

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: HEALTH SERVICES

DATE: APRIL 25, 2014

COMMITTEE MEMBERS PRESENT:

SUPERVISORS SOKOL
CONOVER
FRASIER
TAYLOR
MCDEVITT

OTHERS PRESENT:

REPRESENTING WESTMOUNT HEALTH FACILITY:
LLOYD COTÉ, ADMINISTRATOR
BETSY HENKEL, COMPTROLLER
KEVIN B. GERAGHTY, CHAIRMAN OF THE BOARD
PAUL DUSEK, COUNTY ADMINISTRATOR
MARTIN AUFFREDOU, COUNTY ATTORNEY
JOAN SADY, CLERK OF THE BOARD
FRANK E. THOMAS, BUDGET OFFICER
SUPERVISORS BEATY
BROCK
KENNY
MERLINO
SEEBER
SIMPSON
STROUGH
VANSELOW
WOOD
GRETCHEN STEFFAN, COUNTY HUMAN RESOURCES DIRECTOR
BUD YORK, COUNTY SHERIFF
JOANN MCKINSTRY, ASSISTANT TO THE COUNTY ADMINISTRATOR
J. LAWRENCE PALTROWITZ, ESQ., OF BARTLETT, PONTIFF, STEWART &
RHODES, P.C.
TRAVIS WHITEHEAD, TOWN OF QUEENSBURY RESIDENT
JENNIFER KLEIN, TOWN OF QUEENSBURY RESIDENT
DON LEHMAN, *THE POST STAR*
CHARLENE DiRESTA, SR. LEGISLATIVE OFFICE SPECIALIST

Mr. Sokol called the meeting of the Health Services Committee to order at 10:30 a.m.

Motion was made by Mrs. Frasier, seconded by Mr. McDevitt and carried unanimously to approve the minutes of the previous Committee meeting, subject to correction by the Clerk of the Board.

Privilege of the floor was extended to Lloyd Coté, Administrator of Westmount Health Facility, who distributed copies of the agenda to the Committee members; *a copy of the agenda is on file with the minutes*. Mr. Coté requested Betsy Henkel, Comptroller for Westmount Health Facility, to present the first item on the agenda.

Commencing the agenda review, Ms. Henkel requested a contract with PNP Computer Services, Inc. for an annual software support agreement in the amount of \$5,880 for a term commencing April 1, 2014 and terminating March 31, 2015. She noted the Facility had contracted with PNP Computer Services, Inc. since 1995 and the software allowed for billing of Medicare, Medicaid and Private Pay services and the tracking of receivables. She noted there had been no increase in the cost of the contract.

Motion was made by Mr. Taylor, seconded by Mrs. Frasier and carried unanimously to authorize the contract with PNP Computer Services, Inc. as outlined above. *A copy of the resolution request form*

is on file with the minutes and the necessary resolution was authorized for the May 16, 2014 Board Meeting.

Mr. Coté requested a contract with Attentive Care of Albany, Inc. to provide temporary professional nursing services. He noted the Facility continued to have vacant positions and a high turnover rate. He advised Attentive Care of Albany, Inc. would be the third agency contracted with the Facility to ensure the availability of nursing professionals and that minimum staffing levels were met. Mr. Taylor asked the cost difference involved with agency nurses and Mr. Coté replied it was about twice the cost of staff nurses.

Motion was made by Mr. Taylor, seconded by Mrs. Frasier and carried unanimously to authorize the contract with Attentive Care of Albany, Inc. as outlined above. *A copy of the resolution request form is on file with the minutes and the necessary resolution was authorized for the May 16, 2014 Board Meeting.*

Mr. Coté requested to create and fill the new position of Health Facility Keyboard Specialist, Grade 5, annual base salary of \$26,897, effective June 1, 2014 by deleting the position of Keyboard Specialist, Grade 3, annual base salary of \$24,954. He explained the current Keyboard Specialist would be taking on additional duties and the new title and increased salary would reflect same. He said the vacant Social Worker position would be filled by a per diem 20 hour per week employee which would result in a salary savings, some of which would be utilized to cover the increased salary for the Health Facility Keyboard Specialist position.

