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Cleveland, Ohio 44113

Court of Common Pleas

MOTION Electronically Filed:
October 5, 2016 17:00

By: CHRISTOPHER M. DEVITO 0047118

Confirmation Nbr. 874999

EDWARD GRAHAM, ET AL

CV 15 846212

vs.

CITY OF LAKEWOOD, ET AL

Judge:

JOHN P. O'DONNELL

Pages Filed: 38

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

EDWARD GRAHAM, et al.

Plaintiffs

v.

CITY OF LAKEWOOD, et al.

Defendants

CASE NO. CV-15-846212

JUDGE JOHN P. O'DONNELL

**PLAINTIFFS' MOTION TO COMPEL
STRATEGIC PLAN AND CONSULTANT
FOR LAKEWOOD HOSPITAL**

I. Introduction

Plaintiffs Edward Graham, et al. move this Court for an order compelling the production of records concerning the Strategic Plan and the Consultant that relate to the closing of Lakewood Hospital and the transferring of medical services to other Cleveland Clinic Foundation facilities, including Fairview Hospital and Avon Hospital. The Plaintiffs ask that the Court impose an order upon Defendants the Cleveland Clinic Foundation and Dr. Delos “Toby” Cosgrove (collectively “CCF”), pursuant to Ohio Rules of Civil Procedure (“Civ.R.”) 11, 26, 33, 34, and 37, to fully answer an interrogatory and produce relevant documents.

Plaintiffs are attaching the disputed interrogatories and requests for production of documents (Ex. 1) and the relevant communications between Plaintiffs and Defendants' counsel (Ex. 2) attempting, unsuccessfully, to resolve this discovery dispute.

II. Facts

In this case, the Plaintiffs have sought to discover facts and documents concerning the decision by CCF to retract and abandon a 2010 commitment to operate Lakewood Hospital made orally and in writing at a Lakewood City Council meeting. These promises and assurances were made by senior officials of CCF in order to secure authorization from Lakewood City Council to

remove medical services and property that belonged to Lakewood Hospital, a municipal-owned health care facility. The medical services and other property were thereupon transferred to CCF's Fairview Hospital, which directly competes with Lakewood Hospital.

Evidence has been uncovered that suggests that officials of CCF may have made false and misleading statements relating to the promise of implementation of the Vision for Tomorrow Plan for Lakewood Hospital. Those misleading statements are evidence of a deception, in violation of Ohio Revised Code Section 2913.43 Securing Writings by Deception, as well as evidence of fraud as pled in Plaintiffs' complaint.

The Plaintiffs have reviewed a haystack of redacted, and difficult to read documents, recently provided by the Defendants revealing that the planning process to close the Lakewood Hospital as an inpatient facility began in 2010, just as the Lakewood City Council, the Lakewood Hospital Foundation donors, and the public were being duped into supporting a mirage called the "Vision for Tomorrow Plan." This well-publicized marketing gimmick included the claim of establishing "Medical Centers of Excellence" for Lakewood Hospital. (Bronson Tr. 64, 68). The Vision for Tomorrow was a long-term plan designed to strengthen the financial performance of the Hospital. (Bronson Tr. 59-62). In addition, it was represented that the Vision for Tomorrow Plan would make Lakewood Hospital financially sustainable. (Bronson Tr. 150).

The evidence shows that CCF officials acknowledged an obligation to operate Lakewood Hospital for the duration of the lease (i.e. 2026) and an obligation to return the hospital to the citizens of Lakewood as an ongoing concern. (Bronson Tr. 101, Ex. 1). CCF had even calculated the financial obligation of over \$278 million that it would be required to expend for the continued maintenance and operation of Lakewood Hospital for the remainder of the lease term. (Ex. 3, Bates No. LHA_CCF_8351 and 8352). This amount does not include CCF's obligation to do major capital improvements to "keep the hospital in operational condition." (Ex. 3).

In September 2010, just weeks following the orchestrated presentations made by high ranking CCF executives to City Council, CCF began to backslide on its promises. Dr. David Bronson, the President of CCF regional hospitals and a close strategic adviser to Defendant Dr. Cosgrove, testified in his deposition that he advised Lakewood Mayor FitzGerald that the Vision for Tomorrow Plan for sustainability of Lakewood Hospital was not effective, even though the long-term plan had not yet been fully implemented. (Bronson Tr. 180-183). Dr. Bronson testified that he wanted to make sure that the Mayor had an accurate view of the probability of success of the Lakewood Hospital plan. (Bronson Tr. 180). Those conclusions were reached by Dr. Bronson within months of his arrival at Lakewood Hospital and despite the fact that the Vision for Tomorrow plan would require up to 18 months to be fully implemented. (Bronson Tr. 156). In addition, Dr. Bronson testified that privately he was unsure of the Vision for Tomorrow's likelihood of making Lakewood Hospital financially sustainable. (Bronson Tr. 70-71). These private views and opinions were contrary to the public statements and promises made by Dr. Bronson and other CCF officials when they appeared before City Council in May and June of 2010.

In the fall of 2010, Lakewood Hospital Association ("LHA") chose to suspend the Vision for Tomorrow committee, which was charged with the implementation of the Lakewood Hospital plan. (Bronson Tr. 191). A new "special committee" was then formulated. (Bronson Deposition, Ex. 7). The evidence shows that CCF officials orchestrated the formulation of a new Lakewood Hospital committee, not LHA, to measure the effectiveness of the incomplete Vision for Tomorrow plan. (Bronson Tr. 190). The suspension of the Vision for Tomorrow committee appears to have been a significant step forward to steer the naïve, untrained, and slumbering LHA trustees to eventually concur with CCF's secret decision to close Lakewood Hospital. (Bronson Tr. 191, 228).

In the fall of 2010, a slide show prepared by CCF was presented to some of the LHA board members as part of a series of presentations directed towards the termination of inpatient health care at Lakewood Hospital. (Ex. 4, Bates No. LHA_CCF_ 7693, 7694, and 7702). Other planning documents reveal that CCF had already calculated that the closing of Lakewood hospital would result in a \$11.5 million a year windfall for the other CCF regional hospitals it owned. (Ex. 5, Bates No. LHA_CCF_8019). Other planning documents estimated that CCF hospitals would capture an additional 5,000 inpatient visits per year with a closed Lakewood Hospital. (Ex. 6, Bates No. LHA_CCF_8018). It should be noted Dr. Bronson testified under oath that CCF did not prepare any analysis as to the financial windfall it would receive upon the closing of Lakewood Hospital. (Bronson Tr. 261-262). CCF planning estimates contradict the deposition testimony of Dr. Bronson.

