

July 8, 2020 LDC Meeting Transcript

Tim Dean: Jasmin could you take a roll call for the attendance.

Jasmin Haylett: Tim Dean
Tim Dean, Here

Jasmin H: Mark Doyle
Mark Doyle, Here

Jasmin H: Kathy Bauer
Kathy Bauer, Here

Jasmin H: Jamie Piccone
Jamie Piccone, Here

Jasmin H: Don Sagliano
Don Sagliano, Here

Jasmin H: Al Torreggiani

Tim Dean: First order businesses is the discussion of the conflict of interest disclosures and I would like to report that I do have a conflict with Nuvance, a matter that's coming up under unfinished business. I serve on the board as the chair of the board of directors of Vassar Hospital and also on a Nuvance committee so when that subject comes up I will recuse myself and Mark Doyle will take over running meeting. So is there any other conflict of interest? Okay let us know if for any time during the meeting there is something that comes up. We have some minutes from the June 24, 2020 meeting. Does anybody have any changes or corrections that need to be made, if not, I will ask for a motion to approve the minutes.

Don Sagliano: I will make that motion.

Tim Dean: Thank you, Don. Can I get a second?

Jamie Piccone: I'll second that motion.

Tim Dean: Okay Jasmin would you take a roll call vote please.

Jasmin Haylett: Tim Dean
Tim Dean, Approved

Jasmin H: Mark Doyle
Mark Doyle, Approved

Jasmin H: Kathy Bauer
Kathy Bauer, Approved

Jasmin H: Jamie Piccone
Jamie Piccone, Approved

Jasmin H: Don Sagliano
Don Sagliano, Approved

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Tim Dean: Okay, thank you, everybody. All right, once again, Sarah I believe there will not be a report of the treasurer at this meeting, is that correct?

Sarah Lee: Correct and Tim

Tim Dean: Yes

Sarah Lee: This is Sarah, I'm sorry I was like shuffling papers around so proof of meeting notice.

Tim Dean: Oh yes, I'm sorry I skipped that, was it filed?

Sarah Lee: Yes, so proof of the meeting notice was posted on July 2.

Tim Dean: Thank you very much, I'm sorry I skipped that. So we do not have a report of the treasurer at this meeting is that correct?

Sarah Lee: Correct

Tim Dean: Any reports of committees?

Sarah Lee: No reports.

Tim Dean: Okay so we move very quickly to the topic for which I have a conflict and I believe we'll just skip that for a quick second. Sarah is there any other new business that's going to come up other than the Nuvance old issue?

Sarah Lee: I have no new business.

Tim Dean: Okay so what I'm going to suggest then is Mark I'm going to disconnect from the meeting and I'll let you handle Nuvance and then you can adjourn the meeting after that because there'll be no other discussions and that way people won't have to reconnect me.

Mark Doyle: All right

Tim Dean: Okay, thank you everybody. Mark it's all yours and I will disconnect.

Mark Doyle-Fishkill: Very good. Sarah and Jasmin do we have the Nuvance representatives online?

Sarah Lee: Yes, we have David Kates and I believe Steve Rosenberg I think you're coming in as 025098, are you wearing a pink sweater?

Steven Rosenberg: Yes

Sarah Lee: Okay, so we're going to unmute you in a second. So we have David Kates representing Chapman and Cutler the attorneys of Nuvance and then Steven Rosenberg who is the CFO of Nuvance here this morning.

Steven Rosenberg: Good morning, everybody, this is Steve Rosenberg.

Mark Doyle: Good morning, I'm Mark Doyle, Vice Chair and I don't know if the others would like to introduce themselves.

Steven Rosenberg: I guess not.

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Mark Doyle-Fishkill: Thank you for joining us this morning and taking the time to help us with this discussion. I think Sarah unless you and Don wanted to start the ball rolling we could ask Steve to make his presentation.

Sarah Lee: Don did you want to say a few words before they start?

