



## KOSAIR CHILDREN'S HOSPITAL

**FROM:** Thomas D. Kmetz, Division President, Women's and Children's Services, and President, Kosair Children's Hospital  
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**TO:** **Norton Healthcare Employees, Physician Leaders, Medical Staff Members and Other Constituents**

**DATE:** September 6, 2013

**SUBJECT:** **Frequently Asked Questions – Children's Care in Kentucky**

Just a couple of weeks ago, Kosair Children's Hospital and UK HealthCare's Kentucky Children's Hospital announced plans to discuss how we might better work together to improve children's health care across Kentucky. Since then there has been a deluge of media stories focused on the U of L's immediate negative reaction and no shortage of rumor and speculation that's been presented as fact. Unfortunately, much of what is being reported is inaccurate. It is our hope this document provides some much needed balance and perspective.

### About the Partnership

Kentucky's two children's hospitals – Kosair Children's Hospital (a part of Norton Healthcare) and Kentucky Children's Hospital (a part of UK HealthCare) – have signed an agreement to join forces to better meet the health care needs and interests of Kentucky's children and their families. They deserve a strong, high-quality network of care that spans the state. We can serve our children best by working together.

In the Letter of Intent signed by the leadership of both children's hospitals, the new partnership will maximize the hospitals' combined resources to improve care and enhance access to quality services for children and ultimately improve their health throughout the Commonwealth. The two hospitals will remain entirely independent organizations and form a separate legal entity to engage in collaborative activities.

In order to provide key specialty and sub-specialty services to the Commonwealth's children, we must have a sufficient volume of patients to recruit and retain those specialty physicians as well as afford the expensive associated technology and facilities. Regional competition in pediatric care has been mounting over recent years and we, too, need to become more competitive to attract a broader base of patients. By joining forces, Kentucky's two children's hospitals can better ensure that we will have the highest levels of quality health care available for our children here in the Commonwealth, and that we are working together to be efficient with financial resources. But more importantly, we

know that Kentucky's children will benefit under a more coordinated system that enhances their access to quality services throughout the state.

As we share the following frequently asked questions, please know that we and our entire leadership team remain committed to doing what is right. We are thankful for each of you and what you do for the patients and families of our community. We remain willing to have individual discussions as you have questions.

## **Frequently Asked Questions**

### **Who owns Kosair Children's Hospital?**

Norton Healthcare built and owns Kosair Children's Hospital. Norton Healthcare has invested over \$500 million in Kosair Children's Hospital and its pediatric programs and is in the midst of a renovation of the facility that will cost more than \$69 million. Kosair Children's Hospital is built on land owned by the Commonwealth, after a donation from Norton Healthcare equal to the value of the land, and leased for 149 years. It was intended that the building be used for the benefit of the Commonwealth and has been made available to the U of L School of Medicine. There is no aspect of the partnership between the two children's hospitals that prevents Norton Healthcare from honoring its affiliation agreement with the U of L just as it has done for more than 50 years.

### **Who owns the land on which Kosair Children's Hospital is built?**

The Commonwealth of Kentucky. The land is leased for 149 years. Norton Healthcare has made the hospital available for the programs of U of L School of Medicine.

### **Will Kentucky Children's Hospital own Kosair Children's Hospital under the proposed partnership?**

No. This is a partnership between independent organizations jointly operated through the collaboration, working together to improve care for children across the state. Norton will not own Kentucky Children's Hospital.

### **What does this mean for Kosair Children's Hospital and Kentucky Children's Hospital physicians?**

A key goal of this partnership is to create better alignment among our hospitals and the physicians who work with us to ensure we're providing the best possible care for our children.

Each hospital will continue to have a separate medical staff, a separate credentialing process as well as separate medical staff bylaws and rules. The medical staff governance structures will remain separate and distinct as well.

It is our intent that (through better coordination among our hospitals) physicians will have the opportunity to collaborate through a statewide children's hospital network in a way that supports their efforts and the care they deliver.

Working with our physicians will be paramount as we develop more detail around the best way to make that happen. We are in the process of creating appropriate avenues for physician involvement when we begin work on clinical and physician alignment issues related to the partnership.

