



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.  
*Commissioner*

September 12, 2007

Mr. Michael A. Young  
Chief Executive Officer  
Erie County Medical Center Corporation  
462 Grider Street  
Buffalo, New York 14215

Re: Commission on Health Care Facilities in the Twenty-First Century

Dear Mr. Young:

I am writing to advise you that, pursuant to the requirements of the Commission on Health Care Facilities in the Twenty-First Century (the "Commission"), I have appointed the individuals identified in Exhibit A of this letter to serve (in the capacities described therein) as the trustees of the reconstituted single board of the unified governance structure joining Erie County Medical Center ("ECMC") and the Kaleida Health Systems ("Kaleida").

Chapter 63 of the Laws of 2005 created the Commission and authorized it to make certain recommendations. In the event those recommendations were approved by the Governor, and not disapproved by the Legislature, the recommendations became binding, and acquired the force of law on January 1, 2007, the Commission's recommendations therefore became a legal mandate.

Western Region Acute Care Recommendation No. 5 related specifically to your institution. That recommendation required that ECMC and Kaleida be joined in a single unified joint governance structure under the control of an entity other than ECMC, Kaleida, or any other public benefit corporation, and that a reconstituted single board include representation of Kaleida, ECMC, the University of Buffalo School of Medicine and Biomedical Sciences ("UB"), and community leaders. In the absence of a consensus proposal from the named institutions meeting these requirements, the Commission empowered the Commissioner of Health to alter the board's composition to satisfy these requirements.

The enabling legislation imposed upon the Commissioner the authority, and the duty, to take "all steps necessary" to implement the binding recommendations of the Commission. The enabling legislation also imposed on your facility a legally binding mandate to submit to the Commissioner of Health, at a time and in a form determined by him, an acceptable plan of compliance.

Accordingly, by letter dated February 6, 2007, the Office of Health System Management of the Department of Health (the "Department") required that ECMC and Kaleida submit a formal progress report on March 31, 2007, and again on June 30, 2007, including the proposed composition of a new board of directors.

Written progress reports however only confirmed what the Department had learned from its own discussions with the parties, and from the protracted negotiations, lawsuits, and threats of lawsuits that materialized: the parties likely would not agree on the composition of a governing board.

Accordingly, by letter dated April 17, 2007, I established an April 30, 2007, deadline for the parties to jointly submit a proposal for a single board of directors. This time, however, I advised them that if they were unable to do so, they were to submit instead their individual proposals for the board's composition. The letter advised that my goal would be to establish a board that would operate independently and effectively to advance the public health, rather than one that might be gridlocked by members attempting to protect parochial interests.

I have received and reviewed the parties' submissions, allowed time for additional meetings between the two parties and met with Kaleida, ECMC and UB leadership and other community leaders in Erie County. At this time, in order for timely decisions to be made on State funding for this new enterprise, I have determined that the individuals identified on Exhibit A (in the capacities described therein) will be the trustees of the unified governance structure. The board will be self-perpetuating, and its members will initially serve staggered terms of no less than three years. All items related to its internal governance other than its initial membership, its self-perpetuating form and its members' initial terms are to be determined by the board itself.

The board's composition reflects, I believe, a combination of the best ideas, values and personnel proposed by both parties to this consolidation and other community leaders. I have altered the composition of the boards proposed by Kaleida and ECMC as shown on Exhibit A. I have selected 14 voting members consisting of three members each representing ECMC, Kaleida, UB and five community leaders. The 15<sup>th</sup> voting member of the board will be the CEO of the new board selected by a vote of the board. If for any reason the persons appointed to represent your institution are unable to serve, please notify my office immediately and in no event later than September 14, 2007, and I will replace the appointee.

I have also adopted the recommendation, in amended form, that the Chief Medical Officers (CMO) of Kaleida and ECMC be ex officio, non-voting members of the board. The CMOs will be able to represent the medical staff's point of view at board meetings and provide valuable feedback to the physician community. If the CMOs were actual voting board members, they would no longer be advocating for the physicians but would instead have a fiduciary role to act in the best interest of the institutions.

The goal of creating an independent board acting on behalf of the community informed my choice of community leaders as well. I expect each community leader to act solely on behalf of the interests of the community.

Finally, the three trustees representing UB shall be the UB president and Vice-President of Health Sciences or their designees, both acting ex-officio, and one additional voting member, identified by UB. Having the top leadership at UB represented on the board will help ensure that future decisions regarding the role of academic medicine in this new organization will have the full support of UB.

More than eight months has now elapsed since the Commission issued its report. Identifying the members of the new board, while challenging, is only one step in a long and complicated process towards implementation of the Commission report, as required by law.

Accordingly, the board should meet no later than September 21, 2007, to continue the process of implementing the requirements of the Commission, including reaching out to ECMC and Kaleida to determine the precise nature of the relationship between the parties. At its first meeting, the President of UB shall serve as chair, a quorum shall consist of eight members, and a majority vote of the members shall suffice for any matter to pass. The chair shall be responsible to notify board members of the initial meeting, although in the case of facility representatives, it may be do so by notice to the facility CEO.

As I have previously said, the future of health care in Erie County and the Western Region of New York will depend, to a large extent, on the successful implementation of the requirements described in the Commission's report. Your continued cooperation in moving forward towards implementation is greatly appreciated, and my office is available to assist you in any way that it can.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard F. Daines". The signature is written in a cursive, flowing style.

Richard F. Daines, M.D.  
Commissioner of Health

## Exhibit A: Composition of Joint Board

### ECMC Representatives

1. Kevin E. Cichocki, D.C. Dr. Cichocki currently serves as chair of the Board of Directors of ECMC.
2. Sharon L. Hanson. Ms. Hanson currently serves as Vice-Chair of the ECMC Board of Directors.
3. Jody L. Lomeo. Mr. Lomeo is the former chair of the Board of Directors of ECMC and currently serves as Vice-Chair of the Board.

### Kaleida Representatives

1. Edward Walsh. Mr. Walsh currently serves as Chair of the Kaleida Board of Directors.
2. Robert Zak. Mr. Zak currently serves as Vice-Chair of the Kaleida Board of Directors.
3. James McLeod. Mr. McLeod currently serves as Secretary of the Kaleida Board of Directors.

### UB Representatives

1. John Simpson. President, University of Buffalo, *ex officio*.
2. David Dunn, M.D. Vice-President of Health Sciences, University of Buffalo, *ex officio*.
3. Mary H. Gresham, PhD, Dean, Graduate School of Education, University of Buffalo

### Community Leaders

1. Robert Gioia. Mr. Gioia currently serves as Chair of the Board of the John R. Oishei Foundation.
2. Brenda McDuffie. President and CEO of the Buffalo Urban League

3. Sundra Ryce. Ms. Ryce is President and CEO of Ryce Enterprises
4. Irene Snow, M.D. Dr. Snow is Managing Partner of the Buffalo Medical Group.
5. David Zebro. Mr. Zebro was formerly the Chair of the Roswell Park Cancer Center Board of Directors.