

Panel Presentation to The Haven Board of Directors

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Panelists: Kendis Muscheid, Attorney, Ballard Spahr; Jack Roberts, CPA, Roberts Alexioni Group

Moderated by Patti Caldwell, Caldwell Consulting via CFSA/TEAM Up

Patti Caldwell – everyone received a very rich packet of materials in preparation for today’s meeting. May need to set aside a couple of hours of time to read/study for the meeting. One of the documents was a memo written by Kendis titled “questions for possible updated structure”. That document is the primary reference for this conversation during today’s meeting. Start with the assumption that everyone read that memo and want to make sure that everyone is able to take as much time during the meeting today to be able to talk to Kendis and Jack as needed and ask clarifying questions. Make sure you really understand the issues that Kendis has laid out and the questions she feels are important as a board to discuss. The idea is that this part of the board meeting is to rely on their expertise to be able respond to questions and concerns and additional information you may want to know in relation to the memo she sent you. And then Barbara can excuse us and you can come back together as a board to talk about next steps and additional questions you may have in order to move forward.

It would be helpful for you to highlight key areas from this memo, maybe take 5 or 10 minutes and then we can move in to questions that the board members may have.

Kendis M – when I was first asked to undertake a review of the foundation documents from The Haven’s perspective and to take a look at the protection offered The Haven if it were to put assets there, from that perspective. I let Aimee know the first time I spoke with her and Cynthia that I’ve been working in this area for over 31 years. I routinely form foundations and operating entities and these types of structures. There is always a balance that you’re trying to meet here when you’re looking at the different structures. Are you giving up all your control or are you keeping so much control that you keep all of the money in the operating entity. So you’re really looking at two different spectrums and where you come along in the scale. That’s how I approach these – what are the risks you’re looking at and how are you balancing them. Where do you want to strike the balance within your organization? In the memo I gave you, there was a little bit of an introduction sort of setting the stage and where I would start if I were you and what is the purpose of the foundation? What did you want it to do? What is your first question? I gave you a couple of answers as a way to walk through it and that is on page 2. If you go to the next page it was well, if you had one goal then these are the recommendations I would make and if you adopted the other goal then this is what I recommend. It is all based on your goals and where you want to end up. Maybe some recommendations for how governance for the foundation might be recommended to change a little bit or how you all would interact with the foundation as The Haven. And you can come down anywhere on the spectrum. You just want to be sure from your perspective that your assets are safe and secure and that you know how you need to interact with the foundation when you put your assets there or what you can expect. That’s how I approach these.

The first question that I would suggest that you ask is “what do you want from the foundation?” If you want for that foundation to really support the haven and its mission than I would submit that what’s not what’s able to happen. I litigated when I was a young lawyer and so I sort of get things from the “that’s really nice that you thought that’s what I said” wrong and that’s where we go back to the documents

and people are saying that not what I meant. When you get to litigation and people say that not what I meant than you say, well that's what's written down on the paper. On top of page 2 of the memo there is the purpose here. This is the purpose that is set forth in the articles of incorporation. The articles of incorporation are going to control and we usually try to keep those a little broad so you don't have to amend your articles at different times, and then the bylaws and then policies and other things. So if you look at the articles of incorporation, the purpose of the foundation is very broadly stated, is to support women and families in the pursuit of living free of substance misuse, and provide education and public advocacy in the area of women's health, in accordance with 501 C three, with the intent to benefit mankind, mankind in the United States and abroad by conducting the various activities by making charitable contributions to organizations that qualify as tax exempt organizations under Section 501 C three and then specifically, the foundation will provide financial support to the Haven provided that it remains a recognized C three organization and one seven DB one A is just a subsection of the tax code that basically means you're a public charity. That's what that is. So if you look at this disappeared from your screen, if it did, if you look at this purpose statement, the foundation is able to support a whole bunch of organizations, not only across the US but abroad for much broader purposes and the Haven and much broader activities than just what the Haven does. So that's what the foundation isn't able to do. So if you answer the first question, what did the Haven wants the foundation for? If you want it to just support the haven in the havens mission, then I would submit that you might request that the mission be much more narrowed purpose and that it actually be narrowed to support. The Haven were much more limited mission and you want to specifically state that it's going to support just the Haven and you can do that. So you can also leave we'll talk a little bit more about that. We'll get to number two. If you want the foundation and you're comfortable with the foundation, having such a broad mission and providing support across the US and abroad and to mankind, providing education and lobbying and doing all kinds of other things. Then you can leave it the way it is and it will provide some support, but there's no definitive amount. Then you leave the purpose the way it is. And in order to secure the havens, assets or money raised for the Haven, you're going to want to do some things that I've made a recommendation for and number three so there any questions on that? Sort of first choice set of choices?

