

Montana Code Annotated 2005

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35-2-126. Designation of status of nonprofit corporations. (1) A domestic corporation must be designated as either a public benefit, mutual benefit, or religious corporation. The specific designation of a corporation is as follows:

(a) A corporation designated by its articles of incorporation as a public benefit corporation, a mutual benefit corporation, or a religious corporation is the type of corporation designated by its articles of incorporation.

(b) A corporation that is not designated by its articles of incorporation as a public benefit corporation, a mutual benefit corporation, or religious corporation is the type of corporation designated in the annual report filed in 1995.

(2) A foreign corporation must be designated as either a foreign public benefit, foreign mutual benefit, or foreign religious corporation. The specific designation of a corporation is as follows:

(a) A foreign corporation designated by its articles of incorporation as a public benefit corporation, mutual benefit corporation, or religious corporation is the type of foreign corporation designated by its articles of incorporation.

(b) A foreign corporation not designated as provided in subsection (2)(a), but designated in its application for a certificate of authority, or any amendments of the application, as a public benefit corporation, mutual benefit corporation, or religious corporation is the type of foreign corporation it designated in its application for a certificate of authority.

(c) A foreign corporation not designated as provided in subsection (2)(a) or (2)(b) is the type of corporation it designated in the annual report filed in 1995.

History: En. Sec. 16, Ch. 411, L. 1991.

Provided by Montana Legislative Services

LAW OFFICES OF
POORE, ROTH & ROBINSON, P.C.

A PROFESSIONAL CORPORATION
 1341 HARRISON AVENUE
 P O BOX 2000
 BUTTE, MONTANA 59702

TELEPHONE (406) 497-1200
 FAX (406) 782-0043
 E-MAIL prr@prrlaw.com

OF COUNSEL
 URBAN L. ROTH
 DONALD C. ROBINSON
 THOMAS M. WELSCH
 LISA A. LEVERT

JAMES A. POORE JR.
 (1916-2002)
 ROBERT A. POORE
 (1919-2007)

ROBERT C. BROWN
 BRENDON J. ROHAN
 JOHN P. DAVIS
 PATRICK M. SULLIVAN
 LEE BRUNER
 J. RICHARD ORIZOTTI
 CHARLES K. SMITH
 CYNTHIA L. WALKER

June 3, 2011

VIA EMAIL & U.S. MAIL

Michael S. Kakuk, Esq.
 Kakuk Law Offices, P.C.
 P.O. Box 624
 White Sulphur Springs, Montana 59645

Re: Mountain View Medical Center, Inc.

Dear Mr. Kakuk:

The purpose of this letter is to respond to your letter dated May 18, 2011. Thank you for bringing this issue to our attention and allowing us the opportunity to respond. With little guidance from the Montana Supreme Court, this issue has become a hot topic. Although it appears we disagree on the interpretation of the laws at issue, we would like to avoid wasting the Hospital's very limited resources on litigation and maintain open lines of communication. As such, after you review this letter, and have had a chance to research/discuss it, please contact me with questions or comments. Initially, I am confused as to the scope of your representation. Could you please clarify your role as a District Board member vs. your role as an attorney? Have you been retained by the District to represent them in this matter?

The argument could be made that MMC's general board meetings may be closed; however, MMC has offered to keep those meetings open (at least for the short term). MMC considered closing the meetings due to public interference and potentially losing volunteer members. The Board even considered rejecting the "public funding" as a means to address this situation. Although that option remains on the table, the Board previously decided not to take that route, but will likely readdress this situation next month. Thus, the issue we are currently faced with seems to center on whether MMC's subcommittee meetings, specifically its finance committee, must be open, as the MMC general board meetings are in fact open (at least at this point, that may change as early as next month and render this entire issue moot).

It is an MMC board policy that when a subcommittee is appointed for a particular task, the subcommittee's authority is limited to fact-gathering only. Such subcommittees do not have the authority to act upon the information gathered. Rather, they must report to the MMC general board for action. Under this scenario, no MMC subcommittee falls

within the definition of “agency” according to MCA § 2-3-102(1), as it is not “authorized by law to make rules, determine contested cases, or enter into contracts.” Thus, it follows that any MMC subcommittee cannot take “agency action” according to MCA § 2-3-102(2). Along these same lines, it is MMC’s practice to avoid a subcommittee capable of having a quorum. Therefore, not only is a MMC subcommittee not authorized to act, but because it lacks a quorum, it could not act if it wanted to.

The statement in your footnote that “there is no support in the statutes [for the quorum argument]” could not be more false. According to MCA § 2-3-202, a meeting is defined as “the convening of a quorum.” Because MMC’s subcommittees are not “agencies,” nor are they “meeting,” the open meeting requirements do not apply to them. Nonetheless, the public is allowed to comment on the subcommittee’s fact-gathering process.

According to Article II, Section 8 of Montana’s Constitution, the right of public participation applies prior to a “final decision” being made, but that does not necessarily mean the public must be involved at every stage of the fact-gathering process. See also, MCA § 2-3-201 (“final decision”). At every MMC general board meeting, the public is given the opportunity to comment on a standing committee’s report to the general board prior to any “final decision” by the general board. Likewise, for Ad Hoc committees, the public is granted at least two opportunities to comment prior to a final decision by the MMC general board: when the subcommittee is delegated the fact-gathering task at an MMC general board meeting, and when the subcommittee reports to the MMC general board with its findings (which may occur more than once).

To include public participation in the fact-gathering process is, as recognized by the Montana Supreme Court and Legislature, not necessary. “Ministerial acts” and acts which are not of “significant interest to the public” need not be addressed in open meetings. See MCA § 2-3-112(3), and MCA § 2-3-103(1)(a), respectively.