Under a closed Lakewood Hospital scenario, the CCF enterprise would profit from the elimination of the competing hospital with a \$115 million gain for the remainder of the lease and management contracts that were to expire in 2026. (Ex. 4). In addition, CCF would maintain a health care monopoly on the Lakewood Hospital campus by excluding any hospital competitors from entering into this local market. (Bronson Tr. 238-242).

In late 2010, the new Mayor of Lakewood, Defendant Summers, who had not read the City Charter establishing and mandating a public hospital for Lakewood and completely untrained as to his duties to the citizens of Lakewood, joined the Lakewood Hospital Association. (Summers Tr. 9-12). After joining the Hospital Board, Defendant Summers began to engage in discussions with Dr. Bronson concerning future health care options for Lakewood Hospital. Those discussions thereupon evolved as to options for an outpatient office building, a new recreation center, and acres of land for commercial development. (Bronson Tr. 235).

The closing of Lakewood Hospital provided a great opportunity for the Mayor to “Think Big” as to the possibilities of re-purposing ripe land available for thirsty developers and a Hospital Foundation of \$31 million to benefit a hospital that no longer existed. The assets of land combined with the financial strength of the extinct Lakewood Hospital Foundation, in which the Mayor's own wife served as a board member, created opportunities to control the wealth, feather a political nest, and direct development for years to come. All contrary to the Charter of the City of Lakewood that mandated a hospital for the citizens of Lakewood.

In early 2011, Mayor Summers, Dr. Bronson, and a few CCF employees and LHA trustees began the secret planning process to close Lakewood Hospital and establish an exclusive medical office building on the Lakewood Hospital property. The evidence clearly supports the Plaintiffs' contention that LHA engaged in clandestine discussions and negotiations with CCF since 2011. Furthermore, no other health care operators were offered the opportunity to compete for the establishment of an outpatient facility at Lakewood Hospital. (Bronson Tr. 248, 250). In fact, only CCF was permitted to submit a proposal for an outpatient medical office building. (Bronson Tr. 244, 249).

In order to further limit competition from other health care providers, CCF proposed that a restrictive covenant be required for the future use of the Lakewood Hospital campus. Dr. Bronson reasoned that its purpose was to eliminate the opportunity for CCF competitors to move onto the hospital property. Dr. Bronson also testified that he later abandoned the request for a land use restriction, yet it remained in the final Master Agreement between the City of Lakewood, CCF, and LHA. (Bronson Tr. 239-242). Defendant Summers testified that he supported a restrictive covenant, so as to eliminate the opportunity for CCF competitors to open on the Lakewood Hospital campus, as he wanted CCF to be successful. (Summers Tr. 232-233).

It is the request of the Plaintiffs that the Court order CCF to produce the internal records concerning the development plan for the Western Region of the CCF enterprise, which includes Lakewood Hospital. The regional planning documents will provide a road map of evidence that will be material to answer the following questions:

- Did CCF formulate a decision to close Lakewood Hospital at the same time that their officials were making promises and assurances in a Lakewood Council meeting that requested written authorization of City Council to remove medical services and property belonging to the public?
- Was the process of selecting the CCF proposal for establishment of an outpatient health care facility rigged and manipulated to benefit CCF and deprive other health care operators with the opportunity to fairly compete for the delivery of outpatient services, so as to deprive the community of health care choices on the Lakewood Hospital campus?

III. Argument of Law

A review of the Civil Rules of Procedure rule 37, in relevant part, states as follows:

(A)(2) Motion. If a deponent fails to answer a question propounded or submitted under Rule 30 or Rule 31, or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer or an order compelling inspection in accordance with the request. On matters relating to a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

. . .

(E) Before filing a motion authorized by this rule, the party shall make a reasonable effort to resolve the matter through discussion with the attorney, unrepresented party, or person from whom discovery is sought. The motion shall be accompanied by a statement reciting the efforts made to resolve the matter in accordance with this section.¹

(Emphasis added).

¹ Loc.R. 11(F) also requires that “the party seeking discovery shall first advise the court in writing that after personal consultation and sincere attempts to resolve differences they are unable to reach an accord. This statement shall recite those matters of which remain in dispute, and in addition, the date, time and place of such conference, and the names of all participating parties.”

REASONABLE, PERSONAL, AND SINCERE ATTEMPTS TO RESOLVE

In this matter, Plaintiffs' counsel initiated in-person conversations and emails, and made reasonable and sincere attempts, regarding Defendants' inadequate discovery response to interrogatories and requests for production of documents. Plaintiffs' counsel also wrote to Defendants' counsel, Tracy Stratford, on July 5, 2016, regarding Defendants' failure to provide the strategic plans and identity of the strategic planner for the Northeast Ohio regional hospital network that contains Lakewood Hospital. (Ex. 2). Defendants' counsel responded with a letter on July 6, 2016, stating the Defendants "stand by our objections to requests for strategic plans, and the identity of strategic consultants who were retained to create strategic plans, for hospitals other than Lakewood." (Ex. 2). On July 15, 2016, Plaintiffs' counsel confirmed in an email that the issue involving the strategic plan production and identify of the strategic consultant would have to be addressed by the Court. Thus, a discovery impasse has been reached regarding relevant and necessary information. CCF's regional hospitals strategic plan, which includes Lakewood Hospital, will demonstrate its long-term, concealed intention to close (i.e. decant) Lakewood Hospital (a leased facility operated by CCF) in favor of CCF's wholly-owned hospitals and to be built Avon Hospital throughout Northeast Ohio.

Thus, the within motion to compel is required and sanctions pursuant to Cir.R. 37 and Loc.R. 11 should be imposed by the Court.

INTERROGATORY REQUEST NO. 3

Plaintiffs properly submitted the following Second Request for Interrogatories (Ex. 1) to CCF on May 31, 2015:

3. Identify all third parties that CCF retained to prepare a strategic plan that would include CCF regional hospitals in Northeast Ohio from January 1, 2005, to the present.