Motion was made by Mr. Conover, seconded by Mrs. Frasier and carried unanimously to approve the request to create and fill the new position of Health Facility Keyboard Specialist and delete the position of Keyboard Specialist as outlined above and to forward same to the Personnel Committee. *A copy of the resolution request form is on file with the minutes.*

Mr. Coté requested a contract with the Glens Falls Hospital Laboratory for lab services for the residents of Westmount Health Facility. He stated the Facility currently contracted with Saratoga Hospital which only allowed for one routine blood draw visit per week and sporadic pick ups. He noted two to three times a week they delivered blood draws to Glens Falls Hospital and it made sense to contract with them for all of these services. He advised the contract with the Glens Falls Hospital Laboratory would include two blood draw visits per week and access to the Hospital's computer system which meant immediate test results. He mentioned the amount of the service would be the same as it was based on the Medicare Fee Schedule.

Motion was made by Mr. McDevitt, seconded by Mrs. Frasier and carried unanimously to authorize the contract with the Glens Falls Hospital Laboratory as outlined above. *A copy of the resolution request form is on file with the minutes and the necessary resolution was authorized for the May 16, 2014 Board Meeting.*

Ms. Henkel requested a transfer of funds between various accounts totaling \$55,800 to reflect the increased salary for the Health Facility Keyboard Specialist position; the funds necessary for the per diem Social Worker position; and overtime usage in the Fiscal Office, Nursing, Housekeeping and Laundry Departments.

Motion was made by Mr. Taylor, seconded by Mr. McDevitt and carried unanimously to approve the request for a transfer of funds as outlined above and to forward same to the Finance Committee. *A copy of the Request for Transfer of Funds form is on file with the minutes.*

Pertaining to the Staffing Report, Mr. Coté stated there was one vacant Registered Nurse (RN) Manager position on the 7:00 a.m. to 3:00 p.m. shift; eight vacant part-time Licensed Practical Nurse (LPN) positions on the 7:00 a.m. to 3:00 p.m. and 3:00 p.m. to 11:00 p.m. shifts; and eight vacant Certified Nursing Assistant (CNA) positions on the 7:00 a.m. to 3:00 p.m. and 3:00 p.m. to 11:00 p.m. shifts. Concerning the RN Manager position, he announced several candidates had been interviewed and the position should be filled shortly. He noted the vacant positions were an ongoing issue and the shortage of nursing professionals in the area allowed those potential employees the opportunity to be selective. He commented the sooner the future of Westmount Health Facility was decided, the easier it would be to fully staff the Facility.

Concerning the Overtime Report, Ms. Henkel pointed out the 2014 Amended Budget totals were slightly lower than the 2013 Amended Budget totals. She said there was a decrease in the regular salaries and an increase in the part-time salaries which she attributed to the eight part-time LPN and fifteen part-time CNA positions which had been created in 2014. She commented that overall the Facility was within budget for salaries.

Mr. Coté informed the Facility had recently filed their Case Mix for 2014 which was approximately 1 and he noted when he became the Administrator of Westmount Health Facility the Case Mix had been .83. He mentioned the Case Mix reflected the intensity level of care for the residents and determined the Medicaid and Medicare rates paid to the Facility. He commented the Facility was now receiving credit for all of the care provided to the residents.

Mr. Coté reiterated the vacant Social Worker position had been reduced to a 20 hour per week Per Diem position. He informed the newly hired Admissions Screener was doing a great job and the census of the Facility was currently 76 residents with a possible new admission on Monday, April 28, 2014, as well as a discharge. He noted his current goal was 78 residents in the Facility. He commented the new Admissions Screener was well liked at Glens Falls Hospital.