Further, the Montana Supreme Court stated as follows in *Associated Press v. Crofts*, 2004 MT 120, ¶ 22, 321 Mont. 193, ¶ 22, 89 P.3d 971, ¶ 22:

...factors to consider when determining if a particular committee's meetings are required to be open to the public include: (1) whether the committee's members are public employees acting in their official capacity; (2) whether the meetings are paid for with public funds; (3) the frequency of the meetings; (4) whether the committee deliberates rather than simply gathers facts and reports; (5) whether the deliberations concern matters of policy

rather than merely ministerial or administrative functions; (6) whether the committee's members have executive authority and experience; and (7) the result of the meetings.

It is clear that MMC's finance committee meetings need not be open, as ALL SEVEN factors weigh in favor of closure: (1) the committee members are volunteers, and not public employees, (2) public funds are not used to pay for the meetings; (3) no set schedule exists, typically it only meets once a month, or on an as-needed basis; (4) the committee does not deliberate, only gathers facts; (5) no deliberations occur, and if they did, they would be ministerial or administrative in nature; (6) no authority to act is granted; and (7) the result of the meeting is simply to gather and report information.

The *Crofts* Court went on to state as follows:

A proper consideration of these factors does not mandate that every internal department meeting meet the requirements of open meeting laws. Meetings where staff report the results of fact gathering efforts would not necessarily be public. Deliberation upon those facts that have been gathered and reported, and the process of reaching decisions would be open to public scrutiny.

Crofts, 2004 MT 120, at ¶ 22. Ultimately, the Montana Supreme Court ruled that the committee meetings at issue in *Crofts* were required to be open because the committee was "not merely a fact finding body" (¶ 23), "the costs of conducting the meetings were paid with public funds" (¶ 24), the meetings were "more than simply staff meetings...[they]...were held for much more than mere fact gathering and reporting" (¶ 25), they "did not convene for the purpose of delivering the results of factual investigations [rather they] deliberated, discussed, and debated a wide variety of issues" (¶ 26), "the committee deliberated on legislative strategy" (¶ 27), "the function performed ... was to make decisions on how to proceed" (*id.*), the committee "deliberat[ed] on matters of substance" (¶ 28), and because there were no established rules of procedure regarding quorum requirements, "a quorum...consisted of the members who were in attendance at any particular meeting." (¶ 31). None of these issues are present with MMC's subcommittees.

This analysis makes logical and practical sense. Nothing could get done in this country if the public were allowed to comment every time members of a committee gathered. See, *SJL of Montana Associates Ltd. Partnership v. City of Billings*, 263 Mont. 142, 867 P.2d 1084 (1993) (Where the Montana Supreme Court held that open meeting statutes did not require that meeting between city, public works director, city engineer, and individuals representing private contractor and private engineering company to discuss problems surrounding delays in public construction project be open to public as neither city engineer nor city public works director was "board, bureau, commission, department, or authority" and neither was officer "authorized to make

Michael S. Kakuk, Esq.
June 3, 2011
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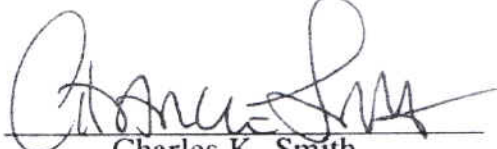
rules, determine contested cases, or enter into contracts” so as to be subject to open meetings law.) That is precisely the reason why the “quorum” and “authority [to act]” provisions appear in the statutes, and why public comment is only required prior to a “final decision.”

We realize that, as pointed out in your letter, MCA § 2-3-203(6) specifically addresses “subcommittees.” However, this lone provision does not take into account the full context of Montana law as explained above. Further, that provision is based on the assumption that the subcommittee is “meeting” (i.e., convening a quorum), and has authority to act (as it references subsection (2) in requiring the authority to “regulate the rights, duties, or privileges of any individual”) which is not the case for a MMC subcommittee.

I appreciate the opportunity to work with you on this matter. Please feel free to contact me at your convenience should you have any questions or concerns.

Sincerely,

POORE, ROTH & ROBINSON, P.C.

By 
Charles K. Smith

KAKUK LAW OFFICES, P.C.
P.O. BOX 624
WHITE SULPHUR SPRINGS, MT 59645

MICHAEL S. KAKUK, ATTY.
LICENSED IN MONTANA,
WISCONSIN (INACTIVE),
AND U.S. PATENT BAR

PHONE: 406-594-0515
EMAIL: INFO@KAKUK.COM
WEB: WWW.KAKUK.COM

SEPTEMBER 19, 2010

BILL GALT, PRESIDENT
MOUNTAINVIEW MEDICAL CENTER
BOARD OF DIRECTORS

HAND DELIVERED
RE: Meagher County Hospital District Board
Dear Bill:

As you know John Dracon, Pam Sundstrom, and I have been appointed by the Meagher County Commissioners to serve on the County Hospital District Board. Our first District Board meeting is scheduled for 6:30, p.m., Monday, September 27, 2011, at the County Courthouse. You, your board, and clinic staff, are welcome to attend but we do not expect to conduct any substantive business at this first organizational meeting. I've included a draft agenda for your information. Also, we would appreciate it if you could put us on the agenda for the next Clinic Board meeting for brief introductions.

Please contact me with any questions. We look forward to working with you, your Board, and Clinic staff on these important issues.

Sincerely,

Michael S. Kakuk
Attorney

cc: Aaron Rogers, Mountainview Medical Clinic

Oct. 11, 2010

Editor, Meagher County News

Back in March of 2008, the hospital board was struggling to select a new CEO for Mountainview Medical Center. The board decided to go with a management company. In a letter dated March 29, 2008 to the MMC staff, the board decided, "If we do contract with a management company there would be a CEO selected by the management company with board input and paid for by MMC. There would also be a management fee paid to the management company." The management company selected was Cypress Healthcare.

