

Sponsors' Position and Exempla Rebuttals – Prepared by Exempla Healthcare

Questions – call Exempla 303-813-5335

Sponsors

- *The transaction selling CFF's sponsorship rights to SCLHS is necessary to save a financially at-risk health care system that cannot invest in its future.*

Rebuttal

- Exempla's financial performance is stronger than most hospitals in the nation, and its Moody's bond rating is the highest of any hospital organization operating solely in Colorado. Exempla Healthcare has an operating margin that exceeds national averages.
- We are renovating Lutheran's campus, we continue to increase patient beds at Good Samaritan, and we have engaged architects and a contractor for the design and construction of the new Saint Joseph Hospital. We continue to improve our clinical information systems and technology, including rolling out a fully integrated electronic medical record (EMR) throughout our hospitals and our clinics.
- As the owner of Saint Joseph Hospital, SCLHS has the capacity and the ability and ethical obligation to invest in and improve its own hospital today.
- SCLHS does not need to acquire Lutheran and Good Samaritan and convert them into Catholic hospitals to invest more resources in Colorado.
- Exempla itself is capable of funding the capital expenditures for Lutheran and Good Samaritan.
- Exempla could also finance the capital expenditures for Saint Joseph currently included in the ten-year plan approved by the Exempla Board and the sponsors, by reducing costs from \$2.1 to \$1.8 billion and delaying the building of the new Saint Joseph Hospital by 18 months -- but Exempla believes SCLHS is obligated as the owner of Saint Joseph to fund the new hospital.

Sponsors (Murray)

- *In the future, SCLHS can provide better access to capital because of its size and its bond rating. Helping Exempla have better access to capital, which it must have, was the reason why discussions were begun by the sponsors in 2005.*

Rebuttal

- SCLHS can and should use its size, bond rating and access to capital to fund the replacement of Saint Joseph Hospital now, not at some future time.
- It has the obligation to fund the rebuilding now because it owns Saint Joseph and its physical plant clearly needs to be replaced now. That is a fundamental duty of an owner.
- This "discussion" did begin when Exempla and the sponsors began planning for Exempla's next ten years and Exempla and SCLHS approved the plan.
- The discussions broke down when the sponsors made selling Lutheran and Good Samaritan to SCLHS, giving SCLHS control over Exempla and turning our hospitals and clinics into Catholic hospitals and clinics -- a condition of SCLHS providing funds
- Those conditions violated the purpose of Exempla – to preserve the differing traditions and values of our hospitals – misused the role of sponsor, and broke serious promises to this community.
- The sponsors then went around Exempla's Board and made a separate agreement between themselves that had CFF selling Lutheran and Good Samaritan to SCLHS.
- We believe that act is illegal because you cannot sell what you do not own and CFF does not own Lutheran and Good Samaritan, Exempla does.
- We have proposed alternatives to our sponsors – including giving SCLHS the controls they asked for over the management of Saint Joseph, or having SCLHS be responsible for funding only the new Saint Joseph Hospital. But the sponsors have only been

interested so far in an arrangement that gives SCLHS control over Exempla and turns all three hospitals into Catholic hospitals.

Sponsors

- *Concerns over the Catholic ERDs are not really germane or material since Exempla's non-sectarian hospitals perform few of those procedures and there are alternative sources in Denver for those procedures. Moreover, CFF is now looking at a carve-out of proscribed reproductive services to address this concern.*

