

MEAGHER COUNTY HOSPITAL DISTRICT BOARD  
MINUTES, OCTOBER 13, 2010

Attendance: John Dracon, Pam Sundstrom, Michael Kakuk.

Chairman Dracon called the meeting to order, welcomed the public and explained that the purpose of the meeting was to elicit public comments and opinions regarding what the public thinks the District Board should be looking at. But before they started accepting public comment, the Board had a few housekeeping matters to attend to.

The Board reviewed amended by-laws prepared by Member Kakuk correcting some inconsistencies on how the various articles were numbered. Mr. Kakuk stated that there were no substantive changes from the by-laws adopted at the Board's first meeting in September.

Mr. Kakuk moved the amended and corrected by-laws be adopted, Ms. Sundstrom, seconded, and the amended by-laws were adopted unanimously.

The Chair opened the meeting to public comment.<sup>1</sup>

#### Financial Issues

- How much money is paid to Cyprus employees?
- Are financial statements available?
- Why does the Clinic use a cash basis accounting instead of an accrual basis?
- Why the large difference between 2008 and 2009 income?
- Where, financially, would the Clinic be without the levy?
- Would contributions go up without the levy?
- What is the current status of the Bair Trust?
- Where was the Bair Trust four years ago?

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<sup>1</sup> Note: While these minutes are not a verbatim transcript of the comments made, they are intended to be an accurate reflection of the issues raised by the public. The issues have also been grouped together into broad topics for ease of review. If any comments were missed or misunderstood, it is my fault alone. Please notify the Board or myself with any corrections.

Michael S. Kakuk  
Board Secretary

- Why have contributions gone down?
- How does the Clinic compare, financially, to other rural clinics?
- How can we make Cyprus prove that they are providing a benefit financially?
- What are the specific provisions of the Cyprus contract?
- Are there a significant number of Clinic payment/billing errors?
- How many patients have left the Clinic over the past few years?
- Are any Cyprus employees compensated to cover federal or state taxes?
- How are Cyprus employee and Clinic employee vacations dealt with?

#### Public Involvement

- Are Clinic Board financial meetings open to the public?
- There is a perceived lack of openness with the Clinic and the Clinic Board.
- The Clinic Board seems to operate without any public involvement except at the end of the meeting. What are the options for increased public involvement with the Clinic?
- Is there any way for the public to control the Clinic's operations?
- Are there other models for public involvement in the Clinic operations?
- How can we improve the feeling of teamwork between the public and the Clinic Board?
- Could the public elect the Clinic Board?
- Is District Board access to Clinic records adequate?
- How does the Clinic compare, in public involvement, to other rural clinics?
- What exactly is it the Cyprus does?
- Are any citizens singled out for disparate treatment regarding their access to or involvement with the Clinic operations? If so, is that treatment justified and reasonable?

#### Miscellaneous Issues

- Who owns the real property that the Clinic sits on?
- Is there a problem with the high rate of Clinic Board turnover?
- Is there a high rate of Clinic employee turnover? If so, why is it high?
- Why have long-term providers left the Clinic?
- There are questions regarding the Clinic Board's decision making.
- How does the Clinic compare, overall, to other rural clinics?
- How can we make Cyprus prove that they are providing a benefit, in general?
- How can we improve the public perception of quality care?

- How can the Clinic reestablish the public's trust?

Chairman Dracon thanked the public for attending and adjourned the meeting. He stated that the Board would continue to accept written comments for the next few weeks. The next meeting was not scheduled.

MEAGHER COUNTY HOSPITAL DISTRICT BOARD  
MINUTES, DECEMBER 1, 2010

Attendance: John Dracon, Pam Sundstrom, Michael Kakuk.

Chairman Dracon called the meeting to order, welcomed the public and explained that the purpose of the meeting was to select the issues that the District Board would study from the issues identified by the public at the October District Board meeting.

Mr. Kakuk moved the minutes from the October meeting, Ms. Sundstrom, seconded, and the Chair opened the floor to public comments regarding the October minutes. There being no comments, the October minutes were adopted.

The Chair explained that he and Ms. Sundstrom met with the County Commissioners in November and updated the Commissioners on the District Board's progress. Since a majority of the District Board was present and Board business was discussed, the Chair treated the meeting with the Commissioners as a District Board meeting and prepared minutes. Mr. Kakuk moved the minutes, Ms. Sundstrom seconded, and they were adopted as well.

The Chair opened the issue selection discussion and the following issues were selected for further study and will be included in the report to the Commissioners. Note: The issues are numbered in accordance with the meeting handout labeled: **Public Meeting Issues/Comments – Oct. 13, 2010.** (Attachment 1.)