While there has been controversy over the selection of this company, we must not allow this to consume our thoughts and actions regarding MMC. Hospitals both large and small throughout our nation are having great difficulty recruiting physicians. Finding a physician to fit Meagher County has to be one of our most important priorities.

Also, running a small, rural hospital and keeping it in the black is no mean task. It will take everyone's support and patronage. This Wednesday evening the newly formed County Hospital District Board will meet at the Senior Center at 6:30 P.M. The public is cordially invited to attend and share its thoughts and opinions on how to make our hospital thrive.

Sincerely,

Meagher County Hospital District Board

John Dracon, Chair
Pam Sundstrom, Member
Michael Kakuk, Member

Nov. 18, 2010

Mr. Aaron Rogers, CEO
MMC
White Sulphur Springs, Mt. 59645

Dear Mr. Rogers,

Based on what transpired at the Commissioner's offices this past Tuesday, I believe it would be appropriate for you and me to sit down in a private setting to discuss issues of mutual interest.

I suggest meeting at your office. Being retired my schedule is very flexible, so please feel free to schedule a time convenient to your needs. My phone number is 547-2477 or I can be reached at farwest96@aol.com.

Please inform me when you will be able to meet.

Sincerely yours,



John Dracon, Chairman
Meagher County Hospital District Board

Copy delivered by hand to Stidam

November 18, 2010

Mr. Aaron Rogers, CEO
MMC
White Sulphur Springs, Mt. 59645

Dear Mr. Rogers,

When you and MMC Board members Ohlson and Schendel and employee Short attended the Commissioner meeting last Tuesday, you found Pam Sunstrom and me reporting to the Commissioners on the status of goals or steps the County District Hospital Board was following as outlined in the minutes of Sept. 27, 2010. MMC had both board members and employees attending that meeting.

It was apparent that the sequence of steps (5) was unknown to some of your folks. Please find a copy of the minutes which I request you share with your board.

The County District Board will be deciding at a work session which issues they will pursue. That will be open to the public with limited public comment due to the nature of the work session.

An interesting exchange took place when I mentioned one comment asked about the ownership of MMC. You stated there was a deed of ownership. Good! That question apparently has been answered. Would you please provide me a copy of the deed to verify your statement?

Please understand that the County District Board is not involved in the issue of whether it was a good decision for the Clinic Board to contract with Cypress. While we may have our own personal opinions on that matter, we see our role as providing a vehicle for the public to express itself. Our personal opinions will be stated in a different forum if we so choose.

Sincerely yours,

John Dracon, Chairman

Meagher County Hospital District Board

CC: Pam Sunstrom, Board Member
Michael Kakuk, Board Member

Enclosure: Minutes of Sept. 27, 2010

Subj: **Re: Meeting**
Date: **11/25/2010**
To: arogers@mvmc.org

Nov. 25, 2010

Mr. Rogers,

Thank you for your prompt response.

Regarding MMC's willingness to meet with my committee, with Mr. Kakuk recovering from a hip replacement and Ms. Sundstrom not returning from Thanksgiving vacation until after the 29th, and a work session scheduled on Dec. 1, it looks like some time during the first full week of Dec. would be best. Would you please make available a copy of MMC's 2009 IRS 990 to me at your earliest convenience. Also, at the commissioners' meeting when you distributed the data sheet, you reference another data sheet which you had forgotten to bring. If that is available, please make that available, too. Thank you.

Sincerely,

John Dracon

CC: Sundstrom
Kakuk

In a message dated 11/19/2010 4:04:29 P.M. Mountain Standard Time, arogers@mvmc.org writes:

Mr. Dracon,

In response to your letter requesting a meeting, I am more than happy to meet with you. I am pretty booked next week but could fit you in or we can schedule for the week of Nov. 29-Dec. 3 if that works better. Feel free to contact Jennifer to schedule at your convenience. I have contacted Otto Ohlson, MMC's Hospital District Committee Chair, to accompany us at the meeting and will plan to have Jennifer take minutes.

Please let me know if there is anything in particular you are interested in me having ready for you when you show up or potential topics you may need information about.

As for the Meagher County Deed Record, Jennifer has a copy for you in her office. She will be in on Monday.

As always, please feel free to email me any further questions or concerns.

Sincerely,

Aaron H. Rogers, CEO
Mountainview Medical Center

Dec. 8, 2010

To: MMC Liason Committee members Ohlson, Schendel, and Gilbertson

From: Meagher County District Hospital Board (MCDHB)

Subject: Invitation to attend meeting with MCDHB on Dec. 14, 2010
At 6:30 P.M. at the courthouse

The District Board has completed its review of the thirty six (36) comments from the public meeting of Oct. 13, 2010. Please see attachment listing the comments numerically. The Board has decided to research some of the comments. Other comments will be responded to with a simple explanation. For example, the number 3 comment (really a question and a conclusion) about MMC using a cash basis instead of accrual accounting is inaccurate. MMC does use accrual accounting as required by Medicare and Medicaid, and our report will correct that statement.

The Board will not address certain comments or questions because it feels it would engage in speculation and/or be beyond the scope of its charge from the Meagher County Commissioners. Question number is an example of such a question.

The Board may postpone some questions and comments for later examination.

You are cordially invited to attend our meeting and share your thoughts and comments on our process.

CC: Aaron Rogers, CEO, MMC
Bill Galt, MMC Board Chairman
Meagher County Commissioners ✓

Attachment: Comments & Questions from Oct. 13, 2010 meeting

Aaron H. Rogers, CEO
Mountainview Medical Center

— Original Message —

From: Farwest96@aol.com

To: arogers@mvmc.org, info@kakuk.com, psundstrom@ymail.com

Sent: Tuesday, December 21, 2010 11:00:15 AM

Subject: request for MCHDB to be on your Dec. 11, 2010, agenda to discuss status of Bair

Dec. 21, 2010

Mr. A. Rogers, CEO
Mountainview Medical Center

Dear Mr. Rogers,

My board requests that you place an item on your agenda tomorrow, viz., the status of the Bair trust. I anticipate that my committee's presentation will be brief and informational. Thank you for your assistance.

