

**BOARD OF DIRECTORS  
REGULAR MEETING  
March 24, 2011**

**1. CALL TO ORDER:**

**Chair Ulliyot** called the meeting to order at 17:47 hours at the Burlingame Council Chambers, 501 Primrose, Burlingame.

**2. ROLL CALL:**

On roll call there were present Dan Ulliyot, MD, Chair, Rick Navarro, MD, Vice-Chair, Helen Galligan, RN, Secretary, Lawrence Cappel, PhD, Treasurer, and Don Newman, MD, past Chair. Also present were: Cheryl Fama, Chief Executive Officer, Kelly Molloy, District Community Outreach Coordinator.

**3. CONSENT CALENDAR:** The Consent Calendar consisting of the Regular Session minutes for February 24, 2011 and the unaudited financials for February 28 were presented.

***DIRECTOR NEWMAN MOVED AND DIRECTOR GALLIGAN SECONDED THE MOTION TO APPROVE THE CONSENT CALENDAR AS PRESENTED. THE MOTION CARRIED UNANIMOUSLY.***

**4. ORAL COMMUNICATIONS:**

**Pat Giorni, Burlingame:** Due to a conflicting meeting schedule, Ms. Giorni submitted written questions to be presented when the agenda item on Paramount Default was discussed. **Chair Ulliyot** took the questions and agreed to present them at that time.

**Luciana Kincer, San Mateo, RN** from Peninsula stated the pediatric training at MPHS is inadequate and therefore pediatric surgeries should be stopped. She gave as an example a recent 12-year old patient who had surgery, went to ICU post op, and ended up staying for two weeks in ICU. She stated this was an inappropriate level of care for the patient and very difficult for the nurses. She asked what Mills-Peninsula has done to inform the community that there is no longer pediatrics at the hospital. She then commented on the "poor quality reputation" of DeVita, the company who will now be operating dialysis for MPHS; and, she asked what the plan is to treat the high acuity patients now treated in the MPHS Skilled Nursing facility when this program is sold to an outside operator. **Chair Ulliyot** asked Ms. Gomez to respond during her presentation if she cared to.

**Supervisor Horsley, San Mateo County Supervisor,** thanked the Board for the opportunity to speak. He stated he received a memo from CEO Fama stating the District was looking for input on needs and having been a former member of a healthcare district, he knows how important health care districts are to the County and specifically the health and wellness of our community. He addressed two needs: affordable assisted living and mental health/substance abuse treatment. He requested the Board consider these during their strategic planning session. **Chair Ulliyot** thanked Supervisor Horsley and said the Board will certainly be discussing those issues.

**5. COMMUNITY EDUCATION:**

**A. "The Move and Beyond: Update on Behavioral Health Services at MPHS"**

**Director Newman** introduced **Dr. Dan Becker, Medical Director**, Behavioral Health Services, MPHS

**Dr. Becker'** presentation covered the December move into new facilities at the Mills campus and the services currently offered by MPHS.

Over twenty in-patients were moved in eight hours through the use of ambulances. It was a safe and efficient move. The new facility was a \$20M project that included a full gut and remodel of the third floor of the main building at Mills that houses the mental health inpatients units, and a less extensive upgrade to the fifth floor, which houses the chemically-dependent in-patient unit, as well as, some administrative support space. The Behavioral Health Program services include mental health inpatient programs with 26 adult beds and 13 adolescent beds in locked facilities. There is also an in-patient chemical dependency unit of 13 beds and large area for out-patients. That represents an increase of approximately 30% more beds than at the previous Peninsula Campus and a significant improvement for the health of the community. Out-patient programs treat seniors, adults and adolescents. There is also a full range of care for chemical dependency treatment for adults. With all services in one facility there is more program and staff flexibility.

Additional in-patient beds also mean fewer diversions from the Emergency Department. The adolescent inpatient unit is particularly important right now given the recent adolescent suicide cluster in Palo Alto. This highlighted the high levels of teenage depression and the need to have a broad range of services. This is the biggest area of focus for expansion.

He stated he sees great support from the County, the hospital, and the broader community --including this Board, who has always had a keen interest in mental health issues and has allowed us as a community to keep going forward.

