate; and the OAG has determined that this Assurance is in the public interest.

**IT IS HEREBY UNDERSTOOD AND AGREED** by and between the Parties that:

#### **IV. PROSPECTIVE RELIEF**

18. Repayment of loans. The individuals referenced in Paragraph 13(a) hereof shall each pay back to Integral the full amount of any outstanding principal balances on their respective loans from Integral owed no later than January 31, 2016. Proceeds received pursuant to the loan repayments shall be deposited into a separate escrow account for Integral's operations (including the satisfaction of existing liabilities), as shall be authorized, approved or ratified by the New Board (as defined below) or in accordance with the Modified Court Order as provided for in Paragraph 28(b) hereof. Integral will seek repayment of the full amounts of these loans, plus any appropriate interest and additional costs as shall be determined by the New Board.

19. Corporate governance. Within thirty (30) days of the Effective Date of this Assurance, Integral shall submit to the OAG the names of no fewer than five (5) new independent nominees for director positions, who will be appointed by the sole remaining director, only after Integral has consulted with and received no objections from the OAG concerning proposed appointments. The sole remaining director shall resign immediately upon the appointment of at least three (3) new independent directors (such newly constituted board comprised entirely of independent directors shall be referred to herein as the "New Board"). The OAG shall have 5 business days to object to any of the nominations (and shall have 5 business days to object to any replacement nominees). In the event of an objection by the OAG, the nomination shall be withdrawn, and the sole remaining director shall nominate a replacement nominee, acceptable to the OAG, within 5 business days of receiving the OAG's objection. The New Board promptly shall elect new officers, in consultation with the OAG, and immediately undertake the following:

- a. Form an audit and finance committee which, among other things, shall review all operating expenses of Integral as well as contracts with independent contractors or vendors.
- b. Require board members to complete at least once every two years an ethics and non-profit compliance training course, administered by a qualified outside consultant or provider deemed acceptable by the board. Each board member shall sign a certification of such completion, which shall be kept on file with Integral for at least five years. For board members who have not had prior board experience, such training shall be completed within six months of appointment.
- c. Hold regular board meetings on at least a quarterly basis.
- d. Record and maintain minutes of all board and committee meetings.
- e. Keep and maintain accurate corporate records.
- f. Amend Integral's certificate of incorporation to (i) change its name to

**"Integral Guardianship Services," and delete the reference to "Prospect Park Nursing Home," and (ii) accurately reflect Integral's current purposes and operations.**

- g. Amend Integral's bylaws to include the above provisions and those consistent with the N-PCL, EPTL, and best practices for an organization of Integral's scope, and acceptable to the OAG.**
- h. Register with the OAG and file tax returns with the OAG in a timely manner.**

**For avoidance of doubt, except with respect to their obligations under this Assurance, the New Board shall not be held liable for any actions or conduct occurring prior to their appointment. The New Board shall at all times act in accordance with applicable law.**

**20. Policies. The board of directors shall adopt conflict-of-interest and whistleblower policies that comply with N-PCL § 715-a and 715-b, and shall maintain the whistleblower policy even if such policy is not required by N-PCL § 715-b because of Integral's revenues or number of employees. Integral's conflict-of-interest policy shall define the circumstances that constitute a conflict in a manner sufficient for it to enforce the terms of this Assurance (in addition to otherwise complying with the N-PCL's and EPTL's requirements for conflict-of-interest policies). The board of directors shall also adopt a Fiscal Responsibility and Expense Reimbursement Policy, which shall address at a minimum expense reimbursement, corporate credit cards, and motor vehicles used for the work of Integral, according to the parameters recommended by the management consultant and approved by the OAG.**

**21. Accounting and financial oversight. The board of directors shall retain an accounting firm to serve as its independent auditor. Such firm shall have experience in advising not-for-profit organizations. The firm shall audit Integral's financial condition on an annual basis, and shall also prepare Integral's tax returns on a timely basis.**

