

# MARIN HEALTHCARE DISTRICT

100-B Drake's Landing Road, Suite 250, Greenbrae, CA 94904  
[www.marinhealthcare.org](http://www.marinhealthcare.org)

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**WEDNESDAY, JUNE 27, 2018**

**5:30 PM: SPECIAL OPEN MEETING / BOARD STUDY SESSION**

## **Board of Directors:**

**Chair:** Ann Sparkman, JD  
**Vice Chair:** Jennifer Hershon, RN, MSN  
**Secretary:** Jennifer Rienks, PhD  
**Directors:** Larry Bedard, MD  
Harris Simmonds, MD

## **Location:**

Marin Healthcare District Office  
100-B Drake's Landing Rd  
Suite 250  
Greenbrae, CA 94904

## **Staff:**

Jon Friedenberg, COO  
Noel Caughman, District Counsel  
Louis Weiner, Executive Assistant

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## AGENDA

Tab #

### **5:30 PM: SPECIAL OPEN MEETING / BOARD STUDY SESSION**

- |  |             |    |
|--|-------------|----|
| 1. Call to Order and Roll Call   | Sparkman    |    |
| 2. General Public Comment<br><i>Any member of the audience may make statements regarding any items on the agenda. Statements are limited to a maximum of three (3) minutes. Please state and spell your name if you wish it to be recorded in the minutes.</i> | Sparkman    |    |
| 3. Review Marin Healthcare District Physician Transactions and Arrangements Policy and Due Diligence Checklist   | Sparkman    |    |
| (a) Policy Approved by MHD Board, June 12, 2012  |             | #1 |
| (b) Agenda and Minutes of MHD Board Regular Meeting, June 12, 2012   |             | #2 |
| 4. Status Update: Physician Access Fee   | Friedenberg |    |
| 5. Adjournment of Special Open Meeting   | Sparkman    |    |

A copy of the agenda for the Regular Meeting will be posted and distributed at least 72 hours prior to the meeting. In compliance with the Americans with Disabilities Act, if you require accommodations to participate in a District meeting please contact the District office at 415-464-2090 (voice) or 415-464-2094 (fax) at least 48 hours prior to the meeting. Meetings open to the public are audio-recorded; the recordings are posted on the District web site and retained for 1 month.

**Tab 1**



**MARIN HEALTH CARE DISTRICT  
PHYSICIAN TRANSACTIONS AND ARRANGEMENTS POLICY  
June 12, 2012**

**I. Purpose**

Marin Healthcare District is a healthcare district organized pursuant to the California Local Health Care District Law. The District (“MHD”) owns and operates clinics providing primary and specialty care pursuant to the authority of Health & Safety Code Section 1206(b) (“Clinic”). The Clinic was established and operated to support and compliment the physician development program of the District’s affiliate, Marin General Hospital (“MGH”). The District is committed to ensuring that its relationships with Physicians and other sources of patient referrals and business fully comply with applicable federal and state laws and regulations, and encourages and expects Management involved in negotiating or implementing financial transactions and arrangements to fully adhere to such laws and regulations. The purpose of this Policy and Procedure is to prevent violations of applicable laws and regulations by establishing policies and procedures and to assure appropriate oversight and approval by the District Board of Directors.

**II. Marin General Hospital Support**

Marin General Hospital by agreement based on the Second Amendment of Lease, dated June 30, 2010, has undertaken the funding and management support of the District Clinic, its creation and its operations. MGH management pursues all contracting options available to MGH including District Clinic, Hospital based staffing, group or individual recruitment or retention, medical foundation, or other medical practice settings in pursuit of community development of needed physician services. MGH conducts community physician needs assessments to determine patient service access needs. In furtherance of its own funding and support commitments and arrangements for the Clinic, MGH will prepare the necessary arrangements and due diligence required of MGH’s own policies and procedures required for Board funding by approved budgets or specific physician staffing and overhead approvals.

**III. Physician Contracting Policy**

**A. Application of Policy**

This policy applies to any financial transaction or arrangement between MHD and a physician or physician group (“Physician”). References herein to “Management” refer to the District CEO or CFO, who may seek information and support from MGH staff.

For examples of *included* arrangements, see Exhibit A.

For examples of *excluded* arrangements, see Exhibit B.

**B. General Contract Requirements**

Any agreement between MHD and any Physician must be reviewed and approved by the District CEO or CFO, who shall be responsible for informing and advising the District Board on Clinic management and operations, budgeting and funding, consistency with Clinic business and strategic planning, and physician staffing needs. Any Physician agreement will

be based on a template form that is approved in advance by the District CEO or District CFO, who shall be responsible for execution of agreements on behalf of the District.

As a general rule, all agreements between MHD and any Physician must:

1. be for a term of at least one year;
2. provide for compensation that is set in advance and that is in accordance with fair market value, based on credible data on comparable annual guaranteed income levels or the equivalent in annual salary / income levels based on productivity measures (e.g., wRVU rates);
3. be signed by both MHD and the Physician;
4. set forth the services with particularity to be provided, space to be occupied, etc.; and
5. not be linked, in any way, to the volume or value of any referrals or other business generated between MHD and the Physician.