**Chair Ulliyot** asked if there was any downside to being located a couple miles away from the inpatient hospital for inpatient services in psychiatry. **Dr. Becker:** Yes, there is a downside. A lot of patients have medical illnesses along with psychiatric illnesses. It is now more cumbersome to move patients between services. In order to ensure the same quality of care we focused on the medical care at both sites. Nursing supervisors are now dedicated to the Mills facility, which was not so before; all are ACLS certified and have medical and psychiatric backgrounds. They serve as an onsite resource to guide assessments and triage patients appropriately. There are also two hospitalists who are there every day and are available 24/7 by pager. Also added to the team are one full-time and one part-time clinical nurse specialist who are specialized in psychiatry and see every patient with co-morbidities every day, seven days a week.

**Luciana Kincer**, San Mateo asked how the Peninsula PEF is being covered now that most of the psychiatrists' practices are located at the Mills campus. **Dr. Becker:** Nothing has changed; the exact same protocols are used that have been used for the past 16 years. ER physician intervention is usually required to ensure the patient is medically stable for either admission to a psychiatric unit or transferred to another psychiatric facility; and to ensure there is no underlying neurologic process that is significant enough to warrant change in mental status. Patients are medically screened through the emergency department just like every other patient; the staff then consults a psychiatrist. If a psychiatrist needs to come see the patient they will. I think I have seen patients at least a dozen times since we moved.

Chair Ulliyot thanked Dr. Becker for his presentation.

**COMMUNITY EDUCATION continued:**

**B. "MPHS Quarterly Performance Report " Dolores Gomez, Chief Operating Officer, MPHS**

Ms. Gomez presented a power point presentation that is appended to and made part of these minutes. She discussed:

- Preparation for the hospital opening
  - Move team practice sessions scheduled for May 5<sup>th</sup>; on opening day, two fully trained teams will move a patient every six minutes.
  - March 30 will be a reception for physicians.
  - March 31 will be an open house for community chambers of commerce and Rotary Clubs.
  - April 9 will be the employee and auxiliary family day; that will also be the ribbon cutting
  - April 30 will be the community event with self-guided tours.
- Facility design: The new hospital was selected for the 2011 Healthcare Facilities Symposium and expo in Chicago.
- The Surgeon General visited on March 15. Dr. Regina Benjamin was invited by the African American Community Health Advisory Committee to discuss the successful partnership with private and public sectors in addressing health disparities in our community. Over 250 participants attended.
- DaVita was chosen to take over dialysis through an RFP process; they will start June 1. A lot of due diligence was carried out to make sure that their quality of care was consistent with MPHS history and expectations.
- The SNF RFP process is underway. A number of vendors responded and responses were specific in terms of ability to provide the same level of service and quality that the current SNF provides. A number of physicians and management staff have toured the facilities of the vendors that we are looking at very closely. Physicians have been very much involved in the process of both the renal dialysis sale and the SNF sale.
- The electronic health record celebrated its 2<sup>nd</sup> year anniversary at the end of next week, April 1. .

Chair Ulliyot asked with DaVita coming in, is it the same relationship with the nephrologists as it was before? Do they have their own nephrology staff? Ms. Gomez said they typically use the nephrologists in the community. In terms of the medical directorship, that is something that DaVita is looking at. Dr. Jain, the current Medical Director, has been extremely involved in this whole process and she has had her own conversations with DaVita.

Chair Ulliyot thanked Ms. Gomez for her presentation.

**6. COMMITTEE REPORTS:**

**LONG TERM PLANNING: Director Ulliyot, Chair:**

Committee met March 22<sup>nd</sup>; discussion focused on paramount default and this will be shared later in this meeting.

**SUTTER OVERSIGHT/BUILDING COMMITTEE: Director Newman, Chair**

Director Newman noted that the Building Committee report was covered by Ms. Gomez's report.

**COMMUNITY HEALTH INVESTMENT, Director Galligan, Chair**

No meeting; nothing new to report.

**7. CEO REPORT, Cheryl Fama:**

**A. Update on Aegis Assisted Living/Memory Care Discussions:**

Discussions with Aegis continue with the goal of having proposed partnership terms ready to present at the April or May meeting of the Board.