Sincerely,

John Dracon, Chair
MCHDB

In a message dated 12/21/2010 3:37:07 P.M. Mountain Standard Time, arogers@mvmc.org writes:

12/21/10
1530

Mr. Dracon,

I appreciate your request, however, due to numerous untrue and inaccurate allegations of illegal meetings, I am forced to deny your request to add mchdb to the agenda. Your request was not received timely enough to allow for the mandated two day change notification. I would be more than happy to add you to the January agenda jointly with the Hospital Committee at their request. Please make available the information of your presentation for their approval prior to the two day deadline.

Furthermore, the agenda is typically posted five days before the Board Meeting and rarely changed/added to after that time unless emergent.

Sincerely,

Aaron H. Rogers, CEO
Mountainview Medical Center

Subj: **Re: request for MCHDB to be on your Dec. 22, 2010, agenda to discuss status o...**
 Date: 12/22/2010 1:53:03 A.M. Mountain Standard Time
 From: Farwest96@aol.com
 To: arogers@mvmc.org, info@kakuk.com, psundstrom@ymail.com

Mr. Rogers - Thank you for your prompt reply. I was unaware of a mandated two day change notification for a request to be on the hospital board's agenda. Is that adopted board policy stated in the bylaws or an administrative rule of management adopted by the board? If so please copy me with that stipulation for my information.

The purpose of our request to be on the board's agenda is to seek permission to contact U.S. Bank for current information on the Bair trust. Only the board can grant that request, and since U.S. Bank needs written documentation to share such information, we felt it was appropriate to approach the board with our request. This is in response to the community meeting where the status of the Bair was questioned.

Part of your response has us confused, viz, "...due to numerous untrue and inaccurate allegations of illegal meetings, I am forced to deny your request... The County District Hospital Board has no dog in that fight. I'm not aware that my committee has ever commented on the legal status of MMC meetings. Please share what information you have that connects us to your statement.

Moreover, are we to infer that your Liaison Committee must grant permission for the County Committee to make a request of the MMC Board? Or am I misreading what you have written? Your committee met with us for several hours on Dec. 14, and are fully informed of the process we are following.

In any respect the Meagher County Hospital District Board requests being placed on your January agenda for the purpose stated above. Thank you for processing this request and responding to the questions raised.

Sincerely,

John Dracon, Chair, MCHDB

CC: Kakuk, Sundstrom

Subj: **Re: request for MCHDB to be on your Dec. 22, 2010, agenda to discuss status o...**
 Date: 12/22/2010 8:57:50 A.M. Mountain Standard Time
 From: arogers@mvmc.org
 To: Farwest96@aol.com
 CC: info@kakuk.com, psundstrom@ymail.com, rseidlitz@itstriangle.com, lisa@cmpmontana.com, wwg@ttc-cmc.net, cevans@horse-creek.net, schleppy@itstriangle.com, seredays@yahoo.com, oohlson@ttc-cmc.net, woodiejarvis@yahoo.com, tony@cypresshealth.net

Mr. Dracon,

The two day change is in our bylaws.

Regarding requesting permission to access our account, that would need to be requested to the committee and recommended by them to the full Board. I can pretty much guarantee that the Board will deny that and tell you to get bank statements from MMC regarding the account. Information from US Bank is open to the public but bypassing MMC and dealing directly with US Bank is extremely bold and inappropriate.

I think the untrue and inaccurate allegations are well publicized. This is not something that I implied MCHDB had anything to do with. You just happened to ask for us to go against the bylaw stipulation.

You are absolutely correct in the understanding that the County Committee needs to make any and all requests of the Hospital Board or administration through the MMC Committee.

I will pass on your request for an agenda spot in our January meeting to the Committee.

Sincerely,

Aaron H. Rogers, CEO
 Mountainview Medical Center

Jan. 3, 2011

Mr. Aaron Rogers, CEO
MMC
White Sulphur Springs, Mt. 59645

Dear Mr. Rogers

You will recall several weeks ago, on behalf of my committee, I asked in person at your office for the IRS 990 2009 report. As we both understand the IRS requires public disclosure of the 990s upon request.

I was given the IRS 990 2008 form which covers the period of July 1, 2008, through June 30, 2009. That period ended a year and a half ago. Your response was that the 2009 report was at the auditors and currently unavailable to MMC. When do you anticipate receiving the IRS 990 for 2009?

Asking for this information has only one purpose. The public wants to know the current costs of the Cypress management of MMC. My committee already knows the compensation for Mr. Pfaff's service via the Cypress' contract with the MMC board. It does not know yours. We would simply add the two compensations together for a total and report that to the public.

We do not understand your reluctance to share this information now since it is destined to become public information anyway. However, you may believe before the IRS 2009 report is returned to your office, your compensation amount is privileged information, and if so, please advise us.

Sincerely yours,



John Dracon, Chair
Meagher County Hospital District Board

CC: Kakuk, Sundstrom, B. Galt, Chair, MMC, County Commissioners

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Disclosing Financial Records as Nonprofit Corporation

Nonprofits forced to be open books

QUESTION:

I work for a 501(c)(3) nonprofit corporation. Are its financial statements available for public view -- especially regarding management salaries?

ANSWER:

Indeed. Nonprofits are required to submit their financial statements and other information -- including the salaries of directors, officers and key employees -- to the IRS. For information on who is considered a key employee, see IRS Form 990 and its instructions. The IRS and the nonprofits themselves are required to disclose this information to anyone who asks.

If it's you who is doing the sleuthwork here, your request to the IRS should include the name of the organization, the year and the type of return requested and should be submitted in writing to:

Commissioner of Internal Revenue
Attn: Freedom of Information Reading Room
1111 Constitution Avenue, NW
Washington, DC 20224

Nonprofits must allow public inspection of these records during regular business hours at their principal offices.

