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CITY OF CAMBRIDGE
CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • TEL. 876-6800
AUG 30 9 59 PM '76
LAW DEPARTMENT
CAMBRIDGE, MASS.

EDWARD D. MCCARTHY
ACTING CITY SOLICITOR

ROWENA E. TAYLOR
ASSISTANT CITY SOLICITOR

CHARLES WATSON
LEGISLATIVE AGENT

August 30, 1976

Leslie Marcus, Esq.
Marcus & Rivkind
1244 Hancock Street
Quincy, Massachusetts 02169

Dear Mr. Marcus:

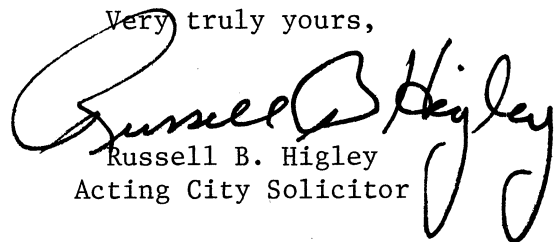
Thank you for your letter dated August 24, 1976.

It is my understanding that a copy of the letter, disclosing Dr. Comunale's involvement with APM, has been received by the City Clerk's Office today.

As a further measure, I have advised the City Manager that he should request that the City Council designate Dr. Comunale as a special municipal employee. These measures should adequately exempt Dr. Comunale from possible conflict of interest under General Laws, 268A.

If further questions arise, please let me know.

Very truly yours,


Russell B. Higley
Acting City Solicitor

RBH:gc

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MARCUS AND RIVKIND
OFFICE OF CLERK
COUNSELLORS AT LAW
1245 HANCOCK STREET
QUINCY, MASSACHUSETTS 02169
773-6900 AREA CODE 617
AUG 25 5 33 PM '76
CAMBRIDGE, MASS.

LESLIE MARCUS
RALPH J. RIVKIND
WARREN F. BAKER

6 WHITMAN ROAD
WALTHAM, MASSACHUSETTS 02154
894-6666 AREA CODE 617

August 24, 1976

Russell B. Higley, Esquire
Law Department
Cambridge City Hall
795 Massachusetts Ave.
Cambridge, Ma. 02139

Re: Appointment as acting Commissioner of Health
for City of Cambridge

Dear Mr. Higley,

I am enclosing a photostat of a contract dated December 22, 1975 between the City of Cambridge and Anesthesia & Pulmonary Medicine Inc. The effective date of organization of the above corporation is April 1, 1975, as a professional corporation under Chapter 156A of the Massachusetts General Laws.

At present there are four (4) stockholders each having an equal corporate interest and they are as follows:

Francis L. Comunale, M.D., President
Wilfrid J. Rokowski, M.D., First Vice-President
Adel A. Kallini, M.D., Second Vice-President
Francis L. Comunale, M.D., Treasurer
Melvyn E. Goldstein, M.D., Clerk

The above four (4) doctors are also the Directors of the corporation.

The above information should be submitted to the City Clerk of the City of Cambridge along with any other information so that there is a full disclosure.

I am also requesting the City Council to designate the position as that of a "special municipal employee" and at the same time that there be a full disclosure of the existing contract with Anesthesia & Pulmonary Medicine, Inc. I am also requesting an exemption of that interest from application of Section 20 of

Russel B. Higley, Esquire
Page 2

August 24, 1976

M.G.L.A. c. 268A.

Furthermore, under Section 22 of the statute referred to above as a municipal employee, I am requesting of counsel an opinion of the potential conflict involved and the application of the statute.

Thank you for your cooperation.

Very truly yours,


LESLIE MARCUS

LM/jp

Enclosure

THE CITY OF CAMBRIDGE
DEPARTMENT OF HEALTH AND HOSPITAL
CONTRACTUAL AGREEMENT

This Agreement, made and executed in duplicate at Cambridge, Massachusetts, as of January 1, 1976 by and between the CAMBRIDGE HOSPITAL, hereinafter referred to as "Hospital", and ANESTHESIA & PULMONARY MEDICINE, INC., a Massachusetts professional corporation, hereinafter referred to as "Corporation".