### **Did Norton Healthcare discuss with the U of L plans to work with UK prior to the announcement?**

Representatives of the U of L School of Medicine were well aware of our intent to partner with the University of Kentucky. A press release dating back to November 8, 2010 initially highlighted the many opportunities we would explore with the University of Kentucky. In the 2010 announcement, we specifically identified areas for pediatric collaboration, “**Children’s health issues:** Creating new opportunities to expand a full range of services, from primary care pediatrics to subspecialty care, thereby ensuring children in the Commonwealth do not have to leave the state to access care. Additionally, as the stewards of Norton Healthcare’s Kosair Children’s Hospital and Kentucky Children’s Hospital, the partners are committed to addressing major children’s health issues such as obesity and juvenile diabetes.” In fact, provisions for working with the University of Kentucky were specifically highlighted in the 2012 affiliation term sheet, which was signed by both Norton Healthcare and the U of L officials in September 2012. Subsequent to that, in November 2012 the U of L granted a right of first refusal to Kentucky One Health which would allow Catholic Health Initiatives to assume the pediatric relationship from Norton Healthcare at a time and date of their choosing. Because of the U of L’s ownership in Kentucky One Health, participation in its governance, and participation in its profits and losses it would have been inappropriate to have included them in Norton’s most recent conversations with UK because of an obvious conflict of interest.

### **How will this affect the academic partnerships for both children’s hospitals?**

The hospitals will continue to have separate medical staffs, medical staff bylaws and rules and regulations.

We will continue to fulfill the existing obligations and opportunities of both children’s hospitals relative to the important teaching, research and clinical service needs of the medical schools of the University of Kentucky and University of Louisville. In fact, we will look to expand such opportunities where possible.

### **What is the University of Louisville’s role in this partnership?**

We plan to collaborate with all of our physicians and solicit input on clinical issues related to the partnership. There is tremendous opportunity to strengthen services at Kosair Children’s Hospital with this partnership and expands the breadth and depth of the medical staff. We will continue to fulfill the obligations and opportunities of both children’s hospitals relative to the important teaching, research and clinical service needs of the School of Medicine of the University of Louisville and the College of Medicine of the University of Kentucky.

### **Can the University of Louisville stop this from happening?**

Neither Kosair Children’s Hospital nor Kentucky Children’s Hospital needs their endorsement. Regardless though, why would anyone want to stop this partnership, which will improve pediatric health care in our state? Trying to prevent the partnership of the state’s two children’s hospitals would not be in the best interest of Kentucky’s children. The entire motivation for our children’s hospitals joining forces is to improve care and enhance access to quality services for kids throughout the Commonwealth. Now is not the time for the U of L to assert they want to begin a monopoly on providing all physician services at Kosair Children’s Hospital. Norton Healthcare respects the many private practice physicians who have contributed to the success of the children’s hospital and continue to do so, as we appreciate the U of L physicians. Providing the U of L exclusivity is not what’s best for the Commonwealth’s children and has never been the case.

**So, this is going to court? What is a declaratory judgment action?**

The health care community seeking to advance children’s health issues in this state needs answers regarding the long term real property and relationship issues underlying this proposed partnership. Norton Healthcare and the U of L have different positions regarding Norton’s ability to do business with another state entity. Accordingly, Norton is asking the Kentucky courts to give a judicial interpretation of the KCH ground lease through a legal vehicle known as a declaratory judgment action. The Court will review the documents and other evidence and decide what the language in the lease means. Once the Court decides and delivers an opinion all of the parties involved will know their rights and obligations under the existing land lease. Please see attached press release from September 6, 2013.

**Is Norton Healthcare willing to complete a new affiliation agreement based on the term sheet of September 2012?**

Last fall, Norton Healthcare and the University of Louisville negotiated and signed a new term sheet, a document used to obtain conceptual approvals from both parties to develop a long term affiliation agreement. Shortly after this term sheet was finalized, the U of L reached an agreement with Kentucky One Health and CHI. Within that arrangement, and despite a letter of assurance to Norton Healthcare from Dr. Ramsey that pediatric services would not be impacted during this process, CHI was given the right of first refusal to assume the academic affiliation agreement the U of L had negotiated with Norton. Importantly, it would not be the right of the U of L to move their academic program to CHI or maintain it with Norton Healthcare, but CHI’s right to assume the relationship at their discretion. Norton Healthcare continued to search for ways to find a workable solution in the face of this difficult development. We were told the U of L asked CHI to remove or modify the language and CHI denied this request. Their new proposed draft agreement submitted after the CHI arrangement was, as described by the U of L representatives, “radically different” and presented as their “final position.” It was so different that the Norton Healthcare board of trustees could not authorize its approval. Norton Healthcare maintains its willingness to have a long term relationship with the U of L and remains willing to have those discussions.