**B. Red Cross Recovery & Resource Center**

The official ribbon cutting and opening of the Center is scheduled for March 29<sup>th</sup>. The District's special gift of \$100,000 made the Center possible. It is going to provide ongoing services to the San Bruno residents that were impacted by the pipeline disaster. It is anticipated that the Center services will be needed for 2-3 years. The facility has a large conference room which is available for District use as well; therefore to help kick off the center, the District Board's April Board meeting has been scheduled in San Bruno at the Center.

**Chair Ulliyot** said parenthetically that is the one part of our District where we didn't have a place to go and now we have this beach head – this is excellent.

**C. County Tsunami Warning**

The County Warning document was included in the packet for information only.

**D. Community Activities**

- March was focused on researching senior housing and assisted living providers.
- March 9 the CEO served as "Principal of the Day" at Spring Valley School in Millbrae.
- March 23 the CEO participated in Skyline College's Career Networking Event by serving on a panel discussing careers in medicine and healthcare.

**8. OLD BUSINESS:**

**A. Paramount Default: Discussion of obligations per Master Agreement and Chair's Perspective on Risk and Implications for Planning**

**Chair Ulliyot** introduced the topic noting that assessing the risk and preparing for the possibility of paramount default has been a vexing problem ever since the agreements were ratified with Measure V. In the 2006-2007 District strategic planning process, and with the assistance of financial experts, assumptions were made and projections established that set growth targets for the Board's reserve funds in order to be positioned to buy the hospital back from Sutter at the end of the 50-year lease. The other important aspect was paramount default. If, for any reason, Sutter walked away, the District Board has the right of first refusal to either sue Sutter or to terminate the agreements. If the agreements are terminated the District would need to buy the hospital. If Sutter chose to walk away early into the 50-year lease, the amount of funds needed to buy the new hospital would be prohibitive for the District. One approach that has been researched is to get an insurance policy for paramount default; such a policy would be expensive and not practical. **Chair Ulliyot** introduced **Mike Peterson** from Archer Norris. Mr. Peterson has consulted with the Board on real estate issues and is experienced in complex deals. He interpreted some of the provisions of the agreements to help understand this issue.

**Summary of Mr. Peterson's presentation** (Power point slides appended to and made part of these minutes.):

- The District has two choices of remedies: 1) pursue for direct damages caused by the paramount default; and, given the nature of paramount defaults, that is probably not the best remedy. 2) Terminate the agreement -the ground lease and definitive agreements- and when that happens the

District will have to fund the hospital, both the netbook value of posted assets and fair market value, basically the rest of the hospital assets.

- What are the strategic considerations of when to terminate the agreement?
  - The agreement allows the District to set a termination date. Theoretically, the Board could set the termination date up to a year out. There are good reasons to try to set the termination date out as far as is reasonable or is as possible:
    - The obligation to pay is due one year after the termination date, not the date of the paramount default.
    - The logistical issues involved with the transfer of the operations of a hospital are complex and many and include IT systems, managed care contracts, business office functions, transfer of employees (contract, benefits, pensions, etc.), and existing or third party claims that arise after the transfer, but are related to pre-transfer problems or issues with the hospital.

**Chair Ulliyot** asked what the situation would be if the District bought the hospital in 60 years and got a new operator, would these problems fall to the new operator? **Mr. Peterson** responded yes, the operator would certainly help with some of these issues, but there would still be incredible logistical challenges.

**Mr. Coffey** added this was not totally ignored by strategic financial expert, Keith Hearle, and the advice he provided the Board. He not only did estimates on the buy-outs at various stages of the lease, but he also factored in operational costs on transfer because the accounts receivable are going to go with Sutter. The Board Reserve targets that were set have those costs built into them.

**Director Newman** asked about the status of the Marin transfer? **Mr. Peterson:** It is complete, and it is noteworthy that their structure was different. The same corporation that ran the hospital pre-transfer ran it post transfer, the Marin District is now just a parent of the hospital organization. It is a slightly different scenario with paramount default where PHCD would be acquiring assets and not the corporation itself. PHCD won't become the parent of MPHS on paramount default; it becomes the operator of the hospital and its assets, so it is different than in Marin. Yes, the operation of the hospital has transferred it is surviving and doing fine.