WHEREAS, the City of Cambridge, through Cambridge Hospital, is owner and operator of a hospital at Cambridge, Massachusetts, in which there is located a Department of Anesthesiology and Respiratory Care, hereinafter referred to as Department, and

WHEREAS, the Corporation is composed of physicians qualified to practice medicine and licensed to practice medicine in the Commonwealth of Massachusetts and has met the requirements for membership on the medical staff and,

WHEREAS, the parties desire to provide a full statement of their agreement in connection with the operation of said Department in the Hospital during the term of this contract.

THEREFORE, in consideration of mutual covenants and agreements of this contract, it is understood and agreed by and between the parties hereto as follows:

FIRST: Employee Physicians of the Corporation upon recommendation of the medical staff and appointment of the governing authority of the Hospital, and by virtue of this Agreement, are members of the medical staff, and subject to the supervision of the Executive Committee of the medical staff.

SECOND: The Corporation shall serve as the professional and administrative head of the Hospital's Department of Anesthesiology and Respiratory Care, including Inhalation Therapy, Pulmonary Function, and any respiratory care unit or pulmonary service, including tuberculosis, whether inpatient or outpatient, which may be established in the future.

THIRD: The Corporation shall be responsible for the overall management of patient care in the above areas.

FOURTH: The Corporation shall organize the Department of Anesthesiology and Respiratory Care, exercising responsibilities for all nominations for appointments, recommendations for promotions and reappointments and dismissals.

FIFTH: The Hospital hereby covenants and agrees to engage ANESTHESIA & PULMONARY MEDICINE, INC., upon an exclusive basis to furnish all necessary professional coverage for the Hospital's Department of Anesthesiology and Respiratory Care as noted in Article Second above.

SIXTH: The Corporation shall establish and implement written policies and procedures which reflect high standards of patient care, professional conduct, and administrative responsibility.

SEVENTH: The Corporation shall arrange and administer acceptable intern and resident training programs, supervise their activities, evaluate their performance, enforce appropriate discipline, and otherwise take steps to insure that the educational programs are in keeping with the best interests of the patients, the hospital and the advancement of medicine.

EIGHTH: The Corporation shall provide opportunities for continuing education of the medical staff and shall participate in such programs sponsored by other services in the hospital.

NINTH: The Corporation shall continually review and evaluate the clinical performance of the Department of Anesthesiology and Respiratory Care, including methods of diagnosis, skills in treatment, and sound judgment, affording each member of the staff the opportunity to realize his full capabilities in accordance with high standards of medical practice.

TENTH: The Corporation shall insure that all related medical records are completed promptly and are in accordance with the standards set by the Joint Commission on Accreditation of Hospitals and the State Department of Public Health.

ELEVENTH: The Corporation shall aid in the enforcement of the medical staff bylaws, rules and regulations, with special attention to those pertaining to the Department of Anesthesiology and Respiratory Care.

TWELFTH: The Corporation shall aid in the preparation of periodic reports pertaining to the Department of Anesthesiology and

Respiratory Care embracing organization, education, research, statistics, and the supervision and evaluation of clinical work.

THIRTEENTH: The Corporation shall hold monthly or more frequent meetings for review of records, deaths and clinico-pathological discrepancies.

FOURTEENTH: The Corporation shall represent the Department of Anesthesiology and Respiratory Care to the administration and the governing body in the planning of facilities, personnel, supplies, equipment and services.

FIFTEENTH: The Corporation shall authorize all requests for expenditures which are directly related to the services of the Department of Anesthesiology and Respiratory Care.

SIXTEENTH: The Corporation shall insure proper coordination with other services and departments of the Hospital providing educational and supervisory services when appropriate.

SEVENTEENTH: Employee Physicians of the Corporation shall attend and actively participate in meetings of Hospital Committees to which they have been appointed.

EIGHTEENTH: The Corporation shall be responsible for the daily preparation and running of the operating room schedule as well as the daily administrative management of the operating room suite and its personnel, including active participation in selecting the number of all personnel, such as, but not limited to nurses and paramedics, and will actively participate in the determination of the number of hours to be worked by each member of the personnel staff. This shall in no way derogate from the responsibility of the hospital to select and assign personnel referred to in said paragraph.

