### IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

EDWARD GRAHAM, ETAL.,

Plaintiff,

CASE NO. cv 15 846212

JUDGE JOHN P. O'DONNELL

v.

CITY OF LAKEWOOD, ETAL.,

Defendant.

# DEFENDANT THE CLEVELAND CLINIC FOUNDATION'S MOTION TO STRIKE PLAINTIFFS' "EMERGENCY" MOTION TO COMPEL

Plaintiffs are five Lakewood taxpayers with no individualized, special interest in Lakewood Hospital. To be sure, they, like all of Lakewood's 50,000 residents, have a common interest in their community and in their City's assets. But unlike the other 50,000 residents, these five residents filed a lawsuit with the hope that *their* views about Lakewood Hospital would, by judicial fiat, outweigh the views of every other resident, the City Council, and the Mayor. Undeterred by the legal defects in the complaint, the Plaintiffs have used this lawsuit in the media to accuse the defendants of a wild conspiracy and other nefarious acts, giving momentum to their political agenda while cloaked with the litigation privilege. Consistent with the rules of civil procedure and well-established judicial process, the Court has provided Plaintiffs with every opportunity to shore up those defects, providing a more than generous briefing schedule for the motion to dismiss, which Plaintiffs have had since July 10 (with minor revisions to address the amended complaint that was filed on August 21).

On the eve of having to respond to the motions to dismiss, faced with the reality that this lawsuit has no legal basis, Plaintiffs filed an "emergency" motion to compel discovery. That

motion bears no resemblance to a proper motion to compel. For starters, it does not identify the discovery requests that were served and are the subject of the motion. It does not attach the requests or responses that the Court is asked to consider. It references deposition testimony that is mischaracterized but not attached. And it does not certify, in writing, that Plaintiffs' counsel made any effort to meet and confer to avoid unnecessary motion practice. For each of these reasons, the motion should be stricken.

While we could speculate about why experienced counsel would so blatantly disregard the rules and file a motion to compel that they know will not survive the procedural requirements of this Court, the facts speak for themselves. On July 26, Plaintiffs' counsel, chair of the Save Lakewood Hospital Legal Committee, explained to the group that documents obtained in discovery could be made public simply by filing documents with the Court: "Motions will be filed and those documents will be public record." Plaintiffs then filed an amended complaint (attaching documents obtained in discovery), a reply in support of their motion for preliminary injunction (attaching documents obtained in discovery), and the "emergency" motion that is at issue here (attaching documents obtained in discovery). Notably, last Thursday afternoon (September 17) at 1:48 p.m., it was announced that Dennis Kucinich would hold a press conference on Monday, September 21, at 10:00 a.m., and a public forum that evening at 7:00

<sup>&</sup>lt;sup>1</sup> See Local Rule 8(E) ("Whenever a party files a motion with the Court that relates to or involves interrogatories or requests for admissions, they shall be attached to the motion.").

<sup>&</sup>lt;sup>2</sup> See Local Rule 11(B) ("If the motion requires consideration of facts not appearing of record, the movant shall serve and file copies of all affidavits, depositions, photographs or documentary evidence which the movant desires to submit in support of the motion.").

<sup>&</sup>lt;sup>3</sup> See Local Rule 11(F) ("To curtail undue delay in the administration of justice, no discovery procedure filed under Rule 26 through 37 of the Rules of Civil Procedure to which objection or opposition is made by the responding party shall be taken under consideration by the Court, unless 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 which remain in dispute, and in addition, the date, time and place of such conference, and the names of all participating parties. It shall be the responsibility of counsel for the party seeking discovery to initiate such personal consultation.").

<sup>&</sup>lt;sup>4</sup> Save Lakewood Hospital, *Meeting Minutes* (July 26, 2015), available at http://savelakewoodhospital.org/minutes/ (accessed Sept. 24, 2015) (attached as <u>Exhibit 1</u>).

p.m., regarding Lakewood Hospital.<sup>5</sup> Mr. Kucinich reportedly "joined the fight to save Lakewood Hospital after reading details of a document filed last Friday in Cuyahoga County Common Pleas Court." The "emergency" motion to compel was filed at close of business on Friday afternoon, more than 24 hours *after* Mr. Kucinich's publicity tour had been announced. On Monday morning, Mr. Kucinich distributed 108 pages of documents that had been obtained in discovery and marked as deposition exhibits.

There is little doubt that Plaintiffs are using this defective lawsuit to abuse the discovery process, obtain and publicize private documents, and make inflammatory accusations to influence public opinion and the democratic process. While the Cleveland Clinic Foundation ("CCF") acknowledges that these Plaintiffs, their counsel, and all Lakewood citizens have the right to formulate and express opinions to participate in public discourse about the future of Lakewood Hospital, these Plaintiffs do not have the right to abuse the judicial system to create discovery burdens, issue inflammatory and untrue statements, and generate publicity for their political cause.<sup>7</sup>

Enough is enough. This "emergency" motion should be stricken.

### I. PROCEDURAL BACKGROUND

#### A. THE LAWSUIT AS MEDIA FODDER

The procedural history of this matter is telling. Plaintiffs filed their lawsuit on May 28, 2015, bringing a variety of claims against the City, Lakewood Hospital Association ("LHA"),

<sup>&</sup>lt;sup>5</sup>Lakewood Observer, *The Observation Deck* (Sept. 17, 2015), available at http://lakewoodobserver.com/forum/viewtopic.php?f=7&t=13924 (accessed Sept. 25, 2015) (attached as <u>Exhibit 2</u>).

<sup>&</sup>lt;sup>6</sup> Cleveland.com, Former U.S. Rep. Dennis Kucinich says he supports Save Lakewood Hospital because of recent court brief (Sept. 22, 2015), available at http://www.cleveland.com/Lakewood/index.ssf/2015/09/former\_congressman\_dennis\_kuci.html#incart\_story\_packa ge (accessed Sept. 23, 2015) (attached as Exhibit 3).

<sup>&</sup>lt;sup>7</sup> Robb v. Chagrin Lagoons Yacht Club, Inc., 75 Ohio St. 3d 264, 271 (1996) ("Simply, abuse of process occurs where someone attempts to achieve through use of the court that which the court is itself powerless to order.").

CCF, Lakewood Hospital Foundation ("LHF"), Subsidium and individuals related to some of those entities. (Am. Compl.) They held a press conference that day. They filed a Motion for Temporary Restraining Order and Preliminary Injunction on July 7, 2015, a motion that was immediately reported to the news media. After Defendants' oppositions to Plaintiffs' preliminary injunction motion made clear the motion was unlikely to succeed—potentially bringing to an end any need Plaintiffs would have for discovery in advance of the Court's ruling on Defendants' motion to dismiss—Plaintiffs amended their complaint, forestalling any ruling on their motion for preliminary injunction and delaying adjudication of the motion to dismiss. (Am. Compl., Aug. 15, 2015.) Just yesterday, they asked for two more weeks, on top of the eleven weeks they have had already, to respond to the motion to dismiss, attempting to further avoid having to address the merits of their claims and extending the life of this lawsuit.

Before Plaintiffs amended their complaint, however, they filed a reply in support of their motion for preliminary injunction, to which they attached a document received from third-party Westlake, Reed, Leskoski. (July 31, 2015 Reply in Support of Mtn. for Preliminary Injunction, refiled Aug. 6, 2015.) The document, which Plaintiffs have dubbed the "Decanting Plan," is a planning document for Fairview Hospital, created by architects (not hospital executives), who were assisting in the development of a twenty-five year Master Plan for Fairview (not Lakewood) Hospital, that considers whether Fairview would have the structural capacity to serve additional patients if a decision were ever made to close Lakewood Hospital. Just two days after Plaintiffs filed the document with the Court, it appeared on the "Save Lakewood Hospital"

<sup>&</sup>lt;sup>8</sup>Save Lakewood Hospital, *May 28, 2015 Press Conference*, video available at http://savelakewoodhospital.org/may-28-2015-press-conference/ (accessed Sept. 25, 2015) (attached as Exhibit 4).

 $<sup>^9</sup>$  See, e.g., wkyc.com, Future of Lakewood Hospital up in the air (July 8, 2015), available at http://www.wkyc.com/story/news/local/cuyahoga-county/2015/07/08/lakewood-hospital/29885841/ (accessed Sept. 25, 2015) (attached as <u>Exhibit 5</u>).

<sup>&</sup>lt;sup>10</sup> Save Lakewood Hospital, *Meeting Minutes* (Aug. 16, 2015), available at http://savelakewoodhospital.org/minutes/ (accessed Sept. 23, 2015) (attached as <u>Exhibit 6</u>) (reporting that Court extended the briefing schedule and status conference until after the election and "[a]s a result, we are still in court").

webpage, with an editorial distorting the document's contents.<sup>11</sup> Dennis Kucinich distributed that same document—and several others totaling 108 pages—on Monday at a press conference in front of Lakewood Hospital.<sup>12</sup> Neither Save Lakewood Hospital nor Mr. Kucinich is a party to this litigation.

### B. **DISCOVERY**

On June 25, 2015, Plaintiffs served CCF with their first discovery requests. <sup>13</sup> The requests included 37 interrogatories, 29 requests for admission and 67 requests for production of documents. Plaintiffs' requests to CCF contained numerous overbroad, vague and irrelevant requests for production. For instance:

Request for Production No. 1: Produce all documents and communications providing a breakdown of operating expenses at each wholly-owned and leased CCF hospital, including, but not limited to, an itemization of each individual operating expense at each separate CCF hospital including Lakewood Hospital, Main Campus, Fairview Hospital, Lutheran Hospital, the new Avon Hospital, etc. from 1996 to the present.

Request for Production No. 20: Produce any and all documents and communications regarding community assessment needs in Northwest Ohio, including the Western Region and Lakewood Hospital service area, individually and separately from 1996 to the present.

<u>Request for Production No. 28</u>: Produce any and all opinion letters received by you [CCF] from the Ohio Ethics Commission from 1996 to the present.

<u>Request for Production No. 33</u>: Produce any and all documents and communications between you, LHA and/or the Ohio Department of Health from 1996 to the present.

<u>Request for Production No. 38</u>: Produce all inter-company billings for pharmaceuticals at Lakewood Hospital and CCF.

Request for Production No. 58: Produce all documents and communications regarding the ICD9, CPT, and DRG annual breakdown by year and CCF hospital individually and separately from 1996 to the present in electronic database format.

<sup>&</sup>lt;sup>11</sup>Save Lakewood Hospital, "*Decanting*" *Lakewood Hospital* (Aug. 2, 2015), available at http://savelakewoodhospital.org/decanting-lakewood-hospital/ (accessed Sept. 25, 2015) (attached as <u>Exhibit 7</u>).

<sup>&</sup>lt;sup>12</sup> Save Lakewood Hospital, *Kucinich hosts press conference*, *forum* (Sept. 21, 2015), available at http://savelakewoodhospital.org/ kucinich-hosts-press-conference-forum/ (accessed Sept. 25, 2015) (attached as Exhibit 8).

<sup>&</sup>lt;sup>13</sup> Plaintiffs' First Discovery Requests to the Cleveland Clinic Foundation (attached as Exhibit 9).

<u>Request for Production No. 63</u>: Produce any and all documents and communications regarding the closure of Huron Hospital.

(*Id*.)

CCF served its responses on July 31, 2015. <sup>14</sup> CCF responded to many of Plaintiffs' requests with no objection, and while it did object to a number of requests, CCF responded to the objectionable requests to the extent portions of those requests were not objectionable. CCF made clear in its responses what documents it intended to produce to Plaintiffs. At no time since CCF served its responses on Plaintiffs have Plaintiffs challenged CCF's objections, offered to narrow, clarify, or otherwise revise their discovery requests to make them reasonable, or provided any explanation as to why CCF's responses were inappropriate.

Following its receipt of Plaintiffs' discovery requests, CCF began to collect the 20-years worth of information. In advance of the then-scheduled preliminary injunction hearing, CCF's counsel offered to make the documents it had gathered to date available for inspection. <sup>15</sup>

Plaintiffs' counsel declined. <sup>16</sup> On September 3, 2015, CCF made available to Plaintiffs' counsel all of the documents it and LHA had gathered to date that they had agreed to produce in their respective responses. Those documents included 20 years of board meeting minutes, committee meeting minutes and financial statements from both LHA and CCF, hundreds of pages of reports prepared by Subsidium, CCF and outside consulting firms, communications relating to services at Lakewood Hospital, the agreements at the heart of this lawsuit, CCF's service line assessments of Lakewood Hospital, and detailed statistics relating to the services provided at Lakewood Hospital. <sup>17</sup> CCF organized each type of document chronologically and provided them to

<sup>&</sup>lt;sup>14</sup> The Cleveland Clinic Foundation's Responses to Plaintiffs' First Requests for Discovery, hereinafter, "CCF Responses" (attached as <u>Exhibit 10</u>).

<sup>&</sup>lt;sup>15</sup> Aug. 5, 2015 email from T. Stratford to C. DeVito (attached as Exhibit 11).

<sup>&</sup>lt;sup>16</sup> Aug. 7, 2015 email from C. DeVito to T. Stratford (attached as Exhibit 12).

<sup>&</sup>lt;sup>17</sup> Sept. 11, 2015 letter from K. McVoy to C. DeVito (attached as Exhibit 15).

Plaintiffs' counsel in labeled gussets identifying each class of documents. Plaintiffs' counsel spent several hours reviewing documents. Plaintiffs' counsel was to provide CCF's counsel with a final decision on which documents they would like CCF to copy. At the end of Plaintiffs' review, CCF's counsel confirmed that CCF continued to search to identify additional responsive documents and would make those documents available when and if they were located.

On September 4, 2015, Plaintiffs' counsel sent a letter to CCF's counsel demanding that CCF produce additional documents. <sup>18</sup> While the letter set forth a litany of complaints, it did not address a single one of CCF's objections to Plaintiffs' myriad requests or offer to reach a compromise on any of the burdensome requests that sought documents having no ostensible relationship to Lakewood Hospital. Three business days later, Plaintiffs sent a second letter to CCF, again demanding the production of additional documents but failing to address the objections set forth in CCF's responses. <sup>19</sup>

CCF responded on September 11, 2015. CCF corrected a number of inaccuracies in Plaintiffs' counsel's letters, requested that Plaintiffs' counsel identify precisely what documents they would like copied, guaranteed that copies of documents would be provided as soon as Plaintiffs' counsel made that identification, raised the issue of confidentiality, and pointed out that Plaintiffs had not addressed any objections set forth by CCF. CCF also agreed that it would produce two-previously requested deponents for deposition—Shannan Ritchie and a 30(B)(5) representative to testify regarding scheduling.<sup>20</sup>

- 7 -

<sup>&</sup>lt;sup>18</sup> Sept. 4, 2015 letter from C. DeVito to K. McVoy, attached as Exhibit 13.

<sup>&</sup>lt;sup>19</sup> Sept. 9, 2015 letter from C. DeVito to K. McVoy, attached as Exhibit 14.

<sup>&</sup>lt;sup>20</sup> Sept. 11, 2015 letter, Exhibit 15.

Rather than responding to the letter or calling counsel for CCF, Plaintiffs' counsel waited a week and filed this "emergency" motion to compel, a courtesy copy of which he provided to Defendants at 5:07 p.m. on a Friday. <sup>21</sup>

As of the date of this response, CCF has hundreds of pages of documents copied for Plaintiffs (which they have not bothered to retrieve) and remains willing to discuss reasonable discovery requests. This procedural history provides no basis for any motion to compel, let alone an emergency motion. Plaintiffs' motion should be stricken.

### II. ARGUMENT

This Court should strike Plaintiffs' motion for three reasons: (1) Plaintiffs have failed to comply with the local rules by engaging in a meet and confer with CCF; (2) CCF has already agreed to produce a majority of the information and persons requested by Plaintiffs' motion to compel; and (3) Plaintiffs' motion makes new discovery requests.

# A. PLAINTIFFS' MOTION SHOULD BE STRICKEN BECAUSE THEY VIOLATED LOCAL RULE 11.0(F) BY FAILING TO MEET AND CONFER.

Local Rule 11.0(F) reflects the need to respect this Court's time and preserve judicial resources. Thus, it encourages counsel to "participate in pretrial discovery conferences" to reduce "the filing of unnecessary discovery procedures." Loc. R. 11.0(F). It further requires that, before any motion to compel is filed, "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." *Id.* If a party fails to abide by Local Rule 11.0(F), his motion to compel should be disregarded. *Wohala v. Gross*, 8th Dist. No. 49164, 1985 Ohio App.LEXIS 7740, \*4 (May 23, 1985). *See also West v. Kysela*, 8th Dist. No. 75594, 2000 Ohio App.LEXIS 72, \*18 (Jan. 13, 2000) (finding failure to abide by Local Rule 11.0(F) proper grounds for not

<sup>&</sup>lt;sup>21</sup> Sept. 18, 2015 email from C. DeVito to J. Armstrong, et al. (attached as Exhibit 16).

permitting additional discovery); *State ex rel. Dep't of Mental Health Office of Support*, 8th Dist. No. 51708, 1987 Ohio App.LEXIS 6874, \*5 (Mar. 19, 1987) ("Nothing in the record before this court indicates defendant followed the strictures of this rule [11.0(F)]. As discovery motions, pursuant to Civ.R. 37 are within the sound discretion of the trial court, and in light of the defendant's failure to obey the local rules, the trial court did not abuse its discretion in granting summary judgment when the discovery motion was pending."); *Curtis v. Nero Enters. Inc.*, 8th Dist. No. 33502, 1974 Ohio App.LEXIS 3304, \*6 (Oct. 24, 1974) ("An examination of the record reveals no such attempt at conciliation [under Rule 11.0(F)] by the defendant. The motion to compel discovery was therefore properly denied.").

Here, not only have Plaintiffs failed to advise the Court in writing that they have engaged in "personal consultation and sincere attempts to resolve differences" with CCF's counsel, they have not even tried to engage in such discussions. Had they reached out to CCF and offered to discuss the actual discovery they sought (as opposed to 20 years of financial information from every hospital owned or leased by CCF), the parties may have been able to reach an agreement. Because Plaintiffs failed to abide by Local Rule 11.0(F) and respect this Court's time, the Court should strike their motion. *Wohala*, 1985 Ohio App.LEXIS 7740, at \*4.