Time-based payments are appropriate, even if the Physician receiving the payment generated the payment through a referral to the facility, so long as the payment is at fair market value at the inception of the agreement and does not subsequently change during the agreement term.

Compensation is “set in advance” if the aggregate compensation or a time-based amount, or a specific formula for calculating the compensation is set in an agreement between the parties before the furnishing of the items or services for which the compensation is to be paid. The formula for determining the compensation must be set forth in sufficient detail so that it can be objectively verified, and the formula may not be changed or modified during the agreement term.

Total Physician compensation must be reasonable, including base, all incentives and benefits, pensions, deferred compensation, personal expenses, etc. paid or reimbursed by MHD (e.g., negotiated and reasonable legal and accounting fees for which MHD reimburses a Physician are acceptable so long as appropriate to the transaction and the Physician or Group’s total compensation remains within the range of fair market value after payment of this type of additional compensation).

Any exceptions to these general rules must be approved in advance by the District CEO or CFO with advice of legal counsel.

#### **IV. Procedure**

##### **A. No Services Before Signed Agreement**

No Physician may begin providing any services for which compensation is expected prior to the execution of a written contract by all parties. Likewise, no Physician may occupy any space or use any equipment of MHD, and MHD may not occupy any space or use any equipment of a Physician prior to the execution of a written lease for the rental of the space or equipment.

**B. Preparation of Agreement**

Management shall begin the process of contract preparation as soon as possible in order to provide sufficient time for discussions and negotiations prior to the review and approval process set forth in Section D below.

During the preliminary review of terms to identify potential changes or terms that shall be renewed, compensation shall not be established until after a fair market value (“FMV”) analysis providing a compensation range is confirmed by Management or the financial terms otherwise satisfy the requirements of Exhibit C regarding FMV.

**C. Supporting Documentation**

1. The District CEO or CFO shall confirm that prior to execution of any agreement subject to this Policy that all supporting documentation has been obtained supporting fair market value, due diligence covering legitimacy of the Physician and its business and license existence, Medicare participation, and compliance with the MGH Officer and Director Conflict of interest policy and the District Conflict Code.
2. The Hospital CEO shall confirm that prior to execution of any agreement that MGH staff has completed and documented its own due diligence to the Hospital CEO’s satisfaction as necessary for MGH funding of the proposed agreement and operational and capital needs associated with the transaction.
3. When Board approval is necessary, management and legal Counsel, as needed, shall complete a Term Sheet (Physician Transactions and Arrangements) and the Conflict of Interest Findings for presentation to the Board of Directors, when applicable. A model of the Transaction Summary Sheet and Conflict of Interest Findings is attached as Exhibit D. The District CEO or CFO shall present the Transaction Summary/Term Sheet to the Board. When applicable, approval of the transaction terms by the Board of Directors must take place before any contract is executed.
4. Professional Opinions

Management may decide, depending on the nature of the particular transaction, to arrange for appropriate professional advice regarding the nature of the proposed transaction, or may rely on such advice obtained by MGH staff for the District and/or MGH. Such professional advice may be in the form of a written opinion and may be obtained from any of the following professionals:

- a. legal counsel for the district or obtained in coordination and joint representation with MGH;
- b. certified public accountants or accounting firms with expertise regarding the relevant tax matters; or
- c. independent valuation experts who hold themselves out to the public as appraisers or compensation consultants, who perform the relevant valuation on a regular basis, are qualified to make valuations of the type of property or services involved, and include in the written opinion a certification that meets the requirements of the law.

A copy or summary of this professional advice shall be presented to the Board of Directors in connection with any approval submitted to the Board.

D. Review and Approval Process

Management shall not execute a contract with, or make any payment to, provide any services or space to, or reimburse any expenses of any Physician unless and until such transaction or arrangement has been reviewed and approved by the following:

1. District Chief Financial Officer (reviewed for compliance and CEO approval)
2. District Chief Executive Officer
3. Legal Counsel (reviewed if appropriate for compliance and CEO approval)
4. MHD Board of Directors - The following is a guide for determining when Board review and approval of physician agreements is required:
  - a. All agreements, regardless of the dollar value involved, and regardless of whether a new agreement or a renewal of a prior agreement is involved in matters raising a conflict of interest under the District's Conflicts Code.
  - b. All new or renewal arrangements that are not accounted for in an approved District budget with an annual value greater than or equal to \$500,000, or that are accounted for but exceed the projected budget by more than 20 percent.
  - c. Where compensation for services exceeds the guidelines for FMV described in Exhibit C.
  - d. Any agreement with a term of more than two years and wherein there is no early without cause termination upon 90 days or less notice by the District during the first two years of the agreement.
  - e. Arrangements for new services based outside the District's boundaries so that the District Board may determined that the extension of services is consistent with the best interests of the District's residents and the enhancement of the integrated system of services provided by the District and MGH to District residents and the communities served by the District and MGH.

