CAUSE NO. D-1-GN-17-005824

REBECCA BIRCH, RICHARD FRANKLIN III, and ESTHER GOVEA, *Plaintiffs*,	§	IN THE DISTRICT COURT OF
v.	§	TRAVIS COUNTY, TEXAS
TRAVIS COUNTY HEALTHCARE DISTRICT d/b/a CENTRAL HEALTH, and DR. PATRICK LEE, in his official capacity only *Defendants*.	§	345th JUDICIAL DISTRICT

PLAINTIFFS' MOTION FOR FINAL SUMMARY JUDGMENT

Fred I. Lewis
800 Brent St
Winston Salem, NC 27103-3810
State Bar No. 12277075

Manuel Quinto-Pozos
State Bar No. 24070459
mqp@ddollaw.com
DEATS, DURST & OWEN, P.L.L.C.
8140 N. Mopac Expy., Suite 4-250
(512) 474-6200
FAX (512) 474-7896

Attorneys for Plaintiffs

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Plaintiffs, each a City of Austin property taxpayer, bring this action asking the Court to grant this Motion for Final Summary Judgment and enjoin the Defendants, Travis County Healthcare District d/b/a Central Health ("Central Health" or "CH") and Dr. Patrick Lee (the new CEO and President of Central Health), in his official capacity only, to stop their *ultra vires* acts in spending public funds on illegal expenditures outside Central Health's constitutional and statutory authority to provide medical and hospital medical care, particularly to Travis County's poor.

INTRODUCTION

I. SUMMARY OF THE MOTION AND ARGUMENT

This case is ripe for final summary judgement because the issues in question are solely a matter of law; there are no genuine material issues of fact. The central legal issue concerns Central Health's authority under state law: is Central Health acting *ultra vires* by spending public funds illegally on items not contained within the hospital district's constitutional purpose and statutory authority to provide "medical and hospital care to needy inhabitants in the county"? Tex. Const. Art. IX, Sec. 4; Tex. Health & Safety Code § 281.002. Based on Central Health and Dell Medical School's ("DMS") budget and accounting records, and depositions explicating them, there is no material factual dispute on what items DMS spends Central Health funds on. The only disagreement is legal: whether Central Health has legal authority in the future to spend its public funds on education, research, and other expenditures not related to medical care.

Hospital districts are special purpose districts authorized by the Texas Constitution to assume from the county and cities therein responsibility for the poor's medical care: "such Hospital District shall assume *full responsibility for providing medical and hospital care* to *needy inhabitants* of the county." Tex. Const. Article IX, Sec. 4 (emphasis added). For this limited purpose, the hospital district has the power to establish a hospital system and levy property taxes; however, thereafter the county and cities therein are precluded from spending any taxes on the

hospital system or the poor's medical care. Tex. Const. Art. IX, § 4.

Texas Health & Safety Code, Chapters 281 and 61 are the primary statutes governing the operations of hospital districts. Chapter 61 defines in detail the "health care services" that hospital districts have authority to provide the poor. Sections 61.028 and 61.0285 itemize a list of specific "health care services," which comports with the plain and ordinary meaning of this term. Tex. Health & Safety Code, Secs. 61.028, 61.0285.

The plain meaning of "medical and hospital care" is attending to and treating a person's physical and emotional health. Merriam-Webster's Law Dictionary, infra. Medical and hospital *care* (patient treatment) is not ordinarily understood to include medical school education, research, and other non-clinical operations of a medical school. Nor are these matters included in Chapter 61's statutory definitions of "health care services."

As shown below, the facts are indisputable that Central Health has spent millions of property tax dollars at DMS on the school's non-clinical operations and administration. In fact, based on the school's official accounting and budgeting, DMS itself has classified only 10% of its expenditures of Central Health's funds as clinical and clinical administration and *90% as education, research, public service, and general administration*. DMS's own records recognize that it spends the vast majority of Central Health funds on activities that are not "medical and hospital care" (which DMS describes as clinical and clinical administration).

Medical schools provide four valuable functions— education, research, medical care to patients able to pay, and medical care to poor patients— but Central Health has legal authority to fund only the last function. Nor is it disputed that Central Health also has spent hundreds of thousands of dollars on an innovation district for economic development, sponsoring chambers of commerce, and various social programs that do not constitute medical care.

As a special purpose district, Central Health has very limited powers. It has the express power to establish a hospital system and provide medical care for the poor; its implied powers extend only to activities that are indispensable to fulfill its express powers. Brief, *infra*, section V.B. Any reasonable doubt about its implied powers is construed by courts against it as a special purpose district. Brief, *infra*, section V.B. Central Health's funding of a medical school's education, research, public service and general administration is not indispensable to the hospital district providing a hospital system and medical care for the poor. While Central Health has discretion in administering "medical care" (such as determining the type and manner of medical care it provides), it has no authority to interpret constitutional and legislative terms contrary to their statutory and plain meaning to fund activities that do not attend to or treat patients.

The Texas Supreme Court has held acts as *ultra vires* of governmental entities with broad administrative authority, when their interpretations of the law are beyond the plain meaning of the text. In this case, Central Health has exceeded its legal authority as a hospital district, and acted *ultra vires*, in expending funds at the medical school and elsewhere on items that are not medical care or its related administration (hereafter collectively "medical care" or "health care"). While very beneficial, undergraduate medical education, faculty research, and non-clinical operations (business affairs, student services, communications, fundraising, etc.) are not medical care. As a matter of law, defendants Central Health and Lee have spent public funds illegally and defendants should be enjoined from further spending funds that do not constitute medical care as defined by Chapter 61.

II. THE STANDARD FOR SUMMARY JUDGEMENT

The purpose of summary judgment is to provide a method of summarily terminating a case when only a question of law is involved and there is no genuine issue of material fact. Gaines v. Hamman, 163 Tex. 618, 626, 358 S.W.2d 557, 563 (1962). The standards are well established for

granting a motion for summary judgment. Nixon v. Mr. Property Mgmt. Co., 690 S.W.2d 546, 548-49 (Tex. 1985). The standards are: 1) the movant for summary judgment has the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law; 2) in deciding whether there is a disputed material fact issue precluding summary judgment, evidence favorable to the non-movant will be taken as true; and 3) every reasonable inference must be indulged in favor of the non-movant and any doubts resolved in its favor. Id.

III. CENTRAL HEALTH'S HISTORY AND BACKGROUND

Travis County was the last large urban county in Texas to adopt a countywide hospital district. In 2003, the Texas Legislature passed a bill authorizing Travis County voters to hold an election on whether to establish a countywide hospital district. Exhibit 20, Central Health Audit Report FY2022, p. 4. In May 2004, Travis County voters approved establishing a hospital district. Id. This vote resulted in the City of Austin transferring its municipal public hospital (Brackenridge Hospital) and its related assets to the newly formed Travis County Healthcare District (aka Central Health). Id. With Central Health's creation, it "assum[ed] full responsibility for providing medical and hospital care to needy inhabitants of the county" and the power to levy a property tax for that purpose. Tex. Const. Article IX, Sec. 4.

In November 2012, Travis County voters approved a measure to increase the hospital district's property tax rate and for the taxes to "be used for *improved health care in Travis County, including support for a new medical school consistent with the mission of Central Health*, a site for a new teaching hospital, trauma services, specialty medicine such as cancer care, community-

wide health clinics . . . ."[1] As a medical school could provide "heath care in Travis County," this particular part of its activities would be "consistent with Central Health's mission." Brief, *infra*, Section X.

In July 2014, Central Health, its non-profit entity the Community Care Collaborative ("CCC"), and UT-Austin entered into an affiliation agreement. Central Health and the CCC agreed to make a $35 million annual payment for 25 years (with potential automatic extensions) to DMS. Exhibit 3, Deposition of Dwain Morris (March 2023), attached Morris Depo. Ex. 14: Central Health-UT Affiliation Agreement, Section 6, p. 20. The affiliation agreement, through its term "permitted investments," purports to give the medical school broad "discretion" in spending the $35 million annual payments, including on the medical school's "on-going operations," "administration infrastructure," or "other related activities and functions." Id. Section 1, p. 9. "Permitted investments" specifically includes education, research, and any other activities of the medical school. Id., pp. 2-5, 9.

Furthermore, the agreement does not afford Central Health or CCC the standard payor right to access the related books and documents of DMS, including those showing DMS's expenditure of the $35 million annual payments. Although the agreement provides that governmental authorities may access DMS records, it inexplicably (and erroneously) defines Central Health as not a governmental authority. Id., Section. 9.5.1, p. 31 (providing governmental authorities access

[1] Central Health Ballot Measure (Nov 2012): "Approving the ad valorem tax rate of $0.129 per $100 valuation in Central Health, also known as the Travis County Healthcare District, for the 2013 tax year, a rate that exceeds the district's rollback tax rate. The proposed ad valorem tax rate exceeds the ad valorem tax rate most recently adopted by the district by $0.05 per $100 valuation; funds will be used for improved healthcare in Travis County, including support for a new medical school consistent with the mission of Central Health, a site for a new teaching hospital, trauma services, specialty medicine such as cancer care, community-wide health clinics, training for physicians, nurses and other healthcare professionals, primary care, behavioral and mental health care, prevention and wellness programs, and/or to obtain federal matching funds for healthcare services." *Available at* https://www.centralhealth.net/library/legal-documents/2012-election-proposition-1/ (last visited April 16, 2024).

to DMS documents); Id, Section 1, p. 8 (defining "governmental authorities" to specifically exclude Central Health). Nor does the Affiliation Agreement specify any health care services DMS will provide Central Health patients, any methodology for determining the cost of these services, or any ability to recoup duplicate payments or incorrect expenses. Id. at i-ii.

THE LAW

IV. RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

A. The Texas Constitution, Article IX, Section 4, authorizes special purpose hospital districts such as Central Health.

In 1954, voters approved Article IX, Section 4 to the Texas Constitution. This amendment authorizes the Legislature and voters in Texas counties over 190,000 to establish special purpose, county-wide hospital districts to assume from counties "full responsibility" for the poor's medical and hospital care. Tex. Atty. Gen. Op. No. JC-220, p. 7 (2000). In relevant part, the amendment states:

> The Legislature may by law authorize the creation of county-wide Hospital Districts *in counties having a population in excess of 190,000* and in Galveston County, with power to issue bonds for the purchase, acquisition, construction, maintenance and operation of any county owned hospital…provided further, that *such Hospital District shall assume full responsibility for providing medical and hospital care to needy inhabitants of the county, and thereafter such county and cities therein shall not levy any other tax for hospital purposes*…

Tex. Const. Article IX, Sec. 4 (emphasis added).[2]

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[2] In full, Tex. Const. Art. IX, Section 4 states:

> The Legislature may by law authorize the creation of county-wide Hospital Districts in counties having a population in excess of 190,000 and in Galveston County, with power to issue bonds for the purchase, acquisition, construction, maintenance and operation of any county owned hospital, or where the hospital system is jointly operated by a county and city within the county, and to provide for the transfer to the county-wide Hospital District of the title to any land, buildings or equipment, jointly or separately owned, and for the assumption by the district of any outstanding

Article IX, Section 4 begins by empowering the Texas Legislature through statutory enactments to authorize countywide hospital districts in larger counties. Id. With voter approval, the amendment establishes a hospital district to levy property taxes and "to issue bonds for the purchase, acquisition, construction, maintenance and operation of any county-owned hospital." Id. A hospital district is constitutionally required to assume "full responsibility" for "providing medical and hospital care to needy inhabitants of the county." Id. See, e.g., Tex. Atty. Gen. Op. No. JC-220, p. 7 (2000); Tex. Atty. Gen. Op. No. JH-31, p. 2 (1988); Tex. Atty. Gen. Op. No. WC-382, p. 2 (1965). With a hospital district's assumption of full responsibility for the poor's medical care, county and cities within a hospital district's territory are precluded from providing further financial support for the hospital district: "such county and cities therein shall not levy any other tax for hospital purposes." Tex. Const. Article IX, Sec. 4. In addition, a hospital district's responsibility for maintaining and operating a hospital "shall never become a charge against the State of Texas, nor shall any direct appropriation ever be made by the Legislature for that purpose." Id.

B. Texas Health and Safety Code, Chapter 281 governs Central Health's general statutory powers.

Chapter 281 of the Texas Health and Safety Code prescribes the statutory powers for

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bonded indebtedness theretofore issued by any county or city for the establishment of hospitals or hospital facilities; to levy a tax not to exceed seventy-five ($ .75) cents on the One Hundred ($100.00) Dollars valuation of all taxable property within such district, provided, however, that such district shall be approved at an election held for that purpose, and that only qualified voters in such county shall vote therein; provided further, that such Hospital District shall assume full responsibility for providing medical and hospital care to needy inhabitants of the county, and thereafter such county and cities therein shall not levy any other tax for hospital purposes; and provided further that should such Hospital District construct, maintain and support a hospital or hospital system, that the same shall never become a charge against the State of Texas, nor shall any direct appropriation ever be made by the Legislature for the construction, maintenance or improvement of the said hospital or hospitals.

hospital districts with over 190,000 residents, such as Central Health. Titled "District Authorization," Section 281.002(c) permits counties, like Travis County, with a population over 190,000 and a municipal hospital (Brackenridge Hospital), to "create a countywide hospital district to assume ownership of *the hospital or hospital system and to furnish medical aid and hospital care to indigent and needy persons residing in the district."* Tex. Health & Safety Code, Section 281.002(c)(emphasis added).[3] This statutory language closely tracks the constitutional language authorizing larger hospital districts to "assume full responsibility for providing medical and hospital care to needy inhabitants of the county." Tex. Const., Article, IX, Section 4.

Consistent with Section 281.002, Section 281.046's taxing authority provides that "[b]eginning on the date on which taxes are collected for the district, the *district assumes full responsibility for furnishing medical and hospital care for indigent and needy persons residing in the district*." Tex. Health & Safety Code 281.046 (emphasis added). This section highlights that a hospital district's power to levy taxes is for the specific purpose of establishing a hospital system to provide medical care for the poor residing in the county.

Other provisions in Chapter 281 also emphasize that a hospital district's powers "apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents," whether in hiring physicians, contracting, or managing assets.[4]

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[3] Texas Health and Safety Code Section 281.002(c) states in full: "A county with at least 190,000 inhabitants that has within its boundaries a municipality that owns a hospital or hospital system for indigent or needy persons that is operated by or on behalf of the municipality may create a countywide hospital district to assume ownership of the hospital or hospital system and to furnish medical aid and hospital care to indigent and needy persons residing in the district."

[4] See, e.g., Tex. Health & Safety Code, Section 281.02815(e) (authority to employ physicians "to fulfill the district's statutory mandate to provide medical care for the indigent"); Section 281.041(a) (authority to take over and manage public hospital assets "to provide medical services or hospital care, including geriatric care, to indigent or needy persons."); and Section 281.043 (authority to assume public hospitals contractual rights and obligations for "provision of health care services or hospital care, including mental health care, to indigent residents.").

Furthermore, no provision in Chapter 281 states that a hospital district has statutory authority to provide for medical education, medical research, general public service, or administration of a medical school.

C. Texas Health & Safety Code, Chapter 61 expressly defines the health care that Central Health may provide and the eligibility requirements for district services.

To ensure that hospital districts (as well as public hospitals and counties) provide medical care to the poor consistent with their powers, the Legislature in 1989 adopted Texas Health & Safety Code, Chapter 61, "The Indigent Health Care and Treatment Act." The Legislature enacted this Act pursuant to its constitutional authority granted in 1985 in Article IX, Section 9A to determine the health care services a hospital district may provide and the eligibility for those services: "The legislature by law may *determine the health care services a hospital district is required to provide*, *the requirements a resident must meet* to qualify for services, and any other relevant provisions necessary to regulate the provision of health care to residents." (emphasis added). See also Tex. Atty. Gen. Op. No. JM-858 (1988), at 3.