Rebuttal

- The transaction does make the issue of Catholic health care material.
 - Finding a way around one set of ERDs for reproductive services does not change the fact that other services in a Catholic hospital must also conform to the ERDs, and some other services may be eliminated, now or in the future as the ERDs change.
 - A “carve-out” has already been considered, but it is problematic and addresses only a small piece of Exempla’s legal and ethical objections to the transaction. A carve-out is a cumbersome mechanism in which a separate corporation owns and operates procedure rooms, in the middle of the hospitals or on their campus, where sterilizations are done. The carve-out entity has to have its own separate staff, policies and procedures. Patients would be transferred from the hospitals to the carve-out entities and then back to the hospitals.
 - Given how strictly the Archbishop of Denver interprets the ERDs and how concerned the US Conference of Bishops is about Catholic health care not being tainted by the “scandal” of seeming to approve of something that it does not approve of, we are surprised that SCLHS and the Archbishop would support a carve-out. As Archbishop Chaput has said so eloquently, “Reasonable people will see very quickly there is no such thing as a ‘strictly’ or ‘loosely’ following the ERDs – any more than a person can be strictly or loosely faithful in marriage.” (Catholic News Agency, February 26, 2008). A carve-out is clearly just a technical way around the ERD prohibiting sterilization.
 - The fact remains, the transaction between CFF and SCLHS would make all Exempla hospitals Catholic. Making all Exempla hospitals Catholic reduces services for patients, employers and physicians in metro Denver by turning two non-sectarian hospitals into Catholic hospitals; in Jefferson County the transaction eliminates services because when St. Anthony’s relocates, both hospitals serving Jefferson County would be Catholic hospitals.
 - Exempla supports and protects the heritage of its Catholic hospital, Saint Joseph Hospital, and the heritages of its two non-sectarian hospitals, Lutheran Medical Center and Good Samaritan Medical Center. Exempla itself was formed by its sponsors so that both kinds of hospitals and both kinds of heritage would be protected.

Sponsors (Murray)

- *The ERDs should not concern people very much because Saint Joseph has excellent end-of-life care and one in 12 babies born in Colorado is born at ESJH.*

Rebuttal

- Exempla is very proud of the care at Saint Joseph, including end-of-life care and is proud to welcome more babies than any other hospital in Denver.
- Neither of those facts is germane to the fundamental issue that Exempla was formed to protect the heritages of both Catholic health care and non-sectarian, community health care provided by Lutheran and Good Samaritan.
- We are well aware of and respect the Catholic identity of Saint Joseph Hospital. In the words of Archbishop Chaput, “The Catholic identity of Catholic healthcare has always

been the key to its heroic public service, both nationally and locally.” (CNA, February 26, 2008). The US Conference of Bishops points out in the preamble to the fourth edition of the ERDs that Catholic care is distinctive because it is Catholic. “Now, with American health care facing even more dramatic changes, we reaffirm the Church's commitment to health care ministry and *the distinctive Catholic identity of the Church's institutional health care services*. The purpose of these *Ethical and Religious Directives* then is twofold: first, to reaffirm the ethical standards of behavior in health care that flow from the Church's teaching about the dignity of the human person; second, to provide authoritative guidance on certain moral issues that face Catholic health care today.” (Emphasis added)

- We are also aware that for some physicians and patients, the ERDs can represent a limitation and therefore they prefer to use hospitals that are not subject to ERDs. End-of-life care offers an illustration. Saint Joseph Hospital provides excellent end-of life-care, but, like the care in all Catholic hospitals, it conforms to the ERDs, including number 59 in Part Five of the ERDs that places a constraint on patient judgment: “The free and informed judgment made by a competent adult patient concerning the use or withdrawal of life-sustaining procedures should always be respected and normally complied with, *unless it is contrary to Catholic moral teaching.*” (Emphasis added)
- One of the values of the Exempla system is that patients may choose between Catholic and non-Catholic care, confident that the care in both kinds of our hospitals meets the highest standards for quality and safety.
- Just as Exempla supports and protects the heritage of its Catholic hospital, Saint Joseph Hospital, we support and protect the heritages of our two non-sectarian hospitals, Lutheran Medical Center and Good Samaritan Medical Center. Exempla itself was formed so that both kinds of hospitals and both kinds of heritage would be protected.

Sponsors (Murray)

- *The real issues that concern Exempla are not about changes in services but about the change in control that will affect parts of the Exempla organization, especially one sponsor to name the board and CEO.*

Rebuttal

- Exempla's leadership is not concerned about a 'change in control', per se. We are open to a change in control as long as it is accomplished in a way that continues to protect the heritage of our hospitals.
- The way the sponsors have structured this change in control will not accomplish that. It will reduce services in the community and break a promise they made to the community. If SCLHS gains control of Exempla, the community will lose services now that we know about. The community may lose other services from Lutheran and Good Samaritan in the future as the ERDs change.
- Exempla was created so no one side or part of Exempla could impose its beliefs on the other. That is exactly what is happening with SCLHS attempting to take over Exempla.
- We would be fighting just as hard if it were Saint Joseph Hospital's heritage and values that were at stake.