E. Contract Administration

Management shall ensure that all the terms and conditions are met by all parties over the term of the transaction or arrangement. This includes ensuring that agreed upon services are delivered in an acceptable manner, time reports reviewed, and that services are appropriately documented throughout the term of the contract, approving payments under the contract, addressing any concerns or issues that may arise, and performing a contract performance appraisal prior to the expiration of the contract. Copies of executed documents and all supporting documentation shall be maintained by the District.

F. Amendments to Physician Agreements

1. Amendments to an Agreement in its First Year

Amendments of terms affecting compensation or fair market value of compensation (e.g., scope of services) in any agreement can only be made after the expiration of the first year of the term of any agreement. Thereafter, amended terms must be effective for a minimum of one year. If an agreement for the provision of services by a Physician or the lease of space to a Physician is terminated before the one-year anniversary of the commencement date of the agreement, no new agreement for the same services or space may be entered into before the one-year anniversary of the commencement date without the prior approval of legal counsel and Senior Management. Otherwise, if an agreement is terminated within its first year of the term of the original agreement, the parties must wait until the expiration of the first year of the term of the original agreement before entering into the same or substantially similar agreement.

2. Amendments to Multi-Year Agreements after the First Year

After its first year, a multi-year agreement with a physician may be amended and include amendments to compensation and scope, provided that the new compensation remains in place for at least one year thereafter.

3. Extending an Existing Physician Agreement Subject to Board Review

When in unanticipated circumstances additional time is needed to complete negotiations or drafting of a renewed agreement between a physician(s) and MHD, and/or to allow for an appropriate Board meeting at which approval can take place, Management may extend the length of the term of an existing expiring agreement between a physician and MHD without Board approval so long as there are no changes to terms of such agreement. Each such extension shall not exceed two months.

G. Exceptions to Policies and Procedures

Management may rely on exceptions to these policies and procedures, upon advice of legal counsel, as may be applicable by law to the pending physician transaction.

H. Training and Education

Management may rely upon MGH compliance training programs for the benefit of District Clinic transactions and operations.

I. Violations

Violations of this policy, determined by circumstances and severity, may result in disciplinary action up to, and including, termination.

## **EXHIBIT A**

### **EXAMPLES OF INCLUDED ARRANGEMENTS**

The following are examples of arrangements to which this policy shall apply.

1. Any administrative services arrangement whereby MHD compensates a Physician for utilization management, chart review, consulting services or other administrative service.
2. Any office space or equipment lease arrangement pursuant to which MHD leases space or equipment to or from a Physician.
3. Any professional services arrangements between MHD and any Physician.
4. Any payments or reimbursement of expenses by MHD to any Physician for physician attendance at meetings, conferences or seminars, whether sponsored or organized by MHD or any other person or entity.
5. Any payments by MHD to any Physician for serving on committees or attending MHD meetings.
6. Any agreement pursuant to which MHD provides space, equipment, personnel, services or any other remuneration in any form to any joint venture owned in whole or in part by any Physician.

The foregoing are intended as examples of the types of financial transactions and arrangements subject to this policy. These examples are not intended as an exhaustive list of the types of transactions and arrangements to which this policy applies.



## EXHIBIT B

### EXAMPLES OF EXCLUDED ARRANGEMENTS

The following are examples of arrangements to which this policy does not apply:

1. Agreements between individual physicians and medical groups, or between multiple medical groups, that contract with entities that in turn contract with MHD.
2. Commercial HMO, PPO and other payer contracts between MHD and any third-party payer (but excluding IPAs, PHOs, and other privately-held payers in which one or more physicians hold an ownership or investment interest).
3. Any Clinic Physician Incidental Benefit, Non-Monetary De Minimis Benefit or Compliance Training Programs or Services, as explained below.
  - A. Staff Physician Incidental Benefits – Specifically, MHD may provide certain low-value, or incidental benefits to Physicians consistent with legal allowances.
  - B. Non-Monetary De Minimis Benefits – MHD may provide non-monetary items and services (other than cash and cash equivalents) to a Physician so long as the annual aggregate value of all items and services provided to an individual physician does not exceed Three Hundred Seventy-Three Dollars (\$373) (CY 2012) in value, or as modified by federal regulation, and consistent with legal regulations.
  - C. Compliance Training Programs and Seminars – MHD may provide compliance training programs for physicians or Clinic physicians (including billing and office staff) under a specific exception to the Stark Law. However, the following requirements must be met:
    - i. The program is provided by MHD to a Physician who practices in the Clinics or provided services to the Clinics; and
    - ii. The program is provided in MHD's local community or service areas (specifically, travel expenses are not covered).

Permissible compliance training includes basic elements of compliance (e.g. establishing policies and procedures and internal monitoring, etc.) and specific elements of compliance (e.g. billing, coding, unlawful referral arrangements, etc.). MHD may provide reasonable meals in connection with compliance training programs if such programs are conducted during meal hours.

