

UNITED STATES DISTRICT OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK

-----X
MARTYN BUCHWALD a/k/a Marty Balin,
and SUSAN BALIN,

18 civ. 7451

COMPLAINT

Plaintiffs,

-against-

JOHN T. FOX, M.D., JOHN D. PUSKAS, M.D.,
GABRIELE Di LUOZZO, ILYA LIKHTEROV, M.D.,
SEANA FRIEDMAN, R.N., MADELYN PEARSON, R.N.,
MOUNT SINAI BETH ISRAEL, INC., BETH ISRAEL
MEDICAL CENTER INC., MOUNT SINAI HOSPITALS
GROUP INC., and MOUNT SINAI HEALTH SYSTEM,
INC.,

Defendants.

-----X
Plaintiffs, by their attorneys, Jaroslawicz & Jaros PLLC, complaining of the
defendants, upon information and belief, allege as follows:

THE PARTIES

1. At all times hereinafter mentioned, plaintiffs are husband and wife.
2. At all times hereinafter mentioned, plaintiffs are citizens of the State of Florida.
3. At all times hereinafter mentioned, plaintiff Martyn Buchwald a/k/a Marty Balin ("Balin") is a well-known singer, songwriter, and musician best known as the founder and one of the lead singers of Jefferson Airplane and Jefferson Starship, both well-known Rock and Roll groups.

4. At all times hereinafter mentioned, plaintiff Balin was also a solo artist and performer.

5. At all times hereinafter mentioned, defendant John T. Fox, M.D. ("Fox") is a citizen of the State of New York.

6. At all times hereinafter mentioned, defendant Fox held himself out as a physician, duly licensed to practice medicine in the State of New York.

7. At all times hereinafter mentioned, defendant Fox held himself out as specializing in the field of cardiology and interventional cardiology.

8. At all times hereinafter mentioned, defendant John D. Puskas, M.D. ("Puskas") is a citizen of the State of New York.

9. At all times hereinafter mentioned, defendant Puskas held himself out as a physician, duly licensed to practice medicine in the State of New York.

10. At all times hereinafter mentioned, defendant Puskas held himself out as specializing in cardiovascular surgery.

11. At all times hereinafter mentioned, defendant Puskas was obligated to provide for patients' after-care following cardiovascular surgery.

12. At all times hereinafter mentioned, defendant Gabriele Di Luoazzo, M.D. ("Di Luoazzo") is a citizen of the State of New York.

13. At all times hereinafter mentioned, defendant Di Luoazzo held himself out as a physician, duly licensed to practice medicine in the State of New York.

14. At all times hereinafter mentioned, defendant Di Luozzo held himself out as specializing in cardiovascular surgery.

15. At all times hereinafter mentioned, defendant Ilya Likhterov, M.D. ("Likhterov") is a citizen of the State of New York.

16. At all times hereinafter mentioned, defendant Likhterov held himself out as a physician, duly licensed to practice medicine in the State of New York.

17. At all times hereinafter mentioned, defendant Likhterov held himself out as specializing in ear, nose, throat/otolaryngology and head and neck surgery.

18. At all times hereinafter mentioned, defendant Seana Friedman, R.N. ("Friedman") is a citizen of the State of New York.

19. At all times hereinafter mentioned, defendant Friedman held herself out as a registered nurse, duly licensed in the State of New York.

20. At all times hereinafter relevant herein, defendant Friedman was a nurse manager of the surgical and/or cardiac surgical ICU.

21. At all times hereinafter mentioned, upon information and belief, defendant Madelyn Pearson, R.N. ("Pearson") is a citizen of the State of Massachusetts.

22. At all times hereinafter mentioned, Pearson held herself out a registered nurse, duly licensed in the State of New York.

23. At all times hereinafter mentioned, defendant Mount Sinai Beth Israel is a New York corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in the State of New York.

24. At all times hereinafter mentioned, defendant Mount Sinai Beth Israel operated a hospital known as Mount Sinai Beth Israel ("MSBI"), located at First Avenue and 16th Street, New York, New York.

25. At all times hereinafter mentioned, the defendant MSBI employed certain doctors, nurses, physician assistants, and other personnel to care for patients at the aforesaid hospital and represented to the public at large and to the plaintiff in particular that its facility was capable of rendering proper medical care and treatment and was properly staffed to do so.