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Mountainview Medical Center

January 5, 2011

John Dracon, Chair
Meagher County Hospital District Board
Meagher County Courthouse
PO Box 309
White Sulphur Springs, MT 59645

Mr. Dracon,

In reference to your letter dated January 3 to Aaron Rogers, the 2009 IRS 990 is not yet available. We have checked with the auditors, the due date is May 16th, it will be several months before it is ready. When it is available, you are welcome to request it through the MMC committee designated to do business with the Hospital District Board.

As for the questions about Cypress and Aaron Rogers compensation, you already have that information in your hands via the audit report given you at the October 27, 2010 MMC board meeting. John, if you remember, this was not only thoroughly discussed at the meeting. It was also pointed out by Marcy who asked the specific question, which was answered by the auditors, that the compensation given Cypress includes Aaron Rogers' wage and all Cypress expenses. (page 14, note J) Please note enclosed minutes. I would like to reiterate all monies paid inclusive of Mr. Rogers' salary is the number presented in that report. There are no other hidden charges by Cypress or Mr. Rogers. As for our reluctance to share this information; there is none. We will gladly supply any and all information to not only your board, but the commissioners and the general public that we are legally allowed to share.

As for the past meeting minutes, it is our policy normally to charge for these. However, I feel the tax payers already shoulder enough burden for MMC and do not want to add to that. The minutes you have requested will be transmitted electronically to the County Commissioners. Feel free to print whatever portions of them you like. Please note all current minutes are now posted on our website for your review.

Mr. Dracon, I request that you deliver to our committee both the copy of the letter addressed to Mr. Rogers stating the offer of the 5% loan from the State of Montana as well as a copy of the C. M. Bair Trust document you referred to in the meeting. As ours varies from the one you quoted. Additionally, would you please also furnish a list of any and all requests for documentation from MMC that have not been fulfilled.

Mr. Dracon, you stated in the meeting that your intent was to only help MMC. I find it very hard to see how any of these continued insinuations that we are hiding financial or any other information in any other way helps MMC. As you know, we are fighting an uphill battle to get utilization in our facility. We would truly appreciate any help you can give and not just repeated request for excessive paperwork. We have requested numerous times that you operate through the committee appointed as the liaison between the District Board and the MMC Board. It is my belief that non paid board members should only be held in meetings the minimum amount of time required to do business. So, I would appreciate that the business between our committee and your board be summarized and addressed as a recommendation to our Hospital Board rather than as a debate.



William W. Galt
MMC Board Chair

Cc: Kakuk, Sundstrom, MMC Board, Meagher County Commissioners

**Mountainview Medical Center
Board of Directors Meeting
October 27, 2010**

Present: Bill Galt – Chair, Rick Seidlitz, Bill Schendel, Woodie Jarvis, Shane Sereday, Otto Ohlson, Lisa Gilbertson, Chad Evans, Aaron Rogers – CEO, Tony Pfaff – Cypress Healthcare.

Absent: Chris Schlepp

Guests: Debra Lawton, Wayne Hiatt – Galusha, Higgins & Galusha

1. Call to Order

Bill called the meeting to order at 7:00 p.m.

2. Minutes

Correction or additions to the minutes of 9/29/10 were requested. Otto moved to approve the minutes as presented, seconded by Bill Schendel. **Motion Carried**

3. CEO report

Aaron directed the members to the spreadsheets provided in their binders. The finance committee discussed having a report that has statistics on a daily basis. They liked the Cypress report that shows census – hospital, skilled swing and intermediate; E.R. visits – by day; clinic visits - by day and provider; and ER admits. The finance committee is interested in having this so they can track numbers for utilization. The report will be in the binders every month.

At last month's board meeting, John Dracon handed out a spreadsheet with audit comparisons. Some of the numbers were not accurate, so Aaron has compiled a new sheet that includes the audits since 2003. That is also in the binders for their review.

4. Financials

Christina gave the summary of financials for the month of September.

- Net patient revenue \$257,101
- Net loss \$53,942
- AR days were 53
- Current cash as of today \$69,277.81

Aaron added that we still have not received the cost report reimbursement from Medicare; they have requested a finalized audit.

Fiscal Year 2010 Audit – Presentation by Debra and Wayne from Galusha Higgins & Galusha. Deb has been on-site the last 3 years. She is an active part in our audit, doing interviews, collecting reports, etc. Wayne is the partner on the job. Deb went through the complete audit page by page explaining the numbers and verbiage.

- Operating Revenues \$4,066,759
- Change in Net Assets \$72,173
- Current Ratio 4.85 (which is good)

- Days in AR: 37 (really good)
- Long term debt to Net Assets 0.03
- Independent Auditors Report statement was read, giving a clean opinion, it was the best you can get
- Assets: \$1,662,014
- Liabilities \$519,857
- Total net \$5,969,929
- Total income \$4,066,759
- Expenses – largest is salaries. Total \$4.2 million
- Change in net assets -increase of \$72,173
- Cash and Equivalents end of year 623, 410
- Long term debt \$177,244 (Harmon Trust pays this loan)
- Function expenses: healthcare services \$2.8 million; fiscal and administrative \$1.3 million; total expenses \$4.2 million
- Management contract - paid \$221, 183 and \$211,572 for last 2 years
- Malpractice liability coverage - no claims
- Review of payor mix: Medicare 22%; Medicaid 6%; Blue Cross, Blue Shield 4%; Third party 18%; Private Pay 50%
- New this year is subsequent events (if took out new debt) - MMC didn't have anything material reported.

It was asked if there were any questions. Marcy (public) asked how much was paid out to Cypress over the last 2 years. Deb gave the numbers again: 2010 -\$221,184 and 2009- \$211,872. She asked if this included Mr. Rogers' (CEO) salary – yes.

