

## MINERS' COLFAX MEDICAL CENTER

### SPECIAL MEETING OF THE BOARD OF TRUSTEES

#### Call to Order

The meeting of the Miners' Colfax Medical Center Board of Trustees was called to order by Chairman Roy Fernandez, on December 14, 2009 at 10:40 pm. The meeting was held in the Long Term Care Facility Conference Room located at 900 S. Sixth St. in Raton, New Mexico.

Members Present: Roy Fernandez, Chairman  
Randy Rubin, Vice Chairman  
Jenny Garcia, Sec/Treas  
Mike Colangelo

Members Absent: Robert Gordon, MD

Staff Present: Mike Carter, CEO  
Albino Martinez, CFO  
Pat Dierking, Care Management  
Margaret Ann Mattorano, LTC Administrator  
Betty Bowers, LTC, DON  
Fabian Quintana, Social Services

Henrietta Romero Recorder

Visitors Present: Danelle J. Smith, MCMC Legal Counsel  
Mary McFarland, Court Reporter  
Gary Alsup, Jones Legal Counsel  
Jerry Jones  
Jo Jones  
Janis Loverin  
Richard Loverin  
Brie Sherwin  
Rob Sherwin  
Gus Mascarenas  
Ernie Trujillo  
Fonda Davis, President MCMC Auxiliary  
Marlene Jenkins, Vice President MCMC Auxiliary

#### Correction/Approval of Agenda

*Motion:* After review of the December 14, 2009 agenda, Mr. Rubin moved to approve the agenda as presented. Mr. Colangelo seconded the motion. Voice vote was taken and all Board Members present voted in favor: Motion carried.

#### Recognition of Visitors & Visitors Forum

Chairman Fernandez recognized staff present. Visitors in attendance introduced themselves to the Board and stated their names for the record. Visitors present were: Danelle Smith, Legal Counsel for MCMC, Mary McFarland, Court Reporter, Gary Alsup, Legal Counsel for

Cecil "Zeke" Jones, Jerry Jones, son of Mr. Zeke Jones, Jo, Jones, wife of Mr. Jones, Janis Loverin, daughter of Mr. Jones, Richard Loverin, son-in law of Mr. Jones, Brie Sherwin, granddaughter of Mr. Jones, Rob Sherwin, husband of Brie Sherwin, Gus Mascarenas and, Ernie Trujillo, witnesses for Mr. Jones, Fonda Davis, MCMC Auxiliary President. Marlene Jenkins, MCMC Auxiliary Vice President.

### **Hospital Auxiliary Annual Report**

Fonda Davis, Auxiliary President and Marlene Jenkins, Auxiliary Vice President presented the MCMC Hospital Auxiliary Annual Report for October 1, 2008 to September 30, 2009. They informed the Board that all MCMC Hospital Auxiliary funds come from their Thrift Shop, the Hospital Gift Shop and memorial donations from the public.

Ms. Davis informed the Board that the Auxiliary purchased hospital equipment which included:

- Clock for patient rooms
- Linens for the Auxiliary House
- Rug for Atrium at hospital
- Patio furniture for LTC
- Lavonia Rohla Art work Atrium
- 25 bedside tables and 8 beds

The Board thanked the Auxiliary for the hard work they have done for MCMC.

### **Appeal for Cecil "Zeke" Jones**

Chairman Fernandez noted that the hearing will be a Hearing de Novo and will be recorded by Mary McFarland, Court Reporter.

Mr. Alsup introduced his two assistants, Brie and Rob Sherwin and informed the Board that he will be speaking on behalf of the Jones family.

Mr. Alsup informed the Board that on behalf of Zeke Jones, he would call Gus Mascarenas, Ernie Trujillo, Mr. Jerry Jones, Fabian Quintana, Pat Dierking and Betty Bowers, Long Term Care (LTC) Admitting Committee members.

Chairman Fernandez requested that all witnesses be sequestered.

Mr. Alsup was informed that he will not be allowed to ask the Board members questions.

Witnesses were excused from the hearing room..

In his opening statement, Mr. Alsup stated that his intent is to establish that Mr. Zeke Jones ("Jones") meets the criteria for admission to LTC based on section 6.1.2 of the MCMC NM Resident Miner Admission policy. He will focus on "and treatment plants" as Jones worked at a treatment plant. Mr. Alsup feels Jones also meets criteria relating to injury or illness based on a letter from Dr. Misbah Zmily, dated December 8, 2009, stating that Jones may have a medical condition directly caused from working at the mine.

Mr. Alsup stated that there are two issues that have to be proven regarding Jones meeting the requirements for admission to LTC as a miner:

- 1) Is Jones a "miner" and does he fall under the definition of a miner?
- 2) Does Jones have a disabling injury directly related to his work as a miner?