Defendant CCF objected to this question alleging it was “overly broad, unduly burdensome, and not relevant to the subject matter in the pending litigation.” (Ex. 1). CCF is legally and factually incorrect. The information is not too broad or burdensome. Further, the identity of the strategic consultant will lead to discoverable and admissible evidence demonstrating CCF's clandestine planning to close Lakewood Hospital to further its own economic interest and profitability. The evidence may also reveal admissions against its interest showing CCF's understanding that it was obligated to operate Lakewood Hospital for the entire length of the Lease and then return it as an ongoing concern with customary medical service lines for a full service regional hospital (i.e. Fairview Hospital, Avon Hospital, MetroHealth Hospital, etc.). Thus, CCF should be required to provide the identity of all strategic consultants used from January 1, 2005, to the present involving the planning for the Northeast Ohio regional hospital network, which includes Lakewood Hospital.

REQUEST FOR PRODUCTION OF DOCUMENT NOS. 2 THROUGH 4

Plaintiffs properly submitted the following Second Request for Production Nos. 2 through 4 (Ex. 1) on May 31, 2016:

2. Produce all strategic planning reports prepared internally or by a third party regarding the CCF regional hospital network in Northeast Ohio from January 1, 2005, to the present, including, but not limited to, all amendments to any strategic planning report.
3. Produce all strategic plans involving medical service lines for Lakewood Hospital from January 1, 2005, to the present.
4. Produce all strategic plans involving medical service lines for CCF regional hospitals in Northeast Ohio from January 1, 2005, to the present.

Defendants have not produced any of the sought documents pertaining to Plaintiffs' Second Request for Production Nos. 2 through 4 (Ex. 1), despite numerous meaningful attempts by Plaintiffs' counsel to obtain the relevant documents.

Plaintiffs seek to prove through the requested documents that CCF covertly planned to remove valuable medical services, equipment, and employees from Lakewood Hospital by deception. This premise has already been supported by the discovery of a “decanting plan” from a third party through a subpoena. This also ties directly to Plaintiffs’ claims of fraud, breach of contract, and breach of fiduciary duty. Thus, all the requested documents and information are reasonable, necessary, related to damage allegations, and required to be produced. Otherwise, Defendants are engaging in gamesmanship and disregarding the Civil Rules of Procedure. Such improper conduct should not be condoned by this Court.

IV. Conclusion

Therefore, Plaintiffs Edward Graham, et al. respectfully request an order from the Court compelling Defendants CCF and Toby Cosgrove **(1)** to answer fully and completely the Second Interrogatory Request No. 3 and **(2)** produce all responsive documents to the Second Request for Production of Documents Nos. 2 through 4. Plaintiffs, through their counsel, made reasonable, personal, sincere, and good faith efforts to resolve this discovery dispute prior to filing this motion. The Court should issue an order requiring Defendants’ complete and full discovery responses (i.e. an interrogatory answer and production of documents) within ten (10) days or incur the consequences of being prohibited from offering evidence and/or the denial of Defendants’ Motions to Dismiss under Civ. R. 12(B)(1) and 12(B)(6). Finally, Plaintiffs request that the Court issue an order for the attorney fees and costs incurred to pursue and submit the within motion to compel responses to the Second Request for Production of Documents and Interrogatories.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing **Plaintiffs' Motion to Compel Strategic Plan and Consultant for Lakewood Hospital** has been filed through the Court's electronic case management system ("ECM"), is available for review on-line by counsel and parties, will be provided notice of filing by the Court's ECM system, and a courtesy pdf copy is also being sent via email only on this 5th day of October, 2016, to the following:

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

EDWARD GRAHAM, *ET AL.*,

Plaintiffs,

v.

CITY OF LAKEWOOD, *ET AL.*,

Defendants.

CASE NO. CV15 846212

JUDGE JOHN P. O'DONNELL

**RESPONSE OF THE CLEVELAND CLINIC FOUNDATION AND DR. COSGROVE TO
PLAINTIFFS' SECOND COMBINED SET OF DISCOVERY UPON DEFENDANTS
THE CLEVELAND CLINIC FOUNDATION AND DELOS "TOBY" COSGROVE, M.D.**

For their response to Plaintiffs' Second Combined Set of Discovery upon Defendants The Cleveland Clinic Foundation and Delos "Toby" Cosgrove, M.D., The Cleveland Clinic Foundation ("CCF") and Dr. Cosgrove state as follows:

General Objections

1. CCF and Dr. Cosgrove object to the definition of "You" and "Defendants" as over broad and vague in that it includes tens of thousands of CCF employees and unidentified agents. To make these responses, CCF has searched for documents and information in those places where responsive documents or information are reasonably likely to be found in the possession, custody, or control of CCF, an Ohio nonprofit corporation. Dr. Cosgrove does not have any documents or information independent of what is in his possession, custody, or control as CCF's Chief Executive Officer.

2. CCF and Dr. Cosgrove object to the definition of "Plaintiffs" to the extent it means anything other than the five named plaintiffs who filed this suit. They further object to

Exhibit 1

the legally incorrect assertion that any one of the Plaintiffs is an “intended beneficiar[y]” of any contract, trust, or City law.

3. CCF and Dr. Cosgrove object to each and every request to the extent that it seeks information protected by the attorney-client privilege or work product doctrine.

4. CCF and Dr. Cosgrove object to the extent these requests seek information that is confidential, constitutes trade secrets, or includes proprietary business information. Any documents or information that are confidential will be produced only upon entry of a confidentiality protective order by the Court.

5. CCF and Dr. Cosgrove object to each and every request that seeks personal health information of any patient or information protected by the peer review privilege. That information is protected by federal and state privacy laws, as well as the physician-patient privilege.

6. CCF and Dr. Cosgrove object to these requests to the extent they seek documents that have already been produced. Documents already made available for inspection and copying will not be produced again in response to these requests.

7. Each of CCF’s and Dr. Cosgrove’s General Objections is incorporated by reference into the responses set forth below as if fully set forth therein. The following responses are therefore made subject to each of these General Objections. The assertion of the same, similar, or additional objections and specific objections to individual requests, or the failure to assert any additional objection to a request, does not waive any objection.

8. A statement that documents will be made available for inspection and copying does not mean and should not be interpreted to mean that such documents exist within CCF’s or Dr. Cosgrove’s possession, custody, or control.

Response to Second Request for Production of Documents

1. Produce all strategic planning reports for Lakewood Hospital prepared internally or by a third party from January 1, 2005, to the present, including, but not limited to, all amendments to any strategic planning report.

RESPONSE: Subject to and without waiving the general objections, CCF and Dr. Cosgrove will make available for inspection and copying strategic planning reports for Lakewood Hospital from January 1, 2005 to the present.