Patti - I'll manage that with questions. Okay. So, so it looks to me like Jeannie had her hand up.

Jeanie - Yeah, I think the distinction that we were trying to make with leaving that broad was to cover the possibility of The Haven being acquired or merging with another organization and then what we hoped would be kicked out of that as the ability to direct the foundation pawns in alignment with the Haven mission, but in the in the in the possible scenario where the Haven didn't exist as a separate entity no longer. I think it was written that way to be able to carry on the mission without the funds having gone to an organization that may or may not be autonomous anymore. So I'm not sure how that affects the conversation. But I think that's where that came from.

Kendis - okay. So the end, let me just talk that through with you. So I make sure I understand. So if the Haven were to be taken over. Then there are funds that were designated for the Haven and its mission that were in the foundation. What would be the thought about what happens with those funds?

Jeanie - Well, we're hoping to, to not be just a ripe target and only to be acquired for the resources that we have. Correct. I think it was hoping that the foundation would provide some layer of protection that that that wouldn't be you know that the acquiring organization wouldn't have access to those funds that

there would be some way that we could still use them to fulfill our mission and I don't think anyone intended the funds to go abroad or even out of the local community. But I think that's why it was written that way. I can't tell you what that achieves. But I think you know, in one of the aspects of the overarching goals of The Haven would be of this foundation was to put some separation between the funds that we have in reserves and in our operations and not letting some not letting another organization have access to.

Kendis - So when that happens, it also keeps the haven from having access to the intent of this right. Right. Which is and I understand that genie, which is the struggle that that happens, right. And so that was when we were talking the other day with the smaller group. And then as you kind of see outline here, that's the struggle that always comes up in the situation like this. And that's what concerns me because I've seen in situations where an organization is concerned either about liability issues, or like you're talking about you have a lot of reserves and somebody comes in and starts populating the board and doing things and then they say, haha, we have all this cash now, we don't care about your mission. We have cash, right? So you struggle with do we give away control in order to mitigate whatever it is the risk or the takeover possibility, but then we lose control of all the assets and so it's always that balance. And if funds are restricted to a certain use, or you have some other controls in there, we might be able to get to the same point and not have to give up control. So that's I understand the fine line and trust me it's a struggle that that lots of organizations work through. So I understand the pain of trying to walk that line. And so do you. The concern I have is when you have a fair amount of money over there, and you don't have control of that organization, then it can make grants abroad or support another mission. And the money is now out of the havens control.

Jeanie - Well what can we do to keep that control because our intention was to have enough Haven board members on the foundation board where it couldn't run away from what the Haven Board wants.

Kendis - Right? Do so we can set? So if the answer and these are you know, sort of black and white which we can we can gray it in the middle of Do you want but for AMD. So the answer is we really wanted to support the Haven and protect its assets as opposed to have this really broad mission. We look at either number two or number three. So let's go to the next page. And if you look at it again, it is number two stated sort of emphatically like we really want it the goal is to support only the Haven and protect its assets. And obviously, we can have a little bit of wiggle room in there where the foundation may make may build in with a haven could make some grants or some collaborations that are in the interests of the Haven, right so that again, that's where we sort of get the ability to do those things. But recommendation, first recommendation I would strongly make is that that purpose be changed and significantly narrowed. So that you can still have some room in there to be able to help the population that you want to help and maybe it's narrowed geographically, maybe, you know, to southern Arizona, Tucson, Arizona generally but you narrow it significantly. So that when if a donor gives money, they can give money to a specific part and that's just the Haven they can give money to the foundation is limited to that purpose. But right now, if I wrote a check for \$100,000 to the foundation, and I didn't say anything else I just said, here's \$100,000 they can do anything in that purpose statement that they want with that money. So that's what concerns me about keeping the purpose. So that's the first thing I would do. The second thing I would suggest is that if we really wanted to support the Haven, then we make the Haven the sole man and we say you know what, as the sole member, we get to do a few things. And again, we can sort of pick and choose. But we could say as the sole member, the Haven appoints the entire board as the sole member that haven appoints 51% of the board and then those board members

pick the rest of the board. And we have staggered terms so that you know we we don't have everybody expiring at once. And maybe we and I've written these down right so you can talk about them. And maybe we couple the board appointment provisions with limiting the number of overlapping boards so that you can only have 20% 25% 30%. Simultaneous to serving board members. Great. So Kendis and Jack may want to speak to the consolidation of financials and those kinds of things. I know there. Sometimes there's a concern about that. But when you have a separate foundation like this, you're both going to be trialing 990s that with the IRS. You're both going to be observing corporate formalities. And so that's going to be very helpful. In forestalling and your creditors' malpractice. Actions slip and fall the liability type issues.