Issues selected for study and inclusion in the District Board Report: 1, 2, 3, 4, 5, 7, 8, 10, 12, 17, 21, 24, 26, and 28. Number 22 was postponed. The remaining issues were not selected for study at this time although it was noted that some of the issues not selected for study would be addressed to varying degrees through research of the selected issues.

Mr. Kakuk offered to outline proposed research activities for each study issue for the Board's review and comment. The Board accepted.

After further public comment regarding issue selection and related clinic matters, and a brief discussion of clinic funding background, Chairman Dracon thanked the public for attending and adjourned the meeting. He stated that the Board would schedule a meeting with the Clinic Liaison Committee sometime in the next few weeks. Therefore, the next meeting was not scheduled.

MEAGHER COUNTY HOSPITAL DISTRICT  
STUDY OUTLINE  
ADOPTED DECEMBER 14, 2010

- 1. How much money is paid to Cypress employees? How much money was paid to Benefice? (Amended 12-14-2010.)

Proposed Research: Discussion with the Clinic Board and or staff and a review of the relevant financial data.

Assigned: Dracon and Sundstrom

- 2. Are financial statements available?

Proposed Research: Discussion with the Clinic Board and or staff.  
Proposed report language: *Yes, upon request.*

Assigned: Committee

- 3. Why does the MMC use a cash basis accounting instead of an accrual basis?

Proposed Research: Discussion with the Clinic Board and or staff.  
Proposed report language: *Since federal regulation require an accrual basis, MMC doesn't use a cash basis, but the financial data can be easily converted to cash basis for those who wish it.*

Assigned: Committee

- 4. Why the large difference between 2008 and 2009 income?

Proposed Research: Discussion with the Clinic Board and or staff and a review of the relevant financial data. Note: This answer may call for a "best guess" from the District Board as to the actual reason.

Assigned: Dracon and Sundstrom

- 5. Where, financially, would MMC be without the levy?

Proposed Research: Discussion with the Clinic Board and or staff and a review of the relevant financial data. Some assumptions will have to be

made to account for a possible increase in donations if the levy were not in place.

Assigned: Dracon and Sundstrom

6. What is the current status of the Bair Trust?

Proposed Research: Discussion with the Clinic Board and or staff, the Bair Trust staff, and a review of the relevant financial data.

Assigned: Dracon and Sundstrom

7. Where was the Bair Trust four years ago?

Proposed Research: Discussion with the Clinic Board and or staff, the Bair Trust staff, and a review of the relevant financial data.

Assigned: Dracon and Sundstrom

8. How does the MMC compare, financially, to other rural hospitals?

Proposed Research: Discussion and research with the various state and local government agencies and hopefully, with rural hospitals themselves.

Assigned: Kakuk

9. What are the specific provisions of the Cypress contract?

Proposed Research: A copy of the most current contract will be included in the Report.

Assigned: Committee

10. Are MMC Board financial meetings open to the public?

Proposed Research: Discussion with the Clinic Board, and or staff, including Clinic legal counsel.

Assigned: Kakuk

11. Are there other models for public involvement in the MMC's operations?

Proposed Research: Discussion and research with the various state and local government agencies and hopefully, with rural hospitals themselves.

Assigned: Kakuk

12. Is the District Board access to MMC financial information adequate to complete the study?

Proposed Research: Discussion with the Clinic Board and or staff.  
Proposed report language (assuming adequate access to Bair Trust and other financial information): *Yes*.

Assigned: Committee

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

14. Who owns the property the MMC sits on?

Proposed Research: The County Commissioners have ordered and received a title search regarding ownership of the real property. The District Board will review this information and determine whether or not additional study is required.

Assigned: Kakuk

**MEAGHER COUNTY HOSPITAL DISTRICT**     **B -23**  
**D-R-A-F-T**  
**STUDY REPORT**

**1. How much money is paid to Cypress employees? How much money was paid to Benefis?**

For the year July 1, 2010 through June 30, 2011, the contract costs of the two people paid through Cypress (Mr. Rogers and Mr. Pfaff) were approximately \$250,000. However, MMC states that the total costs for Mr. Rogers and Mr. Pfaff \$221,183. MCHDB's requests for clarification of this issue were unsuccessful. See Appendix A-33, A-35 and B-6 for more information. Benefis' CEO Campbell was paid approximately \$125,000 for 2007.

**2. Are MMC financial statements available?**

Yes, monthly statements are available at the administrative offices of MMC upon request.

**3. Why does the MMC use a cash basis accounting instead of an accrual basis?**

MMC does not use cash basis accounting. Federal regulations require accrual accounting, and MMC is compliant. Abbreviated reports may be in a cash format, but the standard accrual accounting process is followed.

