

## **KUCINICH ASKS FTC TO SAVE LAKEWOOD HOSPITAL; SEEKS INVESTIGATION AND LEGAL ACTION AGAINST CLEVELAND CLINIC**

CLEVELAND, OHIO (Oct. 15) - - Dennis J. Kucinich has opened a new legal front in his battle to save Lakewood Hospital by asking the Federal Trade Commission (FTC) to take action to stop the Cleveland Clinic Foundation (CCF) enterprise from "further misusing its contractual and fiduciary relationship as the operator of Lakewood Hospital" and to prevent CCF from "decanting, absorbing, defacto merging or otherwise converting the assets of Lakewood Hospital into CCF hospital operations" into their system.

In a complaint filed to day with the FTC in Washington, DC, Kucinich, former Chair of the Subcommittee on Domestic Policy, then a key investigative body of Congress, asked the FTC to protect Lakewood Hospital under Section 13 (b) of the Federal Trade Commission Act, 15 U.S.C., Section 26 which governs unfair competition and to invoke Section 5 of the Federal Trade Commission Act, 15 U.S.C., Section 45, which deals with consumer fraud.

The 21 page, single-spaced filing has over 80 declarations, which note, among other things:

- The unique status of the "coexistent, coextensive alter ego" of CCF, and the Lakewood Hospital Association, which amended its Code of Regulations in 1997 to make Cleveland Clinic the sole member of the Lakewood Hospital Association, and, as such, gave the Clinic "plenary power...with respect to the Lakewood Hospital Association, and consequently the operations of Lakewood Hospital itself." CCF controls 19 of 23 seats on the LHA board.
- "CCF/LHA have diverted Lakewood Hospital assets to other CCF properties, stealthily converting city-owned property for their benefit and to the disadvantage of Lakewood Hospital and the community it serves."
- A Standard and Poor's Research Report of May 9, 2013, states: Lakewood Hospital "remains outside of the obligated group because it is a government-owned facility tied to CCHS through a long-term lease."
- In the May 9, 2013 Research Report, Standard and Poor's cites some underlying facts concerning CCF's contractual obligations to Lakewood Hospital in what has become a central bone of contention between those who maintain that Lakewood Hospital is losing money and therefore must close, and those residents of

Lakewood, plaintiffs in *Graham v. City of Lakewood*, who insist that any cash shortfalls at Lakewood Hospital, by contract must be covered by Cleveland Clinic: **“A contract with Lakewood requires CCF to fund any cash shortfall should one occur. Lakewood’s cash to debt must always equal to at least a 1:1 ration as [sic] the end of its fiscal year. Should losses continue or liquidity decline such that either impede timely payment of remaining debt service, we could lower the rating. “**

- “In 2012, Cleveland Clinic, under increasing competitive and market pressures which threatened their credit-worthiness, executed a deceptive and anti-competitive strategy through and with its coextensive alter ego, the Lakewood Hospital Association, in order to reduce and ultimately eliminate the tax and trust subsidized Lakewood Hospital. In doing so the CCF hoped to evade potentially hundreds of millions of dollars in financial obligations it had accepted pursuant to the 1996 Definitive Agreement and Lease between Cleveland Clinic and the Lakewood Hospital Association.”
- “CCF under the pretext of developing a new master plan for its Fairview Hospital...dupliciously and with intent to deceive...[did] develop and execute a secret plan to destroy Lakewood Hospital as a going concern, raze the buildings and merge much of the remaining physical and personnel assets of Lakewood Hospital into the Cleveland Clinic system outside of the City of Lakewood, while cloaking their clandestine activities in the canard of ‘the evolving nature of health care’...”
- “In a deposition dated September 8, 2015, Joseph Strauss, Director of Planning for Cleveland Clinic, when questioned about what would happen to an estimated prospective 10,000 Emergency Department visitors not provided for in the decanting plan. He opined they could go to Metro Hospital, a twenty-five minute drive, or the Huron Rd. emergency facility, a thirty-five minute drive.”

**“At this very moment there is evidence that CCF continues its ‘decanting plan’ by removing medical services from Lakewood Hospital and diverting patients. This is why I filed now with the FTC.** The Clinic must understand that the people of Lakewood are not going to stand by idly and see their community hospital taken through illegal means. I am proud to stand for Lakewood as a private citizen, as I have through two years in the State Senate and sixteen years in the US House.”

contactkucinich@gmail.com

**Re: The Cleveland Clinic Foundation's Unlawful Defacto Merger Decanting the Assets of A Public Hospital Through Fraud, Misrepresentation, and Conversion.**

**Respectfully Submitted by Dennis J. Kucinich, Member of the United States House of Representatives, 1997-2013; former Chair of the Subcommittee on Domestic Policy of Government Oversight Committee, at the time representing the community of Lakewood, Ohio, now at issue with the Cleveland Clinic.**

The Federal Trade Commission  
600 Pennsylvania Avenue  
Washington, DC 20580

October 14, 2015

Dear Commissioners:

THIS IS TO REQUEST that the Federal Trade Commission seek a preliminary injunction pursuant to Section 13 (b) of the Federal Trade Commission Act, 15 U.S.C., Section 53 (b) and Section 16 of the Clayton Act, 15 U.S.C., Section 26, against the Cleveland Clinic Foundation, (CCF), enjoining them from further misusing their contractual and fiduciary relationship as the operator of Lakewood Hospital; preventing them from "decanting," absorbing, defacto merging or otherwise converting the assets of Lakewood Hospital into CCF hospital operations into their large system in northeastern Ohio and restraining CCF from building a "specialty referral center" in Lakewood, to capitalize on the destruction of Lakewood Hospital the elimination of potential competitors in this northeastern Ohio market and the jettisoning of substantial charity care obligations.

FURTHER REQUESTING, pending the outcome of an investigation of this case, the FTC take such steps as to temporarily preserve Lakewood Hospital's viability, competitiveness and marketability; to prevent the termination of Lakewood Hospital's health-plan contracts; to prevent the further elimination, transfer, or consolidation from any clinical service at Lakewood Hospital or equipment relating thereto; to prevent the transfer or termination of employees at Lakewood Hospital without cause, and to take such action to restore the status quo ante, to the time prior to CCF's determination to impair and degrade hospital operations at Lakewood, to the wrongful competitive benefit of other facilities within the CCF system.

FURTHER REQUESTING, Cleveland Clinic be directed to disgorge all programs, equipment, personnel acquired by deception and fraud during CCF's operation of Lakewood Hospital and that Lakewood Hospital be thereby fully restored to the status quo which existed prior to the planning and execution of CCF's "decanting" strategy.

FURTHER REQUESTING, the FTC take such steps as to prohibit Cleveland Clinic Foundation from acquiring in excess of \$80 million dollars in cash assets, held by two charitable trusts in Lakewood, Ohio, one controlled by Lakewood Hospital Foundation and the other controlled by the Lakewood Hospital Association. In January of 2015, the Cleveland Clinic presented to the City of Lakewood a Letter of Intent (LOI), a joinder agreement, which improperly proposed to cause all of the Lakewood Hospital Foundation's donated funds to be placed in a new charitable trust, with a mission statement unrelated to that of Lakewood Hospital. The LOI has since expired, but CCF and some Lakewood city officials, notably the Mayor of Lakewood, absent legal authority which expressly requires ordinance passage by City Council, are proceeding as if the LOI is in effect, taking such steps which would ultimately result in the closing of Lakewood Hospital through the malfeasant conduct of the CCF and the terminal fiduciary lapses of its coextensive alter ego, the Lakewood Hospital Association.

