

## **UT Dell Medical School’s Own Financial Records Show That It Has Misspent Millions of Central Health Funds Authorized for the Poor’s Health Care**

By Fred I. Lewis (2/8/2017)

### **I. Executive Summary**

Central Health (hereafter “CH”) is a special-purpose hospital district authorized by the Texas Legislature and the Texas Constitution. Its sole purpose by state law is limited to providing health care for the poor in Travis County. This report, based on recently obtained detailed financial records of the University of Texas Dell Medical School (hereafter “Medical School”) demonstrates that Central Health’s millions in funding for the Medical School have been spent overwhelmingly for services that have nothing to do with providing health care for the poor.

Central Health has paid a little over \$105 million to the Medical School, which has spent approximately \$42 million of these funds through the end of 2016. (The remaining approximately \$63 million was as of December 31, 2016 apparently in Medical School accounts earning interest for the Medical School). Approximately \$34 million of CH funds have been spent on Medical School personnel compensation and benefits (hereafter collectively “compensation”). CH is funding the overwhelming majority (83.6%) of Medical School personnel’s compensation, but most of these personnel are not health care providers. They are providing administrative, operational, and educational services for the Medical School-- not health care services for the poor. For example, CH funds are paying in full or in part for 96% of the Dean’s Office staff of 50 employees, which includes admissions, academics, accounting, clerical, fundraising, communications, administration, and other non-health care services.

No other hospital district in Texas, to our knowledge, has funded a medical school’s non-health care services. Hospital districts typically contract with medical schools to provide health care for the poor, but no hospital district other than Central Health funds non-health care services of medical schools.<sup>1</sup>

### **II. Central Health’s Funds Have Been Spent Overwhelmingly by the Medical School for Non-Clinical Administration and Operations and Not for Health Care for the Poor**

Neither Central Health nor the Medical School have kept records related to medical services for the poor that the Medical School may have provided with Central Health’s funds—which is

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<sup>1</sup> For examples, see the medical services agreements between UT Health Science Center-San Antonio and the Bexar County Hospital District and between Parkland Hospital District and UT-Southwestern Medical School. The report’s author has agreement copies available for viewing.

highly unusual for agreements between medical care funders and providers.<sup>2</sup> They also appear to not be following state laws on governmental agency record-keeping that require showing government funds are spent in compliance with the hospital district's laws.<sup>3</sup> However, pursuant to the Texas Public Information Act, the author has obtained finally the Medical School financial statements, the School's list of all personnel's compensation by funding source, and the general ledger of all expenditures of the Medical School from its start in 2013 through December 31, 2016 (hereafter the financial records). This report analyzes these records.

**A. The Medical School's financial records show that nearly 84% of Medical School personnel's compensation have been paid for with Central Health funds intended for the poor's health care.** Through November 2016 (the latest date revenue figures are available), CH has paid \$105,139,000 to the Medical School, consisting essentially of 3 annual payments of \$35 million. (See Appendix A, UT Dell Financial Statements, pp. 7, 19, 22, which is not attached but available in electronic form from the author). From CH funds, the Medical School has spent through November 2016 a total of \$39,114,000 and an estimated \$42.5 million through the end of 2016. (See Appendix A, UT Dell Financial Statements, pp. 7, 19, 22, which is not attached but available in electronic form). Over the last 3 years, as the Medical School has ramped up its operations, it has accelerated its expenditure of CH funds, spending \$5,714,000 in Fiscal Year 2014, \$23,107,000 in Fiscal Year 2015, and \$10,293,000 in just the first 3 months of fiscal year 2016 (See Appendix A, UT Dell Financial Statements, pp. 7, 19, 22, which is not attached but available in electronic form).

As of December 31, 2016, UT Dell Medical School has spent in total \$ 40,716,991 on compensation. (See Appendix B, Medical School-Produced Employee Compensation List, sheet "SortAllbyFunder.") (not attached, but available in electronic form from the author). CH has funded \$34,047,164 of all Medical School compensation expenditures, or 83.62%. As for all other compensation funding sources, they have provided only a little more than 16% of the Medical School's compensation funding:

- The University of Texas Available University Fund: \$3,270, 804 (8.03% of total)
- Clinical Reimbursement: \$1,782,718 (4.38%)

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<sup>2</sup> A normal medical services contract, based on the author's experience, details the specific medical services to be provided and the fee arrangement, which may or may not be fee-for-service. The contract requires the medical provider to keep records showing in detail the medical services provided pursuant to the contract. See the agreements referenced in footnote one above. In addition, see Lewis, Fred, "UT Dell Medical School Appears to Have Failed to Comply with State-Required Financial Accounting and to Have Misspent Health Care Funds Intended for the Poor," (November 14, 2016), pp. 5-6

<sup>3</sup> Lewis, Fred, "UT Dell Medical School Appears to Have Failed to Comply with State-Required Financial Accounting and to Have Misspent Health Care Funds Intended for the Poor," (November 14, 2016), pp.

