



MIDDLETON
REUTLINGER

2500
Brown & Williamson
Tower
Louisville, Kentucky
40202
502.584.1135
502.561.0442 fax
www.midtreut.com
Dennis D. Murrell
Direct Dial: (502) 625-
2717
dmurrell@midtreut.com

February 15, 2011

By electronic mail and U.S. Mail

Jennifer Elliott
STITES & HARBISON PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202

Re: Norton Healthcare Board Meeting
February 15, 2011

Dear Jennifer:

We have been retained to represent the interests of Norton Healthcare, Inc. with regard to the issues raised in your letter of February 14, 2011. This response is intended to address those issues and assist both of our clients to work together in this matter.

We have reviewed the relationship between the University of Louisville (the "University") and Norton Healthcare, Inc. ("Norton") as contemplated by the Agreement dated August 12, 1981 (the "Agreement"), and the Lease dated December 8, 1981 (the "Lease"). We have also reviewed the history of the actions of both the University and Norton with respect to these issues, both before and after the execution of the Lease, to provide everyone a better understanding of what was contemplated by that agreement. Based upon this review, it is our belief that neither the Agreement nor the Lease bestowed any new rights to the University beyond that which Norton was already providing in practice at the time. It is our understanding that Norton had invited representatives from the University School of Medicine as guests, but not as board members, to the meetings of the Norton Board of Trustees and Executive Committee prior to the execution of the Agreement. Indeed, this is confirmed by the first sentence of Paragraph 1 of the Agreement which states that "NKC will continue the practice of inviting a representative of the U of L School of Medicine staff to its Board of Directors and Executive Committee meetings, to assure full and open communications with them."

Prior to and after the execution of the Agreement and the Lease, members of the University's School of Medicine attended Board of Directors and Executive Committee meetings from time to time as invited guests. To our knowledge, no University Trustee has ever attended a Board of Trustees or Executive Committee meeting since the execution of the Agreement and the Lease. Throughout all relevant time periods, Norton has exercised its right to go into Executive Session¹ on those matters it deemed to be

¹ For purposes of clarity, an "Executive Session" of the Norton Board of Trustees is a closed session where confidential and proprietary information is discussed, after invited guests, officers and employees not



Jennifer Elliott
February 15, 2011
Page 2

proprietary. Whenever Norton has gone into Executive Session, University representatives, along with invited guests, have been asked to leave without incident or objection. This practice has "assure[d] full and open communication" while protecting Norton's confidential and proprietary information.

Upon reflection, we hope that you will agree that it would not be in anyone's best interests to have members of the University Board of Trustees or School of Medicine attend closed sessions of the Norton Board of Trustees. With the emergence of the University Medical Center, Inc. as a direct competitor with Norton in providing health care in this region, the sharing of such competitive information would violate the Board's duty to act in Norton's best interests. Furthermore, such disclosure would place both Norton and the University and University Medical Center, Inc. selected representatives in a legally impossible situation, for several reasons.

Under the Kentucky Uniform Trade Secrets Act, the selected representatives would also be precluded from sharing any competitive information with the University and the University Medical Center, Inc., to whom they owe a fiduciary duty of full disclosure. It is difficult to imagine that Dr. Hughes or Dr. Halperin want to be put in that situation.

Further, the receipt of competitively sensitive information concerning Norton by the University or University Medical Center selected representatives would violate federal and state antitrust laws. Information concerning competitive planning, pricing, wages, and managed care relationships should not be shared by competitors, and such sharing can give rise to treble damages liability. There are currently class action lawsuits against hospitals pending in several cities around the United States based on such claims.

Moreover, § 8 of the federal Clayton Act prohibits individuals from serving on the boards of directors of competing organizations. While the University representatives are not members of the Norton Board, their participation in all aspects of Norton Board meetings, including the most sensitive aspects would violate the policies underlying § 8, and would likely be viewed as an effective violation of § 8. The Federal Trade Commission has on several occasions challenged actions that violate the spirit, if not the literal language, of § 8, under § 5 of the Federal Trade Commission Act.

Norton, of course, does not wish to expose itself to antitrust liability, including federal treble damages liability, and we expect that the University would have the same view.

involved in the matters discussed are excused. An "Executive Session" is different than a meeting of the Norton Executive Committee.