26. At all times hereinafter mentioned, defendant Fox was acting as an agent, servant, and/or employee of defendant MSBI.

27. At all times hereinafter mentioned, defendant Fox was an associate professor of medicine and cardiology at MSBI.

28. At all times hereinafter mentioned, defendant Puskas was acting as an agent, servant, and/or employee of defendant MSBI.

29. At all times hereinafter mentioned, defendant Puskas was the Chair of cardiovascular surgery and director of surgical coronary revascularization at MSBI.

30. At all times hereinafter mentioned, defendant Di Luozzo was acting as an agent, servant, and/or employee of defendant MSBI.

31. At all times hereinafter mentioned, defendant Di Luozzo was an associate professor of cardiovascular surgery and director of thoracic aortic surgery.

32. At all times hereinafter mentioned, defendant Likhterov was acting as an agent, servant, and/or employee of defendant MSBI.

33. At all times hereinafter mentioned, defendant Likhterov was assistant professor of head and neck reconstructive surgery at MSBI.

34. At all times hereinafter mentioned, defendant Friedman was acting as an agent, servant, and/or employee of defendant MSBI.

35. At all times hereinafter mentioned, defendant Friedman was the manager of patient care services at MSBI.

36. At all times hereinafter mentioned, defendant Friedman was directly responsible for the daily management and care of all patients of the ICU at MSBI, or what was supposed to be the ICU.

37. At all times hereinafter mentioned, defendant Pearson was an agent, servant, and/or employee of defendant MSBI.

38. At all times hereinafter mentioned, defendant Pearson was the senior vice president and chief nursing officer at MSBI, directly responsible for overseeing nursing patient care.

39. At all times hereinafter mentioned, defendant Beth Israel Medical Center Inc. ("BIMC") is a New York corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in the State of New York.

40. At all times hereinafter mentioned, defendant BIMC operated the aforementioned hospital, MSBI.

41. At all times hereinafter mentioned, the defendant BIMC employed certain doctors, nurses, physician assistants, and other personnel to care for patients at the aforesaid hospital and represented to the public at large and to the plaintiff in particular that its facility was capable of rendering proper medical care and treatment and was properly staffed to do so.

42. At all times hereinafter mentioned, defendant Fox was acting as an agent, servant, and/or employee of defendant BIMC.

43. At all times hereinafter mentioned, defendant Puskas was acting as an agent, servant, and/or employee of defendant BIMC.

44. At all times hereinafter mentioned, defendant Di Luoazzo was acting as an agent, servant, and/or employee of defendant BIMC.

45. At all times hereinafter mentioned, defendant Likhterov was acting as an agent, servant, and/or employee of defendant BIMC.

46. At all times hereinafter mentioned, defendant Friedman was acting as an agent, servant, and/or employee of defendant BIMC.

47. At all times hereinafter mentioned, defendant Pearson was acting as an agent, servant, and/or employee of defendant BIMC.

48. At all times hereinafter mentioned, defendant Mount Sinai Hospitals Group, Inc. ("MSHG") is a New York corporation, duly organized and existing under and by

virtue of the laws of the State of New York, with its principal place of business in the State of New York.

49. At all times hereinafter mentioned, the defendant MSHG employed certain doctors, nurses, physician assistants, and other personnel to care for patients at the aforesaid hospital and represented to the public at large and to the plaintiff in particular that its facility was capable of rendering proper medical care and treatment and was properly staffed to do so.

50. At all times hereinafter mentioned, defendant Fox was acting as an agent, servant, and/or employee of defendant MSHG.

51. At all times hereinafter mentioned, defendant Puskas was acting as an agent, servant, and/or employee of defendant MSHG.

52. At all times hereinafter mentioned, defendant Di Luozzo was acting as an agent, servant, and/or employee of defendant MSHG.

53. At all times hereinafter mentioned, defendant Likhterov was acting as an agent, servant, and/or employee of defendant MSHG.

54. At all times hereinafter mentioned, defendant Friedman was acting as an agent, servant, and/or employee of defendant MSHG.

55. At all times hereinafter mentioned, defendant Pearson was acting as an agent, servant, and/or employee of defendant MSHG.

56. At all times hereinafter mentioned, defendant Mount Sinai Health System, Inc. ("MSHS") is a New York corporation, duly organized and existing under and by virtue

of the laws of the State of New York with its principal place of business in the State of New York.