2. Produce all strategic planning reports prepared internally or by a third party regarding the CCF regional hospital network in Northeast Ohio from January 1, 2005, to the present, including, but not limited to, all amendments to any strategic planning report.

RESPONSE: CCF and Dr. Cosgrove object to this request as overly broad, unduly burdensome, and not relevant to the subject matter involved in the pending action. As indicated in response to Request for Production 1, subject to and without waiving their objections, CCF and Dr. Cosgrove will make available for inspection and copying strategic planning reports for Lakewood Hospital from January 1, 2005 to the present.

3. Produce all strategic plans involving medical service lines for Lakewood Hospital from January 1, 2005, to the present.

RESPONSE: As indicated in response to Request for Production 1, subject to and without waiving the general objections, CCF and Dr. Cosgrove will make available for inspection and copying strategic planning reports for Lakewood Hospital from January 1, 2005 to the present.

4. Produce all strategic plans involving medical service lines for CCF regional hospitals in Northeast Ohio from January 1, 2005, to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as overly broad, unduly burdensome, and not relevant to the subject matter involved in the pending action. As indicated in response to Request for Production 1, subject to and without waiving their objections, CCF and Dr. Cosgrove will make available for inspection and copying strategic planning reports for Lakewood Hospital from January 1, 2005 to the present.

5. Produce all meeting minutes and all reports that were generated from, presented to, and/or prepared for CCF pursuant to the Cleveland Clinic Strategy Council which was newly formed and identified in the Western Region Management Report in December 2008.

RESPONSE: CCF and Dr. Cosgrove object to this request as overly broad, unduly burdensome, and not relevant to the subject matter involved in the pending action. Subject to and without waiving their objections, CCF and Dr. Cosgrove will make available for inspection and copying meeting minutes or reports from the Cleveland Clinic Strategy Council that refer to Lakewood Hospital.

6. Produce all documents CCF provided to Standard & Poor's Research pertaining to Lakewood Hospital and identified at page 9 of the *Ohio Higher Educational Facility Commission Cleveland Clinic Health System; Hospital; System* (May 9, 2013).

RESPONSE: Subject to and without waiving the general objections, CCF and Dr. Cosgrove will make available for inspection and copying documents CCF provided to Standard & Poor pertaining to Lakewood Hospital and identified on page 9 of the May 9, 2013 report referenced in the request.

7. Produce all CCF, LHA, and third party prepared documents identifying medical service lines that existed as of January 1, 2005, for the CCF regional hospital network in Northeast Ohio and the changes and/or repositioning of those medical service lines from January 1, 2005 to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as overly broad, unduly burdensome, and not relevant to the subject matter involved in the pending action.

8. Produce all records and documents related to the CCF and LHA executive leadership retreat from April 16, 2010, which includes, but is not limited to, agenda, presentations, PowerPoint presentations, sign-in sheets, matrix of responsibility and completion dates, and any and all subsequent meetings and/or retreats documents that amend and/or supplement the above document categories identified.

RESPONSE: CCF and Dr. Cosgrove object to the phrase “and any and all subsequent meetings and/or retreats documents that amend and/or supplement the above document categories identified” as unintelligible. Subject to and without waiving their objections, CCF and Dr.

Cosgrove will make available for inspection and copying documents related to the April 16, 2010 LHA executive leadership retreat.

9. Produce all conflict of interest questionnaires for LHA trustees from January 1, 2008, to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as overly broad, unduly burdensome, and not relevant to the subject matter involved in the pending action.

10. Produce a copy of all paper and/or digital (i.e. PowerPoint) presentations made at a community forum on November 9, 2010, at Lakewood Alive.

RESPONSE: Subject to and without waiving the general objections, CCF and Dr. Cosgrove will make available for inspection and copying any presentation made at a community forum on November 9, 2010 at Lakewood Alive.

11. Produce a copy of Vision for Tomorrow Board/Trustee authority matrix.

RESPONSE: CCF and Dr. Cosgrove object to this request as unintelligible.

12. Produce all documents and materials reviewed by the Advisory Committee appointed in December 2010 to review the Vision for Tomorrow and follow-up meetings. (This includes, but is not limited to, all subsequent meetings that transpired which reviewed the operational summary and financial aspects of the plan.)

RESPONSE: CCF and Dr. Cosgrove object to this request as vague and ambiguous. Subject to and without waiving their objections, CCF and Dr. Cosgrove will make available for inspection and copying documents reviewed by the LHA Board of Trustees Advisory Committee formed in December 2010 relating to Vision for Tomorrow.

13. Produce all Administrative Services slides and reports depicting shared services presented to LHA on December 12, 2011, and to the joint meeting of the Western Region on November 16, 2011, which include, but is not limited to, the summary of service line charges for 2006 through 2011 as discussed on October 21, 2011.

RESPONSE: Subject to and without waiving the general objections, CCF and Dr. Cosgrove will make available for inspection and copying the powerpoint slides relating to shared services that were presented on November 16, 2011 and December 12, 2011.

14. Produce the original “Lakewood Healthcare Partners: Helping Lakewood Become the Healthiest Community in America” initial report that led to the May 15, 2014, Draft v8.0 version of the proposal by CCF.

RESPONSE: Subject to and without waiving the general objections, CCF and Dr. Cosgrove will make available for inspection and copying all versions of the document titled “Lakewood Healthcare Partners: Helping Lakewood Become the Healthiest Community in America.”

15. Produce all interim and various drafts of the “Lakewood Healthcare Partners” document from the original draft through the “Draft v8.0” dated May 15, 2014, and going forward to the present.

RESPONSE: Subject to and without waiving the general objections, CCF and Dr. Cosgrove will make available for inspection and copying all versions of the document titled “Lakewood Healthcare Partners: Helping Lakewood Become the Healthiest Community in America.”

16. Produce all documents sent from Subsidiium to CCF regarding inpatient healthcare proposals for operating Lakewood Hospital.

RESPONSE: Subject to and without waiving the general objections, CCF and Dr. Cosgrove will make available for inspection and copying documents sent from Subsidiium to CCF regarding inpatient or outpatient healthcare proposals for operating Lakewood Hospital.

17. Produce all documents from Subsidiium to CCF regarding outpatient healthcare proposals for Lakewood Hospital.

RESPONSE: Subject to and without waiving the general objections, CCF and Dr. Cosgrove will make available for inspection and copying documents sent from Subsidiium to CCF regarding inpatient or outpatient healthcare proposals for operating Lakewood Hospital.