Mr. Coté stated the switch from the current Medicaid Program to Managed Long Term Care was anticipated to commence at the end of this year. He explained this change would require the Facility to negotiate contracts with various insurance companies to determine the Medicaid rate. He expressed if the Facility was not sold prior to the change, it would be necessary to hire legal assistance to help the Facility through the process. He explained the State no longer wanted to be party to setting Medicaid rates and once the change took effect rates would be negotiated. Mr. Coté stated any current Medicaid residents would remain on a fee-for-service basis and would not be required to switch to Managed Long Term Care. He explained any resident that applied for Medicaid after the commencement of the change to Managed Long Term Care would need to select from one of the contracted carriers. He advised the switch was anticipated for December 1, 2014 and he would work closely with the County Attorney to determine how to proceed.

Mr. McDevitt pointed out that Siemens Industry, Inc. provided the County with Annual Performance Assurance Reports. He said he had not yet seen the Report for Year 8 and he asked if it was available for review. Martin Auffredou, County Attorney, replied the Year 8 Performance Assurance Report was available and had been provided to and reviewed by EnerNOC, Inc. He stated any Supervisors that wished to review the Report could stop by the County Attorney's Office for a copy.

Mr. McDevitt voiced his concern that the County's credit worthiness or bond rating would be affected by the possible guaranteeing of future Medicaid Reimbursements. Paul Dusek, County Administrator, expounded that the County's bond rating was dependent upon revenues, resources and exposure. He stated he felt it would be premature to assume that the County's bond rating would be affected

by the possibility of guaranteeing Medicaid Reimbursements to a potential buyer. He pointed out currently the County's rating was very good and he noted one of the reasons was the level of the Fund Balance. Mr. McDevitt stated if the County guaranteed future revenue streams they would probably pay a higher rate when borrowing in the future. A brief discussion ensued pertaining to bond ratings.

With reference to the Year 8 Performance Assurance Report, Mr. Beaty asked if the Board of Supervisors typically voted to accept this Report annually. Mr. Auffredou replied affirmatively and added the Board had not voted on the Year 8 Report because they had been awaiting the results of the EnerNOC, Inc. Report. Mr. Auffredou said he did not know if it was critical to vote on the Year 8 Report but in the past the Reports had been accepted by the full Board of Supervisors. Mr. Beaty stated the Year 8 Report had been available in August and had been voted on in the past for Years 1-7. He said the County would soon have the Year 9 Report and it would be prudent for the Committee to review the Report and decide if it should be presented to the full Board. Mr. Sokol pointed out that the last year had not been typical and he noted the Year 8 Report had been discussed but there had not been any real interest or urgency to vote on it due to other concerns. Mr. McDevitt requested the Year 8 Performance Assurance Report be distributed to each of the members of the Committee so they could review it and vote on it at the next Committee meeting. He noted in the past the Committee had received a presentation on the Report from a representative of Siemens Industry, Inc. and had voted to accept the Report following the presentation. Mr. Auffredou stated he would be happy to distribute copies of the Year 8 Report and he noted the EnerNOC, Inc. Report was full of information which had been derived from the Year 8 Report. He noted the matter could be placed on the agenda for the next Committee Meeting to be discussed, reviewed and possibly voted on. It was the consensus of the Committee that the Year 8 Performance Assurance Report from Siemens Industry, Inc. would be reviewed and discussed at the next Committee Meeting.

Mr. Sokol opined that in light of the results of the vote at the April 18, 2014 Board Meeting pertaining to the possible sale of Westmount Health Facility and the article in the *Post Star* which had indicated that Fort Hudson Health Systems' proposal for the purchase of the Facility had been impacted by the Cogeneration Plant, it might have been better to postpone the vote until all the members of the Board could be present. He commented that Westmount Health Facility lost approximately \$50,000 per week of operation and further delays with the sale of the Facility were costly. He acknowledged there had been Supervisors at the Board Meeting with reservations pertaining to the Fort Hudson newspaper article and preserving the County's rights in moving forward with the sale of the Facility.