## **EXHIBIT C**

### **EXAMPLES OF SUPPORTING DOCUMENTATION FOR FAIR MARKET VALUE COMPENSATION AND COMMERCIAL REASONABLENESS**

#### **A. Medical Director and Administrative Services Agreements**

1. Reliable comparables for the same or similar services in a similar setting from at least two (2) non-District affiliated providers within the local market; or
2. An independent, third-party opinion from a qualified appraiser or compensation expert; or
3. No separate FMV shall be required where a FMV report (current based on the life span estimate accompanying the FMV report) generally covering standard Medical Director and Administrative Services Agreements has been obtained by MGH or MHD and has established a range of standard hourly rates and hours for such services, and, based on that report:
  - a. Compensation is equal to or less than One Hundred and seventy five Dollars (\$175) per hour for primary care physicians (e.g. internal medicine, emergency medicine, family/general practice; pediatrics; hospitalists); or compensation is equal to or less than Two Hundred Dollars (\$200) per hour for specialty physicians; and
  - b. If a bonus/performance bonus is included, then the bonus payment must NOT exceed an additional Twenty-Five Percent (25%) of the base hourly rate times the total hours of annual service.

#### **B. Professional Services Agreements**

1. An independent, third-party opinion from a qualified appraiser or compensation expert; or
2. No separate FMV shall be required where a FMV report or industry standard annual salary/compensation survey as applicable to the local market (current based on the life span estimate accompanying the FMV report or salary survey) generally covering standard PSAs or salary / income based compensation ranges has been obtained by MGH or MHD and has established a range of standard hourly or productivity rates and hours for such services, or comparable salary or annual compensation ranges (comparable by income guarantee levels or conversion of standard productivity rates, e.g., wRVUs), and, based on that report or survey, rates established by a proposed agreement or renewal are consistent with that report or survey; or
2. Reliable comparables for the same or similar services in a similar setting from at least two (2) non-District affiliated providers within the local market.

#### **C. Real Estate Leases**

1. A reliable market analysis conducted within the previous twenty-four (24) months of similar lease arrangements in the relevant geographic area; or

2. Reliable comparables from at least two (2) non- District affiliated lease arrangements in the relevant geographic area; or
3. An opinion letter from a licensed real estate broker actively involved in the relevant market.

D. Equipment Leases

1. Reliable comparables for the same equipment from one or more commercial (i.e., non-hospital) lease arrangements; or
2. Reliable comparables for the same equipment from at least two (2) non-District affiliated equipment lease arrangements in the relevant geographic area; or
3. An independent, third-party opinion from a qualified appraiser or other expert.

E. Loan and Line of Credit Agreements

Except as otherwise approved in advance by the District CFO, demonstrating commercial reasonableness for loans and lines of credit requires: (i) Reliable market data from one or more commercial lenders demonstrating that the economic terms of the arrangement (e.g., guarantee fee, interest rate, repayment terms and any other financial terms and conditions) are commercially reasonable; and (ii) adequate collateral for the loan or line of credit based on commercially reasonable standards.

**EXHIBIT D**

**MODEL TERM SHEET AND CONFLICT OF INTEREST FINDINGS**

**TERM SHEET**  
**PHYSICIAN TRANSACTIONS AND ARRANGEMENTS**

*[Name of Particular Agreement]*<sup>1</sup>

<b>Parties</b> <sup>2</sup>	
<b>Term</b>	
<b>Medical Director Services</b> <sup>3</sup>	
<b>Services</b> <sup>3</sup>	
<b>Compensation</b> <sup>4</sup>	
<b>Billing for Professional Services</b>	
<b>Termination Rights/Procedures</b>	
<b>Other Service Agreements</b>	
<b>Interested Parties</b> <sup>5</sup>	
<b>Fair Market Value Opinion (Summary or attached as Exhibit )</b>	
<b>Business and Financial Risk</b> <sup>6</sup>	
<b>Other</b> <sup>7</sup>	

**1 Type of Arrangement**

- Indicate specialty.
- Indicate whether the arrangement is new or is a renewal of an existing arrangement.
- Indicate whether the arrangement will be structured as an employment or independent contractor relationship.

**2 Parties:**

- Identify the Physician and indicate his or her specialty/practice area and administrative expertise.
- Will the arrangement be with the Physician as an individual, or with his/her group?

**3 Services to be Provided**

- Describe the services to be provided by the Physician.
- Describe the time commitment of Physician (e.g., FTE, part-time, # of hours).
- Describe how the services actually provided will be tracked and documented by hospital management.

**4 Financial Terms**

- Describe the compensation methodology (hourly fee, monthly or annual salary, etc.). Indicate the aggregate compensation to be paid.
- Describe any other benefits payable to, or provided to the Physician (space, services, equipment, etc.).
- Describe the methodology for determining that the financial terms meet Fair Market Value requirements.

**5 Interested Parties**

- List Interested Parties and explain their relationship to MHD.

**6 Business and Financial Risk**

- Identify any business and financial risks of this arrangement.

**7 Other Terms**

- Indicate insurance coverage arrangements.
- List any special requests or conditions proposed by the Physician.