FURTHER REQUESTING, the FTC, pursuant to the authority of Section 5 of the Federal Trade Commission Act, 15 U. S. C., Section 45, investigate the deceptive acts of CCF in relation to its dealings with Lakewood Hospital and the City of Lakewood, a municipal corporation. The CCF's unfair methods of competition adversely affecting commerce, and their unlawful practices with respect to Lakewood Hospital alone, include, but are not limited to, fraudulent inducement, false oral statements, false written statements, publicly presenting false impressions to the media, to gain public support based on false premises, all of which are material to government and public decision-making processes with respect to health care as well as impacting area consumer's civil rights and decisions to use the services of Lakewood Hospital in the future.

### **Relevant Parties and History.**

#### **Lakewood Hospital**

1. Lakewood Hospital was established in 1907 as a full-service community hospital. It continues to serve the Lakewood, Ohio, community, population 50,000, up to the present moment. The City of Lakewood owns Lakewood Hospital, pursuant to City of Lakewood Ordinance 3160, passed December 1, 1930, which established a municipal hospital.

2. The electorate of the City of Lakewood at the General Election held on November 5, 1985, adopted an amendment to the City Charter which authorized the lease of Lakewood Hospital to a nonsectarian Ohio non-profit corporation, organized for charitable purposes.

3. Ordinance 63-86, passed January 5, 1987, approved the transfer of "the operation, management and assets of Lakewood Hospital from the Board of Trustees of Lakewood Hospital to the Lakewood Hospital Association. . ." The ordinance

noted: "Lakewood Hospital has operated on a self-sustaining basis without any operating subsidy from this city, and has established a reputation for providing quality hospital care..."

4. Section 2 of the enactment clause of Ordinance 63-86 reads: "The Council finds and determines (1) the lease of the Facilities to Lakewood Hospital Association pursuant to the Lease will better provide for the health and welfare of the people of this City and the State of Ohio by enhancing the availability, efficiency and the economy of hospital facilities and the services rendered thereby, by continuing the policy of the hospital Trustees to provide hospital care to residents of this City, without regard to their ability to pay...without discrimination by reason of race sex, creed, color or national origin; (11) that this City will be duly benefited by the Lease..."

5. In 1996, pursuant to Lakewood City Ordinance 51-96, passed by City Council, the City of Lakewood and the Lakewood Hospital Association entered into an amended and restated lease permitting the Hospital Association to enter into a definitive agreement with the Cleveland Clinic Foundation, pertaining to the operation of Lakewood Hospital, for a period of 30 years, expiring at the end of the year 2026. The agreement had a striking provision in which LHA permitted CCF to be its sole member.

## **The Lakewood Hospital Association**

### **Articles of Incorporation of LHA**

6. On February 27, 1997 the Lakewood Hospital Association amended and restated its Articles of Incorporation in several significant matters relating to the operation of Lakewood Hospital. Article Three, Purposes (1) reads "to establish, operate, maintain and support hospitals and other health care facilities, within or without the City of Lakewood...". Article Four, Members, reads: "The [sole] member of the Corporation shall be The Cleveland Clinic Foundation, an Ohio nonprofit corporation."

### **Cleveland Clinic Health System Management Discussion Re: LHA**

7. The Lakewood Hospital Association, has been described described thusly, in the Cleveland Clinic document, as "a non-obligated affiliate of the System"... (December 31, 2014).

## **Code of Regulations of LHA, Cleveland Clinic the Sole Member**

8. The Code of Regulations of the LHA, adopted January 27, 1987, and amended seven times, the last amendments being on February 27, 1997, state in Article I, Section 1.1: "The sole Member of the Corporation shall be The Cleveland Clinic Foundation,..." The preceding and the succeeding amendments clearly delineate the plenary power of the Cleveland Clinic, with respect to the Lakewood Hospital Association, and consequently the operations of Lakewood Hospital itself: Article II, Section 2.2 reads, in part, "At any meeting of the Member all questions shall be determined by the affirmative vote of the Member." Section 2.7 reads, in part: "The following corporate actions to be taken by the Board of Trustees shall require the approval of the Member (but may not be exercised independently by the Member)": "(h) Strategic plans consistent with the overall strategic direction and plan of CCF Health Care System;" and (i) The Corporation's strategic and financial plans, including the implementation of new or elimination of existing services offered at Lakewood Hospital." Section 2.8 states, in part, "The following corporate actions shall be exercised by the Member as set forth herein: (a) The appointment of the chief executive officer of the Corporation, provided however, that such individual also must be approved by the Board of Trustees; (b) Termination of the chief executive officer..."

9. Article Three of LHA's Code of Regulations provides, in Section 3.2, Composition of Board of Trustees, a formula which provides that of 23 members of the Board, 3 are "Member Trustee" positions and another 16 are "submitted for consideration of ratification by the Member which may, but need not," ratify, the appointment or approval of a trustee, giving the Member a controlling interest over 19 or 23 Trustees.

10. Cleveland Clinic has total control of the Lakewood Hospital Association, and, as such, is its coexistent, coextensive alter ego. In *Graham v. City of Lakewood*, plaintiffs cite Ohio courts recognition that: "[a] corporation is a separate legal entity from its shareholders, even where there is but one shareholder. Generally, in such situations, only the corporation can be held liable for corporate obligations. Nevertheless, in certain circumstances courts can pierce the corporate veil, that is, disregard the corporate entity and treat the shareholder and his corporation as a single entity. In such cases the corporation is treated as the alter ego of the shareholder; thereby rendering shareholders liable for the obligations of the corporation.... The test for piercing the corporate veil, as provided by the Ohio Supreme Court, is as follows: 'the corporate form may be disregarded when (1) control over the corporation by those to be held liable was so complete that the corporation has no separate mind, will or existence of its own, (2) control over the corporation by those to be held liable was exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity and (3) injury or unjust loss resulted to the plaintiff from such control and wrong so complete that (4) control over the corporation by those to be held liable was so complete that the corporation has no separate mind, will of existence of its own. As a result of Code of

Regulations of the LHA and the hand-in-glove simultaneity of action of LHA and CCF in regards to the affairs of Lakewood Hospital, LHA and CCF are fundamentally indistinguishable.

11. In the Definitive Agreement between CCF and LHA, which conjoins the twin entities, Article 1 reads: "Integration of Lakewood and the CCF Health System." This provision sets forth CCF's total control and dominance, carefully constructing scenarios, which in retrospect would make the self-dealing of CCF/LHA an art form. As cited by Plaintiffs in *Graham v. City of Lakewood*, CCF, LHA's sole member, has reserved powers which include:

"(a) Amendment to LHA's Article of Incorporation and the Amended Code of Regulations.

(b) Annual operating and capital budgets.

(c) Strategic plans.

(d) Implementation of new or elimination of services;

(e) Appointment of the CEO, and

(f) Unilateral right to terminate the CEO.