# B. CCF HAS ALREADY AGREED TO PRODUCE MUCH OF THE INFORMATION PLAINTIFFS SEEK, MOOTING PLAINTIFFS' MOTION.

The Court should also strike Plaintiffs' motion because CCF has produced or agreed to produce much of the information Plaintiffs seek. Plaintiffs ask this Court to compel CCF to produce Ann Huston and a 30(B)(5) CCF representative to testify regarding scheduling. (Mtn. at 9.) CCF has already agreed to make a 30(B)(5) representative available (Exhibit 15), and has not refused to produce Ms. Huston. Plaintiffs also ask the Court to compel CCF to produce: (1) all LHA Board Meeting minutes from 2008 to the present; (2) all LHA Planning Committee

Meeting minutes from 2008 to the present; and (3) all LHA Select Committee and Step2

Committee minutes from 2012 to the present. (Mtn. at 9.) All of these meeting minutes that had been located as of September 3, 2015 were already provided to and reviewed by Plaintiffs' counsel, who represented that they would identify which documents they wanted to have copied (though they have not yet fully done so), and CCF's counsel made clear that CCF continues to search to locate additional sets of meeting minutes to the extent those minutes exist. (Exhibit 15.) Thus, there is no reason to burden the Court with these requests and no basis for this motion.

# C. PLAINTIFFS SET FORTH NEW DISCOVERY REQUESTS AND PROVIDE NO BASIS FOR SUCH REQUESTS.

Finally, CCF requests that the Court strike Plaintiffs' motion because it seeks documents that were not requested in Plaintiffs' initial discovery requests. Aside from the meeting minutes, a majority of the documents Plaintiffs request relate to the Master Plan for Fairview Hospital—a hospital separate and independent from Lakewood Hospital. (Mtn. at 9-10.) These requests are not ones made in Plaintiffs' initial discovery requests, and Plaintiffs do not tell the Court (and have not told CCF) how these requests relate in any way to those set forth in Plaintiffs' initial discovery. The place for Plaintiffs to make new discovery requests is in a second request for production of documents, not in an "emergency" motion to compel.

### III. CONCLUSION

For the reasons set forth above, CCF respectfully requests that the Court strike Plaintiffs' Emergency Motion to Compel. If the Court denies this motion to strike, CCF requests seven days from the date of the denial to respond to Plaintiffs' motion to compel.

Dated: September 25, 2015

### s/ Katie M. McVoy

James R. Wooley (0033850) Tracy K. Stratford (0069457) Katie M. McVoy (0080860) JONES DAY North Point 901 Lakeside Avenue Cleveland, OH 44114.1190 Telephone: +1 216 586 3939

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 on September 25, 2015, I electronically filed the foregoing Defendant The Cleveland Clinic Foundation's Motion to Strike Plaintiffs' "Emergency" Motion to Compel with the Clerk of the Court using the electronic filing system which will send notification of such filing to all counsel of record at their e-mail address on file with the Court and by emailing a copy pursuant to Civ.R. 5(B)(2)(f).

s/ Katie M. McVoy

One of the Attorneys for Cleveland Clinic Foundation

Meeting Minutes: July 26, 2015

Chair M. Harkness calls meeting to order. Calls motion to approve minutes of last meeting, July 12, 2015. Motion seconded and approved. Treasurer, Bill Call states there is currently \$462.00 in treasury. There are 2 fundraisers coming up. One at Jammy Buggars. Details to follow.

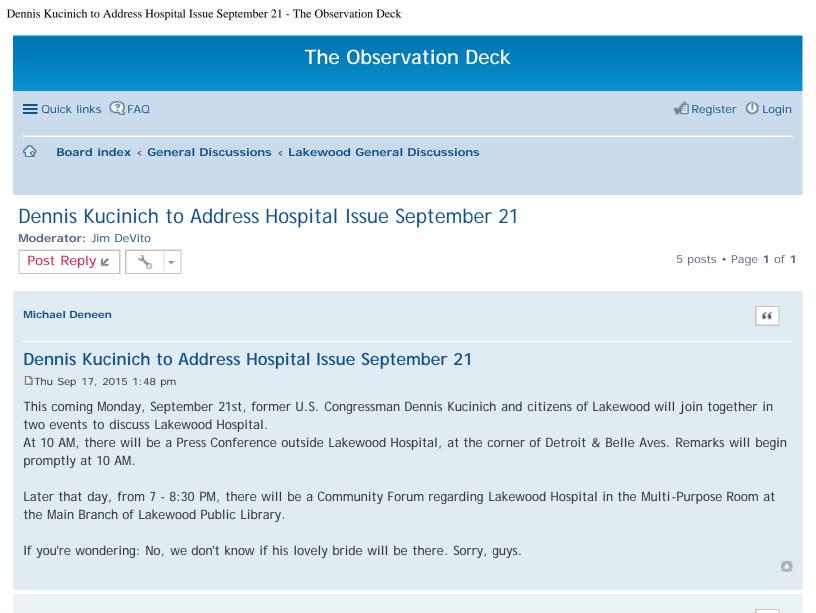
Legal Committee – Chair S. Dever states that they are trying to figure out if Cleveland Clinic had a plan. Discovered that in 2006 there was a Master Plan, a \$50 million investment in Lkwd. Hospital and to take 2 buildings down. In 2011 there was a "decanting" plan to transfer all assets from Lkwd. Hospital to Fairview Hospital. In 2013 \$190 million to Fairview for two medical office buildings, a bridge over Lorain Ave and two garages. There will be a hearing at the Justice Center (Courtroom 18D), Aug. 13<sup>th</sup>, on the restraining order to determine if there was a breach of the lease. If members can attend, wear Business attire, no t shirts. Motions will be filed and those documents will be public record. Cleveland Clinic has a lease until2026. Any monetary damages would have to be paid or require specific obligations. The Legal Committee will enforce the terms of the lease and make the Cleveland Clinic deliver on the promises made to upgrade Lakewood Hospital. A member asks for a response to petition signers questions; "Who would take over Lakewood Hospital if Clinic is out?" - Many possibilities. "Are these referendum petitions public record?" Yes, they become public record.

Research Committee – Chair M. Monahan reports that there is a list of 100 Best Community Hospitals. Those are community hospitals that have less than 200 beds. In Ohio, Wooster Community Hospital works with OSU and Akron. Wooster Community Hosp. has been cited for excellence And honored for their superb community relations. There are other good community hospitals in Ohio. This goes to show that we can sustain a quality hospital with good management.

Vice Chair T. Monahan states that there will be a COW meeting on Monday July 26<sup>th</sup> at 6PM. Please attend and WEAR RED! Will be having a question and answer session. Dru Siley will give a presentation on the professional buildings and garage. There will be representatives from reality and appraisers. The closing of Lakewood Hospital means 1,400 jobs lost, taxes going up and privatization of EMS. Lkwd unofficial Facebook was dismantled in 2013. Metro, UH and the Cleveland Clinic have privately set up their areas or territories. The Dept. of Justice needs to be brought in to investigate. The Drs. CAN manage the hospital. Premier Physicians will be waiting to join Lkwd. Hospital. A member relates that in Brooklyn, N.Y. an interfaith hospital had a "sit in". As a result, they put in a new hospital board. All members of this new hospital board live in the community or work at the hospital. This Brooklyn N.Y. hospital is now worker owned. Vice Chair T. Monahan stresses the importance of reforming Lakewood Hospital Association. To restructure LHA we need advocates that can attend all of their meetings and become involved.

Communications Committee – Chair B. Grulich informs that they are working on a professional video and other media to inform citizens. An educational post card is in the works. The committee needs a photographer. There is a Medicare Rally on Thursday July 30<sup>th</sup> at Lakewood Park from 11am to 2pm. At 1pm rally will march to Lakewood Hospital.

Referendum Committee – Chair D. Kolis petition training Tues.July30th at S. Devers's office at 7pm.



cameron karslake

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### Re: Dennis Kucinich to Address Hospital Issue September 21

DFri Sep 18, 2015 6:21 am

I've been wondering what Dennis has been up to. He's been very quiet for a long time. Not like him to avoid an issue like this and it will be interesting to hear his take.

Jim O'Bryan

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#### Re: Dennis Kucinich to Address Hospital Issue September 21

DFri Sep 18, 2015 8:21 am

Cameron

Dennis and Elizabeth are always passing through town, and stay very interested in their old home of their office. I always find it interesting that with everyone having the Kucinichs living here or there about once a month he is in Lakewood.

Far more than Marcy Kaptur.

This was from last night.



Always great running into Elizabeth Kucinich, and Dennis Kucinich. Tonight at the Root Cafe they met their friend, and professor at Baldwin Wallace, Param Srikantia. You might remember him from "the architecture of human greatness." Fun, good conversation and good food was had by all!

Jim O'Bryan Lakewood Resident

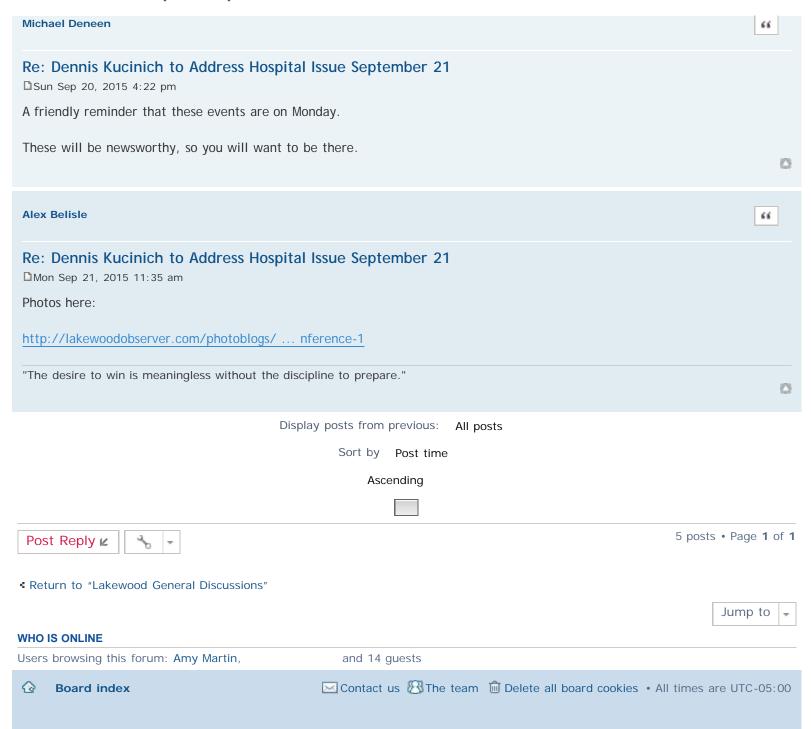
"The very act of observing disturbs the system."

#### Werner Heisenberg

"If anything I've said seems useful to you, I'm glad. If not, don't worry. Just forget about it."

His Holiness The Dalai Lama

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# Former U.S. Rep. Dennis Kucinich says he supports Save Lakewood Hospital because of recent court brief





By Bruce Geiselman, Northeast Ohio Media Group Email the author | Follow on Twitter

on September 22, 2015 at 1:02 PM, updated September 22, 2015 at 2:15 PM





LAKEWOOD, Ohio – Former U.S. Rep. Dennis Kucinich said he joined the fight to **save Lakewood Hospital** after reading details of a document filed last Friday in Cuyahoga County Common Pleas Court.

Kucinich spoke to about 120 people at the Lakewood Public Library Monday night, after **holding a news conference earlier in the day.** Kucinich said he had been following the issue in Lakewood since the

beginning of the year, but details in the recent court filing prompted him to speak out.

Attorney Christopher DeVito **in May filed a lawsuit** on behalf of Ed Graham and several other Lakewood residents to stop the Cleveland Clinic and city officials from closing Lakewood Hospital. Friday's court filing was an emergency motion to compel discovery. The motion requests the Cleveland Clinic provide, among other things, documents from 2006 to the present having to do with plans to remove or relocate medical services from Lakewood Hospital.

In the motion, DeVito claimed the Cleveland Clinic "is working feverishly with the city to complete a deal before the issues can be properly vetted by this Honorable Court."

The document included attachments that Kucinich said showed the Clinic for years secretly developed plans to remove services from Lakewood Hospital, while publicly talking about efforts to improve existing services and invest in the hospital, Kucinich said.

The Cleveland Clinic released a statement Monday saying it has been proud to manage the hospital for 20 years and remains committed to the community. A spokeswoman said the Clinic has been examining ways to deal with shifting patient demands.

"Our commitment to the Lakewood community remains strong and we have continued to honor and follow the contract to operate the hospital for the City of Lakewood," the Clinic said in a statement.

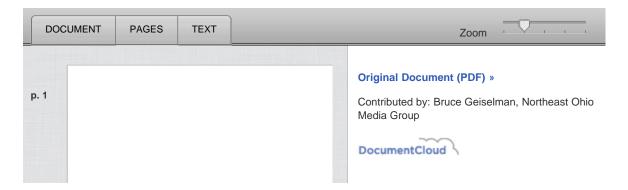
Meanwhile, Lakewood Hospital Association trustees released a statement Monday urging the city to negotiate with the Cleveland Clinic for a family health center and emergency department.

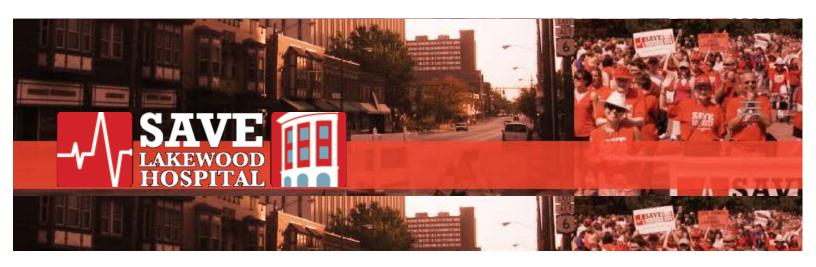
"Transforming healthcare keeps vital services in Lakewood," hospital association Chairman Tom Gable said.
"Without the change, when [Lakewood Hospital Association] runs out of money, the hospital will shut down.
If that happens, the city would have a large, vacant, out-of-date building to renovate or demolish and there is no guarantee that any hospital system would operate a facility or an emergency room in Lakewood."

Supporters of Save Lakewood Hospital and the Hospital Association disagree about whether the Cleveland Clinic could be required to make up any budget shortfall.

The Lakewood Public Library, which hosted the event, prohibited Northeast Ohio Media Group from photographing the event, saying prior written permission from the director was necessary.

A copy of attorney Christopher DeVito's motion appears below.





## May 28, 2015 Press Conference

☐ May 29, 2015 ☐ Editor ☐ Recent News

□ Lawsuit filed against Clinic, city of Lakewood

A History of Lakewood Hospital □

#### **MEETINGS:**

September 27, Sunday 4 p.m., Save Lakewood Hospital meeting at main branch library

Download latest flyer HERE

...Read More...

#### PLEASE DONATE

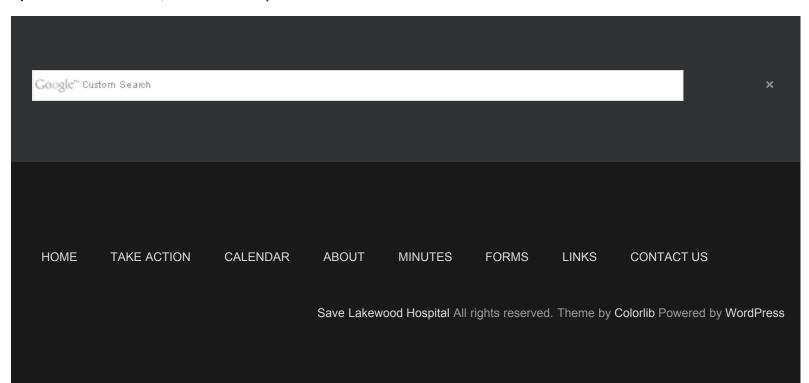


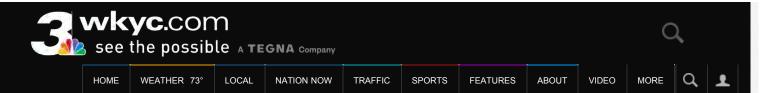
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BREAKING NEWS

John Boehner to resign as House speaker

### Future of Lakewood Hospital up in the air



Monica Robins, WKYC-TV 7:33 p.m. E

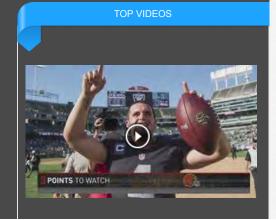


(Photo: WKYC-TV,

21 7 In Connect Tweet Linkedin Con

serving its residents for more than a century, and for the last six months, there's been a fight to keep it the way it is. But city leaders and Cleveland Clinic say it needs to be revamped to survive the changes in healthcare.

Cleveland Clinic's operated Lakewood Hospital for twenty years but since 2005 it began moving some services to other hospitals because it said Lakewood wasn't being used as it needed to be to keep it financially sound.



In January they offered to buy it and build a \$34 million Family Wellness Center and keep the Emergency Department operating. Hours after the announcement, opponents formed "Save Lakewood Hospital" and they're taking their fight to court and possibly the ballot box.

They've filed a temporary restraining order and preliminary injunction to stop the Clinic from removing equipment and services. A hearing is set in Cuyahoga County Common Pleas court on August 10th.

The entire deal rests with the Lakewood City Council who needs to vote on the proposal. On Monday they'll hear the findings from Huron Consulting whom they hire to do a community assessment of healthcare needs. The Lakewood Hospital Association, who originally approved the proposal from the Clinic, also hired a consulting firm that determined transforming the hospital from an inpatient model to an outpatient one would provide lower costs and better access.



WKYC
Dr. Toby Cosgrove on Lakewood Hospital adopting outpatient model

Council is expected to vote on the issue in early September. If they pass it organizers with "Save Lakewood Hospital" say they'll gather the signatures needed to get a referendum on the November ballot to let the citizens ultimately decide the fate of the hospital.







Apple fans camp out for new iPhone 6S and 6S Plus 01:52



Morning News Feed Friday



Neighbors Want Action After Fires

#### MORE STORIES



CPD officers hailed as heroes for saving boy Sept. 25, 2015, 1 a.m.



Pope Francis steers clea of politics in NYC homily Sept. 25. 2015. 1:16 a.m.



3 victims identified in possible murder-suicide in Medina

Sept. 25, 2015, 5:18 a.m.



Meeting minutes: August 16, 2015

Chair M. Harkness calls meeting to order. Motion to approve minutes from July 26, 2015. Seconded and approved. Member suggests meeting minutes be linked to website. Member D. L. Meckes stated she is working on that.

Treasurer: B. Call states that there is \$12,000.00 in the bank. The fundraiser at Jammy Buggar's raised \$195.00 and the owner chipped in an additional \$250.00. There will be another fundraise at Bobby O's on Sunday Aug. 23<sup>rd</sup>, from 4-7pm. This will include lots of raffle baskets and a 50/50 raffle. A member suggests other Lakewood businesses that do "carry forward" fundraising: Angelo's Pizza, Einstein's, Root Café, Tommy's Pastry, Roman Fountain and TJ Butcher Block.

Referendum Committee - Status of the citizen's law suit : the hearing on Wednesday Aug. 13<sup>th</sup> was cancelled.