Patti - if I could just interrupt for a second so for folks who are who have the memo in front of you that you may have printed out or have up on your screen that was sent out by Julie, the recommendations that Candice is going over are on page three of that memo and they're very specifically spelled out as you're hearing. You know, it's not a it has to be this or that. Once you're clear as a board about what your intent is, what you really want to see happen long term, then Kendis can really help you refine your vision a little bit more to develop the foundation as a real benefit and adjunct to the Haven world providing some of the protections that you've talked about and providing some functionality in the way you heard last month from some of the folks who presented on Casa de Los Ninos Del Rio and council on aging. So Candace, if I could just pause you for a moment. Barbara, you have a question?

Barbara - I do. Maybe it's a really basic question. But I'm having a real hard time understanding what you mean by saying the Haven is the sole member of the foundation.

Kendis - So nonprofit corporations don't have shareholders. So in one of the things that we can do, though, is we can have real members so it's, you might be the member of the art museum or some kind of an organization like that. And when you are a real member, you vote for the board of directors. So just like when you're a shareholder in a for profit company, that's one of the things you get to do. And under Arizona law, like in many states, if you are a member of a nonprofit corporation, and you get to elect a director, you have a vote for that to the board of directors. Then you are a member under state law with certain rights. And that's the hallmark provision is voting for the board of directors. We have lots of organizations that have quote members, but they don't have really a right to vote on anything. So what we could do is under Arizona law, we could amend the Articles of Incorporation for the foundation. And we could make the Haven the sole member so there's only one member and that member would have the right to appoint all the board members are 51% of the board members, we will give the Haven certain rights as the sole member and there wouldn't be any other members who couldn't admit any other members. And we would do that as a method of control and away way to keep control and to have certain rights. Another one of the rights that I always like to do is a right to approve any changes to the articles or the dissolution of the corporation, spending substantially all the assets, those kinds of things. So that's the in in nonprofit law, that's what a real member is. So you hear the term members used a lot. Their members with the capital M. Lowercase members don't really have. So that's what I mean by where does that help?

Barbara - Yes, yes.

Kendis - You're welcome.

Patti - Who else has a question for Kendis? Either unmute or raise your hand, whichever works better for you.

Jack - How long have you Kendis, is there an issue with giving the if you give the Haven the right to appoint either the entire board or a portion of the board? Can you also give them the right to terminate the board members at will?

Kendis - We normally if you have the right to appoint a director you have the right to thank you for calling the Haven build in the control because let's say for example, we gave the Haven The Rachel point a majority of the board. You have board members that really yes there is I can transfer you to Latricia if you want to support the local animal shelter that's important to have support for day one. And it is perfectly acceptable at that point to say you know it has tremendous pleasure having you serve on our board but it is time for you to really go find service somewhere else. And you don't have to say anything other than that. Just the demand to know why you can't do that. And I have a right to just say thank you so much for your service. It's been a pleasure and you don't serve on our board anymore. And that's one of the abilities that you have as a sole member. I mean, we give you those rights and it's a termination without to have support for day one. And it is perfectly acceptable at that point to say you know it has tremendous pleasure having you serve on our board but it is time for you to really go find service somewhere else. And you don't have to say anything other than that. Just the demand to know why you can't do that. And I have a right to just say thank you so much for your service. It's been a pleasure and you don't serve on our board anymore. And that's one of the the abilities that you have as a sole member. I mean, we give you those rights and it's a termination without cause and removal without cause.

Jeanie - However, is that right when it's coming from the haven that is really coming from the Haven directors?

Kendis – Correct.

Patti - I think every time Candace says The Haven is translated in your mind to the Haven Board of Directors because it's not a single member of the Board of Directors. It's not just the officers of the board of directors. It's the board of directors.

Kendis - And you can delegate that to executive committee because the executive committee delegated authority can act as the board between board meetings. Right. And that's, but generally, when we say the Haven acts, it's the board and I've had situations over the years it doesn't happen too frequently where an entire boards by the sole member, but it happens occasionally.