Section 61.055 specifies that hospital districts *shall* endeavor to provide the same "basic health care services" that counties (without hospital districts) are required to provide in Section 61.028: "a hospital district shall endeavor to provide the basic health care services a county is required to provide under Section 61.028, together with any other services required under the Texas Constitution and the statute creating the district." Tex. Health & Safety Code § 61.055(a). Section 61.028 defines "basic health care services," as they are commonly understood:

> (1) primary and preventative services designed to meet the needs of the community, including:(A) immunizations; (B) medical screening services; and (C) annual physical examinations; (2) inpatient and outpatient hospital services; (3) rural health clinics; (4) laboratory and X-ray services; (5) family planning services; (6) physician services; (7) payment for not more than three prescription drugs a month; and (8) skilled nursing facility services, regardless of the patient's age.

Tex. Health & Safety Code § 61.028(a). In addition, under Section 61.0285, counties and hospital

districts *may provide* "*other medically necessary services or supplies* that the county determines to be cost-effective, including":

> (1) ambulatory surgical center services; (2) diabetic and colostomy medical supplies and equipment; (3) durable medical equipment; (4) home and community health care services;(5) social work services; (6) psychological counseling services; (7) services provided by physician assistants, nurse practitioners, certified nurse midwives, clinical nurse specialists, and certified registered nurse anesthetists; (8) dental care; (9)vision care, including eyeglasses; (10) services provided by federally qualified health centers, as defined by 42 U.S.C. Section 1396d(l)(2)(B); (11) emergency medical services; (12) physical and occupational therapy services; and (13) *any other appropriate health care service identified by department rule* that may be determined to be cost-effective.

Tex. Health &Safety Code § 61.0285(a) (emphasis added).

Nowhere in Sections 61.028 and 61.0285's list of authorized health care services, does the Legislature empower hospital districts to fund medical research, medical education, or the operations and administration of a medical school. In fact, nowhere in any section of Chapter 61, which defines the scope of "indigent health care and treatment," are medical education and research even mentioned. Moreover, state regulations also define "basic" and optional" "health care services" as they are commonly understood and do not include within their ambit medical education, research, or other non-medical care services. 25 Tex. Admin. Code § 14.021.

Chapter 61 of the Texas Health & Safety Code also prescribes the eligibility requirements for receiving health care services from a hospital district. Tex. Atty. Gen. Op. No JC-220 (2000), at 2, 9. Texas Health & Safety Code § 61.052(a) mandates that a "hospital district shall provide health care assistance to each eligible resident in its service area." Section 61.002(3) defines an eligible resident as a person who meets the county residence and income and resources requirements. Id. at 61.002(3). Sections 61.03 and 61.045 define "residence" in a hospital district's jurisdiction and how to determine it. Sec. 61.052(a) prescribes the income and resource requirements for a hospital district resident, which must either be set at the state's very low

prescribed maximum income level or by a hospital district (which for Central Health is 200% of the federal poverty level). A hospital district must establish eligibility procedures for applying for its services and for seeking payment for its services from financially able patients. Id., §§ 61.053 and 61.60. In summary, a hospital district may provide free health care services only to eligible low income residents of the county; non-resident and financially able patients are required to pay for their services.

V. HOSPITAL DISTRICTS ARE SPECIAL PURPOSE DISTRICTS AND COURTS STRICTLY CONSTRUE THEIR POWERS.

A. Hospital Districts are special purpose districts.

Hospital districts-- with their specific purpose and narrow powers-- are special purpose districts. Dallas County Hosp. Dist. v. Hospira Worldwide, 400 S.W. 3d 182, 185-186 (Tex. App.—Dallas 2013, no pet.); Sabine County Hosp. Dist. v. Packard, 12-11-00272-CV, 2012 WL 1268386 (Tex. App.—Tyler Apr. 12, 2012, no pet.). See also Tex. Atty. Gen. Op. No. JM-258, at 1 (1984). Special purpose districts are "[t]he most basic, and lowest level, of local government." C. Kay, "Special Purpose Districts in Texas," (LBJ School of Public Affairs Texas Water Policy Conference, December 6, 2014), p. 2 (https://docplayer.net/100833441-Invisible-government-special-purpose-districts-in-texas.html). Central Health's special purpose is providing medical care, particularly for the poor.

B. Texas Law recognizes for a special purpose district only those implied powers that are indispensable to its express purposes.

The leading Texas case on construing the powers of special purpose districts is Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d 945 (Tex. 1940). It involves a water supply district that issued voter-approved bonds and levied taxes to equip and operate fire protection and sewage systems. Id. at 946. The Texas Supreme Court voided the water supply district's bond contracts, holding that it had no implied powers to provide fire protection and sewage systems—even though

they both require water supplies—because such powers are not indispensable to its authorized purpose:

> [the district] has only such implied powers as are reasonably necessary to make effective the powers expressly granted. That is to say, such as are *indispensable to the declared objects of the corporation* and the accomplishment of the purposes of its creation. *Powers which are not expressed and which are merely convenient or useful may not be included* and cannot be maintained.

Id. at 947 (emphasis added). The Supreme Court further held that any reasonable doubt concerning the district's powers should be resolved against it: "'Any fair, reasonable, substantial doubt concerning the existence of power is *resolved by the courts against the corporation*, and the power is denied.'" Id., quoting, Foster v. City of Waco, 255 S.W. 1104, 1106 (Tex. 1923) (emphasis added).

The Court pointed out that special purpose districts have very limited powers and can exercise only those powers that are clearly granted: "Governmental agencies, or bodies corporate such as Fresh Water Supply Districts…are constituted by the Legislature to *exercise, in a prescribed area, a very limited number of corporate functions*, and they are said to be *'low down in the scale or grade of corporate existence'…they can exercise no authority that has not been clearly granted by the Legislature*." Id. at 948 (emphasis added). Finally, the Court noted that if the Legislature had wanted the water supply district to have the power to engage in fire protection and sewage treatment, then it would have said so in plain language:: "Had the Legislature intended to invest Fresh Water Supply Districts with corporate powers to purchase and install apparatus for fire prevention and fire protection and to construct and operate a sewerage system within a given territory, *it doubtless would have so enacted in plain languag*e." Id. (emphasis added).

Relying on its holding in Tri-City Fresh Water Supply Dist. v. Mann, the Texas Supreme Court has held recently that a county clerk with enumerated, limited statutory powers (like a special purpose district) has no implied authority to expand the use of mail-in ballots. State v. Hollins, 620

S.W.3d 400, 407 n.28 (Tex. 2022) (per curiam). The Court reiterated that "powers 'necessarily or fairly implied' must be indispensable": "Because Hollins [the County Clerk] acts on behalf of Harris County, he possesses only those powers 'granted in express words' or 'necessarily or fairly implied in' an express grant—*powers 'not simply convenient' but 'indispensable.' Any reasonable doubt must be resolved against an implied grant of authority.*" Id. at 406, quoting, Foster v. City of Waco, 255 S.W. at 1106 (emphasis added).

Similarly, and close to home, in Builder Recovery Services v. Town of Westlake, 650 S.W.3d 499, 503 (Tex. 2022), the Texas Supreme Court relied on Tri-City Fresh Water Supply District v. Mann to hold that a limited-power entity has an "indispensable" implied power only when without its exercise the entity's express powers "would be rendered nugatory." The City of Westlake, a general law city without the plenary power of home-rule cities, passed an ordinance to impose a license fee based on a percentage of revenue on garbage haulers. Id. at 501. The Court struck down the fee, holding: "The reasonable *necessity of an implied power will not be lightly assumed*. To the contrary, we have held that a general-law city's implied powers are limited to those that are *'indispensable' to carrying out expressly granted powers*. Mann, 142 S.W.2d at 947. Stated another way, '[a] municipal power will be implied only when without its exercise the expressed duty or authority *would be rendered nugatory*.'" Id. at 503 (emphasis added).

Last year, the Texas Supreme Court held again, based on Tri-City Fresh Water Supply District v. Mann, that it would not imply powers for limited purpose districts except when they are indispensable to its operation. Pecos County Appraisal Dist. v. Iraan-Sheffield Indep. Sch. Dist., 672 S.W.3d 401 (Tex. 2023). The Court found that the school district had no implied power to hire a lawyer on a contingent-fee basis to increase the appraised value of properties in the district: "*Authority will not be implied lightly*. We have explained that the 'reasonably necessary to make

effective' standard encompasses those powers that are *'indispensable' or 'essential' to the exercise of expressly granted powers*." Id. at 407. The Court held that "*any reasonable doubt concerning the existence of an implied power is resolved against the political subdivision."* Id., quoting, Tri-City Fresh Water Supply District v. Mann and Foster v. City of Waco (emphasis added).

In summary, the Texas Supreme Court has held repeatedly that it will not imply powers that are merely convenient or useful for special purpose districts or governmental entities with limited powers. The Court has emphasized that reasonable doubts concerning implied power are resolved against such entities. The Court will find implied powers only when such powers are *indispensable* to the exercise of the entity's express powers. By indispensable, the Court means implied powers that are so essential that if they did not exist it would render the entity's express powers nugatory (of no value). The Court has noted that if the Legislature had wanted a special purpose district to have an additional power, it would have said so clearly in the statute.

C. Texas Courts also strictly construe the taxing power of special purpose districts.

In addition to strictly construing the powers of special purpose districts, the Texas Supreme Court Courts has held that these districts' power to levy taxes must be limited to expenditures for powers "granted in clear and unmistakable terms." Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d at 948, citing, Dallas Consol. Elec. St. Ry. Co. v. City of Dallas, 260 S.W. 1034, 1036 (Tex. Comm'n App. 1924, judgm't adopted). The seminal case on strictly construing the power of special purpose districts to levy taxes is again Tri-City Fresh Water Supply District v. Mann. The Texas Supreme Court held that the water supply district could not levy taxes for fire protection and sewage systems because it was not expressly authorized to impose taxes for such activities: "The power to levy assessments for the construction of drains can be exercised only when granted in *clear and unmistakable terms*, and statutes purporting to grant such power must be *strictly*

construed as against those asserting the right to exercise it." Id. at 948, quoting, Dallas Consol. Elec. St. Ry. Co. v. City of Dallas, 260 S.W. at 1036 (emphasis added). The Court concluded: "The power to tax belongs to the sovereignty [the people]. It can only be exercised by a subordinate corporate body when delegated to it either by the Constitution or by the legislature, and when so delegated, *it must be exercised for those purposes, only, which are distinctly included in the constitutional or legislative provision*." Id. (emphasis added)

Dallas Consol. Elec. St. Ry. Co. v. City of Dallas, which is relied upon in Tri-City Fresh Water Supply Dist., is also instructive. The Texas Supreme Court held that a city tax for street improvements could not be used for storm sewers under the streets. Id., 260 S.W. at 1036-1037. The Court found that the power to levy street improvement taxes for storm sewers "was not granted in clear and unmistakable terms" because it was not "necessary" for making street surface improvements. Id. at 1035 (reversing the Court of Appeals' holding that expending street taxes on storm sewers for streets was necessarily implied). See also Henry v. Kaufman County Dev. Dist. No. 1, 150 S.W 3d 498, 504 (Tex. App.—Austin 2004, pet. dism'd by agr.) (citing Tri-City Fresh Water Supply and Dallas Consol. Elec. St. Ry. Co. for the principle that the power to tax "can be exercised only when granted in clear and unmistakable terms.").

D. Hospital districts, like all governmental entities, cannot enter into agreements that do not conform to a strict construction of their authority.

Governmental entities' expenditures must strictly comply with their state law authority; agreements are illegal that attempt to make expenditures that are not clearly authorized by state law. Osborne v. Keith, 177 S.W.2d 198, 200 (Tex. 1944); Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d at 947; Hendee v. Dewhurst, 228 S.W.3d 354, 380 (Tex. App.–Austin 2007, no writ). Courts have enjoined enforcement of such unauthorized contracts as *ultra vires*. See, e.g., Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d at 947.

E. Texas Attorney General Opinions have strictly restricted hospital districts' powers to providing only medical care.

(1) Hospital Districts have an absolute duty to provide for the poor's medical care.

Over seventy years, Texas Attorneys General have defined strictly the powers of hospital districts.[5] While these opinions are not binding, they are persuasive. Farmers Grp., Inc. v. Geter, 620 S.W.3d 702, 712 (Tex. 2021). Their opinions repeatedly have found that a hospital district's "primary" constitutional purpose is to "assume full responsibility for providing medical and hospital care to needy inhabitants of the county." Tex. Atty. Gen. Op. No. JC-220, at 7 (2000) (property tax levy must be available and used to discharge district's "manifest purpose . . . to provide for indigent medical care."). See also, Tex. Atty. Gen. Op. No. JM- 858 (1988), at 4; Tex. Atty. Gen. Op. No. WC-382 (1965), at 2. Opinions have declared that a hospital district's duty to provide medical care for the poor is "absolute": "[A] hospital district is directed to assume responsibility for providing hospital and medical care to its needy inhabitants . . . . *Because of its absolute duty to provide medical and hospital care for its needy inhabitants*, a hospital district is responsible for those medical expenses." Tex. Atty. Gen. Op. No. JC-220, at 7 (emphasis added). See also Tex. Atty. Gen. Op. No. JM- 858 (1988), at 4.

(2) A District's "hospital purpose" is to provide medical care.

Texas Attorney General opinions have explained Article IX, Section 4's terms "hospital system" and "hospital purpose." By "hospital system," the constitution is indicating that a hospital district may fulfill its "hospital purpose" either through establishing public hospitals and clinics or

[5] Texas Attorney General Opinions discuss interchangeably hospital districts established under both the Texas Constitution, Article IX, Section 4 (in counties with over 190,000 residents) and Article IX, Section 9 (all other counties).

by funding private health care providers to provide care for the resident poor. Tex. Atty. Gen. Op. No. JC-220, at 9-11. See also Tex. Atty. Gen. Op. No. DM-37 (1991), at 1; Tex. Atty. Gen. Op. No. JM-858, at 5-6. In addition, these opinions explain that the term "hospital purpose" provides express power to hospital districts to use their hospital system to treat paying patients in addition to the poor—but that financially able patients must pay for the cost of their medical care. Tex. Atty. Gen. Op. No JC-220, at 10. "Based on the constitutional and statutory scheme for providing hospital and medical care, we conclude that the District may offer medical care to nonindigent Garza County residents *provided it collects from these persons the cost of the medical services*." (emphasis). Id. See also Tex. Atty. Gen. Op. No. JC-434 (2001), at 8; Tex. Atty. Gen. Op. No. CM-382 (1965), at 2. By requiring those financially able to pay for their medical care, the hospital district's property tax levy is preserved for its primary and absolute constitutional duty: medical care for the poor. Tex. Atty. Gen. Op. No. JC-220, at 7.

In Tex. Atty. Gen. Op. No JC-220, at 5, the Texas Attorney General pointed out that for a "hospital purpose" to be lawful, it must fulfill a hospital district's duty to provide medical care, especially for the poor: "To be permissible, however, a hospital district facility's lease must also *serve a hospital district purpose* consistent with article IX, section 9, requiring a hospital district *to provide medical care, particularly hospital and medical care to needy hospital district residents*." (emphasis added). See also Tex. Atty. Gen. Op. No. DM-66 (1999) at 3 (stating that statutory authority to lease a public hospital building does not end the legal analysis, but one must also consider whether leasing to private physicians would serve hospital purpose consistent with article IX, Sec. 9); Tex. Atty. Gen. Op. No. DM-131 (1992) at 1. Importantly, Texas Attorney General opinions also recognize that a hospital district's duty to provide medical care for the poor takes "precedence" over its "hospital purpose." Tex. Atty. Gen. Op. No. WC-382, at 2 (1965) ("the

primary function of the Hospital District is the furnishing of medical and hospital care for the indigent… and that such function must take precedence over all others"). See also Tex. Atty. Gen. Op. No JC-220, at 7 (2000).

