

University of Minnesota Flagship Healthcare Facilities

The central question in considering the proposed Fairview/Sanford merger is ensuring the nonprofit charitable assets that make up the University of Minnesota's flagship healthcare facilities are, and will continue to be, devoted to their restricted purpose of serving the public, land grant academic health mission of the University.

That question is not answered in dollars, but in terms of the mission to which Fairview has committed its resources - a mission that connects and restricts those facilities to the University's public, land grant mission.

Fairview Mission Entwined With U Mission

The following reflects the many ways in which the Fairview mission entwines with the healthcare mission of the University of Minnesota:

--- In 1997, Fairview became stewards of the University's facilities via a complex set of interrelated transactions that found Fairview accepting the opportunity to integrate its healthcare duties with the clinical service mission of UMP and the land grant mission of the University. Fairview's acceptance of this responsibility was evidenced through its revised mission statement and revised Bylaws tying its nonprofit mission to the University. That revised mission statement applies both to the East Bank facilities transferred by the University and to the West Bank facilities via contractual promises of Fairview to operate both campuses collectively as a "combined campus" for the University's health-related research, education, and patient care mission.

--- In 2018, Fairview renewed that commitment by forming a "joint" clinical enterprise, embedding University faculty physicians into the service lines throughout the Fairview system and adopting a corresponding brand of M Health Fairview in recognition of its commitment to the University's academic medicine mission.

--- University assets and University philanthropy built the East Bank facility, and since 1997, the University of Minnesota Foundation has received over \$130 million in philanthropic donations to support the flagship facilities, including over \$104 million for Masonic Children's Hospital. While Fairview has also invested in the flagship facilities, that point is irrelevant. The important legal and public policy point is that all resources invested in the flagship facilities – from public funds, from charitable donations, and from Fairview – become beholden to the restricted nature of the flagship facilities which is to support the public, land grant, academic healthcare mission of the University.

--- Fairview has benefitted from UMP physician and other related services since 1997, with that commitment of care generating over 47% of Fairview's revenue and over 70% of Fairview's contribution margin, even though the UMP payments from Fairview account for less than 10% of Fairview's \$6 billion in revenue. In other words, Fairview's finances are inseparable from the

ways UMP is involved throughout the Fairview system and the services of academic physicians are necessary for Fairview to remain solvent.

--- The entwined mission is also reflected in the Clinics and Surgery Center, a 50-50 joint venture providing specialty clinical care on the U of M campus which serves as the front door to UMMC.

University Land Grant, Constitutional Mission

A second, equally important governor is the public purpose embedded in the healthcare provided through the University of Minnesota flagship campus facilities. The University was founded in 1851 as a land grant university with a corresponding mission of teaching, service, and research. That mission is not only tied to the grant of land to the University via the Morrill Act of 1862, it is also embedded in the University Charter found in Chapter 3 of Minnesota's 1851 Territorial Laws, which was recognized by the Minnesota Constitution adopted in 1858. By entwining with the University land and mission, Fairview took on corresponding public commitments. Any effort to divorce the campus facilities from that mission or from control by Minnesota and its public university is contrary to their constitutional foundation.

Implications

The consequences of those two sets of public obligations are:

--- The transfer of the campus facilities to the University cannot be viewed like a commercial purchase-and-sale transaction. The University is reacquiring public facilities that must be devoted to the land grant mission of the University no matter who "owns" them. The issue is not "fair market value" but constitutional "public value".

--- While a general healthcare mission can conceivably be advanced by Sanford becoming the sole member of Fairview Health Services, *the University's land grant mission cannot be beholden to a Sioux Falls entity*. Exporting control over University healthcare and the campus facilities essential to providing it would be in conflict with the constitutional mission of the University and all of the public policies focused on Minnesota's control over its own public health future, including access and equity in healthcare.

--- The University cannot be viewed as simply a healthcare delivery system. The University is part of the State of Minnesota by constitutional design, and by acting in the interest of the public mission of the University, the legislature is also acting on its own responsibilities to entrust the future of Minnesota health care in a Minnesota public institution dedicated by its charter to teaching, research and service.

--- Support of teaching and research is not a diversion of revenue or a generous by-product of an economic enterprise. Teaching and research must be primary purposes of how the University's public facilities are employed. That charter mission cannot be handed to an out-of-state entity.

--- The Fairview/Sanford merger should not be allowed to proceed "with or without" the University. Any merger must rest on a publicly enforceable commitment to a set of principles that center around academic medicine and an affiliation that advances the land grant obligations of the University to all Minnesotans.

--- Public and charitable purpose is not defined or divisible by the dollars invested by Fairview versus those invested by the University. The issue is the mission to which those funds were tied when invested and that mission creates legal charitable restrictions under the Minnesota Nonprofit Corporations Act and Minnesota's charitable trust laws. Those laws must be respected and simply do not permit the proposed merger to move forward without the University.

--The University and its Medical School faculty devote their time and resources to the M Health Fairview mission and cannot let a for-profit mentality determine its priorities; likewise, by joining in the University's healthcare mission, Fairview takes on its public responsibilities and cannot now try to parse its contributions and take back what has been dedicated to its nonprofit charter mission tied to the University.