12. Although the Lakewood Hospital is separate entity, and remains the (leased) property of the City of Lakewood, the CCF refers to Lakewood Hospital as "a Cleveland Clinic Hospital," notwithstanding the terms of the Definitive Agreement and Lease which establish a reciprocal relationship between two distinct entities, the two-headed CCF/LHA and the City of Lakewood, *sui generis*.

13. Under color of law, but without legal sanction and contrary to the 1996 Definitive Agreement, CCF/LHA have diverted Lakewood Hospital assets to other CCF properties, stealthily converting city-owned property for their benefit and to the disadvantage of Lakewood Hospital and the community it serves.

14. The LHA holds \$34 million in trust assets on behalf of Lakewood Hospital Foundation, which, given the 2015 Letter of Intent, would be converted to an entity created by CCF.

15. The Lakewood Hospital Association (LHA) is described as the "lessee" of Lakewood Hospital. It is listed as a "related organization" of the CCF on CCF Form 990 filings and was listed by CCF as a "subordinate organization" included in a group exemption ruling for the year ending December 31, 2000.

16. The minutes of the meeting of the Lakewood Hospital Association of July 29, 2013, a Hospital Report by the Chief Nursing Officer relates "Lakewood Hospital had the most consistent upward scores. She next reported that all staff had completed "90 in 90" training and as a result Lakewood Hospital experienced an improvement in HCAHPS rankings.

17. The minutes of the meeting of July 29, 2013, Finance and Audit Committee report, in part, state: “...activity and revenue below plan primarily due to surgical volumes; an increasing self-pay trend; operating expenses overall positive budget and wage base productivity at 97.4% and unfavorable operating results.”

## **The Lakewood Hospital Foundation, Inc.**

18. On February 27, 1956, the Lakewood Hospital Foundation (LHF) filed its Articles of Incorporation with the Secretary of the State of Ohio which state its foundational purposes as “Aid in the growth and development of the Lakewood Hospital of Lakewood, Ohio, as an institution of increasing promise and performance in the public interest; aid the hospital, without profit to the Corporation or any member thereof...” Its primary, tax exempt, purpose is to seek financial support for Lakewood Hospital. The Lakewood Hospital Foundation “establishes and maintains relationships that generate philanthropic support to enhance Lakewood Hospital’s ability as a community hospital to fulfill its mission. “ In 2014 it incurred expenses of \$1,149,524, including grants of \$796, 156. (Form 990 IRS). It holds assets in excess of \$37.2 million. It has approximately \$22 million in endowment funds and \$9.4 million in permanently restricted investments held in perpetual trusts. (Form 990 IRS)

19. During 2014, the Lakewood Hospital Foundation “provided direct support to Lakewood Hospital in the amount of \$796,156 in the form of grants and gifts, and provided \$117,787 of indirect support to the hospital as the cost for generating funds to support the hospital and its programs.” (Form 990)

20. The Lakewood Hospital Foundation has no financial accountability to the Cleveland Clinic. Nor can the Cleveland Clinic appoint any Lakewood Hospital Foundation board members. (Form 990)

## **THE CLEVELAND CLINIC FOUNDATION**

21. The Cleveland Clinic Foundation, aka, the Cleveland Clinic, aka, the Clinic, aka, the Cleveland Clinic Health System, with assets of over \$12 billion, \$6 billion in cash, is a not-for-profit integrated healthcare delivery system, serving primarily northeastern Ohio, with affiliates in Florida and Dubai. CCF owns and operates 11 hospitals in or adjacent to Cuyahoga County, Ohio and maintains a total of 3,571 staffed beds. According to CCF documents “The System also operates eighteen outpatient Family Health Centers, ten ambulatory surgery centers, as well as numerous physician offices, which are located throughout a seven-county area of northeast Ohio, and specialized cancer centers in Sandusky and Mansfield, Ohio. In addition, the System operates a hospital and a clinic in Weston, Florida, health and



wellness centers in West Palm Beach, Florida, and Toronto, Canada and a specialized neurological clinical center in Las Vegas, Nevada.

The CCF System has recently affiliated with Akron General Health System (Akron General) an integrated healthcare deliver system with a 532-bed flagship medical center located in Akron, Ohio.

Pursuant to agreements, the System also provides management services for Ashtabula County Medical Center, located in Ashtabula, Ohio, with approximately 180 staffed beds, and in cooperation with Abu Dhabi Health Services Company, the Sheikh Khalifa Medical City, a network of healthcare facilities in Abu Dhabi, United Arab Emirates with approximately 780 staffed beds.”

22. Excluding Lakewood Hospital, the CCF operates general acute-care hospitals in Cuyahoga County, including Euclid Hospital, Fairview Park General Hospital, Hillcrest Hospital, Marymount Hospital, Medina Hospital, South Pointe Hospital, and a 1,265 bed facility at its main campus in Cleveland.

23. Fairview Park Hospital is a 426 bed facility which offers primary and secondary services.

24. In 2012 , according to [healthcarefinance.com](http://healthcarefinance.com), “the Cleveland Clinic OH series bonds rated AA-, on long-term rating to the Ohio Higher Educational Facility Commission’s \$474.77 million series 2012 revenue and refunding bonds on behalf of Cleveland Clinic Health Systems.” Standard and Poor’s rating service made the following observations about the financial health of Cleveland Clinic:

(a) the scope and timing of national health care reform is uncertain but nevertheless will likely constrain profitability and cash flow accumulation for large health systems like CCHS.”

(b) the rating “reflects our assessment of the ongoing challenges CCHS faces from rising bad debt expense, location in a state with a relatively robust recovery underway after a prolonged period of below average growth, and a region with weak demographic trends.”

(c) [healthcarefinance.com](http://healthcarefinance.com) writes “While Standard and Poor’s considers CCHS’s liquidity could become diluted as management expects annual capital expenditures to total in excess of a recent five year annual average amount of \$427 million and as the system addresses underfunded pension and other postemployment benefit liabilities.”

(d) [healthcarefinance.com](http://healthcarefinance.com) reports “Standard and Poor’s views a higher rating as somewhat unlikely over the outlook period but could consider an upgrade based on CCHS ability to further strengthen its financial performance and liquidity in relationship to existing and planned debt. A lower rating could result from a decline in patient utilization or key financial performance or balance sheet metrics weaken materially.

25. Standard and Poor's Research Report of May 9, 2013 underscores the operational relationship, including the contractual requirements between Cleveland Clinic and Lakewood Hospital, the vulnerability of CCF to any cash shortfall at Lakewood Hospital, the potential threat to LHA's bond rating, given the requirements of the Definitive Agreement and the co-extensive nature of CCF and the Lakewood Hospital Association. In a subsection of a report on the Ohio Higher Educational Facility Commission, Cleveland Clinic Health System; Hospital; System, by Primary Credit Analyst Ken Rodgers, entitled "Lakewood Hospital", the following assessment is provided to potential investors:

"The affirmed 'A+' long-term rating and revisited positive outlook on Lakewood Hospital Association's series 2003 bonds (10.6 million outstanding as of Dec. 31, 2012, with a final maturity of 2015) reflects our view of its operational integration into CCHS' management structure, **even though it remains outside of the obligated group because it is a government-owned facility tied to CCHS through a long term lease.** [My emphasis]. While Lakewood had incurred losses in recent years on an operating and excess income basis and did not meet its debt service requirement in 2009 and 2010, it did improve its financial performance in 2011, generating a modest operating loss and a positive bottom line, resulting in its meeting its debt service ratio requirement with MADS coverage of 1.3x.