(3) Hospital District implied powers must be indispensable to their express powers.

In light of these express constitutional powers, Texas Attorneys General have strictly construed the implied powers of a hospital districts to encompass only those powers that are indispensable, and not just convenient or helpful, to serving its primary purpose of providing health care for the poor. For example, in Tex. Atty. Gen. Op. No. JM-258, at 3 (1984), the Attorney General "conclude[d] that the Titus County Hospital District derives from the constitution and enabling statutes no express or implied power to lease on any terms a portion of its hospital property for use as private offices for private physicians." The opinion noted that "a special purpose district 'may exercise only powers expressly delegated it by the Legislature or exist by clear and unquestioned implication," citing, Tri-City Fresh Water Supply Dist. v. Mann. See also Tex. Atty. Gen. Op. No. JC-220 (2000), at 2.

(4) Hospital Districts have no authority to fund activities that are not clearly medical care.

Texas Attorney General opinions consistently have rejected attempts to fund public health and other community services, however valuable and needed, because they do not constitute "medical and hospital care." In 1973, the Texas Attorney General rejected Tarrant County's attempt to use hospital district funds for its health department: "A hospital district… may engage only in those activities specifically authorized by the Constitution and may not, *by contract or otherwise, assume to render services which are not among those ordinarily rendered by a hospital* such as the regulatory inspection of restaurants, meat, milk, sewage, and water." Tex. Atty. Gen. Op. No. JH-31 (1973), at 4 (emphasis added).

Similarly, in Tex. Atty. Gen. Letter Op. No. 95-088 (1995), the Texas Attorney General held that the Lubbock Hospital District could not fund a medical examiner's office because it did not provide medical or hospital care. Relying on Tri-City Fresh Water Supply District v. Mann, the opinion pointed out: "The Texas Supreme Court has stated that such implied powers are those that are *'indispensable* to . . . the accomplishment of the purpose' for which the district is created and that '[p]owers which are not expressed and which are merely convenient or useful' may not be exercised by the district.'" Id. at 2 (emphasis added). The Attorney General found the hospital district had no implied power to fund the medical examiner's office because "[w]hile the office of the county medical examiner would seem to share in this responsibility [public health], we conclude that such office does not provide medical or hospital care for the residents of the county." Id. at 3. "The salary and expenses of the medical examiner's office *are not authorized medical and hospital expenses which can be funded by a county hospital district*." Id. at 4 (emphasis added). See also Tex. Atty. Gen. Op. No. M-256 (1968) (a hospital district lacks authority to expend its funds for building and operating a "crime lab"); Tex. Atty. Gen. Op. No. WW-1170 (1961) (hospital district cannot not fund a public health nurse for rural county schools to educate students on communicable diseases). In summary, a hospital district may "by contract or otherwise, assume to render services" only "that are ordinarily rendered by a hospital"—i.e., medical care as ordinarily understood. Tex. Atty. Gen. Op. No. JH-31 (1973), at 4.

Nor have Attorneys General allowed hospital districts to spend their funds on goodwill, community relations or other ancillary activities. In Atty. Gen. Op. No. DM-29 (1991), the Attorney General held that the Dallas Hospital District had no authority to pay membership dues to various local chambers of commerce, a non-profit organization promoting economic development, or an association that publicizes and promotes local health care facilities: "No

provision of chapter 281 may reasonably be construed to authorize the board to expend funds for membership in such private organizations as you have described, nor do we think that any such authorization can properly be inferred therefrom." Id. at 3-4.

VI. STATUTORY CONSTRUCTION: THE PLAIN MEANING OF WORDS IS DETERMINATIVE WHEN THE TEXT IS CLEAR.

A. Principles of statutory construction.

Statutory construction is a question of law for the court. Brazos Elec. Power Coop., Inc. v. State Comm'n on Envtl. Quality, 576 S.W.3d 374, 384 (Tex. 2019). Texas Courts' objective in statutory construction is "to give effect to the enacting body's intent." Houston Belt & Terminal Ry. Co. v. City of Houston, 487 S.W. 3d 154, 164 (Tex. 2016). Courts ascertain intent by beginning with the plain and ordinary meaning of the statute's words "because the best indicator of what the Legislature intended is what it enacted." Brazos Elec. Power Coop., 576 S.W.3d at 384, citing, Sw. Royalties v. Hegar, 500 S.W.3d 400, 404 (Tex. 2016). Courts also look at any definitions provided in the statute. Houston Belt & Terminal Ry. Co., 487 S.W.3d at 164.

"When clear, the text is determinative of the enacting body's intent unless the plain meaning produces an absurd result." Id. at 165. The law presumes that the Legislature chose the text "with care and that every word or phrase was used with a purpose in mind." Brazos Elec. Power Coop., 576 S.W.3d at 384, citing, Tex. Lottery Comm'n v. First State Bank of DeQueen, 325 S.W.3d 628, 635 (Tex. 2010). See also City of San Antonio v. City of Boerne, 111 S.W.3d 22, 29 (Tex. 2002). Courts "read the statute as a whole and interpret it to give effect to every part." City of San Antonio v. City of Boerne, 111 S.W.3d at 25. Moreover, "[s]tatutory terms should be interpreted consistently in every part of an act." Brazos Elec. Power Coop., 576 S.W.3d at 384.

B. The Texas Supreme has held that a governmental entity's interpretation of a law is entitled to no deference when it conflicts with the text's plain meaning.

While an agency's interpretation of a statute is due "serious consideration," "deferring to

an agency's construction is appropriate only when the statutory language is ambiguous. Otherwise, agency deference has no place." Id. at 384 (internal citations omitted). See also TracFone Wireless, Inc. v. Comm'n on State Emergency Commc'ns, 397 S.W.3d 173, 182 (Tex. 2013).

The Supreme Court case of Houston Belt & Terminal Ry., 487 S.W.3d at 165, is directly on point. It concerns a drainage program administrator's interpretation of Houston's drainage ordinance. Because the ordinance gave the director authority for the program's "administration," the city maintained that the law "implies a broad grant of authority and discretion, citing dictionary definitions of 'administration' and 'ministerial.'" Id. The city further contended that "because Krueger [the administrator] has authority to administer, he necessarily has authority to interpret 'benefitted property [the term in question]', and so his determination—even if wrong—cannot be *ultra vires.*" Id.

The Texas Supreme Court rejected the city's argument, holding that the administrator's interpretation of the text conflicted with the "plain meaning" of the definitions, and, therefore, was beyond his authority. Id. at 166. The Court began by noting that "[h]ere, as is generally the case, *the limits of Krueger's [the administrator's] authority are found in the authority-granting law itself*—the ordinance." Id. at 165 (emphasis added). Looking at the ordinance's definitions, the Court found that they were clear and that the administrator's interpretation-- that the drainage fee applied to all property in Houston regardless of whether the property was part of the city's drainage system—"is contradicted by the ordinance's plain language." Id. at 166. The Court held that although the administrator had discretion to administer the drainage program, "*no language in the ordinance grants Krueger discretion to interpret 'benefitted property'—or any other definition—in a way that is contrary to the definition itself. . . .* Accordingly, we conclude that while Krueger may have some authority with respect to determining which properties are benefitted, he does not

have authority to make that determination in a way that conflicts with other provisions of the ordinance, including its definition and usage of 'benefitted property.'" Id. at 167 (emphasis added).

In Brazos Electric Power Cooperative, the Texas Supreme Court held an agency's discretion to interpret a statute did not extend to interpretations that conflict with the plain meaning of the statutory definitions. 576 S.W.3d at 384. The Legislature established a tax exemption for pollution control property, including a partial tax exemption for property that produces goods and services as well as has pollution control equipment. Id. at 384-86. The "statute generally grants the Executive Director broad discretion to make these determinations" as to the amount of the partial tax exemption, but they did not have authority to determine, contrary to the plain meaning of statutory definitions, that property with partial pollution control equipment would receive no tax exemption. Id. at 385. "There appears to be no dispute that some portion of a HRSG's value is attributable to its production capacity; thus, the Executive Director's discretion is limited to making a use determination that is greater than 0% and less than 100%." Id. at 386.

In City of San Antonio v. City of Boerne, the Texas Supreme Court rejected an attempt to expand the counties' broad power to control their roads to include the non-essential power to ask a city to annex the roads. 111 S.W. 3d. at 31-32. The City of Boerne pointed to statutory language that gave the Kendall and Comal Count Commissioners "general control" over county roads; based on this broad power, the city contended "that the Legislature authorized a commissioners court to voluntarily petition a city to include a county road within its extraterritorial jurisdiction." Id. at 28. The Supreme Court rejected the county's implied power to petition for annexation because it was not indispensable to the legislative purpose of granting counties "general control" over roads in order "to protect the public interest in transportation." Id. at 31-32. "A commissioners court's actions are thus sanctioned under section 81.028 [the "general control" language] only if related

to its duty to protect the public's interest in transportation. Unless the power to petition for annexation is necessary for a commissioners court to carry out that function, we will not imply that it has such power. *Here, the power to petition for inclusion in a city's extraterritorial jurisdiction is neither expressly conferred nor necessarily implied to enable a commissioners court to perform its delegated duty to provide safe roads for public travel*." Id. at 30 (emphasis added) (internal citations omitted).

In the instant case, Chapter 61 specifically defines the medical care services that hospital districts can provide. Although Central Health has discretion to determine which of these medical care services to provide patients, it does not have authority to redefine the statutory definition of medical care services beyond its plain meaning and clear definitions.

VII. FAILURE TO HAVE BASIC FINANCIAL CONTROLS IN GOVERNMENTAL CONTRACTS VIOLATES AS A MATTER OF LAW THE ANTI-GIFT PROVISIONS IN ARTICLE III, SECTION 52 OF THE TEXAS CONSTITUTION.

Article III, Section 52 of the Texas Constitution prohibits governmental entities from providing public funds as a gift to private parties.[6] Texas Municipal League Intergovtl. Risk Pool v. Texas Workers' Compensation Comm'n, 74 S.W.3d 377 (Tex. 2002). The Texas Supreme Court applies a three-part test to determine if a governmental entity complies with this constitutional prohibition against public gifts to private parties. The Court's test states that the governmental entity "must: (1) ensure that the statute's predominant purpose is to accomplish a public purpose,

[6] Article III, 52(a) states: "Except as otherwise provided by this section, *the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision* of the State to lend its credit or *to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever*, or to become a stockholder in such corporation, association or company. However, this section does not prohibit the use of public funds or credit for the payment of premiums on nonassessable property and casualty, life, health, or accident insurance policies and annuity contracts issued by a mutual insurance company authorized to do business in this State." (emphasis added).

not to benefit private parties; (2) *retain public control over the funds to ensure that the public purpose is accomplished and to protect the public's investment*; and (3) ensure that the political subdivision receives a return benefit." Id. at 384 (emphasis added).

The issue most relevant to this case involves the second prong: the public control, or lack thereof, maintained over public funds "to ensure that its public purpose is accomplished and to protect the public's investment." Id. At a minimum, public control requires that the governmental entity has the ability to oversee and control its funds to ensure that they are spent legally on their constitutional and statutory purposes. Id.

In the recently released case of Corsicana Indus. Found., Inc. v. City of Corsicana, 685 S.W.3d 171 (Tex. App.—Waco 2024, pet. filed), the Court of Appeals affirmed a partial summary judgement that as a matter of law the city's agreement with private parties lacked adequate controls to ensure that its funds were spent on their authorized purpose. The Court began by noting that "[l]ong before the Texas Municipal League decision, when determining the constitutionality of any provision authorizing use of public funds committed in furtherance of some public purpose, *courts have considered whether the governmental entity properly supervised and controlled the enterprise*. See Gillham v. City of Dallas, 207 S.W.2d 978, 983 (Tex. Civ. App.—Dallas 1948, writ ref'd n.r.e.)." Id. at 179 (emphasis added). "[C]ourts require some form of *continuing public control* to ensure that the governmental entity receives its consideration, that is, *accomplishment of the public purpose*." Id. (emphasis added).

Looking at the parties' agreements, the Court held that the city's expenditures violated Article III, Section 52 because "[w]e have been unable to discern any provisions in the Agreements that constitute an element of *oversight by Appellees to ensure the public purposes are met*, nor has Chase identified any. The right to mere document review does not provide authority to address

irregularities. There is no provision allowing Appellees to back out for any reason, to change any terms, or *seek reimbursement.*" Id. at 185 (emphasis added). Similarly, in Key v. Commissioners Court of Marion County, 727 S.W.2d 667, 669 (Tex. App.—Texarkana 1987, no pet.) (per curiam), the Court of Appeals found that the county violated Article III, Section 52(a) when it transferred a county project and funds to a non-profit entity and failed to retain public control.

THE FACTS

VIII. THE INDISPUTABLE FACTS AS TO DELL MEDICAL SCHOOL'S EXPENDITURES OF CENTRAL HEALTH FUNDS.

The brief discusses the undisputable facts in three sections below: 1) Central Health has handed over tens of millions of its dollars to DMS that have been spent on expenditures that are not medical care as defined by the plain meaning of the words and Texas Health & Safety Code, Chapter 61; 2) Central Health has funded the $35 million annual payments to DMS both directly and indirectly through commingling its funds with its non-profit the CCC; and 3) Central Health has funded directly other organizations' activities that are not medical care, such as economic development, chambers of commerce, and non-medical social service programs. In short, there is no genuine issue of material fact regarding the evidence that underlies plaintiff's legal contentions of illegal, *ultra vires* expenditures of Central Health funds.

Finally, we note that we are not asking the Court to determine that each of these multitude of expenditures is not medical care; we are asking the Court to hold that there is no genuine issue of material fact that in general DMS has expended a substantial amount of Central Health funds on non-medical care, and then to enjoin Central Health going forward from funding DMS's and others' non-medical services. Because plaintiffs are seeking only an injunction for future, illegal Central Health funding, and not past damages, determining the precise amount of past illegal expenditures is not necessary.

A. DMS undeniably spent tens of millions of the $35 million annual payments on expenses that are not medical care.

The evidence is undeniable that DMS spent tens of millions from the $35 million annual payments on education, research, and general medical school administration unrelated to medical care. Many different types of evidence from DMS-- accounting, budgeting and personnel records as well as depositions—conclusively prove this fact. *DMS essentially admits this fact by classifying in its official financial records the vast majority of these expenditures as for education, research, and general administration— and not for medical care.*

> (1) DMS's own financial records classify 90% of its expenditures of the $35 million annual payments from FY2014- FY2021 as education, research, public service or general administration expenses and only 10% as clinical or clinical administration.

DMS documents show it was officially required by the UT System to classify all of its expenditures, including those from the $35 million payments, by both mission (purpose of the expenditure)[7] as well as national standard higher education functional budget classification codes. These records demonstrate that DMS classified 90% of its expenditures from the $35 million annual payments as serving the functions of education (and related administration), research (and related administration), public service (and related administration), or administration expenses (unrelated to specific missions, hereafter "general administration"). It classified only 10% of these expenditures as clinical or related clinical administration.

The chart below, based on DMS's records, shows from FY2014-FY 2021 that DMS classified only 10.06% of its expenditures from the $35 million annual payments as clinical or clinical administration:

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[7] The plain meaning of "mission" is "a preestablished and often self-imposed objective or purpose." Merriam Webster Legal Dictionary (online at https://www.merriam-webster.com/dictionary/mission#legalDictionary).

