



June 14, 2013

## **DLP Holdings LLC and MGH Wind Down Inc. Compliance with the Post-Closing Covenants of the Asset Purchase Agreement**

Superior Health Foundation ("SHF") is tasked with monitoring the compliance of DLP Marquette Holding Company, LLC ("DLP") and MGH Wind Down Inc. ("MGH") with the six post-closing covenants contained in the Asset Purchase Agreement dated June 28, 2012. This monitoring consists of reviewing the parties' compliance on a quarterly basis and generating an annual written report which is to be published on SHF's website by April 15 of the following year.

To assist in gathering and analysis of the documentation that DLP is required to provide SHF under the Monitoring Compliance and Enforcement Agreement, SHF has engaged the services of Clark Hill PLC. Under this engagement, Clark Hill assists the Monitoring and Compliance Committee of SHF with certain administrative and clerical functions and also advises on specific matters at the request of the SHF. After reviewing the documentation provided by DLP and conducting its review of the post-closing covenants, the Monitoring and Compliance Committee makes a recommendation to the Foundation Board as to whether the parties have complied with the post-closing covenants. The final determination of compliance is reserved to the Board of Directors of the SHF.

The closing for the sale of the Hospital's assets from MGH to DLP occurred at the end of August, 2012. As a result, the first annual monitoring report conducted by SHF consists of reviewing only the last four months of 2012. Given that several of the covenants require significant planning and long term expenditures, the Board of SHF has determined that it is premature to assess compliance with several post-closing covenants. However, based on the review of the Compliance and Monitoring Committee completed February 28, 2013, SHF has not identified any areas in which DLP and MGH have not complied with the obligations under the Asset Purchase Agreement or the Monitoring Compliance and Enforcement Agreement.

Attached is a summary memo from Clark Hill dated February 28, 2012 that provides a status of the information SHF received relating to the post-closing covenants. In addition to this information, below are the findings of the SHF for each post-closing covenant.

### Indigent Care

DLP has retained the indigent care policy of Marquette General Hospital (Policy number 100-087 last updated June 22, 2011). While DLP is in the process of transitioning the Hospital's policies to be consistent with Duke Lifepoint, DLP has committed to retaining this policy in its current form.

### Capital Commitment

DLP and MGH are in the process of establishing a strategic capital plan which will be completed by August 2013. Given the short duration since the sale of the hospital, SHF is unable to assess compliance with this post-closing covenant.

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### Physician Recruitment Commitment

DLP's physician recruitment commitment under the Asset Purchase Agreement is to be in accordance with Schedule 9.11. However, this schedule was never created prior to closing. As a result, SHF and DLP are in the process of establishing criteria to assess compliance with this post-closing covenant. The criteria will then be submitted to the Michigan Attorney General prior to finalization of any agreement. As a result, at this time SHF is unable to assess compliance with this post-closing covenant.

### Continuation of Services

DLP continues to offer the core services identified on Schedule 9.15 of the Asset Purchase Agreement.

### Restrictions of Seller Transfer

To evaluate compliance with MGH's obligation, SHF reviewed the minutes of the Board of Directors of MGH. Per these minutes, MGH is in the process of winding down its business affairs, and has not engaged in any non-compliant transfer of assets.

### Restriction of Sale of Hospital

DLP has not sold the assets of the hospital to a third-party.

If there are any questions regarding the review of the post-closing covenants by SHF, please contact Jim LaJoie, Executive Director of Superior Health Foundation, at 906-225-3431 or [jlajoie@superiorhealthfoundation.org](mailto:jlajoie@superiorhealthfoundation.org)

# CLARK HILL

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February 28, 2013

**CORRESPONDENCE VIA ELECTRONIC MAIL**  
**EXHIBITS TO FOLLOW VIA FEDERAL EXPRESS OVERNIGHT MAIL**

Board of Directors  
Superior Health Foundation  
121 N. Front Street  
Marquette, MI 49855

**Re: DLP Production of Documents Relating to Post-Closing Covenants  
and Monitoring Enforcement and Compliance Agreement**

Board of Directors:

The purpose of this letter is to provide Superior Health Foundation (The "Foundation") a summary of its obligations under the Monitoring, Compliance, and Enforcement Agreement, ("MCE Agreement") and to report on the documents that DLP Marquette Holding Company, LLC ("DLP") produced to demonstrate compliance with its post-closing covenants contained in the Asset Purchase Agreement between Marquette General Hospital, Inc. ("MGH") and DLP Marquette Holding Company, LLC, ("DLP") dated June 28, 2012 (the "APA").

