

<b>LINCOLN COUNTY BOARD OF COMMISSIONERS</b>	<b>MINUTES JUNE 23, 1999</b>
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The Lincoln County Board of County Commissioners met on June 23, 1999, which was recessed from the June 21, 1999 Regular Meeting, at the Citizens Center, Commissioners Room, 115 West Main Street, Lincolnton, North Carolina, the regular place of meeting at 2:00 PM. The following were present:

James A. Hallman, Chairman  
Terry L. Brotherton, Vice-Chairman  
Beth H. Saine  
John R. Gamble, Jr.  
W. J. Waters, Jr.

Stan Kiser, County Manager

Also present was Amy S. Long, Clerk to the Board of Commissioners.

#### **CALL TO ORDER**

Chairman Hallman called the June 23, 1999, recessed from June 21, 1999, meeting to order.

Chairman Hallman stated that the Board needs to amend the agenda to add Consideration of Settlement Agreement in Hospital Lawsuit, Peter W. Acker, et al vs. Lincoln County Board of Commissioners as Item 19.

A motion by Commissioner Waters to add Item 19 – Consideration of Settlement Agreement in Hospital Lawsuit, Peter W. Acker, et al vs. Lincoln County Board of Commissioners.

#### **MERGER AGREEMENT BETWEEN CLEVELAND COUNTY AREA MENTAL HEALTH DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE AUTHORITY DBA CLEVELAND CENTER AND GASTON-LINCOLN AREA MENTAL HEALTH DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE AUTHORITY**

A motion by Commissioner Gamble to approve the Merger Agreement.

Unanimously approved.

Chairman Hallman advised that at this time, the Board would wait for the Hospital Board members to arrive.

Chairman Hallman called for a five minute recess.  
Chairman Hallman reconvened the meeting.

**CONSIDERATION OF PROPOSED SETTLEMENT AGREEMENT IN  
HOSPITAL LAWSUIT PETER W. ACKER, ET AL VS. LINCOLN COUNTY  
BOARD OF COMMISSIONERS AS ITEM 19.**

Chairman Hallman read the following:

We have on our agenda today Item Number 19, consideration of a proposed settlement agreement in the lawsuit, ***Peter W. Acker and other vs. Lincoln County Board of Commissioners and others.***

As part of the settlement arrangement, it will be necessary for the Board to reconsider certain actions previously taken. Doing so will require a motion to suspend our Board rules to permit reconsideration of our votes on March 8 and 15, 1999, to appoint 11 new members to the Lincoln Health System Board of Directors and our votes on February 22 and March 8, 1999, to remove the 11 previously appointed members of the LHS Board who were serving on the Board up until February 22.

The Chair will entertain such a motion to suspend the rules for that purpose.

A motion by Commissioner Brotherton to suspend the rules for the purpose described.

Vote: 4 – 1 AYES: Hallman, Brotherton, Waters, Saine  
NOES: Gamble

Now that we have suspended our rules, the Chair will entertain a motion to reconsider the votes taken by this Board on March 8 and 15, 1999, to appoint 11 new members to the LHS Board of Directors and our votes on February 22 and March 8, 1999, to remove the 11 appointed directors who were serving up until February 22.

Commissioner Gamble read the following statement:

June 16, 1999

Today we are considering whether we will retain our own Lincoln County Hospital or whether we are falling victim to a plan to take away that legacy, something that I feel most established Lincoln Countians do not want taken away from them.

We have not definitively addressed nor corrected a single problem from the number of concerns, which caused the County Commission to take action in the first place.

All we seem to be doing is sitting still for a back door turnover to Carolinas Medical Group. Why have we gone through all this operation at all if we are now going to perpetuate the problems we had and acted on in the first place? Why would we put back in the driver's seat the persons against whom Mr. Jim Hallman and Mr. Stan Kiser filed counterclaims? Those of you who have not read the counter suit should read it to know those identified existing problems. Are these counter claims untrue? Or are we willing to accept those about whom these claims are true? Is this attempt to cancel the suit try to say that all those allegations are untrue?