## **EXHIBIT E**

### **PHYSICIAN TRANSACTIONS AND ARRANGEMENTS CONFLICT OF INTEREST FINDINGS**

Conflict findings are to be consistent with the Marin General Hospital (“MGH”) Conflicts of Interest Policy or the State Political Reform Act.

1. Identify the contractor and the type or nature of the transaction or agreement.
2. Is the contractor a present officer or director of MGH/MHD? **[Yes/No]**. If yes, describe the role or function of the contractor.
3. Is any member of the Contractor’s immediate family a present or former officer or director of any affiliate of MGH/MHD? **[Yes/No]**. If yes, identify the family member and the affiliate and describe the role or function of the Contractor’s immediate family member.
4. Does any present officer or director (including any immediate family member) of MHD/MGH have a financial interest in, or tie to, this transaction or arrangement, or to the contractor? **[Yes/No]**. If yes, describe the financial interest or relationship.
5. If any of Items 2-4 were answered “YES,” describe all the material facts, including:
  - Alternatives to this transaction or arrangement investigated.
  - How the transaction or arrangement better serves MHD’s interests than alternatives would.
  - How the determination was made that the transaction or arrangement is fair and reasonable.
  - The basis for concluding that MHD cannot obtain a more advantageous arrangement with reasonable efforts under the circumstances.



**MARIN HEALTH CARE DISTRICT  
PHYSICIAN TRANSACTIONS AND ARRANGEMENTS POLICY**

**Due Diligence Checklist for Board Approvals**

Basis for District Board review and approval (check all that apply):

- New unbudgeted arrangement
  - Transaction not covered in approved District Clinic operations or development budget
  - Conflict of Interest Issue in Transaction
  - Transaction exceeds projected budget for physician staffing by 20%
  - Transaction compensation exceeds FMV guidelines and needs specific consideration of compensation
  - Transaction has term of more than two years without early termination
  - Transaction involves the provision of services outside District boundaries
- 
- Hospital CEO confirms MGH staff has completed its own due diligence and policy procedures as necessary for MGH funding of the proposed agreement and operational and capital needs associated with the transaction
    - Hospital management has confirmed the transaction is financially viable and is consistent with Hospital's physician development plan to meet community physician access needs
- 
- Hospital management confirms that all supporting documentation has been obtained supporting management due diligence covering legitimacy of the Physician and its business and license existence, its Medicare participation, and qualifications
    - Hospital management confirms contract requirements based on its Physician Contracting Policy have been met.
    - The Hospital has made a fair market value determination consistent with its Physician Contracting Policy.
    - Agreement / transaction has been approved by:
      - The Hospital Board since the matter involves a Board or senior management conflict of interest, or
      - The Board Executive Committee since the matter involves a matter with an annual value of \$500K
      - The Board Executive Committee since the matter involves more in funding or if funding exceeds an increase of 20% over the prior year

- The Board Executive Committee since the matter involves exceeds fair market guidelines
- The CEO since the matter involves routine arrangements or matters already authorized in Hospital Board approved budgets for physician development and operations
  
- Management confirms that all supporting documentation has been obtained supporting management due diligence covering legitimacy of the Physician and its business and license existence, its Medicare participation, and qualifications
- Management confirms consistency with Clinic business and strategic plan
- District Board reviewed Term Sheet
- District Board confirmed Fair Market Value determination
- District Board reviewed Conflict Findings, if any
- District Board made determinations supporting outside boundary services (if necessary)
- District Board approved material terms of agreement and authorizes execution of necessary documents concluding and supporting the arrangement

\_\_\_\_\_  
 Chair, District Management, Finance &  
 Audit Committee

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Chair, District Board

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 CEO, Marin General Hospital

\_\_\_\_\_  
 Date



## **Tab 2**

# MARIN HEALTHCARE DISTRICT

100B Drakes Landing Road, Suite 250, Greenbrae, CA 94904

Telephone: 415-464-2090

Fax: 415-464-2094

Website: [www.marinhealthcare.org](http://www.marinhealthcare.org)

## REGULAR MEETING AGENDA

Tuesday, June 12, 2012

7:00 pm

**Chair:** Jennifer Rienks, Ph.D.  
**Vice Chair:** Harris Simmonds, M.D.  
**Secretary:** Larry Bedard, M.D.  
**Directors:** James Clever, M.D.  
Ann Sparkman, J.D.