**Chair Ulliyot** noted the paper he wrote entitled "Paramount Default – the Chair's Perspective", copies were distributed in the Board materials and made available to the public. In this, he points out that while Sutter is a very strong company, the Board must accept the uncertainty of the District's ability to buy the hospital in the event of a paramount default. If a paramount default occurred tomorrow, the District would come up about \$400M short of what would be needed. This shows that even though this is extremely unlikely, the cost early on in the ground lease would be huge. Over time, the District's position will strengthen as its assets accumulate and the hospital depreciates in value. It appears, given the formidable obstacles in obtaining a default insurance policy; the Board should abandon the quest for such policy. The District therefore must make no mistake in understanding its impotence in the event of an early paramount default and take comfort in the overall strength of Sutter to avoid a paramount default and continue to accumulate assets in realistic expectation of purchasing the hospital from Sutter at least 50 years from now.

**Mr. Peterson** commented that it makes sense to monitor the success of MPHS in their new facility and Sutter in general because the nature of the paramount default is such that you are not going to wake up one morning and be surprised by the notice of a paramount default.

**Director Navarro** asked about the District hospital in Contra Costa which was quite sanguine about having Tenent as a partner and they ended up in a very bad situation. Do you know how much lead time they had? **Mr. Peterson:** They had six months. **Mr. Coffey** said six months formal notice was given, but there were indicators that it was going to happen about a year ahead. Six months ahead of formal notice, an operational team of experts was established and a financing mechanism was structured. Tenent left 19 hospitals around the state with not much more than a year's notice. **Director Navarro** said, part of that year they had a very sound financial partner. **Mr. Coffey** said that is correct, with a 30 year lease.

**Chair Ulliyot** then presented Ms. Giorni's questions from Oral Communications:

1. *Although we are told otherwise, it appears that services which the public assumes are core services are being whittled away from both Mills and Peninsula hospital venues. Therefore, can the District call for termination of the contract if it is unsatisfied w/MPHS/Sutter Health's performance? If so, what are the ramifications to the District?* **Chair Ulliyot:** There are a set of core services in the agreement that if they were to renege on we would try to mediate it. **Mr. Peterson:** He was unsure if maintenance of the core services provisions in the Master Agreement rises to the level of paramount default that would then give the Board a termination remedy.
2. *In the event MPHS/Sutter Health wants to break the lease agreement and the District is able to buy back the Peninsula Hospital at book value, is Mills Hospital and its adjacent Medical Arts Building part of that acquisition?* **Chair Ulliyot:** No.
3. *In the event the District is unable to buy back the Peninsula Hospital in the event of a paramount default, will the District have any say in how the new owners provide services? Or does the District simply become a landlord?* **Chair Ulliyot:** It would be my assumption that if we can't pony up the money and somebody else buys it and they turn out to be not a very good operator; we don't have a lot to say except that they have to pay us rent as the owner of the dirt. **Mr. Peterson** said if you are talking about Sutter bringing in a third party and says we want to assign the agreements, lock, stock and barrel to this third party they can't do that without the District's consent. If the District refuses that consent they cannot make that assignment. As part of that process, when it refuses that assignment, it must then tell MPHS that the District wants to buy the facility. MPHS then has to withdraw its requested assignment and the District would be back to where it started. If it doesn't withdraw then again, the District is obligated within the agreement to buy the hospital. **Chair Ulliyot** commented if we actually have a paramount default and termination date, but can't afford to buy the hospital then MPHS can pick anyone they want, so their bond holders get paid off and somebody else runs the hospital and we get very little control is that correct? **Mr. Peterson** said the obligation to buy includes providing adequate security for the obligation. The agreements don't specify what happens if the District chooses the remedy of terminating the agreement and purchasing the hospital, but can't fulfill the obligation of providing adequate security for the financial obligation one year down the road. It is unclear as to what MPHS's remedy would be if this were the case.

**Director Newman** said, if we decide to buy the hospital at the point of default, don't have the money – can we buy the hospital anyway and have the money paid out over a period of years? Or, do we have to come up with the money all at one time? **Mr. Peterson:** The payments are all cash in one year with interest accruing on the amount owed. **Director Newman:** Unless we could find a financial partner. So, theoretically, we do have some options? **Mr. Peterson:** The District would have to provide MPHS, on the termination day, security adequate to meet the obligation and make the payment in a year. The security

is unspecified and it may be that the District does have non-liquid assets to make a pledge or could have another partner come in. The District could choose to buy the hospital and work out a deal with someone to come in and finance the deal in the year allowed from termination. That was part of the reason for granting that grace period.