**4. Why the large difference between 2008 and 2009 MMC income?**

From the data provided by the MMC, the Meagher County Hospital District Board (MCHDB) assumes that any significant difference in income in these years can be explained by the decrease in county population and the fact that, with no doctors in residence during much of this period, patient utilization started to drop.

**5. Where, financially, would MMC be without the levy?**

Since 1995, there was a continuous county levy of 8 mills. There was an additional special hospital 20 mill levy beginning in October 2007 which

finished its second cycle of two years each. To date, the hospital has received approximately \$800,000 over the past four years from these levies.

While it is impossible for the District to answer the question: “*Where would MMC be financially without the county levy?*”, it seems apparent that, from the financial information provided above, without the county tax levy, MMC would be probably operating at a deficit unless offsetting non-operational revenues, such as donations, increased to cover the reduction in MMC’s revenue from the tax levy.

On June 22, 2011, the MMC Board voted not to accept any more county tax money and publicly thanked all Meagher County taxpayers in a mass mailing stating that the levies “truly saved this hospital”. (See Appendix B – 27).

#### **6. What is the current status of the Bair Trust?**

As of February 2011, what is commonly referred to as the Bair Trust consisted of approximately \$591,000. The trust was terminated in 2003 and control was placed in the hands of the MMC Board instead of the previous trustee, U. S. Bank in Billings.

#### **7. Where was the Bair Trust four years ago?**

The Bair Trust four years ago was worth approximately \$1.2 million. In 2003, it was worth approximately \$3 million. Since 1980 the Bair Trust gave MMC approximately \$6 million. (Appendix A – 3.)

#### **8. How does the MMC compare to other rural hospitals?**

The District contacted the Montana Hospital Association and also 46 of the 48 Critical Access Hospitals, i.e., rural hospitals, in Montana and asked questions designed to answer this question. Those questions and the responses are provided in Appendix B – 25.

Although not a complete or scientific survey by any means, it appears that all rural hospitals in Montana are subject to similar financial issues, including recruitment of qualified employees; increasing regulatory costs; access to capital; and decreasing government reimbursement for services.

**9. What are the specific provisions of the Cypress contract?**

See the response to Issue 13 below as well as Appendix B – 18.

**10. Are MMC Board financial meetings open to the public?**

The MCHDB is convinced that any Board meeting or any subcommittee meeting is open to the public as required under §2-3-203, MCA. However, MMC and its current attorneys now disagree with this opinion and have continually held that its Finance Sub-Committee meetings were not open to the public. MMC attorneys also seem to argue that, regardless of the tax levy, the MMC Board meetings themselves might not be open to public. (See Appendix A – 14 and B – 24.)

**Recommendation:** Considering MMC’s June 2011 refusal of the county tax levy, the District should continue to research this issue paying particular attention to MMC’s access to County health insurance and its use of the funds commonly referred to as the “Harmon Trust” and whether or not such use still subjects MMC to Montana’s open meeting laws.

**11. Are there other models for public involvement in the MMC's operations?**

Mountainview Medical Center, Inc. is a private, non-profit entity operated as a “*public benefit without members*” corporation. As such, it is governed by a self-appointed board. Simply put, this means that the Board itself appoints members to the Board and makes all financial and operational decisions. Therefore, there is no opportunity for any formal public involvement in Board membership or any public oversight of Board operation. This is a very common method of hospital governance in Montana but it is certainly not the only method.

For example, the Critical Access Hospitals, i.e., rural hospitals, in Townsend, Sidney, Chester, and Jordan are all public corporations and operate with ample opportunities for public involvement and oversight. (See Appendix B - 25.) However, even if MMC did not wish to become a public entity, it could, through simple changes in its by-laws, provide increased opportunities for public involvement and oversight to the citizens of Meagher County.

As just one example, MMC could allow the County Commissioners or the Hospital District to appoint a number of MMC Board Members from the community at large. This would certainly increase the public's opportunity, both real and perceived, to be actively and effectively involved in the hospital's management and governance.

**Recommendation:** While the District acknowledges that the issue of MMC's governance is most likely outside of the District's statutory authority (statutorily limited to those issues involving MMC finances), the MCHDB is also strongly convinced that there may be a better, more representative, method of ensuring appropriate public involvement in governing the hospital. Therefore, the District respectfully recommends that MMC fully review and consider all available governance options.

The MCHDB also recommends that it continue to fully cooperate and provide any assistance necessary with any such future analysis by MMC.

## **12. Is the District Board access to MMC financial information adequate to complete the study?**

Unfortunately, the MCHDB believes that some of its legitimate requests for financial information from MMC have been either ignored or refused. (See the below discussion of Issue 13 for a specific example.)