57. At all times hereinafter mentioned, the defendant MSHS employed certain doctors, nurses, physician assistants, and other personnel to care for patients at the aforesaid hospital and represented to the public at large and to the plaintiff in particular that its facility was capable of rendering proper medical care and treatment and was properly staffed to do so.

58. At all times hereinafter mentioned, defendant Fox was acting as an agent, servant, and/or employee of defendant MSHS.

59. At all times hereinafter mentioned, defendant Puskas was acting as an agent, servant, and/or employee of defendant MSHS.

60. At all times hereinafter mentioned, defendant Di Luozzo was acting as an agent, servant, and/or employee of defendant MSHS.

61. At all times hereinafter mentioned, defendant Likhterov was acting as an agent, servant, and/or employee of defendant MSHS.

62. At all times hereinafter mentioned, defendant Friedman was acting as an agent, servant, and/or employee of defendant MSHS.

63. At all times hereinafter mentioned, defendant Pearson was acting as an agent, servant, and/or employee of defendant MSHS.

JURISDICTION AND VENUE

64. That the amount in controversy exceeds the sum of \$100,000, exclusive of interest and costs.

65. That this Court has jurisdiction over the parties by reason of diversity of citizenship and the amount in controversy, pursuant to 28 U.S.C. 1332.

66. Venue is properly placed in the United States District Court for the Southern District of New York since the defendants do business here, the malpractice complained of occurred here, the witnesses are located here, and this is the most convenient place for the trial of this action.

THE UNDERLYING FACTS

67. Plaintiffs arrived in New York from their home in Tampa, Florida as part of plaintiff Marty Balin's music tour which was to include a performance at the Cutting Room in New York City on March 12, 2016.

68. On or about March 11, 2016, Mr. Balin was admitted through the emergency room at MSBI with cardiac problems and came under the care and treatment of the defendants.

69. Defendant Fox was the admitting physician.

70. Defendant Fox advised plaintiff Susan Balin that her husband required open heart surgery.

71. Defendant Fox should not have admitted Mr. Balin as a patient to MSBI because he knew that the hospital was in the process of closing down and did not have

adequate and proper faculty to treat a patient for a serious heart condition, particularly following heart surgery (Exhibit A).

72. Mr. Balin underwent open heart surgery as well as triple bypass and valve replacement.

73. The surgery was performed by defendant Puskas, assisted by defendant Di LuoZZO.

74. Defendant Puskas advised Mrs. Balin that the surgery had gone well, that recovery was very important, and that thereafter her husband would have to undergo some rehabilitation in the form of physical therapy.

75. Defendant Puskas explained to Mrs. Balin that during the recovery period, Mr. Balin would have to be kept medically stable, that only surgical ICU trained nurses would care for him in the recovery process and that there would be one patient assigned to one nurse.

76. In addition, it was explained to Mrs. Balin that her husband would be turned to avoid bedsores and that respiratory therapy would be provided so that he could be weaned off the respirator as soon as possible.

77. Mrs. Balin approached defendants Friedman and Pearson and others numerous times during her husband's hospital stay regarding her husband's improper care, and Friedman and Pearson were present at various meetings when they were alerted to the improper care Mr. Balin was receiving, but they took no action to prevent harm and future harm to Mr. Balin.

78. At the time Mr. Balin entered MSBI, the hospital was in the process of closing down the facility on 17th Street and had insufficient staff, particularly to care for a patient such as Mr. Balin who had undergone serious heart surgery.

79. At all times Mr. Balin was in the hospital, the personnel in charge knew that the hospital was inadequately staffed, particularly in the recovery unit where Mr. Balin was sent after undergoing open heart surgery, but failed to properly care for him.

80. All defendants were aware that the hospital was inadequately staffed and did not have properly trained ICU and CCU nurses.

81. No hospitalist or pulmonary/critical care physicians were made available to care for Mr. Balin.

82. At some point, while Mr. Balin was confined to the hospital he required a tracheotomy due to the defendants' negligence.

83. Defendants failed to arrange for a timely tracheotomy.

84. Defendant Likhterov, who performed the tracheotomy, failed to recognize the injury to plaintiff's tongue and vocal chords; failed to obtain a pulmonary consult with respect to a trache collar and cuff pressures.

85. Although blood developed around the site of the tracheotomy, defendants failed to take any action, resulting in Mr. Balin losing half his tongue and having a paralyzed vocal chord.