The letters of standard reporting were distributed to members. Wayne reviewed the letter and communication between the auditors and board. This letter relays the responsibility of the auditing company and the Board. The timing and scope of the audit is determined by them (auditors), also how much they are going to look at. This is done so management can't steer them in a certain direction. There have been no changes in the accounting policies or their application (management did not change anything in the past 2 years). There were no significant difficulties in dealing with management during the audit. All adjustments to financials attached to the letter were corrected. Wayne noted that it is acceptable to not post all the adjustments they find, if they are not material. MMC did post all findings, no disagreements over anything. A representation letter was signed; all consultations with other accountants were responded to truthfully, nothing was hidden. There were no other significant findings or issues that need to be addressed with the board. It was a good and clean audit. Deb and Wayne then distributed their cards to board members; to call if they have questions.

5. Medical Staff

A meeting was held on October 12th between nursing, lab, medical records, radiology, physical therapy, and the 3 providers. This is a routine meeting to touch base and make sure everything is going well.

6. DON Report

October numbers:

- 40 ER visits
- 13 Acute days
- 12 skilled days
- 448 intermediate days
- 1 new NA hire
- 3 CNA traveler shifts

Quality and Infection Control monthly meeting was held. CNA classes are in process with 7 NA's in the class. We should be well staffed November. Two satisfaction surveys came back with good results. A thank you card was read: without MMC they may not have survived, excellent facility in our community. In November, two RN's are scheduled for an interview, their references are good.

7. Information Items

Brett Williams and Dave Wendt have decided to build a haunted house for the kids here at the facility. There will be quite a few people working on it. There will be some expense to it; but it is a nice thing to do and will be warm for the kids. There will be no charge; but donations are accepted. It is from 7-9 p.m. on both Sat and Sun.

November Board meeting date is set for the 24th which is the day before Thanksgiving. Question was asked if anyone had a conflict. Everyone is fine with the 24th.

Doug Leibel – Employee Representative, has visited with Aaron. He hopes employees will feel involved; and more will be interested after the first year. His goal for the year is to do an employee survey. Other staff will be involved and possibly some board members. A survey hasn't been done since Katharine Ann was here. He would like to set it up so it is not an expense to the facility. Question was asked of what he needed; Doug will initially have a meeting with the employees to find out what they want in it. He is still in the planning stages and will let members know when he needs help.

Finally, Aaron wanted to formally thank Cheryl Seibel. After 30 years of services, she is retiring. We appreciate all she has done; she will be missed. She has seen a lot of changes in the last 30 years.

8. Public Comment

John Dracon – had two comments. First he asked if the audit report was now available for the public. Bill noted that it has not been accepted by the board yet. It will be reviewed by the Finance Committee and a recommendation will be made at the next board meeting. Second, on the 13th the newly formed Meagher County Hospital District Board met with the public. 23 people attended. He asked to clarify a comment made by Otto regarding Cypress and the figure of 4 million dollars. Otto didn't recall making any statement to that effect.

Adjourn – Motion made by Woodie, seconded by Rick; meeting adjourned at 7:35 p.m.

Mountainview Medical Center

January 6, 2011

John Dracon, Chair
Meagher County Hospital District Board
Meagher County Court House
P.O. Box 309
White Sulphur Springs, MT 59645

Dear Mr. Dracon,

It was with great disappointment that I read the headlines and associated article in the January 6 Meagher County News. Regrettably, the article was filled with inaccuracies and half truths. I can only assume that the editor reported the factual details of the meeting between yourself and the Meagher County Commissioners.

You are quoted as stating that "he had been informed the county board will have to make a request through the liaison committee to get anything put on the Mountainview Medical Center board meeting again".

As you are aware, you did circumvent the Liaison Committee with the request, however, the reason that you were not given a spot on the Board Meeting was that there was insufficient time between your request and the Board meeting to fulfill the time limits for the 'open meeting law' requirements.

Further, you have received all available information from all your requests on a timely basis, despite your continual refusal and lack of cooperation on taking requests to the Liaison Board. John, as you are aware, you were at the board meeting at which time the Liaison Board was set up to channel all requests through and have been reminded numerous times to channel all requests through. To date, the only involvement of the Liaison Board was one invitation to attend a meeting of the Meagher County Hospital District Board. The Liaison Board cooperated fully with this request and answered all the questions they could and told you that they were unable to make several decisions that would have to be taken to administration or the MMC Hospital Board.

You appear to have aversion to utilizing the Liaison Board which is highly unusual considering that you retired from an administrative position from several school districts. All business executives and administrators utilize 'filters' or liaison positions to enable them to concentrate on their duties. Interestingly, I am sure you can appreciate that this practice started in Biblical 'Old Testament' times when Moses' father-in-law recognized that Moses was physically and mentally unable to care for all the Israelites demands while wandering in the Wilderness. I would hope

that you could recognize that our CEO's primary responsibility is to manage the Hospital.

The newspaper article continues "questions were raised as to why the information isn't being provided if there is nothing to hide". I am puzzled as to what information you were referencing. If in fact it is the 2009 IRS 990 form, it will not be available until June, 2011. If it is in fact your request to directly access Mountainview Hospital accounts with US Bank, you will have to admit that while this is a bold and brash request, the decision would have to be made by the full board and your request for the meeting was not timely enough to fulfill the requirements of the 'open meeting' laws. You will also have to admit that you were furnished the bank statements at the last board meeting which had all the information that you requested.

The Board Members and administration of the Mountainview Medical Center are committed to make the facility economically viable. At least publicly, the District Board has stated their goals are to 'help' the hospital. Instead, it would appear that you are more intent on making headlines at the expense of the hospital through an over eager publisher intent on printing every bad thing he can find about the facility.