Jennifer Elliott
February 15, 2011
Page 3

The position taken in your letter, that the Agreement requires Norton to share competitive information with the University, seeks to redefine a well-established relationship developed for over thirty years. We can only conclude that your interpretation is grounded in the University's desire to gain access to a competitor's proprietary information, especially in light of the University Medical Center, Inc.'s planned merger with Jewish Hospital and the Academic Affiliations involved with the merged entity and Catholic Health Initiatives. The University and the University School of Medicine are not now, nor have they ever been, entitled to such information.

With that being said, Norton recognizes the significant involvement and contributions of University representatives on various Norton committees and wishes to maintain that dialogue to continue to assure full and open communication. Norton appreciates the perspectives and commitment they bring to our organization and hope they will continue to do so. In regard to the implication that Norton in any way has failed to provide full and open communication with the University, the following is a list of University faculty who are serving this year on various Norton committees:

Board of Trustees Committee on Quality, Clinical Services and Patient Safety

Vickie Montgomery, M.D.
Stephen P. Wright, M.D.

System Medical Executive Committee

Mary Fallat, M.D.
Joshua Honaker, M.D.
Vickie Montgomery, M.D.
Stephen P. Wright, M.D.

Norton Hospital Medical Executive Committee

Gary Vitale, M.D.

Norton Hospital Credentials Committee

Gary Vitale, M.D.

Kosair Children's Hospital Medical Executive Committee

Steve Auden, M.D.
Erle Austin, M.D.
Andrea Boeckman, M.D.
Kimberly Boland, M.D.
Kristina Bryant, M.D.
Mary Fallat, M.D.
Julie Goldman, M.D.
Ann Greenwell, DMD, MSD
Sandra Herr, M.D.
Paige Hertweck, M.D.

Jennifer Elliott
February 15, 2011
Page 4

Joshua Honaker, M.D.
Faye Jones, M.D.
Allen Josephson, M.D.
George Kushner, D.D.S.
Vicki Montgomery, M.D.
Ron Paul, M.D.
Vinay Puri, M.D.
Gerard Rabalais, M.D.
John L. Roberts, M.D.
Dan Stewart, M.D.
Janice E. Sullivan, M.D.
Chris Sweeney, M.D.
Judy Theriot, M.D.
Stephen P. Wright, M.D.
Laura Forster, M.D.
Chad Wiesenauer, M.D.

Kosair Children's Hospital Governance (Credentials) Committee

Mary Fallat, M.D. Vicki Montgomery, M.D.
Julie Goldman, M.D. Faye Jones, M.D.
Josh Honaker, M.D. Judy Theriot, M.D.
Stephen P. Wright, M.D.

You will recall that the Agreement contemplated the construction of a new pediatric facility to be part of Kosair-Children's Hospital. Paragraph 1 of the Agreement was drafted to ensure that the University remained informed and, to a certain extent, involved as to the development and operation of the new pediatric facility. Surely, based upon the level of involvement of the University faculty as shown above, the University is informed and very involved. The expansive reading that you have given the Agreement and the Lease is misguided. It was never contemplated that the University or the University School of Medicine would have open communication as to all matters apart from those that relate directly to them.

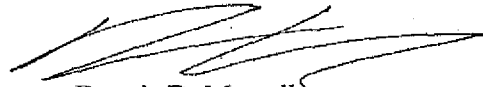
Norton is committed to honoring both the letter and the intent of the Lease and the Agreement. It is honoring that commitment by inviting Dr. Hughes and Dr. Halperin to attend the Board of Director's meeting, despite no request by any University Trustee to attend any such meeting in the almost thirty years since the Lease and Agreement were executed and no University School of Medicine representative having regularly attended such meetings for over 15 years. Norton is also committed to assuring full and open communications with the University and we will be happy to address any concerns you may have. However, as you have advised us, we must advise you that any declaration of breach by the University in regard to this matter will be considered a breach of the Agreement and the Lease by the University and an act of bad faith. None of the actions

MIDDLETON
REUTLINGER

Jennifer Elliott
February 15, 2011
Page 5

taken by Norton should be viewed as a waiver of any of its rights under the Lease or the Agreement.

Very Truly Yours,



Dennis D. Murrell

cc: Robert Azar, Esq.
Thomas W. Ice, Esq.