**Location:**  
Marin General Hospital, West Wing  
**Magnolia/Tamalpais Conference Rooms**  
250 Bon Air Road  
Greenbrae, CA 94904

**Staff:**  
Lee Domanico, CEO  
Maria Countouriotis, Executive Assistant  
Colin Coffey, District Counsel

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### Tab

#### 1. ROLL CALL

#### 2. APPROVAL OF AGENDA

#### 3. APPROVAL OF THE CONSENT AGENDA

A. Approval of the Minutes: Regular Meeting of May 7, 2012

Rienks 1

#### 4. GENERAL PUBLIC COMMENT

*Any member of the audience may make statements regarding any item NOT on the agenda. Statements are limited to a maximum of three (3) minutes. Please state and spell your name if you wish it to be recorded in the minutes.*

Rienks

#### 5. Resolution – Proposing an election be held in its jurisdiction; requesting the Board of Supervisors to consolidate with any other election conducted on Said date, and requesting election services by the Registrar of Voters

Rienks 2

#### 6. Presentation – Jim Randlett, Lobby Work for MHD and MGH

Rienks 3

#### 7. Engagement of Independent Legal Counsel for MGH Lease Renewal and Waiver of Conflict for Legal Work by Archer Firm

Domanico/Coffey 4

#### 8. Engagement in Connection with Lease with Marin General Hospital Bouey & Black LLP

Domanico 5

#### 9. Presentation of Lease Renewal Term Sheet

Domanico/Friedenberg

#### 10. Approve Marin Healthcare District's Physician Transactions and Arrangements Policy and Due Diligence Checklist, as written and approved by the Management, Finance and Audit Committee

Domanico/Coffey 6

#### 11. Review of Marin Healthcare District 2013 Budget Draft

Cox 7

#### 12. Application to Present Late Claim-Sandoval

Domanico/Coffey 8

#### 13. Approve Professional Services Agreement with Beth Gonzales (Registered Dietitian) for 1206(b) Clinics

Domanico 9

#### 14. COMMITTEE UPDATES

A.. Management, Finance & Audit (May 22, 2012 meeting)

Simmonds/Cox

B. Lease and Building (May 22, 2012 Meeting)

Bedard/Friedenberg

#### 15. REPORTS

A. District CEO Report

Domanico

B. Hospital CEO Report

Domanico

C. Chair Report

Rienks

D. Board Member Reports

#### 16. ADJOURNMENT: Next Regular Meeting of the Board: Tuesday, July 10, 2012

A copy of the agenda for the Regular Meeting will be posted and distributed at least seventy-two (72) hours prior to the meeting. American Sign Language Interpreters may be requested by calling (415) 464-2090 (voice)



**MARIN HEALTHCARE DISTRICT**  
100B Drakes Landing Road, Suite 250  
Greenbrae, CA 94904

**REGULAR MEETING MINUTES**  
Tuesday, June 12, 2012  
Marin General Hospital, Conference Center

**1. Roll Call**

Chair Rienks called the meeting to order at 7:14 pm.

BOARD MEMBERS PRESENT: Chair Jennifer Rienks, PhD, Vice Chair Harris Simmonds, MD, Secretary Larry Bedard, MD, and Director James Clever, MD. Director Ann Sparkman, JD participated from her home in Corte Madera via speaker phone.

ALSO PRESENT: Lee Domanico, Chief Executive Officer and Maria Countouriotis, Executive Assistant, MGH Administration.

**2. Approval of Agenda**

**Correction to Notice and Agenda:** this meeting occurred in the Conference Center, not in the Magnolia/Tamalpais rooms. Director Simmonds moved to approve agenda. Director Bedard seconded. Vote: all ayes; motion passes unanimously.

**3. Approval of the Consent Agenda**

Director Simmonds moved to approve agenda. Director Bedard seconded. Vote: all ayes; motion passes unanimously.

**4. General Public Comment**

Barry Toronto.

**5. Resolution Proposing an election be held in its jurisdiction; requesting the Board of Supervisors to consolidate with any other election conducted on said date, and requesting election services by the Registrar of Voters**

Counsel Coffey noticed the resolution in the packet had an error; historically, the payments of candidates' statements of qualifications filed at the time of nomination have been the responsibility of the *candidates*, not the responsibility of the Marin Healthcare District. Director Bedard moved to strike "Marin Healthcare District" from the second paragraph of the resolution and replace it with "candidates." Director Simmonds seconded. Vote: all ayes; resolution approved as amended. Public comment: none.

**6. Presentation by Jim Randlett, Lobby work for MHD and MGH**

Mr. Randlett, a professional lobbyist, has been assisting the Marin Healthcare District since 2009. His lobbying efforts have brought about successfully passed legislation in Sacramento that has resulted in millions of dollars of on-going reimbursement from the State to the Marin General Hospital, reimbursement that MGH would not have otherwise been eligible to receive.

This year, there are a number of bills that fail to recognize the unique situation of Marin Healthcare District's parent/subsidiary relationship with Marin General Hospital. One of those bills that Mr.



Randlett has amended affects MGH and will be at the Senate tomorrow. The State Budget Act is expected to be passed this Friday, June 15.

Mr. Randlett distributed a 3-page memo that he prepared for the MHD Board of Directors, which summarizes 13 initiatives expected to be on November's ballot. Copies of his memo were made available to the public at the back table.

Mr. Randlett's firm prides itself in finding opportunities. He is looking to change the voting requirement for MHD's coming bond measure from 2/3rds (66.66%) majority to a 55% majority. A provision in the state constitution requires a 55% majority vote for school districts when they are rebuilding for seismic reason. Mr. Randlett is lobbying that the healthcare districts should be allowed the same 55% majority for seismic rebuilding. Mr. Domanico said Mr. Randlett has been extremely helpful with seismic-related issues, making sure that wording for changes in legislature are carefully written with regard to MHD's parent/subsidiary structure. Public comment: none.