We have no knowledge nor guarantees that we will know anything about the hospital's financial status. What are the accounts payable? The ages of the accounts payable? What are the accounts receivable? Have they been aged? Are they being collected? What is the hospital's cash position? We understand they now owe \$17.5 million. When this became a private non-profit there was a \$16 million surplus.

We will have no assurances that a joint venture in the East of the County will not be controlled by CMC or some other such entity. We (Lincoln County) should control our own center in East Lincoln.

Employees at LMC are not fairly treated nor, allegedly, are their funds for retirement, etc. properly treated or safeguarded.

The private doctors will have no protection from harassment nor from having their practices taken, replaced or stolen. As recently has been reported by local private physicians.

We should not discuss a settlement agreement until we have met face to face with the hospital boards and discuss this fully with definite understanding of outstanding questions in a joint meeting.... It appears that we are being railroaded, what's the hurry? If this goes through and we lose the hospital in a year or so, we will all be responsible and bear the shame including our political parties. Or maybe we don't care. We don't know why all the practices are being sold to CMC although recruited by LHS. It appears to be a method by which CMC will control the entire medical operation and we will no longer have a Lincoln County community hospital controlled by Lincoln County. If CMC controls all doctors practices, the East Lincoln, the East Lincoln facility controller is given first right of refusal to lease or purchase LMC – Lincoln County will have lost a Lincoln County Community hospital controlled by Lincoln County. If that transpires, as I believe it will, the Gambles will consider seeking their contribution to be returned along with interest because the hospital will no longer be a Lincoln County community hospital controlled by Lincoln County which was the understanding and original intent at the time of the gift.

A motion by Commissioner Brotherton to reconsider the vote taken for appointing new directors and removing old directors.

Commissioner Gamble stated that he is not opposed to the motion, but is opposed to acting on it on such short notice.

Vote: 4 – 1 AYES: Hallman, Brotherton, Saine, Waters  
NOES: Gamble

You have before you a proposed Resolution Rescinding the Appointment of New Directors to the Lincoln Health System Board of Directors. The Chair will entertain a motion to adopt this resolution.

**RESOLUTION RESCINDING APPOINTMENT OF  
NEW DIRECTORS TO  
LINCOLN HEALTH SYSTEM BOARD OF DIRECTORS**

**WHEREAS**, Lincoln Health System (LHS) is a nonprofit corporation organized and existing under the provisions of Chapter 55A of the North Carolina General Statutes, know and designated as the North Carolina Nonprofit Corporation Act; and

**WHEREAS**, the Articles of Incorporation of LHS provide that the corporation shall have a Board of Directors consisting of 15 persons, four of whom serve by virtue of their respective offices as County Manager, Chairman of the Board of Commissioners, President of the Medical Staff, and the President of the Corporation; and

**WHEREAS**, the Articles provide that the remaining 11 members of the Board of Directors are appointed by the Lincoln County Board of Commissioners from nominations made by the existing Board of Directors of LHS; and

**WHEREAS**, on February 22, 1999, the Board of Commissioners adopted a resolution removing the 11 appointees from the LHS Board of Directors and confirmed such removal by a further resolution adopted on March 15, 1999; and

**WHEREAS**, on March 8, 1999, the Board of Commissioners appointed 11 replacement directors to the LHS Board, to wit: Arthur Wilson, Betty Gamble, Milton Mosely, Eddie Faulkner, James W. Warren, Dr. Ali S. Mofrad, Tom Burgin, Louis McConnell, David Lowe, Dr. Claude Falls, and R.D. Fortenberry, and

**WHEREAS**, the Board of Commissioners confirmed the appointment of the aforesaid individuals by a further vote on March 15, 1999; and