- Unrestricted Local Funds: \$564,392 (1.39%)
- Research Contracts and Grants: \$415,254 (1.02%)
- Restricted Local Grants: \$291,566 (.72%)
- Philanthropy: \$271,076 (.67%)
- State General Revenue for Education: \$41,500 (.10%)
- Service Center: \$32,517 (.08%)

See Pie Chart, Exhibit 1 (attached with the exhibits at the end of the report) (for the underlying data, see Appendix B, Medical School-Produced Employee Compensation List, sheet “SortAllbyFunder”).

**B. Central Health Funds Spent on Medical School Compensation Have Gone Predominately for School Administrative and Operational Personnel and not Health Care Providers.** Of the thirty-four million dollars in Central Health funds spent by the Medical School on compensation, approximately 2/3rds has been spent by Medical School departments and sectors that provide no apparent medical care, for the poor or otherwise. These departments and sectors, as labeled by the Medical Schools in its own financial records, are:

- Medical Education: \$5.0 million in CH funds (making up 86% of all funds spent in this area)
- Medical School (Administration): \$15.2 million in CH funds (making up 81% of this area’s funds)
- The Design Institute: \$1.97 million in CH funds (making up 91% of all the Institute’s funds)
- Population Health Department: \$913,000 in Central Health funds (making up 86% of the Department’s funds)

See Bar Chart, Exhibit 2 (attached at the end of the report) (for the underlying data, see Appendix B, Medical School-Produced Employee Compensation List, sheet “SortAllByDept”). The Medical School’s self-described education and administration sectors appear from their personnel job classifications to provide no health care services for the poor. (See Appendix B, Medical School-Produced Employee Compensation List, sheet “SortAllByDept,” which is not attached, but available in electronic form). Nor do the Design Institute and Population Health Department appear to provide much if any direct health care services for the poor. The financial and personnel records are all the documentation available; the Medical School and CH have no detailed medical services records of the Medical School’s provision of health care for the poor from CH funds. As we explained in a prior report, CH and the Medical School knowingly kept no such records of their medical services for the poor, which appears to violate state accounting and record-keeping laws (and is certainly a flawed practice).<sup>4</sup>

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<sup>4</sup> See Lewis, Fred, “UT Dell Medical School Appears to Have Failed to Comply with State-Required Financial Accounting and to Have Misspent Health Care Funds Intended for the Poor,” (November 14, 2016), pp. 4-8

If these educational and administrative sectors actually provide any health care for the poor with CH taxpayer dollars, then the Medical School has the responsibility to provide documentation in detail to show that these personnel provide such services. In addition, the Medical School should show through appropriate documentation how much in Central Health funds, if any, may be allocated for these employees' actual time spent on any health care services for the poor.

The medical departments, which include Medicine, Surgery, Women's Health, Pediatrics, Neurology, and Psychiatry in the financial records, presumably provide some medical care. Compensation for these departments is funded with \$10.38 million from CH—which makes up 89% of all these departments' funding. See Bar Chart, Exhibit 2 (attached at the end of the report) (for the underlying data, see Appendix B, Medical School-Produced Employee Compensation List, sheet "SortAllByDept," which is not attached, but available in electronic form).

Again, we do not know how much medical care for the poor these Medical School Departments provide, because the Medical School and CH knowingly kept no such detailed service records. This is one of numerous anomalous actions of the Medical School with CH funds.

**C. Central Health pays fully or partially for 96% of the Dean's Office's administrative personnel.** Dean's Office personnel do not appear to provide any health care, but to be solely administrative personnel. While valuable for the administration of the medical school, these personnel appear to provide no health care of any kind. The Dean's Office has 50 paid personnel, with 41 people paid in full by Central Health funds and 7 employees paid partially by Central Health.<sup>5</sup> (Appendix B, Medical School-Produced Employee Compensation List, sheets "EmployeeByFunder" and "SortEmployeeByTitleandFunder") (not attached, but available in electronic form). Only two Dean's Office personnel are paid for in full by sources other than Central Health. The number of employees by Dean's Office division and funding source are as follows:

- Business Affairs: 23 Employees (18 paid by CH in full and 2 paid in part by CH)
- Development: 10 Employees (9 paid by CH in full and 1 paid in part by CH)
- Communications: 7 Employees (5 paid by CH in full and 2 paid in part by CH)
- Office of Academics: 8 Employees (7 paid by CH in full, 1 paid in part by CH)
- Dean Assistants: 2 Employees (2 paid in full by CH)

See Bar Chart, Exhibit 3 (attached at the end of the report) (for the underlying data, see Appendix B, Medical School-Produced Employee Compensation List, sheets

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<sup>5</sup> The employees and departments of the Dean's Office may be found online at [www.dellmedschool.utexas.edu/team/deans-office](http://www.dellmedschool.utexas.edu/team/deans-office). In this report, the personnel listed online have been linked back to Appendix B employee compensation lists.

“EmployeeByFunder” and “SortEmployeeByTitleandFunder,” which is not attached, but available in electronic form).

**D. Central Health funds the vast majority of all the Medical School’s Administrative, Clerical and Accounting Personnel.**

Central Health’s funding of administrative personnel may also be viewed by employee job titles across all the departments and sectors. Some examples of non-health care, administrative personnel that are funded with CH funds in full or in part are:

- 35 administrative assistants/associates (31 paid in full with CH funds, and 1 partially)
- 6 administrative managers (all 6 paid in full with CH funds)
- 19 executive assistants (15 paid in full with CH funds, 2 partially)
- 6 business and financial analysts (6 paid in full with CH funds)

See Bar Chart, Exhibit 4 (attached at the end of the report) (for the underlying data, see Appendix B, Medical School-Produced Employee Compensation List, “SortEmployeeByTitleandFunder,” which is not attached, but available in electronic form).

**III. Texas Law: Central Health Has Only One Statutorily and Constitutionally Authorized Power- Providing Health Care for the Poor.**

For historical, legal, and structural reasons, hospital districts’ authority in Texas has been construed strictly. It is fundamental law that Central Health, as a special-purpose hospital district created pursuant to Texas statute and the Texas Constitution, only has the authority given it by the Texas Legislature under the Constitution. No ballot measure vote nor any agreement can expand or alter the authority granted by the Constitution or Legislature. *Miller v Long-Bell Lumbar*, 222 SW2d 244 (Tex. 1949) (“It is believed to be a rule of universal application that to undertake to do an act forbidden by the law of the place where it is to be done is an invalid agreement, and imposes no legal obligation”); *City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d 945, 946 (Tex. 1940)(bonds approved by the water supply district voters are invalid because the district lacked specific statutory authorization to fund a sewage system).

**A. The relevant statutory and constitutional provisions for hospital districts.** The controlling statutory provision on the authority of hospital districts is Texas Health and Safety Code, Section 281.002, titled “District Authorization.” It provides in pertinent part that a county “**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.**”<sup>6</sup> Texas Health and Safety Code, Section 281.002(c) (emphasis added). This legislative

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<sup>6</sup> The entire section, Texas Health and Safety Code Section 281.002, reads: “(a) A county with at least 190,000 inhabitants that does not own or operate a hospital system for indigent or needy persons may create a countywide hospital district and provide for the establishment of a hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

“(b) A county with at least 190,000 inhabitants that owns and operates a hospital or hospital system for indigent or needy persons, separately or jointly with a municipality, may create a countywide

statutory authorization is based on the Texas Constitution, Article 9, Section 4. It provides in pertinent part<sup>7</sup>:

COUNTY-WIDE HOSPITAL DISTRICTS. The Legislature may by law authorize the creation of county-wide Hospital Districts in counties having a population in excess of 190,000... 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...**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...

(emphasis added).

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hospital district and take over the hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

“(c) 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.”

<sup>7</sup> The entire provision, Texas Constitution, Article 9, Section 4, states: “COUNTY-WIDE HOSPITAL DISTRICTS. 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 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.”