Donald Cappillino: Yeah, this is before the board on the question of a letter that Nuvance has asked Sarah to sign. We've negotiated some of the language to make it clear that there's a limit to this but under the terms of the loan agreement between Nuvance and the LDC, there was a requirement that there be an audit filed by the end of February of 2020 and that was not done. There is some issues when Health Quest joined the Western Connecticut Health Network to create Nuvance and as they were trying to bring the financial statements together and reviewing them some discrepancies came up and I'll let Mr. Rosenberg perhaps discuss that but all of the disclosure requirements were met but this a provision that said that they had to file the audit. Well the audit has been delayed because of the discrepancies that they found and the mere fact that they were trying to join these two entities with different fiscal years so they've asked us to sign a letter saying we're not going to declare a default on that basis and we said well you said that you would have the audit done, your projection and you'd have it by August so come back to us at the September 9 meeting and let us know but in the meantime, you can sign the letter that you're not going to declare a default in the interim and declaring a default would be an extreme matter and would also require that this board make a determination that Nuvance is not using diligent efforts to prosecute this to completion and while it says that it is the sole discretion of the LDC to make that determination, you are a public entity and I think you are bound by rules that you can't be arbitrary in making such a determination. So on that basis, we didn't feel there was an issue but there are some questions that the board had about that and so I think it's up to Mr. Rosenberg to explain to the board what is going on and make the board feel comfortable that they are prosecuting this to completion so that they can file the audit even if it's a little bit late.

David Kates: Don, this is a David Kates, if I could maybe just clarify one thing with Chapman and Cutler representing Nuvance. While it is a technical violation of a covenant within the loan agreement, it's actually not an event of default as long as Nuvance is diligently pursuing the delivery of the audit which they are doing so we will let you know. So while there's a covenant violation were within a grace period of the loan agreement so there is no event of default and the letter that Nuvance asked has asked you to sign is an acknowledgement so that they have something for their files with their auditors with regard to the fact that there is not an event of default at this point in time and that really just an acknowledgement. You're correct them in all those determinations that the LDC needs to make. I just wanted to at least clarify that we don't have a default at this point in time.

Donald Cappillino: Yeah that's well stated, I agree with that.

Steven Rosenberg: So thank you for inviting us and thank you for the time. I can assure you that we are working more than diligently. I'm trying to close our audit for fiscal year 19. The issue we ran into is as we began to close our fiscal year 19 financial statements for Nuvance as a merged entity for the first time, legacy Health Quest and legacy Western Connecticut merged on April 1, 2019 so as we began to look at the numbers my team recognized that were there was a pretty significant variance in the accounts receivable and the revenue recognition over the past couple of years. Some portion of it clearly created by the fact that Health Quest went live on a new revenue cycle system back in 2017 but the size of the number was pretty significant. We found that the receivables were overstated by \$75 million. We traced the variance in the year it actually belonged back to 2018 which created complications so we can't close the 2019 audit until we close 2018. We had to go back to the legacy audit firm for Health Quest which is RSM. We presented the case that we think there was an error in the audited financial statements, a pretty significant one. They first argued that it was just a change in estimate, but after seeing all the information we presented to them on how we came to work conclusions they recognize that there was an error in the 18 financial statements so we brought them back in and they are currently working with my management team to go back and restate 2018. Once we get that done that obviously creates the beginning balances for our fiscal year 19 balance sheet and financial statements. So our challenge has been again. If that had not happened we would have been closed a long time ago but that really created some

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significant complications. So my anticipation is we will have everything closed by the end of August and again, just to make sure there's no confusion with our bondholders and the rating agencies who I have spent a lot of time trying to explain the situation. We are asking for you to sign this letter. We are working more than diligently on closing this. I assure you I have a finance committee and an audit committee and a board that is not happy that we're not closed so we are pushing to get this done but I wanted to explain the situation that gave rise to the delay and I will be happy to answer any questions.

Mark Doyle: Thank you very much. Does anybody on the board have questions?

Don Sagliano: I do, thank you Acting Chairman Doyle, Don Sagliano. Mr. Rosenberg you mentioned that there was a \$75 million overstatements in accounts receivable, what portion of the annual revenue does that represent?

Steven Rosenberg: It depends on whether you're looking at the annual revenue of ...

Don Sagliano: What is fairly financially acceptable under GAAP?

Steven Rosenberg: So again if we're looking at legacy Health Quest as a standalone entity prior to the mergers, we're about a two and a half billion dollar organization now combined. Before that, we were both about a million 2, to a billion 3 so as a percentage, it's about seven 7%. It's pretty significant.

Don Sagliano: So that would be a material over statement in conformity with GAAP. Has your organization Nuvance or Health Quest taken any action about the predecessor auditors with regards to them not discovering this error and characterizing it as an overstatement or a misrepresentation of estimated receivable?

Steven Rosenberg: So we have certainly reviewed the potential of going back and suing RSM for that. As we actually did a forensic review of some of the previous management team at Health Quest, as you probably know the CEO and the CFO are no longer with our organization. We believe that the issue was more with management than it was with the audit firm. I don't believe that RSM was presented with all the appropriate information in order to make the determination and we also felt that it was in our best interest to get this restated and closed as opposed to ending up in a prolonged litigation and if that happened our auditor now for Nuvance is Ernest & Young. They would not have been able to provide an opinion on 18, 19. It would have sort of spiraled out of control but we clearly had a big discussion about that because there were a lot of upset audit committee members about the RSM audit so that's a great question, thank you.