Legal Committee - Sen. Skindell explains that the Judge talked to the lawyers. In the process of discovery got many documents. The citizen's filed an amended complaint filled in with facts from the discovery. Judge decided to move date out, after the Nov. 3<sup>rd</sup> election. As a result, we are still in court. Cleveland Clinic filed a motion to dismiss, tried to pressure Judge Jack O'Donnell to rule on their dismissal. Citizen's lawyers are requesting discovery of documents from Cleve. Clinic, LHA and Lakewood Foundation. Cleve. Clinic requested that discovery documents NOT be made public record. Judge has refused. The judge put a strong warning to the Clev. Clinic if they reduce or remove equipment it is "at their own peril". Attorney General is following the lawsuit closely and making sure charitable trusts are handled proper. Member suggests a "touch card" with basic info about our issues. Bill Grulich and D.L. Meckes are making an educational post card. Another member informs that Build Lakewood group is going door to door. Sen Skindell suggests looking into these educational issues to get our message out. Sen Skindell explains the "Talking Points" from the Huron Business Advisory Report dated Aug. 14.2015. Copies are distributed to members, also available on website. Dr. Nautiyal delineates a few items/issues that are missing from the Huron Report: Told not to bring certain patients; Revamped ER; Long term reason; What will Wellness Cntr. provide?; ER will become a 6-8 bed urgicare NOT a true ER; and info about CEO of St. Vincent Charity Hosp. The Huron Report was NOT asked to evaluate the economic impact of losing Lakewood Hospital. Chair M. Harkness discussed, for 2 hours, the economic impact with a representative from the Huron Report . She sent emails with attachments to explain points/issues. Dr. Kilroy and Brian Essi also had discussions with the hired consultants. Cindy Marx fashioned a letter to the Ohio Ethics Commission. Joe Gibbons had to resign due to conflict of interest. He is a partner in a law firm with Ryan Nowlin, council member. Mayor Summers had conflict of interest because his wife, Wendy Summers, was a member of the board of Lakewood Hospital Foundation. Wendy Summers, possibly, resigned her position to permit Mayor Summers no conflict of interest.

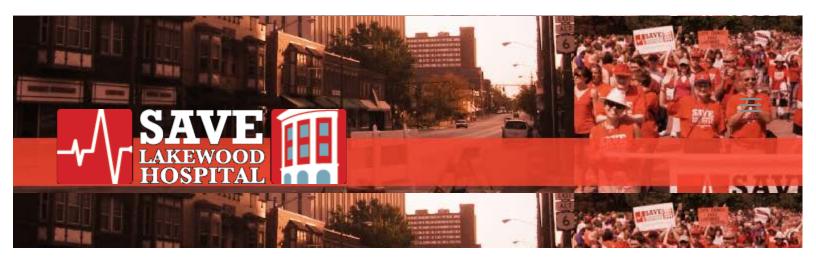
Right to Vote Committee- -Chair D. Kolis reports that we have gathered a sufficient number of signatures to put issue on the ballot. Will submit referendum to the Brd. of Elections for verification.

Candidate Introductions. Chair M. Harkness invites candidate for various Lakewood offices to introduce themselves.

- 1.Lori Allen Candidate for Ward 4. Concerned about urban crime, drug problems and safety.
- 2. J.T. Neuffer Candidate for Ward 3. He is rallying around the SAVE Lakewood Hospital issues. Endorsed by the Democratic Caucus and Women's Caucus.
- 3. Khrisine Pagsuyoin Running for Lkwd. School Brd. She has worked for school issues for 10 years. Spoke up, in 2007, against making Grant Elem. Into a Wellness Cntr.
- 4. Sen. Mike Skindell Running for Mayor of Lakewood. Rallying around Save Lakewood Hospital issues and to end backroom deals.
- 5. Woody Calleri Running for Lkwd. School Brd. 18 year resident. Taught for 5 years. Member of Harding PTA and worked on improving schools. Want transparency from School Brd.

Communication Committee – Chair B. Grulich reports that they are working on a postcard to go out in Sept., and a video for cable. Pam Wetula has tickets for Bobby O's fundraiser. There will be a COW meeting on Monday Aug. 17<sup>th</sup> at 6PM in City Hall. As always, be courteous. On Wednesday, Aug 19<sup>th</sup> there is a 6:30 meeting at the University of Akron Lakewood campus. Dru Siley is holding a forum on what to do with the buildings.

Chair M. Harkness needs additional volunteers for getting info out. Motion to adjourn Seconed and approved



### "Decanting" Lakewood Hospital

☐ August 2, 2015 ☐ Editor ☐ Uncategorized

On June 21, 2012, three years before the plan to close and raze Lakewood Hospital was revealed to the public and beneficiaries of the charitable trust, Cleveland Clinic Foundation (CCF) representatives met to discuss the decanting plan of Lakewood Hospital. (Ex. 2).

Under the decanting plan,

- 30-45 beds from Lakewood Hospital's nursing unit will be moved to Fairview Hospital;
- 16 intensive care unit beds at Lakewood Hospital will be moved to Fairview Hospital;
- Fairview Hospital will absorb 700-800 births per year from Lakewood Hospital;
- 7,000-8,000 Lakewood Hospital inpatient emergency department visits will be moved to Fairview Hospital;
- 1,315-1,773 inpatient surgeries per year will be moved from Lakewood Hospital to Fairview Hospital;
- Lakewood Hospital physicians will be moved to Fairview Hospital and other CCF wholly-owned hospitals;
- 12 geropsych beds will be moved from Lakewood Hospital to Lutheran Hospital;
- Lakewood Hospital's vascular laboratory will be moved to Fairview Hospital;
- some Lakewood Hospital inpatient beds will be moved to Fairview Hospital;
- · and inpatient surgery and the catheterization laboratory at Lakewood Hospital will be moved to

Fairview Hospital. (Ex. 1).

All of these services, employees, and equipment that have been moved and will continue to be moved away from Lakewood Hospital are City assets. More importantly, those assets belong to a charitable trust for the charitable purpose of providing high quality health care to the third party beneficiaries of the trust: City taxpayers and residents, Lakewood Hospital employees, and the general public.

The need for these medical services, including inpatient surgery, is demonstrated by CCF's Master Plan for Fairview Hospital showing Lakewood Hospital's 1,773 surgery cases being transferred (i.e. decanted) to CCF's wholly-owned Fairview Hospital.

Read more here: 2015.07.31.01.Reply in Support of PI w Exhibits-2

Cleveland Clinic

legal news

☐ A right to vote on our hospital's future

August fundraiser at Bobby O's □

#### **MEETINGS:**

September 27, Sunday 4 p.m., Save Lakewood Hospital meeting at main branch library

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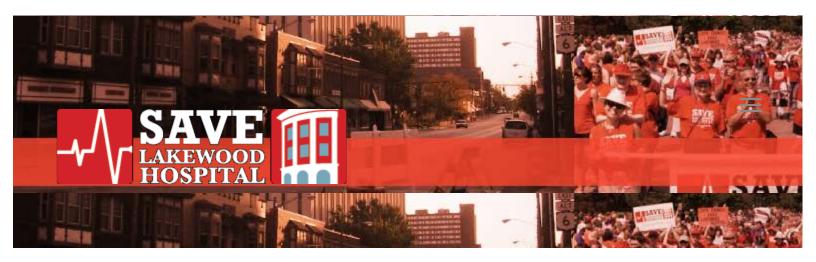
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### Kucinich hosts press conference, forum

☐ September 21, 2015 ☐ Editor ☐ Recent News

Former congressman Dennis Kucinich addressed several representatives of local media Monday morning, in a press conference in front of Lakewood Hospital.

Distributing copies of the "decanting" plan and additional documents recently revealed in court, Kucinich asserted that Cleveland Clinic intentionally misled the city of Lakewood with promises of a new hospital. Urging Lakewood's people and leadership to consider the new information becoming available, he called on the city to file a brief in support of the lawsuit for damages to Lakewood Hospital.

Kucinich also hosted a community forum in the evening, at the Lakewood main library. One attendee has posted photos here, and cleveland.com has a brief story about the forum here.

The documents Kucinich presented are available online at the end of this cleveland.com article.

WKYC and Fox8 have posted stories about the press conference; the Lakewood Observer has a draft transcript of Kucinich's remarks, and photos.

legal news

media

## LEAVE A REPLY

You must be logged in to post a comment.

☐ Feature story in this week's Scene

Why Lakewood Hospital is not St. Michael's  $\ \square$ 

#### **MEETINGS:**

September 27, Sunday 4 p.m., Save Lakewood Hospital meeting at main branch library

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## **EXHIBIT 9**

# IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

EDWARD GRAHAM, et al. | CASE NO. CV-15-846212

Plaintiffs JUDGE JOHN P. O'DONNELL

v. <u>PLAINTIFFS' FIRST COMBINED</u>

SET OF DISCOVERY UPON

CITY OF LAKEWOOD, et al. DEFENDANTS THE CLEVELAND

**CLINIC FOUNDATION AND** 

Defendants <u>DELOS "TOBY" COSGROVE, M.D.</u>

Plaintiffs Edward Graham, et al. ("Plaintiffs" or "Taxpayers"), by and through their counsel Morganstern, MacAdams & DeVito Co., L.P.A. and pursuant to Rules 26, 33, 34, 36, and 37 of the Ohio Rules of Civil Procedure, request that the Defendants The Cleveland Clinic Foundation ("CCF") and Delos "Toby" Cosgrove, M.D. ("Cosgrove") (collectively, "Defendants" or "CCF") (1) answer following interrogatories fully, completely, in writing, and under oath, (2) produce the documents described below for inspection and copying, and (3) answer the following admissions at the law office of Morganstern, MacAdams & DeVito Co., L.P.A., 623 West Saint Clair Avenue, Cleveland, Ohio 44113-1204.

It is requested that said answers and production be made within twenty-eight (28) days of receipt hereof by mailing a copy of all requested documents to undersigned counsel or producing documents in an acceptable electronic format. These interrogatories, requests, and admissions are deemed continuing in nature so as to require Defendants and/or Defendants' counsel to amend, supplement or correct said answers and production of documents should further information or documents become known which would change or become relevant or material to this action

## **DEFINITIONS OF TERMS**

As used hereinafter, the following terms have the meanings indicated:

- a. "You" and/or "Defendants" refers to The Cleveland Clinic Foundation ("CFF") and any of its employees or agents and/or Delos "Toby" Cosgrove, M.D. ("Cosgrove"). "Plaintiffs" refer to the Taxpayers, who are residents of the City of Lakewood ("City") or employees of Lakewood Hospital and are the intended beneficiaries of contracts, trusts, and City laws.
- b. "Other Defendants" refers to The City of Lakewood ("City"), Mayor Michael Summers, Lakewood Hospital Association ("LHA"), Thomas Gable, Lakewood Hospital Foundation ("LHF"), Kenneth Haber, and/or Subsidium Healhcare, L.L.C. ("Subsidium").
- c. "Change" or "Changing," in regards to Lakewood Hospital health care services, includes diminishing health care services by any amount, transferring health care services from Lakewood Hospital to any other hospital not owned by the City, and/or completely terminating health care services.
- d. "Meeting Minutes" include the minutes and notes from meetings of LHA's full Board of Trustees and CCF's full Board of Trustees, individually and separately, committees, special meetings, task force, advisory boards, Step 2, and notes thereof.
- e. "DOCUMENT" or "DOCUMENTS" refers to originals and all non-identical copies of any printed, written graphic or recorded matter, however produced or reproduced, of every kind and description, currently in or formerly in the possession, custody, care, or control of the named Defendants, or any of them, or of any past or present attorney of them or any of them, or of which any of these persons has knowledge, including without limitation, correspondence, statements, memoranda, minutes, contracts, notes, worksheets, diaries, reports, letters, telegrams, telexes, telefaxes, computer printouts, e-mails, texts, data bases, internet content, web pages,

pamphlets, appointment books, summaries, analyses, studies, statistics, vouchers, bank checks, receipts, returns, working papers, summaries or other reports of conferences, meetings, visits, discussions, notations of any sort of conversations, telephone conversations, or other communications; bulletins, printed matter of any kind, and all forms of drafts, notations, markings, alterations, modifications, changes, and amendments of any of the foregoing, any other written, printed, typed, recorded, or graphic matter, including, without limitation, photographs, charts, videotapes, recordings, PowerPoint presentations, and motion pictures; and the electronic records or representations of any kind (including, without limitation, tapes, cassettes, discs, and recordings); and any copies of the foregoing which are different because of marginal or handwritten notations or markings; and all papers similar to the foregoing, however denominated and wherever located.

- f. "IDENTIFY" or "IDENTIFICATION" used in reference to an individual person, means to state his or her full name and last known present home and business address, his or her present or last known and past positions and business affiliations, home and business telephone numbers, the name of each company which employed such person in each position, the inclusive dates of such employment during the time period applicable to these interrogatories, the person(s) whom he was representing or acting for, and his or her position at the time in question. "IDENTIFY" or "IDENTIFICATION" used in reference to more than one person means to set forth the full name, present or last known position and business affiliation, and position at the time in question of each such person.
- g. "IDENTIFY" or "IDENTIFICATION" used in reference to a document means to state the nature and substance of the writing with sufficient particularity to enable the same to be precisely identified, the date and type of document (e.g., letter, memorandum, receipt, invoice, report, telegraph telegram, photograph, sound recording, etc.), the author, and if different, the

signer or signers, their addresses, its present of last known location and/or custodian, and all other means of identifying it with sufficient particularity to satisfy the requirement for its identification in a motion for its production, pursuant to Rule 34 of the Ohio Rules of Civil Procedure. If any such document was, but no longer is, in your possession or subject to your control, state whether it is missing or lost, destroyed, transmitted voluntarily or involuntarily to others, identifying such other, otherwise disposed of, and in each instance explain the circumstances surrounding any such disposition, the disposition which was made for it, the reasons for such disposition, and the date thereof. In the alternative, production of documents responsive to the Interrogatories shall constitute identification of such documents.

- h. "IDENTIFY" or "DESCRIBE" or "EXPLAIN" when used in reference to an oral statement, conversation, or conference the person making the statement, the person to whom such statement was made, and all other person(s) present at the time of such statement; state the date of such statement, conversations, or conference; state the place where such statement, conversation, or conference was held, or if by telephone, the person(s) participating in the telephone call, where the person(s) making the call were located; and state the substance of such statement, conversation, or conference.
- i. "IDENTIFY" or "DESCRIBE" or "EXPLAIN" when used in reference to an act, event, statement, or representation means to state the following information with respect to it: date, place, name and address of each person present, detailed description referring or relating thereto, and the identification of each and every document referring or relating thereto.
- j. Unless otherwise indicated, these discovery requests refer to the time, place and circumstances of the occurrences mentioned or complained of in the pleadings in the above-captioned case. In this matter, the relevant time period is from 1996 to the present.

- k. Copies of documents shall be served with the request and responses unless they have been or are otherwise furnished or made available for inspection and copying.
- 1. If Defendants make an objection, the reasons for it must be stated. The answer must specifically deny the matter in question or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial must fairly meet the substance of the requested admission, and when good faith requires a qualified answer, or a denial of part of the matter of which an admission is requested, the party must specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that he or she has made a reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable an admission or denial. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(C), deny the matter or set forth reasons why he or she cannot admit or deny it. Any objection for privilege requires a description of the document and a privilege log.

## FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

- 1. Produce all documents and communication providing a breakdown of operating expenses at each wholly-owned and leased CCF hospital, including, but not limited to, an itemization of each individual operating expense at each separate CCF hospital including Lakewood Hospital, Main Campus, Fairview Hospital, Lutheran Hospital, the new Avon Hospital, etc. from 1996 to the present.
- 2. Produce all balance sheets and operating statements, individually and separately, for Lakewood Hospital, Main Campus, Fairview Hospital, Lutheran Hospital, and the new Avon Hospital from 1996 to the present.
- 3. Produce all inter-company audited consolidated financial statements for CCF from 1996 to the present.

- 4. Produce a full and complete accounting of any funds contributed by CCF to Lakewood Hospital to service the Definitive Agreement required 1:1 cash-to-debt ratio from 1996 to the present.
- 5. Produce full and complete final accounting documents of the funds received by CCF per year to provide indigent care services along with the portion of those funds used to actually provide indigent care services at Lakewood Hospital from 1996 to the present.
- 6. Produce any and all documents and communications itemizing the number of indigent patients served annually and the composition of health care services received by those patients at Lakewood Hospital from 1996 to the present.
- 7. Produce any and all documents detailing patient visits, patient admissions, and revenues individually and separately at Lakewood Hospital and CCF's wholly-owned Fairview Hospital's emergency room, trauma unit, and cardiac unit annually from 2005 to 2014 and year-to-date through June 2015.
- 8. Produce any and all documents, communications, and formulas behind CCF's economic impact report and how it applies to, and/or incorporates, Lakewood Hospital.
- 9. Produce all documents and communications regarding and exhibiting the sources of funds used to pay Subsidium for its consultation services from 2013 to the present.
- 10. Produce all unredacted meeting minutes of LHA Board of Trustees meetings from 1996 to the present, and any committee special meeting, task force, advisory boards, Step 2, and notes for, including, but not limited to, the Vision for Tomorrow task force.
- 11. Produce all unredacted meeting minutes of CCF Board of Trustees meetings from 1996 to the present, and any committee special meeting, task force, advisory boards, Step 2, and notes for, including, but not limited to, the Vision for Tomorrow task force.
- 12. Produce a complete copy of the 1996 Amended and Restated Lease ("Lease") with **ALL** attachments and exhibits.
- 13. Produce a complete copy of the 1996 Definitive Agreement ("DA") with **ALL** attachments and exhibits.
- 14. Produce all documents and communications regarding the Vision for Tomorrow plan.
- 15. Produce any and all market studies conducted or received, including, but not limited to, studies on the City market and Lakewood Hospital's service area, studies on northeast Ohio and national health care trends, economic impact studies regarding Lakewood Hospital and health care services in general, community assessment needs, and the Subsidium study.
- 16. Produce all original or unredacted copies of requests or notices given to LHA Board of Trustees members for Changes in health care services offered by Lakewood Hospital in compliance with the Lease.