Chairman Geraghty informed he had called Andy Cruikshank, Chief Executive Officer for Fort Hudson Health Systems, about the article in the *Post Star* and Mr. Cruikshank had stated his proposal had not been effected by the existence of the Cogeneration Plant. He said he had been part of the negotiating team and the first time they had discussed the Cogeneration Plant with Mr. Cruikshank had been well after the proposals had been submitted. He informed that in a letter dated May 28, 2013 which had been sent to each of the three companies participating in the negotiations, the negotiating team had asked five or six questions of each proposer. Chairman Geraghty acknowledged that Fort Hudson Health Systems were no longer interested in the purchase of Westmount Health Facility. Mr. McDevitt asked if Mr. Cruikshank had been quoted correctly in the *Post Star* article when he indicated the deal breaker had been that the County did not want to sell the Facility to a not-for-profit organization so the property could be placed back on the tax rolls. Chairman Geraghty replied during his phone conversation with Mr. Cruikshank that topic did not come up. He noted the question pertaining to not-for-profit status was included in the May 28, 2013

letter from the County to the proposers. He explained he had kept detailed notes on the negotiating process and Mr. Cruikshank did want to apply for not-for profit status; however, he added, if Fort Hudson Health Systems did purchase and develop the additional land, it would have been taxable. Chairman Geraghty advised Fort Hudson Health Systems had never been removed from the bidding process because the County was awaiting the EnerNOC, Inc. Report before proceeding with the sale of the Facility. He stated Mr. Cruikshank had never been notified that Fort Hudson's proposal was not being considered. Chairman Geraghty said he would not dispute the information contained in the *Post Star* article; however, he reiterated, Mr. Cruikshank had stated the Cogeneration Plant did not effect the proposal amount submitted by Fort Hudson Health Systems.

Travis Whitehead, Town of Queensbury Resident, said his understanding was the RFP (Request for Proposals) had included a description of the Cogeneration Plant; however, he added, at some point Mr. Cruikshank had been asked if he would be willing to take over the lease payments for the Cogeneration Plant and at that point concerns had been raised and he asked if the Chairman could speak to that. Chairman Geraghty replied he had spoken to that matter at the April 18, 2014 Board Meeting and he commented when the negotiating team met with Mr. Cruikshank on June 3, 2013, the possibility of assuming the Cogeneration Plant lease payments had been one of the questions asked. Chairman Geraghty acknowledged Mr. Cruikshank had not been interested in assuming the lease payments. He reiterated that he had detailed notes on all of the meetings pertaining to the negotiating team. He noted the same questions had been posed to each of the three companies interviewed by the negotiating team.

Mr. Conover stated he did not recall any of the proposers indicating any issues associated with the Cogeneration Plant. Chairman Geraghty pointed out the questions asked by the negotiating team had originated from the Committee members. He noted the Committee had decided the most important issues were the continued care of the residents, the continued employment of Westmount Health Facility's employees, the Cogeneration Plant and the lease for same. He reiterated the questions had been derived from the Committee and each Supervisor had been kept informed of the negotiating process.

Mr. Sokol commented the *Post Star* was incorrect from time to time and Don Lehman, Reporter for the *Post Star*, stated he had spoken with Mr. Cruikshank and the article had been accurate.

Mr. Beaty stated he was still very concerned about this whole process and with guaranteeing Medicaid Reimbursements to The Centers for Specialty Care. He noted there was an ongoing investigation concerning potential fraud on behalf of Siemens Industry, Inc. He said it was his understanding that if the County and the FBI (Federal Bureau of Investigations) went forward with the investigation and fraud was proven then Medicaid could request all the funds awarded to the County in connection with the Cogeneration Plant be returned. He added right now that amount totaled approximately \$630,000. He stated his concern was that if the County sold the Facility to Specialty Care and guaranteed the Medicaid Reimbursements and fraud was proven then the County would be responsible for returning the funds to Medicaid and paying the \$1 million in Medicaid Reimbursements to Specialty Care. Mr. Beaty stated he believed strongly the Cogeneration Plant should be separated from the sale of Westmount Health Facility.