"Lakewood's 2012 audit is expected to be released later this month. Aside from the comfort CCF derives from the short remaining maturity on the rated bonds, **a contract with Lakewood requires CCF to fund any cash shortfall should one occur: Lakewood's cash to debt must always equal to at least a 1:1 ratio as [sic] the end of its fiscal year. Should losses continue or liquidity decline such that either impede timely payment of remaining debt service, we could lower the rating. CCHS is actively working with Lakewood to reposition its services in light of demographic and economic changes occurring in its market.**" [My emphasis]. [It should be noted that the S and P allusion to CCHS "actively working with Lakewood to reposition its services," predates a Letter of Intent by two years, and tracks precisely the period of secret decanting of Lakewood assets, which raising questions about the veracity of information provided to Standard and Poors.]

"We consider Lakewood's overall financial profile adequate for the rating because it maintains ample liquidity; to support its debt obligations with **\$47 million of unrestricted and cash investments on hand at Sept. 30, 2012** [my emphasis] (fiscal year end December 31, 2012) compared with long-term debt of \$19.5 million, cash to debt of \$241.5% and 13.8% debt leverage.

25.1 In 2012, Cleveland Clinic, under increasing competitive and market pressures which threatened their credit-worthiness, executed a deceptive and anti-competitive strategy through and with its coextensive alter ego, the Lakewood Hospital Association, in order to reduce and ultimately eliminate the tax and trust-subsidized Lakewood Hospital. In doing so the CCF hoped to evade potentially hundreds of millions of dollars in financial obligations it had accepted pursuant to the 1996

Definitive Agreement and the Lease between Cleveland Clinic and the Lakewood Hospital Association. CCF's obligations to Lakewood Hospital included the amount of \$91 million of deferred maintenance, long-term capital improvement obligations, and a 1:1 cash to debt ratio which made the Cleveland Clinic liable for Lakewood Hospital losses. The Cleveland Clinic also eyed converting nearly \$110 million in trust assets held by the Lakewood Hospital Association, and the Lakewood Hospital Foundation as well as physical assets of Lakewood Hospital such as equipment and high tech machines worth collectively tens of millions of dollars. In the Letter of Intent CCF proposed to purchase a Lakewood Hospital and city asset located at 850 Columbia Rd., Westlake, Ohio at below fair-market value, as appraised by Cuyahoga County.

### **The Cleveland Clinic Health System Trustee Orientation Manual**

26. The Trustee Orientation Manual, under Tab 13, Legal Information, recites an overview of governing documents, including, "Legal and Fiduciary Responsibilities of Hospital Trustees...the Lease Agreement with the City of Lakewood....the Definitive Agreement with The Cleveland Clinic Foundation....."

27. The Powers of the Cleveland Clinic Foundation, as relates to the Lakewood Hospital Association, and enumerated in the Trustee Orientation document of the Lakewood Hospital Association, include: "Amendment to Articles of Incorporation and Code of Regulations"; "Merger/dissolution"; "Appointment of Auditors"; "Annual operating and capital budgets"; "Strategic plans"; "Implementation of new or elimination of services"; "Appointment of 3 trustees and ratification of 16 trustees"

28. The Powers of the Cleveland Clinic Foundation also provide that "If Lakewood fails to meet cash generation, CCF shall provide daily management, subject to Board, and appoint new CEO (without Board approval) for three years from the end of Deficiency Period.

29. The Trustee Orientation includes, under "Obligations of The Cleveland Clinic Foundation" the following guarantee to Lakewood Hospital: "Guarantee of cash-to-debt ratio of 1-1.

### **THE 1996 DEFINITIVE AGREEMENT BETWEEN CCF AND LHA**

30. In 1996 Cleveland Clinic and the Lakewood Hospital Association signed a "Definitive Agreement" for CCF to manage and operate Lakewood Hospital as a full service hospital, through the expiration of the lease in 2026 and to return it "as a going concern, able to stand on its own."

31. Cleveland Clinic Foundation, pursuant to the 1996 agreement with LHA, controls 19 of 23 seats on the board of the Lakewood Hospital Association, giving CCF

operational control of the decision making of the LHA board, and consequently, the day-to-day operations of Lakewood Hospital.

32. The obligations and duties of the 1996 Amended and Restated Lease and Definitive Agreement as authorized by Ordinance 51-96, have been and are being evaded and/or violated by the CCF, to wit:

(a) Lakewood Hospital is not being maintained "as a going concern" (Section 1.3.2)

(b) The Cleveland Clinic, through subterfuge, devised circumstances that caused Lakewood "to take or omit to take any action that could cause Lakewood to fail to perform...its obligations under the Lease." (Section 1.8 and 1.8.1).

(c) The CCF, with the assistance of certain elected Lakewood officials, has contrived to renounce and to escape a provision in the Definitive Agreement which states the reciprocal and enduring financial obligations of CCF to the financial health of Lakewood Hospital, thereby assuring the long-term operation of Lakewood Hospital: "...if Lakewood's cash to debt ratio exceeds 1:1, Lakewood shall return to CCF fifty percent (50%) of such excess cash until all advances have been repaid to CCF; provided, however, that any advances not repaid to CCF at such time as the lease referred to in Section 1.8, above, terminates, shall be forgiven by CCF, and provided further, that none of such advances, whether or not repaid shall be considered to be debt."

(d) the CCF has designed to categorically breach a contract which permits no breaches, contrary to provisions in the Definitive Agreement which state: "none of the transactions contemplated by this Agreement creates in any party to such contracts and commitments the right to revise the terms of, to terminate, to accelerate any obligation of Lakewood or any Affiliate...." CCF violated those terms In that

1. It has secretly devised a plan to change the terms of the Definitive Agreement.

2. It has, in bad faith, constructed a strategy to terminate the Definitive Agreement.

3. It has devised to compel the acceleration of assets out of Lakewood Hospital, in an attempt to create irrevocable "facts on the ground" deliberately impairing the obligation of the hospital to serve the community, an outright violation of its obligations under the 1996 Definitive Agreement.

4. It has sought to accelerate obligations of CCF affiliates who will receive Lakewood Hospital assets and operations to their benefit and to Lakewood Hospital's detriment. (Section 3.17).

(e) CCF, in the scope of and the totality of their conduct seeks to abjure and thereby neither perform nor honor the essence of the thirty-year Definitive Agreement; breaching non-breach provisions, which read: "The execution, delivery and performance by CCF of this Agreement and related agreements contemplated herein do not and will not. . . give rise to any right to terminate any material agreement, contract or other instrument binding upon CCF...." (Section 4.2)

(f) CCF knows, or should have known, subject to due diligence,

1. The business, financial and legal status of Lakewood Hospital and its Affiliates. (Section 5.10).

2. The antitrust implications of the transactions contemplated in the Definitive Agreement. (Section 5.10).

(g) CCF, either singularly, or jointly in collusion with unnamed parties or fiduciaries to the agreement, developed and executed a secret plan to “decant” the assets of Lakewood Hospital into properties in the Cleveland Clinic system, and in doing so violated the letter and spirit of a mutual agreement and reciprocal consent covenant, which reads: “The timing and content of any announcements, press releases, or other public statement concerning the transactions contemplated by this Agreement will occur upon, and be determined by, the mutual agreement and consent of the parties.” (Section 9.2).