86. Mr. Balin walked into the hospital able to speak and with a fully functional left hand.

87. By the time Mr. Balin was finally released from the hospital, he had lost half his tongue so that he cannot speak or eat properly; he also has a paralyzed vocal chord; he has a necrotic left hand and has lost his left thumb; he had become totally disabled and has never recovered properly.

**AS AND FOR A FIRST CLAIM FOR RELIEF
ON BEHALF OF PLAINTIFF
MARTYN BUCHWALD a/k/a MARTY BALIN**

88. Defendants were reckless, careless and negligent in failing to properly staff the hospital for recovery and rehabilitation following cardiac surgery because they were in the process of closing the hospital; in accepting plaintiff as a patient; in failing to direct the plaintiff to a properly equipped and staffed hospital; in failing to have efficient, sufficient and properly trained personnel; in failing to properly monitor the patient post-operatively so as to prevent respiratory insufficiency; in failing to properly intubate; in failing to properly and timely extubate; in providing a prolonged intubation with too much pressure on the tongue and causing the loss of half the tongue and injury to the vocal chords; in failing to recognize the tongue injury; in causing radial arteries to be injured with a catheter; in causing the loss of the left thumb when they cut off the blood flow; in failing to keep properly clean wounds; in causing and/or permitting infection to set in; in failing to have pulmonary/critical care physicians to manage the patient after his surgery; in failing to obtain proper and timely consultations; in failing to provide proper ICU and CCU care; in having serious mismanagement and under-staffing issues; in failing to assign competent surgical ICU personnel to monitor the patient; in failing to provide proper

respiratory or physical therapy; in violating applicable laws, rules and regulations; and defendants were otherwise reckless, careless and negligent.

89. As a result of the defendants' recklessness, carelessness and negligence, and failure to treat plaintiff in accordance with proper and accepted medical practice, plaintiff suffered severe and permanent personal injuries, including kidney damage requiring dialysis; developed bedsores; loss of half his tongue; paralyzed vocal chord; difficulty speaking and eating; inability to fully use his left hand; is unable to function properly; is unable to care for his special needs daughter; extreme pain and suffering; mental anguish and distress; his ability to sing and play in a band has been destroyed; he has lost earning; and plaintiff has been otherwise damaged, all of which damages are permanent in nature and continuing into the future.

90. By reason of the foregoing, defendants are jointly and severally liable pursuant to the exceptions set forth in the CPLR.

91. By reason of the foregoing, plaintiff is entitled to recover all of his damages properly recoverable under New York CPLR 3017(c) from the defendants.

**AS AND FOR A SECOND CLAIM FOR RELIEF
ON BEHALF OF PLAINTIFF
MARTYN BUCHWALD a/k/a MARTY BALIN**

92. Plaintiffs hereby repeat, reiterate and reallege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

93. The defendants failed to inform the plaintiff of the risks, hazards and alternatives connected with the procedures and methods utilized prior to, at the time of, and

subsequent to treatment of the plaintiff, and that they were in the process of closing the hospital.

94. Reasonably prudent persons in the plaintiff's position would not have undergone the procedures and methods utilized in connection with the treatment rendered to the plaintiff if they had been fully informed of the risks, hazards and alternatives associated with said procedures and methods and with the hospital being in the process of closing.

95. The failure to adequately and fully inform the plaintiff of the risks, hazards and alternatives of the procedures and methods utilized in connection with the treatment rendered to the plaintiff was a proximate cause of the plaintiff's injuries.

96. As a consequence of the foregoing, there was no informed consent to the procedures and methods utilized in connection with the treatment of the plaintiff.

97. By reason of the foregoing, defendants are jointly and severally liable pursuant to the exceptions set forth in the CPLR.

98. By reason of the foregoing, the plaintiff is entitled to recover all of his damages properly recoverable under New York CPLR 3017(c).

**AS AND FOR A THIRD CLAIM FOR RELIEF
ON BEHALF OF PLAINTIFF
SUSAN BALIN**

99. Plaintiffs hereby repeat, reiterate and reallege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

100. That at all times hereinafter mentioned, the plaintiff was the lawful wife of Marty Balin and as such was entitled to his society, support, services and consortium.