**Recommendation:** This issue is squarely within MCHBD's statutory mandate and the MCHDB should continue to seek the requested information.

## **13. What exactly is it that Cypress does? What did Benefis do?**

The MCHDB prepared an outline of Cypress' duties under the current contract and compared those to Benefis' duties. (Appendix B – 28.)

Additionally, the MCHDB met in March 2011 and determined that additional information was required from Cypress before this question could be fully answered. Mr. Kakuk sent a letter to the Clinic requesting a meeting with Mr. Rogers and Mr. Pfaff but the Clinic has declined to allow access to those individuals and never responded to the follow-up written questions. (Appendix A – 30 through 31A.)

Without access to Clinic administration and staff, the district Board is unable to answer this question in more detail.

**Recommendation:** This issue is squarely within MCHBD's statutory mandate and the MCHDB should continue to seek the requested information.

#### **14. Who owns the property the MMC sits on?**

As of 1958, the land on which the hospital is located is in the name of "Mountainview Memorial Hospital". Mountainview Memorial Hospital changed its name to "Mountainview Medical Center, Inc." in 2001. Therefore, MMC holds the title to the land on which the clinic is located. (See Appendix B -8 and B - 10.)



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## Access to public meetings

### What are the laws governing access to meetings?

Montana's 1972 Constitution includes a "Right to Know" clause intended to protect the citizen's right to inspect public records and attend meetings of public agencies at all levels of state government. This clause, along with other sections of Article II of the constitution, provide the cornerstone upon which subsequent laws and conflicts are founded.

These important sections include:

**Section 3 Right of Participation.** The public has the right to expect government agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

**Section 9 Right to Know.** No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of the state government and its subdivision, except in cases where the demand of individual privacy clearly exceeds the merits of public disclosure.

Chapter 2, Section 3 of Montana Code Annotated further defines access to meetings in Montana.

2-3-201 Declares the Legislature's intent that "public boards, commissions, councils and other public agencies in this state exist to aid in the conduct of the peoples' business." It further declares that provisions of this part of the law "shall be liberally construed," that is, in favor of openness.

2-3-202 Defines a meeting as the convening of a quorum of a public agency to hear, discuss or act upon a matter over which the agency has control or advisory power.

2-3-203 Says all meetings of governmental bodies of the state, political subdivisions or organizations supported in whole or in part by public funds shall be open to the public, including committees and subcommittees. The presiding officer may close a meeting for discussion of a matter involving

individual privacy, but only if the officer determines that the demand of individual privacy clearly exceeds the merits of public disclosure. The right to individual privacy may be waived by the individual about whom the discussion pertains. Meetings may be closed to discuss litigation strategy when an open meeting would have a detrimental effect on the position of the public agency. Meetings in which the only parties are public bodies may not be closed to discuss litigation strategy.

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### **For what reasons can a meeting of a governmental body be declared closed to the public?**

As noted above, meetings can be closed should the body discuss matters involving individual privacy (personnel) if the presiding officer determines that the demand of individual privacy clearly exceeds the merits of public disclosure. Public bodies may not close meetings to discuss collective bargaining strategy, *Great Falls Tribune v. Great Falls Public Schools* (1992). Also § 2-3-203. Nor may public bodies close a meeting to discuss litigation strategy in which the only parties are public bodies, *Associated Press v. State Board of Public Education*, 246 Mont. 386, (1991).

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### **What must the officer do to close a meeting?**

Meeting closures are at the discretion of the meeting's officer. Before closing a meeting, the presiding officer must explain in open session the reasons for closing the meeting and must also explain each item the body intends to discuss in private before closing the meeting. For example, a school board may not close a meeting to discuss personnel matters, then move on to other business while in closed session. It should also be noted that individuals may waive their rights to privacy and allow meetings to remain open even when personnel matters are being discussed. Additionally, boards can only close meetings at the request of an individual seeking privacy.

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### **Can governmental bodies meet by telephone or other electronic means?**

Yes, but they must allow the public to participate as outlined in statutory law. Section 2-3-202, MCA defines a meeting as "the convening of a quorum of the constituent membership of a public agency or association ... whether corporal or by means of electronic equipment ..." Specifically, the state Supreme Court has ruled that a telephone conference with a quorum is subject to the Open Meeting Act. *Board of Trustees, Huntley Project School District No. 24 vs. Board of County Commissioners*, 37 St. Rep. 175 (1980). Therefore, all laws governing public access to such meetings would apply, and could be closed only for the exceptions noted (when an individual's right to privacy clearly exceeds the public's right to know or when litigation