- 17. Produce all original or unredacted copies of (A) notices given to LHA by CCF or City of any deficiencies or events of default at Lakewood Hospital under the Lease and Definitive Agreement and (B) notices sent by LHA or City to CCF of any deficiencies or events of default at Lakewood Hospital under the Lease and/or Definitive Agreement.
- 18. Produce any and all documents containing itemizations, allocations, calculations, and meanings of Administrative Services expenses at Lakewood Hospital under CCF's "shared services" plan from 1996 to the present.
- 19. Produce any and all documents and communications by LHA requesting CCF to do acts agreed to under the Lease and/or Definitive Agreement and any and all responses by CCF thereto.
- 20. Produce any and all documents and communications regarding community assessment needs in Northeast Ohio, including the Western Region and Lakewood Hospital service area, individually and separately, from 1996 to the present.
- 21. Produce all communications to Lakewood Hospital employees regarding (A) the Letter of Intent, (B) CCF's Avon Hospital, and (C) proposed closure of Lakewood Hospital, and (D) Changes in medical services at Lakewood Hospital.
- 22. Produce any and all notes of LHA Board of Trustees members from any meetings and discussions regarding Lakewood Hospital and LHA from 1996 to the present.
- 23. Produce the original or identical, unredacted copy of the <u>2015</u> Definitive Agreement by and between LHA and CCF and all drafts thereof.
- 24. Produce any and all internal communications and documents or communications sent between CCF and Other Defendants regarding the 2015 Definitive Agreement.
- 25. Produce all meeting minutes, notes, and internal communications from the January 2015 LHA Board of Trustees meeting at which the Board unanimously approved CCF's Letter of Intent.
- 26. Produce the original or an identical, unredacted copy of the original January 2015 Letter of Intent and all drafts thereof.
- 27. Produce the original or an identical, unredacted copy of the original Memorandum of Understanding between the City, LHA, and CCF in 1996.
- 28. Produce any and all opinion letters received by you from the Ohio Ethics Commission from 1996 to the present.
- 29. Produce any and all notes, meeting minutes, documents, and communications concerning the Step 2 Team or Step 2 committee.

- 30. Produce any and all presentations of caucuses and subcommittees of LHA and/or CCF from 1996 to the present related to Lakewood Hospital and the Western Region hospitals whollyowned by CCF.
- 31. Produce any and all documents and communications concerning the Lease and Definitive Agreement's required minimum annual investment that CCF must provide to LHA or the City.
- 32. Produce all documents and communications containing a periodic checklist of Lease and Definitive Agreement provisions being complied with, or not being complied with, by LHA and CCF from 1996 to the present.
- 33. Produce any and all documents and communications between you, LHA, and/or the Ohio Department of Health from 1996 to the present.
- 34. Produce any and all documents and communications regarding Change(s) and/or reduction(s) in Lakewood Hospital central scheduling or future plans at Lakewood Hospital to Change and/or reduce medical services and central scheduling, and to where patients will be sent to receive medical care previously offered at Lakewood Hospital, providing the effective date of each proposed/planned Change and/or reduction.
- 35. Produce any and all notes, documents, and communications shared between you and either LHA or the City and Mayor Michael Summers in private meetings from 1996 to the present.
- 36. Produce all documents, communications, contracts, and letter agreements between you and Select Health concerning the sale of Lakewood Hospital rehabilitation beds.
- 37. Produce the full, complete, unredacted meeting minutes from the 2010 LHA Board of Trustees meeting at which former Mayor Ed Fitzgerald and City council persons recused themselves from a vote regarding the Vision for Tomorrow plan.
- 38. Produce all inter-company billings for pharmaceuticals at Lakewood Hospital and CCF.
- 39. Produce all documents and communications showing (A) <u>planned</u> use for and the moving of Lakewood Hospital equipment and to where it is being or will be sent, identifying other CCF wholly-owned hospitals to where it is being sent and (B) <u>prior</u> use and moving of Lakewood Hospital equipment to other CCF wholly-owned hospitals.
- 40. Produce all PowerPoint presentations proposing to move any medical services, including Required Services, from Lakewood Hospital to other wholly-owned CCF hospitals, from 1996 to the present.
- 41. Produce a complete depreciation schedule of Lakewood Hospital from 1986 to the present.
- 42. Produce all documents outlining all fixed assets of Lakewood Hospital including, but not limited to, building, improvements, and equipment from 1996 to the present.

- 43. Produce all documents and communications between LHA and LHF regarding the allocation and sources of funds from 1996 to the present.
- 44. Produce an unredacted, full, and separate annual accounting from LHF from 1996 to the present.
- 45. Produce an unreducted, full accounting of long-term investments of LHA each year from 1996 to the present.
- 46. Produce all documents and communications with Other Defendants regarding Subsidium, including, but not limited to, documents and communications referencing funds and sources of funds paid to Subsidium and Subsidium's overview of Lakewood Hospital.
- 47. Produce a copy of all contracts or letter agreements with third-party health care consultants regarding Lakewood Hospital from 1996 to the present.
- 48. Produce all documents and communications requested by and from the Mayor and City council persons as ex-officio trustees and any input or documents the Mayor and City council persons provided to LHA or CCF.
- 49. Produce all documents and communications regarding requests for maintenance at Lakewood Hospital, maintenance performed, not performed, and the cost of each maintenance.
- 50. Produce any and all documents and communications between CCF and any Other Defendants regarding, but not limited to, (A) the Definitive Agreement by and between LHA and CCF, (B) the Lease by and between the City and LHA, (C) LHA's Code of Regulations, (D) the Vision for Tomorrow plan, (E) CCF's proposal in response to LHA's request for proposal, (F) CCF's Letter of Intent, (G) any health care needs study or analysis, and (H) the Subsidium overview report.
- 51. Produce any and all drafts of the Subsidium overview report and recommendations, all underlying research and reports of such report and recommendations, and any documents or communications relating thereto.
- 52. Produce any and all documents and communications between CCF and any Other Defendants regarding any Change in medical services at Lakewood Hospital from 1996 to the present. This includes, but is not limited to, formal notices or requests to Change medical services, all reviews and analyses, and all responses approving or denying the requested Changes in medical services.
- 53. Produce all documents identifying all medical services provided at Lakewood Hospital in these years separately: 1986, 1996, 2000, 2005, 2010, 2011, 2012, 2013, 2014, and 2015.
- 54. Produce all documents identifying the Required Services <u>and</u> all other medical services agreed upon in the Lease between LHA and the City and the Required Services and all other medical services still provided at Lakewood Hospital currently.

- 55. Produce all market studies, community health assessments, economic impact studies relating to Lakewood Hospital, or any other analyses received by LHA and CCF from Other Defendants or any third-party regarding Lakewood Hospital and the Lakewood Hospital service area from 1996 to the present.
- 56. Produce all documents or communications transmitted between the City, LHA, LHF, and CCF regarding the Vision for Tomorrow plan.
- 57. Produce any and all documents and communications regarding the valuation or appraisal of land in the potential sale of City-owned property to CCF.
- 58. Produce all documents and communications regarding the ICD9, CPT, and DRG annual breakdown by year and CCF hospital individually and separately from 1996 to the present in electronic database format.
- 59. Produce any and all documents, communications, contracts, and letter agreements among you, all Other Defendants, and all other entities regarding plans to diminish, terminate, and/or transfer Lakewood Hospital medical services in 2015 through 2016.
- 60. Produce all documents regarding Changes in scheduling appointments for medical services (i.e. neurology, infusions, OB, etc.) from Lakewood Hospital to CCF wholly-owned hospitals for 2015 and 2016.
- 61. Produce all drafts of the Letter of Intent regarding future plans for Lakewood Hospital.
- 62. Produce an unredacted copy of or the original Mutual Confidential Disclosure Agreement between you, LHA, LHF, and the City pertaining to the Letter of Intent.
- 63. Produce any and all documents and communications regarding the closure of Huron Hospital.
- 64. Produce any and all documents and communications indicating financial audits, performance, and economic impact of the CCF family health center in East Cleveland which replaced Huron Hospital.
- 65. Produce all contracts with Hennes Paynter Communications and/or Crisis Communications including Lakewood Hospital, Huron Road Hospital, Fairview Hospital, Lutheran Hospital, and/or Avon Hospital from 2005 to the present.
- 66. Produce any internal communications concerning the foregoing document requests.
- 67. With respect to each expert witness you retained or intend to call at trial, provide all documents relating to: (A) any expert report or statement issued by the identified experts regarding their opinions or basis for their opinions; (B) any documents upon which the identified experts based their opinions; (C) any documents relating to the identified experts' qualifications for rendering such opinions; (D) copies of each expert's curriculum vitae; (E) any documents

relevant to the use of identified experts; (F) any documents furnished or made available to any expert; and (G) any documents passing between you and your counsel and each expert.

## FIRST REQUEST FOR INTERROGATORIES

1. Identify the individual(s) who are responding to Plaintiffs' First Request for Production of Documents, Interrogatories, and Admissions, including the number of the Interrogatory for which each individual supplied information and/or is verifying the answers.

## ANSWER:

2. Identify all documents consulted in connection with the preparation of the answers to these Interrogatories and attach a copy of each document.

## ANSWER:

3. Identify the individual(s) most knowledgeable regarding the Lease and lessee(s) of the properties located at 14519 Detroit Avenue, Lakewood, Ohio 44107 and 850 Columbia Road, Westlake, Ohio 44145.

#### ANSWER:

4. Identify all individuals who you believe to have knowledge of any facts concerning the allegations of Plaintiffs' Complaint. For each individual so identified, briefly summarize his or her knowledge concerning the allegations of Plaintiffs and the answers and/or affirmative defenses propounded by Defendant(s).

## ANSWER:

5. Identify all individuals you intend or anticipate to call as witnesses at the trial of this matter providing a brief summary of their anticipated testimony.

#### ANSWER:

6. Identify and describe each exhibit which the Defendant(s) will use at the trial of this matter.

## ANSWER:

7. Identify your role in the discussions and ultimate decision to hire a health care consultant, which ended up being Subsidium.

## ANSWER:

8. Identify your role in Subsidium's consultation to LHA and CCF in regards to Lakewood Hospital.

#### ANSWER:

9. Identify any entities you consulted on your own in considering the future of Lakewood Hospital in response to Subsidium's recommendations.

## ANSWER:

10. Identify your role in communicating to the City's Taxpayers, residents, Lakewood Hospital employees, and the general public in discussing and laying out plans for the future of Lakewood Hospital.

## ANSWER:

11. Identify your role in creating LHA's Request for Proposal to prospective bidders in response to Subsidium's recommendations.

## ANSWER:

12. Identify your role in drafting any of the bidders' proposals in response to LHA's Request for Proposal in response to Subsidium's recommendations, including CCF's proposal and MetroHealth's proposal.

#### ANSWER:

13. Identify your role in accepting CCF's proposal over MetroHealth's proposal.

#### ANSWER:

14. Identify your role in creating and/or approving CCF's Letter of Intent.

## ANSWER:

15. Identify all medical services provided at Lakewood Hospital beginning at the start of the Lease agreement in 1996.

## ANSWER:

16. Identify all Required Services in the Lease.

## ANSWER:

17. Identify all Changes in (A) medical services and (B) Required Services in the Lease from 1996 to the present by providing the date of Change and the type of Change.

#### ANSWER:

18. Identify the medical services (i.e., Centers of Excellence) promised by CCF to the City and LHA in return for Changing the Required Services and/or medical services under the Lease.

#### ANSWER:

19. Identify when/if the Centers of Excellence described in the foregoing were instituted, modified, and/or terminated at Lakewood Hospital.

#### ANSWER:

20. Identify Lakewood Hospital's Chief Hospital Administrator from 1996 to the present and for each identified individual provide his or her employer's name and address as reported to the Internal Revenue Service.

#### ANSWER:

21. Identify any and all medical services at Lakewood Hospital you <u>intend</u> on diminishing, terminating, or transferring, why you intend on doing so, when you intend on doing so, and to where you intend on transferring such medical services.

#### ANSWER:

22. Identify all entities you are transacting with in regards to the immediate foregoing interrogatory.

## ANSWER:

23. Identify all provisions in the Lease applicable to CCF's duties and responsibilities in regards to the operations and management of Lakewood Hospital.

#### ANSWER:

24. Identify all provisions in the Definitive Agreement applicable to CCF's duties and responsibilities under the Lease to operate and manage Lakewood Hospital.

## ANSWER:

25. Identify all provisions of LHA's Code of Regulations applicable to CCF's duties, rights, and responsibilities in regards to the operation and management of Lakewood Hospital and/or influence over and control of LHA.

#### ANSWER:

26. Identify all sources of funds coming from LHA to pay Subsidium for its health care consultation services.

#### ANSWER:

27. Identify the intended beneficiaries of Lakewood Hospital as defined in (A) LHA's Articles of Incorporation, (B) the Lease, (C) the Definitive Agreement, (D) the Second Amended Charter of Lakewood, (E) City Ordinances, and (F) LHA's Code of Regulations.

#### ANSWER:

28. Identify the current LHA trustees by name and address as defined in (A) LHA's Articles of Incorporation, (B) the Lease, (C) the Definitive Agreement, (D) the Second Amended Charter of Lakewood, (E) City Ordinances, and (F) LHA's Code of Regulations.

#### ANSWER:

29. Identify the sole member of LHA and describe its rights, duties, and responsibilities as defined in the (A) Lease, (B) Definitive Agreement, and (C) LHA's Code of Regulations.

## ANSWER:

30. Identify the total number of Lakewood Hospital employees in each individual and separate year from 1996 to the present.

## ANSWER:

- 31. Identify exactly what Administrative Services expenses you are allocating and how much in each of the following categories from 1996 to the present for Lakewood Hospital:
  - A. Information technology
  - B. Marketing
  - C. Supply chain
  - D. Legal
  - E. Human resources
  - F. Executive team
  - G. Revenue cycle
  - H. Internal audit
  - I. Regional administration
  - J. Finance

#### ANSWER:

32. Identify what percentage of Administrative Service expenses or "shared services" you are allocating to Lakewood Hospital, and how much to each other individual and separate CCF wholly-owned hospital from 1996 to the present.

## ANSWER:

33. Identify which hospitals are included under "obligated group" and which are included under "non-obligated group" indicated in your 2013 and 2014 consolidated audit financial statements.

#### ANSWER:

34. Identify the allocation, calculation, and meaning of Administrative Services expenses as it relates to Lakewood Hospital in comparison to each separate and individual CCF wholly-owned hospital.

## ANSWER:

35. Identify any and all consultants who worked for you, other than Subsidium, from 1996 to the present, not excluding consultants used for purposes unrelated to Lakewood Hospital.

## ANSWER:

36. Identify the names and addresses of any companies and any agents, employees or affiliates thereof who have worked with you from 1996 to the present to provide studies and/or analysis of Lakewood Hospital and/or CCF in its entirety.

## ANSWER:

37. Identify as precisely as possible the total dollar you plan to invest in the demolition of Lakewood Hospital and the building of a new family health center and the source(s) of funds used for that investment.

## ANSWER:

## FIRST REQUEST FOR ADMISSIONS

1. Admit that CCF has been operating and managing Lakewood Hospital from 1996, after it entered into the Definitive Agreement and Lease, through to the present.

## RESPONSE:

2. Admit that LHA integrated CCF into the LHA entity in 1996.

## **RESPONSE:**

3. Admit that LHA's sole member with reserved powers is CCF.

## RESPONSE:

4. Admit that LHA's alter ego is CCF because it is the sole member, with reserved powers, responsible for day-to-day operations, determines strategic plans and financial matters, and has final authority to approve or terminate the LHA president, Lease terms, Lease extension, etc.

#### RESPONSE:

5. Admit that the Lease term is thirty (30) years, lasting from 1996 until 2026, with an option for another thirty (30) years until 2056.

#### RESPONSE:

6. Admit that LHA and CCF entered into a Definitive Agreement in or around 1996 that required an Amended Lease with the City.

RESPONSE:

7. Admit that through the Definitive Agreement CCF was integrated into LHA to be the operator and manager of Lakewood Hospital assets (i.e. land, building, and equipment) and to conform to the Lease as amended in 1996.

## RESPONSE:

8. Admit that Section 1.1.4 of the Definitive Agreement provides that CCF shall operate and manage Lakewood Hospital in a fiscally prudent manner, consistent with LHA's charitable purpose and its obligations under the Lease.

#### RESPONSE:

9. Admit that Section 1.2 of the Definitive Agreement provides the City the right to enforce the Lease against LHA and CCF.

## RESPONSE:

10. Admit that Sections 1.8.1 and 6.1.1 of the Definitive Agreement provide that CCF is bound by the terms of the Lease and shall not do anything to cause LHA to breach the Lease.

## RESPONSE:

11. Admit that Section 2.1.1 of the Definitive Agreement provides that CCF must ensure LHA's 1:1 cash-to-debt ratio on a yearly basis through the initial Lease term of 2026.

## RESPONSE:

12. Admit that the Lease provides for the operation and management of Lakewood Hospital in a faithful and efficient manner as a going concern through the initial Lease term of 2026.

#### RESPONSE:

13. Admit that CCF has moved Lakewood Hospital equipment and/or medical services to other CCF wholly-owned hospitals.

## RESPONSE:

14. Admit that CCF has plans to move Lakewood Hospital equipment and/or medical services to other CCF wholly-owned hospitals in 2015 and 2016.

#### RESPONSE:

15. Admit that Lakewood Hospital currently is the largest employer in the City and that CCF's proposed plan to close and demolish Lakewood Hospital would significantly reduce employment and have an adverse economic impact on the City.

## **RESPONSE:**

16. Admit that the City created a charitable trust in Lakewood Hospital with the intended beneficiaries of such trust being the City Taxpayers, residents, employees of Lakewood Hospital, and the general public as defined in (A) the Second Amended Charter of Lakewood, (B) City Ordinances, (C) the Lease, (D) the Definitive Agreement, and (E) and LHA's Code of Regulations.

## **RESPONSE:**

17. Admit that the trustees of the Lakewood Hospital trust in the immediate foregoing admission are LHA, CCF, LHF, and all of their separate boards of trustees.

## **RESPONSE**:

18. Admit that, as trustees of the Lakewood Hospital trust, CCF and Other Defendants owe a higher standard of care and fiduciary duties to the intended beneficiaries of the trust.

## **RESPONSE:**

19. Admit that Lakewood Hospital is a City-owned asset entrusted to the lessee LHA and CCF as its sole member, alter ego, and as identified in the Lease as the "Member".

## **RESPONSE:**

20. Admit that no independent appraiser did an appraisal on any of the real estate owned by the City for the purpose of providing medical care through Lakewood Hospital for the purpose of ascertaining the value at which it might be sold to CCF.

## **RESPONSE:**

21. Admit that LHA proposed to sell City-owned property located at 850 Columbia Road, Westlake, Ohio, without any appraisal or competitive bidding, at the price of \$8.2 million whereas the fair market value is \$13,726,000 as established by the Cuyahoga County Fiscal Officer.

#### RESPONSE:

22. Admit that the Lease between the City and LHA and CCF as the Member encompasses the land, building, equipment, fixtures, and supplies used in the management and operation of Lakewood Hospital.

#### RESPONSE:

23. Admit that certain equipment, fixtures, and/or supplies mentioned in the immediate foregoing admission have been coveted and transferred to other CCF wholly-owned hospitals.

## RESPONSE:

24. Admit that CCF plans on continuing this coveting, transfer, and ultimate destruction of City-owned assets through 2015 and 2016 and that the City through its ex-officio trustees on LHA's Board of Trustees voted in favor of CCF's plan outlined in the January 2015 Letter of Intent.

