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Columbus, OH 43215



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11th Floor
Columbus, OH 43215

Keith Faber
Ohio Auditor
88 E. Broad St.
Suite 500
Columbus, Ohio 43215

July 7, 2020

Dear Auditor Faber:

We can recall no legitimate instance in which a law enforcement agency such as yours allowed an entity under review to set the parameters of that review. That arrangement, however, appears to be how your office repeatedly handled allegations of felonies, financial irregularities and conflicts of interest involving the academic affiliation agreement between ProMedica and the University of Toledo for the UT College of Medicine and Life Sciences.

Your office recently conducted a cursory audit that you concede left many “unanswered questions,” and you publicly stated that UT officials declined your recommendation for a full performance audit that could help explain why the agreement, marketed as a means of improving the finances at the University of Toledo College of Medicine, is having the opposite effect. As you stated in a June 22 letter accompanying your findings: “A performance audit may have elicited additional information and provided the Auditor of State with the ability to make meaningful observations and recommendations regarding the financial status and operations of the medical center and affiliation agreement.”

The Auditor of State does not need UT’s permission to examine how it has been spending the public’s money. As your website clearly states, “Any public or quasi-public entity in Ohio that receives funds from or through the state may request a performance audit. **The Auditor of State’s office may also elect to exercise statutory authority and conduct a performance audit of an organization.**”

Even your cursory audit generated new financial questions and concerns among doctors. In a June 29 letter to the Dean of the College of Medicine, UTMC Professor Dr. James Willey cited your audit findings that suggest UTMC made a profit in 2016-2018 but interdepartmental transfers caused the medical college to operate in the red. The bulk of Dr. Willey’s letter centers on an estimated \$30 million that Medicare paid annually to help fund Graduate Medical Education. The letter asks if the payments were “used by UToledo to support resident training or were they used for some other purpose?” If used for another purpose, it would undermine the medical school’s ability “to meet their educational obligations to resident training,” according to Dr. Willey’s letter, which is attached.

We are officially requesting your office conduct a forensic audit and performance audit of the agreement. These audits must determine the status of UTMC’s finances before the affiliation agreement, the impact the agreement has had on UTMC and answer the specific questions raised in Dr. Willey’s June 29 letter.

Your failure to produce an audit that answers these questions marks the second time that you have been dismissive of serious allegations about the affiliation agreement’s purpose or effect.

In March 2019 – 16 months ago – your office received an official complaint from a whistleblower and UTMC physician. The complaint centers on the 50-year affiliation agreement signed in 2015. It alleges possible felonies, conflicts of interest and breaches of fiduciary duty involving two UT Trustees who championed the agreement, Stephen Cavanaugh and Mary Ellen Pisanelli. While serving as Trustees for a state college supported by taxpayers, both Trustees had a fiduciary duty to UT but also had strong financial ties to ProMedica and helped advance the agreement in ways that hurt UTMC. Gov. John Kasich appointed both Trustees.

As the whistleblowing physician pointed out, soon after Cavanaugh’s appointment as a Trustee, Cavanaugh donated \$500,000 to UT. About two years after his appointment, Cavanaugh became chairman of the UT Board of Trustees and continued to help steer the affiliation agreement in favor of ProMedica. In 2018, ProMedica paid approximately \$4 billion to rescue Cavanaugh’s employer, HRC ManorCare from bankruptcy. In 2019, ProMedica made Cavanaugh its CFO and soon after he resigned from the Board of Trustees and cited “conflicts of interest.”

Pisanelli succeeded him as chair of the trustees. Gov. Kasich appointed her to the Board of Trustees in 2015 while she was a partner at a law firm that counted ProMedica among its more important clients. In March 2017, while still serving as a trustee, Pisanelli left the law firm to become senior vice president at Welltower, a real estate investment trust, that had partnered with ProMedica under a complex deal to wipe out HRC ManorCare’s debts. Soon after, Welltower gave \$30 million to the University of Toledo. The following year, Pisanelli became chair of the UT Board of Trustees.

In his March 26, 2019, complaint to your office, the whistleblower asks these questions:

- Did the \$500,000 “charitable” gift (from Cavanaugh) lead to \$7.1 billion in debt relief? Did Cavanaugh steer the UT-ProMedica contract in favor of ProMedica/HRC ManorCare in exchange for \$7.1 billion in corporate debt relief for Cavanaugh’s HRC ManorCare?
- Was that \$30 million payment from Welltower to UT “a bribe or equivalent illegal payment” as defined by Ohio law?

Your office referred these questions to the Ohio Inspector General – who dismissed the case and said, “The Ohio Ethics Commission stated that prior to entering into business agreements with ProMedica both Trustee Cavanaugh and Trustee Pisanelli sought advisory opinions with the Commission.” Neither you nor the IG pointed out that the advisory opinions were requested in May 2018 – several years after the alleged conflicts of interest began. Moreover, the advisory opinion clearly states that the “business relationships between the Trustees and ProMedica was (sic) permissible, provided the Trustees recused themselves from voting on any matter which directly affected ProMedica.”

Cavanaugh voted at least two times to advance the deal with ProMedica.

Since you declined to properly investigate these matters, we have come into possession of public records that raise new questions about Mr. Cavanaugh’s appointment as a UT Trustee. Gov. Kasich appointed Cavanaugh on April 15, 2014. The person who recommended Cavanaugh was none other than his boss, HRC ManorCare CEO Paul Ormond. In an email to long-time Kasich adviser Jai Chabria, Ormond wrote, “Governor Kasich called me twice this week, and one of the subjects he brought up was the need to find top candidates for the University of Toledo Board of Trustees....” Ormond alluded to Gov. Kasich’s knowledge of UTMC’s financial issues in the same email: “Sorry to be so long in this message, but the

Governor encouraged me to share this with you because of the very real challenges UT is dealing with and the need to have strong and capable Trustees to help lead the university through its tough road ahead.”

Soon after, Gov. Kasich appointed HRC ManorCare COO Cavanaugh to the UT Board of Trustees. The records do not show whether Gov. Kasich and his former Wall Street ally, Jai Chabria, positioned or encouraged the Trustees to favor ProMedica over UTMC.

Still, Cavanaugh’s April 8, 2014, application for the appointment raises red flags. He checked the NO box when asked, “Do you have, or have you had, any personal, financial or business interest or dealings that might pose a conflict of interest with your proposed state appointment?”

As early as 2012, however, HRC ManorCare and ProMedica had agreed to partner on a nursing home and rehab center, meaning that Cavanaugh was compromised the day he became a Trustee.

Although Gov. Kasich also appointed Pisanelli as a Trustee, the archivist handling his gubernatorial records could find no application from Pisanelli for her appointment.

Please let us know at your earliest convenience when you plan to begin these audits and who you have tasked to conduct them.

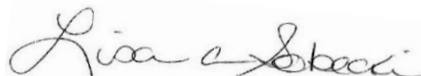
Sincerely,



Senator Teresa Fedor
Ohio Senate District 11



Representative Paula Hicks-Hudson
Ohio House District 44



Representative Lisa Sobecki
Ohio House District 45



Representative Mike Sheehy
Ohio House District 46

CC:

Randy Gardner, Chancellor of Higher Education
Save UTMC Coalition