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Gregory L. Hanson
Elizabeth L. Hausbeck
Isaac M. Kantor
Tessa A. Keller
Bradley J. Luck
Robert C. Lukes
Kathryn S. Mahe
Alan F. McCormick
*Currently admitted in New York, Texas, and Washington only

Charles E. McNeil
Emma L. Mediak
Mark S. Munro *
Robert L. Nowels
J. Andrew Person
Anita Harper Poe
Larry E. Riley
Jeffrey M. Roth
Robert E. Sheridan
Brian J. Smith
Jeffrey B. Smith
Peter J. Stokstad
Christopher B. Swartley
Kevin A. Twidwell
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October 14, 2015

Office of the Attorney General
Helena, Montana

OCT 16 2015

RECEIVED

VIA EMAIL & US MAIL

Kelly Hubbard
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RE: CMC Missoula, Inc.
Missoula Community Hospital Legacy Foundation
Response to September 23 Request

Dear Ms. Hubbard:

This letter is being sent on behalf of CMC Missoula, Inc. ("CMC") in response to your inquiries and requests for answers to questions/concerns dated September 23, 2015, related to CMC's Request for Approval of Distribution of Charitable Assets from the Sale of Community Medical Center, Inc., dated September 2, 2015. Specifically CMC has asked the Office of the Attorney General ("AGO") to approve the creation of the Missoula Community Hospital Legacy Foundation (the "Foundation") for this purpose. Your requests have been set forth in full below with answers thereto in the order presented.

1. *What are the specific ways for which the money could be used? Specifically, could the money be used for:*
 - a. *The handicapped?*
 - b. *Outreach programs for the rural poor?*

Kelly Hubbard
RE: CMC Missoula, Inc.
Missoula Community Hospital Legacy Foundation
Response to September 23 Request
October 14, 2015
Page 2

- c. *Public health education such as publications advancing health care?*
- d. *Training nurses, physician assistants, and other health care professional personnel at the University of Montana, Missoula College, Carroll College, Montana State University, and other Montana institutions?*

Response:

In general, the Foundation will be created with the mission of using the sale proceeds from the sale of Community Medical Center for charitable purposes, which purposes are as consistent as possible with the charitable healthcare mission of the hospital before it was sold (the doctrine of *cy pres*). Specifically, the Foundation will use the charitable assets to promote and support health and healthcare services in what was the hospital's service area in western Montana (the "Region"). When appropriate, and at all times consistent with its mission to support health and healthcare in the Region, the Foundation may, but shall not be required to be, guided by the Institute for Healthcare Improvement's "Triple Aim Initiative" for optimizing health system performance by:

- Improving the patient experience (including quality and satisfaction);
- Improving the health of populations; and
- Reducing the per capita cost of health care.

Specifically, as long as such uses are consistent with this mission, the money may be used for:

- a. The handicapped in Region.
- b. The support of outreach programs for the rural poor in the Region.
- c. The support or promotion of public health education in the Region, such as publications advancing health care.
- d. The training of nurses, physician assistants, and other healthcare professional personnel, but only to the extent the Foundation can assure that such training will result in benefit to health and healthcare services in the western Montana Region; i.e. such healthcare personnel must provide services in the Region.

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Kelly Hubbard
RE: CMC Missoula, Inc.
Missoula Community Hospital Legacy Foundation
Response to September 23 Request
October 14, 2015
Page 3

2. *Why do the submitted documents not commit the funds to identified, specific purposes?*

Response:

No programs, services, people, or other specific purposes have yet been identified as the beneficiary of the funds. The Board of the Foundation will review and analyze the needs in the Region on an ongoing basis to determine what programs and services are to be funded consistent with its health and healthcare mission. These needs will change over time and the Board will have the flexibility, within the scope of its mission, to meet the dynamic healthcare needs in the Region for many years to come, many of which cannot be specifically identified at this time. The Foundation will be operated on an endowment-model basis to support its mission of healthcare grant-making on a long-term basis, rather than liquidating the principal in a limited number of near-term large grants.

3. *What can be done to limit the amount of charitable assets that will be used for administrative expenses, so that more funds can be devoted to health and health-care programs?*

Response:

Every non-profit Board member in Montana has a fiduciary duty under the law to the corporation, requiring the Board member among other things to act in good faith, with the care an ordinarily prudent person would exercise under the circumstances, and in a manner the Board member believes to be in the best interests of the corporation. This means a Foundation Board Trustee must exercise due diligence to oversee that the organization is well managed and operated efficiently in order to allow the Foundation to have funds available to meet its charitable mission to support health and healthcare in the Region. As stewards of charitable funds, the Trustees must always act for the good of the organization and its mission, rather than for the benefit of themselves. This includes the obligation to operate the organization efficiently to maximize the funds available for support of its charitable mission. See also the response to Question 4 below.