**During the discussions did both parties negotiate in good faith?**

Talks to reach a new affiliation agreement with the U of L were open and honest. It was the U of L who abandoned the agreed upon term sheet in favor of “radically different” terms in a totally new affiliation agreement. Clearly, Norton Healthcare did not provide CHI the right of first refusal language as we were not privy to their negotiations and are not a party to the contract between the U of L and CHI. Further, we had every assurance from the president of the University of Louisville that the deal contemplated by the University of Louisville and CHI was limited to the adult agenda and that “... we commit that these affiliation discussions will suffice for defining the relationship between Norton Healthcare and the U of L Pediatrics in place of responding to the Request for Proposal...”. In the “radically different,” agreement Norton Healthcare was presented by the U of L; their legal counsel wrote this was their “final position.”

**Is it true that Norton Healthcare has not paid the U of L \$8M in fees, resulting in Dr. Dunn’s claim the Department of Pediatrics is “facing insolvency.”**

Norton Healthcare has paid every contractual obligation to the U of L as outlined in our 2008 affiliation agreement and supplemental contracts. Norton Healthcare has more than 250 contractual arrangements with the U of L and all obligations are current. The school frequently requests

additional funding that is above and beyond our contractual obligations. Norton Healthcare works in partnership with the U of L to prioritize those requests for funding to best meet the needs of the children we serve and the collective needs of our institutions. We are not aware of calculations that determined the \$8M figure, nor do we have information about the school's financial state. Nonetheless, there is little doubt that the Department of Pediatrics faces challenging economic times, as do all health care organizations and physician practices.

To illustrate the financial challenges of the Department of Pediatrics, the School of Medicine points to potential changes in the department's "Healthy for Life" program. Kosair Children's Hospital has long supported this program by providing free rent for the clinical space associated with the effort and has agreed to continue doing so. The fact is this: the U of L Department of Pediatrics has been unable to secure a contract for support from Passport, a contract on which they have historically relied. To suggest this program is struggling as a result of the Norton Healthcare's funding to the Department of Pediatrics is just not accurate.

In 2003, Kosair Children's Hospital provided \$7.3M in support to the U of L pediatric programs. Ten years later, in 2013, we are forecasted to spend more than \$27M, which includes over \$5M in new contracts this year alone. This represents a 272% increase in spending on the School of Medicine's pediatric efforts. We are proud to support the University of Louisville Pediatric Programs and intend to continue and even grow our support as we are economically able.

**Is it true that Norton Healthcare has been hiring pediatric specialists and reducing the opportunities for the U of L medical students at Kosair Children's Hospital?**

Norton Healthcare has stepped up and invested in certain specialty pediatricians when there was a community need. Our actions enhanced the breadth of services available at Kosair Children's Hospital and in no way have diminished the opportunities for the U of L medical students, residents or faculty. As recently as August 6<sup>th</sup>, 2013 University of Louisville Hospital requested Kosair Children's Hospital employed Pediatric Board Certified Radiologists to provide services for their neonatal service. Many believe our recruitment efforts have brought stability to these clinical programs and strengthened the depth and breadth of the hospital's medical staff. Many of these physicians participate as faculty with the University of Louisville, participating in teaching, research, and supportive clinical programs.

**What does this partnership mean for Kosair Children's Hospital and Kentucky Children's Hospital employees?**

There are no immediate changes, of course. The work of creating the partnership is just getting underway.

In the long term, the overarching goal of this partnership is to secure and advance children's health care statewide. As the two hospitals identify the details of the joint operating model, additional job opportunities may develop. A unified network will help keep children's health care services and the accompanying jobs in Kentucky. This will undoubtedly lead to more opportunities for employees of both organizations to work together when appropriate.

We will spend the next several months engaging with employees, physicians and others to help us shape what's best for the Commonwealth, building on the work already underway.

**Will Kentucky Children’s employees become Kosair Children’s Hospital employees?**

No. This is a partnership between two independent hospitals that will work together for Kentucky’s children. Under the partnership, however, Kosair Children’s Hospital and Kentucky Children’s will jointly operate both hospitals, including the development of joint protocols for staffing and personnel matters.

**Will the leadership change at either hospital?**

The details of who will play what role once the partnership is final are still being determined. The partnership model is under development as we speak and we will certainly share details of that plan once it is finalized.



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*For Immediate Release*

## **Norton Healthcare Asks Court to Declare U of L Threats against Kosair Children’s Hospital to be Without Legal Basis**

**Louisville, KY – (September 6, 2013):** Earlier today, Norton Healthcare, the not for profit health system which owns and operates Kosair Children’s Hospital, filed suit to establish that U of L has no legal right to evict Norton from the children’s hospital it built and owns, and to seize the building for itself.