Mr. Sokol pointed out there were two items that were to be discussed by the Committee today, the issue of the newspaper article about Fort Hudson and the issue of preserving the County's rights relative to the Siemens Industry, Inc. contract. Mr. Auffredou said he understood what Mr. Beaty was saying; however, he added, it was not set in stone that the County would be on the hook for anything if fraud was proven. He stated if fraud were proven, he would assume the County would

be off the hook and out of any contract or arrangement between them and Siemens Industry, Inc. He stated it troubled him to hear comments from Supervisors when there was no basis for those comments. He said the County needed to be careful about making assertions unless they were based on facts and laws. He noted he did not feel that Supervisors should be speculating about what could possibly happen in the future. He apprised that three or four years from now the County would be responsible for a considerable amount of ongoing expenses related to the operation of Westmount Health Facility. He advised the potential for future liabilities were being factored in and considered in the strategies for the sale of Westmount Health Facility.

Mr. Beaty asked if Medicaid had ever gone after funds awarded to a County if fraud had been proven and he answered his own question affirmatively. He asked if the County sold the Facility to Specialty Care and guaranteed the Medicaid Reimbursements would they be required to pay those Reimbursements even if fraud were proven. Mr. Auffredou replied it was a scenario based on pure speculation and it had no concrete basis.

Mrs. Wood stated she would need to leave soon for another appointment and she wanted to know if it would be possible to continue with the business to come before the Committee prior to proceeding with this conversation. Mr. Sokol said he wanted to see if the Committee would be interested in scheduling a Special Board Meeting. He said in light of the fact that the Facility was losing \$50,000 per week of operation, time was of the essence. He noted the process of trying to sell Westmount Health Facility had begun due to the concern of many taxpayers that the services provided by the Facility were expensive for only about 70 residents. He mentioned there had been two Supervisors absent from the April 18, 2014 Board Meeting whose votes would have been critical to the outcome. He stated his plan was to move the matter to a Special Board Meeting to be voted on by the full Board. Mr. Merlino opined as a businessman, if the County could sell Westmount Health Facility for \$2.3 million this year and save \$1.5 million next year in expenses, then it made sense to sell now.

Pertaining to the proposal to guarantee the receipt of Medicaid Reimbursements to Specialty Care, Mr. Whitehead mentioned the initial Pro-Forma estimate from Siemens was that the County would collect \$3.8 million from Medicaid. The Pro-Forma from one year later, he continued, had decreased the amount of anticipated Medicaid Reimbursements to \$3.3 million. When the contract was signed, Mr. Whitehead said, a clause had been included indicating that Siemens was not responsible for Medicaid Reimbursements. He advised the latest estimate of Medicaid Reimbursements from Ms. Henkel anticipated approximately \$2.7 million. He noted approximately 2/3 of the Reimbursements should have been received thus far but only about \$600,000 had been received. He stated these were facts and not speculations. He said if Siemens was not willing to guarantee Medicaid Reimbursements, he could see no reason why the County should guarantee them, thereby letting Siemens off the hook. Mr. Dusek responded it was not a fact that Siemens would be off the hook on Medicaid Reimbursements because they were never on the hook. It was known from the beginning, he continued, that Medicaid Reimbursements were a separate issue and were not guaranteed by Siemens. As the County Attorney at the time, he said, he had consulted with Urbach, Kahn & Werlin, P.C. and had reviewed the Medicaid Reimbursement Plan to determine if the amount stated in the Pro-Forma was a reasonable amount and had been told at the time that it was. Mr. Whitehead stated the amount had gone from \$3.8 million at that time to \$2.7 million today, so the estimate was wrong. He reiterated Siemens had never guaranteed Medicaid Reimbursements and he saw no reason why the County should. Mr. Conover said it might be helpful to have a general discussion on the preservation of the County's options regarding the Siemens contract.