**WHEREAS**, the Board of Commissioners, Lincoln Health System, Lincoln Medical Center, and individual parties affected by the action of the Board in adopting the aforesaid resolutions have reached agreement on settlement of the matters and things in dispute between them, a material term of which is that the Board of Commissioners adopt this resolution rescinding its actions appointing the aforesaid individuals as replacement members on the LHS Board of Directors;

**NOW, THEREFORE**, be it and it is hereby resolved as follows:

1. That the Lincoln County Board of Commissioners does hereby RESCIND its actions of March 8, 1999, and March 15, 1999, whereby it appointed the following individuals as directors of Lincoln Health System: Arthur Wilson, Betty Gamble, Milton Mosely, Eddie Faulkner, James W. Warren, Dr. Ali S. Mofrad, Tom Burgin, Louis McConnell, David Lowe, Dr. Claude Falls, and R.D. Fortenberry; and

2. That the Clerk to the Board of Commissioners is hereby directed to prepare and deliver or cause to be delivered any written notices of this action as may be required by any applicable laws, ordinances, or rules of either the Lincoln County Board of Commissioners or Lincoln Health System.

3. This resolution shall be effective immediately.  
This 23<sup>rd</sup> day of June, 1999.

LINCOLN COUNTY BOARD OF  
COMMISSIONERS

By: \_\_\_\_\_  
James A. Hallman  
Chairman

ATTEST:

\_\_\_\_\_  
Amy S. Long  
Clerk to the Board

A motion by Commissioner Brotherton to adopt the Resolution Rescinding Appointment of New Directors to Lincoln Health System Board of Directors.

Commissioner Gamble stated that he has one objection to all of this, how crummily we have treated those new directors we appointed in good faith. I don't believe one of them would have accepted that nomination unless they thought it was in good faith, and they would not just be used so

acquardly or crummily. I think this Board in the future ought to think seriously before naming anybody the Dogcatcher unless they feel like it is an upfront, out on the table, legitimate and honest offer, with no strings attached.

Chairman Hallman stated that he did not go into this with the intent of using anyone, or taking advantage of anyone. He stated that this is a situation, as it has developed, and he feels like this is an appropriate action to take.

Unanimously approved.

You have before you a proposed Resolution Rescinding the Removal of Lincoln Health System Directors. The Chair will entertain a motion to approve this resolution.

### **RESOLUTION RESCINDING REMOVAL OF LINCOLN HEALTH SYSTEM DIRECTORS**

**WHEREAS**, Lincoln Health System (LHS) is a nonprofit corporation organized and existing under the provisions of Chapter 55A of the North Carolina General Statutes, know and designated as the North Carolina Nonprofit Corporation Act; and

**WHEREAS**, the Articles of Incorporation of LHS provide that the corporation shall have a Board of Directors consisting of 15 persons, four of whom serve by virtue of their respective offices as County Manager, Chairman of the Board of Commissioners, President of the Medical Staff, and the President of the Corporation; and

**WHEREAS**, the Articles provide that the remaining 11 members of the Board of Directors are appointed by the Lincoln County Board of Commissioners from nominations made by the existing Board of Directors of LHS; and

**WHEREAS**, on February 22, 1999, the Board of Commissioners adopted a resolution removing the 11 appointees from the LHS Board of Directors and confirmed such removal by a further resolution adopted on March 15, 1999, and

**WHEREAS**, the Board of Commissioners, Lincoln Health System, Lincoln Medical Center, and individual parties affected by the actions of the Board of Commissioners are presently engaged in a legal action in Lincoln County Superior Court in which the various parties have asserted a number of claims

and counterclaims against each other and in support of their respective positions; and

**WHEREAS**, the Lincoln County Board of Commissioners, Lincoln Health System, Lincoln Medical Center, and individual parties affected by the action of the Board in adopting the aforesaid resolutions have reached agreement on settlement of the matters and things in dispute between them, a material term of which is that the Board of Commissioners adopt this resolution rescinding its action to remove the 11 previously appointed LHS Directors, to wit: James L. Perry; Gordon C. Crowell, M.D.; Beverly F. Smith; Martha Jayne Rhyne; Robert E. Tull; Hollis C. Henderson; Mary Frances White; David Bynum; James E. Burt; R.D. Fortenberry; and Dr. William Beutel.;