Under the MCE Agreement, the Foundation "shall diligently monitor compliance by DLP with the Post Closing Covenants." In order to fulfill this obligation, the Foundation is required to establish a Monitoring and Compliance Committee (the "Committee"), which will report quarterly to the Foundation's Board regarding DLP's compliance with the six post-closing covenants (see list of covenants in Exhibit 1). On an annual basis, this Committee must also produce a written report evaluating DLP's compliance with its post-closing covenants that also summarizes the status of complaints filed with the Foundation. The First Annual Report is to be delivered to the Foundation's Board within 180 days of closing. Please accept this letter as the First Annual Report which is being submitted on behalf of the Committee.

To demonstrate compliance with its post-closing covenants, the MCE Agreement requires that DLP "provide copies of reports to governmental agencies and other periodic reports to the Foundation, as specifically set forth on the list of reports attached [to the MCE Agreement]." This list is included as Exhibit 2 to this letter. Furthermore,

“DLP shall promptly provide the Foundation with such additional information that is relevant to a determination that DLP is fulfilling the Post-Closing Covenants and is prepared in the ordinary course of DLP’s business that the Foundation reasonably requests.”

The following provides a summary of the post-closing covenants along with the information received from DLP relevant to each covenant.

### **Summary of Post-Closing Covenants**

The MCE Agreement requires that DLP provide information “prepared by DLP in the ordinary course of business.” DLP asserts that it is unable to provide certain reports, either because the scheduled run date for the report has not yet occurred or that such a report is not one that DLP produces in the ordinary course of its business. The status of documents received from DLP pursuant to the MCE Agreement is included in Exhibit 3, and the actual reports provided are contained in Exhibits 6.1 through 6.20. In addition, Exhibit 3 identifies the scheduled run dates for the reports as well as the documents DLP states it will not produce.

The information received from DLP relevant to each post-closing covenant is summarized below.

### **Indigent Care**

Section 9.9 of the APA requires that DLP institute and maintain the same policy for the treatment of indigent patients that was in place prior to closing. The indigent care policy of MGH prior to the closing is memorialized as Exhibit 9.9 to the APA (see Exhibit 4). Any changes to this policy within five years after closing requires the approval of the Foundation Board.

Tami Seavoy from DLP communicated to us that DLP is in the process of merging the prior MGH policies into DLP’s. The indigent care policy, which is Policy Number 100-087, last updated June 22, 2011 and titled *Financial Assistance for Uninsured Patients*, has not yet been merged into DLP’s policies. Therefore, Ms. Seavoy attests that the policy as contained in Exhibit 9.9 is the indigent care policy currently in place at DLP.

### **Capital Commitment**

Section 9.10 of the APA requires that DLP “commit or cause to be committed for the benefits of the Hospital Facilities and the development of other facilities” at least \$300,000,000 in aggregate capital investment. \$180,000,000 of this requirement must be spent within the five year period immediately following the closing. In addition, within 180 days of closing, MGH and DLP are to develop a strategic capital plan that will address timing and amount of the capital expenditures. Guidance for these

expenditures and amounts that are to be credited to DLP's requirement are identified in Schedule 9.10 of the APA and included herein on Exhibit 5.

DLP produced a copy of its capital expenditures (Exhibit 6.16) as required in the MCE Agreement. According to this report, DLP incurred \$6.37 million dollars in capital expenditures between September 1 and December 31, 2012. We have been informed by Tami Seavoy that DLP recognizes that the current rate of capital expenditures is below what is necessary to satisfy its requirements under the APA. However, DLP states that it has spent the five months since the closing in strategic planning and development of a capital plan.

