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FLORIDA BAR BOARD CERTIFIED IN HEALTH LAW

TELEPHONE 305-670-2100

March 8, 2024

Spencer Krenke
Key West Citizen & Resident

Re: Lower Florida Keys Hospital District

Dear Mr. Krenke:

I am in receipt of your email of February 13, 2024, as a follow-up to your presentation before the Board of Commissioners (the "Board") of the Lower Florida Keys Hospital District (the "District"), and the handout you provided. At the request of the Chair of the Board, I am providing as follows in response to your handout and the questions you posed on Pages 10 and 14:

Initially, with regard to Page 14 and the composition of the four (4) entities you listed, inasmuch as the District does not operate Lower Keys Medical Center ("LKMC") and only appoints two (2) individuals to its Advisory Board, one of whom is a District Board member and the other of whom is not and is a community member, and inasmuch as I do not represent LKMC, we can only attest that Dr. Lesley Thompson and Susan Harrison are the two District appointees.

Similarly, since the District has no involvement in Kennedy Drive Investors, Ltd. ("Kennedy Drive"), neither I nor the District Board can affirm if the listed individuals remain involved with Kennedy Drive, although it is our belief that they are still involved.

As regards the District Board, your listing is incorrect. Leslie Johnson is neither a Board member of the District nor its Chair. Lesley Thompson, Ph.D. is the Board Chair and a member. Similarly, Susan Harrison is not a District Board member. She is merely the District's community appointee to the LKMC Advisory Board. The other five (5) listed Board members and their respective offices are correct.

Lastly, as set forth on the Division of Corporations' website, the Directors of the Lower Florida Keys Health System for the 2023 calendar year were Robin Lockwood, Lesley Thompson, Jay Levin, Kathy Ovide and James Muir.

With regard to the questions you posed on Page 10, and in the same order as presented, I offer as follows:

1. As we previously discussed, the Ground Lease, as amended (the "Lease"), between the District and Key West HMA does not expire until April 30, 2029. There is no basis set forth in the Lease by which the District can earlier terminate the Lease absent an uncured breach for cause, as defined in the Lease. To date, Key West HMA is in full compliance with the Lease terms, and continues to make capital improvements within the facility. While your presentation regarding the current financial condition of Community Health Systems (CHS) as a corporate entity is duly noted, absent an uncured breach by Key West HMA, any actions or proposed actions by the District adverse to the Lease or Key West HMA's interest therein would be a breach by the District itself, and could subject it to a claim of tortious interference should the District affirmatively take steps deemed to interfere with the Lease. Furthermore, even if your concern of a proposed divestiture by CHS of Key West HMA prior to Lease end were to occur, the Lease itself allows for same provided the contemplated successor meets the minimum financial and operational requirements set forth in the Lease. There is nothing the District can do pre-emptively. The Board receives quarterly reports from Lower Keys Medical Center at its District meetings and assures compliance with the Lease terms.
2. The District Board has only had cursory discussion about the need to commence consideration of the Lease term end, and is in the process of reviewing and establishing minimum criteria it would require of a lessee commencing May 2029. It has made no determinations to date with regard to the identity of a potential lessee.
3. The District Board is concerned that the lessee provides the District community and its residents with quality medical care and with the broadest range of services and equipment, and in a comfortable facility, at a fair cost. The Board is also cognizant, as we discussed, of the amount of indigent care that District community requires, and the cost therefor, as that is its obligation under its Enabling legislation.
4. As stated above, the Board has just commenced the process of preparing for the current Lease term expiration, and has merely explored its legal options, with no decision made as of yet how to proceed.
5. A community understanding that the District is obligated to lease to a not-for-profit operator is incorrect. This issue was raised previously, was dispelled by the Florida Attorney General's Office, and was reaffirmed in 2016 when the District obtained an independent opinion from the law firm of Holland & Knight after a similar community uprising.
6. The Enabling legislation provides that the District Board of Commissioners are to be appointed by the Governor, for terms of four (4) years each. The Florida Attorney General

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has opined by Opinions that appointees continue to serve until replaced, notwithstanding the expiration of their appointed term, unless they affirmatively elect not to continue serving after their term expires. Vacancies are to be filled by Governor appointment for the balance of the vacant term. Governor DeSantis has not made any appointments to the District Board since his initial election as Governor. The Board has authorized me and I have had communications with the Governor's General Counsels regarding this issue, have been referred to the Governor's staff chair of appointments, and have had communications with her, and the understanding is that the Governor will begin to address all his appointment obligations for all taxing districts. At present, all six (6) serving Commissioners are doing so on expired terms, there is one (1) vacancy due to the demise of the then Commissioner, one (1) Commissioner resigned and was not replaced, and one (1) Commissioner elected not to continue to serve upon the expiration of her term.

On behalf of the Board of Commissioners, I trust the foregoing responds to your inquiries.

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'L. Fishman', written over a faint, light blue rectangular stamp or watermark.

Lewis W. Fishman

LWF:

cc: Samuel Kaufman, City of Key West (*via email to skaufman@cityofkeywest-fl.gov*)
Lesley Thomson, Ph.D. Board Chair (*via email to drlesleythomson@gmail.com*)
Jill Cranney-Black, District Administrator (*via email to jclfhda@aol.com*)