Mission	Amounts	Percentages
Administration	($171,468,316)	**73.30%**
Clinical	($8,937,791)	**3.82%**
Clinical Administration	($14,592,569)	**6.24%**
Education	($21,231,746)	**9.08%**
Education Administration	$59,869	**-0.03%**
Public Service	($6,659,993)	**2.85%**
Public Service Administration	($586,530)	**0.25%**
Research	($6,392,984)	**2.73%**
Research Administration	($4,120,753)	**1.76%**
Total	**($233,930,813)**	**100.00%**

Exhibit 10, Affidavit of Dr. William Spiesman, exhibit 1 thereto, tab 1 (highlighting for emphasis).

Dr. William Spiesman explains in his attached affidavit how he used a basic Excel process to derive the figures in the mission summary chart above. Exhibit 10, Affidavit of Dr. Spiesman, pp. 2-6. Dr. Spiesman is a professional research scientist with thirty years of experience using Microsoft Excel and other database software to make very complicated scientific calculations. He relied upon only DMS-provided databases and used a basic, reliable Excel process to combine them. Id., pp. 1-3, 6-7.

He employed Microsoft Excel to simply combine two Excel databases provided by DMS, using the common factor (DMS's unique budget group number) in the two databases. These DMS databases are: 1) the "CCC Account List"; and 2) the "FY2021 CCC Summarized: Tab 7 (Pivot by Domain)." Id., pp. 2-4, exhibits 3 and 4 thereto. See also Exhibit 3, Depo. of Morris, exhibits 4 and 8 thereto.

The "CCC Account List" is a list of every DMS budget group category funded by the $35 million annual payments. Exhibit 3, Depo. of Morris pp. 13, 15, 17, and exhibit 4 thereto. Each

budget group category contains its own nine-digit number, title, source of funds, and assigned mission (among much other data). Id. See also Exhibit 10, Affidavit of Dr. Spiesman, exhibit 3 thereto. So, for budget group account number 19-5500-00 (Rows, 5-12, Column A), the budget title is listed as "Department of Medicine- Designated Funds" (Column H), fund name as "Central Health" (Column R), and the assigned mission as "Administration" (Column O). Exhibit 10, Affidavit of Dr. Spiesman, p. 3 and exhibit 3 thereto.

The "FY 2021 CCC Summarized: Tab 7 (Pivot by Domain)" Excel sheet contains for each budget group account number the amount of CH funds expended by year and in aggregate from FY2014-FY2021. Id. exhibit 4 thereto. See also Exhibit 3, Morris Depo. exhibit 8 thereto. So, for budget group number 19-5500-00, Tab 7 shows that the total amount of CH funds spent by DMS on the "Department of Medicine-Designated Funds" was $8,791,517. Exhibit 10, Spiesman Affidavit, p. 4 and exhibit 4 thereto. Dr. Spiesman, using Excel to combine the databases with their common factor of the budget group category number, shows in his chart that on budget group account number 19-5500-00, the Department of Medicine spent $8,791,517 in CH funds on the assigned mission administration. Id. and attached affidavit Ex. 1, Tab 2. Replicating this step for all CCC Account List budget group account numbers and Tab 7's corresponding total expenditures, Dr. Spiesman derived the figures on Exhibit 1, Tab 2. Id., pp. 4-6, exhibit 1 thereto, tab 2. He then used Excel to simply group the budget group account numbers by mission and finally summed the total expenditures for each mission category. Id., p.5. The result is the above mission summary chart, which is Exhibit 1, Tab 1.

Former DMS Chief Financial and Administrative Officer, Dwain Morris, agreed that this methodology is correct and would "tie the transaction entries [with amounts] to the Missions." Exhibit 3, Depo. Of Morris, pp. 113-114. Morris explained in detail the DMS mission categories

in his deposition of March 2023. He testified that DMS created the mission categories and that he did not know of any written definitions. Exhibit 3, Depo. of Morris, pp. 34-39. He further testified that DMS personnel essentially used the plain and ordinary meaning of these mission terms. Id., pp. 39-44. Morris himself plainly defined clinical, education, research and public service missions: "But generally speaking, clinical would be around the provision of care for patients. Education would be activities aligned with the education of students… research would be activities based towards research activities, so discovery process… Public service would be more generally, not necessarily focused on an individual patient or group of patients but more the general public and activities focused around, you know, service to that -- to· that public -- to the public entity." Id., pp. 40-41. Like Mr. Morris's understanding of clinical, the dictionary meaning is diagnosis and treatment of patients.[8]

He distinguished in plain, ordinary terms between the missions clinical and clinical administration: "if you look at clinical, it would be towards people who are providing care to the individual patient or group of patients. And the [clinical] administration would be individuals or activities that go to support the provision of care to those patients but may not be directly interacting with a patient." Id., p. 41-42. He defined education administration and research administration equally straightforwardly as "support" for these particular missions. Id., p. 42

In summary, based on DMS's own financial records and assignment of missions, *at most 10% of the expenditures from the $35 million annual payments could have been spent on medical care of the poor*—and likely much less. Ten percent is the maximum possible percentage of

[8] Merriam Webster Legal Dictionary defines "clinical" as "of, relating to, or conducted in or as if in a clinic: such as a) involving direct observation of the patient (clinical diagnosis); b) based on or characterized by observable and diagnosable symptoms (clinical treatment, clinical tuberculosis)." (https://www.merriam-webster.com/dictionary/clinical)

medical care because Central Health and DMS never have provided specific information as to how much, if any, of these expenditures actually were spent on Central Health eligible patients (the resident poor), *despite repeated discovery requests and deposition questions*. Exhibit 21, Defendants' Objections and Responses to Plaintiff's Interrogatories, Request for Production, and Requests for Admissions (Feb. 7, 2018), pp. 7-8 (Interrogatory No. 7 Answer); pp. 18-19 (Request for Production No. 2 Response); p. 23 (Request for Production No. 11 Response); Exhibit 1, Deposition of Dr Young (March 2023), pp. 38, 104, 121, 138; Exhibit 3, Deposition of Morris, p. 138.

> (2) DMS also has used national standard higher education budget classifications to categorize 90% of the expenditures from the $35 million annual payments as non-medical care functions.

In addition to using internally its mission assignments, DMS also classifies for external purposes its expenditures by national standard functional classification codes. Exhibit 3, Depo. of Morris, pp. 35, 50, 57. The UT-System requires all its institutions, including DMS, to classify the function of every expenditure by the national standards of the National Association of College and University Business Officers ("NACUBO"). Exhibit 17, UT-System FY2024 Operating Budget Summaries (August 2023), pp. 4, 7, 13, 29. See also Exhibit 3, Deposition of Morris, exhibit 10 thereto. Because NACUBO standardized functional classification codes are used by higher education institutions across the country, they have precise definitions, which are spelled out in lengthy manuals and numerous memos. Exhibit 17, UT-System FY2024 Operating Budget Summaries, pp. 7-8; Exhibit 3, Deposition of Morris, pp. 48, 50-53, exhibit 10 thereto; NACUBO Financial Accounting and Reporting Manual for Higher Education (FARM) (https://efarm.nacubo.org/event-data/section/nacubo/nacubo_13). NACUBO categorizes medical care and medical care administration functions as "Hospital," and the other higher education functions as "Academic Support," "Research," "Public Service," "Institutional Support," and other

codes. Based on NACUBO Codes, DMS assigned these amounts and percentages to its expenditures from the $35 million annual payments:

See Exhibit 10, Affidavit of Dr William Spiesman, exhibit 2 thereto.

NACUBO Codes	**Amounts**	**Percentages**
Institutional Support	($171,468,316)	73.30%
Hospital	($23,530,360)	10.06%
Academic Support	$59,869	-0.03%
Instruction/Scholarship & Educ.	($21,231,746)	9.08%
Public Service	($7,246,523)	3.10%
Research	($10,513,737)	4.49%

For his attached NACUBO Code Summary Chart (exhibit 2 to affidavit), Dr. Spiesman combined the data in Exhibit 1, Tab 1 with the data in the DMS-provided NACUBO and Mission Mapping Chart. Exhibit 10, Affidavit of Dr Spiesman, pp. 6-7, exhibit 5 thereto. This Mapping Chart shows the NACUBO codes that correspond to DMS's assigned missions. Id. For example, the DMS missions "clinical" and "clinical administration" correspond to the single NACUBO Code "Hospital." Id., exhibit 5 thereto. Dr. Spiesman then used Excel to substitute NACUBO Codes for the corresponding assigned missions in Exhibit 1, Tab 1, creating Chart 2 above. Exhibit 10, Affidavit of Dr. Spiesman, pp. 6-7 and exhibit 2 thereto. Chart 2 shows the total amount of these funds spent by NACUBO standard functional budget codes.

It is noteworthy that DMS assigned the same percentage of funds (10.06%) to the

NACUBO Code "Hospital"[9] as it assigned to its missions clinical and clinical administration. It assigned also to the NACUBO Code "Institutional Support" the same percentage (73.3%) as it assigned to the mission general administration.

The Official UT-Systems FY2024 Operating Budget Summaries provide short descriptions of the NACUBO functional codes. Exhibit 17, UT System Operating Budget Summaries FY 2024, pp. 7-8. It explains that "functional classifications" "indicate why an expense was incurred rather than what was purchased. Functional classification definitions are set by the National Association of College and University Business Officers." Id, p. 7. It defines, for example, NACUBO Code "hospitals and clinics," as "[e]xpenditures of U. T. health-related institutions with teaching hospital affiliations for *costs associated with providing patient care and operating the entity (i.e., labs, pharmacies, personnel salaries, etc*.)." Id. at 8 (emphasis added). NACUBO's "Hospital Code" comports with the plain meaning of the function of hospital and clinics: to provide patient care. Similarly, applicable DMS NACUBO Codes that relate to research, education, public service and general administration comport with common usage.[10]

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[9] The NACUBO Hospital classification also includes, in addition to hospital care, medical care at clinics and other locations. Exhibit 17, UT-System FY 2024 Operating Budget Summaries, pp. 8, 29.

[10] "INSTRUCTION AND ACADEMIC SUPPORT – Expenditures for salaries, wages, and all other costs related to those engaged in the teaching function including operating costs of instructional departments. This would include the salaries of faculty, teaching assistants, lecturers, and teaching equipment. Library materials and related salaries are also included."

"RESEARCH – Expenditures for salaries and wages and other costs associated with the support of research conducted by faculty members."

"PUBLIC SERVICE – Expenditures for activities providing noninstructional services beneficial to individuals and groups external to the institution (e.g., conferences, institutes such as the Institute for Texan Cultures, general advisory services, reference bureaus, radio, and television)."

"INSTITUTIONAL SUPPORT – Expenditures for central executive-level activities concerned with management and long range planning for the entire institution, such as the governing board, planning and programming, and legal services; fiscal operations, including the investment office; administrative data processing; space management; employee personnel and records; logistical activities that provide procurement, storerooms, printing, and

In short, DMS's financial documents prove conclusively that DMS spent only 10% ($23,530,360 out of $233,930,813) of its expenditures from the $35 million annual payments "for costs associated with providing patient care and operating the entity (i.e., labs, pharmacies, personnel salaries, etc.)." DMS undeniably spent the remainder on the other NACUBO functional classifications—which do not include medical care or related administrative expenses, including Instruction/Scholarship & Education ($21,231,746), Public Service ($7,246,523), Research ($10,513,737), and Institutional Support ($171,468,316). Exhibit 10, Affidavit of Spiesman, exhibit 2 thereto. Notably, the Institutional Support classification includes only general medical school costs, such as general administration, operations, maintenance, and plant expenses, because administrative expenses related to medical care are included separately in the NACUBO "Hospital Code" (as well as in the DMS clinical administration mission).[11]

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transportation services to the institution; support services to faculty and staff that are not operated as auxiliary enterprises; and activities concerned with community and alumni relations, including development and fund raising."

"STUDENT SERVICES – Expenditures for offices of admissions and of the registrar and activities with the primary purpose of contributing to students' emotional and physical well-being and intellectual, cultural, and social development outside the context of the formal instruction program."

"OPERATION AND MAINTENANCE OF PLANT – Expenditures of current operating funds for the operation and maintenance of the physical plant. This includes all expenditures for operations established to provide services and maintenance related to grounds and facilities…."

"SCHOLARSHIPS AND FELLOWSHIPS – Expenditures for scholarships and fellowships in the form of grants to students resulting from selection by the institution or from an entitlement program. Amounts reported are net of the effects of tuition discounting." Exhibit 17, UT-System FY2024 Operating Budget Summaries, p.8.

[11] Similarly, the NACUBO classifications related to DMS's research, public service, and education functions also include the administrative expenses related to those specific functions. Exhibit 17, UT-System FY2024 Operating Budget Summaries, pp. 8. Thus, the NACUBO Code "Institutional Support" makes clear that it corresponds to the DMS mission for general, unassigned administrative expenses for the entire school: "Expenditures for central executive-level activities concerned with management and long range planning for the entire institution, such as the governing board, planning and programming, and legal services; fiscal operations, including the investment office; administrative data processing; space management; employee personnel and records; logistical activities that provide procurement, storerooms, printing, and transportation services to the institution; support services to faculty and staff that are not operated as auxiliary enterprises; and activities concerned with community and alumni relations, including development and fund raising." Id.

(3) DMS's official budgets for FY2022-FY2024 show it spent millions on non-medical care from the $35 million annual payments during this period as well.

After fiscal year 2021, we need to look at the UT-Austin officially approved operating budgets for DMS's expenditures because DMS refused to produce the CCC Summarized Data: Tab 7 for subsequent fiscal years (The CCC Summarized Data: Tab 7 in Excel made it simple to aggregate Central Health-funded budget category totals by mission and NACUBO Code for FY2014-2019).

Nonetheless, hard copies of the FY 2022 and FY2023 official UT-Austin operating budgets show undisputedly that DMS has continued to spend millions of the $35 million annual payments on expenditures that DMS classified as other than clinical care or clinical administration. Exhibit 15, UT-Austin FY2023 Budget, pp. G-36 – G-43; Exhibit 14, UT-Austin FY2022 Budget, pp. G-35 – G-42. These DMS budgets categorize their expenditures by the same nine-digit budget group account numbers and budget titles as used in the CCC Account List (and as described above). By identifying the budget group account numbers in both documents, we can determine the amounts spent in the DMS budget categories and their assigned missions.

Turning to the DMS FY2023 budget, it first should be noted that all the "Dell Medical School-Central Health District Funding: 19-5600-22" revenue is classified as "administration." Exhibit 15, UT-Austin FY 2023 Budget, G-37; Exhibit 10, Affidavit of Spiesman, exhibit 3 thereto (CCC Account List (Rows 82-90, Columns B, H, O). DMS assigned the mission general administration to twelve DMS budget expenditure categories funded by the $35 million annual payments, totaling $6,761,670.[12] Similarly, DMS's assigned the following non-clinical missions

[12] "Design Institute- CH Funding" $200,000: "Administration" (Exhibit 15, UT-Austin FY 2023 Budget, G-37: Exhibit 10, Affidavit of Spiesman, exhibit 3 thereto: CCC Account List, Rows 91-98 (Cols. B, H, O)); "Communications- CH

to these budget categories funded by the $35 million payments: Education Mission ("Medical Education, "Student Affairs," and "Ungrad. Med. Ed"), totaling $2,050,000[13]; Public Service ("Strategy and Partnership" and "PH [Public Health] Community Engagement"), totaling $1,610,000.[14] (Note that the DMS official budget section, cited above, is not nearly as comprehensive as the CCC FY 2021 Summarized Data and may not include all expenditures from the $35 million).