**B. Hospital Districts are Special Purpose Districts with Limited Authority.** In Texas, special-purpose districts are created for a specific, limited purpose by Legislative statute or the State Constitution. They include hospital districts, navigation districts, flood control districts, municipal utility districts, river authorities, and many other limited-purpose districts. The “most basic, and lowest, level of local government is the special purpose district,” which has “limited powers.”<sup>8</sup> Kay, *Invisible Government: Special Purpose Districts in Texas* (LBJ School of Public Affairs, December 6, 2014), p. 2 (<https://static1.squarespace.com/static/54c15aa8e4b08b9c092063a6/t/54d68b58e4b0136443318e19/1423346520044/RP-Kay.pdf>). They have only the authority given them by the Legislature or Constitution: “The people of this [fresh water supply] district do not have the power to determine for themselves such corporate functions as they may wish to inaugurate, such as are granted to cities and towns operating under home-rule charters. **This district may exercise only such powers as have been expressly delegated to it by the Legislature, or which exist by clear and unquestioned implication. Therefore, the right to issue these bonds for all the purposes named in this bond record must be sought for in the words of the statute which authorized the creation of the district.**” *City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d 945, 946 (Tex. 1940) (emphasis added).

**C. The authority of special-purpose districts is construed strictly narrowly by the Courts.** Because special purpose districts are authorized for only limited purposes, Texas Courts have strictly construed their authority. A special-purpose may “exercise only such powers as have been expressly delegated to it by the Legislature, or which exist by clear and unquestioned implication.” *Tri-City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d at 946. See also *Jackson Co. Hosp. Dist. v. Jackson County Citizens for Continued Hospital Care*, 669 S.W. 2d 147, 154 (Tex. App.- Corpus Christi 1984, no writ). In the *Tri-City Fresh Water Supply Dist. No. 2* case, the fresh water supply district voters approved bonds for a sewage system and fire equipment. While these services furthered valuable public purposes, the Court held the district’s bonds were invalid because the district had authority only to provide fresh water supplies. *Id.* at 947. The Texas Supreme Court held that the district did not have the implied power to provide a sewage system, even though it involved supplying water. This is because a special-purpose district’s implied powers are only those powers that are “indispensable to the accomplishment of the purposes of the district’s creation.” *Id.* at 947; Texas Attorney General Op. No. JM-258 (1984) “Powers which are not expressed and which are merely convenient or useful” are not authorized for a district. *Id.* Similarly, Texas Attorney General’s opinions “have consistently held that the purposes for which a hospital district is created should be narrowly construed...” Texas Atty. Gen Letter Op. 95-088 (Dec 22, 1995).

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<sup>8</sup> See also “*Invisible Government: Special Purpose Districts in Texas*”, Texas Senate Research (October 2014) ([http://www.senate.state.tx.us/\\_assets/srcpub/Spotlight\\_Special\\_Purpose\\_Districts.pdf](http://www.senate.state.tx.us/_assets/srcpub/Spotlight_Special_Purpose_Districts.pdf))

In addition, Texas Courts have construed strictly the taxing authority of special-purpose districts. Courts have held such districts may only levy taxes for the purposes intended by the Legislature: "The power to levy assessments for the construction of drains [by the special-purpose development district] 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." *Henry v. Kaufman County Development District No. 1*, Appellee, 150 SW 3<sup>rd</sup> 498, 503 (Tex. App. -Austin 2004). See also *Tri-City Fresh Water Supply Dist. No. 2*, 142 S.W.2d at 948. If the Legislature wishes to allow a governmental entity to tax for particular purposes, Texas Courts require the legislature to clearly indicate they have such authority.

In summary, Central Health, as a special-purpose hospital district, has only the specific, limited authority granted by the Texas Legislature and Constitution: providing health care for the indigent and needy. Central Health may legally levy taxes and provide funds to UT Medical School or others for the purpose only of providing hospital and medical care for the poor.

**D. The historical and structural reasons for narrowly construing hospital districts' authority.** In the 19<sup>th</sup> century in the United States and Texas, health care for the needy was provided primarily by churches and private-aid societies. As the country became more populated and urbanized, cities and counties began to fund charitable hospitals and health care for the poor. See Konczal, *The Conservative Myth of a Social Safety Net Built on Charity* (Atlantic Monthly, March 24, 2014) (<https://www.theatlantic.com/politics/archive/2014/03/the-conservative-myth-of-a-social-safety-net-built-on-charity/284552/>). In 1954, the voters passed Texas Constitutional Amendment, Article 9, Section 4 to specifically authorize countywide hospital districts with taxing authority to provide for the poor's health care. This constitutional amendment expressly stated that countywide hospital districts "assumed full responsibility for medical and hospital care to needy inhabitants of the county." Tex. Const. Article 9, Section 4. Concurrently, when a hospital district is established, this amendment prohibits counties and cities from levy[ing] any other tax for hospital purposes..." Id. The State also is relieved of any responsibility for funding directly hospital districts: "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 have the sole taxing authority for funding the hospital system to provide health care for the poor that reside in their county; they cannot look to the county or cities for financial assistance or to the state for district appropriations to the hospital district. Because hospital districts are essentially on their own in Texas, Texas Attorney General's opinions have construed narrowly what is indigent health care in order to protect these limited funds for the poor. See, e.g., Texas Attorney General Letter Advisory Opinion No. JH-97 (1975).