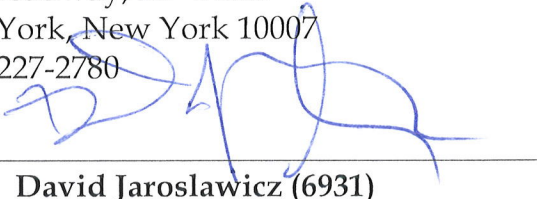
101. By reason of the defendant's negligence as aforesaid, the plaintiff was deprived of the society, support, services and consortium of her husband.

102. By reason of the foregoing, defendants are jointly and severally liable pursuant to the exceptions set forth in the CPLR.

103. By reason of the foregoing, the plaintiff is entitled to recover all of her damages from the defendants.

WHEREFORE, plaintiffs demand judgment against the defendants, jointly and severally, to recover all damages properly recoverable under New York CPLR 3017(c), all together with the costs and disbursements of this action.

JAROSLAWICZ & JAROS PLLC
Attorneys for Plaintiffs
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New York, New York 10007
(212) 227-2780



David Jaroslawicz (6931)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARTYN BUCHWALD a/k/a Marty Balin,
and SUSAN BALIN,

Plaintiffs,

-against-

JOHN T. FOX, M.D., JOHN D. PUSKAS, M.D.,
GABRIELE Di LUOZZO, ILYA LIKHTEROV, M.D.,
SEANA FRIEDMAN, R.N., MADELYN PEARSON, R.N.,
MOUNT SINAI BETH ISRAEL, INC., BETH ISRAEL
MEDICAL CENTER INC., MOUNT SINAI HOSPITALS
GROUP INC., MOUNT SINAI HEALTH SYSTEM, INC.,

Defendants.

CERTIFICATE OF MERIT
PURSUANT TO
CPLR 3012-a

-----X
STATE OF NEW YORK)
 ss:
COUNTY OF NEW YORK)

DAVID JAROSLAWICZ, being duly sworn, deposes and says:

I am making this Certificate of Merit pursuant to CPLR 3012-a.

I have reviewed the facts of this case with at least one physician licensed to practice medicine in the State of New York and which physician I reasonably believe is knowledgeable in the issues involved in this case.

Based upon the facts as related to me and as discussed with the physician, and based upon the information presently in my possession, on the basis of that consultation I believe there is a reasonable basis for the commencement of this action.


DAVID JAROSLAWICZ

Sworn to before me this
August 16, 2018



Notary Public

ROCHELLE MEYER
NOTARY PUBLIC, State of New York
No. 01ME4805065
Qualified in Rockland County
Commission Expires October 31, 2018

EXHIBIT A

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0.55% ▲

THE WALL STREET JOURNAL.

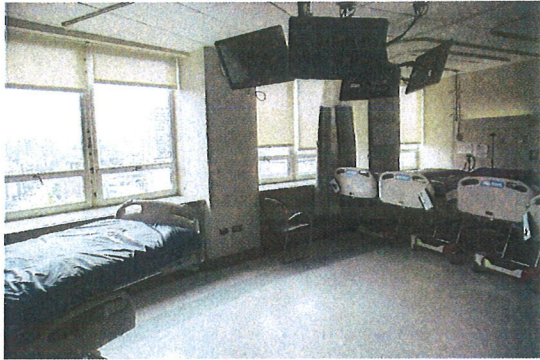
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U.S. | NEW YORK | TRI-STATE AREA

New York City's Beth Israel to Close Hospital, Open Smaller Facility

Downsizing is part of \$550 million plan to respond to changes in health care that the property's owner says has led to a decline in hospitalizations



Empty beds in a closed portion of Mount Sinai Beth Israel. The hospital plans to sell the facility. PHOTO: ANDREW LAMBERSON FOR THE WALL STREET JOURNAL

By *Corinne Ramey and Melanie Evans*

Updated May 25, 2016 8:37 p.m. ET

Mount Sinai Beth Israel will close its hospital and replace it with a much smaller facility, significantly reducing the number of hospital beds in lower Manhattan.

Beth Israel, which has struggled financially and says it typically uses less than 60% of its roughly 825 beds, said Wednesday it would sell the property and open a 70-bed hospital and emergency room in 2020. The new hospital will be two blocks from the current facility.

RELATED

- Hospital Mergers in the New York Area Bring Cost Fears (August 2014)
- St. Vincent's Hospital in New York to Close (April 2010)
- Manhattan Hospitals Crowded by St. Vincent's Closure (June 2010)

The downsizing is part of a \$550 million plan by Beth Israel's owner to adapt to a changing health-care landscape where patients are using more outpatient care and spending less time in hospitals.