**Mr. Coffey** reiterated with emphasis that during the course of the 2006-2007 strategic planning process, two separate sets of financial consultants confirmed that the Board's finance policy supported a very viable remedy -- that through a combination of cash and bond funding, and with a year's timeframe, it would be possible for the District to pursue the purchase of the hospital. The District has had to respond to questions about Board reserves from the community repeatedly; and that is why this topic is being fully revisited and discussed now as the Board is engaging in strategic planning for the next five years.

4. *Will the current ground lease remain in effect if Peninsula Hospital is sold to another entity, or must it be re-negotiated?* **Mr. Peterson:** MPHS can't reassign the ground lease without our consent. They could sell the rights to the hospital without the District consent.

**Chair Ulliot** thanked Mr. Peterson for his presentation.

#### **B. Director's and Officer's Insurance**

**Ms. Fama** reported that the Peninsula Guardian's lawsuit has now been filed with the carrier. Also, multiple competitive bids have been solicited and a recommendation will be presented at the April Board meeting concerning the Board's D&O coverage renewal.

#### **C. CEO Performance Goals for 2011 – Revised per 2/24/11 Board Discussion**

At the request of the **Chair**, **Ms. Fama** commented on the changes that incorporated Director input from the last meeting. No further comments were offered by the Directors.

**Public Comment:** None were offered.

***DIRECTOR NEWMAN MOVED AND DIRECTOR NAVARRO SECONDED THE MOTION TO APPROVE THE REVISED CEO PERFORMANCE GOALS AS PRESENTED. THE MOTION CARRIED UNANIMOUSLY.***

### **9. NEW BUSINESS**

#### **A. Strategic Plan 2011 – 2016 – Presentation of Interim Report** (Appended to and part of minutes.)

**Chair Ulliot** introduced Emily Hall, President, Olive Grove Consulting

**Ms. Hall** stated the objective for the presentation was to summarize planning activities to date and to share the resulting themes and findings. Tonight's Director and community feedback will be incorporated into a draft plan for discussion at the Board's retreat, April 8. The presentation covered:

- Why is the District planning
- The process to date
- Themes coming out of research that should define the "next chapter"
- A review of the operating environment
- An assessment of District's strengths, risks and challenges
- Vision and values
- Key strategic issues and next steps

The plan for the Board's retreat is to discuss a ten-year vision, reflect on the mission and values, and identify priorities. In May and June a draft plan will be presented to review in detail before final revision, presentation, and adoption.

**Director Cappel** said he was looking forward to the process and felt it was important. He feels the District is in a very important time in its evolution highlighted by the negative impact of the State's position on "obligatory health services" and its increasing difficulty in providing those services causing some of the provision of those services to fall on the District and other entities.

**Chair Ulliyot** noted the obvious and major change. On May 15<sup>th</sup>, the District will no longer own the hospital serving its residents. There is also a change in the structure of Sutter. Instead of having 28 affiliates interacting with management, they have gone to a regional structure which removes MPHS leadership one step away from being right next door? There is a very dynamic and changing health policy environment. The Affordable Care Act of 2010 and all of its implications require that we serve the public by keeping on top of that and inform people about the implications of those changes. "I, too, very much look forward to the process".

**PUBLIC COMMENT:**

**Dr. Susan Erlich, CEO of San Mateo Medical Center** referenced the Board's vision and noted that these are the most challenging times for residents in this community. Over the last two to three years the number of people eligible for County healthcare coverage went from 10K to 25K people at the same time the resources available to provide those services have gone way down. It is a very challenging time and it is a good time to join with us and join with the other health players in the community to invest in the community even more. I want to be a resource to you and help bring the resources to you in your planning and really look forward to partnering with you to serving the health needs of the community.

