



# COUNTY OF BERNALILLO

Wayne Johnson  
COUNTY COMMISSIONER  
DISTRICT 5

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## **Commissioner Johnson's Response to UNMH**

From an email to Dr. Paul Roth dated February 26, 2013:

Dr. Roth,

First off, as you indicated in your previous communication I do owe you and UNMH an apology. I was incorrect regarding the timeline of the current 6.4 mills. As Mr. McKernan stated in his rebuttal, the current rate was indeed imposed in 2000. It then rose to 6.5 from 2001 through 2008 and was reduced to 6.4 mills from 2009 to the present. I also implied that the governance structure had significantly changed from 1978 to 1999. That is also incorrect. I stand corrected and apologize for any impression that my inaccuracies created. However, I stand by the basic premise of my Op/Ed and disagree with many of the points of your rebuttal.

My research for the Op/Ed included the leases and MOUs between UNMH and the county, the University of New Mexico Health Sciences Center Master Plan of 2010 and the revised edition of 2011, and a study conducted by the Urban Land Institute sponsored by the Sandia Foundation and the Lobo Development Corporation. All of the information contained in the Op/Ed can be found in those materials and any quotes were taken directly from the documents in question.

### **Item 1**

UNMH receives \$90 million out of its total revenues of \$780 million, or 12% of its total revenue from the County, the remaining funding comes from Medicare, Medicaid and private insurance, like all other Hospitals. UNMH provided \$149 million in uncompensated care to the residents of Bernalillo County during that same period of time period; bring \$59 million of Value to the Bernalillo County

### **Response**

While it is technically accurate to state that UNMH brings \$59 million of value to the county, it's also misleading. Bernalillo County is not the only source of funding for uncompensated care. In light of these other revenue sources, how much of the \$149 million burden should be borne by Bernalillo County?

### **Item 2**

UNMH has prudently saved funds during the past 6 years to be able to expand access and initiate the replacement of facilities that are 60 years old. The total replacement of the adult hospital is expected to take 15 to 20 years. The total build out of the facility would be approximately 2.5 million square feet including all clinics. The 96 bed expansion project is projected at 250,000 square feet.

## **Response**

The comingling of funds - whether required by statute or not – tends to obscure how funds are being used. Therefore it's fair to say that Bernalillo County taxpayers have made a significant contribution to UNMH's capital plans. At the very least, those tax dollars freed up resources that made possible the "prudent" savings described by Mr. McKernan.

UNMH's Master Plan 3,433,589 sq. ft. in the Hospital district alone. Mr. McKernan claims in the rebuttal that the "total build out of the facility would be approximately 2.5 million square feet including all clinics." According to your Master Plan, the Clinic District includes another 1,215,229 square feet. Also, Mr. McKernan's rebuttal appears to exclude both the supporting infrastructure and the entire Clinic District and its supporting infrastructure. You can't exclude things like parking structures, circulation and even open space as they all have a cost associated with them. Even at a modest \$150 a square foot, that works out to \$697,322,700. I would also be willing to bet that this plan costs considerably more than \$150 per square foot. The Master Plan itself includes another 2.6 million sq. ft. in two additional districts for Education/Research and Mixed Use. The 2011 Urban Land Use study estimates the total build out at \$1.5 billion (page 19).

## **Item 3**

The mil levy support that UNMH receives from the taxpayers of Bernalillo County was most recently placed on the ballot by the Bernalillo County Commission in 2008 after a unanimous vote of the Commission in August 2008 and included in a Memorandum of Understanding between the Bernalillo County Commission and the Regents of UNM that reaffirmed the relationship between UNM and Bernalillo County. The mil levy support was designated on the maintenance of the hospital. This is consistent with the state statute, the New Mexico Hospital Funding Act, 4-48B, which authorizes mil levy.

## **Response**

No matter how much process the UNMH provides, the entity (Bernalillo County) with the responsibility to care for and steward the tax dollars under its authority is almost completely excluded. Two appointed members on an unelected board of nine that is subordinate to another unelected board who is likewise subordinate to the Board of Regents, yet another unelected board is hardly representation. I don't believe the voters of Bernalillo County elected their representatives to out-source their responsibility to oversee \$90 million of their tax dollars.

## **Item 4**

UNM Hospital is a public entity under the authority of the Regents of the University. UNMH has a Board of Trustees to provide governance for the hospital, as is required under New Mexico State statute. The Board meets on a monthly basis and is subject to the New Mexico Open Meetings Act. It publicly advertises its meeting and agenda on its web site and in the newspaper. UNMH posts its Board minutes

on its web site along with presentations for its meetings. The actions of the Board are reviewed and for many items like budgets and capital projects, approved by the Regents.