I would like to think that we could all agree on the FACT that any bad publicity, as what just occurred does nothing but further discourage the use of the facility and make it more difficult to achieve the goal of operating without public mil levies more difficult.

The Liaison Board extends an offer to work with the Meagher County Hospital Board to achieve that goal. Ultimately, you will find that the Liaison Board is cooperative and committed to doing what is best for the public and Mountainview Medical Center.

Sincerely,



Otto Ohlson
MMC Liaison Board Chair

Cc: Kakuk, Sundstrom, MMC Board, Meagher County Commissioners

Jan. 20, 2010

Otto Ohlson, MMC Liaison Board Chair
MMC Board of Directors
W.S.S. Mt. 59645

Dear Otto,

Your highly critical letter of me as Chair of the Meagher County Hospital District Board, dated Jan. 6, 2011, which was publicly published on the MMC website and bulletin board, and copies sent to the Meagher County Commissioners and the MMC board, has never been received by me or any members of my committee as indicated at the bottom of your letter.

It appears that you have violated one of the most basic precepts in written communication between human beings that exists, viz., when a letter is written from one person to another, the original letter is expected to be sent to that person for his or her review. As the author of the letter in question, you have the responsibility to make sure that letter reaches the addressee, particularly when you chose to copy other persons in your letter or make it available on public media.

What makes this breach of written ethics even more egregious is the fact that your administration put your letter on the MMC website without our knowledge that the letter even existed.

Following are the facts. Last Saturday while attending a Hornet basketball game in Harrison, a W.S.S. resident remarked that a letter addressed to me under your signature was on the MMC bulletin board.

Since I could not recall such a letter, I was naturally curious what she was talking about. Monday was MLK day. Your offices were open so I approach Jennifer Stidham to make inquiry. She informed me that she had taken your letter to us in a sealed envelope over to the courthouse and left it at the commissioner's office.

Because the courthouse was celebrating the holiday, I had to wait another day to try and find such a letter. My committee does not have a mail drop at


the courthouse. A previous letter from Chairman Galt to our committee was hand delivered to us by the courthouse staff.

I approached Commissioner Hurwitz on Tuesday morning about your letter. He knew nothing about it. Now that was Jan. 17, 2010, eleven (11) days since your letter was written.

We consulted with Nate (who works in the Commissioner's office) if he remembered anything delivered from your office, and he could only recall a letter put into Commissioner Schlepp in-tray. Commissioner Hurwitz went to the tray and found the following: a sealed brown envelope with the MMC logo with the hand written addressee "Meagher Co. Commissioners" on it. Please see copy of that envelope

Commissioner Schlepp had not attended the last meeting so evidently had not gone through her mail. Commissioner Hurwitz stated that he could open the envelope since he was one of the addressees and did so. Inside he found three letters marked to the Commissioners.

A search in the offices has not turned up your letter addressed to my committee. This is a clear example why communications between your board and ours breaks down. Would you be so considerate as to send me your original letter via the U.S. mail to the courthouse addressed to my committee. Thank you.

John Dracon, Chair

CC. MCHDB members

KAKUK LAW OFFICES, P.C.
P.O. Box 624
WHITE SULPHUR SPRINGS, MT 59645

MICHAEL S. KAKUK, ATTY.
LICENSED IN MONTANA,
WISCONSIN (INACTIVE),
AND U.S. PATENT BAR

PHONE: 406-594-0515
EMAIL: INFO@KAKUK.COM
WEB: WWW.KAKUK.COM

MARCH 22, 2011

MOUNTAINVIEW CLINIC
BOARD OF DIRECTORS
LIAISON COMMITTEE

HAND DELIVERED TO THE MOUNTAINVIEW CLINIC STAFF

RE: STUDY ISSUES

Dear Liaison Committee:

I am writing on behalf of the Meagher County Hospital District Board to ask for your help in setting up brief interviews with Tony Pfaff and Aaron Rogers regarding Study Issue 13, reproduced below.

*13. What exactly is it that Cypress does? What did Benefice do?
(Amended 12-14-2010.)*

Proposed Research: The Committee will prepare an outline of Cypress' duties under the current contract and compare those to Benefice's duties.

Assigned: Kakuk and Dracon

In attempting to complete our research on this issue we determined that we lacked sufficient information regarding the exact duties and responsibilities for Mr. Pfaff and Mr. Rogers and that a brief conversation with each of them would be helpful.

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CLINIC LIAISON COMMITTEE
MARCH 22, 2011
PAGE 2

Please let us know at your earliest opportunity how we can best schedule this meeting. As always, we look forward to working with you as we complete our study responsibilities.

Sincerely,

Michael S. Kakuk
Attorney

cc: Mountainview Clinic Board of Directors
Tony Pfaff
Aaron Rogers
County Commissioners



Mountainview Medical Center

March 31, 2011

Michael S. Kakuk, Atty
P. O. Box 624
White Sulphur Springs, MT 59645

RE: Letter dated March 22 to Mountainview Medical Center Board of Directors and Liaison Committee – reference: study issues

Dear Mr. Kakuk:

We are in receipt of your letter of March 22 requesting a brief interview with Tony Pfaff and Aaron Rogers regarding Study Issue 13 (*What exactly is it that Cypress does? What did Benefis do? (amended 12-14-2010)*) -- Proposed Research: *the Committee will prepare an outline of Cypress' duties under the current contract and compare those to Benefis duties.* --- Assigned: *Kakuk and Dracon.*

Since Aaron was on vacation, we had our Administrative Assistant, Jennifer, email and request you wait until after April 4, at which time he will return.

We, (the board) have since had some time to further consider this request and base our decision(s) on the previous two meetings of the Mountainview Medical Center Board, the request in general and a legal decision rendered by the previous County Attorney.