Sponsors (Murray)

- *SCLHS wants to and will honor Lutheran's heritage because SCLHS knows how important that heritage is and is very respectful of it.*

Rebuttal

- Lutheran's heritage is as a non-sectarian, community hospital.
- Exempla wonders how SCLHS defines “honor” and “heritage’ if it is willing to violate the core tenet of Lutheran's heritage.

Sponsors

- *The sponsors are the parents of Exempla and have a perfect right to do what they are doing.*

Rebuttal

- The sponsors are not the “parents” of Exempla or its owners.
- The sponsors’ role was created at the formation of Exempla for a very specific purpose, that is, to preserve the Catholic values, practices and traditions of Saint Joseph Hospital and the non-sectarian values, practices and traditions of Lutheran and, later, Good Samaritan.
- If they were ‘parents’, they would have been active participants in our operations. They have not been.

Sponsors (Murray)

- *The joint operating agreement allows, very specifically, for the kind of transaction that SCLHS and CFF have proposed.*

Rebuttal

- The original Affiliation Agreement is very clear in saying that one of the fundamental purposes of Exempla is “to retain the Catholic identity ... of Saint Joseph Hospital and the community heritage of Lutheran Hospital.”
- The by-laws provide for the transfer of membership in Exempla from one member to another – in this case from CFF to SCLHS.
- Nothing in the Affiliation Agreement or the by-laws, though, allows the member, or members, of Exempla to change the fundamental purpose of Exempla.
- That is exactly what SCLHS and CFF are trying to do. That is why we oppose their transaction.

Sponsors

- *The transaction will provide substantial economic benefits to the community of Denver as shown in its recently commissioned economic impact study.*

Rebuttal

- The economic impact study was paid for by the sponsors through one of the sponsor’s lobbying firms. It commits some of the common flaws of studies meant to serve a biased agenda – using a simple “multiplier effect,” for instance, and not accounting for the economic benefits of the existing condition that it wishes to replace (See *Fire-Walking: Ensuring Credible Economic Impact Studies*, by Lisa Petraglia and Glen Weisbrod, Economic Development Research Group, Inc. 2 Oliver Street, 9th Floor Boston, MA 02109.)
- For example, the study does not take into account the fact that Exempla was already planning on its own to invest \$1 billion in capital improvements at Lutheran and Good Samaritan over the next ten years.
- Moreover, the study does not account for the fact that Exempla already provides substantial economic and community benefits and would continue to do so. In addition to generating annual revenues of \$860 million and net income of \$58 million that flow through the community, Exempla provides direct, charitable community benefits of \$86 million, about 10% of Exempla’s annual revenues.
- The fact remains that the greatest economic benefit that SCLHS could provide the community – and do that now -- is to fulfill its obligation as the owner of Saint Joseph Hospital and fund the building of the new hospital.

Sponsors

- *The transaction will specifically benefit Jefferson County because it will increase the CFF corpus by \$311 million, which CFF will use to benefit the people of that county and the region.*

Rebuttal

- The \$311 million represents the proceeds of a sale of Exempla assets to which the sponsors have no legal right and show that this “transaction” is in reality a hostile, leveraged buy-out.
- CFF has stated it will use these funds to support other charitable organizations and causes in metro Denver, thereby redirecting millions of dollars away from health care.
- In other words, CFF wishes to play the role of “bank” that other non-profit organizations can come to for funds.
- CFF's role as “banker” will become considerably strengthened through this transaction which will increase its capital by 700% by diverting money from providing health care through Lutheran to this and any other purpose that CFF desires.
- Many former CFF board members and community leaders believe CFF is mis-serving the community and abandoning its legitimate purpose.

Sponsors (Murray)

- *Exempla should not be going to court. Using binding arbitration was an agreement made by all parties when Exempla was formed.*

Rebuttal

- We are going to court because the sponsors are violating the agreement that formed Exempla and Exempla's fundamental purpose. They can't have it both ways – violate the agreement and then selectively use it to get their own way.
- The arbitration provision is intended to deal with disagreements over basic operational issues. The sponsors have proposed overhauling the governance of Exempla and its core purpose. That is not an every-day occurrence.
- In fact, the dispute resolution section of the Affiliation Agreement begins by saying, “In their dealings with each other, the Parties shall be guided by their mutual commitment to the formation of the System and its objectives”
- The sponsors are set on a course to change the purpose, formation and objectives of Exempla, violating the first condition of the dispute resolution process.