**Chair Ulliyot** responded by inviting Dr. Erlich to the Planning Retreat.

**Srija Srinivasan, San Mateo Health System** stated that she appreciated the review of the plan and noted that we know much more about what it takes to influence health over the long term. She urged the Board to work with others in the pursuit of the District's vision. She cited the success of the Children's Health Initiative of which the District has been a major supporter. Since its launching in 2003, the county has gone from 17K low income, uninsured children to 2K. No one entity could have done it alone and it could not have been done without this District. All of us at the County are proud of our partnerships and accomplishments and we want to be a resource to you. **Chair Ulliyot** thanked Ms. Srinivasan

**Maya Altman, CEO of the Health Plan of San Mateo** thanked the Board for the funding support for CHI-- especially increasing the funding this year. The Health Plan has about 96K members and that is a high percentage of the County's population. The Health Plan of San Mateo is a public insurance plan created by the County in 1987 to provide services for people on Medicaid. She reiterated the previous two speakers' comments, these are very difficult times and they are getting worse. The Governor has signed legislation implementing many of the cuts and they are dreadful cuts: a 2% Medi-Cal provider cut, steep co-pays for people on Medi-Cal, physician caps on the number of visits per year, and complete decimation of the adult day health care program. The hit to the Health Plan is about \$3M. Dr. Erlich talked about the growth in needs; it is astounding how many more people are now seeking services from the County. We need to work smarter and again the CHI is a great example of where all parts of the community, public and private, came together to figure out a system-wide approach. We need to think of ourselves as a system and all the money that the District collects is match-able; your investments have the potential to bring in more Federal resources into this community. Also, you have the opportunity to leverage more in housing because there is seed funding in housing. We are trying to keep people out of institutions and what we need is housing. We have a shortage of affordable housing in this community. I think there are a lot of possible initiatives and we need to get some smart financial people together and

figure out ways where we can work smarter as a health system to get through this really challenging time. **Chair Ulliyot** asked Ms. Fama to follow up on the idea of matching.

**Mr. Robert Hortop**, VP, MPHS: In your strategic planning presentation you identified several strategic questions; one of them was “a healthy tension”; I am concerned about what I would describe as the unhealthy tension. Over the next few months and years we have very real concerns for the community. The tension seems to be between your objective of compiling funds to buy the new hospital in the event of a catastrophe vs. providing support to the community in an environment where we have an increasingly desperate need for care for people. The concern that I have as a citizen, not speaking as a representative of MPHS, is that we live in a community where funding for needed programs is at a desperate state. This organization enjoys a fairly healthy degree of latitude relative to the problems that the County faces, relative to many of the agencies you have provided support for and I would like to acknowledge you have been very generous in providing support to many programs. I would suggest that you have a challenge before you as you go forth in your strategic plan, to try to balance this tension between your plan that was described earlier and for this very real, desperate need in this community. I was invited to participate and would like to help in any way possible. **Chair Ulliyot** stated Mr. Hortop’s comments were very well said.

**Director Newman** responded: The money we are putting away is a scrim source of income to us so that we can increase the amount of money we provide to the community. It isn’t a question of “either-or”; it is a question of both. The more money we put away, the more money we can give away. Unfortunately we are in trouble now as a country because a lot of people didn’t think of that -including our bankers and our financial planners. The Board will give away as much as it possibly can. He pointed out that the Board has never turned down County or the hospital requests for financial aid support. It is not a source of tension; it is a source of revenue that we are guaranteeing to this community. The Board is also asked to guarantee that the hospital never go away, and unfortunately someone has to provide for that. We do not want to walk away from all of those responsibilities. It is not an either-or at all. **Mr. Hortop** responded he would love the opportunity to work with the Board to address these issues; further discussions would help. **Director Newman** responded “Okay”, and added that you can never speak as a citizen when you work for an organization. That organization is in your unconscious.” **Chair Ulliyot** thanked Mr. Hortop for his comments.

#### **B. Reportable Actions from Closed Session, 3/24/11**

**Chair Ulliyot** stated the District has ongoing negotiations with Aegis to build and operate an assisted care facility on District land. The District also has ongoing negotiations with Vibra to build an acute rehab facility on District land. The Board is pursuing three properties which are now in escrow: 1720 Marco Polo, 1740 Marco Polo and 430 No. El Camino, San Mateo. **Director Navarro** pointed out that he feels those real estate investments will probably do better than the investments the District had in Lehmann Brothers.

**ADJOURNMENT:**

There being no further business, the meeting was adjourned by Chair Ulliyot at 19:46 hours.

**By:**

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**Kelly Molloy, Community Outreach Coordinator**

**Approved:**

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**Helen C. Galligan, Secretary**

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**Daniel J. Ulliyot, M.D., Chair**