4. *If the sales proceeds were managed by an existing foundation with a similar purpose, what is the approximate amount of administrative expenses that could be saved annually?*

Response:

As part of The Giving Practice's ("TGP") foundation affiliation analysis (see the response to Question 5 below for background), the potential savings of a merger or affiliation with Montana Healthcare Foundation ("MHF") was explored. MHF's office is located in Bozeman, Montana. TGP assumed that savings could be realized from the elimination of redundancy at the CEO and CFO positions. However, an additional program officer and an additional grants

Kelly Hubbard
RE: CMC Missoula, Inc.
Missoula Community Hospital Legacy Foundation
Response to September 23 Request
October 14, 2015
Page 4

administrator would need to be hired for the combined entity resulting in net staff savings of up to \$100,000 per annum. This saving would be reduced by the cost of adding a Missoula office. While savings of up to \$100,000 are meaningful, they are a small fraction of the distribution from the endowment ultimately expected to be in excess of \$3 million annually. Furthermore, the benefits of local control and presence in the Region were determined to outweigh the potential savings as discussed below.

5. *Describe the efforts made, if any, to locate an existing foundation(s) with a similar purpose, and if an existing foundation was located, describe the efforts to reach an agreement with that foundation that would permit the foundation to manage the sales proceeds.*

Response:

In the fall of 2014, prior to the sale of the hospital's assets, the Board of the Community Medical Center was introduced to existing foundations with the potential to manage or assist in managing the assets generated by the sale. These foundations included The University of Montana Foundation ("UMF"), MHF, and Montana Community Foundation. Initially, a potential affiliation with UMF was explored due to UMF's scale, sophistication of operations, and University of Montana's participation in healthcare related education. During its sale review process the AGO raised concerns that : (1) UMF's primary mission of supporting the University differed from the healthcare mission required for the sales proceeds; and 2) there could be a conflict of interest created by the University being a potential recipient of the Foundation's grants. Accordingly, the consideration of a potential affiliation with UMF was discontinued and withdrawn.

In April 2015, after the closing of the sale of the hospital and after consulting with the AGO, an independent foundation consultant, TGP, was engaged by CMC to identify potential foundations for affiliation and ascertain and analyze the advantages and disadvantages of a potential affiliation. TGP identified Montana Community Foundation and MHF as two potential affiliation partners. Montana Community Foundation was not recommended for affiliation because there would be neither integration of missions nor programmatic synergy. Furthermore, its assets are no larger than those of CMC. MHF was the most likely partner due its similarity of healthcare mission. MHF is located in Bozeman with a mission of serving the entire state. In contrast, CMC's sale proceeds must by law (the doctrine of *cy pres*) be used for health and healthcare purposes that are as consistent with the mission of Community Medical Center in the western Montana Region as possible. Preliminary concepts of affiliation through the sharing of back- office services or merging were discussed. MHF did not express a significant interest in sharing back office services. A potential merger was discussed with the possibility of sharing program staff in western Montana or even co-creating an office presence in Missoula. With the guidance of TGP, the benefits of remaining independent and maintaining local control and presence, were found to outweigh the benefits of affiliation,

Kelly Hubbard
RE: CMC Missoula, Inc.
Missoula Community Hospital Legacy Foundation
Response to September 23 Request
October 14, 2015
Page 5

primarily cost savings discussed above in the Response to Question 4. Although an affiliation is not being pursued, MHF expressed a strong interest in cooperating with the newly formed Foundation in connection with supporting health and healthcare needs in the western Montana Region. The CMC Board also strongly encourages and urges collaboration between the Foundation and MHF with respect to initiatives of mutual interest impacting the health and healthcare needs of the Region.

6. *Earlier proposals specifically permitted the creation of a Healthcare Advisory Board. The latest proposal does not include that specific provision. Would an advisory board provide valuable guidance to the Board of Trustees in a transparent manner?*

Response:

The creation by this Foundation of a Healthcare Advisory Board was removed from the Bylaws because Article 5 of the Bylaws gives the Foundation Board the general authority to establish "one or more standing, special or ad hoc Committees". As was discussed with the AGO, this gives to the Board the flexibility and broad authority to create at any time a committee or committees deemed to be appropriate and necessary. The Board could create a healthcare advisory committee or board at any time it determines that such a group would have value to the Board and the operation of the Foundation.