U of L’s threats to evict Norton and seize the building followed U of L’s protests over Norton’s discussions with UK HealthCare on how the Commonwealth’s two children’s hospitals might work together to improve the scope, quality and access to health care for Kentucky’s 1.1 million children.

Immediately following the announcement of the non-binding Letter of Intent to create a partnership between Kentucky’s two children’s hospitals, U of L served a “notice of breach” to begin the process to evict Norton from its own hospital unless talks with Kentucky Children’s Hospital stopped. Norton made several subsequent offers to negotiate with U of L if they would rescind the notice of breach that threatened to disrupt medical care for thousands of children. Those offers were declined, forcing a situation where negotiations could only begin with a looming threat to the quality of care provided by Kosair Children’s Hospital. “We could not in good faith negotiate under those circumstances,” said Stephen A. Williams, CEO, Norton Healthcare.

Norton has invested \$500 million in constructing Kosair Children's Hospital and in making significant improvements over the years. The hospital was built on land owned by the Commonwealth, but for which Norton paid the full value in the form of a donation to the University. The land is leased for 149 years, for the purpose of serving the interests of the Commonwealth and to *make available* the hospital for the programs and use of U of L School of Medicine.

"We highly value the relationship between Kosair Children's Hospital and U of L," said Williams. "We have no intention to diminish it, and we will continue to meet our obligations to U of L. But in the rapidly changing world of health care, Kentucky's two children's hospitals need to find ways to further work together. Now is not the time for U of L to begin a monopoly on providing all physician services at Kosair Children's Hospital, to demand \$24 million we don't owe, or if we don't agree, to try to have us evicted from the children's hospital we own. Norton Healthcare respects the many private practice pediatric physicians who have contributed to the success of the children's hospital and continue to do so, as we appreciate the U of L physicians. U of L has never had exclusivity at the hospital and exclusivity is not what's best for the Commonwealth's children."

U of L's highly charged and emotional threats are without legal standing, and they create a cloud of uncertainty that threatens to disrupt the medical care for Kentucky's children. "Norton has urged U of L leaders to withdraw their notice of breach and join Norton in a constructive dialogue to address mutual concerns in a manner that best serves the interests of all children in the Commonwealth," said Williams. "Even though U of L's threats are without basis, Norton has provided assurances it would address their concerns." To date, U of L has been unwilling to withdraw their notice of breach and Norton has been forced to turn to the courts to resolve these unsubstantiated, baseless and harmful distractions.

Norton is hopeful of a prompt resolution by the Court. "While we await the Court's clarification, we will continue our focus on providing the high-quality pediatric care the community and the Commonwealth have come to expect from us. We are confident that the community pediatricians, specialists, the U of L faculty, and all the Kosair Children's Hospital family of care providers are committed to that as well," said Steven Hester, MD, chief medical officer of Norton Healthcare.

"Norton Healthcare's Board of Trustees and management want to get past these distracting antics as quickly as possible so we can all move forward to improve the health care for all of Kentucky's children by having both of the state's children's hospitals working together, with physicians from U of L and UK medical schools and other health care professionals across the Commonwealth," noted Williams. "There are so many opportunities to positively impact children's health care in Kentucky. We should be all pulling together, not apart, on behalf of the children that each of our organizations has a mission to serve."



## **About Norton Healthcare**

For 127 years, Norton Healthcare's faith heritage has guided its mission to provide quality health care to all those it serves. Today, Norton Healthcare is a leader in serving adult and pediatric patients throughout Greater Louisville, Southern Indiana, the state of Kentucky and beyond. The hospital and health care system is the Louisville area's third largest private employer, providing care at more than 140 locations throughout Greater Louisville and Southern Indiana. The Louisville-based not-for-profit system includes five Louisville hospitals with 1,837 licensed beds; seven outpatient centers; 12 Norton Immediate Care Centers; more than 12,000 employees; some 630 employed medical providers; and approximately 2,000 total physicians on its medical staff. Norton Healthcare has been recognized as one of the best places to work in Metro Louisville, the state of Kentucky and nationally. Norton Healthcare and Humana were among the first nationally, and the only ones in Kentucky, asked to create, operate and study the Accountable Care Organization (ACO) model through the prestigious Brookings – Dartmouth ACO Pilot Project. More information about Norton Healthcare is available at [NortonHealthcare.com](http://NortonHealthcare.com).

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