The DMS FY2022 Budget contains many of the same budget group categories assigned education, public service, and general administration missions as in the DMS FY2023 budget. Exhibit 14, UT-Austin FY2022 Budget, G35- G-42.[15] The totals for these same budget categories

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Funding" $800,000: "Administration" (Id. at G-37; CCC Account List, Rows 138-145 (Cols. B, H, O)); "Value in Health and Care CH" $200,000: "Administration" (Id., G-38; CCC Account List, Rows 266-272 (Cols. B, H, O)); "Facilities CH Funding" $361,670: "Administration" (Id., G-38; CCC Account List, Rows 334-343 (Cols. B, H, O)); "Technology CH Funding": "Administration" $1,500,000 (Id., G-38; CCC Account List, Rows 352-355, 357 (Cols. B, H, O)); "Human Resources CH" $950,000: "Administration" (Id., G-39; CCC Account List, Rows 465-473 (Cols. B, H, O)); "Finance CH" $800,000: "Administration" (Id., G-39; CCC Account List, Rows 543-550 (Cols. B, H, O)); "IT Clinical Apps CCC" $800,000: "Administration"; (Id., G-40; CCC Account List, Rows 551-558 (Cols. B, H, O)); "IT Data Analytics CH" $150,000: "Administration" (Id., G-40; CCC Account List, Rows 559-566 (Cols. B, H, O)); "IT Education CH" $200,000: "Administration" (Id., G-40; CCC Account List, Rows 567-574 (Cols. B, H, O)); "IT Ops CH" $800,000: "Administration" (Id., G-40; CCC Account List, Rows 583-590 (Cols. B, H, O)).

[13] "Medical Education" $400,000: "Education" (Exhibit 15, UT-Austin FY2023 Budget, G37; Exhibit 10, Affidavit of Spiesman, exhibit 3 thereto: CCC Account List: Rows 124-130 (Cols. B, H, O)); "Student Affairs": "Education" $50,000 (Id, at G-38; CCC Account List: Rows 206-212 (Cols. B, H, O)); "Ungrad. Med. Ed.": Education $1,600,000 (Id, at G-38; CCC Account List: Rows 221-227 (Cols. B, H, O)).

[14] "Strategy and Partnerships" $500,000: "Public Service" (Exhibit 15, UT-Austin FY2023 Budget, G-37; Exhibit 10, Affidavit of Spiesman, exhibit 3 thereto: CCC Account List: Rows 154-161 (Cols. B, H, O)); "Public Health Community Engagement" $1,100,000: "Public Service" (Id. at G-40; CCC Account List: Rows 786-790 (Cols. B, H, O)).

[15] The budget categories in the FY2022 Budget that are also in the FY 2023 budget and have the same assigned missions are:

1) Education: "Medical Education" $900,000: "Education" (Exhibit 14, UT-Austin FY2022 Budget, at G-36; Exhibit 10 (Spiesman Affidavit), exhibit 3 thereto: CCC Account List: Rows 124-130 (Cols. B, H, O)); "Student Affairs": "Education" $900,000 (Id, at G-36; CCC Account List: Rows 206-212 (Cols. B, H, O)); "Ungrad. Med. Ed.": Education $900,000 (Id, at G-37; CCC Account List: Rows 221-227 (Cols. B, H, O)). The total amount for education is $2,700,000.

2) Public Service: "Strategy and Partnerships" $1,100,000: "Public Service" (Exhibit 15, UT-Austin FY2022 Budget, G-36; Exhibit 10 (Spiesman Affidavit), exhibit 3 thereto:CCC Account List: Rows 154-161 (Cols. B, H, O)); "Public

in FY2022 by DMS assigned mission are: $2,700,000 for Education, $1, 600,000 million for Public Service, and $9,200,000 for General Administration. See footnote 15 for the totals' details. The FY2022 DMS Budget also contains budget category expenditures funded by the $35 million that were not made in FY2023, such as the general administration budget categories "Business Affairs" and "Development" [fundraising] and research budget categories "Research" and "Professional Education."[16] These total an additional $5,000,000.

Just as the budget categories funded by the $35 million annual payment change from year to year, the amounts in each category vary widely and inexplicably. For example, in FY2023 DMS spent $50,000 on "Student Affairs" and nothing on "Business Affairs," but in FY2022 DMS spent $900,000 and $1.7 million respectively from the $35 million payments on these categories. Exhibit 15, UT-Austin FY 2023 Budget, G-38; Exhibit 14, UT- Austin FY2022 Budget, G-36. Similarly, the budget amounts in Fiscal Year 2022 for Strategy and Partnerships ($1,100,0000) and Public

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Health Community Engagement" $500,000: "Public Service" (Id. at G-40; CCC Account List: Rows 786-790 (Cols. B, H, O)). The total amount for public service is $1,600,000.

3) General Administration: "Design Institute- CH Funding" $200,000: "Administration" (Exhibit 14, UT-Austin FY 2022 Budget, at G-35: Exhibit 10 (Spiesman Affidavit), exhibit 3 thereto: CCC Account List, Rows 91-98 (Cols. B, H, O)); "Communications- CH Funding" $800,000: "Administration" (Id. at G-36; CCC Account List, Rows 138-145 (Cols. B, H, O)); "Value in Health and Care CH" $200,000: "Administration" (Id., G-37; CCC Account List, Rows 266-272 (Cols. B, H, O)); "Facilities CH Funding" $1,400,000: "Administration" (Id., G-37; CCC Account List, Rows 334-343 (Cols. B, H, O)); "Technology CH Funding": "Administration" $2,200,000 (Id., G-37; CCC Account List, Rows 352-355, 357 (Cols. B, H, O)); "Human Resources CH" $950,000: "Administration" (Id., G-38; CCC Account List, Rows 465-473 (Cols. B, H, O)); "Finance CH" $1,100,000: "Administration" (Id., G-38; CCC Account List, Rows 543-550 (Cols. B, H, O)); "IT Clinical Apps CCC" $800,000: "Administration"; (Id., G-39; CCC Account List, Rows 551-558 (Cols. B, H, O)); "IT Data Analytics CH" $150,000: "Administration" (Id., G-39; CCC Account List, Rows 559-566 (Cols. B, H, O)); "IT Education CH" $200,000: "Administration" (Id., G-39; CCC Account List, Rows 567-574 (Cols. B, H, O)); "IT Ops CH" $1,200,000: "Administration" (Id., G-39; CCC Account List, Rows 583-590 (Cols. B, H, O)). The total amount for general administration is $9,200,000.

[16] FY2022 DMS budget categories not funded in the FY2023 DMS Budget are: "Business Affairs" $1,700,000: "Administration" (Exhibit 14, UT-Austin FY 2022 Budget, G-36; Exhibit 10 (Spiesman Affidavit), exhibit 3 thereto: CCC Account List: Rows 131-136; "Development" $500,000: "Administration" (Id.; CCC Account List, Rows 146-153 (Cols. B, H, O)); "Research" $1,400,000: "Research Administration" (Id.; CCC Account List, Rows 162-167(Cols. B, H, O)); "Professional Education" $1,400,000: "Research" (Id., G-37; CCC Account List, Rows 213-220 Cols. B, H, O)). The total is $5,000,000.

Health Community Engagement ($500,000), simply flipped in Fiscal Year 2023. Exhibit 14, UT-Austin FY 2022 Budget, G-36, G-40; Exhibit 15, UT-Austin FY 2023 Budget, G-37, G-40.

For Fiscal Year 2024, the official UT-Austin Operating Budget again shows that DMS has spent the $35 million annual payments on DMS budget categories assigned to non-clinical missions. However, the FY2024 budget presents the information differently than in prior year budgets; it is much shorter and uses a seven-digit "unit code" number with the budget category title, rather than the nine-digit budget group account number. Exhibit 16, UT FY2024 Operating Budget, G-10 – G-12. The "unit code' corresponds to specific departments as a whole, rather than different components of department activities such as with the budget group account code. Exhibit 10, Spiesman Affidavit, exhibit 3 thereto (CCC Account List, Columns E, F)). See also Exhibit 3, Deposition of Morris, exhibit 5 thereto. The mission for many of these FY2024 DMS budget categories still can be determined because each unit code number (department) is assigned one or more specific missions. Id., CCC Account List, Columns E, O. We list the amounts for only the budget categories with assigned unit codes that do not include assigned clinical or clinical administration missions: Diagnostic Medicine ($889,943), Neurosurgery ($6,820,764), Facilities ($1,022, 078), DMS-Development ($65,000), Health Disparities ($90,293), Medical Education ($5,783, 514), Neurology ($14, 493,018); and "DMPH-PI-Shokar [Dell Medical Population Health Dept.] ($85,683).[17] The total of non-clinical expenditures, which is an undercount because

[17] "Diagnostic Medicine" 0051-000: Administration, Research, Research Administration, Education (Exhibit 16, UT FY2024 Operating Budget, at G-10; Exhibit 10 (Spiesman Affidavit), exhibit 3 thereto: CCC Account List, Rows 327-333, 686-700 (Columns D, E, O); "Neurosurgery" 0053-000: (Id. at G-10; CCC Account List, Rows 449-456 (Columns D, E, O); "Facilities" 0060-110: Administration (Id. at G-11; CCC Account List, Rows 334-344 (Columns D, E, O); "DMS-Development" 0060-300: Administration (Id. at G-11; CCC Account List, Rows 146-153(Columns D, E, O); "Health Disparities" 0060-700: Research (Id. at G-10; CCC Account List, Rows 228-235 (Columns D, E, O); "Medical Education" 0061-000: Education, Education Administration (Id. at G-11; CCC Account List, Rows 124-130, 1115-1119 (Columns D, E, O); "Neurology" 0063-000: Administration (Id. at G-11; CCC Account List, Rows

the budget uses unit codes, is $29,250, 293.

(4) DMS has officially classified and treated the $35 million annual payments as a gift of unrestricted funds, for which it owes no services to Central Health.

UT-Austin's official budget documents reveal that it considers the $35 million annual payments as funds for which it owes Central Health nothing in return (i.e., a gift). In UT-System's Official FY 2024 Operating Budget Summaries, p. 28, the UT System classifies the $35 million payment in the budget category, "State/Local Sponsored Programs- Nonoperating." Exhibit 17, UT-System FY2024 Operating Budget Summaries (August 2023). The UT-System defines this category as "[f]unding received from state or local governments *for which no exchange of goods or services is perceived to have occurred*. This typically includes Texas Research Incentive Program awards from the State of Texas and *funding for the U. T. Austin Medical School provided by the local health care district*." Id., p. 8 (emphasis added). The $35 million annual payments are the only state or local funds placed by UT-Austin in this unrestricted revenue category. Id., p.28.

In contrast, the UT-System classifies *restricted* state and local governmental funds as state or local "operating: sponsored programs." These funds are defined as "amounts *received for services performed on grants, contracts, and agreements* from these entities for current operations." Id., p. 7. 28 (emphasis added). In short, for these restricted state and local government funds—unlike the $35 million annual payments to DMS—commensurate value in services is expected in return. Id., pp. 7, 28. Legally, the $35 million payments funds should have been classified and treated as restricted government revenue because they may be spent only on legally authorized hospital district purposes. Brief, *supra,* section V.B.

113-118 (Columns D, E, O); "DMPH-PI-Shokar" 0066-24: Education Administration (Id. at G-12; CCC Account List, Rows 1105-1109 (Columns D, E, O).

Depositions also demonstrate that DMS personnel used the $35 million payments as basically a slush fund to fill whatever medical school budget gaps existed—regardless of—the legal restrictions on hospital district funds. Dwain Morris, former DMS head of finance, testified that DMS allocated these funds simply to fill medical school budget gaps and not based on any other basis. Exhibit 3, Depo. of Morris, pp. 88-89, 96-102. He further testified that DMS could and did spend the funds on any expenses that related to DMS operations, regardless of whether they related to medical care. Id. at 175-176.

In addition. Dr. Amy Young, DMS Vice Dean of Professional Practice, confirmed there was no DMS budget allocation methodology other than using the $35 million payments to plug DMS budget shortfalls. Exhibit 1, Depo. of Young, pp. 9, 29-30,33-35,148. See also Exhibit 6, Deposition of Mike Geeslin (May 2023), pp. 192-194.

In conclusion, DMS classified and treated the $35 million annual payments as a gift for which they owed no services. Accordingly, it allocated these funds based on the school's operational budget needs and without regard to whether they complied with the restrictions embodied in Texas law.

> (5) CH justifies DMS's uses of the $35 million annual payments based on their affiliation agreement, but its definition of "permitted investments" purports to allow many expenditures other than for medical care.

Both Central Health and DMS rely on their affiliation agreement-- rather than Texas' constitution and statutes—as DMS's authorization to spend the $35 million annual payments on non-medical care. DMS's former finance head testified that its decisions on how to spend these funds were based on "the definition of permitted… investments" in the Affiliation Agreement. Exhibit 3, Deposition of Morris, p. 173. See also pp. 85-86, 96, 169-172, 174-176. Central Health's Chief Financial Officer Jeff Knodel confirmed that Central Health knew and agreed that DMS could spend these funds based on the affiliation agreement's definition of "permitted investments."

Exhibit 5, Deposition of Jeff Knodel (November 2018), 20, 59-61, 69-79. Similarly, Central Health's former President and DMS's Chief Clinical Officer both testified that DMS made its funding decisions based on the affiliation agreement's definition of "permitted investments." Exhibit 6, Depo. of Mike Geeslin, pp. 106-113; Exhibit 1, Depo. of Dr. Amy Young, p. 63.

The affiliation agreement's definition of "permitted investment" is written so broadly as to encompass, in DMS's "discretion," any and all operations or activities of the medical school, whether its "on-going operations," "administration infrastructure," or "other related activities and functions. In pertinent part, "permitted investments"

> include the provision of *direct operating support to UT* that will be used by UT *in its discretion to facilitate and enhance* the (i) development, accreditation, and *on-going operation of the UT Austin Dell Medical School and its administrative infrastructure*, (ii) recruitment, retention, and work of the UT Austin Dell Medical School Faculty, Residents, Medical Students, researchers, administrators, staff, and other clinicians, and (iii) *other related activities and functions as described in the Recitals to this Agreement*.

Exhibit 3, Deposition of Morris, exhibit 14 thereto: Affiliation Agreement, Section 1, p. 9.

By incorporating in the last clause four pages of amorphous "recitals" into the definition of permitted "other related activities and functions," the agreement provides essentially little if any restrictions on DMS's use of these funds. Id., pp. 2-6. The recitals reference undergraduate medical education (pp. 3-4, last clause); continuing professional education (p. 3, bullet 4; p.14, section 4.2.3); general academic research (p. 3, bullets 5-7); p. 4, clause 2); administration (p. 9, section 4.6); academic programs (p. 3, bullet 1); general population health studies (p. 3, bullet 7; p. 15, section 4.2.9); commercialization of innovation and research (p 3, bullet 6); funding for the development of the medical school (p. 5, clause 5); and care of paying patients (p. 2, clause 3). Id.

Central Health and DMS officials interpret "permitted investments" as broadly as it is written, as purportedly permitting the medical school to spend the $35 million annual payments on any DMS activity. When asked "is there anything that is part of Dell Medical School's overall

operations that would not fit within the permitted investments," DMS's head of finance answered, "I don't believe there is." Exhibit 3, Depo. of Morris, p. 175. He also could not think of any instance when DMS declined to use these funds for any purpose. Id., pp. 175-176. Other DMS and Central Health officers testified similarly regarding the incredibly broad scope of "permitted investments"[18] None of the above contractually "permitted" DMS expenditures constitute "hospital and medical care," as commonly understood. Tex. Const. Art IX, § 4. Texas Health & Safety Code, Sec. 61.028, 61.0285.