18. Produce CCF's responses to any and all communications from Subsidiium regarding Lakewood Hospital.

RESPONSE: Subject to and without waiving the general objections, CCF and Dr. Cosgrove will make available for inspection and copying responses to Subsidiium sent from CCF to Subsidiium regarding Lakewood Hospital.

19. Produce any and all CCF executive management, department, and/or committee meeting notes, internal memoranda, and/or formal resolutions that reviewed and then either approved or denied LHA's proposal to right-size Lakewood Hospital and build a new bed tower in 2007.

RESPONSE: CCF and Dr. Cosgrove object to this request as ambiguous. Subject to and without waiving their objections, CCF and Dr. Cosgrove will make available for inspection and copying meeting notes, memoranda or formal resolutions of CCF management or CCF's Board of Trustees that "reviewed and then either approved or denied LHA's proposal to right-size Lakewood Hospital and build a new bed tower in 2007."

Response to "Second Request for Interrogatories"

1. Identify all third parties, entities, and individuals at CCF hired to prepare a strategic plan for Lakewood Hospital from January 1, 2005, to the present by identifying the entity's name, address, and date of strategic plan.

RESPONSE: Lakewood Hospital Association hired Noblis and Navigant to conduct strategic assessments. Pursuant to Rule 33(C), the information requested about each can be derived from their reports, which have already been produced.

2. Identify all internal CCF strategic planning committees or departments that are responsible to review and prepare a strategic plan for Lakewood Hospital from January 1, 2005, to the present.

RESPONSE: None.

3. Identify all third parties that CCF retained to prepare a strategic plan that would include CCF regional hospitals in Northeast Ohio from January 1, 2005, to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as overly broad, unduly burdensome, and not relevant to the subject matter involved in the pending action.

4. Identify all committees or departments within CCF that are responsible for reviewing and preparing strategic plans for CCF regional hospitals in Northeast Ohio from January 1, 2005, to the present.

RESPONSE: Rule 33(A) provides: "A party shall not propound more than forty interrogatories to any other party without leave of court." No response is required to this interrogatory, pursuant

to Rule 33(A)(3): “When the number of interrogatories exceeds forty without leave of court, the party upon whom the interrogatories have been served need only answer or object to the first forty interrogatories.”

5. Identify all third parties and internal CCF departments or committees that are responsible for reviewing and preparing strategic plans for medical service lines for CCF regional hospitals from January 1, 2005, to the present.

RESPONSE: Rule 33(A) provides: “A party shall not propound more than forty interrogatories to any other party without leave of court.” No response is required to this interrogatory, pursuant to Rule 33(A)(3): “When the number of interrogatories exceeds forty without leave of court, the party upon whom the interrogatories have been served need only answer or object to the first forty interrogatories.”

6. Identify, beginning January 1, 2005, all medical service lines being performed at Lakewood Hospital and then set forth for each calendar year any deletions, additions, changes, and/or repositioning of the medical service lines at Lakewood Hospital.

RESPONSE: Rule 33(A) provides: “A party shall not propound more than forty interrogatories to any other party without leave of court.” No response is required to this interrogatory, pursuant to Rule 33(A)(3): “When the number of interrogatories exceeds forty without leave of court, the party upon whom the interrogatories have been served need only answer or object to the first forty interrogatories.”

7. Identify the CCF individual(s) and/or committee that reviewed and rejected LHA's proposal to right-size Lakewood Hospital and build a new bed tower that was approved by LHA in and then sent to CCF.

RESPONSE: Rule 33(A) provides: “A party shall not propound more than forty interrogatories to any other party without leave of court.” No response is required to this interrogatory, pursuant to Rule 33(A)(3): “When the number of interrogatories exceeds forty without leave of court, the party upon whom the interrogatories have been served need only answer or object to the first forty interrogatories.”

8. Identify the CCF individual and/or the committee that was responsible for preparing and responding to Subsidiary's proposal regarding Lakewood Hospital.

RESPONSE: Rule 33(A) provides: "A party shall not propound more than forty interrogatories to any other party without leave of court." No response is required to this interrogatory, pursuant to Rule 33(A)(3): "When the number of interrogatories exceeds forty without leave of court, the party upon whom the interrogatories have been served need only answer or object to the first forty interrogatories."

Response to "Second Request for Admissions"

1. Admit that until December 21, 2015, Lakewood Hospital was a government-owned facility that tied CCF through a long-term lease through 2026.

RESPONSE: No response is required pursuant to Rule 36(C), which provides: "If a party includes a request for admission in a document containing any other form of discovery, the party shall include a caption on the document that indicates the document contains a request for admission. A party is not required to respond to requests for admission that are not made in compliance with this division."

2. Admit that until December 21, 2015, CCF's contractual obligations to Lakewood Hospital required it to fund any cash shortfall, should one occur.

RESPONSE: No response is required pursuant to Rule 36(C), which provides: "If a party includes a request for admission in a document containing any other form of discovery, the party shall include a caption on the document that indicates the document contains a request for admission. A party is not required to respond to requests for admission that are not made in compliance with this division."

3. Admit that until December 21, 2015, CCF's contractual obligations to Lakewood Hospital require that the cash-to-debt ratio must always be equal to or at least a 1:1 ratio as of the end of its fiscal year.

RESPONSE: No response is required pursuant to Rule 36(C), which provides: “If a party includes a request for admission in a document containing any other form of discovery, the party shall include a caption on the document that indicates the document contains a request for admission. A party is not required to respond to requests for admission that are not made in compliance with this division.”

4. Admit that CCF, pursuant to its contracts with Lakewood Hospital and LHA, was required to return the inpatient Lakewood Hospital facility at the end of the lease in 2026 “as a going concern able to stand on its own.”

RESPONSE: No response is required pursuant to Rule 36(C), which provides: “If a party includes a request for admission in a document containing any other form of discovery, the party shall include a caption on the document that indicates the document contains a request for admission. A party is not required to respond to requests for admission that are not made in compliance with this division.”

5. Admit that CCF has had strategic plans for its regional hospital network in Northeast Ohio from January 1, 2005, to the present.

RESPONSE: No response is required pursuant to Rule 36(C), which provides: “If a party includes a request for admission in a document containing any other form of discovery, the party shall include a caption on the document that indicates the document contains a request for admission. A party is not required to respond to requests for admission that are not made in compliance with this division.”

6. Admit that from on or about January 1, 2010, to the present, CCF's strategic plan for the regional hospital network in Northeast Ohio proposed to close Lakewood Hospital.