**7. Engagement of Independent Legal Counsel for MGH Lease Renewal and Waiver of Conflict for Legal Work by Archer Firm**

Director Bedard moved for approval. Director Clever seconded. Chair Rienks brought attention to the June 5, 2012 Archer Norris letter contained in the packet that explains the conflict of interest with respect to Archer Norris' proposed representation of Marin General Hospital for the negotiation and drafting of a new hospital lease between Marin General Hospital and Marin Healthcare District. Based on the discussion and disclosures contained in the letter prepared by Michael Peterson, the Archer Norris law firm requests that the Marin Healthcare District and Marin General Hospital each consent to this firm's representation of MGH only with respect to the new hospital lease, and the clinic management agreement transactions. Due to the conflicts, MHD is advised to engage its own separate counsel for all purposes with respect to these two transactions.

Director Sparkman asked if any communication with Archer Norris would be considered direct communication with Marin General Hospital. Mr. Peterson responded that the answer is yes, with respect to the lease negotiation, anything the District tells him is equivalent to telling the Hospital. Director Sparkman asked if District Board members are required to obtain their own individual attorneys. Chair Rienks clarified that the District – not individual members – will hire its own attorney. Director Clever asked if there are other issues whereby the District will require its own counsel, separate from Archer Norris. Counsel Coffey explained there have been instances since the transition of MGH two years ago where the Pillsbury Winthrop Shaw Pittman law firm has provided services to the District related to its 1206(b) Clinics. After no further discussion, the Board voted unanimously to consent to Archer Norris' June 5, 2012 letter. Public comment: none.

**8. Engagement in Connection with Lease with Marin General Hospital Bouey & Black LLP**

Director Bedard moved for the District to retain Mr. Donald Bouey of the Bouey & Black law firm as the District's attorney to negotiate and implement a new lease with Marin General Hospital up to the initial amount of \$10,000 and approve the engagement letter that is included in the packet. Director Simmonds seconded. Director Bedard, who sits on the Ad Hoc Lease Committee along with Chair Rienks and two members of the Marin General Hospital Board, explained how it became apparent to the Ad Hoc Lease Committee the need for the District to have counsel representation separate from that of the Hospital. After interviewing two law firms, they recommend this Board approve the engagement of Bouey & Black, LLP in these matters.



Chair Rienks clarified for Director Sparkman that the engagement letter, dated June 6, 2012 has not been signed. Hence, Director Sparkman clarified that the engagement letter, if approved tonight, would take effect today, June 12, 2012 (not on June 6 as dated on the letter).

Mr. Bouey spoke briefly about his background and experience. His practice deals primarily in the healthcare industry, representing physicians, hospitals, HMOs, insurance companies, and various provider centers. He has done healthcare joint ventures and acquisitions. In the mid 1990's, he represented the Petaluma Health Care District (PHCD) with the lease of its hospital to the Saint Joseph's Health system and has continued to represent the PHCD since that time. Vote: all ayes; motion approved. Public comment: none.

**9. Presentation of Lease Renewal Term Sheet**

Chair Rienks said the Ad Hoc Lease Committee received a first draft of terms for the new hospital lease yesterday. She stressed that this draft is very preliminary and open to discussions.

Mr. Bouey explained that the new lease will qualify as a transfer transaction under the Health & Safety Code and will require five public meetings and a Board Resolution to put it to a vote of the District. The vote has to occur at least 88 days after the passage of the Board Resolution. Specific provisions are required to be in the lease to protect District assets and use of such assets.

Mr. Peterson shared a high-level summary of the first draft. Copies of his one-page summary were made available to the public at the back table. Mr. Peterson said the biggest issues revolve around the joint funding of MGH's new improvements - the new wing, the parking garages, and the Medical Office Building – through the two bond measures. These will necessitate input from bond counsel in order to draft lease provisions that will give the two bond measures the best chances for passage. It may be advantageous to terminate the current lease sooner – before 11/30/15, so the new lease can include provisions that will foster District voters' passage of a general obligation bond and similarly promote the passage of the Hospital's revenue bond.

The first draft includes a proposal for lease payments to cover all MHD operating costs with a “not to exceed” amount. In addition to the lease agreement is a proposal for a separate agreement that would have the MHD Board annually allocate \$500K of MGH's community benefit dollars with specified criteria. Mr. Peterson said MGH would have the ability to encumber the property during the term of the lease as required by bond counsel, that the distribution of assets at lease termination would be as required by bond counsel. Importantly, the lease would contain provisions relative to new improvements and funding, development and construction of the hospital replacement project deemed necessary by bond counsel. Mr. Peterson foresees adding wording pertaining to dispute resolution that will indemnify the District and hold the Hospital responsible for what happens at the Hospital.