The permitted uses of Central Health's public funds must comply with state law, and if not, the affiliation agreement's definition of permitted investments cannot contractually authorize what the Legislature has not. Brief, *supra,* section V.D. The fact that the funds were used for "permitted investments" as defined by an agreement of the parties is irrelevant to whether the funds were used for legally authorized purposes, which they were not.

(6) A detailed look at select DMS departments also proves that the $35 million payments were spent on education, research, and general administration.

We chose a few DMS departments to depose their directors as to their activities and those of their employees who were paid fully or nearly so by the $35 million annual payments. These departments spent millions of these funds on activities that DMS classified as missions other than clinical care or clinical administration. The department employees' work had nothing to do with clinical care or clinical administration, yet they were paid fully or almost fully from the $35 million

[18] DMS's Chief Clinical Officer testified that "permitted investments" authorizes the $35 million payments to be used for "administration of an academic department [that] is responsible for the tripartite mission, research, education and clinical care." Exhibit 1, Depo. of Dr. Amy Young, p. 63. Likewise, the hospital district's former President testifies that "permitted investments" allows DMS to use the funds for "non-clinical medical education," "ongoing operations for medical education unrelated to indigent medical care," "administrative infrastructure for non-clinical medical research," and DMS communication and development departments because "what they're doing is part of the overall health care system." Exhibit 6, Depo. of Geeslin, pp. 108-113.

payments.

Communications Department. John Daigre, Executive Director of Communications and External Affairs for DMS, testified that the Communications Department's function was "to communicate and advance the mission of the medical school," including for all of its departments. Exhibit 7, Depo. of John Daigre (November 2018), pp. 9, 14. His job description, which he describes as accurate, indicates that he oversees all of DMS's marketing, branding, press releases, media relations, promotion of school events, the website, social media, and graphics. Id., pp. 9-18, Ex. 2. The $35 million annual payment funded at the time of his deposition 100 % of his salary and that of approximately six other departments employees. Id., pp. 31-36. He admitted none of his employees provided health care and much of their communications work was related to promoting the school's research and teaching. Id. at 9, 37, 41.

DMS's official documents show between Fiscal Year 2014-2021 that the $35 million payments funded $3,822,947.33 of the Communications Department, of which DMS assigned 100% to the mission general administration. Exhibit 10 (Spiesman Affidavit), exhibit 4 thereto: CCC FY21 Summarize Data, Tab 7: Pivot By Domain, Rows 12-13, 46-47 (Columns A, I); Exhibit 10 (Spiesman Affidavit), exhibit 3 thereto: CCC Account List Rows 138-144 (Communications:19-5600-33), Columns B, G, O). The FY2022 and FY2023 Budgets shows that the Communications Department received $800,000 each of these year for general administration. Brief, *supra,* VIII.A(3).

Business Affairs Department. Dwain Morris testified about the operations of the Business Affairs Department, which he oversaw. Exhibit 2, Deposition of Dwain Morris (November 2018), pp. 5, 8 and exhibit 8 thereto. His job responsibilities for the Business Affairs Department, which served the entire medical school, included overseeing "the financial transactions that occur in the

organization, reporting, oversight approvals, going through the administrative process for the different functions of the -- the school." Id., p. 10. He testified to the titles, responsibilities, and salary amounts of his department's employees that were paid fully (or nearly so) from the $35 million payments. Those employees included, among others: himself; Adrianne Basurto (administrative assistant), Raquel Epstein (marketing manager), Amanda Janecek (Sr. HR coordinator), Joseph Ramirez (Sr. administrator associate), and Susan Scheffler (associate director of finance). Id., pp. 20-27.

From Fiscal Years 2014-2021, the Business Affairs Department spent $10,522,837.13 from the $35 million annual payments, all of which were assigned the mission administration. Exhibit 10 (Spiesman Affidavit), exhibit 4 thereto: CCC FY2021 Summarized Data, Tab 7: Pivot by Domain, Rows 5-6, 42-43 (Columns A, I); Exhibit 10 (Spiesman Affidavit), exhibit 3 thereto: CCC Account List (Business Affairs:19-5600-32, Rows 131-137 (Columns B, G, O). In FY 2022. $1,700,000 was spent on the Business Affairs Department and again was classified as administration. Brief, *supra*, VIII.A(3).

Design Institute for Health. Stacey Chang, Executive Director of the Design Institute for Health, testified about the activities and funding of his department. The Design Institute teaches and researches "redesigning…almost every aspect of the health care system," from the overall system, fee methodology, medical products, technology, information systems, and social determinants of health. Exhibit 8, Deposition of Stacey Chang, pp. 20, 25-34 and exhibit 6 thereto (Design Institute's webpage self-description).

It employs approximately 15 people. Id., p. 66. The employees' salary information reveals those employees that were paid completely (or almost completely) from the $35 million payments. These employees include Stacey Chang (Executive Director), Katherine Jones (Director of

Strategies and Missions), Jose Colucci (Director of R&D), Jeff Steinberg (Director of Operations), and Charu Junejar (Director of Business and Behavior Design). Id., pp. 9-10, 58-60, 69-70.[19] Mr. Chang admitted that "[n]one of the employees of the Design Institute are medical professionals, so we don't provide direct medical care… ." Id., p. 71.

DMS financial records show from Fiscal Years 2014-2021 that the Design Institute spent $6,015,033.50 of these funds, of which $5,791,156.82 was assigned the mission administration. Exhibit 3, Morris Depo, exhibit 8 thereto: CCC FY21 Summarized Data, Tab 7: Pivot by Domain, Rows 29-34, Columns A, I); Exhibit 3, Morris Depo, exhibit 4 thereto: CCC Account List, Rows 92-98 (Columns B, D, O). For both FY 2023 and FY 2022, $200,000 was spent on the Design Institute on administration. Brief, *supra*, VIII.A(3).

Departments of Diagnostic Medicine and Women's Health. Dr. Amy Young testified about the functions of these two departments. Dr. Young wears many important hats for DMS: Vice Dean of Professional Practice, Chief Clinical Officer at UT Health Austin, Interim Director of the Dept. of Diagnostic Medicine, Distinguished Professor of Women's Health, and formerly Director of the Women's Health Department. Exhibit 1, Depo. of Dr. Amy Young (March 2023), pp.7-8. In her capacity as a department director, she has played an important role in assigning missions to the expenditures of the Departments of Diagnostic Medicine and Women's Health. Id., pp. 18-22, 54, 57-58. She testified that she agreed with DMS's assignment of 100% of the expenditures by the Department of Diagnostic Medicine from the $35 million payments to research and administration expenditures. Id., p. 58 (referring to CCC Account List, Rows 199-205, 327-

[19] The evidentiary support related to the information for each Design Institute employee listed above is as follows: Stacy Chang (Exhibit 8, Depo, of Stacy Chang, pp. 19, 68, exhibit 5 thereto); Katherine Jones (Id., pp. 9, 16, 48, 59, 69); Jose Colucci (Id., pp. 9, 10, 24, 28, 58-59); Jeff Steinberg (Id., pp. 59-70); Charu Juneja (Id., pp.59-69)

333 (Columns B, G, O)). She also agreed with the mission assignments of $17.5 million in expenditures for the Department of Women's Health, which classified $16.5 million in expenditures as general administration and only $604,000 as clinical administration. Id., pp. 59-60 (referring to CCC FY21 Summarized Data, Tab 7, Rows 191, 192, 196 (Columns A and I); CCC Account List, Women's Health Department: Administration Mission (Account No. 19-5500-02, Rows 18-25 (Columns B, G, O); Mission (Account No. 19-5602-80 (Rows 866-870) (Columns B, G, O)). In the FY 2024, Diagnostic Medicine receives $889,943. She also testified as Chief Clinical Officer that there were no records of the amount or type of medical care provided the poor by DMS department personnel whose salaries were assigned in full or in part to the clinical and clinical administration mission. Id., pp. 66-67, 81-82, 126-127, 130-131, 134, 138, 141, 144.

Some background information may be helpful to explain why there are no records of medical care to uncovered poor residents having been provided by DMS personnel funded by the $35 million annual payments. There are two basic categories of CH-eligible low-income patients. One category is the 70,000 or so low-income residents who have Central Health's Medical Assistance Program (MAP) coverage. Exhibit 6, Depo. of Mike Geeslin, pp. 21, 171-172. MAP is Central Health's health coverage program for uninsured Travis County residents with incomes at or below 200% of the federal poverty level. Id. The second category is eligible low-income county residents but who are *not* covered by MAP. Id., pp. 173-176. Approximately 91,000 Travis County low-income residents fit the latter category: they are eligible for MAP coverage but do not receive it, at least in part because of an alleged lack of Central Health funds. Id.

For the 71,000 low-income residents with MAP coverage, Central Health and UT Health Austin (DMS's discrete provider group) have a separate specialty services agreement to provide medical care. Exhibit 3, Deposition. of Morris, exhibit 12 thereto. This specialty services

agreement provides MAP patients with health coverage in only very limited areas of care: musculoskeletal, women's health, and related imaging services since 2018, and since the middle of 2023, also ophthalmologic, podiatric, long COVID, and advanced imagery services. Exhibit 1. Depo. of Dr. Young, pp. 89, 122-123; Exhibit 3, Deposition of Morris, exhibit 12 thereto: Specialty Services Agreement (October 2019), pp. 22-55. DMS does not provide medical care to MAP patients with any other illnesses, whether cancer, heart, diabetes, auto-immune, or other illnesses not listed in the specialty services care agreement.

There is a crucial catch: for these specialty medical care services, Central Health pays DMS *additional millions* (on top of the $35 million annual payments) to treat its MAP patients. Exhibit 1, Depo. of Dr. Young, pp. 124. UT Health Austin (UTHA) collects and enters data for these MAP patients as it does with all its insured patients. It asks, and keeps in its electronic medical data system, whether patients have MAP coverage. Id., p. 101-102, 120. As a result, UTHA provides Central Health typical aggregated patient data, such as the number of MAP patients served, number of patient visits, and their diagnosis and treatment codes. Id., pp. 104-105. Plaintiffs have no dispute with Central Health fairly paying UT Health Austin for specialty medical care services for low-income residents because it helps Central Health fulfill its legally required responsibility under Texas law. This dispute is over the fact that most if not all of the $35 million annual payments does not provide medical care to poor residents.

In contrast, from the $35 million annual payments, DMS pays some of the salaries of clinical and clinical administration personnel but has *no record of treating any of the 91,000 eligible low-income residents without MAP coverage*. Id. at pp. 38, 101-102, 120-121, 138. This is because DMS does not ask, and, therefore its electronic data system does not keep, data on the income level of patients. Id. As a result, DMS has no documentation that its personnel provided

any medical care from the $35 million annual payments to CH eligible patients without MAP coverage. Id. There are no records of the number, if any, of these CH-eligible patients treated by DMS, the number of their patient visits, their diagnoses, or the particular medical services they received. Id. *In summary, DMS has no specific records that its employees who were paid for from the $35 million annual payments provided any medical care to the 91,000 eligible county residents without MAP coverage.*[20]

(7) DMS Personnel and Salary Summary Records.

DMS produced summary personnel data for its employees whose salaries have been funded in full or in part from the $35 million annual payments. For many of these personnel, their titles and assigned academic, research, and administrative departments indicate that they are not involved in providing medical care. Exhibit 3, Deposition of Morris, exhibit 8 thereto: CCC FY2021 Summarized Data, Tab 3 (Pivot by Title) (Columns K, L, M) and Tab 6 (FY21 Personnel & Salary) (Columns C, D, E, F). These include numerous administrative, clerical and management position titles for non-clinical departments, such as Undergraduate Medical Education, Research, Communications, Development, and Business Affairs. Id. An in-depth look at DMS's personnel and salary summary chart for FY2021 shows that many of its personnel have nothing to do with medical care. Id., CCC FY2021 Summarized Data, Tab 6: FY21 Personnel by Exp. & Salary. This data also reveals the arbitrariness (the lack of any methodology) of the allocation of DMS personnel salaries to these funds. Exhibit 1, Depo. of Dr. Young, pp. 39,49, 52, 69, 148.

[20] Nor does DMS have any methodology for or records relating to its allocation of clinical infrastructure expenditures to the $35 million payments. Exhibit 1, Depo. of Dr. Young, pp. 69, 77-78. For example, these funds paid $201,642.00 for DMS's clinical malpractice insurance in FY2021, but there are no records of DMS providing any medical care for CH-eligible patients without MAP (Exhibit 3, Morris Depo, exhibit 8 thereto: CCC FY21 Summarized Data, Tab 4, Row 23 (Columns A, J, H). Brief, supra, VIII.A(6).

A few representative examples of DMS department personnel who worked in education, research or non-medical care administration and who had their salaries funded in full (or nearly so) by the $35 million annual payments:

Name	Title	Dept	CH $/Total Salary
Abrams, S.	Sr. Academic Pr. Coordinator	Medical Ed.	52,856.77/60,147.36
Bair, S.	Sr. Grants & Contracts Specialist	Research	68,672.66/69,500.00
Bosking, D.	UME Curriculum Mgr.	Medical Ed.	75,000.00/75,000.00
Hackett, B.	Sr. Business Analyst	Finance	66,083.36/71,500.00
Harrison, T.	Sr. Academic Pr. Coordinator	Medical Ed.	59,986.17/59,986.20
Holder, K.	HR Coordinator	Human Res.	57,088.32/58,000.00
Johnson, A.	Mgr. Media Relations	Communications	63,750.11/80,000.00

Exhibit 3, Depo. of Morris, exhibit 8 thereto: CCC FY2021 Summarized Data, Tab 6: FY21 Personnel by Exp. & Salary (Rows 4, 32, 52, 204, 218, 255)

Furthermore. DMS's allocation of funds to UT Health Austin's clinical personnel's salaries also is arbitrary since DMS has no records showing it treated CH-eligible patients without MAP coverage. CCC FY2021 Summarized Data, Tab 6: FY21 Personnel by Exp. & Salary; Brief, *supra*, VIII.A(6). A few examples:

Name	Title	Dept	CH $/Total Salary
Aarras, L	Clinical App. Specialist	IT Clinical Apps	57,783.00/57,783.00
Brown, M.	Patient Access Dir.	UTHA	117,434.24/134,000.00
Epstein, R.	Asst. Dir. Health Market/Branding	Clinical Marketing	104,009.04/104,009.00
Fladland, D.	Health Info. Man. Specialist	UTHA	41,415.09/ 41,717.50
Garza-Telles, P.	Credentialing Coordinator	UTHA	49,260.08/63,240.00

Exhibit 3, exhibit 8 thereto: CCC FY2021 Summarized Data, Tab 6: FY21 Personnel by Exp. & Salary (Rows 25, 65, 105, 168, 183).

(8) DMS illegally provided services to statutorily ineligible persons.

In his deposition, Central Health's former president testified that Central Health had authority to fund services (without payment) for person's ineligible by residency or income under Chapter 61's requirements. Exhibit 6, Depo. of Geeslin, pp. 80, 91-92, 96. He testified that he did not think DMS was out of compliance with the law to use CH funds to "provide unreimbursed services to non-residents of Travis County." Id., p. 96. He believed that unreimbursed expenditures on non-residents were permissible because "these resources are dedicated to establishing a high-functioning health care system." Id., pp. 80, 85, 90. He further testified that Central Health had "discretion" to fund unreimbursed medical care for patients above 200% of the poverty level at DMS and third-party clinics. Id., pp. 20-21, 26, 73, 77-78, 95. Central Health also admitted these facts in Exhibit 21, Defendants Objections and Response to Plaintiffs Requests for Admission (February 8, 2018), pp. 41-42 (Requests for Admissions Nos. 15 and 16).