(h) CCF was party to a provision in the Definitive Agreement which pledged “the parties will negotiate with each other in good faith” with Lakewood. The sum and substance of on-going CCF decisions regarding the impairment of Lakewood Hospital as a going concern, reveals repeated examples of bad faith.

(i) the Lease provides that LHA and CCF will not terminate or purport to terminate the Definitive Agreement to operate and manage Lakewood Hospital unless first given approval by the city through ordinance or resolution. The LOI breached those provisions.

33. On February 1, 2007, a conceptual design report relating to the future of Lakewood Hospital, entitled ‘Master Plan Feasibility Study,’ authored by Westlake, Reed and Leskosky (WRL) with Frank Zilm and Associates, Inc., was completed after “A series of meetings with the Steering Committee appointed by the Hospital and Fred DeGrandis,” CEO for CCF’s region.

34. WRL, in the executive summary of the Conceptual Design Report, states the purpose of the Master Plan is to 1. Facilitate or strengthen programs related to specialty service lines. 2. Convert from double occupancy model to single occupancy for patient rooms. 3. Eliminate or replace antiquated facilities including buildings, central plan and infrastructure. 4. Improve the image and visibility of the Hospital. “

35. The summary of the WRL report indicate “total project cost ranges from \$65 M to \$69M.”

36. In 2007 and 2008, the Lakewood Hospital Board of Trustees approved a Master Plan that would result in a new hospital bed tower in Lakewood.

37. In 2009, a plan called the “Vision for Tomorrow” was announced by the Cleveland Clinic Foundation and the Lakewood Hospital Association. The plan specified the sustaining nature of Cleveland Clinic’s commitment to Lakewood Hospital through the establishment of four medical centers for excellence in geriatrics, orthopedics, neurological service and for the treatment of diabetes and endocrine conditions.

38. News coverage of CCF’s plans included a report from Crain’s Cleveland Business, January 30, 2009, which states in the headline: “Cleveland Clinic plans updating of

Lakewood Hospital.” The text of the story cites “The cornerstone of the plan is to transform 200 hospital rooms into private patient rooms that will enable families and friends to visit patients in a more intimate and comfortable setting,” according to CCF Regional CEO Fred DeGrandis. “The conversion to private rooms is really the centerpiece of this project,” he said. “It serves the patient in a much better environment.”

39. On Friday, May 31, 2009, Lakewood Hospital communicated to the community in a mailer that it was “pleased to unveil its new, strategic plan – Vision for Tomorrow! This multiyear plan will position the hospital for future growth and long-term stability.”

40. One of the key components of the “Vision for Tomorrow” included: “Aligning Cleveland Clinic Services and community physicians into Lakewood Hospital.”

41. The President of the Lakewood Hospital Foundation, Brian King, in announcing a \$5 million leadership gift to Lakewood Hospital said: “We hope support of this magnitude conveys to others how strongly the Foundation trustees believe that this is a necessary step in securing the future provision of healthcare services to meet the health and wellness needs of the West Shore community member.”

42. In consideration of the promises which Cleveland Clinic specified in the “Vision for Tomorrow,” the Lakewood City Council, pursuant to the requirements of the 1996 agreement, entertained CCF’s request to move pediatric and trauma services out of Lakewood Hospital, to another CCF Hospital, Fairview.

43. The Vision for Tomorrow plan was, in the words of CCF, “a multi-year strategic plan shaped to better meet the changing needs of the Lakewood community that was adopted by the Board in 2008.”

44. On November 5, 2009, the Executive Committee of the Board of Trustees of the Lakewood Hospital Association established a special committee to review and assess the plan for Lakewood Hospital.

45. The committee was established to review an independent third party’s report on Lakewood Hospital and to conduct dozens of interviews of key Lakewood Hospital leaders.

46. On February 11, 2010, the full board of the LHA adopted the plan.

47. The plan addressed the sustainability of Lakewood Hospital, and articulated a purpose of “making available the finest services typically provided by hospitals in communities” similar to Lakewood. The plan “further aligns Lakewood Hospital with Cleveland Clinic services to create a health delivery system for today’s and tomorrow’s community health needs.” See April 6, 2010 letter Lakewood Hospital Cleveland Clinic letter to Edward Fitzgerald, Mayor of Lakewood.

48. On April 6, 2010, Cleveland Clinic officials, in the letter to Mayor Fitzgerald, (a) sought to elicit the support of the Mayor, the City Council and citizens of Lakewood for the CCF plan, through articulating the following written assurances:

1. that CCF's requested transition of Lakewood Hospital's trauma and inpatient pediatric service to a CCF Hospital, Fairview Hospital, would "enable us to expand existing services and transfer new clinical services to Lakewood Hospital."

2. CCF, in the letter to Mayor Fitzgerald, averred its plan was "a comprehensive framework that will improve Lakewood Hospital's ability to serve the Lakewood population."

3. CCF wrote in the letter that the CCF Plan "positions and strengthens our services around four centers of clinical excellence - - Neurosciences, Orthopedics, Diabetes and Geriatrics, ensures the highest level of care for our patients; created improved coordination of care on the West Side, and positions the Hospital for longer-term stability."

4. Lakewood officials were reminded in the letter, through an elaboration of the centers of clinical excellence, that Cleveland Clinic "expanded and extended the care and services of its Neurological Institute" to Lakewood Hospital, made capital investments of \$3.3 million in two years; that neurological specialists would complement the community physician staff; and that "additional physician recruitment was planned in 2010."

5. Lakewood was assured that "alignment of inpatient acute rehabilitation from Cleveland Clinic's other West Side hospitals to Lakewood Hospital [would] enable Lakewood Hospital to serve "as the hub for this needed service in this market, complementing Lakewood's centers of excellence in neuroscience and orthopedics. Inpatient rehabilitation will bring a significant financial benefit to the Hospital and will provide intensive physical and occupation therapy. . ."

6. CCF further assured the City of Lakewood of "patient referrals from Cleveland Clinic facilities coming to Lakewood Hospital. "

7. CCF further assured the City of Lakewood of that its "strong relationship with physicians in Lorain County" brought "orthopedic surgeries that were previously performed in non-Cleveland Clinic hospitals to Lakewood Hospitals.

8. CCF further assured the City of Lakewood that "strategies were being implemented to strengthen geriatric services and the senior population of Lakewood would benefit from "our expanded SeniorCare program offerings, which has long been a strong foothold for Lakewood Hospital."

9. CCF further assured the City of Lakewood of Cleveland Clinic plans to "develop a regional center at the Hospital in conjunction with the Cleveland Clinic Endocrine Institute."

49. The April 6, 2010 letter which contained the aforementioned specific assurances was signed by Fred DeGrandis, President and CEO of Cleveland Clinic Regional Hospitals, Mousab Tabbaa, M.D., Chairman of the Board of Trustees , Lakewood Hospital Association, and Janice Murphy, President of Lakewood Hospital and Fairview Hospital.