In addition, DLP states that the MGH Wind Down Inc. has elected to postpone the development of a capital plan until the summer of 2013. Per the MGH Wind Down minutes, which are attached as Exhibit 7, it is believed that the development of the capital plan must occur after the receipt of bids from contractors. The timeline of steps the Board of MGH Wind Down Inc. believes are necessary for development of a Capital Plan is attached as Exhibit 8.

### **Physician Recruitment Commitment**

DLP is required to commit \$50,000,000 in the recruitment and support of new physicians in connection with the business or operations of the hospital pursuant to Section 9.11 of the APA. While Section 9.11 requires that these expenditures be in accordance with Schedule 9.11 of the APA, DLP states that this Exhibit was never created. Therefore, the APA does not provide a standard to assess which expenditures should be included toward the physician recruitment obligation.

In response to the requirements under of the MCE Agreement, DLP provided a "Physician Recruitment Costs" report (Exhibit 6.17). According to this report, MGH spent \$1.28 million on the recruitment of seven physicians. This expense is allocated into three categories: Physician Recruitment Department - \$294,311, Net Investment for New Hires - \$362,897, and Locums Staff - \$626,935.

### **Continuation of Services**

DLP covenanted that it will continue in all material respects to provide and enhance important health care services and programs of the hospital. These "Core Services" are identified on Schedule 9.15 of the APA and included herein as Exhibit 9. We have included a copy of the services currently listed on DLP's website as provided to the Marquette, Michigan Area as of February 22, 2013 in Exhibit 10.

### **Restrictions on Seller Transfer**

Section 9.16 creates an obligation on MGH as the Seller not to transfer its assets without subsequently transferring its liabilities under the APA to the recipient of its

assets. Furthermore, the Seller and the Foundation are required to use commercially reasonable efforts to substantially wind down the business affairs of Seller within 36 months following the closing. While this covenant does not directly involve any obligation on the part of DLP, DLP is substantially involved in the wind down efforts. Therefore, DLP has provided the Board Minutes of MGH Wind Down Inc to allow the Foundation to assess the progress of MGH's progress towards concluding its operations (Exhibit 7).

### **Restriction on Sale of the Hospital**

The final post-closing covenant that the Foundation must monitor is the requirement that DLP not sell the assets of the hospital to a third-party.

### **Next Steps and Other Commitments**

Based on the information received from DLP, the Foundation is tasked with assessing whether DLP has complied with its obligations under the MCE Agreement and the post-closing covenants of the APA. After making its determination on each post-closing covenant, Clark Hill will produce an annual written report on behalf of the Board which is required to be made available on the Foundation's website within 30 days after receiving approval from the Foundation Board.

Furthermore, the Foundation is required under Section 3(C) of the MCE Agreement to establish a complaint procedure, which is to include a link on the Foundation's website to an email address maintained by the Foundation. As part of Clark Hill's engagement with Foundation, we will assist the Foundation over the next month to establish this complaint procedure, and we will investigate all complaints filed which pertain to the MCE Agreement. A summary of these complaints and the status of the investigation will be reported to the Committee during its quarterly meetings.

In addition to the Foundation's obligations under the MCE Agreement, the Foundation, pursuant to a request by DLP, has entered into a Non-Disclosure Agreement to keep confidential information that DLP believes is proprietary or commercially sensitive. Therefore, while the Foundation is not limited in its ability to monitor and enforce the post-closing covenants, it should take steps necessary to limit access to the documents contained on the Non-Disclosure Agreement to only those individuals who are required to have access to such information.

Please contact me should you have any questions regarding the information contained in this report prior to the Board's meeting to assess DLP's compliance with the post-closing covenants.

Board of Directors  
Superior Health Foundation  
February 28, 2013  
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Thank you for the opportunity to assist the Foundation with this process.

Very truly yours,

CLARK HILL PLC

A handwritten signature in black ink, appearing to read 'G. Moore', with a long horizontal flourish extending to the right.

Gregory W. Moore