B. The evidence is indisputable that Central Heath has funded tens of millions of the $35 million annual payments to DMS for the non-medical care expenditures above.

(1) Central Health has funded the $35 million annual payments in two ways.

First, it has funded $57 million to DMS directly out of its public funds since 2022 (and not indirectly as in the past through the CCC with commingled funds, as explained below). In Fiscal Year 2023, Central Health made a $22 million payment directly to DMS. Exhibit 11, Central Health Approved FY2023 Budget Book, p. 24; Exhibit 12, Central Health's Preliminary Monthly Financial Statement (September 2023), p.11. These Central Health payments were made directly to DMS, and will be made directly in the future, because of the winding down of the CCC and the ceasing of Federal Medicaid DSRIP funds: "Now that DSRIP funding has ended, Central Health will begin to make this annual payment. Because some funds remain in the CCC from the final DSRIP payment, Central Health budgeted $22 million in FY 2023 for the remaining portion of the

affiliation agreement. Beginning in FY 2024, Central Health will budget for the full cost of the affiliation agreement." Exhibit 11, Central Health Approved FY2023 Budget Book, p. 24, 48. See also Exhibit 13, Central Health Approved FY2024 Budget, Attachment B.

(2) Central Health funded DMS before 2022 through commingled CCC funds.

Between FY2014 and FY2019, Central Health funded $137.3 million of DMS's $35 million annual payments by sending these public funds through its non-profit the CCC. Exhibit 24, Joint Stipulation. Central Health transferred annually its statutorily restricted funds to the CCC, which then commingled these funds with Seton and Federal Medicaid DSRIP funds in an unsegregated account. From this account, the CCC then transferred the $35 million annual payments to DMS (hereafter "CH commingled funds").

Central Health transferred the following "membership payment" amounts to the CCC by fiscal year: FY2014: $15.6 Million; FY 2015: $13.9 million; FY2016: $24.6 million; FY 2017: $24.6 million; FY 2018 $23.2 million; and FY 2019 $35.4 million (totaling $137.3 million). Id., p. 1 (Stip. No. 7). These Central Health funds then went into CCC's one unsegregated account, where they were commingled with Seton and DSRIP funds: "All the funds transferred from CH's Account to the CCC for membership payments, as specified in stipulation no. 7 above, flowed into one, unsegregated CCC financial account." Id., p. 2 (Stip. No. 8). From this one account with commingled funds, CCC transferred the $35 million annual payments to DMS. Id., p. 2 (Stipulation No. 13).

From FY2020- FY2023, Central Health and Seton made no payments into CCC's unsegregated account because of a falling out between them, but federal DSRIP revenue continued in this period. Exhibit 18, CCC FY2020 Financial Statements and Audits, pp. 4, 11; Exhibit 19, CCC FY2021 Financial Statements and Audits, pp. 4, 11; Exhibit 6, Depo. of Geeslin, p. 135. CCC continued to make the $35 annual million payment through FY2022 from its one unsegregated

account with CH commingled funds. Since Central Health controlled, financially staffed, and its President was chair of the CCC, it clearly knew about and approved the commingling of its funds by the CCC. Exhibit 6, Depo of Geeslin, pp 29-33.

In summary, Central Health has sent directly from its own funds $57 million to DMS, tens of millions of which were spent on non-medical care expenses. In the future, Central Health will continue to fund the $35 million annual payments to DMS directly from its own funds because the CCC no longer functions and federal DSRIP funds have ended.

As for the $137.3 million in CH commingled funds transferred to the CCC, the law presumes, as explained below, that all of CCC's $35 million annual payments were Central Health funds because of Central Health and CCC's improper commingling of restricted public funds with other funds.

IX. CENTRAL HEALTH UNDENIABLY HAS FUNDED HUNDREDS OF THOUSANDS OF DOLLARS FOR ECONOMIC DEVELOPMENT, NON-PROFIT SPONSORSHIPS, AND SOCIAL SERVICE PROGRAMS THAT ARE NOT MEDICAL CARE.

A. Central Health directly funds downtown economic development programs.

Stephanie McDonald, chief of staff for Central Health, testified that Central Health has funded directly, and participated actively, in promoting an "Innovation District" for economic development in a large swath of downtown Austin (from MLK to Lady Bird Lake, I-35 to Trinity). Exhibit 4, Depo. of Stephanie McDonald (February 2019), pp. 6, 9, 18-19. See also Exhibit 6, Depo. of Geeslin, pp. 202. She testified that Central Health was a founding member of the non-profit Capitol City Innovation ("CCI") and provide it with $250,000 in seed capital. Exhibit 4, Depo. of Stephanie McDonald, pp. 11, 13, 30. She also stated that she served as Central Health's representative on the initial three-member board. Id, p. 11.

She testified that "[t]he mission of Capital City Innovation is to provide for and support

the creation, growth and sustainability of an Innovation Zone that enhances Austin's unique cultural, community and economic assets." Id, p. 19. She explained that CCI "was meant to establish businesses and enterprising startups to become part of the health ecosystem that's developing around the Dell Medical School." Id., pp. 18-19. She also agreed that CCI was similar to a chamber of commerce but focused on promoting health innovation, workforce development, and redevelopment in the entire innovation zone. Id., p. 26-29, 34, 41, 49-50. See also Exhibit 27, Central Health Innovation Zone Documents, CH Doc. Nos. 9964-9997. She also noted that CCI used Central Health's funds to provide real estate and market analysis for the entire innovation zone and not just its properties. Exhibit 4, Deposition of Stephanie McDonald, p. 43. See also Exhibit 28, Central Health Innovation Zone Documents, CH Doc. Nos. 10774-10776. Needless to say, economic development of an innovation district is not generally understood as medical care for the poor.

B. Central Health has spent tens of thousands of dollars on sponsoring non-profit organizations that provide no medical care.

Central Health has funded local chambers of commerce (such as the Austin Chamber, Greater Austin Hispanic Chamber, and Greater Austin Black Chamber) and a long list of local non-profit organizations (such as the Austin Area Research Organization, Housing Works, the Austin Area Urban League, and the Sustainable Food Center). These are fine organizations but either do not provide medical care or received charitable gifts for no health care services. Exhibit 26, Sponsorships and Charitable Contributions CH Doc. Nos. 4568- 4614, 4673, 4703, 4777-4778, 4809, 4837, 4990, 4906, 5023, 5051, 9647-9654, 9664-9668, 9670-9672, 9678-9682, 9695-9696, 9756, 9758. It has sponsored golf tournaments for charities and backpacks for students. Exhibit 26, CH Doc. No. 4592-4593, 4597. It has spent thousands of dollars to have a breakfast and presence at SXSW, as well as for employee attendance badges. Exhibit 26, Sponsorships and

Charitable Contributions CH Docs. 4760-4762, 4764-4767, 4770-4771, 4784-4785. We know of no medical care provided at SXSW or of attendance by any poor people. Central Health is a government entity with a specific mission, not an all-purpose charity.

C. Central Health directly funds workforce development for trainees that were not, and did not become, their employees.

Central Health's former President Mike Geeslin testified that it has funded general job training for medical technician students not working for it (or intending to) and was considering doing it again in the future. Exhibit 6, Depo. of Mike Geeslin, pp. 202-203; Exhibit 29, Job Training Documents, CH Doc Nos. 11467-11492 (see, in particular, the program description at CH Doc. No. 11492). Central Health may hire and pay to train its own medical technicians, but it has no authority to provide job training for the community as a whole. Such training is not indispensable to its mission, however beneficial it may be to the public.

D. Expansive, future-planned non-medical social service programs.

Former President Geeslin acknowledged at his deposition in May 2023 that Central Health has "action plans" for "funding non-medical initiatives and collaborating with partners focused on improving social determinates of health, like ·housing and transportation." Exhibit 6, Depo of Geeslin, p. 203, and exhibit 13 thereto. As part of its "health equity plan," Central Health intends to spend tens of millions of dollars on social determinants of health, which are factors other than medical care—such as poverty, racism, housing etc.-- that can impact health. Id., pp. 198, 203-206. While these Central Health direct expenditures undoubtedly would be for good purposes, they are not medical care for the poor and are beyond Central Health's lawful authority.

APPLYING THE LAW TO THE FACTS

X. THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT CENTRAL HEALTH'S FUNDS HAVE BEEN SPENT ILLEGALLY

As demonstrated above, the material facts are indisputable: Central Health has spent

millions of public funds on expenditures that are not medical care services as understood by the plain meaning of the term and as defined by Chapter 61. There are three, separate undisputed categories of non-medical care expenditures: 1) the $57 million in direct expenditures from Central Health to DMS; 2) the $137 million in statutorily restricted Central Health funds, which were commingled with other CCC funds, and then transferred as part of the $35 million annual payment to DMS; and 3) hundreds of thousands of dollars in direct expenditures to an innovation district, workforce development, chambers of commerce and non-profit organizations, and social service programs not related to medical care.

The only issue in this case is one of law: are these Central Health-funded expenditures unauthorized, illegal expenditures under the Texas Constitution and statutes?

A. As a matter of law, the plain meaning of medical care and the statutory definitions do not include non-medical care activities.

While Central Health has authority to administer the hospital district (Tex. Health & Safety Code § 281.047),[21] it has no authority to interpret the constitution and statutes contrary to their plain meaning and definitions. Brief, *supra,* section VI. The terms hospital and medical care, as well as hospital purpose, are not defined in Article IX, Section 4. Therefore, we turn first to Merriam-Webster's Law Dictionary for common definitions of these terms:

• "health care: efforts made to maintain, restore, or promote someone's physical, mental, or emotional well-being especially when performed by trained and licensed professionals."

• "take care of: to attend to or provide for the needs, operation, or treatment of someone or something."

[21] Tex. Health & Safety Code, Sec. 281.047: "The board shall manage, control, and administer the hospital or hospital system of the district."

• "hospital: an institution where the sick or injured are given medical or surgical care." https://www.merriam-webster.com/dictionary/mission#legalDictionary.

The plain meaning of medical care is to provide treatment or to attend to the physical and mental health care needs of a patient. Medical care involves *treatment of a patient*; it does not include education of medical students, general medical research by faculty, or other activities that do not involve treating a patient (and related clinical administrative support). The plain meaning of hospital—a licensed institution where the sick or injured are given medical or surgical care—does not include a medical school (apart from any separate clinical services for patients). Central Health's interpretation of these constitutional and statutory terms conflicts with their plain meaning. Its non-medical care expenditures are illegal and *ultra vires*. Brief, *supra*, sections V and VI.

Central Health's interpretation also is contrary to Chapter 61's definitions, which specify the basic and optional "health care services" hospital districts may provide. The Texas Legislature adopted "The Indigent Health Care and Treatment Act, Chapter 61 of the Health and Safety Code, [which] defines the responsibilities of hospital districts in providing medical care to the indigent." Tex. Atty. Gen. Op. No. JC-394 (2001) at 1. As discussed above, Sections 61.028 and 61.0285 delineate the particular health care services that hospital districts may provide and these comport with the ordinary understanding of these terms. Brief, *supra*, section IV.C. Chapter 61's definition of health care services includes only "medically necessary services;" it does not include medical education, research, or other medical school activities that do not constitute "medically necessary services" for *treating patients*.

B. As a matter of law, Central Health is a special purpose district for providing medical care and has no express or implied power to fund non-medical care services.

(1) No express power.

There is no express power for a hospital district to spend funds except on providing medical care to patients, particularly the county's poor. Brief, *supra*, Section V.B. Nowhere in Texas law is a hospital district "clearly and unmistakably" provided express authority to fund education, research, general operations of a medical school, or programs to address the social determinants of health. Brief, *supra*, Section V.B.

(2) No indispensable implied power.

A hospital district is a special purpose district with the limited purpose of providing medical care, particular to the poor. It has only those implied powers indispensable to its express purpose to provide such care. It does not clearly and without reasonable doubt have the implied power to fund a medical school's non-clinical functions. While valuable, these medical school functions are not indispensable for providing hospital and medical care to patients: not funding a medical school does not render a hospital district's power to provide health care to the poor of no worth ("nugatory"). Since the vast majority of Texas hospital districts provide medical care without a medical school in their county, a medical school clearly is not indispensable to a hospital district's express purpose. (The UT-System has seven medical schools and Texas has sixteen in total; there are 142 hospital districts in Texas). Exhibit 17, UT-System FY 2024 Operating Budget Summaries, pp. ii (Table of Contents), pp. 14-17, 49, 68, 72, 76, 80, 84); List of Texas Medical Schools (Tex. Medical Association Website) (https://www.texmed.org/Texas_Medical_Schools_and_Hospitals.aspx); Texas Comptroller, Rates and Levies of Special District (https://comptroller.texas.gov/taxes/property-tax/rates/index.php). Clearly, a hospital district is able to provide medical care services without funding the massive education, research, and other academic functions of a medical school.

Central Health has authority to establish a hospital system of multiple hospitals and health

clinics, whether private or public, because these health care institutions serve to provide medical care of patients. Brief, *supra,* Sections IV and V. The medical school, however, is not a licensed hospital; it is an "institution of higher education" with full accreditation from the Liaison Committee for Medical Education and the Accreditation Council for Graduate Medical Education. ("ACGME"). Exhibit 3, Deposition of Dwain Morris, exhibit 12 thereto: UT Health Austin Specialty Services Agreement, p. 1), and exhibit 14 thereto: Affiliation Agreement, Section 4.1, p 14. Seton, not DMS. *owns the hospital and Central Health funds Seton separately to provide hospital care for the poor*.[22]

The medical school has established a separate entity, apart from its education, research and other academic functions, to provide medical care: UT Health Austin, a licensed clinical practice group. Exhibit 3, Deposition of Dwain Morris, exhibit 12 thereto: UT Health Specialty Agreement, Section 2.1, pp. 4-5. UT Health Austin provides DMS's clinical care to patients. Exhibit 1, Depo. of Dr Young, pp. 27, 86-87. It is UT Health Austin that is "responsible for ensuring that all facilities, equipment, and staff are qualified ["permitted" and "licensed"] to provide the [medical care] services." Exhibit 3, Deposition of Dwain Morris, exhibit 12 thereto: UT Health Specialty Agreement, Section 2.1, pp. 4-5. While CH has discretion to contract with licensed medical care

[22] Central Health has contracted through an Omnibus Healthcare Services Agreement with Seton to provide "health care services" though Seton's *licensed* non-profit hospital and clinic system for Central Health eligible patients. Exhibit 22, Master Agreement Between Seton and CH, Attachment C (Central Health-Seton Omnibus Healthcare Services Agreement (June 1, 2013)). Seton is required to provide these healthcare services through licensed medical facilities, including a "licensed hospital facility, outpatient primary care or specialty care clinic or other healthcare facility…" Id., Attachment C, Section 2.4, p. 6 ("Seton Sponsored Facility"), p. 8 ("Licensure and Certification"). Health care services are defined by a specified list of medically necessary services. Id., Attachment C, Sections 1.1, p.5 ("MAP Healthcare Services"); Id, Attachment C, Annex C. Attachment C, Annex C contains a long list of covered medical care services, which again comport within an ordinary understanding of this term. Id. MAP low-income and residence procedures are set out in Exhibit 22, Attachment C, Annex B.

providers of its choosing, such as UT Health Austin, it does not have authority to fund education, research, or other activities that do not constitute licensed medical care (and related administrative support).