50. Web MD describes Dr. Tabbaa as being a gastroenterologist presently affiliated with a Cleveland Clinic health care facility located at 5700 Cooper Foster Park Rd., Lorain, Ohio 44053.

51. On June 9, 2010, under the signature of David L. Bronson, the [new] President of Cleveland Clinic Regional Hospitals, the Cleveland Clinic sent the City of Lakewood a letter which hedged on its commitment to Centers of Excellence,” seeking a loophole that would permit the LHA board of trustees to vote to “eliminate or transfer neurosciences, geriatrics, endocrinology/diabetes and orthopedics,” after providing a 60 day notice to the City.

52. On June 10, 2010, a Lakewood City Council considered and passed a resolution which, in a “Whereas” clause, notes the June 9, 2010 CCF letter among other communications, but does address its implications let alone incorporate its intended limitations into the council resolution. Instead:

(a) The council resolution focused on the assurances provided by CCF to the city in the April 6, 2010 letter signed by the Cleveland Clinic Regional Hospital CEO, Fred DeGrandis.

(b) The Lakewood City Council Resolution specifically states: “The citizens of Lakewood and the elected officials have been assured continued, active participation in key decisions impacting the Vision for Tomorrow plan and related Centers of Excellence for the duration of the lease term.”

(c) The Resolution of June 10, 2010 further states: “The city joins Lakewood Hospital Board of Trustees in giving public cognizance and support to the Lakewood Hospital Vision for Tomorrow Plan including its Centers for Excellence emphasis as described in the April 6, 2010 letter from Cleveland Clinic leadership to the City of Lakewood.”

53. The enactment clause of the Lakewood City Council resolution, which has legal, binding effect, states: “This Council and the Mayor affirm their support for the Vision for Tomorrow plan at Lakewood Hospital, with its focus on the Centers of Excellence, as described in the April 6, 2010, letter from Cleveland Clinic leadership to the City.”

(a) Nowhere, either in the prefatory, hortatory language of the “Whereas “ clauses, or in the legally binding enactment clause of the resolution does it state that the city accepts the terms described in the June 9<sup>th</sup>, 2010 letter.

54. CCF, through a series of public actions, promises and commitments, actively sought to gain required official action of the City of Lakewood to transfer two pediatric and trauma units out of Lakewood Hospital, in exchange for the establishment of “Centers of Excellence” at Lakewood Hospital, guaranteeing the Hospital’s viability through the term of the lease, 2026;

55. In whole reliance upon the totality of assurances of the long-term viability of Lakewood Hospital, which the CCF expressly provided to the City of Lakewood,



the Lakewood City Council permitted the CCF to remove pediatric and trauma units from Lakewood Hospital, to other Cleveland Clinic properties, pursuant to the June 10, 2010 resolution, which reads in part: "The City and Cleveland Clinic aspire and commit to provide appropriate services suitable for the Lakewood Community and to maintain the near and long-term viability of Lakewood Hospital."

56. The pediatric and trauma units were moved out of Lakewood Hospital after the resolution was approved by Lakewood City Council.

#### **THE SECRET PLAN TO MERGE LAKEWOOD HOSPITAL WITH CLEVELAND CLINIC THROUGH A PROCESS KNOWN IN CCF DOCUMENTS AS 'DECANTING'**

57. Cleveland Clinic Foundation, under the pretext of developing a new master plan for its Fairview Hospital, contemporaneous with, and contrary to its promises to Lakewood Hospital, duplicitously, and with intent to deceive, enlisted a consulting firm to work with CCF management to conceive, develop and execute a secret plan to destroy Lakewood Hospital as a going concern, raze the buildings and merge much of the remaining physical and personnel assets of Lakewood Hospital into the Cleveland Clinic system outside of the City of Lakewood., while cloaking their clandestine activities in the canard of "the evolving nature of health care;" to wit:

(a) In November of 2011, The Director of CCF Planning and Design, Joseph Strauss met with Philip LiBassi, AIA, ACHA, Principal of WRL, to discuss a confidential project WRL referred to as "Cleveland Clinic, MOB Prototype".

(b) On April 19, 2012, pursuant to phone conversations noted in WRL documents and under the project name "Fairview Hospital Master Plan" WRL's LiBassi memorialized Cleveland Clinic's requirements in a letter to CCF's Director of Development Strauss, which included:

(a) Signed confidentiality agreements with WRL staff.

(b) A commitment by WRL to take "necessary precautions within our office to ensure that confidentiality is maintained."

(c) Identifying how "the current programs/volumes at Lakewood Hospital will be accommodated by relocation to Fairview Hospital," and which programs will relocate to other facilities, either proposed or existing..

(d) an implementation plan and schedule.

58. CCF, in this document, designs to effect a plan to close Lakewood Hospital through a "Lakewood Hospital Decanting Plan" which involves in Part 1

1 - Inpatient beds OB GYN and OR only the following elements:

(a) the development of "a matrix that defines all Lakewood Hospital area and program requirements."

(b) the identification of the proposed status of all existing [Lakewood Hospital] programs and where each program will ultimately exist (e.g. New MOB, Fairview Hospital, other CC facility).

(c) the defining of “the volumes, and ultimately the area and program requirements for all [Lakewood Hospital] inpatient activities that will be moved to Fairview Hospital.”

(d) defining the “type and area of improvements to Fairview Surgery and IP beds to accommodate additional capacity [from Lakewood Hospital].

(e) the development of a “Blocking/Stacking plan for Fairview Hospital indicating impact of Lakewood [Hospital] program assumption, which will be limited only to departments directed affected (limit to OR, Beds, Parking)

59. Part 2 of CCF’s Lakewood Decanting Plan, as outlined in the WRL memorandum of April 19, 2012, includes a “Comprehensive evaluation” which incorporates all of Part 1 and extends to specific program and utilization goals evaluating “the impact of assumed Lakewood [Hospital] volumes on a wide range of [Fairview Hospital] functions..

60. Cleveland Clinic, under the proposal, would supply the following information to WRL in furtherance of the Decanting Plan for Lakewood Hospital:

(a) Statement of conditions

(b) prior Master plans

(c) .CAD Backgrounds of all buildings and site.

(d) Service Line volumes/utilizations, both current and projected

(e) Any planning completed by CC OCM to date.

61. On May 15, 2012, CCF and WRL principals met in Independence, Ohio. The notes from the meeting relating directly to the decanting of Lakewood Hospital include: Item 9., Potential wellness center to be a 1-story 40,000 SF building including therapy pool, PT/OT, new community rooms (sim. to a YMCA facility). Item 10. Potential wellness center would be developed by CC partner, possibly City and managed by entity such as the YMCA. Item 11., Community Health Building is leased to CC from Lakewood Foundation. Item 12., Community Health Building currently holds Child Day Care, OB offices, unused Geriatric offices, Community Room. Item 13., Some med offices would move from Professional Building (on Detroit) to new FHC building.

62. Program spreadsheets were developed, with WRL program summary and plan options to be presented with CC updating program spreadsheets and distributing to planning and implementation teams.

63. On June 21, 2012 a “kick-off” meeting was held with client Fairview Hospital, a wholly owned CCF hospital, to discuss the Lakewood Hospital Decanting Plan. Attendees included officials of Fairview Hospital, WRL and Cleveland Clinic, including CCF’s Director of Planning, Joseph Strauss.