RESPONSE: No response is required Pursuant to Rule 36(C), which provides: “If a party includes a request for admission in a document containing any other form of discovery, the party shall include a caption on the document that indicates the document contains a request for

admission. A party is not required to respond to requests for admission that are not made in compliance with this division.”

7. Admit that since at least January 1, 2010, CCF's strategic plan for its regional hospitals in Northeast Ohio proposed to invest in Fairview Hospital and build a new hospital in Avon, Ohio to service its patients' inpatient needs on the west side of Northeast Ohio.

RESPONSE: No response is required pursuant to Rule 36(C), which provides: “If a party includes a request for admission in a document containing any other form of discovery, the party shall include a caption on the document that indicates the document contains a request for admission. A party is not required to respond to requests for admission that are not made in compliance with this division.”

8. Admit that CCF has strategic plans to fund its regional hospital network in Northeast Ohio from January 1, 2010, to the present.

RESPONSE: No response is required pursuant to Rule 36(C), which provides: “If a party includes a request for admission in a document containing any other form of discovery, the party shall include a caption on the document that indicates the document contains a request for admission. A party is not required to respond to requests for admission that are not made in compliance with this division.”

9. Admit CCF's continued operation of Lakewood Hospital's inpatient facility, even if it ran at alleged losses, would not be an undue burden or financial hardship upon CCF based upon its other medical operations in Northeast Ohio and investment portfolio.

RESPONSE: No response is required pursuant to Rule 36(C), which provides: “If a party includes a request for admission in a document containing any other form of discovery, the party shall include a caption on the document that indicates the document contains a request for admission. A party is not required to respond to requests for admission that are not made in compliance with this division.”

Dated: June 28, 2016

s/ Tracy K. Stratford

James R. Wooley (0033850)

Tracy K. Stratford (0069457)

Katie M. McVoy (0080860)

JONES DAY

North Point

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Telephone: +1.216.586.3939

Facsimile: +1.216.579.0212

Counsel for Defendants

THE CLEVELAND CLINIC FOUNDATION

AND DR. COSGROVE

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via United States mail, this 28th day of June 2016, pursuant to Ohio R. Civ. P. 5(B)(2)(c), upon the following:

Counsel for Plaintiffs

Christopher M. DeVito
Morganstern, MacAdams & DeVito Co., L.P.A.
623 West St. Clair Avenue
Cleveland, OH 44113-1204

Counsel for Defendants

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-and-

Kristine Hayes
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Charitable Law Section
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Attorneys for Ohio Attorney General Mike DeWine

s/ Tracy K. Stratford

One of the Attorneys for Cleveland Clinic
Foundation and Delos ("Toby") Cosgrove, M.D.



MORGANSTERN, MACADAMS & DEVITO CO., L.P.A.

TRIAL ATTORNEYS AND COUNSELORS AT LAW

“Legal Solutions for Individuals, Families, and Businesses”

July 5, 2016

VIA EMAIL ONLY (tkstratford@jonesday.com)

Tracy K. Stratford
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114

Re: *Graham, et al. v. City of Lakewood, et al.*
Cuyahoga County Common Pleas Case No. CV-15-846212
MMD File No. G-15-123

Dear Ms. Stratford:

This letter responds to the envelope I received on Thursday, June 30, 2016, containing a Certificate of Service and narrative responses by The Cleveland Clinic Foundation and Dr. Cosgrove to Plaintiffs' Second Combined Set of Discovery upon Defendants The Cleveland Foundation and Dr. Cosgrove. First, thank you for timely placing in the mail the written responses. However, you have again failed to actually produce responsive documents as propounded by the written discovery. You have also failed to identify when and where the documents could be made available for inspection. Please immediately produce the documents at my office this week so where they can be inspected by Mr. Dever and I.

Second, as anticipated by your deposition objections and instruction to the witness Ms. Murphy not to answer, CCF and Dr. Cosgrove improperly objected to Request for Production of Documents seeking strategic planning reports regarding CCF's regional hospital network in Northeast Ohio from January 1, 2005, to the present. As discussed before the Judge, the strategic planning just for Lakewood Hospital is insufficient because the CCF enterprise admittedly was coordinating medical service lines, staff, expenses, etc. through a larger planning process that involved Lakewood Hospital, the Main Campus, Northeast Ohio and regional hospitals. For example, Ms. Murphy was the president of both Lakewood Hospital and Fairview Hospital for multiple years and tasked with making these two facilities both economically sustainable. Thus, please remove your objections and agree to produce documents responsive to Request Nos. 2 and 4. Similarly, Request No. 7 has narrowly requested the identity of medical service lines that existed as of January 1, 2005, for CCF's regional hospital network in Northeast Ohio and the changing and repositioning of those service lines to the present. Thus, this information, because it affects services flowing to and leaving Lakewood Hospital, should be provided.

623 West Saint Clair Avenue, Cleveland, Ohio 44113-1204



MORGANSTERN, MACADAMS & DEVITO CO., L.P.A.

TRIAL ATTORNEYS AND COUNSELORS AT LAW

“Legal Solutions for Individuals, Families, and Businesses”

Request No. 9 sought conflict of interest questionnaires from LHA trustees, which are relevant and necessary and should be provided. From your response that the request is “overly broad, unduly burdensome,” there must exist many documents, and be vast in number, demonstrating admitted conflicts by the LHA Board members. Thus, the removal of the objection and production of these relevant documents is required.

Regarding Plaintiffs' Second Request for Interrogatories, Defendants improperly cited to Rule 33(A) and did not respond to Request Nos. 4 through 8. Please immediately provide written responses or I will be forced to seek Court intervention regarding the objection alleging an inappropriate number upon the two Defendants CCF and Dr. Cosgrove, which would total 80 interrogatory requests. Additionally, please withdraw your objection and provide the identity of all CCF retained third parties that prepared strategic plans that would include CCF regional hospitals in Northeast Ohio from January 1, 2005, to the present as requested in Interrogatory No. 3.

Finally, Defendants cited to Rule 36(C) in response to Plaintiffs' Second Request for Admissions Nos. 1 through 9. Even though the caption did include a request for admissions, this technical objection is improper, evasive, and demonstrates the discovery obstruction that has been occurring in this matter. Please agree to waive any and all technical objection to not having the word “admission” in the caption of the second set of discovery and produce relevant responses.¹

Please do not hesitate to call if you wish to further discuss, but this sincere, personal, and reasonable attempt is being made under the Ohio Civil Rules and Cuyahoga Local Rules to try and resolve a discovery dispute.