The County Commission appoints two of the UNMH Board of members. One of the County Commissioners is appointed as an Ex Officio member of the Board, without vote, receives all materials, attends the meetings and provides input as other Board members. UNMH sends its annual financial audit and its annual budget to Bernalillo County.

The County has requested and the UNMH administrator attends regularly scheduled meetings of the Bernalillo County Commission on a quarterly basis and provides reports to the Commission in the format and with the content that the Commission has requested. These reports are posted on the UNMH website.

### **Response**

None of the boards that approved the Consolidated Master Plan were made up of elected officials. With all due respect to the Regents and their responsibilities, the Regents are appointed not elected officials. While I understand the desire not to “politicize” boards whose charge is running a hospital, UNMH directly benefits from funding under the authority of the County Commission – a political body. Those funds and those funds alone should be subject to some sort of advice and consent.

Curiously, UNMH appears to be in violation of Section VIIG of the 1999 lease which requires an annual budget to be submitted to the County. After checking with staff, I found that there has never been a budget submitted to the County as required.

The current lease language provides more budget information than I am actually am seeking. I would be satisfied to have a budget prepared for the mill levy funds along with advice and consent for those funds alone.

### **Item 5**

The UNM Consolidated Master Plan was approved in September 2011 and had the UNMH expansion plans in that plan. The UNMH Board approved the architects for the project. The Regents approved the architects for this project in December 2011. The UNM Regents approved using a Construction Manager at Risk for the project in March 2012. The UNMH Board approved moving forward with the project in May 2012. The UNM Regents approved the project at their meeting in June 2012.

### **Response**

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#### **Item 6**

UNM is operating at greater than 91% occupancy. This data is the same that has been reported by the New Mexico Hospital Association.

#### **Response**

The letter from Jeff Dye, President and CEO of the NM Hospital Association is interesting in that it confirms a 91% to 95% occupancy rate without indicating how those numbers were calculated. Also, Mr. Dye emphasizes that these numbers are “proprietary” and that they do not provide “occupancy information to anybody but our own members.” And that any numbers “came from the hospitals themselves.”

I would argue that a public institution interested in transparency would readily provide occupancy information and how those occupancy numbers were calculated and whether or not they include or exclude any other factors. I would also argue that any documents created by UNMH indicating occupancy would be subject to IPRA. In any case, the Op/Ed assumes these numbers to be accurate.

#### **Item 7**

UNM receives about 12 percent of its funding from the Bernalillo County mill levy support for the operations and maintenance of the hospital. UNMH expends 20 percent of in cost on the provision of uncompensated care to the residents of Bernalillo County. UNMH has optimized the reimbursement from insurance companies, Medicaid and other sources to cover the excess cost of uncompensated care and to save the funds needs to expand and replace its facilities.

#### **Response**

See Item 2. The question remains, is it appropriate for a public institution to be able to have sufficient surpluses over and above appropriate cash reserves to be able to build a \$146 million project out of cash on hand? Budgeting and planning become much easier when you have 12% of your revenue guaranteed.

#### **Item 8**

UNMH treats the receipts of the mill levy funding in accordance with the state statute, the voter intent for ballot elections, the specific language of the Lease agreement between Bernalillo County Commission and the University and Generally Accepted Accounting Principles. Treating the funds in any

other manner would be a violation of the ballot measure, the state statute, the lease and would not allow UNMH to meet its external financial audit requirements.

### **Response**

It's hard to believe that an institution as financially capable as UNMH has no way to provide the County with a HIPPA compliant list of treatments provided to those who are unable to pay without violating state statute.

### **Item 9**

The 1978 and 1999 Leases between Bernalillo County and UNM are posted at the UNMH website for review. There is no material difference between the Leases in terms of the authority level of the UNM to operate UNMH. In the 1978 Lease on page 3, paragraph 5, it states that the "Lessee (UNM Regents) will have exclusive responsibility and jurisdiction to control and manage the premises all in accordance with the terms and conditions of this lease." In the 1999 Lease on page 5, Section V Paragraph A, it states that: The University will have the exclusive responsibility and authority to control and manage the Hospital in accordance with the terms of this Agreement. The 1999 Lease provided additional responsibilities for UNM under the Lease and it required that the UNM include the services provided by the UNM Adult Psychiatric Center, the UNM Children's Psychiatric Center, the UNM Cancer Center and UNM Carrie Tingley Hospital to the services of the UNMH.