**NOW, THEREFORE**, be it and it is hereby resolved as follows:

1. That the Lincoln County Board of Commissioners does hereby RESCIND its resolutions of February 22, 1999, and March 15, 1999, removing the following appointed members of the Lincoln Health System Board of Directors, effective immediately: James L. Perry; Gordon C. Crowell, M.D.; Beverly F. Smith; Martha Jayne Rhyne; Robert E. Tull; Hollis C. Henderson; Mary Frances White; David Bynum; James E. Burt; R.D. Fortenberry; and Dr. William Beutel.

2. That the Clerk to the Board of Commissioners is hereby directed to prepare and deliver or cause to be delivered any written notices of this action as may be required by any applicable laws, ordinances, or rules of either the Lincoln County Board of Commissioners or Lincoln Health System.

3. This resolution shall be effective immediately.

This 23<sup>rd</sup> day of June, 1999.

LINCOLN COUNTY BOARD OF  
COMMISSIONERS

By: \_\_\_\_\_  
James A. Hallman  
Chairman

ATTEST:

\_\_\_\_\_  
Amy S. Long  
Clerk to the Board

A motion by Commissioner Brotherton to approve the Resolution Rescinding Removal of Lincoln Health System Directors.

Unanimously approved.

Commissioner Gamble requested that the names of the newly removed directors be read.

Commissioner Waters read the following list of names: Arthur Wilson, Betty Gamble, Milton Mosely, Eddie Faulkner, James W. Warren, Dr. Ali Mofrad, Tom Burgin, Louis McConnell, David Lowe, Dr. Claude Falls, and R. D. Fortenberry.

You have all seen a copy of the proposed Settlement Agreement, and you have before you a proposed Resolution to Adopt the Settlement Agreement. The Chair will entertain a motion to adopt this resolution and approve the settlement agreement.

### **RESOLUTION TO ADOPT SETTLEMENT AGREEMENT**

**WHEREAS**, the Lincoln County Board of Commissioners is presently engaged in certain litigation in the form of an action styled ***Peter W. Acker et al. vs. Lincoln County Board of Commissioners et al.***, Lincoln County Superior Court File 99-CVS-280; and

**WHEREAS**, the Lincoln County Board of Commissioners, Lincoln Health System, Inc., Lincoln Medical Center, Inc., and the individual plaintiffs to the aforesaid action have reached an agreement to resolve the matters and things in dispute between them and have proposed to memorialize the terms in a Settlement Agreement, a copy of which is attached hereto as Exhibit A and incorporated herein by reference; and

**WHEREAS**, the Lincoln County Board of Commissioners verily believes that the approval of this settlement is in the best interests of the citizens of Lincoln County and of Lincoln Medical Center;

**NOW, THEREFORE**, be it and it is hereby resolved that the Lincoln County Board of Commissioners approves and adopts the terms of the Settlement Agreement attached as Exhibit A hereto and authorizes the Chairman, the Clerk to the Board, and legal counsel, as the case may be, to execute all documents necessary to effectuate the terms of this Agreement. This resolution shall be effective immediately.

This 23<sup>rd</sup> day of June, 1999.

LINCOLN COUNTY BOARD OF  
COMMISSIONERS



By: \_\_\_\_\_  
James A. Hallman  
Chairman

ATTEST:

\_\_\_\_\_  
Amy S. Long  
Clerk to the Board

A motion by Commissioner Brotherton to approve the Resolution to Adopt the Settlement Agreement.

Unanimously approved.

Having approved these resolutions and concluded all the other business before us at this time, the Chair will entertain a motion to adjourn.

A motion by Commissioner Gamble to adjourn.  
Unanimously approved.