## RESPONSE:

25. Admit that the highest ranking Chief Hospital Administrator of Lakewood Hospital from 1996 to the present has been a CCF employee (i.e. receiving a W-2 for IRS reporting purposes).

## **RESPONSE:**

26. Admit that you had a contract with Select Health to sell and did sell Lakewood Hospital rehabilitation beds.

#### RESPONSE:

27. Admit that you initiated discussions between you and Other Defendants regarding the closure and demolition of Lakewood Hospital.

## **RESPONSE:**

28. Admit that the January 2015 Letter of Intent purported to change the Lease and/or Definitive Agreement.

#### RESPONSE:

29. Admit that CCF is responsible to ensure and pay, on a yearly basis, any operating expenses that cause a cash-to-debt ratio to exceed 1:1.

## **RESPONSE:**

Respectfully submitted,

## /s/ Christopher M. DeVito

Christopher M. DeVito (0047118)

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Attorney for Plaintiffs

## **CERTIFICATE OF SERVICE**

A copy of Plaintiff's First Combined Set of Discovery upon Defendants The Cleveland Clinic Foundation and Delos "Toby" Cosgrove, M.D. has been served via electronic mail only this 25<sup>th</sup> day of June, 2015, to the following:

Kevin M. Butler
<a href="mailto:kevin.butler@lakewoodoh.net">kevin.butler@lakewoodoh.net</a>
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-and-

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Attorneys for Ohio Attorney General Mike DeWine

Respectfully submitted,

/s/ Christopher M. DeVito

Christopher M. DeVito (0047118) Morganstern, MacAdams & DeVito Co., L.P.A.

Attorney for Plaintiffs

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# **EXHIBIT 10**

## IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

EDWARD GRAHAM, et al.,

Plaintiff,

CASE NO. CV-15-846212

v.

JUDGE JOHN P. O'DONNELL

CITY OF LAKEWOOD, et al.,

Defendant.

## DEFENDANTS THE CLEVELAND CLINIC FOUNDATION AND DELOS "TOBY" COSGROVE, M.D. RESPONSES TO PLAINTIFFS' FIRST COMBINED SET OF DISCOVERY

## **General Objections**

- 1. The Cleveland Clinic Foundation ("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 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 the stated timeframe of these requests, which spans nearly 20 years, as overbroad.
- 4. CCF and Dr. Cosgrove object to all instructions that impose obligations beyond those imposed by the Ohio Rules of Civil Procedure.
- 5. CCF and Dr. Cosgrove object to the categorization of hospitals within the Cleveland Clinic Health System as "wholly-owned."
- 6. 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.
- 7. 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.
- 8. 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.
- 9. 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.

10. 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.

## RESPONSES TO FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

1. Produce all documents and communication providing a breakdown of operating expenses at each wholly-owned and leased CCF hospital, including, but not limited to, an itemization of each individual operating expense at each separate CCF hospital including Lakewood Hospital, Main Campus, Fairview Hospital, Lutheran Hospital, the new Avon Hospital, etc. from 1996 to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This request appears to call for every document and communication that breaks down any operating expense at CCF or any CCF hospital for the last 19 years. By way of example, payroll records for the last 19 years, which would constitute operating expenses of CCF and its regional hospitals, would alone consist of millions of documents. Subject to these objections, CCF will make available for inspection and copying documents in its possession, custody, or control sufficient to show operating expenses for Lakewood Hospital Association for the period 2005 through June 2015. Accounting records that pre-date 2005 are not readily available or easily accessible.

2. Produce all balance sheets and operating statements, individually and separately, for Lakewood Hospital, Main Campus, Fairview Hospital, Lutheran Hospital, and the new Avon Hospital from 1996 to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, the audited financial statements of LHA contain balance sheets and operating statements of LHA. Subject to these objections, CCF will make available for

inspection and copying the audited financial statements of LHA for the period 1996 through 2014, to the extent they are in its possession, custody, or control.

3. Produce all inter-company audited consolidated financial statements for CCF from 1996 to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague and ambiguous with specific regard to the phrase "inter-company." The request is also overbroad in seeking documents for a 19 year period. Subject to these objections, CCF will make available for inspection and copying the audited consolidated financial statements of The Cleveland Clinic Foundation d/b/a Cleveland Clinic Health System for the period 1996 through 2014, to the extent they are in its possession, custody, or control.

4. Produce a full and complete accounting of any funds contributed by CCF to Lakewood Hospital to service the Definitive Agreement required 1:1 cash-to-debt ratio from 1996 to the present.

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

CCF has never been required to contribute funds to LHA pursuant to Section 2.1.1 of the

Definitive Agreement.

5. Produce full and complete final accounting documents of the funds received by CCF per year to provide indigent care services along with the portion of those funds used to actually provide indigent care services at Lakewood Hospital from 1996 to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as incomprehensible. CCF and Lakewood Hospital Association are Ohio non-profit corporations recognized as exempt from federal income tax under I.R.C. § 501(c)(3). Each institution provides free care to indigent patients pursuant to a financial assistance policy. CCF does not receive funds to provide indigent care, although it does receive offsets, in the aggregate, on cost reports filed with the state and federal government, for some portion of certain costs associated with the provision of free care at its main campus and at family health centers. Lakewood Hospital files its own cost reports with the state and federal governments.

6. Produce any and all documents and communications itemizing the number of indigent patients served annually and the composition of health care services received by those patients at Lakewood Hospital from 1996 to the present.

RESPONSE: CCF objects to this request as vague and ambiguous. CCF does not track the number of unique patients who are indigent and receive services at Lakewood Hospital, so there are no documents that collect and summarize information about indigent patients who receive services at Lakewood Hospital. To the extent that this information can be collected at all, it would require review of details from thousands of patient billing statements and medical records, which are protected health information. That process would be unduly burdensome and prohibitively expensive, if even possible, and on that basis, CCF and Dr. Cosgrove object. Free and reduced price care is provided by Lakewood Hospital pursuant to a financial assistance policy and has historically been called "charity care." The amount of charity care provided at Lakewood Hospital is reported in its audited financial statements for the years 1996 through 2014. Subject to these objections, CCF will make available for inspection and copying the audited financial statements of LHA for the period 1996 through 2014, to the extent they are in its possession, custody, or control.

7. Produce any and all documents detailing patient visits, patient admissions, and revenues individually and separately at Lakewood Hospital and CCF's wholly-owned Fairview Hospital's emergency room, trauma unit, and cardiac unit annually from 2005 to 2014 and year-to-date through June 2015.

RESPONSE: CCF and Dr. Cosgrove object to this request as not reasonably calculated to lead to the discovery of admissible evidence, overbroad and unduly burdensome in that it calls for every document relating to every patient visit at two different hospitals for a period of ten years, including patient invoices, medical charts, and insurance reconciliations. Subject to these objections, CCF will make available for inspection and copying documents sufficient to quantify Lakewood Hospital's emergency room visits, trauma cases, and cardiac encounters annually

from 2005 through June 2015, to the extent those documents are in CCF's possession, custody, or control.

8. Produce any and all documents, communications, and formulas behind CCF's economic impact report and how it applies to, and/or incorporates, Lakewood Hospital.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. To the extent this request is referring to the 2008, 2010, or 2014 economic impact report (that relies on 2013 data), the methodology for those reports are described in them. Subject to these objections, CCF will make the 2008, 2010, and 2014 economic impact reports available for inspection and copying.

9. Produce all documents and communications regarding and exhibiting the sources of funds used to pay Subsidium for its consultation services from 2013 to the present.

<u>RESPONSE:</u> CCF and Dr. Cosgrove object to this request as vague and ambiguous. To the extent the request is seeking documents that relate to CCF providing funds to pay Subsidium for the services it provided to LHA, no such documents exist.

10. Produce all unredacted meeting minutes of LHA Board of Trustees meetings from 1996 to the present, and any committee special meeting, task force, advisory boards, Step 2, and notes for, including, but not limited to, the Vision for Tomorrow task force.

RESPONSE: CCF and Dr. Cosgrove object to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to LHA's assertion of attorney client privilege and/or confidentiality, CCF will make available for inspection and copying meeting minutes of LHA's Board of Trustees and any committees from 1996 to the present that relate to LHA's financial performance or business plans, to the extent those documents are in CCF's possession, custody, or control.

11. Produce all unredacted meeting minutes of CCF Board of Trustees meetings from 1996 to the present, and any committee special meeting, task force, advisory boards, Step 2, and notes for, including, but not limited to, the Vision for Tomorrow task force.

RESPONSE: CCF and Dr. Cosgrove object to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

CCF and Dr. Cosgrove further object to this request to the extent it seeks information protected by the attorney-client privilege.

12. Produce a complete copy of the 1996 Amended and Restated Lease ("Lease") with ALL attachments and exhibits.

<u>RESPONSE:</u> CCF will make available for inspection and copying the Lease with all attachments and exhibits that are in its possession, custody, or control.

13. Produce a complete copy of the 1996 Definitive Agreement ("DA") with ALL attachments and exhibits.

<u>RESPONSE</u>: CCF will make available for inspection and copying the DA with all attachments and exhibits that are in its possession, custody, or control.

14. Produce all documents and communications regarding the Vision for Tomorrow plan.

RESPONSE: CCF and Dr. Cosgrove object to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. CCF and Dr. Cosgrove further object to this request to the extent it seeks information protected by the attorney-client privilege. Subject to these objections and LHA's assertion of attorney client privilege and/or confidentiality, CCF will make available for inspection and copying meeting minutes of LHA's Board of Trustees and any special committees that relate to the Vision for Tomorrow plan from 1996 to the present, to the extent those documents are in CCF's possession, custody, or control.

15. Produce any and all market studies conducted or received, including, but not limited to, studies on the City market and Lakewood Hospital's service area, studies on northeast Ohio and national health care trends, economic impact studies regarding Lakewood Hospital and health care services in general, community assessment needs, and the Subsidium study.

<u>RESPONSE</u>: CCF and Dr. Cosgrove object to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

CCF and Dr. Cosgrove further object to this request to the extent it seeks information protected by the attorney-client privilege. Subject to these objections, CCF will make available for inspection and copying the following reports, to the extent they are in its possession, custody, or control, that relate specifically to Lakewood Hospital: the October 2009 Noblis Report, the June 2006 Service Line Assessment, the October 2007 Vision for Tomorrow powerpoints, the July 2011 Navigant Report, the 2001 Community Health Assessment - Western Region prepared by Strategy Solutions, and the 2013 community health needs assessment.

16. Produce all original or unredacted copies of requests or notices given to LHA Board of Trustees members for Changes in health care services offered by Lakewood Hospital in compliance with the Lease.

<u>RESPONSE:</u> CCF and Dr. Cosgrove object to this request as unintelligible. CCF is not a party to the Lease and has provided no notices to LHA pursuant to the terms of the Lease.

17. Produce all original or unredacted copies of (A) notices given to LHA by CCF or City of any deficiencies or events of default at Lakewood Hospital under the Lease and Definitive Agreement and (B) notices sent by LHA or City to CCF of any deficiencies or events of default at Lakewood Hospital under the Lease and/or Definitive Agreement.

RESPONSE: CCF and Dr. Cosgrove object to this request as unintelligible. CCF is not a party to the Lease and has provided no notices to LHA or received notices from anyone relating to defaults under the Lease. CCF has not received any notice of default under the Definitive Agreement.

18. Produce any and all documents containing itemizations, allocations, calculations, and meanings of Administrative Services expenses at Lakewood Hospital under CCF's "shared services" plan from 1996 to the present.

RESPONSE: CCF and Dr. Dr. Cosgrove object to this request as overbroad and unduly burdensome in that it requests "all" documents over a 19 year period.

19. Produce any and all documents and communications by LHA requesting CCF to do acts agreed to under the Lease and/or Definitive Agreement and any and all responses by CCF thereto.

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

CCF has no obligations under the Lease and LHA has never requested CCF to perform obligations under the Lease. To the extent this request is seeking formal notices provided by LHA to CCF under the Definitive Agreement, no such notices exist.

20. Produce any and all documents and communications regarding community assessment needs in Northeast Ohio, including the Western Region and Lakewood Hospital service area, individually and separately, from 1996 to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague and ambiguous, specifically with regard to the phrase "community assessment needs." To the extent this request seeks community health needs assessments, CCF and Dr. Cosgrove object to this request as over broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, see response to document request 15.

21. Produce all communications to Lakewood Hospital employees regarding (A) the Letter of Intent, (B) CCF's Avon Hospital, and (C) proposed closure of Lakewood Hospital, and (D) Changes in medical services at Lakewood Hospital.

RESPONSE: CCF will make available for inspection and copying communications to Lakewood Hospital employees that refer specifically to the January 2015 Letter of Intent, the Avon Hospital, the possible closure of Lakewood Hospital, and changes in medical services offered at Lakewood Hospital that are in CCF's possession, custody, or control.

22. Produce any and all notes of LHA Board of Trustees members from any meetings and discussions regarding Lakewood Hospital and LHA from 1996 to the present.

RESPONSE: Subject to LHA's assertion of attorney client privilege and/or confidentiality, CCF will make available for inspection and copying notes of LHA's Board of Trustees from meetings from 1996 to the present, to the extent those documents are in CCF's possession, custody, or control.

23. Produce the original or identical, unredacted copy of the 2015 Definitive Agreement by and between LHA and CCF and all drafts thereof.

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

There is no 2015 Definitive Agreement by and between LHA and CCF.

24. Produce any and all internal communications and documents or communications sent between CCF and Other Defendants regarding the 2015 Definitive Agreement.

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

There is no 2015 Definitive Agreement by and between LHA and CCF.

25. Produce all meeting minutes, notes, and internal communications from the January 2015 LHA Board of Trustees meeting at which the Board unanimously approved CCF's Letter of Intent.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague and ambiguous with regard to the phrase "internal communications from the . . . meeting." Subject to these objections and LHA's assertion of attorney client privilege and/or confidentiality, CCF will make available for inspection and copying meeting minutes, presentations, and notes from LHA's January 14, 2015 Board of Trustees meeting, to the extent those documents are in CCF's possession, custody, or control.

26. Produce the original or an identical, unredacted copy of the original January 2015 Letter of Intent and all drafts thereof.

<u>RESPONSE</u>: CCF will make available for inspection and copying a copy of the January 2015 Letter of Intent to the extent it is in CCF's possession, custody, or control.

27. Produce the original or an identical, unredacted copy of the original Memorandum of Understanding between the City, LHA, and CCF in 1996.

RESPONSE: CCF will make available for inspection and copying the 1996

Memorandum of Understanding to the extent it is in CCF's possession, custody, or control.

28. Produce any and all opinion letters received by you from the Ohio Ethics Commission from 1996 to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as overbroad and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks letters

that relate to anything other than Lakewood Hospital. Neither CCF nor Dr. Cosgrove received any letter from the Ohio Ethics Commission that relates to Lakewood Hospital.

29. Produce any and all notes, meeting minutes, documents, and communications concerning the Step 2 Team or Step 2 committee.

RESPONSE: CCF and Dr. Cosgrove object to this request as overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and LHA's assertion of attorney client privilege and/or confidentiality, CCF will make available for inspection and copying meeting minutes of LHA's Board of Trustees and any Step 2 committee minutes from 1996 to the present, to the extent those documents are in CCF's possession, custody, or control.

30. Produce any and all presentations of caucuses and subcommittees of LHA and/or CCF from 1996 to the present related to Lakewood Hospital and the Western Region hospitals wholly-owned by CCF.

RESPONSE: CCF and Dr. Cosgrove object to this request as overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and LHA's assertion of attorney client privilege and/or confidentiality, CCF will make available for inspection and copying meeting minutes of LHA's Board of Trustees and any committees from 1996 to the present that relate to LHA's financial or business plans, to the extent those documents are in CCF's possession, custody, or control.

31. Produce any and all documents and communications concerning the Lease and Definitive Agreement's required minimum annual investment that CCF must provide to LHA or the City.

<u>RESPONSE:</u> CCF and Dr. Cosgrove object to this request as vague and ambiguous, specifically with regard to the phrase "required minimum annual investment."

32. Produce all documents and communications containing a periodic checklist of Lease and Definitive Agreement provisions being complied with, or not being complied with, by LHA and CCF from 1996 to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as overbroad and unduly burdensome. Subject to these objections, CCF will make available for inspection and copying the Member Reports for LHA that are in its possession, custody, or control for the time period 1996 to the present.

33. Produce any and all documents and communications between you, LHA, and/or the Ohio Department of Health from 1996 to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as overbroad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Ohio hospitals are required to provide a significant amount of data to the Ohio Department of Health on a routine basis. Identifying all documents and communications for every Cleveland Clinic hospital for a 19 year period would require extraordinary effort and time.

34. Produce any and all documents and communications regarding Change(s) and/or reduction(s) in Lakewood Hospital central scheduling or future plans at Lakewood Hospital to Change and/or reduce medical services and central scheduling, and to where patients will be sent to receive medical care previously offered at Lakewood Hospital, providing the effective date of each proposed/planned Change and/or reduction.

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

35. Produce any and all notes, documents, and communications shared between you and either LHA or the City and Mayor Michael Summers in private meetings from 1996 to the present.

<u>RESPONSE:</u> CCF and Dr. Cosgrove object to this request as overbroad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

36. Produce all documents, communications, contracts, and letter agreements between you and Select Health concerning the sale of Lakewood Hospital rehabilitation beds.

<u>RESPONSE:</u> CCF and Dr. Cosgrove object to this request as vague and ambiguous with regard to the phrase "sale of Lakewood Hospital rehabilitation beds."

37. Produce the full, complete, unreducted meeting minutes from the 2010 LHA Board of Trustees meeting at which former Mayor Ed Fitzgerald and City council persons recused themselves from a vote regarding the Vision for Tomorrow plan.

RESPONSE: Subject to LHA's assertion of attorney client privilege and/or confidentiality, CCF will make available for inspection and copying meeting minutes of LHA's Board of Trustees, to the extent those documents are in CCF's possession, custody, or control.

38. Produce all inter-company billings for pharmaceuticals at Lakewood Hospital and CCF.

<u>RESPONSE:</u> CCF and Dr. Cosgrove object to this request as vague and ambiguous.

39. Produce all documents and communications showing (A) planned use for and the moving of Lakewood Hospital equipment and to where it is being or will be sent, identifying other CCF wholly-owned hospitals to where it is being sent and (B) prior use and moving of Lakewood Hospital equipment to other CCF wholly-owned hospitals.

RESPONSE: CCF and Dr. Cosgrove object to this request as overbroad, unduly burdensome, vague and ambiguous, specifically with regard to the phrase "Lakewood Hospital equipment." Equipment located on the Lakewood Hospital premises is owned in some instances by LHA, in other instances by CCF, and in still other instances by third parties. To the extent this request seeks information about equipment that is owned by LHA, LHA's policy is that any transfers of ownership of that equipment are to be conducted at arm's length, for fair market value. CCF and Dr. Cosgrove are unaware of instances in which this policy has not been followed.