**22. Management consultant. Within thirty (30) days of the Effective Date of this**



Assurance, Integral will formalize its agreement with the Community Partners program of the Harvard Business School Club of New York ("Community Partners"), a pro bono management consultant, to review Integral's systems, operations, and finances, or, in the event the services of Community Partners are unavailable to Integral for any reason, such other management consultant firm identified by Integral and approved by the OAG (interchangeably with Community Partners, the "Management Consultant"). The Parties anticipate that the Management Consultant will make recommendations regarding actions, policies and procedures that should be implemented by Integral to ensure more effective and efficient operations, including, in particular, those aimed at enhancing the performance of Integral's duties as guardian. While the Management Consultant may provide its recommendations and guidance during the course of its engagement, the Parties anticipate that the Management Consultant will provide Integral with a formal written report of its findings and recommendations at the conclusion of the engagement (the "Final Report"). Integral shall request that the Management Consultant provide a draft of the Final Report, and upon receipt thereof, shall provide a copy of such draft to the OAG for review, comment and approval. A copy of the Final Report will be provided to the OAG promptly upon receipt. Integral agrees that, although the Management Consultant will primarily communicate with Integral's New Board, management, employees, and legal counsel, as the case may be, the Management Consultant may communicate directly with the OAG (upon notice to the New Board) as it deems necessary or appropriate or as may be requested by the OAG about the Management Consultant's work for Integral, including but not limited to the development of findings and recommendations.

23. Compliance Officer. Within sixty (60) days of the Effective Date of this Assurance, Integral shall designate a compliance officer ("Compliance Officer"), paid by

Integral and subject to the OAG's approval, to implement, oversee and evaluate compliance with the management consultant's recommendations and this Assurance. Integral's Compliance Officer shall also provide quarterly written reports to the New Board, and annual reports to the OAG, that:

- a. tracks each recommendation of the management consultant, and that describes the steps taken by Integral to meet those requirements, and
- b. tracks each recommendation of the Assurance of Discontinuance, and that describes the steps taken by Integral to meet those requirements.

In connection with its obligations described in this paragraph, the Compliance Officer shall meet in person with the OAG semi-annually, starting one year from the Effective Date of this Assurance, and continuing through the third anniversary of the Effective Date. The Compliance Officer shall submit its written report to the OAG semi-annually through the third anniversary of the Effective Date.

24. If the OAG, having concerns about the quality of the review, qualifications or independence of the Compliance Officer, asks Integral to terminate its agreement with the existing Compliance Officer, Integral will promptly take such action and, subject to the OAG's approval, retain a new Compliance Officer.

25. Pro Bono Caseload. Integral shall use its best efforts to cease taking on new pro bono cases<sup>6</sup> until receipt of, and subject to, the recommendations of the Management Consultant. Moreover, within thirty (30) days from the Effective Date of this Assurance Integral shall, in consultation with the Management Consultant and the OAG agree on a plan setting forth

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<sup>6</sup> The Parties agree and acknowledge that, under certain circumstances, a case that appeared not to be pro bono upon Integral's appointment may, for various reasons, become pro bono because funds are unavailable for payment to Integral. Integral will use its best efforts to identify cases such as these in advance of accepting any appointment, and shall promptly notify the OAG upon a case becoming pro bono in nature.

parameters relating to the extent to which it may take on additional cases during the period of the Management Consultant's review.

26. Social Work Services. Within thirty (30) days from the Effective Date of this Assurance, Integral shall enter into formal contracts with the schools of social work that provide the social work students to Integral, and it shall ensure that appropriate oversight and supervision is being provided to students, including their work and work-product, especially while they are in the field. Integral shall also comply with all requirements of the schools of social work, and provide all information requested by the school.

27. Resignations. The New Board shall give strong consideration to the recommendations of the Management Consultant relating to the hiring, retention and scope of duties of Integral's employees. In the event that the New Board disagrees with any such recommendation of the Management Consultant, it shall first attempt to reconcile any disagreement directly with the Management Consultant, and, if unable to resolve such disagreement promptly, Integral shall consult with the OAG and the Management Consultant in furtherance of reaching a decision that is in the best interest of Integral and its wards. Resignations shall be subject to OAG approval.

28. Modified Court Order. The Parties shall take reasonable efforts to modify the Court Order as soon as possible following the Effective Date (such modified court order, the "Modified Court Order") as follows:

- a. New Escrow Agent: The funds held in escrow as of the Effective Date (and subsequent interest accrued thereon) by Epstein Becker & Green, P.C., as escrow agent, pursuant to the Court Order will be transferred to a new escrow agent, which shall be either Sheppard, Mullin, Richter & Hampton LLP or such other escrow agent as the Parties shall determine.
- b. Modification of Use Restriction on Integral's Share of Current Escrow Balance: The current restriction that 50% of Integral's allocable share of the net sale proceeds must be used for LHCSA purposes should be

modified to (i) remove the LHCSA restriction, and (ii) permit such funds, together with funds received pursuant to Paragraph 19 and Paragraph 28(c), to be used towards Integral's operations subject to the restriction that such funds shall only be used in accordance with budgets, criteria and other parameters to be developed by the New Board in consultation with, and as approved in advance by, the OAG, which budgets, criteria and parameters shall be established in consultation with, and/or based on the recommendations of, the Management Consultant.