### **Response**

There was a change in governance structure between 1978 and 1999. In 1999 the governing board was increased to a 9 member board from a 5 member board. The real damage to county representation happened when the HSC Board of Directors was created as a superior governing body.

### **Item 10**

The mill levy rate voted on by the taxpayers of Bernalillo County was 6.5 mills in 2000 and 6.4 mills in 2008. The mill levy was not increased in the 2008 ballot election.

### **Response**

I was inaccurate in when I stated that mill levy increased to 6.4 when it decreased from 6.5 in 2008. However, I was accurate when I stated that UNMH claimed a form of poverty. 2008 MOU Section II: "The parties acknowledge that present Mill Levy revenues payable to the University are insufficient to pay all the costs of care delivered by the Hospital and Mental Health Center to medically indigent residents of Bernalillo County who seek care at the Hospital and Mental Health Center." As mentioned before, Bernalillo County does not shoulder the burden of indigent care alone.

### **Item 11**

UNMH provides its annual external financial audit to the County each year. UNMH reports on its income statement and balance sheet each quarter to the Bernalillo County Commission in their regularly scheduled meetings. UNMH audit reports and monthly financial statements are reported at the UNMH Board meeting each month. The UNMH audit is presented to the Regents each year at their open meeting. The UNMH financial reports are presented each month at UNM Regents meetings.

UNM is also required, under the 1999 Lease, in Section VIII Paragraph B, to be responsible for the replacement of its facilities and expansion of any facilities. The Hospital has routinely renovated its current hospital, to the extent possible, built new additions, such as the 2007 Richardson Pavilion, acquired property and built new clinics such as the South East Heights Clinic and the South West Mesa Clinic and renovated clinics such as the Neurosciences clinic.

### **Response**

I would point out again that it appears that UNMH is not complying with Section VIIG of the 1999 lease agreement. This provision was also a part of the 1978 agreement that ended in 1998. Financials and audits are not budgets.

### **Item 12**

The Bernalillo County Commission entered into the current Lease with UNM in 1999. Bernalillo County affirmed the Lease in 2004 with amendments. Bernalillo County Commission voted on a Memorandum of Understanding with UNM in 2008 that affirmed that Lease.

Bernalillo County is also ultimately responsible to fulfill covenants that it committed to in 1952 with the Indian Health Service to provide access to health care services to Native American residents of New Mexico in exchange for the land that UNMH was built upon and for funding for the original building of the hospital. UNM has accepted responsibility for those commitments under the Lease arrangement. Bernalillo County has an obligation to assure that the provisions of the 1952 contract are met

### **Response**

My argument has never been one of legality but of wisdom. Is it wise for the Commission to abdicate its fiduciary responsibility to another unelected public entity? Is it wise to effectively wash our hands of over \$90 million regardless of how well that entity may be run? I would say no.

I would also point out that there is a question of whether or not a 1952 County Commission of 3 members has the ability to effectively bind a 2013 County Commission and every subsequent commission. Excepting the 1952 agreement, all of the agreements have and had terms and provisions for renegotiation that allow future elected commissioners to provide guidance and make necessary changes. The 1952 agreement binds all subsequent commissioners to an agreement that was based on a health care system that no longer exists. I have no wish to ignore our responsibilities to the IHS or to Native Americans. However, in light of the changes in the IHS health care delivery model it may be time - after sixty plus years - to re-evaluate how we meet those obligations.

As you can see, I have a number of disagreements with your rebuttal. There are a number of policy differences and at least a couple of errors on Mr. McKernan's part, specifically with regard to accurately reporting the size of the proposed expansion. You mentioned that I don't trust UNMH. In truth, the attempts to minimize proposed expansion plans when it suits the hospitals' objectives and the expression of manufactured outrage don't engender trust or confidence.

Thank you for taking the time to meet with me. Despite its unpleasant nature, I gained valuable insight into how UNMH management works and how it deals with those whose policy positions differ from theirs. I had hoped that we might be able to discuss how to move forward in order to achieve our mutual goals. Apparently, that was not to be.

My door remains open to discussing how we can work together, but I would make one request. I would appreciate it if you didn't start the meeting with a challenge to my integrity and fitness to serve as an elected official. Believe it or not, that approach tends to be a bit off-putting and doesn't necessarily lead to a productive discussion. Every elected official takes an oath of office, and while you may not respect the office holder at least respect the office. I take my oath very seriously and also the best interests of the 133,000 people I represent

Respectfully,

Wayne Johnson  
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