Documentation presented by Gary Alsup, legal counsel for Jones included

- 1) Letter from Mr. Carter, CEO, clarifying issues for Appeal (12/2/09)
- 2) Letter from LTC Admission Committee recommending admission (8/18/09)
- 3) Letter from Mr. Carter, CEO denying admission (9/15/09)
- 4) MCMC LTC Admission Criteria ("Miner") (8/28/09 Policy)
- 5) Letter from Paul A. Kastler re: Jones' work as a miner (6/11/09)
- 6) Letter from Jo Jones to LTC re: Jones' work as a miner at York Canyon (4/6/09)
- 7) Affidavit form Marcus Middleton re: Thad Middleton's admission to MCMC LTC Facility (12/9/09)
- 8) Letter from Jo Jones to LTC supporting Thad Middleton's Work history (10/17/09)
- 9) Letter from Nick Yaksich re: his work with Jones at York Canyon site (4/6/09)
- 10) Letter from Donald Segotta re: Jones' presence at the York Canyon site (4/3/09)
- 11) New Mexico AG Opinions clearly indicate that "Mine" includes all surface operations
- 12) Federal Laws that define "Mine" and "Miner"
- 13) MCMC LTC Medical Admissions Criteria (8/28/09)
- 14) NM Law State that miner must only be "Disabled"
- 15) Letter from Misbah Zmily, MD re: Jones' illness which may have resulted from his employment as a "miner" (12/11/09)
- 16) MCMC Nursing Assessment Screening admission to LTC
- 17) Peer-Reviewed Medical Journal Article - "Osteoarthritis and meniscus disorders of the knee as occupational diseases of miners." *Occup Environ Med* 2005; 62:567-575

Danelle Smith presented documentation regarding LEGAL AUTHORITY MINERS' COLFAX MEDICAL CENTER which included:

- 1) Section 23-3-1 NMSA 1978 Purpose of miners' hospital; admission & maintenance of patients.
- 2) 1915 Attorney General opinion
- 3) 1962 Attorney General opinion
- 4) October 26, 1971 Attorney General letter regarding the definition of a "miner"
- 5) September 28, 1988 Attorney General letter regarding the definition of a "miner"
- 6) Foreman v. Director of Office of Workers Compensation case cited by 1988 AG letter.
- 7) Policy in effect at the time of this admission request
- 8) Definition in NMAC 19.7.17- NM Mining regulations

At 11:31am Ernie Trujillo was called in as a witness. After being sworn in, questions were presented by Mr. Alsup, Danelle Smith and Board members. Mr. Trujillo was excused at 12:14pm.

Chairman Fernandez recessed the meeting at 12:15pm

The meeting reconvened at 12:24pm.

At 12:25pm Augustine "Gus" Mascarenas Jr. was called in as a witness. After being sworn in, questions were presented by Mr. Alsup, Ms. Smith and Board members present. Mr. Mascarenas was excused at 12:45pm.

The Board recessed for lunch at 12:46pm.

The meeting reconvened at 1:09pm.

Pat Dierking, RN, was called as a witness at 1:10pm. After being sworn in, questions were presented regarding the process utilized by the LTC Admitting Committee to determine miner eligibility by Mr. Alsup, Ms. Smith and Board members. Ms Dierking was excused at 1:34pm.

Betty Bowers, RN was called as a witness at 1:35 pm. After being sworn in, questions were presented regarding the process utilized by the LTC Admitting Committee to determine miner eligibility by Mr. Alsup, Ms. Smith and Board members present. Ms. Bowers was excused at 2:13pm.

Mr. Alsup wanted to go on record stating that the Board states that Mr. Zeke Jones did not participate in moving a wash plant, whereas the first witness, Mr. Trujillo, stated that Mr. Jones helped move the wash plant. Mr. Alsup stated that he feels that the Board is biased in their opinion regarding Mr. Zeke Jones.

Chairman Fernandez stated for the record that the Board is not biased but is trying to clarify whether Mr. Zeke Jones qualifies as a miner.

Jerry Lyle Jones was called as a witness at 2:14pm. After being sworn in, questions were presented by Mr. Alsup, Ms. Smith and Board members present. Mr. Jerry Jones was excused at 2:24pm.

It was requested that the documentation presented by Mr. Alsup be part of the record. It was further requested that the information presented by Ms. Smith also be included in the record.

The Board recessed at 2:25pm.

The meeting reconvene at 2:30pm.

Mike Carter, CEO was called as a witness at 2:31pm. After being sworn in, questions were presented by Mr. Alsup, Ms. Smith and Board members. Mr. Carter was excused at 2:40pm.

Mr. Alsup commenced his closing argument at 2:41pm.

Danelle Smith commenced her closing argument at 3:01pm.

### **Executive Session**


*Motion:* Mr. Rubin moved to go into Executive Session at 3:10 pm pursuant to Section 10-15-1(H)(9) for the purpose of strategic planning of the Open Meetings Act. Ms. Garcia seconded the motion. Roll call vote was taken; all Board members present voted in favor, and the motion carried.

**Open Session /Announcements**

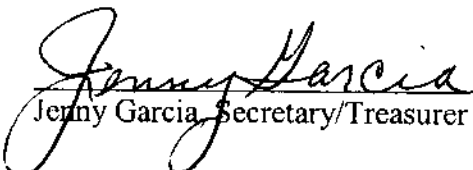
The Board of Trustees returned to Open Session at 3:40pm. The Chairman announced that no decision would be made on the appeal at this time. The Board will take a maximum of 45 days to make their final decision.

With no further business to discuss, Mr. Rubin moved to adjourn, with a second from Mr. Colangelo. The Board meeting adjourned at 3:45pm.

**Attest**

  
\_\_\_\_\_  
Roy Fernandez, Chairman

1-22-10  
Date

  
\_\_\_\_\_  
Jenny Garcia, Secretary/Treasurer

1-22-10  
Date