- c. Assurance of Discontinuance. The Modified Court Order shall incorporate each element of Prospective Relief contained in this Assurance.

29. Legal compliance. Integral shall comply with all New York laws and regulations, including but not limited to the requirements of Article 81 of the New York Mental Hygiene Law, the New York Not-for-Profit Corporation Law, and the New York Estates Power and Trusts Law, as well as all requirements set out by the court.

30. Staff training: Integral shall train its management, employees, agents and contractors, and modify its practices, procedures, and policies in accordance with the provisions of this Assurance. The training will be conducted by or under the direct supervision of the Compliance Officer within sixty (60) days from the Effective Date of this Assurance, on an annual basis thereafter, and at the time of any new hire. Attendance at training will be mandatory and a condition of continued employment.

31. Integral shall agree to extend the tolling agreement already in place with the OAG, until December 31, 2016.

#### V. CORRESPONDENCE AND PAYMENT

32. All notices, reports, requests, and other communications to any Party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the OAG to:

Carol Hunt  
Assistant Attorney General, Health Care Bureau  
120 Broadway, 26th Floor

New York, New York 10271

and

William Wang  
Assistant Attorney General, Charities Bureau  
120 Broadway, 3<sup>rd</sup> Floor  
New York, New York 10271

If to Integral to:

Jay Gerzog, Esq. Sheppard Mullin  
30 Rockefeller Plaza  
New York, New York 10112

## **VL MISCELLANEOUS**

33. Integral's Representations. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Integral and its counsel and the OAG's own factual investigation. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

34. No Deprivation of the Public's Rights. Nothing herein shall be construed to deprive any person of any private right under law or equity.

35. No Blanket Approval by the OAG of Integral's Practices. Acceptance of this Assurance by the OAG shall not be deemed or construed as approval by the OAG of any of Integral's acts or practices, and Integral shall make no representation to the OAG to the contrary.

36. Monitoring by the OAG. To the extent not already provided under this Assurance, Integral shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance, at Integral's expense. This Assurance does not in any way limit the OAG's right to obtain, by subpoena or by any other means permitted by law, documents, testimony, or other information.

37. No Limitation on the OAG's Authority. Nothing in this Assurance in any way limits the OAG's ability to investigate or take other action with respect to any non-compliance at any time by Integral with respect this Assurance, or Integral's noncompliance with any applicable law with respect to any matters.

38. Nondisparagement of the Assurance. Integral shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Integral's (a) testimonial obligations or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a Party.

39. Governing Law: Effect of Violation of the Assurance. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

40. Under Executive Law § 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law in any action or proceeding thereafter commenced by the OAG.

41. If a court of competent jurisdiction determines that Integral has breached this Assurance, Integral shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs. Such payment shall be directed to the attention of the OAG pursuant to paragraph 32 hereof.

42. Any failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance.

43. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole

discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

44. Entire Agreement; Amendment. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Integral in agreeing to this Assurance.

45. This Assurance contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties, and the Assurance is not subject to any condition not provided for herein. This Assurance supersedes any prior agreements or understandings, whether written or oral, between the OAG and Integral regarding the subject matter of this Assurance.

46. This Assurance may not be amended or modified except in an instrument in writing signed on behalf of all the Parties to this Assurance.

47. The division of this Assurance into sections and subsections and the use of captions and headings in connection herewith are solely for convenience and shall have no legal effect in construing the provisions of this Assurance.

48. Binding Effect. This Assurance is binding on and inures to the benefit of the Parties to this Assurance and their respective successors and assigns, provided that no Party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without prior written consent of the OAG.

49. Effective Date. This Assurance is effective on the date that it is signed by the Attorney General or his authorized representative (the "Effective Date"), and the document may be executed in counterparts, which shall all be deemed an original for all purposes.

*[The remainder of this page has been left intentionally blank.]*

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto as of

December 31, 2015.

**ERIC SCHNEIDERMAN**

Attorney General of the State of New York

120 Broadway

New York, NY 10271

By: 

James Sheehan

Bureau Chief, Charities Bureau

By: 

Lisa Landau

Bureau Chief, Health Care Bureau

**PROSPECT PARK NURSING HOME, INC. d/b/a/  
INTEGRAL GUARDIANSHIP SERVICES**

By:  CP 12-31-15

Jacob Feldman, Chief Financial Officer