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STATE OF IOWA

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April 11, 2012

Winneshiek Medical Center
901 Montgomery Street
Decorah, Iowa 52101

Re: Chapter 21 of the Code of Iowa

To the Board of Trustees:

We are contacting you in regard to compliance with Chapter 21 of the Code of Iowa, also known as the "open meetings law." Specifically, we have been provided with selected copies of agendas and minutes for meetings of the Winneshiek Medical Center (Medical Center) from March 2010 through December 2011 and agendas for January, February and April 2012. Applicable statutes are noted below for your reference.

Chapter 21.2 of the Code of Iowa (definitions) states, in part:

1. "Governmental *body*" means: (b). A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state.
2. "*Meeting*" means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter.
3. "*Open session*" means a meeting to which all members of the public have access.

Chapter 21.3 of the Code of Iowa states, in part: "Each governmental body shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting."

Chapter 21.4 (2)(a) of the Code of Iowa states, "Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical (emphasis added). Special access to the meeting may be granted to persons with disabilities."

Chapter 21.5(1) of the Code of Iowa states, in part, "A governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. A governmental body may hold a closed session only to the extent a closed session is necessary for any of the following reasons..." and lists 12 specific reasons a governmental body may hold a closed session. Selected reasons pursuant to Chapter 21.5 of the Code of Iowa include:

Chapter 21.5(1)(l): "To discuss patient care quality and process improvement initiatives in a meeting of a public hospital or to discuss marketing and pricing strategies or similar proprietary information in a meeting of a public hospital, where public disclosure of such information would harm such a hospital's competitive position when no public purpose would be served by public disclosure. The minutes and the audio recording of a closed session under this paragraph shall be available for public inspection when the public disclosure would no longer harm the hospital's competitive position. (emphasis added). For purposes of this paragraph, "public hospital" means the same as defined in section 249J.3. This paragraph does not apply to the information required to be disclosed pursuant to section 347.13, subsection 11, or to any discussions relating to terms or conditions of employment, including but not limited to compensation of an officer or employee or group of officers or employees."

Chapter 21.5(2) of the Code of Iowa requires, "The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section (emphasis added) shall be announced publicly at the open session and entered in the minutes."

According to Board agendas and minutes, the Board appears to meet routinely in closed session under Iowa Code Chapter 21.5(1) with the description of "strategic planning closed session." The inclusion of a "strategic planning closed session" appears to be a standard practice, included on the agendas as a contingency, but not apparently necessary and not always held.

Holding closed sessions without stating a specifically allowable section of Chapter 21.5(1), which would permit the closed session does not appear to comply with the statutory requirements of Chapter 21 of the Code of Iowa. In one instance, the agenda dated March 2, 2011 referenced Iowa Code 21.5(1)C(1) and in another instance the minutes dated January 5, 2011 referenced "Iowa Code 21.5(1) C (1) L," both of which do not exist. However, we noted the Board's recent April 4, 2012 agenda listed "Iowa Code 21.5(1)(L) in its last item for "strategic planning, closed session."

According to the agenda and minutes dated November 30, 2010, the Board met and held its regular (public) meeting, including a closed session out of state in Rochester, Minnesota. No reason was provided and the minutes did not provide any particular reason for holding the meeting in Rochester, Minnesota. Regardless, this meeting does not appear to comply with Chapter 21.4(2)(a) of the Code of Iowa, as noted above. In addition, in 2009, the Spirit Lake Community School District Board was found to violate Chapter 21 of the Code of Iowa when the Board held meetings at a time and place not reasonably accessible to the public. I have enclosed a copy of the Dickinson County ruling for your review and information.

According to the minutes dated June 1, 2011 and August 3, 2011, following closed sessions at both meetings, the Board took the exact same action regarding settlement with the Mayo Clinic and termination of the Brown Winick Law Firm, who incidentally attended the November 30, 2010 Board meeting in Rochester, Minnesota. We did not note Board action to rescind its action taken at the June 1, 2011 meeting, and it is unclear how or why the Board would duplicate these actions.

We are not attorneys; however, as auditors of public funds, we question the propriety of the numerous and lengthy closed sessions for "strategic planning" and the Board's meeting held in Rochester, Minnesota on November 30, 2010.

We request your reply as to whether the Medical Center has made available "The minutes and the audio recording of a closed session under this paragraph" which according to statute "shall be available for public inspection when the public disclosure would no longer harm the hospital's competitive position." If so, please provide copies of the closed minutes record only (audio recordings not required) for the closed sessions for "strategic planning" held on March 31, 2010 from 1:10 PM to 3:05 PM; August 4, 2010 from 2:00 PM to 3:34 PM; November 30, 2010 (in Rochester, Minnesota) from 5:06 PM to 5:33 PM and January 5, 2011 from 2:00 PM to 2:25 PM. All of these meetings were held at least 12 months ago or longer. We also request your response in regard to the meeting held in Rochester, Minnesota on November 30, 2010.

Your written response is requested on or before May 21, 2012. We are copying Mr. Andrew VanDerMaaten, Winneshiek County Attorney for his review and information. If you have any questions, please contact me at 515-281-5464.

Sincerely,



Susan D. Battani, CPA
Director

Enclosure

Cc: Dan Werner, Chief Administrative Officer
Andrew VanDerMaaten, Winneshiek County Attorney