Don Sagliano: Just one further question, Acting Chairman Doyle, if I could. Mr. Rosenberg do you see any reason why from any indication as they're diligently doing the work Nuvance, is it Nuvance, is that the actual correct name? I see the billboard every day when I come to work so anyway, is there any reason why you wouldn't anticipate receiving a clean auditors' opinion from Ernst and Young once they complete their work there?

Steven Rosenberg: There is none.

Don Sagliano: Thank you

Mark Doyle: Thank you very much Don, this is Mark Doyle. Is there anybody else with a question? Good, so I'm anxious to just understand this again and maybe make sure that I heard it correctly that Don Cappillino that there has not been an actual default. We have not crossed the default threshold up to this point but going forward to September, do we reach that threshold, is there an actual instance in which ..., what is the point where we reach that threshold?

Donald Cappillino: Well, I think as Mr. Kates made clear, there is a breach of the covenant but you would have to declare an event of default. If as a board you would have to determine that they were not proceeding diligently to try to meet that covenant and to file that report. So they've said that they're working diligently to get it done by the end of

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August and we have a meeting coming up on the ninth of September, so the thought was to be able to sign this letter saying that as of now there's no event of default. You're not making a final determination on that but again I think that if they're showing you that they've made this kind of efforts so far and you're satisfied with that you can push it out to September 9 and hopefully by September 9 they will tell you they filed the report and you have nothing more to be concerned about if they haven't then maybe they'd be kind to return and explain why they haven't done it. At the meeting on September 9 they can come and make a further explanation.

Mark Doyle: Right, thank you. The letter asked us to acknowledge that we push this off until at least September 9 so I feel like there should be some, you know, I'm personally very comfortable with the amount of diligence and postponement of any type of decision, obviously because they are moving in the right direction, clearly it's in everybody's interest to do so not to leave a wide open window. Do we need to have a date? We can always extend from that date but it seems like it should be September 9 or a month later for that matter just to have a fixed date.

Donald Cappillino: Well, again, I don't know that. They may be able to come in and tell us on September 9 that they need another two months because they found certain other discrepancies and they disclose us exactly where they are. So I don't know that you're in a position to bind yourself in the future. Here we're just saying we're pushing this out to September 9 and review it again. You're not making any commitment one way or the other from September 9. After that you can do whatever you choose to do. This just leaves it open but this takes care of what they need to do to give to their auditors so that they do what they have to do.

Mark Doyle: Right, so we review the situation again on September 9.

Donald Cappillino: Right, so now you're looking for a motion to authorize Sarah to the sign this letter as presented.

Mark Doyle: Is there any further discussion from the board and comments and if not I would entertain a motion.

Don Sagliano: I'll make that motion to authorize the Executive Director to sign the letter as presented.

Mark Doyle: Thank you, that's Don Sagliano.

Jamie Piccone: I'll second that motion.

Mark Doyle: Thank you Jamie. May I ask for a roll call vote, all in favor?

Sarah Lee: I'm sorry, this is Sarah. Mark would you like Jasmin to do a roll call vote?

Mark Doyle: Yes, please Jasmin, sorry about that.

Jasmin H: Mark Doyle
Mark Doyle, Yes, approved

Jasmin H: Kathy Bauer
Kathy Bauer, Approved

Jasmin H: Jamie Piccone
Jamie Piccone, Approved

Jasmin H: Don Sagliano
Don Sagliano, In favor

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Mark Doyle: Right, so any opposed, no this none because we're all in favor and the motion passes. Steve and David thank you very much for your time this morning and we hope that everything proceeds as well as it can from this point.

Steven Rosenberg: Thank you for your consideration, I look forward to meeting you in person someday. Have a good day.

Mark Doyle: Thank you

Sarah Lee: Thank you

Mark Doyle: Sarah do we have no more new business to review? I don't think we do.

Sarah Lee: This is Sarah, no we have no more new business to review.

Mark Doyle: So I'd like to call for an adjournment, if some could make a motion?

Jamie Piccone: I'll make a motion to adjourn.

Mark Doyle-Fishkill: Jamie, thank you.

Kathy Bauer: This is Kathy, I second.

Mark Doyle: Thank you, I don't think we need a roll call for that. Thank you very much everybody. Thank you.

Jamie Piccone: Thank you

Kathy Bauer: Thank you

Sarah Lee: See everyone in September.

Jamie Piccone: Yeah, have a good day.

Sarah Lee: Bye