40. Produce all PowerPoint presentations proposing to move any medical services, including Required Services, from Lakewood Hospital to other wholly-owned CCF hospitals, from 1996 to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague and ambiguous, specifically with regard to the phrase "presentations proposing to move medical services." To the extent this request is seeking presentations made to the LHA Board of Trustees, subject to LHA's assertion of attorney client privilege and/or confidentiality, CCF will make available for inspection and copying presentations provided to LHA's Board of Trustees that relate to changes in services provided at Lakewood Hospital, to the extent that those presentations are in CCF's possession, custody, or control.

41. Produce a complete depreciation schedule of Lakewood Hospital from 1986 to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence. A depreciation schedule is included in LHA's audited financial statements. Subject to these objections, CCF will make available for inspection and copying the audited financial statements of LHA for the period 1996 through 2014, to the extent they are in its possession, custody, or control.

42. Produce all documents outlining all fixed assets of Lakewood Hospital including, but not limited to, building, improvements, and equipment from 1996 to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence. A schedule of fixed assets is included in LHA's audited financial statements. Subject to these objections, CCF will make available for inspection and copying the audited financial statements of LHA for the period 1996 through 2014, to the extent they are in its possession, custody, or control.

43. Produce all documents and communications between LHA and LHF regarding the allocation and sources of funds from 1996 to the present.

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

44. Produce an unredacted, full, and separate annual accounting from LHF from 1996 to the present.

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

45. Produce an unredacted, full accounting of long-term investments of LHA each year from 1996 to the present.

<u>RESPONSE:</u> CCF and Dr. Cosgrove object to this request as vague and ambiguous. Subject to these objections, CCF will make available for inspection and copying the audited

financial statements of LHA for the period 1996 through 2014, to the extent they are in its possession, custody, or control.

46. Produce all documents and communications with Other Defendants regarding Subsidium, including, but not limited to, documents and communications referencing funds and sources of funds paid to Subsidium and Subsidium's overview of Lakewood Hospital.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague and ambiguous. To the extent it is seeking communications between CCF and Other Defendants about payments made to Subsidium, CCF does not have any responsive documents in its possession, custody or control.

47. Produce a copy of all contracts or letter agreements with third-party health care consultants regarding Lakewood Hospital from 1996 to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence.

48. Produce all documents and communications requested by and from the Mayor and City council persons as ex-officio trustees and any input or documents the Mayor and City council persons provided to LHA or CCF.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence.

49. Produce all documents and communications regarding requests for maintenance at Lakewood Hospital, maintenance performed, not performed, and the cost of each maintenance.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence.

50. Produce any and all documents and communications between CCF and any Other Defendants regarding, but not limited to, (A) the Definitive Agreement by and between LHA and CCF, (B) the Lease by and between the City and LHA, (C) LHA's Code of Regulations, (D) the Vision for Tomorrow plan, (E) CCF's proposal in response to LHA's request for proposal, (F)

CCF's Letter of Intent, (G) any health care needs study or analysis, and (H) the Subsidium overview report.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence.

51. Produce any and all drafts of the Subsidium overview report and recommendations, all underlying research and reports of such report and recommendations, and any documents or communications relating thereto.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence. Subject to these objections, CCF will make available for inspection the Subsidium report and drafts thereof in its possession, custody, or control.

52. Produce any and all documents and communications between CCF and any Other Defendants regarding any Change in medical services at Lakewood Hospital from 1996 to the present. This includes, but is not limited to, formal notices or requests to Change medical services, all reviews and analyses, and all responses approving or denying the requested Changes in medical services.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence.

53. Produce all documents identifying all medical services provided at Lakewood Hospital in these years separately: 1986, 1996, 2000, 2005, 2010, 2011, 2012, 2013, 2014, and 2015.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence.

54. Produce all documents identifying the Required Services and all other medical services agreed upon in the Lease between LHA and the City and the Required Services and all other medical services still provided at Lakewood Hospital currently.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence.

55. Produce all market studies, community health assessments, economic impact studies relating to Lakewood Hospital, or any other analyses received by LHA and CCF from Other Defendants or any third-party regarding Lakewood Hospital and the Lakewood Hospital service area from 1996 to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence. CCF and Dr. Cosgrove object further to the extent this request is duplicative of other requests, including request number 15, and their response to that request is incorporated here.

56. Produce all documents or communications transmitted between the City, LHA, LHF, and CCF regarding the Vision for Tomorrow plan.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence.

57. Produce any and all documents and communications regarding the valuation or appraisal of land in the potential sale of City-owned property to CCF.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence.

58. Produce all documents and communications regarding the ICD9, CPT, and DRG annual breakdown by year and CCF hospital individually and separately from 1996 to the present in electronic database format.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence.

59. Produce any and all documents, communications, contracts, and letter agreements among you, all Other Defendants, and all other entities regarding plans to diminish, terminate, and/or transfer Lakewood Hospital medical services in 2015 through 2016.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence.

60. Produce all documents regarding Changes in scheduling appointments for medical services (i.e. neurology, infusions, OB, etc.) from Lakewood Hospital to CCF wholly-owned hospitals for 2015 and 2016.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence.

61. Produce all drafts of the Letter of Intent regarding future plans for Lakewood Hospital.

<u>RESPONSE:</u> CCF and Dr. Cosgrove object to this request as not reasonably calculated to lead the discovery of admissible evidence and seeking documents protected by the attorney-client privilege.

62. Produce an unredacted copy of or the original Mutual Confidential Disclosure Agreement between you, LHA, LHF, and the City pertaining to the Letter of Intent.

RESPONSE: No such document exists or ever existed.

63. Produce any and all documents and communications regarding the closure of Huron Hospital.

<u>RESPONSE:</u> CCF and Dr. Cosgrove object to this request as overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence.

64. Produce any and all documents and communications indicating financial audits, performance, and economic impact of the CCF family health center in East Cleveland which replaced Huron Hospital.

<u>RESPONSE:</u> CCF and Dr. Cosgrove object to this request as overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence.

65. Produce all contracts with Hennes Paynter Communications and/or Crisis Communications including Lakewood Hospital, Huron Road Hospital, Fairview Hospital, Lutheran Hospital, and/or Avon Hospital from 2005 to the present.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence. To the extent this request is seeking contracts between CCF and Hennes Paynter Communications and/or Crisis Communications, no responsive documents exist.

66. Produce any internal communications concerning the foregoing document requests.

RESPONSE: CCF and Dr. Cosgrove object to this request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence. They further object in that it specifically seeks communications protected by the attorney-client privilege.

67. With respect to each expert witness you retained or intend to call at trial, provide all documents relating to: (A) any expert report or statement issued by the identified experts regarding their opinions or basis for their opinions; (B) any documents upon which the identified experts based their opinions; (C) any documents relating to the identified experts' qualifications for rendering such opinions; (D) copies of each expert's curriculum vitae; (E) any documents relevant to the use of identified experts; (F) any documents furnished or made available to any expert; and (G) any documents passing between you and your counsel and each expert.

RESPONSE: CCF and Dr. Cosgrove object to this request as premature and seeking information protected by the work product doctrine. Subject to these objections, CCF and Dr. Cosgrove will supplement their response in accordance with the Court's scheduling order and/or the requirements of the Ohio Rules of Civil Procedure.

### **ANSWER TO REQUEST FOR INTERROGATORIES**

1. Identify the individual(s) who are responding to Plaintiffs' First Request for Production of Documents, Interrogatories, and Admissions, including the number of the Interrogatory for which each individual supplied information and/or is verifying the answers.

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as requesting information protected from discovery by the attorney-client privilege and the attorney work product doctrine.

2. Identify all documents consulted in connection with the preparation of the answers to these Interrogatories and attach a copy of each document.

<u>ANSWER:</u> CCF and Dr. Cosgrove object to this interrogatory as requesting information protected from discovery by the attorney work product doctrine.

3. Identify the individual(s) most knowledgeable regarding the Lease and lessee(s) of the properties located at 14519 Detroit Avenue, Lakewood, Ohio 44107 and 850 Columbia Road, Westlake, Ohio 44145.

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as vague and ambiguous.

Lakewood Hospital Association is the lessee and the City is the lessor in the referenced Lease.

Upon information and belief, those entities are most knowledgeable about the Lease.

4. Identify all individuals who you believe to have knowledge of any facts concerning the allegations of Plaintiffs' Complaint. For each individual so identified, briefly summarize his or her knowledge concerning the allegations of Plaintiffs and the answers and/or affirmative defenses propounded by Defendant(s).

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

CCF and Dr. Cosgrove further object to this request to the extent it seeks information protected by the attorney-client privilege. The allegations in the Complaint span the period of time from 1907 to the present, with particular focus on the last 20 years, and those allegations include allegations and speculation about LHA employees, patients, and doctors; CCF management; City officials; and each of the defendants. According to the Complaint there are more than 1000 LHA

employees who may have knowledge that relates to the allegations in the Complaint. Subject to these objections and pursuant to Rule 33(C), the answer to this interrogatory may be derived further from the LHA Board of Trustees meeting minutes.

5. Identify all individuals you intend or anticipate to call as witnesses at the trial of this matter providing a brief summary of their anticipated testimony.

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as premature. In the event that this case proceeds to a trial, CCF and Dr. Cosgrove will identify witnesses at such time and in such manner as required by the Court's scheduling and/or case management orders.

6. Identify and describe each exhibit which the Defendant(s) will use at the trial of this matter.

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as premature. In the event that this case proceeds to a trial, CCF and Dr. Cosgrove will identify exhibits at such time and in such manner as required by the Court's scheduling and/or case management orders.

7. Identify your role in the discussions and ultimate decision to hire a health care consultant, which ended up being Subsidium.

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as vague and ambiguous. Neither CCF nor Dr. Cosgrove had a role in LHA's decision to hire Subsidium and the LHA Board of Trustees members who are CCF employees did not participate in the Board's decision to hire Subsidium. With regard to the decision to hire a health care consultant, neither CCF nor Dr. Cosgrove were involved in that decision. The Board of Trustees members who are CCF employees did participate in the LHA Board meeting on Nov. 19, 2012, at which this issue was discussed.

8. Identify your role in Subsidium's consultation to LHA and CCF in regards to Lakewood Hospital.

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as vague and ambiguous. Subsidium did not provide consulting services to CCF with regard to Lakewood Hospital. The LHA Board of Trustees members who are CCF employees were not members of either the "Select Committee" or the "Step 2 Committee" that met with and provided oversight of Subsidium.

9. Identify any entities you consulted on your own in considering the future of Lakewood Hospital in response to Subsidium's recommendations.

<u>ANSWER:</u> Neither Dr. Cosgrove nor CCF consulted any entity in considering the future of Lakewood Hospital in response to Subsidium's recommendations.

10. Identify your role in communicating to the City's Taxpayers, residents, Lakewood Hospital employees, and the general public in discussing and laying out plans for the future of Lakewood Hospital.

ANSWER: Among the administrative services that CCF provides to LHA are executive management services, marketing and communications, human resources, and government relations, which have provided input to LHA in communicating to employees and the public about the future of Lakewood Hospital. On or about January 15, 2015, Dr. Cosgrove participated in a press conference that discussed the future of Lakewood Hospital and CCF delivered a message to CCHS employees, including Lakewood Hospital employees, about the future of Lakewood Hospital.

11. Identify your role in creating LHA's Request for Proposal to prospective bidders in response to Subsidium's recommendations.

ANSWER: Neither Dr. Cosgrove nor CCF had a role in creating any requests for proposal relating to Lakewood Hospital.

12. Identify your role in drafting any of the bidders' proposals in response to LHA's Request for Proposal in response to Subsidium's recommendations, including CCF's proposal and MetroHealth's proposal.

ANSWER: CCF drafted its own proposal in response to LHA's Request for Proposal. It had no role with regard to any other proposals that were submitted in response to LHA's Request for Proposal. Dr. Cosgrove had no role independent of his employment with CCF.

13. Identify your role in accepting CCF's proposal over MetroHealth's proposal.

ANSWER: Neither Dr. Cosgrove nor CCF had any role in Subsidium's recommendations with regard to CCF's proposal, nor with regard to any actions LHA took relating to Subsidium's recommendations.

14. Identify your role in creating and/or approving CCF's Letter of Intent.

ANSWER: CCF was a party to and negotiated the terms of the Letter of Intent. Dr. Cosgrove had no role independent of his employment with CCF.

15. Identify all medical services provided at Lakewood Hospital beginning at the start of the Lease agreement in 1996.

ANSWER: CCF and Dr. Cosgrove object to this request as unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, CCF and Dr. Cosgrove are continuing to search for responsive information from twenty years ago to respond to this request and will supplement their response if information is located.

16. Identify all Required Services in the Lease.

ANSWER: Pursuant to Rule 33(C), the answer to this interrogatory may be derived from the Lease.

17. Identify all Changes in (A) medical services and (B) Required Services in the Lease from 1996 to the present by providing the date of Change and the type of Change.

ANSWER: CCF and Dr. Cosgrove object to this request as unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, CCF and Dr. Cosgrove are continuing to search for responsive information from twenty years ago to respond to this request and will supplement their response if and when information is located.

18. Identify the medical services (i.e., Centers of Excellence) promised by CCF to the City and LHA in return for Changing the Required Services and/or medical services under the Lease.

ANSWER: CCF did not promise any medical services "in return for Changing the Required Services and/or medical services under the Lease."

19. Identify when/if the Centers of Excellence described in the foregoing were instituted, modified, and/or terminated at Lakewood Hospital.

ANSWER: CCF did not promise any medical services "in return for Changing the Required Services and/or medical services under the Lease."

20. Identify Lakewood Hospital's Chief Hospital Administrator from 1996 to the present and for each identified individual provide his or her employer's name and address as reported to the Internal Revenue Service.

ANSWER: Lakewood Hospital did not have a board elected officer with the title "Chief Hospital Administrator" during the years 1996 through the present. The following individuals served as the highest ranking official of Lakewood Hospital during the approximate years indicated:

1984-1998 Jules Bouthillet

1998-1999 Revonda Shumaker

1999-2004 V. Richard Stelzer Jr.

2004-2009 Jack Gustin, as appointee of Fred M. DeGrandis

2010-2011 Janice Murphy, as appointee of Dr. David L. Bronson

2012-2013 Robert Weil, M.D., as appointee of Dr. Bronson

2013-present Shannan Ritchie, as appointee of Dr. Bronson and Dr. Stephen Jones

21. Identify any and all medical services at Lakewood Hospital you intend on diminishing, terminating, or transferring, why you intend on doing so, when you intend on doing so, and to where you intend on transferring such medical services.

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as vague and ambiguous, specifically with regard to the concept of "transferring . . . medical services." CCF, LHA, and the City have discussed the possibility of terminating all services at Lakewood Hospital and building an emergency and outpatient medical facility to best serve the immediate and long term health care needs of the community. This transition cannot take place without the City's approval and no approval has been given to date. CCF, in connection with LHA's Board of Trustees, continuously studies ways to improve the quality of services and lower costs, as reflected in the LHA Board of Trustees Meeting Minutes. Rehabilitation services are expected to be transitioned from Lakewood Hospital. Pursuant to Rule 33(C), the details relating to the transition of rehabilitation services may be derived from the July 30, 2014 LHA Board of Trustees meeting minutes.

22. Identify all entities you are transacting with in regards to the immediate foregoing interrogatory.

ANSWER: Pursuant to Rule 33(C), the answer to this interrogatory may be derived from the July 30, 2014 LHA Board of Trustees meeting minutes.

23. Identify all provisions in the Lease applicable to CCF's duties and responsibilities in regards to the operations and management of Lakewood Hospital.

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as vague and ambiguous. CCF is not a party to the Lease.

24. Identify all provisions in the Definitive Agreement applicable to CCF's duties and responsibilities under the Lease to operate and manage Lakewood Hospital.

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as vague and ambiguous. CCF is not a party to the Lease.

25. Identify all provisions of LHA's Code of Regulations applicable to CCF's duties, rights, and responsibilities in regards to the operation and management of Lakewood Hospital and/or influence over and control of LHA.

<u>ANSWER:</u> Pursuant to Rule 33(C), the answer to this interrogatory may be derived from the LHA's Code of Regulations.

26. Identify all sources of funds coming from LHA to pay Subsidium for its health care consultation services.

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as vague and ambiguous. To the extent it is seeking information about the source of LHA's revenues, that information may be derived from LHA's audited financial statements, pursuant to Rule 33(C).

27. Identify the intended beneficiaries of Lakewood Hospital as defined in (A) LHA's Articles of Incorporation, (B) the Lease, (C) the Definitive Agreement, (D) the Second Amended Charter of Lakewood, (E) City Ordinances, and (F) LHA's Code of Regulations.

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as vague and ambiguous. To the extent it is seeking an identification of intended third party beneficiaries, as defined by Ohio law, of the listed documents, there are none.

28. Identify the current LHA trustees by name and address as defined in (A) LHA's Articles of Incorporation, (B) the Lease, (C) the Definitive Agreement, (D) the Second Amended Charter of Lakewood, (E) City Ordinances, and (F) LHA's Code of Regulations.

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as vague and ambiguous. To the extent this interrogatory is seeking the names of LHA's current trustees, the answer to this interrogatory may be derived from the LHA Board of Trustees Meeting Minutes pursuant to Rule 33(C). To the extent this interrogatory is seeking a description of the process by which trustees

are to be selected in each of the documents listed, the answer to this interrogatory may be derived from the documents that are listed.

29. Identify the sole member of LHA and describe its rights, duties, and responsibilities as defined in the (A) Lease, (B) Definitive Agreement, and (C) LHA's Code of Regulations.

ANSWER: Pursuant to Rule 33(C), the answer to this interrogatory may be derived from the Definitive Agreement and LHA's Code of Regulations. The Lease has no binding effect on the sole member of LHA because it is not a party to it.

30. Identify the total number of Lakewood Hospital employees in each individual and separate year from 1996 to the present.

ANSWER: CCF and Dr. Cosgrove object to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, the following data shows the number of full time equivalents who were employees of Lakewood Hospital during the given year. It does not include individuals who were employed by other entities (within or outside of the Cleveland Clinic Health System) but provided services at Lakewood Hospital. For those years not provided, CCF and Dr. Cosgrove will supplement this response with additional information as it is located.