64. The participants in the June 21, 2012 meeting reviewed the decanting plan spreadsheet. Meeting notes include the following:

(b) “Nursing Units

1. M/S Beds: A total of 30-45 beds will move to Fairview. Balance of existing beds will not be required.

Course of Action: complete work as planned for ^N, ^S, %N & 5W.

2. ICU Beds: a total of 16 beds will move to Fairview. These beds have been addressed in the new ICU unit that is set to open in mid-2013. Balance of beds will not be required.

3. Rehab beds: Approximately 16 beds (of 35) will be impacted by the decanting of the 4B unit. An interim solution may be available by re-purposing beds within the existing facility. Long term TBD.

Course of Action: Develop a plan.

4. OB Beds: Fairview can absorb the 700-800 births/year without any physical improvement.

Course of Action: None needed

5. Grace LTAC, SNU will not be replaced.

Course of Action: Establish termination date (assume mid-2013?)”

65. Each and every one of the elements of the Decanting Plan constitutes a breach of the fiduciary responsibility by CCF as the operator of Lakewood Hospital, to the City of Lakewood, as those responsibilities are detailed in the Lease Agreement and the Definitive Agreement of 1996, in that CCF engaged in secret meetings and negotiations, constructively terminating the Definitive Agreement and the Lease Agreement, without the required approval by Lakewood City Council.

66. Interventional changes in the decanting plan included moving of outpatient surgery to the Family Health Center and the movement of inpatient surgery and a cath lab to Fairview Hospital.

67. The Decanting Plan elaborated changes in Diagnostic and Treatment venues:

(c)

1. ED. [Emergency Department] Current volume of 34K [Lakewood Hospital] visits per year. Proposed FHC will be sized for 17K visits per year.” The meeting notes indicated FH (Fairview Hospital) emergency department is scheduled to open in Mid 2013 and is design[ed] to handle this volume. Of the balance, it is assumed 8K visits will move to FH, with 9K visits being distributed to non-CC facilities.

Course of Action: in process.

2. Other D/T will move to proposed FHC.

68. In a deposition dated September 8, 2015, Joseph Strauss, Director of Planning for Cleveland Clinic, when questioned about what would happen to an estimated prospective 10,000 Emergency Department visitors not provided for in the decanting plan. He opined they could go to Metro Hospital, a twenty-five minute drive, or the Huron Rd. emergency facility, a thirty-five minute drive. This is contrary to assertions contained in notes of the meeting of July 16, 2012, in which Mr. Strauss participated, which indicate that Fairview Hospital would be able to handle an extra 10,000 emergency cases yearly.

69. The proposed limitations upon the people of Lakewood by CCF to access to emergency care raise troubling implications for the health and safety of Lakewood residents, cherry picking of insured patients and provision of uncompensated care, a Lakewood Hospital tradition. Indeed confidential meeting notes from July 18, 2012 in which CCF principals participated, indicate a discussion about the decanting plan in that it “will increase amount of uncompensated care.” Since 2012, CCF has known that 10,000 emergency room patients, currently served by Lakewood Hospital will likely be absorbed by hospitals outside their system. Mr. Strauss’, sworn deposition concurs, 10,000 emergency cases currently served by Lakewood Hospital will go “outside the CC system.”

70. The sum and substance of the WRL memo make it abundantly clear that the Decanting Plan for Lakewood Hospital originated with the CCF and was wholly dependent upon CCF for its information, direction.

71. Documents produced in discovery in *Graham v. City of Lakewood* indicate that the Decanting Plan was 100% complete on September 12, 2012, but was kept confidential from the City.

72. Since CCF was totally in control of the operations of Lakewood Hospital, it breached its fiduciary responsibilities described in the Definitive Agreement by taking inside information from Lakewood Hospital and using it to the detriment of Lakewood Hospital and to the benefit of Cleveland Clinic owned properties.

73. CCF secretly devised to degrade the assets of Lakewood Hospital through its coextensive LHA Board and through a series of moves which were designed to undermine Lakewood Hospital’s finances, including the assignment of exorbitant, unreasonable and confiscatory charges for administrative services and the diversion of patients to other CCF wholly owned hospitals.

74. This was done as part of a plan to force the decanting of Lakewood Hospital into other CCF assets, by making it appear that Lakewood Hospital could not produce a profit, was operating at a deficit, a condition which CCF sought to alleviate through its secret merger, to build a false case for the closing of Lakewood Hospital.

## **The Letter of Intent (LOI)**

75. On January 14, 2015, The Cleveland Clinic Foundation, its coextensive Lakewood Hospital Association and the Lakewood Hospital Foundation, proposed to enter into a joinder agreement, known as “the letter of intent” which would result in the closing of Lakewood Hospital and the merging of its assets into properties owned by the Cleveland Clinic Foundation.

76. According to a CCF document, “The Letter of Intent proposes,  
(a) “among other things, a plan under which a health and wellness campus would be created at the site of Lakewood Hospital, whose operations would cease and whose buildings would be razed in the future to allow for construction of the health and wellness campus.” (CCF analysis for the period ending December 31, 2014).  
(b) to “keep Lakewood Hospital open until the Clinic’s new Avon Hospital opens in September 2016 and to keep Lakewood Hospital’s emergency department open until the new family health center with its own emergency department opens in Lakewood.”  
(c) that “LHA and the Clinic would make contributions to a health and wellness foundation to be used for the benefit of the Lakewood community and its citizens.  
(d) “Existing contractual obligations between or among LHA, the City and the Clinic, including a current 30 year lease between or among LHA and the City, would be terminated and replaced with new agreements.”

77. The proposed health and wellness center in Lakewood has been described as a “specialty referral center” by a Cleveland Clinic official. If the animating purpose of such specialty referral centers in the CCF system is to capture in-patient market share and thereby squeeze out the competition, such facilities in the CCF system pose market domination questions which must be reviewed by the FTC. In the instant case, Lakewood residents needing inpatient care would be referred out of Lakewood to other CCF facilities.

78. The Letter of Intent was defective in the following ways:

- (a) it was a device to terminate an advantageous lease which indemnified the city from long-term loss.
- (b) it sought the extralegal conversion of \$50 million in cash and investments held by Lakewood Hospital Association; \$34 million in cash and investments held by the Lakewood Hospital Foundation; and \$30 million in hard assets, i.e., high tech equipment; into a new foundation with assets directed by Cleveland Clinic and its coextensive LHA. This cash conversion would pay Cleveland Clinic for putting Lakewood Hospital out of business.
- (c) it would raze Lakewood Hospital, destroying through deception an ongoing, in-patient health concern:
  - 1. depriving the people of Lakewood of a full-service, inpatient hospital and attendant emergency services.
  - 2. depriving potential competitors of the opportunity to compete in the Lakewood market for Lakewood inpatients.
  - 3. requiring the City of Lakewood taxpayers to pay \$26 million to wind down the hospital and to tear down the buildings valued at \$70 million.
- (d) damaging the City’s ability to attract third party options.
- (e) CCF will negotiate exclusively with its coextensive LHA, the definition of self-dealing.
- (f) it indemnifies CCF, as agents for LHA, to receive from LHA \$2.5 million for insurance coverage solely to provide legal protection for trustees.