Very truly yours,

s/ Christopher M. DeVito

Christopher M. DeVito

ChrisMDeVito@gmail.com

CMD/nk

Enclosure

cc: Steven Dever (via email [only](#))

All Counsel (via email [only](#))

All Clients (via email [only](#))

L:\CLIENTS-CMD\LakewoodHospital\Letters&Emails\2016.07.05.DeVito-Stratford.Ltr.docx

1 Because CCF and Dr. Cosgrove continue to delay and impede discovery in this matter, please find enclosed Plaintiffs' Third Request for Admissions to facilitate proper and complete responses in a timely fashion.

JONES DAY

NORTH POINT • 901 LAKESIDE AVENUE • CLEVELAND, OHIO 44114-1190
TELEPHONE: 216-586-3939 • FACSIMILE: 216-579-0212

Direct Number: (216) 586-7288
tkstratford@JonesDay.com

JP502313:bm
082988-635003

July 6, 2016

Christopher M. DeVito, Esq.
Morganstern, MacAdams & DeVito Co., L.P.A.
623 West Saint Clair Avenue
Cleveland, OH 44113

Dear Mr. DeVito:

I am writing in response to your letter dated July 5.

1. I am happy to send a set of the production documents to your office. Please let me know what copy service you would like to use and let the service know that you authorize it to charge you for a copy set.

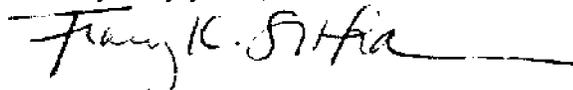
2. We stand by our objections to requests for strategic plans, and the identity of consultants who were retained to create strategic plans, for hospitals other than Lakewood.

3. Your request for all conflict of interest questionnaires is overly broad and has no relationship to the allegations in the complaint. Please tailor your request to particular individuals and years that are relevant to claims in the complaint.

4. I do not understand your reading of Rule 33(A). You have propounded in excess of 40 interrogatories to The Cleveland Clinic Foundation and Dr. Cosgrove already.

5. With regard to your requests for admissions, I will disregard your inflammatory language and accusations of unprofessionalism, referring you instead to our Court of Appeals: "Failure to provide notice to the opposition that such requests are sought circumvents the fairness imbedded in the discovery process." *Secharan v. Macy*, No. 75130, 1999 WL 980579, at *7 (Ohio Ct. App. Oct. 28, 1999). We stand by our objection to your failure to follow rules that are intended to preserve fairness in discovery.

Very truly yours,



Tracy K. Stratford

cc: Counsel of Record

NAI-1501453560v1



Christopher DeVito <chrismdevito@gmail.com>

Re: Graham v. Lakewood

1 message

Christopher DeVito <chrismdevito@gmail.com>

Fri, Jul 15, 2016 at 2:32 PM

To: Tracy Stratford <tkstratford@jonesday.com>

Cc: Nancy Krajcer <nancykrajcer@gmail.com>, Steven Dever <astevendevery@aol.com>, Jennifer Armstrong <jarmstrong@mcdonaldhopkins.com>, "Jennifer L. Swallow" <jennifer.swallow@lakewoodoh.net>, Joseph Schmansky <Joseph.Schmansky@ohioattorneygeneral.gov>, "James R. Wooley" <jrwooley@jonesday.com>, "O. Judson Scheaf" <jscheaf@mcdonaldhopkins.com>, "Kevin M. Butler" <kevin.butler@lakewoodoh.net>, Katie McVoy <kmmcvoy@jonesday.com>, Kristine Hayes <Kristine.Hayes@ohioattorneygeneral.gov>, Robert Cahill <rcahill@sutter-law.com>, "Sara H. Jodka" <sjodka@mcdonaldhopkins.com>, "Thomas M. Ehrnfelt" <tehrnfelt@healthlaw.com>, "Walter F. Ehrnfelt" <walter@healthlaw.com>, "Huntsberger, Jeffrey R." <jhuntsberger@mcdonaldhopkins.com>

Ms. Stratford,

I do not agree to pay for an unknown document dump by CCF. Please produce the documents in my office for inspection or make them available next week at your office in a conference room for Mr. Dever and I to review at our convenience.

We will raise your refusal to provide information and documents related to CCF past strategic plans involving the Northeast Ohio regional hospitals, which includes Lakewood Hospital, with the Court.

The request for conflict questionnaires is relevant, should not be overly burdensome, and should be responded to in its entirety. But to begin our review and without waiving our rights to later request additional documents and complete information, please produce the conflict questionnaires for all CCF Board members of LHA Board members for the last ten years that IDENTIFIES a conflict.

Regarding interrogatories, a party is allowed to request up to 40 interrogatories upon each defendant. You represent CCF and Dr. Cosgrove. Thus, Plaintiffs have the right by the Civil Rules to request up to 80 interrogatories upon these two defendants. Further, to avoid unnecessary motion practice, even if you believe or it is true that Plaintiffs are limited to 40 questions to both CCF and Dr. Cosgrove, I am requesting you agree to the few additional questions posted in this matter.

Your last point about "fairness" is ironic. Obviously you and your clients were aware of the admissions (i.e. not surprised even though not in the caption of the requests) but choose to interpose delay and obstruction on a technicality. Since you have not waived your improper objection, I have also sent a third set of admissions with the caption denoting such to ensure "fairness."

Chris

On Wed, Jul 6, 2016 at 3:57 PM, Tracy Stratford <tkstratford@jonesday.com> wrote:

Tracy K. Stratford
 Partner
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From: Nancy Krajcer <nancykrajcer@gmail.com>
 Electronically Filed 10/05/2016 17:00 / MOTION / CV 15 846212 / Confirmation Nbr. 874999 / BATCH
 To: Tracy K. Stratford <tkstratford@jonesday.com>, Christopher DeVito <chrismdevito@gmail.com>

Cc: "James R. Wooley" <jrwooley@jonesday.com>, Jennifer Armstrong <jarmstrong@mcdonaldhopkins.com>, "Jennifer L. Swallow"

<jennifer.swallow@lakewoodoh.net>, Joseph Schmansky <Joseph.Schmansky@ohioattorneygeneral.gov>, Katie McVoy <kmmcvoy@jonesday.com>, "Kevin M. Butler" <kevin.butler@lakewoodoh.net>, Kristine Hayes <Kristine.Hayes@ohioattorneygeneral.gov>, Mariam Keramati <mkeramati@jonesday.com>, "O. Judson Scheaf" <jscheaf@mcdonaldhopkins.com>, Robert Cahill <rcahill@sutter-law.com>, "Sara H. Jodka" <sjodka@mcdonaldhopkins.com>, Steven Dever <astevendever@aol.com>, "Thomas M. Ehrmfelt" <tehrmfelt@healthlaw.com>, "Walter F. Ehrmfelt" <walter@healthlaw.com>
Date: 07/05/2016 01:54 PM
Subject: Graham v. Lakewood

Ms. Stratford,

Attached please find correspondence and Plaintiffs' Third Request for Admissions from Mr. DeVito in the above matter.