2003: 1,110	2004: 1,102	2005: 1,035	2006: 1,025	2007: 1072
2008: 1,062	2009: 1,032	2010: 927	2011 (Oct.): 896	2012 (Oct.): 899
2013: 969	2014: 913	2015 (June 30): 811		

- 31. Identify exactly what Administrative Services expenses you are allocating and how much in each of the following categories from 1996 to the present for Lakewood Hospital:
  - (a) Information technology
  - (b) Marketing
  - (c) Supply chain
  - (d) Legal

- (e) Human resources
- (f) Executive team
- (g) Revenue cycle
- (h) Internal audit
- (i) Regional administration
- (i) Finance

<u>ANSWER:</u> CCF and Dr. Cosgrove object to this request as over broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

32. Identify what percentage of Administrative Service expenses or "shared services" you are allocating to Lakewood Hospital, and how much to each other individual and separate CCF wholly-owned hospital from 1996 to the present.

<u>ANSWER:</u> CCF and Dr. Cosgrove object to this request as over broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

33. Identify which hospitals are included under "obligated group" and which are included under "non-obligated group" indicated in your 2013 and 2014 consolidated audit financial statements.

ANSWER: Pursuant to Rule 33(C), the answer to this interrogatory may be derived from the 2013 and 2014 consolidated audited financial statements.

34. Identify the allocation, calculation, and meaning of Administrative Services expenses as it relates to Lakewood Hospital in comparison to each separate and individual CCF wholly-owned hospital.

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as vague and ambiguous. It does not appear to be requesting anything different from Interrogatory No. 32. CCF and Dr. Cosgrove thus incorporate their response to Interrogatory 32 as if fully restated here.

35. Identify any and all consultants who worked for you, other than Subsidium, from 1996 to the present, not excluding consultants used for purposes unrelated to Lakewood Hospital.

<u>ANSWER:</u> CCF and Dr. Cosgrove object to this interrogatory as over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

36. Identify the names and addresses of any companies and any agents, employees or affiliates thereof who have worked with you from 1996 to the present to provide studies and/or analysis of Lakewood Hospital and/or CCF in its entirety.

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as vague, ambiguous, over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. CCF and the LHA Board of Trustees continuously study and analyze Lakewood Hospital's operations.

37. Identify as precisely as possible the total dollar you plan to invest in the demolition of Lakewood Hospital and the building of a new family health center and the source(s) of funds used for that investment.

ANSWER: CCF and Dr. Cosgrove object to this interrogatory as premature. Until a transaction is negotiated, the costs associated with demolition or construction cannot be estimated with any accuracy, nor can the source of those funds be predicted.

### **RESPONSE TO FIRST REQUEST FOR ADMISSIONS**

1. Admit that CCF has been operating and managing Lakewood Hospital from 1996, after it entered into the Definitive Agreement and Lease, through to the present.

RESPONSE: Denied. CCF is not a party to the Lease. CCF does provide services to Lakewood Hospital, and has done so since 1996, pursuant to the terms of the Definitive Agreement.

2. Admit that LHA integrated CCF into the LHA entity in 1996.

<u>RESPONSE:</u> CCF and Dr. Cosgrove object to this request for admission as unintelligible. To the extent a response is necessary, it is denied.

3. Admit that LHA's sole member with reserved powers is CCF.

RESPONSE: Denied. LHA's sole member is CCF and its rights are described in LHA's Code of Regulations.

4. Admit that LHA's alter ego is CCF because it is the sole member, with reserved powers, responsible for day-to-day operations, determines strategic plans and financial matters, and has final authority to approve or terminate the LHA president, Lease terms, Lease extension, etc.

<u>RESPONSE</u>: Denied. LHA is an Ohio non-profit corporation, as is CCF. They are separate legal entities, each controlled by its own governing board.

5. Admit that the Lease term is thirty (30) years, lasting from 1996 until 2026, with an option for another thirty (30) years until 2056.

RESPONSE: Admitted.

6. Admit that LHA and CCF entered into a Definitive Agreement in or around 1996 that required an Amended Lease with the City.

RESPONSE: Denied. LHA and the City did enter into an amended Lease at the time that the Definitive Agreement was executed.

7. Admit that through the Definitive Agreement CCF was integrated into LHA to be the operator and manager of Lakewood Hospital assets (i.e. land, building, and equipment) and to conform to the Lease as amended in 1996.

RESPONSE: Denied.

8. Admit that Section 1.1.4 of the Definitive Agreement provides that CCF shall operate and manage Lakewood Hospital in a fiscally prudent manner, consistent with LHA's charitable purpose and its obligations under the Lease.

## RESPONSE: Denied.

9. Admit that Section 1.2 of the Definitive Agreement provides the City the right to enforce the Lease against LHA and CCF.

### RESPONSE: Denied.

10. Admit that Sections 1.8.1 and 6.1.1 of the Definitive Agreement provide that CCF is bound by the terms of the Lease and shall not do anything to cause LHA to breach the Lease.

### RESPONSE: Denied.

11. Admit that Section 2.1.1 of the Definitive Agreement provides that CCF must ensure LHA's 1:1 cash-to-debt ratio on a yearly basis through the initial Lease term of 2026.

#### RESPONSE: Denied.

12. Admit that the Lease provides for the operation and management of Lakewood Hospital in a faithful and efficient manner as a going concern through the initial Lease term of 2026.

#### RESPONSE: Denied.

13. Admit that CCF has moved Lakewood Hospital equipment and/or medical services to other CCF wholly-owned hospitals.

### RESPONSE: Denied.

14. Admit that CCF has plans to move Lakewood Hospital equipment and/or medical services to other CCF wholly-owned hospitals in 2015 and 2016.

### RESPONSE: Denied.

15. Admit that Lakewood Hospital currently is the largest employer in the City and that CCF's proposed plan to close and demolish Lakewood Hospital would significantly reduce employment and have an adverse economic impact on the City.

RESPONSE: Denied. Neither CCF nor Dr. Cosgrove has data sufficient to establish that Lakewood Hospital Association is currently the largest employer in the City. Discussions about the future of Lakewood Hospital are underway. Unless and until an agreement is reached with the City, proposals relating to the future of Lakewood Hospital are neither definitive nor static.

16. Admit that the City created a charitable trust in Lakewood Hospital with the intended beneficiaries of such trust being the City Taxpayers, residents, employees of Lakewood Hospital, and the general public as defined in (A) the Second Amended Charter of Lakewood, (B) City Ordinances, (C) the Lease, (D) the Definitive Agreement, and (E) and LHA's Code of Regulations.

### RESPONSE: Denied.

17. Admit that the trustees of the Lakewood Hospital trust in the immediate foregoing admission are LHA, CCF, LHF, and all of their separate boards of trustees.

## RESPONSE: Denied.

18. Admit that, as trustees of the Lakewood Hospital trust, CCF and Other Defendants owe a higher standard of care and fiduciary duties to the intended beneficiaries of the trust.

## RESPONSE: Denied.

19. Admit that Lakewood Hospital is a City-owned asset entrusted to the lessee LHA and CCF as its sole member, alter ego, and as identified in the Lease as the "Member".

### RESPONSE: Denied.

20. Admit that no independent appraiser did an appraisal on any of the real estate owned by the City for the purpose of providing medical care through Lakewood Hospital for the purpose of ascertaining the value at which it might be sold to CCF.

### **RESPONSE**: Denied.

21. Admit that LHA proposed to sell City-owned property located at 850 Columbia Road, Westlake, Ohio, without any appraisal or competitive bidding, at the price of \$8.2 million whereas the fair market value is \$13,726,000 as established by the Cuyahoga County Fiscal Officer.

### RESPONSE: Denied.

22. Admit that the Lease between the City and LHA and CCF as the Member encompasses the land, building, equipment, fixtures, and supplies used in the management and operation of Lakewood Hospital.

## RESPONSE: Denied.

23. Admit that certain equipment, fixtures, and/or supplies mentioned in the immediate foregoing admission have been coveted and transferred to other CCF wholly-owned hospitals.

3

### RESPONSE: Denied.

24. Admit that CCF plans on continuing this coveting, transfer, and ultimate destruction of City-owned assets through 2015 and 2016 and that the City through its ex-officio trustees on LHA's Board of Trustees voted in favor of CCF's plan outlined in the January 2015 Letter of Intent.

RESPONSE: Denied.

25. Admit that the highest ranking Chief Hospital Administrator of Lakewood Hospital from 1996 to the present has been a CCF employee (i.e. receiving a W-2 for IRS reporting purposes).

RESPONSE: Denied.

26. Admit that you had a contract with Select Health to sell and did sell Lakewood Hospital rehabilitation beds.

RESPONSE: Denied.

27. Admit that you initiated discussions between you and Other Defendants regarding the closure and demolition of Lakewood Hospital.

RESPONSE: Denied.

28. Admit that the January 2015 Letter of Intent purported to change the Lease and/or Definitive Agreement.

RESPONSE: Denied.

29. Admit that CCF is responsible to ensure and pay, on a yearly basis, any operating expenses that cause a cash-to-debt ratio to exceed 1:1.

4

RESPONSE: Denied.

## s/ Tracy K. Stratford

James R. Wooley (0033850) Tracy K. Stratford (0069457)

Katie M. McVoy (0080860)

JONES DAY

North Point

901 Lakeside Avenue

Cleveland, OH 44114.1190

Telephone: 216.586.3939 Facsimile: 216.579.0212

Email: jrwooley@jonesday.com Email: tkstratford@jonesday.com Email: kmmcvoy@jonesday.com

Counsel for Defendants

THE CLEVELAND CLINIC FOUNDATION AND DELOS ("TOBY") COSGROVE, M.D.

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served via electronic mail, this 31st day of July 2015, pursuant to Ohio R. Civ. P. 5(B)(2)(f), 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

David C. Olson Aaron M. Bernay Katherine A. Klaeren Frost Brown Todd LLC 3300 Great American Tower 301 East Fourth Street Cincinnati, Ohio 45202

Attorney for Defendant Subsidium Healthcare, LLC

Kevin M. Butler, Law Director Jennifer L. Swallow, Chief Assistant Law Director (0069982) CITY OF LAKEWOOD LAW DEPARTMENT 12650 Detroit Avenue Lakewood, Ohio 44107

E. John Brzytwa Robert E. Cahill BRZYTWA QUICK & McCRYSTAL LLC 1660 West Second Street 900 Skylight Office Tower Cleveland, Ohio 44113

Attorneys for Defendant City of Lakewood and Mayor Summers

6

O. Judson Scheaf, III Jennifer D. Armstrong Sara H. Jodka Ann M. Hunt 600 Superior Avenue, E., Suite 2100 Cleveland, Ohio 44114

Attorneys for Defendants Lakewood Hospital Association and Thomas Gable

Walter F. Ehrnfelt (0040261) Thomas M. Ehrnfelt (0088087) Waldheger Coyne Co., LPA 1991 Crocker Road, Suite 550 Westlake, OH 44145

Attorneys for Defendants Lakewood Hospital Foundation, Inc. and Kenneth Haber

-and-

Kristine Hayes Joseph Schmansky The Ohio Attorney General's Office Charitable Law Section 150 E. Gay Street, 23<sup>rd</sup> Floor Columbus, OH 43215

Attorneys for Ohio Attorney General Mike DeWine

s/ Tracy K. Stratford\_

One of the Attorneys for The Cleveland Clinic Foundation and Dr. Cosgrove

## **EXHIBIT 11**

Re: Document Inspection??

Tracy Stratford to: Christopher DeVito

216-586-7288

Jones Day North Point 901 Lakeside Avenue Cleveland, Ohio 44114 (216) 586-7288 (216) 579-0212 (fax)

Cc: James R Wooley, Katie M McVoy

#### Chris.

You are welcome to come look at what we have collected thus far. As I told you, we are continuing to search for documents, so please consider this a rolling production. I have meetings outside of the office this afternoon, but I'm happy to make arrangements for you. I should warn you that the Washington Post is holding a national forum at our offices this afternoon relating to the RNC debate. I suspect it is going to be a zoo here. Please let me know approximately what time you'd like to come over. If you want to do it first thing tomorrow morning to avoid the masses, I am happy to accommodate that as well.

Tracy K. Stratford Partner JONES DAY® - One Firm Worldwide™ North Point 901 Lakeside Avenue Cleveland, Ohio 44114 Office +1.216.586.7288 tkstratford@jonesday.com

Christopher DeVito

Tracy, Are the documents ready to be reviewed... 08/05/2015 10:46:53 AM

Christopher DeVito <chrismdevito@gmail.com> From: "Tracy K. Stratford" <tkstratford@jonesday.com>, To:

Date: 08/05/2015 10:46 AM Document Inspection?? Subject:

Tracy,

Are the documents ready to be reviewed today at your office?

**CMD** 

Christopher M. DeVito, Esq.

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

623 West Saint Clair Avenue Cleveland, Ohio 44113-1204

Work 216-687-1212 and Fax 216-621-2951

Email ChrisMDeVito@gmail.com

Web www.mmd-law.com

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08/05/2015 12:43 PM

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========

## **EXHIBIT 12**



Re: Document Inspection??

Christopher DeVito

to:

Tracy Stratford

08/07/2015 11:59 AM

Cc:

James R Wooley, Katie M McVoy

Hide Details

From: Christopher DeVito <chrismdevito@gmail.com>

To: Tracy Stratford <tkstratford@jonesday.com>,

Cc: James R Wooley < jrwooley@jonesday.com>, Katie M McVoy

<kmmcvoy@jonesday.com>

Tracy,

I do not want to come over multiple times to your office becasue of a "rolling production". Further, you have objected to almost every document request and futher have moved for a protective order before producing documents.

Please advise when all the documents are assembled for my review. Please also advise if any documents are being withheld from inspection because of your pending motion for a protective order. The due date, extension, and futher extensions are well past due.

Finally, I still have not received any documents from E&Y becasue of your review. I know you stated that you said they could be released, but I have not received anything. I have already paid for the copies. Please again let E&Y and their copy provided know the documents can be sent to me ASAP.

### Chris

On Wed, Aug 5, 2015 at 12:43 PM, Tracy Stratford <tkstratford@jonesday.com> wrote:

Chris,

You are welcome to come look at what we have collected thus far. As I told you, we are continuing to search for documents, so please consider this a rolling production. I have meetings outside of the office this afternoon, but I'm happy to make arrangements for you. I should warn you that the Washington Post is holding a national forum at our offices this afternoon relating to the RNC debate. I suspect it is going to be a zoo here. Please let me know approximately what time you'd like to come over. If you want to do it first thing tomorrow morning to avoid the masses, I am happy to accommodate that as well.

Tracy K. Stratford

Partner

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North Point

901 Lakeside Avenue Cleveland, Ohio 44114 Office +1.216.586.7288

tkstratford@jonesday.com

From: Christopher DeVito <chrismdevito@gmail.com>
To: "Tracy K. Stratford" <tkstratford@jonesday.com>,

Date: 08/05/2015 10:46 AM

Subject: Document Inspection??

Tracy,

Are the documents ready to be reviewed today at your office?

**CMD** 

--

Christopher M. DeVito, Esq. Morganstern, MacAdams & DeVito, Co., L.P.A. 623 West Saint Clair Avenue Cleveland, Ohio 44113-1204 Work 216-687-1212 and Fax 216-621-2951

Email ChrisMDeVito@gmail.com

Web www.mmd-law.com

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--

Christopher M. DeVito, Esq.

Morganstern, MacAdams & DeVito, Co., L.P.A.
623 West Saint Clair Avenue
Cleveland, Ohio 44113-1204
Work 216-687-1212 and Fax 216-621-2951
Email ChrisMDeVito@gmail.com
Web www.mmd-law.com

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## **EXHIBIT 13**

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

## TRIAL ATTORNEYS AND COUNSELORS AT LAW

"Legal Solutions for Individuals, Families, and Businesses"

September 4, 2015

## VIA EMAIL ONLY (kmmcvoy@jonesday.com)

Katie M. McVoy 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. McVoy:

This letter follows Plaintiffs' document inspection the morning of September 3, 2015, at your law office. After much delay, I was greatly disappointed that there did not exist one piece of paper from The Cleveland Clinic Foundation ("CCF") that is not already in the public realm. The minimal document production appears to be only from the Defendant Lakewood Hospital Association ("LHA") or other documents obtained by public records requests or are currently on public websites.

The document production by CCF and LHA for inspection was greatly deficient. Certain time periods and many categories of documents for LHA were missing. All of the requested information from CCF was never produced. This results in a current discovery dispute with CCF and LHA.

Please accept this letter as my personal and sincere attempt to obtain the necessary documents in lieu of filing a motion to compel against CCF and LHA. However, you indicated to me yesterday orally that CCF has objected and will not voluntarily produce any additional documents. This communication is being sent to memorialize your representation.

However, regarding the LHA document production that was produced at the Jones Day office pursuant to agreement of counsel, the following areas need to be immediately supplemented. I am copying LHA's counsel and all other defense attorneys to make a record of the deficient production and hopefully to obtain a supplemental production of the relevant and necessary documents.

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First, LHA produced Regular Board meeting minutes, Finance and Audit Committee meeting minutes, Governance Committee, and Executive Committee meeting minutes. However, none of the attachments referenced in any of the meeting minutes (including subcommittee reports, PowerPoint presentations, market studies, handouts, etc.) were included in the LHA production. Additionally, the Executive Committee meeting minutes had missing minutes from August 2009 through September 2013. These should immediately be produced with all attachments. Similarly, the Finance and Audit Committee were missing minutes from June 2006 through October 2010. Again, these committee meeting minutes and attachments should be provided.

More importantly, the Planning Committee meeting minutes of LHA were completely missing from the relevant time period agreed to be produced. These LHA Planning Committee meeting minutes, including any and all attachments and documents made part of that committee's meeting minutes, should also be produced.

From the LHA Regular Board meeting minutes that were provided, there was referenced documents and attachments that were made part of the meeting minutes' records, but were not produced. Of note and importance are the following: LHA Strategic Three-Year Plan (referenced August 18, 2008); LHA CEO/Management Reports (referenced August 20, 2007, and May 19, 2008, but other time periods and all other CEO/management reports should be produced); CCF Strategic Capital Plan for Community Hospitals (referenced November 24, 2008); and all other strategic plans, capital plans, CEO/management reports, market studies, etc. referenced in the Regular Board meeting minutes and all LHA Committee meeting minutes.

There also is missing committee meeting minutes for (1) Select Committee and (2) Step 2 that were referenced in the LHA Regular Board meeting minutes. Where are they?

Certain of the LHA Regular or Executive Board Meeting minutes also referenced the following documents as part of the meeting minutes, but were not produced and should be supplemented: 2009 Business Plan and Priorities (referenced December 15, 2008) and Western Region Market Business Plan and Budget 2008. In addition to these two identified business and market region plans, any and all other business plans and market region plans discussed and made part of the LHA records should have been been produced and should be produced now.

The LHA document production also produced certain Subsidium documents, but failed to include the three different engagement letter and/or scope of employment contracts that have been referenced in discovery responses. These contracts and/or scope of engagement letters should be supplemented and produced.