Jeanie - we're going to have board members that serve on both boards. We're going to have some I mean, how it's structured now is we're going to have paid and board members serving on the foundation board as well. And I know that hasn't been it hasn't happened that way yet. I mean, right now it is two thirds Haven 1/3, outside person, and that was kind of the ratio we like, but it would be hard for the haven to remove the entire foundation board.

Kendis - It would have to have that right and right now the Haven has no rights at all. And that's the concern.

Patti - The intent on the part of the existing people who created the foundation and the conversation the board has had. And those intents are only as good as what's written in the articles of incorporation. Assume that 10 years from now, none of you will be involved and the people who are involved need clear guidelines for what's going to happen and how to manage whatever assets. If assets are transferred from the Haven over to the foundation. The other thing I would just raise just what all of you are thinking about another question you may have for Candace or Jack is Amy. I. I'm just thinking as a parking lot issue, just because it's come up a couple times. It might be useful to have a conversation at some point about what nonprofit mergers and acquisitions actually look like. Having been part of two of those, and the hostile takeovers aren't very common or even very impossible easily. Within the nonprofit world. So I think the worries about acquisition need to be balanced with the fact that no acquisition takes place without the permission and vote of the board of directors in the hate. So that doesn't mean it isn't something you want to pay attention to or think about. Like I just want to be sure that folks are and again, it's a parking lot issue. I think it may be something that we just want to be sure that all board members have the same understanding about what nonprofit mergers and acquisitions actually look like and how they take place.

Jeanie - I'll just add to that, that, at least for the last 15 years, it's been a topic of conversation on this board that smaller organizations are going to find it increasingly difficult to maintain funding. Our funding sources have changed every two to three years. For the last 15 years. We've existed in a state of uncertainty and we've been told by consultants and large organizations that the inevitable result is going to be that we have to combine with a larger help home or larger organization hasn't happened yet. But it has been a conversation of this board for as long as I've been on this board. And so that is I we understand that it wouldn't be a hostile takeover or someone coming in you didn't want to do business with but we've always felt that there's a possibility that we would be forced into a larger organization to be taken over by any of the larger health organizations. So that's where that comes from. That traditional sense but that's yeah, that's good.

Patti - And I think what I'm just saying is one may want to have a conversation about what the forces are that could lead to the havens board of directors, directors deciding that it was in the best interest of the Haven and the havens mission. And the clients that you serve, to choose to be acquired or merge with someone else. I mean, we had a conversation just six months ago about merging with another organization. So what kind of questions having looked at the memo listen to Kendis so far, what additional questions two people on the board have? I just want to be sure that you're taking full advantage of canvasses expertise while she's on with you to see as close of a question.

Colette - Thank you and really helpful. Reading it is one thing but hearing someone that's been through this and I guess the question are more of a concern is that I hope that you will guide those writing is to really protect the population that we serve. So, you we required to reduce the conversation and put it to a lecture but even though I love this education, never certainly because decide what's going to happen. So just so people know the background, but what is it that scholarships to the population to support that population be otherwise supported? Merge and I'm gonna step up how we create this to protect both resources and clientele.

Patti – And so there are just so so there's just one thing so I think as Candice has outlined, there may be some, some refining and purpose to really do this thing but there's also I know you wanted to also protect against liability is one of the things that never talked to parents could be more about that

another type of people. I think one of the was kind of like, buffet of options to, to include in the scenarios is an LLC or real property. That also provides some additional protection which is usually considered a much better place assets foundation. You may want to look at it many not because do is if they don't have a foundation, or even the foundations takes I know some point there was conversation about wanting to ensure that some of your reserves can't necessarily be swept into day to day operations without realizing it and and many organizations set up or designated reserves that again, have specific policies connected to how those funds can be used and where the the executive director can't invade without Board approval, but gives you that reserve and pushes for research and total control. So you can look at diet dividing up your funds in several different ways in order to manage that through. So so I just put that out that as it's not a it's not a one thing necessarily that you need to do in order to protect assets. There's several different ways to do that. And to manage that and canvases clearly laid out some really useful steps that you can take to refine your vision of the foundation and allow you to ensure that any funds that you choose to move over the foundation remain under appropriately under control controls your assets.

Jeanie - I really liked that idea of at least the initial funding of the foundation being restricted. If the foundation goes on to do other fundraising activities and raises money for specific causes, that's one thing or you know, they did a fundraiser for community outreach that was not specifically for the for the initial funding. I think it'd be restricted that kind of at first concern with going does that don't directly.