At the time the 'County Board' was created by the Meagher County Commissioners, the County Attorney (Linda Hickman) issued her decision that the responsibility of the 'County Board' was limited to insuring that the 20 mills of County Tax Money was distributed and utilized correctly, as defined on the ballot to the voters. Since that time, the role has been expanded considerably by both the 'County Board' and the Meagher County Commissioners. Also, as obvious by the Study Issue 13, these 'Study Issues' continue to be amended and changed.

The administration at Mountainview Medical Center has devoted considerable time (and resources) providing detailed information for the continual expanding requests of the 'County Board'. A considerable number of these requests have circumvented the 'Liaison Board' that was established as a filter. To date, however, the Liaison Board and administration at the Mountainview Medical Center has gone out of their way to respond to every request on a timely basis.

The newest member of the 'County Board' (Marcie R.) has attended the last two Board Meetings at the meeting room at the Hospital. She was disruptive during the meetings and threatening to the public that was in attendance.

'Item 13' is an interesting request. You are in receipt of two contracts (one is the latest version) between Cypress and Mountainview Medical Center. If you do not have the contract with Benefis, I would guess that one is available. I am sure that as an attorney, you are aware that the contract is a legally binding document. If, during an interview, Aaron or Tony was to make a statement that was contrary to the contract, the contract is still the legally binding document. As such, we find it difficult to understand why the need to have the brief interview (interrogation??).

The Mountainview Medical Center Board and the administration are committed to making the medical center pay its' own way and eliminate the need for the additional 20 mils of County Assistance. As I am sure you can appreciate; the continual 'bad' publicity that weekly appears in the Meagher County News, generated by an editor intent on targeting the Medical Center, is damaging to the facility. Unfortunately, often this information is gleaned from the meetings of the County Board. It is time to unite as a community and support the facility that is desperately needed in Meagher County. Making headlines, by completing a report that is in any way damaging to the efforts of the administration and Board of the Mountainview Medical Center, will only further promote the agenda of the editor of the Meagher County News and further cause division and long term harm to the community.

After considering the items described above, the Mountainview Medical Center Board has made several decisions. These were very tough decisions to make. Since the current board has taken over the control the Mountainview Medical Center, several important changes have been made. One of the primary changes has been to provide transparency – all board meetings have been open, (all) financial information available, board minutes posted on the web site and all questions by the public answered. As often occurs, these privileges' have been abused.

As such, the Mountainview Medical Center Board has respectfully decided to deny your request to interview Tony and Aaron. The Contract(s) are the legally binding document(s). No additional information that could be gathered from interviewing, interrogating, or badgering Tony or Aaron, that differed from the contract, is in any way or form legally binding.

Further, all future requests for information between the 'County Board' and the administration or the Board of the Mountainview Medical Center will be denied if they are in excess of the legal responsibility of the 'County Board'. In addition, we request that you establish a policy whereby any member of the County Board act 'professionally' and politely when at all board meetings and that these decisions be passed on to successive County Board members.

If we may, we would like to respond to your Proposed Research Topic. The items listed below are some of key components of the services provided by the respective management company. To complete a report without considering each component would be a disservice to your entire report.

Benefis:

- Closed meetings, (no public involvement)
- Financial information kept from public (and new board members)
- Required Confidentiality Statements signed by board members
- Extremely high administrative and operation costs
- Overstaffing of facility
- No oversight of Mountainview Medical Center (and minimal supervision of CEO) even when request was made by board member to check on overstaffing
- Loan(s) to Mountainview Medical Center without full board approval
- Empowered Financial Committee (able to make decisions without board approval)
- Large bonus's for administration
- Questionable financial oversight (facility lost over \$1,000,000/year for last 2 years)
- Provided leadership on breaking conditions of Bair Trust, resulting in spending all available corpus in trust (over \$2,000,000)
- Expensive annual Board Retreats for board members and family (4 members of one family)

Benefis (Continued):

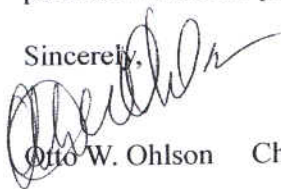
- Board retreats included Lake Tahoe and Sun Valley – ALL expenses paid by Mountainview
- Left Mountainview Medical Center on verge of financial demise and bankruptcy
- High rate of use of 'travelers' for nursing staff and huge use (abuse?) of overtime for 'favored' nurses
- County Commissioner on hospital board while sitting commissioner (conflict of interest)
- Misuse of facility paid continuing education (i.e. paying 5 positions for hospital administration at the same time)
- Extremely poor medical insurance for employees
- Found employment for CEO at another facility that also resulted in financial demise of facility

Cypress:

- Provided list of replacement CEO's with Board Decision on hire
- Doctor and Provider recruitment
- Cypress provided training at considerable financial savings
- Excellent insurance plan for all employees
- Full staff of nurses, LPN's and CNA's (very-very minimal use of overtime or travelers)
- Reduction of Administrative positions and related costs (including management costs of Cypress it is still is less than administrative costs under Benefis)
- Reduction of staff and associated costs without compromising patient care
- Rebuilding Bair Trust
- Open meetings
- Full disclosure of financial information, posting minutes, all information public
- Provides oversight of hospital and administration
- Instrumental in bringing back hospital from financial ruin
- Annual bonuses to all non-administrative employees to improve employee moral

In closing, I would like to think we share a common goal – that of providing a functioning, caring, economically sound medical center for Meagher County; one that is responsive to the needs of the community. Again, we request your cooperation in promoting the facility in a positive manner. I would also like to stress that we will continue to work with you, to the extent possible within the parameters of your legally assigned responsibilities.

Sincerely,



Otto W. Ohlson Chair Mountainview Medical Center Liaison Committee

Cc: ~~John Dracon~~

Nancy Schlepp (chairperson – Meagher County Commissioners)
Tony Pfaff (Cypress)
Aaron Rogers (CEO – Mountainview Medical Center)