Nancy Krajcer

nancykrajcer@gmail.com

Assistant to Christopher M. DeVito, Esq.

Morganstern, MacAdams & DeVito Co., L.P.A.

623 West Saint Clair Avenue, Cleveland, OH 44113-1204

Phone 216-687-1212 / Fax 216-621-2951

www.mmd-law.com[attachment "2016.07.05.DeVito-Stratford.Ltr.pdf" deleted by Tracy Stratford/JonesDay] [attachment "2016.07.05.CCF&Cosgrove.3rd Request for Admissions.pdf" deleted by Tracy Stratford/JonesDay] [attachment "2016.07.05.CCF&Cosgrove.3rd Request for Admissions.docx" deleted by Tracy Stratford/JonesDay]

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—
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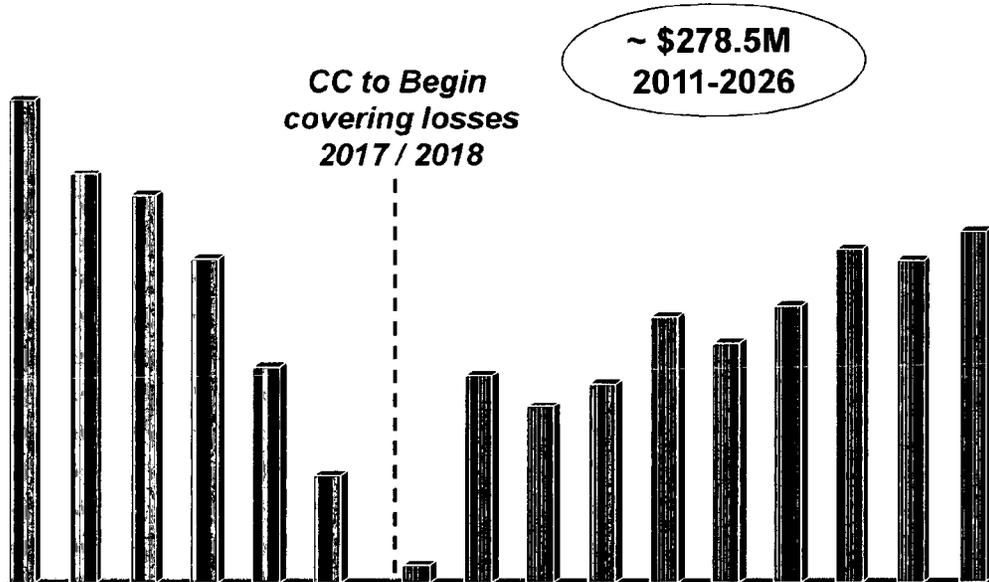
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Status Quo Scenario

- **Continue all services currently offered thru term of the lease (Dec 2026)**
- **Does not include any additional PI initiatives**
- **Major capital needs required to keep the hospital building in operational condition**

Exhibit 3

Operating Loss & Capital Needs



Cleveland Clinic

Lakewood Hospital

Defining a Brighter Future ***Draft 2.1***

10/25/2010

Exhibit 4

Realities

- **Best case scenario – income will cover direct expenses, but no margin for reinvestment/capital needs**
- **City owned asset leased at \$1m/y till 2027**
- **Facility is 80% Class C quality**
- **ADC Med/Surg 110 pts (60% occupancy including OB)**
- **ADC Post acute 50 pts (66% occupancy)**
- **Fairview and Lutheran able to absorb LWD volume, but will need reinvestment**
- **Political process will take time**

Next Steps

- **Share vision with selected leaders**
- **Move to maintain current balance sheet**
 - **Transfer OB to FV (saves \$1.5 m+/yr)**
- **Financial model of end state options**
- **Capital plan**
- **Proposal for community wellness and outreach programs for LHA / LHF**
- **Engage leaders and tell the story of change and a brighter future**
- **Medical staff preparation**
- **Board presentations and approvals**

IP Vol. Redistribution – Projected Net Financial Impact

- In estimating the financial contribution of incremental volumes:
- The revenue/payer mix from LKH was used – but was adjusted to reflect the DSH, HCAP, GME, and IME payment levels of the receiving hospitals
- The estimated inpatient expense basis for the receiving hospital was used – additional step fixed costs (20% of direct costs) were also added.

	2012	2013	2014	2015	2016
Fairview	\$ 5,533	\$ 5,372	\$ 5,258	\$ 5,142	\$ 5,022
Huron	88	89	85	89	83
Marymount	310	303	293	293	288
Lutheran	2,775	2,737	2,703	2,674	2,644
Other CHS	152	146	141	137	132
Main Campus	989	982	971	929	899
Total	\$ 12,226	\$ 11,975	\$ 11,796	\$ 11,514	\$ 11,427

1) Estimates for redistribution of inpatient volume by service line and ZIP code based on historical patient origin data. 2) Does not include the spin-off revenue from Lakewood FHC. 3) Does not include impact of transfer cases to Main Campus.

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Exhibit 5

FHC Scenario – Inpatient Volume Redistribution

- **Redistributed based on ZIP code and service line to other CCHS and non-CCHS facilities in the same proportion that non-Lakewood volume is currently distributed**
- **CCHS is assumed to retain approximately 50% of Lakewood's inpatient volumes**

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Fairview	3,466	3,397	3,350	3,303	3,257
Huron	96	94	93	92	90
Marymead	135	133	131	129	127
Lutheran	805	820	808	787	766
Other CCHS	106	104	102	101	99
Main Campus	733	719	709	699	689
Total	5,372	5,267	5,193	5,120	5,048

* *Estimates for redistribution of inpatient volume by service line and ZIP code based on historical patient origin data.*

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Lakewood Hospital – Strategic Planning Update | March 10, 2011 | 45

Exhibit 6