Mr. Auffredou suggested the Committee entertain a motion to convene an executive session under the Open Meetings Law, Section 105(d) to discuss matters pertaining to strategies for proposed litigation against Siemens Technology, Inc. and also to convene a closed session otherwise exempt from the Open Meetings Law under Section 108(3) pertaining to any matter made confidential by Federal or State Law. He noted the confidential matter would be legal advise from the County Attorney and Special Counsel (J. Lawrence Paltrowitz, Esq. of Bartlett, Pontiff, Stewart & Rhodes, P.C.) wherein the County was exempt by virtue of CPLR (Civil Practice Law and Rules), Section 4503, to discuss legal services, opinions, assistance in legal proceedings and confidential communications between legal counsel and the Board of Supervisors.

Motion was made by Mr. Conover, seconded by Mrs. Frasier and carried unanimously that executive session be declared pursuant to Sections 105(d) and 108(3) of the Public Officers Law.

Executive session was declared from 11:15 a.m. to 11:56 a.m.

Upon reconvening, Mr. Auffredou requested a motion to authorize J. Lawrence Paltrowitz, Esq. and Bartlett, Pontiff, Stewart & Rhodes, P.C., in accordance with terms and conditions set forth in the retainer agreement, to move forward on behalf of Warren County to review contract documents and provide advice and recommendations concerning the Siemens Industry, Inc. Performance Assurance Contract and potential claims which the County might have with regard to same.

Motion was made by Mr. McDevitt, seconded by Mr. Taylor and carried unanimously to authorize J. Lawrence Paltrowitz, Esq. and Bartlett, Pontiff, Stewart & Rhodes, P.C., in accordance with terms and conditions set forth in the retainer agreement, to move forward on behalf of Warren County to review contract documents and provide advice and recommendations concerning the Siemens Industry, Inc. Performance Assurance Contract and potential claims which the County might have with regard to same. *The necessary resolution was authorized for the May 16, 2014 Board Meeting.*

Mr. Auffredou said that in the course of moving forward, Mr. Paltrowitz would need to consult with EnerNOC, Inc. and additional funds would be needed to compensate them for their time and efforts. He advised he would obtain a proposal from EnerNOC for their fee structure for these additional services. He suggested the Committee entertain a motion to retain litigation support services from EnerNOC, Inc., with fees to be approved at a later date. Mr. Sokol asked if it would be necessary to determine a source of funding and Mr. Dusek replied the source of funding would be identified at a later date but would most likely be the Contingent Fund.

Motion was made by Mr. Taylor, seconded by Mr. Conover and carried unanimously to retain litigation support services from EnerNOC, Inc. for consultations with J. Lawrence Paltrowitz, Esq. and Bartlett, Pontiff, Stewart & Rhodes, P.C. for matters pertaining to the contract between Warren County and Siemens Industry, Inc., with fees to be approved at a later date. *The necessary resolution was authorized for the May 16, 2014 Board Meeting.*

Mr. Sokol requested a motion to authorize the setting of a date for a Special Board Meeting in order to further discuss proceeding with the sale of Westmount Health Facility to The Centers for Specialty Care. Chairman Geraghty requested Joan Sady, Clerk of the Board of Supervisors, to poll the Board Members to determine a date for the Special Board Meeting in order to ensure all Members would be able to attend. Mr. McDevitt advised he would be voting in opposition and commented the Board had monthly Meetings and did not need Special Board Meetings.

Motion was made by Mr. Taylor, seconded by Mr. Conover and carried by majority vote, with Mr. McDevitt voting in opposition, to request the Chairman to set a date for a Special Board Meeting in order to further discuss proceeding with the sale of Westmount Health Facility to the Centers for Specialty Care. *(Note: Subsequent to the meeting it was determined that the Special Board Meeting would be held on Wednesday, May 7, 2014 at 9:00 a.m.)*

As there was no further business to come before the Health Services Committee, on motion made by Mrs. Frasier and seconded by Mr. Conover, Mr. Sokol adjourned the meeting at 12:00 p.m.

Respectfully submitted,
Charlene DiResta, Sr. Legislative Office Specialist