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"We are not diminishing, in any way, the services," said Kenneth Davis, president and chief executive officer of Mount Sinai Health System, which acquired Beth Israel in 2013. "We are not closing the doors."

Still, the plan continues a broader retrenchment of hospitals in New York City, where a number of facilities have closed in recent years due to financial losses or under a statewide plan to reduce excess capacity.

The 2010 closure of St. Vincent's Hospital, in Manhattan's Greenwich Village neighborhood, angered local residents who feared loss of access to emergency care and other medical services. Cabrini Medical Center, in Manhattan's Gramercy Park, closed in 2008, and Long Island College Hospital, in Brooklyn, shut in 2014.

In recent weeks, rumors of Beth Israel's closure have worried local residents and elected officials.



A desk in a closed section at Mount Sinai Beth Israel Hospital. PHOTO: ANDREW LAMBERSON FOR THE WALL STREET JOURNAL

"Any downsizing or closure at Beth Israel threatens to further strain an already overburdened network of health-care providers in Manhattan, reduce health-care options and curtail services in the immediate neighborhood, and eliminate jobs," wrote seven elected officials earlier this month.

U.S. Rep. Jerrold Nadler, who represents parts of Manhattan and Brooklyn, said Beth Israel was one of the few remaining hospitals downtown.

"I remain concerned that the drastic reduction in hospital beds in New York City—and now twice in Lower Manhattan—in recent years will result in insufficient care downtown," said Mr. Nadler, a Democrat, in a statement Wednesday.

Mount Sinai's Dr. Davis said the plans for Beth Israel are different. The network anticipates a \$215 million expansion of outpatient facilities and an \$85 million expansion of its 150-bed behavioral health center. It will spend \$250 million to build the new hospital and upgrade its New York Eye and Ear Infirmary.

Under the plan, Beth Israel's roughly 4,000 union workers will keep their jobs or be retrained for new ones, officials said.

Between 600 and 700 nonunion employees are expected to lose their jobs, although hospital officials said they would offer retraining and other job services.

Mount Sinai will sell the 16th Street property where Beth Israel sits, hospital officials said. The property's current value is about \$600 million, Dr. Davis said. Beth Israel has outstanding debt of more than \$200 million, hospital officials said.

Beth Israel, which was founded in 1889 by Orthodox Jews, was once one of few hospitals downtown. Today, lower Manhattan is saturated with outposts of prominent health-care networks.

Manhattan had 6.1 hospital beds per 1,000 residents in 2014, compared with 2.9 nationally, according to the most recent data available from the American Hospital Association.

"I remember when *the* hospital was Beth Israel," said Len Fischman, 86 years old, who lives nearby. He said the community, and particularly Jews, have long been attached to the hospital, which has special Sabbath elevators that automatically stop on every floor because of rituals followed by some observant Jews.



An entrance at Mount Sinai Beth Israel Hospital in Manhattan. PHOTO: ANDREW LAMBERSON FOR THE WALL STREET JOURNAL

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BETH ISRAEL

- 825 total beds
- 150 of the beds, for behavioral-health patients in a nearby building, will remain after hospital closes
- 70 beds at new hospital building
- Over \$200 million in debt
- Acquired by Mount Sinai Health System in 2013

Earlier this week at Beth Israel, a Sabbath elevator sat stationary near a hospital unit with dozens of empty beds.

Some staff members started looking for new jobs about two years ago, said Cicely Parris, 59, who transports patients. "The hospital's been empty, and staff are leaving for other hospitals," said Ms. Parris, who has worked at Beth Israel for 22 years.

Although communities and politicians are typically sentimental about hospital closings, the plan makes sense for Mount Sinai and its patients, said John Rowe, professor of health policy and management at Columbia University's Mailman School of Public Health.

"They leave behind a large, antiquated, money-losing hospital, but they maintain their meaningful presence in a Manhattan market which was the primary aim of their acquisition of Beth Israel," said Dr. Rowe, a former Mount Sinai executive who isn't involved in the current plans. "They weren't trying to buy the building, they were trying to buy the business."

Write to Corinne Ramey at Corinne.Ramey@wsj.com Melanie Evans at Melanie.Evans@wsj.com

Appeared in the May 26, 2016, print edition as 'Beth Israel to Shut Hospital.'

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