NINETEENTH: The Corporation shall be responsible for the administration of the recovery room and for staffing the unit, including active participation in selecting the number of all personnel; such as, but not limited to nurses and paramedics, and will actively participate in determining the number of hours to be worked by each member of the personnel staff. The Corporation will also have final authority as to the medical management of patients in the recovery room. This shall in no way derogate from the responsibility of the hospital to select and assign personnel referred to in said paragraph.

TWENTIETH: The Corporation shall be responsible for the administrative management of a surgical day care unit, including active participation in selecting the number of all personnel; such as, but not limited to nurses and paramedics, and will actively participate in determining the number of hours to be worked by each member of the staff and the establishment of booking, admitting and discharge procedures. This shall in no way derogate from the responsibility of the hospital to select and assign personnel referred to in said paragraph.

TWENTY FIRST: Attendance at professional and scientific meetings, conferences and conventions and vacations shall be in accordance with corporate policy to the extent that it does not interfere with the aforementioned duties and obligations.

TWENTY SECOND: The Corporation may allow its members to engage in individual and joint scientific research projects as long as care is taken to protect the human rights of the patient, to the extent that it does not interfere with the aforementioned duties and obligations.

TWENTY THIRD: When in the course of the aforementioned duties, the Corporation is immediately involved in patient care or direct supervision thereof, they shall treat that patient as a private patient and bill that patient the usual and customary fee for the service provided.

TWENTY FOURTH: The Corporation and its employee physicians are not bound by this Agreement to limit their activities and practice of medicine and anesthesiology to The Cambridge Hospital, provided that any other duties do not interfere with the aforementioned duties and obligations.

TWENTY FIFTH: As compensation for its professional services, the Corporation shall be allowed to bill for and collect in its own name, all fees generated by the rendering of professional services of its employees on all patients at The Cambridge Hospital, whether they be inpatients or outpatients at the Hospital or its associated clinics. The Hospital and/or City of Cambridge will provide whatever records or information that might be necessary for the Corporation to complete such billings without delay. As compensation for the administrative and educational services rendered as described above, the City of Cambridge shall pay the Corporation fifty (\$50.00) dollars per hour for the following services:

for the organization, supervision, arranging and running of the daily operative schedule;

for the daily professional and administrative management of the recovery room; not including the provision of intensive, personal medical care;

for the organization and presentation of all conferences whether for residents, nurses, students or other paramedical personnel;

for the administrative services rendered to the other areas mentioned above, such as Respiratory Therapy, Pulmonary Function Laboratory, TB Unit, Pulmonary Outpatient Clinic, Day Care Surgical Center, Committee meetings, etc.

The Corporation shall present the Hospital and/or City an itemized bill for such services rendered on the first (1st) day following each month, and shall be reimbursed by the Hospital and/or City within thirty (30) days of the date of such bill.

However, under no circumstances shall the Hospital and/or City be liable to pay the Corporation a sum greater than twenty thousand (\$20,000) dollars in any one month. Any charges for administrative services which may be in excess of twenty thousand (\$20,000) dollars for any given month shall be absorbed by the Corporation and not carried over to the next month.

TWENTY SIXTH: Hospital shall provide the service of anesthesia residents, fellows, certified registered nurses, registered nurses, anesthesiologists, and non-physician personnel as may be needed for the efficient and effective operation of the Department of Anesthesiology and Respiratory Care and other services as noted in Articles Second, Eighteenth, Nineteenth and Twentieth above. All such personnel shall be employees of Hospital and as such, be responsible to Hospital in the same manner as anesthesia residents, fellows, certified registered nurses, registered nurses, anesthesiologists, and non-physician ancillary personnel of Hospital in departments other than

Anesthesiology and Respiratory Care.

TWENTY SEVENTH: The Hospital and/or City of Cambridge shall provide the equipment, space and personnel necessary to establish a functional Pulmonary Function Laboratory. In return, the Hospital shall bill for the technical aspects of all tests and treatments performed by the non-professional members of this unit, while the Corporation shall bill only for the professional interpretation, consultation or direct patient care rendered by its professional employees in this unit.