Although the federal government currently provides Medicare for the elderly, and the federal and state government provide limited Medicaid for the poor, hospital districts still play a crucial role in providing health care for the many poor in Texas without any health coverage. Therefore, hospital district funds should be strictly limited to the poor's health care, which is essential for their well-being and lives.

**E. Texas Attorney General opinions have strictly construed hospital districts' authority to not include providing educational services.** Numerous Texas Attorney General opinions have narrowly construed the authority of hospital districts, restricting their funding to medical care for the poor, and not for tangential community health benefits. See, e.g., Tex. Attorney Gen Op. No. H-31 (1973) (hospital district cannot fund city and county health departments); Texas Attorney General Letter Op. No. 95-088 (December 22, 1995) (hospital district cannot fund the county medical examiner's office); Texas Attorney General Opinion No. JC-0434 (hospital district's purpose is providing indigent health care and, thus, must charge non-indigent patients reasonable and necessary costs of medical services).

Over the years, several Attorney General's opinions have specifically precluded hospital districts from using their funds for educational purposes. In Texas Attorney General Opinion No. WW-1170 (1961), the Attorney General held that a hospital district could not provide a public health nurse to the schools to educate students on communicable diseases. "From the facts related in your request that the duties of the public health nurse are to deal principally with outlying schools in the county for the purpose of controlling communicable diseases among school children, it is our opinion that her duties could not be considered to fall within those authorized for hospital districts." *Id.*

Similarly, in Texas Attorney General Letter Advisory Opinion No. JH-97 (1975), the Attorney General addressed whether the state could fund public medical school personnel teaching in hospitals that were established by hospital districts. The opinion stated that the state could fund teaching services only to the extent that they were providing education, but could not fund indigent health care because it was the sole responsibility of the hospital district. "We believe the prohibition regarding charges against and obligations of the State for the support and maintenance of a district's hospital system to be inapplicable. **The State would be contracting for and thus supporting and maintaining the teaching services of a hospital, not the normal hospital functions for which the district has the constitutional responsibility...** It is our opinion that the committee substitute for Senate Bill 343 would probably be held not to violate [Texas Constitution] Article 9 sections 4 and 9, **so long as the [hospital] districts are compensated only for teaching services.**" (emphasis added).

In Texas Attorney General Opinion No. M-71 (1967), a different Attorney General similarly held that the Texas Education Agency could not provide vocational rehabilitation and educational funds to hospital districts because these services were not indigent health care. The opinion

noted that “the purpose of the Program Is to vocationally train disabled Individuals so that they may return to civil employment... Rehabilitation Districts may be created to provide education, training, special services, and guidance to handicapped persons peculiar to their condition and needs, to develop their full capacity for usefulness to themselves and society...” However, “the power of the hospital district to contract is limited for the purpose of providing for maintenance and operation of the hospital or facilities” for health care for the poor. The State could contract with the hospital district “to provide medical and hospital care incident to the Vocational Rehabilitation Act, but the Hospital District does not have the authority to administer the entire Vocational Rehabilitation Program in that area [i.e., educational matters not constituting health care for the poor].” Three different Texas Attorney Generals have made clear over the years that educational services are not indigent health care. The State of Texas may fund educational services of hospital districts, but hospital district may not fund such services. No opinions have held otherwise.

Another Attorney General expressly points out the crux of the issue: indigent health care is the paramount mission of hospital districts. “It must be here noted that the primary function of the Hospital District is the furnishing of medical and hospital care for the indigent and the needy of the county, and that such function must take precedence over all others.” Texas Attorney General Opinion No. C-382 (1965). In summary, the history, structure, language, court decisions, and attorney general opinions relating to hospital districts strongly support that their authority is limited narrowly to include only health care for the poor, and exclude educational or other services.

#### **IV. Conclusion. Hospital Districts May Provide Only Hospital and Medical Services that Directly Benefit the Indigent and They Are Not Authorized to Provide Funding for Medical School education, administration and operations.**

Central Health has no authority to fund the Medical School faculty and staff for services that are not directly related to providing health care for Travis County’s poor. CH funds should not be going to the Medical School’s admissions, administration, academics, business affairs, fundraising and other operations that do not constitute direct medical care for the poor—no matter how generally valuable the Medical School may be.