7. *Why should any former officer or director of the former nonprofit Community Medical Center be permitted to serve as a trustee of the Missoula Community Hospital Legacy Foundation? Put differently, did the former board members have conflicts of interest (or appearances of conflicts of interest)? By voting to sell the nonprofit Community Medical Center's assets when the board members knew that they would have the prestige and power associated with making decisions about disbursement of the sale proceeds?*

Response:

The former Community Medical Center Directors devoted countless hours, most of them for a number of years, voluntarily executing their fiduciary and governance responsibilities with respect to the current and future mission and operations of a significant charitable healthcare institution impacting the health of Missoula and western Montana, their friends, co-workers, neighbors, and communities. The decision to sell the hospital was a difficult one for every Board member, but was made only after years of study, evaluation, due diligence, and the guidance of independent healthcare experts. The decision was made after, and only after it was determined that a sale of the assets would best secure Community Hospital's long-term future in western Montana in light of healthcare reform and the number of challenges facing independent stand-alone community hospitals. The sale was approved by the AGO after a lengthy and thorough review, due diligence and public input period. At no time during the

Kelly Hubbard
RE: CMC Missoula, Inc.
Missoula Community Hospital Legacy Foundation
Response to September 23 Request
October 14, 2015
Page 6

entire process was the power and prestige associated with serving on the new Foundation Board ever discussed, and at no time was it ever a factor or consideration in the hospital Board's decision to sell Community Medical Center. No such conflict existed, real or apparent. In fact most of the hospital Board members who made the decision to sell the hospital, had no interest in serving on the Foundation Board. In addition, the Board's initial proposal, which was withdrawn after discussions with the AGO, was to affiliate with the existing University of Montana Foundation (or a subsidiary thereof), which would expand its mission to include healthcare. In that arrangement, the UMF Board would have had the ultimate authority over the use of the sale proceeds, not the Community Medical Center Board members, a result that would have been wholly inconsistent with a Board that was taking future power or prestige into account when making a decision to sell the hospital assets.

Going forward the new Foundation Board must use the sale proceeds to support charitable healthcare purposes and will not be permitted to use the sale proceeds to support Community Medical Center since it is now a for-profit venture. So, no such conflict, or an appearance of conflict, will exist for the Trustees. In addition, the Articles and Bylaws only allow three (3) of the nine (9) Foundation Trustees to be former Community Medical Center Board members.

By reason of their long-term voluntary service in and understanding of the local healthcare market, as well as their understanding of Community Medical Center's important historical role in that market, the three (3) Trustees will be strongly qualified to help guide the Foundation in its charitable healthcare mission, and uniquely qualified to honor Community Medical Center's legacy in the Region.

8. *The proposed Bylaws provide that "the Initial Board [of Trustees] shall consist of three (3) members who formerly served as board members of Community Medical Center, Inc. . . . " Does this three—person limitation apply to those who served on that former board because of their ex-officio status, such as Steve Carlson, as well as other board members?*

Response:

Yes, this limitation applies to all former Community Medical Center Board members, including those who were members by reason of their ex-officio status such as Steve Carlson.

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Kelly Hubbard
RE: CMC Missoula, Inc.
Missoula Community Hospital Legacy Foundation
Response to September 23 Request
October 14, 2015
Page 7

9. *The proposed Bylaws permit up to two trustees to reside outside the region. What matters were considered in making this proposal? Put differently, would it not be better to require all of the trustees to reside within the region since it is more likely that they will be familiar with the health and healthcare needs of people who are the potential beneficiaries of this foundation?*

Response:

Initially the Articles and Bylaws required all Trustees to reside in the Region for the reason outlined in the question, i.e. local Trustees would be more likely to be familiar with the health and healthcare needs of the local area. It is the expectation and hope that all the Trustees will reside in the Region. However, upon reflection and discussion with the AGO, it was determined that some flexibility should be built-in to the Bylaws to allow a person from outside the Region to become a Trustee if necessary in order to populate the Board at all times with qualified individuals. Although it is the Board's expectation that qualified individuals from the Region will be available and willing to serve, the Board feels it would be prudent to have the flexibility if necessary to find a qualified Trustee from outside the Region. For example, it could be necessary in future years to find an outside person in areas of investment, assets management, public health, or non-profit administration/ grant-making in the healthcare field. The Board is limited in its authority. It can do this only if "in its reasonable discretion it determines it is necessary to do so."

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP



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