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

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In addition to the above deficiencies which require supplementation, the following are lists of requests for production of documents and/or interrogatories that need to be fully answered or supplemented to avoid a motion to compel. These include but are not limited to the following Requests for Production of Documents:

- 4. Produce all documents and communications regarding the Vision for Tomorrow Plan.
- 5. Produce any and all market studies conducted or received, including, but not limited to, studies on the City market and Lakewood Hospital's service area, studies on northeast Ohio and national health care trends, economic impact studies regarding Lakewood Hospital and health care services in general, community assessment needs, and the Subsidium study.
- 10. Produce any and all documents and communications regarding community assessment needs in Northeast Ohio, including the Western Region and Lakewood Hospital, individually and separately, from 1996 to the present.
- 13. Produce the original or identical, un-redacted copy of the 2015 Definitive Agreement by and between LHA and CCF and all drafts thereof.
- 19. Produce any and all notes, meeting minutes, documents, and communications concerning the Step 2 Team or Step 2 committee.
- 20. Produce any and all presentations of caucuses and subcommittees of LHA from 1996 to the present.
- 21. Produce any and all documents and communications concerning the Lease and Definitive Agreement's required minimum annual investment that CCF must provide.
- 22. Produce all documents and communications containing a periodic checklist of Lease and Definitive Agreement provisions being complied with, or not being complied with, by LHA and CCF from 1996 to the present. (Missing Member Report for year 2008\_\_\_\_\_).
- 24. Produce any and all documents and communications regarding Change(s) and/or reduction(s) in Lakewood Hospital central scheduling or future plans at Lakewood Hospital to Change and/or reduce medical services and central scheduling, and to where patients will be sent to receive medical care previously offered at Lakewood Hospital, providing the effective date of each Change and reduction.

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

## TRIAL ATTORNEYS AND COUNSELORS AT LAW

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- 25. Produce any and all notes, documents, and communications shared between you and either CCF or the City and Mayor Michael Summers in private meetings from 1996 to the present.
- 26. Produce all documents, communications, contracts, and letter agreements between you and Select Health concerning the sale of Lakewood Hospital rehabilitation beds.
- 28. Produce all inter-company billings for pharmaceuticals at Lakewood Hospital.
- 30. Produce all PowerPoint presentations proposing to move any medical services, including Required Services, from Lakewood Hospital from 1996 to the present.
- 31. Produce a complete depreciation schedule of Lakewood Hospital from 1986 to the present.
- 32. Produce all documents outlining all fixed assets of Lakewood Hospital including, but not limited to, building, improvements, and equipment from 1991 to the present.
- 35. Produce an un-redacted, full accounting of long-term investments of LHA each year from 1996 to the present.
- 36. Produce all documents and communications with Other Defendants regarding Subsidium, including, but not limited to, documents and communications referencing funds and sources of funds paid to Subsidium and Subsidium's overview of Lakewood Hospital.
- 37. Produce a copy of all contracts or letter agreements with third-party health care consultants regarding Lakewood Hospital from 1986 to the present.
- 38. Produce all documents and communications requested by and from the Mayor and City council persons as ex-officio trustees and any input or documents the Mayor and City council persons provided to LHA or CCF.
- 39. Produce all documents and communications regarding requests for maintenance at Lakewood Hospital, maintenance performed, not performed, and the cost of each maintenance.
- 40. Produce any and all documents and communications between LHA and any other Defendants regarding, but not limited to, (A) the Definitive Agreement by and between LHA and CCF, (B) the Lease by and between the City and LHA, (C) LHA's Code of Regulations, (D) the Vision for Tomorrow plan, (E) CCF's proposal in response to LHA's request for proposal, (F)

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

## TRIAL ATTORNEYS AND COUNSELORS AT LAW

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CCF's Letter of Intent, (G) any health care needs study or analysis, and (H) the Subsidium overview report.

- 41. Produce any and all documents and communications between LHA and any Other Defendants regarding any Change in medical services at Lakewood Hospital from 1986 to the present. This includes, but is not limited to, formal notices or requests to Change medical services, all reviews and analyses, and all responses approving or denying the requested Changes in medical services.
- 42. Produce all documents identifying all medical services provided at Lakewood Hospital in these years separately: 1986, 1996, 2000, 2005, 2010, 2011, 2012, 2013, 2014, and 2015.
- 45. Produce all documents or communications transmitted between the City, LHA, LHF, and CCF regarding the Vision for Tomorrow plan.
- 46. Produce any and all documents and communications regarding the valuation or appraisal of land in the potential sale of City-owned property to CCF.
- 48. Produce any and all documents, communications, contracts, and letter agreements among you, CCF, and all other entities regarding plans to diminish, terminate, and/or transfer Lakewood Hospital medical services in 2015 through 2016.
- 49. Produce all documents regarding changes in scheduling appointments for medical services (i.e. neurology, infusions, OB, etc.) from Lakewood Hospital to CCF wholly-owned hospitals for 2015 and 2016.

## **Interrogatories**:

- 3. Identify the individual(s) most knowledgeable regarding the Lease and lessee(s) of the properties located at 14519 Detroit Avenue, Lakewood, Ohio 44107 and 850 Columbia Road, Westlake, Ohio 44145.
- 15. Identify all medical services provided at Lakewood Hospital beginning at the start of the Lease agreement in 1996.
- 27. Identify the purpose of Lakewood Hospital and LHA as originally intended in 1986 upon the formation of LHA and the subsequent lease of Lakewood Hospital to the non-profit corporation continuing through the present.

## MORGANSTERN, MACADAMS & DEVITO CO., L.P.A. TRIAL ATTORNEYS AND COUNSELORS AT LAW

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In regards to The Cleveland Clinic Foundation, since there was objection to each and every request and a failure to produce any documents (except publicly available documents and previously produced documents from public record requests or websites), all of the requested CCF documents and answers to interrogatories should be properly and fully responded.

Finally, please be advised the Plaintiffs will not sign under duress nor agree to a protective order in order to receive the minimal LHA document production made available for inspection. As we discussed, and as set forth in your own writing, any and all LHA documents prior to January 1, 2010, are not deemed proprietary or confidential and should immediately be produced in a pdf format as we discussed. Further, all the documents I reviewed at the Jones Day inspection do not contain any propriety or confidential information that would be classified as a trade secret or need a protective order. As you are aware, the LHA code of regulations requires that the operations of Lakewood Hospital be open to the public, the hospital employees, and the City of Lakewood. If LHA (and/or CCF, its sole member) truly believe there are certain information and/or documents that need redaction, then that can be done with a proper log, but the documents should immediately be produced.

Finally, I will see you at my office on Tuesday morning for the scheduled depositions.

Very truly yours,

s/ Christopher M. DeVito

Christopher M. DeVito

CMD/nk

All Defense Counsel (via email only)

All Plaintiffs (via email only)

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## **EXHIBIT 14**

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

## TRIAL ATTORNEYS AND COUNSELORS AT LAW

"Legal Solutions for Individuals, Families, and Businesses"

September 9, 2015

## VIA EMAIL ONLY (kmmcvoy@jonesday.com)

Katie M. McVoy 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. McVoy:

This letter follows my September 4, 2015, communication and the recent depositions of Cleveland Clinic Foundation ("CCF") employees Mr. Joseph Strauss, Director of Planning and Design and Mr. John Mills, COO of Fairview Hospital. Both deponents under oath identified numerous documents and categories of documents that are responsive to Plaintiffs' First Combined Discovery, but where not produced during the document inspection on Thursday September 3, 2015, at your law office. After much delay and assurances that CCF documents were being gathered and organized, I was greatly disappointed that there did not exist one piece of paper from CCF that is not already in the public realm. The minimal document production appears to be only from the Defendant Lakewood Hospital Association ("LHA") or other documents obtained by public records requests to the City of Lakewood or currently available on public websites.

The documents identified by Mr. Strauss and Mr. Mills include, but our not limited to:

- (1) Emails and other written or electronic communications regarding changes in the Fairview Hospital Master Plan of 11-30-2012 for the scheduling and implementation (which includes as Part 1 the decanting of Lakewood Hospital), approvals for various phases and projects within the master plan, budget requests and approvals, etc.;
- (2) Budgets, projections, and performance reviews for each CCF community hospital through an online EBI dashboard for the past three years AND similar information for each CCF community hospital since at least 2007;

## MORGANSTERN, MACADAMS & DEVITO CO., L.P.A. TRIAL ATTORNEYS AND COUNSELORS AT LAW

## "Legal Solutions for Individuals, Families, and Businesses"

- (3) COO Regional Community Hospital CCF meeting minutes and Western Region Moving Parts sub-committee meeting minutes for CCF;
- (4) Strategic Planning (currently headed by Ann Huston) and its documents, emails, communications, and meeting minutes regarding the planning, coordination, and direction for the division of medical service lines between the CCF community hospitals and to decant Lakewood Hospital;
- (5) Clinical Planning and its documents, emails, communications, and meeting minutes regarding the planning, coordination, and direction for the division of medical service lines between the CCF Community hospitals and to decant Lakewood Hospital;
- (6) Institute Chairs (Neurology, Rehabilitation, Trauma, etc.) and their documents, emails, communications, and meeting minutes regarding the "Centers for Excellence" or "Hub" or "Focus Factories" to designate and drive treatment of patients to specific CCF designated hospitals;
- (7) Regional Committee meeting minutes, which includes the East and West side CCF community hospitals, to plan and coordinate medical service lines between the hospitals;
- (8) Business Plan authored by Mr. Mills in 2007 for Fairview Hospital that was approved in 2008 and then began implementation in 2009 for an expanded and updated ER/ICU and any other hospital improvement business plans for Fairview Hospital;
- (9) All communications from Mr. Mills superiors Mr. Peacock, Frank Auckerman, and Neil Gambrel relating to the decanting of Lakewood Hospital;
- (10) All meeting meetings and documents regarding the CCF review and decision (Strategic, Planning, Buidling, Budget, Clinical, Administrative, etc.) regarding the Lakewood Hospital Feasibility Study dated February 1, 2007, and approved by the Lakewood Hospital Association ("LHA") board for implementation;
- (11) All internal and third-party communications of CCF regarding the proposed MOB Prototype to be built in Lakewood, Ohio from 2009 to the present;
- (12) All internal and third-party communications of CCF regarding the "Market/System Impact" designation used in stead of the formerly known name of Lakewood Decanting Plan.
- (13) All documents from Dr. Frost regarding the "10 years in planning for the rehabilitation services to be consolidated onto the Avon Medical Campus with Select Health Care, Inc.

# MORGANSTERN, MACADAMS & DEVITO CO., L.P.A. TRIAL ATTORNEYS AND COUNSELORS AT LAW

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Further, based on Mr. Strauss and Mr. Mills statements under oath that it is "above their pay grade" and the decisions for the decanting of Lakewood Hospital and the medical line assignment to each community hospital (i.e. Rehabilitation from Fairview to Lakewood, etc.) is by the CCF Strategy department (currently headed by Ann Huston), we are requesting to depose Ms. Huston on the same date or a consecutive date with Mr. Shannan Ritchie. I am still waiting for alternative dates for Mr. Rithchie and for the identification and deposition of the CCF corporate representative regarding the Central Scheduling system for inpatient and outpatient assignments to CCF hospitals.

Please accept this letter as my second personal and sincere attempt to obtain the necessary documents in lieu of filing a motion to compel against CCF and LHA. However, you indicated orally to Mr. Dever and I that CCF has objected and will not voluntarily produce any additional documents. This communication is being sent to again memorialize your representation and to again attempt to meet and confer to avoid a discovery dispute.

Finally, please provide a written response by Friday September 11, 2015, to address the items raised in this letter and my communication of Friday September 4, 2015.

Very truly yours,

s/ Christopher M. DeVito

Christopher M. DeVito

CMD/nk

cc: All Defense Counsel (via email only)

All Plaintiffs (via email only)

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## **EXHIBIT 15**

### JONES DAY

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JP014287 082988-650003 September 11, 2015

### <u>VIA E-MAIL AND U.S. MAIL</u>

Christopher M. DeVito Morganstern, MacAdams & DeVito Co., L.P.A. 623 West Saint Clair Ave. Cleveland, Ohio 44113-1204 chrismdevito@gmail.com

Re: Edward Graham, et al. v. City of Lakewood, et al.

Cuyahoga County Court of Common Pleas No. CV 15 846212

Dear Chris:

I write in response to your letters of September 4 and 9, 2015 regarding the Cleveland Clinic Foundation's ("CCF") and Lakewood Hospital Association's ("LHA") production of documents. First, I am not counsel for LHA. LHA is an independent entity and is represented by its own counsel, as you know. My response, therefore, is made on behalf of CCF.

Your letters include a number of statements that are not true and generally misconstrue CCF's efforts to respond to your expansive discovery requests. I hope this clarifies the record.

CCF responded to your 67 requests for production, 37 interrogatories and 29 requests for admission on July 31, 2015. (Defendants the Cleveland Clinic Foundation and Delos "Toby" Cosgrove, M.D. Responses to Plaintiffs' First Set of Combined Discovery Requests, hereinafter "July 31, 2015 Responses.") Contrary to the statement in your September 4, 2015 letter, CCF did not object "to each and every request" and "fail[] to produce any documents." (September 4, 2015 letter from C. DeVito to K. McVoy at p. 6.) Rather, CCF responded to every request for admission, responded to many interrogatories and requests for production without any objection and responded to many more interrogatories and requests for production subject to its objections.

In those same responses, CCF made clear precisely what documents it intended to make available for inspection. Then, with LHA, CCF compiled hundreds of pages of documents covering twenty years, organized and labeled those documents and made them available to you. In fact, CCF offered to have you review a large portion of those documents in July, an inspection you unilaterally cancelled. On September 3, 2015, CCF produced for inspection financial statements and fiscal and economic impact reports, and worked with LHA to produce board

NAI-1500532100v1

Christopher M. DeVito September 11, 2015 Page 2

meeting and committee minutes from as far back as 1996, Subsidium's reports, communications regarding changes at Lakewood Hospital, contracts, documents relating to the Vision for Tomorrow and numerous other categories of documents. Thus, it is simply not true that CCF has produced no documents.

In fact, as I told you on Thursday, September 3, 2015 when you were at Jones Day, CCF made available for inspection each document it agreed to produce in its responses that it had located to date. I likewise told you that CCF continued to search its records to locate any additional documents it agreed to produce in its July 31, 2015 Responses. At no time did I tell you that "CCF has objected and will not voluntarily produce any additional documents." To the extent CCF locates any of the additional documents identified in your September 4, 2015 letter that are documents CCF agreed to produce in its July 31, 2015 Responses, CCF will produce those documents.

To date, you have not contested CCF's objections in its July 31, 2015 Responses, let alone provided any explanation as to why those objections are improper. To the extent you are unhappy with the documents CCF has agreed to produce, you have provided no basis on which to challenge CCF's responses. While your September 9, 2015 letter requests additional categories of documents that you believe are responsive to your first requests for production, that letter still does not address CCF's objections, which have been in your hands for nearly six weeks. Instead, your letter continues to make overly broad, unduly burdensome and irrelevant requests for production. And, you have given CCF only two days to respond to these additional requests. CCF is under no obligation to supplement its responses to your discovery requests.

As for making copies of documents, CCF will certainly provide you copies of its documents that neither it nor LHA believe contain confidential or proprietary information. As you inspected the documents on Thursday, September 3, 2015 and knew I would be out of the office the afternoon of Friday, September 4, 2015, it is a bit unreasonable for you to expect that those copies would have been in your hands by 4:00 on Friday afternoon. Further, you agreed to inform me which financial documents you did not want copied, but have not yet done so.

As for documents containing confidential information, both we and counsel for LHA have tried repeatedly to reach an agreement with you regarding the production of such information. We revised the draft Stipulated Confidentiality Protective Order to address your concerns regarding use of confidential information in court filings and to put the burden on the shoulders of the producing party to keep its information protected. You had that draft for more than a week before you came to inspect the documents, including a redlined version we sent at your request. Rather than providing substantive comments to the draft we sent or suggesting an alternative approach, you simply demanded that we produce everything with no protection, insisting that your own belief as to what is proprietary information for a hospital system should

Christopher M. DeVito September 11, 2015 Page 3

serve as a basis for CCF and LHA to release that information to you. Given your repeated refusal to work with us to reach an agreement regarding confidential information, we will submit to the Court those documents that we believe contain confidential information, and you will have to wait for the Court's order on the confidentiality of such information before it can be produced.

We are prepared to go forward with the depositions of Mr. Ritchie and a Rule 30(B)(5) representative who can address the topic of central scheduling for regional hospitals within the Cleveland Clinic Health System. However, if you choose to go forward with these depositions before you have whatever documents you think are necessary for them, you do so at your peril. We will not hold depositions open or provide witnesses for additional depositions because you unilaterally have decided to rush through discovery in a case that has no discovery cutoff, no trial date, and no other impending deadlines.

I hope this letter responds to your concerns regarding CCF's production of documents. As I told you last week and again above, CCF will continue to look for any additional documents it has agreed to produce and produce non-confidential documents to you once you confirm what documents you do not wish to have copied.

Very truly yours,

Katie M. Mc Voy

cc: A. Steven Dever (via e-mail and U.S. mail)
All Defense Counsel (via e-mail)

## **EXHIBIT 16**



Graham v Lakewood Christopher DeVito

to:

Aaron M. Bernay, Ann M. Hunt, David C. Olson, James R. Wooley, Jennifer Armstrong, Jennifer L. Swallow, Joseph Schmansky, Katherine A. Klaeren, Katie McVoy, Kevin Butler, Kevin Butler, Kristine Hayes, Nancy Krajcer, Nancy Krajcer, Nancy Krajcer, O. Judson Scheaf, Robert E. Cahill, Sara H. Jodka, Steve Dever, Steve Dever, Thomas M. Ehrnfelt, Tracy K. Stratford, Walter Ehrnfe lt

09/18/2015 05:07 PM

Hide Details

From: Christopher DeVito <chrismdevito@gmail.com> Sort List...

To: "Aaron M. Bernay" <abernay@fbtlaw.com>, "Ann M. Hunt"

<a hunt@mcdonaldhopkins.com>, "David C. Olson" <dolson@fbtlaw.com>, "James R.

Wooley" < jrwooley@jonesday.com>, Jennifer Armstrong

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<astevendever@aol.com>, Steve Dever <astevendever@ganleyauto.com>, "Thomas M.

Ehrnfelt" <tehrnfelt@healthlaw.com>, "Tracy K. Stratford" <tkstratford@jonesday.com>,

Walter Ehrnfe lt <walter@healthlaw.com>,

History: This message has been forwarded.

#### 1 Attachment



2015.09.18.Emergency Motion to Compel w Exs-FINAL to FILE.pdf

Counsel,

Please find a courtesy copy of a filing made today. Have a good weekend.

Chris

--

Christopher M. DeVito, Esq.

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