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June 25, 2013

Delivery: Via PDF attachment to addressees
With original via U.S. Mail to County Clerk

Board of County Commissioners
Washakie County
Att: Mary Grace Stauch, County Clerk
P.O. Box 260
Washakie County courthouse
1001 Big Horn Avenue
Worland, WY 82401

RE: Washakie County Memorial Hospital Board of Trustees-
Structure, Bylaws, Function and Duties

Dear Gentlemen:

Among other matters, you have asked this firm to advise you with respect to the structure, bylaws, function and duties of the Washakie County Memorial Hospital Board of Trustees.

W.S. 18-8-104(a) places the management and control of the Washakie County Memorial Hospital ("Hospital") in a board of trustees appointed by the Washakie County Commissioners with the seven trustees serving five-year terms. (The Commissioners set the number of Trustees at not less than five or more than eleven.) The trustees are required to provide financial and operating information to the county commissioners, W.S. 18-8-107, and major actions such as leasing the hospital to a third party or entering into management contracts for the hospital require approval and consent of the county commissioners, W.S. 18-8-108(a).

The current "Bylaws/Rules and Regulations of Washakie Memorial Hospital" were adopted on November 5, 1973 ("Bylaws"), under the then management structure of the Lutheran Hospitals and Homes Society of America, Fargo, North Dakota, predecessor to Banner Health. While the structure of the Bylaws (medical staff, committees, etc.) is basically sound, there are three fundamental problems.

First, the Bylaws identify Banner Health as the "governing body" when by Wyoming statute that authority is vested in the Trustees.

Second, the Bylaws establish a "local board" approved by the governing body to advise the governing body.

Third, there are no provisions governing conflicts of interest and recusal of a trustee(s) from participating in the decision-making process when there are conflicts.

Historically, the Trustees appointed by the County Commissioners have served as the "local board" under the Bylaws. Because Banner Health and its predecessors have continuously operated the Hospital under lease agreements since July 3, 1962, the lease terms have minimized the role of the Trustees in the management and control of the Hospital.

There are three basic forms under which the Hospital can be operated: (1) direct management where the Trustees hire professional hospital administrators to operate the Hospital; (2) contract management by a company retained by the trustees where the management company provides a team of professional hospital administrators to operate the Hospital; and (3) a lease of the Hospital to a third party to operate the Hospital. Generally, under the first two forms, the Hospital bears the financial risk of its own operations, while under the third form, the lessee bears the financial risk of operating the Hospital. Regardless of the operational form selected for the future, the Bylaws need to be revised to comply with the statutory requirement that the Trustees function as the managers of the Hospital.

The duties of the Trustee in performing their management function are primarily three.

First, the Trustees need to hold the professional hospital administrators accountable for the performance of the Hospital with respect to financial results, quality of care and availability of care. This requires the Trustees to rigorously examine the recommendations of the professional hospital administrators and question "why" and "how" those recommendations are in the best interest of providing cost-effective health care to the community.

Second, the Trustees need to establish the policies under

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which the Hospital provides hospital care and services to the community. This includes the scope of services to be made available and the physical facilities in which the services are to be provided. Establishing these policies does not include micro-management of the day-to-day operations of the Hospital. That is the responsibility of the professional hospital administrators. The Trustees should monitor the performance of the professional administrators in their day-to-day management, but should not attempt, either individually or collectively, to engage in day-to-day management.

Finally, the Trustees should have regular communications with the County Commissioners regarding the Hospital's financial condition, scope of services and quality of care. In this regard, you are encouraged to designate one the Commissioners as a liaison with the Hospital to attend the Trustees board meetings.

In the exercise of the Commissioners' duty to appoint persons to the Board of Trustees, it is imperative that your consideration of candidates includes a thorough discussion with the candidates of the broader scope of duties and responsibilities that the Trustees will be performing. This may discourage people from seeking appointment or re-appointment as a Trustee. However, it is only fair to both the community and the Trustees that there be a shared understanding of the scope of their duties and responsibilities.

Very truly yours,


Steven F. Freudenthal

Cc: Marcy Argeris, County Attorney