Nor is DMS indispensable for providing medical residents at Seton's teaching hospital. Before DMS began in 2016, Brackenridge Municipal Hospital received its medical residents from UT Southwestern in Dallas and UT Galveston medical schools. Exhibit 1, Depo. of Dr. Young, pp. 109-112, 117-118. Moreover, Seton owns the teaching hospital and pays for its residents, not DMS or Central Health. Id, pp. 91,109, 111; Exhibit 22, Master Agreement Between Seton and Central Health (June 2013), Sections 4.8, p. 25

In summary, establishing and operating a local medical school is not indispensable to Central Health performing its express duty to provide medical and hospital care to Travis County's poor. Central Health's express power to administer a hospital district does not provide it implied authority beyond reasonable doubt to fund the non-medical care services of an institution of higher education.

Moreover, the diversion of Central Health funds to the medical school undermines Central Health's absolute duty to provide medical care for the county's poor, because large sums are siphoned away from their medical care to fund education, research and medical school administration. This massive diversion of funds prevents Central Health from covering and providing care to a significant number of the 91,000 eligible low-income county residents who do not have MAP coverage. It substantially decreases the amount of medical and hospital treatment that Travis County's poor can receive.

(3) As a matter of law, the CH-DMS affiliation agreement cannot authorize illegal expenditures.

The DMS affiliation agreement cannot authorize by contract the expenditure of Central

Health funds beyond its constitutional and statutory authority to provide medical care. Brief, *supra*, Section V.D. While Central Health has discretion to determine whom it hires to provide medical care, it cannot contract to fund services beyond its legal authority by defining medical care contrary to its plain meaning and statutory definitions.

(4) As a matter of law, Central Health's lack of basic financial controls in the affiliation agreement violates Article III¸ Section 52 of the Texas Constitution.

Central Health's failure to provide basic financial controls over DMS's expenditures of its public funds violates as a matter of law Article III, Sec. 52 of the Texas Constitution. The affiliation agreement violates the second prong of Texas Municipal League because it lacks the necessary financial controls to ensure public funds are spent for their intended public purpose and in compliance with state law restrictions. Brief, *supra*, Sections III and IV.

The affiliation agreement's lack of financial control provisions is clear and unambiguous. When the terms of a contract are unambiguous, as here, the courts "will determine its meaning as a matter of law." Piranha Partners v. Neuhoff, 596 S.W.3d 740, 744 (Tex. 2020). The affiliation agreement fails to contain standard payor-provider financial controls to monitor and account for DMS uses of Central Health's $35 million annual payments. As a healthcare payor, Central Health's provider contracts with DMS should "reflect essential provisions of a typical provider agreement" related to financial controls. Jason Brocks, Health Plan Network Provider Agreement Essentials (Lexis-Nexis Practical Guidance Journal: Healthcare Practice Special Edition, April 2019), hereinafter "Brocks."[23] Key financial control provisions in payor-provider agreements are

[23] https://www.lexisnexis.com/community/insights/legal/practical-guidance-journal/b/pa/posts/health-plan-network-provider-agreement-essentials#.

"compensation, billing, and payment" and "maintenance of records."[24] Id.

The affiliation agreement has none of these provisions. It does not provide even the most basic financial controls to ensure public funds are being spent on authorized constitutional and statutory purposes. Exhibit 3, Deposition of Morris, exhibit 14 thereto. The affiliation agreement purports to allow DMS in its "discretion" to fund any operations and administration of the medical school. Brief, *supra*, Section VIII.A(5). It contains no list of required medical services DMS must provide and no payment methodology. Brief, *supra*, Section VIII.A(5). The Agreement precludes Central Health from inspecting or auditing DMS's records to ensure funds were spent as required by law, and it does not require DMS to comply with the law's income and residence requirements. Brief, *supra*, Section VIII.A(5). Nor does it authorize Central Health to seek reimbursement for coordinated benefits or recoup improper payments (if, for example, another payor, such as Medicaid, pays DMS for the same medical services). Exhibit 3, Deposition of Morris, exhibit 14 thereto: Affiliation Agreement, pp. i-ii; Exhibit 6, Depo. of Geeslin, pp. 132-133.

Standard payor financial control provisions are well known to Central Health, for it uses them in its other payor-provider agreements. Both its specialty services agreement with

[24] "Compensation, billing, and payment" provisions "[i]nclude "compensation amounts," "[r]equire providers to accept the agreed-upon payment amounts from the health plan as payment in full for all services," "[d]efine clean claims with reference to applicable state insurance laws," "[d]escribe healthcare claims submission and provider billing processes", [and] "[c]learly set out any recoupment rights." Id. Maintenance of records provisions "[r]equire providers to create and maintain patient (member) medical records in a manner that meets the standard of care for their profession," "[r]equire providers to keep medical records for at least 10 years," and "[p]rovide health plans with the right to access medical records and other books and records relevant to the provider's participation in the plan." Brocks, *supra*.

UT Health Austin[25] and its Omnibus Health Services Agreement with Seton[26] have some version of these obvious, standard provisions for financial control and accountability. As the Court of Appeals held in Corsicana Indus. Found., Inc., 685 S.W.3d at 185, as a matter of law there are not "any provisions in the Agreements that constitute an element of oversight by Appellees to ensure the public purposes are met." It is also noteworthy that DMS classified the $35 million payments as a gift and treated it as a slush fund to be used for any budget-gap purpose-- and not just for restricted statutory purposes. Brief, *supra*, Section VIII.A(4).

(5) As a matter of law, Central Health has funded millions in DMS's and other entities' expenditures that do not constitute medical care.

It is beyond dispute that Central Health has funded directly $74 million to DMS for millions in expenditures that are not health care. Brief, *supra*, Section VIII.B(1).

Furthermore, Central health has funded an additional $137.3 million that it knowingly commingled with unrestricted CCC Funds, which then were transferred to DMS. Brief, *supra*, Section VIII.B(2). All of CCC's 35 million annual payments with CH commingled funds are presumed as a matter to all be restricted or illegal funds. If Central Health funds can be traced to a commingled account, Texas law shifts the burden to the party that commingles these funds to show

[25] Exhibit 23, the Specialty Services Agreement with UT Health Austin ("UTHA") (October 2019) has all the standard control provisions: it specifies UTHA's duties (Section 2, pp. 4-6), the specific medical care services that UTHA will provide (Section 1.26, p. 3; Attachment A, pp. 22-55), the terms and method of payment (Section 3, pp 6-7; Section, 6.29, p. 18; Attachment A, pp. 22-55), the recordkeeping and reporting requirements (Sections 2.3 and 2.7, pp. 5-6; Attachment A, pp. 24, 28), the payor's right to inspect and audit (Section 2.4, pp. 5-6; Section 6.4, pp. 12-13), and reimbursement and coordination of benefit provisions (Section 4.4., pp. 7-9).

[26] Central Health and Seton's Omnibus Health Care Services Agreement (June 1, 2013)(Exhibit 22, Attachment C) has all these standard provisions as well: it delineates Seton's specific duties (Articles 2- 3, pp. 8-14; Article 5, pp. 16-24), the specific medical care services that Seton will provide (Annex, C-1- C-10), the terms and method of payment (Annex B, B-14- B-16), the recordkeeping requirements (Section 2.7, p. 9; Section 8.19, p. 34), periodically providing to Central Health service reports (Section 2.14, pp. 12- 13), the right to inspect and audit (Section 8.18, p. 34) and reimbursement (Section 5.9, p. 20) and coordination of benefit provisions (Section 5.13, p.24). Exhibit 3, Depo of Morris, exhibit 12 thereto.

they are not all restricted or illegal. Wilz v. Flournoy, 228 S.W.3d 674, 676 (Tex. 2007) (per curiam). "A party seeking to impose a constructive trust has the initial burden of tracing funds to the specific property sought to be recovered." Id. See also Meyers v. Baylor Univ., 6 S.W.2d 393, 394-95 (Tex. Civ. App.—Dallas 1928, writ ref'd); "[T]he beneficiary may follow the trust property and claim every part of the blended property which the trustee *cannot identify as his own*." Id., citing, Eaton v. Husted, 172 S.W.2d 493, 498 (Tex. 1943)) (emphasis in original). The Court further explained that "[o]nce that tracing burden is met, 'the entire. . . . property will be treated as subject to the [constructive] trust, except in so far as the trustee may be able to distinguish and separate that which is his own.'" Id., quoting, Eaton, 172 S.W.2d at 498-99.

This legal principle also applies to commingling of governmental and private funds. In Transformative Learning Sys. v. Tex. Educ. Agency, 572 S.W.3d 281, 288 (Tex. App.—Austin 2018, no pet.), the Austin Court of Appeals upheld a TEA order that treated commingled state and private funds as all state funds, and then on that basis revoked a school's charter. In other cases, the Austin Court of Appeals has held that an individual was personally liable for mixing a corporation's sales taxes with other funds. State v. Mink, 990 S.W.2d 779, 782-783 (Tex. App.—Austin 1999, pet. denied); Davis v. Texas, 904 S.W.2d 946, 948, 955 (Tex. App.—Austin 1995, no writ).

By knowingly commingling Central Health's funds in the CCC, Central Health has failed to comply with basic statutory financial controls to ensure its funds are spent in accordance with state law restrictions. Hospital districts are subject to the state recordkeeping requirements in "Subtitle C, Title 6, Local Government Code" Texas Health and Safety Code, Section 281.073. This subtitle includes Chapters 201-205 of the Tex. Local Gov. Code. Chapter 203 applies the recordkeeping requirements for county officials to hospital districts. Tex. Loc. Gov't Code, Secs.

203.001, 203.021. Section 203.21(3) mandates that hospital districts shall "facilitate the creation and maintenance of local government records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the local government and *designed to furnish the information necessary to protect the legal and financial rights of the local government, the state, and persons affected by the activities of the local government.*" Texas Local Gov. Code, Section 203.021(3) (emphasis added).

Central Health, by allowing its nonprofit the CCC to commingle its statutorily restricted funds with other funds, failed to maintain "adequate and proper documentation" of CCC's "functions, policies, decisions, procedures and essential transactions" related to its uses of Central Health's funds. Id. Without these documents, Central Health l*acks "the information necessary to protect the legal and financial rights of the local government, the state, and persons affected* by the activities of the local government." Id. (emphasis added). In summary, the evidence is indisputable that Central Health tax dollars were transfer into CCC's unsegregated account, where they were commingled with other funds, and then transferred to DMS. Central Health's $137 million to the CCC is presumed to have all been transferred to DMS.[27]

[27] Central Health's recordkeeping requirements for CCC and DMS's expenditures also violate Government Accounting Standards Board (GASB) directives, which Central Health comports to comply with. Ex. 17, Central Health Preliminary Monthly Financial Statements (Sept. 2023), pdf p.9. GASB Standard No. 34 requires governmental entities to have sufficient financial controls to ensure its funds are being spent in compliance with state law: "The [GASB] Board also emphasized the usefulness of the governmental fund structure and the use of fund accounting as a control mechanism and a means of reporting compliance with legal and other restrictions on the use of financial resources . . . ." Exhibit 25, Governmental Accounting Standards Board, Statement Number 34 of the Governmental Accounting Standards Board: Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments (June 1999), p. 80. It is essential, GASB commentary explains that "[a]t a minimum, governments should provide information 'to assist in evaluating whether the government was operated within the legal constraints imposed by the citizenry.'" Id. at 77 (citation omitted).

CONCLUSION

Central Health undeniably has expended millions in public funds on non-medical care services. As a matter of law, these expenditures exceed its constitutional and statutory authority to provide medical care, particularly to the poor. Funding medical education and research, economic development, and other non-medical care services are not indispensable to Central Health's express authority to provide medical care. Its affiliation agreement cannot provide Central Health authority to fund activities that are contrary to state law. Central Health's affiliation agreement also violates Article III, Section 52 because as a matter of law it lacks even rudimentary financial controls to ensure public funds are spent in compliance with their statutory public purpose.

PRAYER

For these reasons, Plaintiffs ask the Court:

1. To grant this motion for final summary judgment, and to enter a declaratory judgement that as a matter of law Defendants have acted *ultra vires* by spending substantial public funds illegally without financial controls on non-medical care or other unauthorized services;
2. To enjoin the Defendants from taking any action or expend any public funds on activities that do not constitute medical care services to eligible recipients as defined by the Texas Constitution, Article IX, Section 4 and Chapter 61 of the Texas Health & Safety Code.
3. To enjoin Defendants from expending any public funds without complying with the financial controls and accountability required under Article III, Section 52 of the Texas Constitution and Texas Health & Safety Code Chapter 281; and
4. To grant Plaintiffs reasonable and necessary attorney's fees and expenses, court costs,

post-judgment interest, and such other relief, in law or equity, to which they are entitled.

Respectfully submitted,

/s/ Manuel Quinto-Pozos

Fred I. Lewis
800 Brent St
Winston Salem, NC 27103-3810
State Bar No. 12277075

Manuel Quinto-Pozos
State Bar No. 24070459
mqp@ddollaw.com
DEATS, DURST & OWEN, P.L.L.C.
8140 N. Mopac Expy., Suite 4-250
(512) 474-6200
FAX (512) 474-7896

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein on this the 18th day of April 2024, to:

Beverly Reeves
Sinéad O'Carroll
Reeves & Brightwell LLP
3103 Bee Caves Rd, Ste 240
Austin TX 78746-5581
(512) 334-4492 (Facsimile)

Daniel Richards
Clark Richards
Richards Rodriguez & Skeith LLP
611 W 15th St.
Austin, TX 78701
(512) 476-1513 (Facsimile)

Attorneys for Defendants

/s/ Manuel Quinto-Pozos
Manuel Quinto-Pozos

TABLE OF EXHIBITS

Exhibit	Description
A.	Manuel Quinto-Pozos Affidavit
1.	Young depo transcript and exhibits
2.	Morris 2018 depo transcript and exhibits
3.	Morris 2023 depo transcript and exhibits
4.	McDonald depo transcript and exhibits
5.	Knodel depo transcript and exhibits
6.	Geeslin depo transcript and exhibits
7.	Daigre depo transcript and exhibits
8.	Chang depo transcript and exhibits
9.	Brian Davis declaration with exhibits
10.	Spiesman affidavit and exhibits
11.	FY23 Approved Budget Book Final
12.	CH Preliminary Financials September 2023
13.	CH FY24 Budget Attachment B
14.	UT FY22 Budget
15.	UT FY23 Budget
16.	UT FY24 Budget
17.	FY24 Operating Budget Summaries
18.	CCC FY2020 Financial Statements and Audits
19.	CCC FY2021 Financial Statements and Audits
20.	Central Health Audit Report FY2022
21.	Defs Objs Rsps to Plaintiffs Rogs RFPs and RFAs
22.	SCH Master Agreement with Exhibits
23.	CCC Agreement for Specialty Services
24.	Stipulation Fully Executed
25.	GASB Standard No. 34
26.	CH 4568-9758 (excerpts)
27.	CH009964-9997
28.	CH10774-10776
29.	CH011467-11492

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Manuel Quinto-Pozos on behalf of Manuel Quinto-Pozos
Bar No. 24070459
mqp@ddollaw.com
Envelope ID: 86829322
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Manuel Quinto-Pozos	24070459	mqp@ddollaw.com	4/18/2024 4:18:59 PM	SENT
Daniel Read Richards	791520	drichards@rrsfirm.com	4/18/2024 4:18:59 PM	SENT
Fred I. Lewis		f_lewis@sbcglobal.net	4/18/2024 4:18:59 PM	SENT
Beverly Reeves		breeves@reevesbrightwell.com	4/18/2024 4:18:59 PM	SENT
Sinead O'Carroll		socarroll@reevesbrightwell.com	4/18/2024 4:18:59 PM	SENT
Manasi Rodgers		mrodgers@reevesbrightwell.com	4/18/2024 4:18:59 PM	SENT
Susan Farris		sfarris@reevesbrightwell.com	4/18/2024 4:18:59 PM	SENT
Jacob Sanchez		jsanchez@reevesbrightwell.com	4/18/2024 4:18:59 PM	SENT