Kendis - You could do as we kind of go through that a sudden you know, without trying. If you remember top pages, let's face it really is a thing you could do and you know, if you were going to sort of combination, I narrowed and some was the little more running, maybe get more population and start with some restricted funds if you want to do that and give the Haven at least some appointment right some of the law hard because if I'm an owner and I say even butterfly Foundation, know that done associate may be pleasantly surprised donors may donate ie not restricted to you. You apply That's right. And though there may be funds going there that will think will help you may end up in in what I call a general pool. So don't get too Curt, terrifying documents that get you where you want to go maybe set up on our men's specific from a foundation of point. So they're their donors. With money from money, their behavior, and then often restrict any money to give. So it really is the combinations that cannot completely bring everything even if you really don't want to do that. So there really are a lot of middle grounds that look at this whole spectrum. However you want to go with that but definitely trying to sit down and decide where to be on the supplement if you want the patient to go to raise money for other groups.

Jeanie - I mean, maybe the other members would they but my concern was that they we feel like you know that Easter Seals is such a great idea. We actually do work with them and they're awesome. We can't wait that money and for them if we don't Easter sealer the money in the foundation is only directed Haman that he could get access to and everybody feel like they're going to do that we want to build in progress happening.

Jack - I can just jump in it seems to me under this scenario we could amend the bylaws of the foundation before you merge with the other organization and fix that.

Kendis – The organization. That's what it's all about the Haven. So all every dollar that goes in is restricted to the Haven, right, just by nature of the way the organization is drafted. It's going to be difficult for that money to go somewhere else which is why I said you want to probably think about

restricting it to the motion geographically or something like that. Right? Because you may be surprised that like you said, not everybody thinks this is a great idea can be really good. But maybe some people still want to run the foundation, scholarship grants or do other things. So there's again that wine that you want to walk between everything has to go to the haven that haven doesn't exist. Right if it merges, money can get there. But if there's an asset purchase or something like that, it may be more difficult. So you want to protect the assets from creditors. And that's a question I get a lot well what happens if we have partially overlapping boards or, you know, we're many over there. If it's board designated, and it's a board restricted? Where, you know, like a reserve fund for instance, then the money can just be pulled back. Just like the board can pull it back today. But if it is donor restricted, and you can't call it back as the haven that a creditor can't call it back, right. So there are reasons for segregating assets like that.

Patti - So, Barbara, I'm watching your time for us. And so a couple of thoughts. It sounds it sounds like there's some further discussion or refinement or maybe you have a small group of a subgroup of your board members along with Amy who would want to go away and maybe talk with Candace more and based on the discussion today, come back with a proposal to the board that might reflect some of the issues that Candice is raising. It's one option and another would certainly be that you could excuse me in Kansas and Jack at this point or and continue the conversation as a full board about what kind of next steps you want to take and what that looks like. It also seems like one of the things that I haven't heard clarified, and again, not necessarily today's discussion, but a bigger discussion. And you heard this a little bit with from Susie Q and a customer was he knows last month is a decision about where fundraising responsibilities lie. Aiden's got long term reputation. One of the reasons why constantly most leaders chose to keep fundraising as part of the service organization, as opposed to move over to the foundation. It's a very different they're very different models are real but a different route, mostly because they're primarily healthcare and that's never been a forte within a healthcare organization necessarily. But I think that's a that's a longer term issue that has to do with staffing, and how you want staffing to occur. And what you what your donors would expect what you might think would be in the best interest of raising money. So I just put that as another part in an issue just since I've heard it raised a couple of times. Barbara, what's your pleasure at this point? You're muted, I'm sorry, Barbara.

Barbara - I think it might be a good idea to unless anybody has any other questions which would be fine for you all, perhaps, to lead us to discuss as a group right now without naming the board and you could always make it a smaller group later that people are now less of reality. Again, somebody else has a different idea.

Patti - Anybody have any additional questions for Kendis or Jack before we would excuse ourselves so you can move forward to your board discussion?

Jeanie - I have a question for Jack. Are there any what are the mechanics of transferring the funds out of The Haven into the foundation? What are the reporting requirements for that?

Jack - Ratio it's just a ground like any other it's just you're granting to a foundation.

Kendis - That's going to be true. If, if you're donating but like a reserve fund you want it over there for investment purposes. It'll be slightly different but Jack's right. It's a grant.

Patti - Any other questions for Candice or project?

Barbara - Yeah, well, thank you very much. Again, we really appreciate it. I don't think I realize the complexity of all this until now.