Board members asked how the costs associated with the 1206(b) Clinics will factor into the lease, if the rent will be determined by the District's budget, what limits would be in place, and what the frequency of the payments might be. Asked how the Bylaws would be incorporated into the lease, Mr. Peterson said more important would be to make sure the new lease doesn't intrude on the relationship established in the Bylaws between the District and the Hospital. Public comment: none.



10. **Approve Marin Healthcare District’s Physician Transaction and Arrangements Policy and Due Diligence Checklist, as written and approved by the Management, Finance and Audit Committee**

Director Sparkman moved for approval. Director Simmonds seconded. Counsel Coffey said the document in the packet is the result from having gone to the MF&A Committee twice, received management’s input and revisions that were approved at the last MF&A Committee meeting. The policy mimics the Hospital’s own policy as well as the industry’s basic standards for hospital-physician contractual relationships, Stark laws and some IRS principles. This policy was brought about by the District’s rapid growth of the 1206(b) clinics and contracting with physicians and medical groups. Counsel Coffey said this policy gives a very broad delegation of authority to management.

Chair Rienks envisioned these checklists will allow the District to “go back” to figure out how approvals for physician contracts were done, who made these decisions, and explain why certain contracts did or did not come before the District for approval. Director Bedard asked if the checklists were going to be completed for the contracts that are currently in effect. Chair Rienks would like to compare this document against the best practices that were outlined by Sullivan Cotter to determine if the District is using best practices. For example, is the District using compensation formulas that incorporate production incentives and clinical quality goals whereby future compensation is at risk? With new healthcare reform where penalties will be tied to quality, she thinks it will be important to link quality standards to compensation.

Counsel Coffey explained that the purpose of this policy is to assure high governance to laws, not to business terms (such as income guarantees, incentives, etc.). After no further questions or comments, the vote was called: all ayes; motion unanimously approved. Public comment: none.

11. **Review of Marin Healthcare District 2013 Budget Draft**

The draft of the Marin Healthcare District for 2013 was included in the packet. Mr. Cox said this is for discussion only. The budget will be reviewed by the MF&A Committee in June before coming back to the MHD Board in July for approval. The budget anticipates total receipts of approximately \$750K, of which \$147K are reimbursable by the Hospital. There is a total of \$870K in District expenses that includes \$365K for a communications plan. The 1206(b) Clinic operation expenses are expected to be \$14.8M.

Chair Rienks asked if there is a way for the budget to more accurately represent District expenses (for example, show what portion of the Drakes Landing rent is attributed to the District). Questions raised by Board members pertained to the addition of the communication expenses, if Jim Randlett’s services were being shared with the Hospital, and if there is a policy that addresses how the District can modify the budget. If District expenses for the year, not including reimbursable expenses, are less than what was budgeted, those “savings” are not rolled over to the next year’s budget or accrued to the District as savings.

12. **Application to Present Late Claim – Sandoval**

Director Bedard moved for approval. Director Simmonds seconded. Vote: all ayes; motion unanimously approved. Counsel Coffey relayed that our insurance carrier advises the Board consider allowing a claimant to present a late claim, which was previously rejected by the District because it was late, because the claimant (Sandoval) is a minor. Only the Board of Directors can grant permission for someone to file a late claim application against the District. Vote: all ayes; motion unanimously passed. Public comment: none.



**13. Approve Professional Services Agreement with Beth Gonzales (Registered Dietitian) for 1206(b) Clinics**

Mr. Domanico informed the Board that this agreement does not require their approval. Therefore, he asked that it be withdrawn from the agenda. With no opposition, this item was removed from the agenda.

**14. Reports (non-action)**

a. District CEO Report

Nothing further to report.

b. Hospital CEO Report.Mr. Domanico said this Hospital is showing volume growth for the first time in years. Efforts to rebuild elements of Paragon to improve its functionality and speed continue. Over 160 physicians attended the last Medical Staff dinner. The Foundation's Gala event netted close to \$150K.

c. Chair Report. Chair Rienks decided to appoint Judd Goldsmith, a CFO, as a public advisory member of the Management, Finance & Audit Committee. She and Director Simmonds attended a lecture on parliamentary procedures at the Association of California Healthcare District's Annual meeting, and also heard a talk from the CFO of Salinas Memorial Hospital which is up for sale, after paying their CEO a \$5M retirement package and failing to pass their bond measure. Tomorrow, Mr. Domanico, Paul Kirinic, Chair of the MGH Board, Derek Parker, Director of the MGH Board, and she will travel to San Diego to tour the new Palomar Medical Center, which has leased two floors to Kaiser Permanente.

Chair Rienks mentioned a recent article in Health Affairs about electronic medical records and pointed out that scanning medical records into electronic PDFs does not constitute electronic data.

d. Board Members Reports.

Director Clever shared that he read an interesting article in The Times about cross-tubular structures that offer strength and suggested it might be worth looking into as a possible construction option.

Director Simmonds shared that ACHD is looking into possibly reducing membership rates in order to counter declining membership.

**15. Adjournment**

Director Simmonds moved to adjourn. Chair Rienks seconded. Meeting adjourned at 9:42 pm.