TWENTY EIGHTH: The Hospital shall provide adequate office space for the members of the Corporation to adequately carry out their professional administrative and related patient care activities, at its own expense, and provide all necessary expendable and non-expendable equipment, drugs, supplies, furniture and fixtures which are required for the efficient and effective operation of the Hospital's Department of Anesthesiology and Respiratory Care as noted in Articles Second, Eighteenth, Nineteenth, Twentieth and Twenty Eighth above.

TWENTY NINTH: The Hospital shall maintain and repair all equipment and shall provide utilities and services such as heat, water, electricity telephone service, laundry, janitor service, painting and decorating which are necessary for the efficient and effective operation of the Hospital's Department of Anesthesiology and Respiratory Care as noted in Articles Second, Eighteenth, Nineteenth, Twentieth and Twenty Eighth above.

THIRTIETH: In performing under this Agreement, Corporation shall be at all times acting and performing as an independent contractor.

THIRTY FIRST: The provisions of this Agreement, and the interpretation thereof, shall be governed exclusively by the law of Massachusetts.

THIRTY SECOND: The Corporation agrees that one (1) of its employee physicians shall serve, subject to appropriate medical staff approval, as Director of the Department of Anesthesiology and Respiratory Care. In the event of a vacancy in said position for more than six (6) continuous months, by failure of the medical staff to approve an employee physician of the Corporation as Director of the Department of Anesthesiology and Respiratory Care, then this agreement shall terminate at the option of the City. If the City exercises the above option, it is required to give at least one (1) full months written notice to the Corporation.

THIRTY THIRD: The Corporation shall maintain adequate medical mal-practice insurance for the Corporation and its employee physicians at its own expense.

THIRTY FOURTH: This Agreement may be amended at any time by mutual agreement of the parties, provided, however, that before any amendment shall be operative or valid, it shall be reduced to writing and signed by Hospital, City of Cambridge and by the Corporation. This Agreement shall not be assignable by either party.

THIRTY FIFTH: The Agreement dated January 1, 1973 between the parties, due to terminate December 31, 1975 is hereby extended to June 30, 1976 on the same terms and conditions. The terms of the above agreement dated January 1, 1976 shall remain in full force and effect for a term of three (3) years

beginning July 1, 1976 and ending on June 30, 1979 and shall at that time be automatically renewable each year unless the Corporation or the City notifies the other in writing within ninety (90) days of the yearly termination (July 30) of its intention to cancel this Agreement. If either party should terminate the Agreement, this Agreement shall be of no further force or effect and each of the parties hereto shall be relieved and discharged of all obligations under the terms of this Agreement.

IN WITNESS THEREOF: The City of Cambridge and the Hospital has caused this Agreement to be executed and its seal to be hereunto affixed by its duly authorized officers, and Anesthesia & Pulmonary Medicine, Inc. has caused this agreement to be executed and its seal affixed by its duly authorized officer on the 22nd day of December in the year nineteen hundred and seventy five at Cambridge, Massachusetts.

ANESTHESIA & PULMONARY MEDICINE, INC.

Witness

Witness

Witness

Witness

by Francis A. Corcoran, Jr.
its President

James Sullivan
City Manager
Cambridge, Massachusetts

Richard H. Hurst
Hospital Director
Cambridge, Massachusetts

City Solicitor
Cambridge, Massachusetts

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OFFICE OF CITY CLERK

AUG 25 5 33 PM '76

CAMBRIDGE, MASS.



City of Cambridge

IN CITY COUNCIL

August 30, 1976

ORDERED:

That Doctor Francis L. Comunale Acting Commissioner of Health,
Hospital and Welfare, is hereby classified as a "Special Municipal
Employee" pursuant to Chapter 268A of the General Laws.

In City Council August 30, 1976
Adopted by the affirmative vote of nine members.
Attest:- Paul E. Healy, City Clerk.

A true copy,

ATTEST:

Paul E. Healy

5-365

Classifying Francis L. Comunale as a
Special Municipal Employee.

In City Council,

August 30, 1976