79. In January of 2015, the Mayor of Lakewood, Michael Summers, also a member of the Lakewood Hospital Association, announced Lakewood Hospital was closing.

## **SUMMARY AND CONCLUSION**

80. The devastating community impact of the Decanting Plan, when placed alongside the multiple assurances provided by CCF to the City of Lakewood, as inducements to gain official action for the benefit of CCF, and the utter failure to carry through with the declarations and promises made to sustain Lakewood Hospital clearly constitute deceptive acts, including fraudulent inducement, false oral statements, false written statements, presenting false impressions to the media, to elicit public support based on false premises, all of which are material to government and public decision-making on matters relating to critical public policies in health care. The remedy for such deceptive acts fall under the enforcement scope of the Federal Trade Commission, Section 5 of the Federal Trade Commission Act, 15 U.S.C., Section 45. Further, the “decanting plan” would ipso facto result in greater market dominance for CCF and higher rates for consumers. Further relief is to investigate the current consumer pricing by the CCF, its pricing structures during the operation of the Definitive Agreement with Lakewood Hospital, and the effect on future pricing by the elimination of Lakewood Hospital. (See Federal Trade Commission, et al, Plaintiff, v. Promedica Health System, Inc. Defendant. No. 3:11 CV 47, March 29, 2011 in the United States District Court, N.D. Ohio, Western Division).

IN RESTATEMENT AND SUMMARY, THIS IS TO REQUEST that the Federal Trade Commission seek any and all enforcement actions available to it, including seeking preliminary injunction pursuant to Section 13 (b) of the Federal Trade Commission Act, 15 U.S.C., Section 53 (b) and Section 16 of the Clayton Act, 15 U.S.C., Section 26, against the Cleveland Clinic Foundation, (CCF), enjoining them from further misusing their contractual and fiduciary relationship as the operator of Lakewood Hospital; preventing them from “decanting,” absorbing, or defacto merging or otherwise merging the assets of Lakewood Hospital into CCF hospital operations in their large system in northeastern Ohio and restraining them from building a “specialty referral center” in Lakewood, to capitalize on the destruction of Lakewood Hospital and the elimination of potential competitors in this northeastern Ohio market. Finally, the FTC, pursuant to the authority of Section 5 of the Federal Trade Commission Act, 15 U. S. C., Section 45, is hereby requested to investigate the deceptive acts of CCF in relation to its dealings with Lakewood Hospital and the City of Lakewood, a municipal corporation. The CCF’s unfair methods of competition adversely affecting commerce, and their unlawful practices with respect to Lakewood Hospital alone, include, but are not limited to, fraudulent inducement, false oral statements, false written statements, publicly presenting false impressions to the media, to gain public support based on false premises, all of which are material to government and public decision-making processes with respect to health

care as well as impacting area consumer's civil rights and decisions to use the services of Lakewood Hospital in the future.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Dennis J. Kucinich". The signature is written in a cursive, flowing style with a large initial "D".

Dennis J. Kucinich  
contactkucinich@gmail.com

July 3, 2014

Dr. Brian Donley  
President of Cleveland Clinic Regional Hospitals  
Mail Code NA4  
9500 Euclid Avenue  
Cleveland, OH 44195

Dear Dr. Donley

This letter is a formal protest of the Cleveland Clinic's recent decision and subsequent announcement to move the Rehabilitation Service to a soon to be built Select Medical 60 bed facility in Avon.

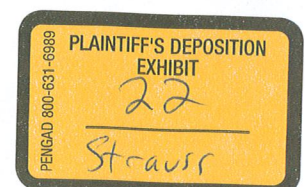
This service at Lakewood Hospital recently received in excess of \$3.7 million of Lakewood Hospital Association and Lakewood Hospital Foundation monies. These investments were made in good faith that CCF intended to honor the spirit and letter of our definitive agreement of services to offered by CCF at Lakewood Hospital.

This particular service delivers approximately three million dollars of contribution to the financial performance of Lakewood Hospital. Consequently, The absence of these monies will have a devastating impact on the financial viability of our hospital.

This decision, and others similar to it, is a continuation of the Cleveland Clinic's unilateral strategic approach to seemingly disregarding the impact on Lakewood Hospital to the benefit of the Clinic system as a whole. I recognize the market and regulatory pressures that might compel these decisions, but I must protest their detrimental impact on Lakewood Hospital. I believe the service losses are in violation of the letter and spirit of the definitive agreement between the Lakewood Hospital board of trustees and The Cleveland Clinic foundation.

Sincerely,

Michael P. Summers





From: "Frost, M.D., Frederick" <FROSTF@ccf.org>  
To: "maria@clevecpi.com" <maria@clevecpi.com>  
Cc: "Bayoumy, Sam (SBayoumy@clevelandclinicrehab.com)" <SBayoumy@clevelandclinicrehab.com>  
Subject: New Cleveland Clinic Rehabilitation Hospital in Avon  
Date: Wed, Aug 26, 2015 12:34 PM

Hi Maria, Can you please forward the email below to Dr. Killroy? Thank you

Dr. Killroy,

After nearly ten years in planning, our beautiful new 60-bed Cleveland Clinic Rehabilitation Hospital will open the first week in December on the Richard E. Jacobs Health Campus in Avon. The walls are up, the landscaping is installed, and final touches are being put on the building- which will open about a year ahead of the new Avon Cleveland Clinic acute care hospital. This facility is the cornerstone of Cleveland Clinic's joint venture with Select Medical Corporation, an affiliation that we chose in light of the company's wonderful track record of working with the best academic hospital systems in the United States.

I am writing to solicit your interest in joining the medical staff of the hospital. As an inpatient rehabilitation hospital, it will operate on an acute care model. In order to meet criteria for admission, not only do patients need to have rehabilitation goals, they must have medical conditions that require frequent physician visits – in some cases the patients are seen seven days a week by the doctors.

Over the years, in our rehab units at Lutheran, Fairview and Lakewood Hospitals, we have been grateful for the collaboration of our medical and surgical consultants. It is our goal to bring this great medical care to a sparkling new facility, and to integrate the patients' care into the existing Cleveland Clinic networks. In order to do so, we need to articulate our need for physicians, which is substantial. I'm reaching out personally to the physicians that have helped us in the past, and inviting them to apply for credentials and privileges.

As a follow up to this email;

- Sam Bayoumy, the CEO of Cleveland Clinic Rehabilitation Hospital, will be sending out application packets to the short list of medical colleagues that we hope to engage in this new endeavor.
- I am available by phone, email, or in person to elaborate on the specifics of our new hospital. Dr. Patrick Schmitt, a Cleveland Clinic Staff Physician for the last 5 years, has been picked by the Joint Venture Board to serve as medical director of the new rehabilitation hospital. Patrick and I would consider it a privilege to meet with prospective physician colleagues individually at their convenience and location.

Regards

Fred

---

Frederick S. Frost MD  
Physical Medicine and Rehabilitation / Desk S31  
Executive Director: Cleveland Clinic Rehabilitation and Sports Therapy  
Chair: Department of Physical Medicine and Rehabilitation  
Associate Professor of Medicine  
Cleveland Clinic | 9500 Euclid Ave.  
Cleveland, OH 44195  
| tel (216) 445-7352 | fax (216) 636 0221

