



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

February 20, 2024

Stephen M. Leitzell  
Dechert LLP

Re: Select Medical Holdings Corporation (the "Company")  
Incoming letter dated December 4, 2023

Dear Stephen M. Leitzell:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the Physicians Committee for Responsible Medicine and co-filer for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company adopt the American Medical Association policy for healthful foods for healthcare facilities and adopt the program for healthful hospital food developed by the NYC Health + Hospitals system.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to, and does not transcend, ordinary business matters. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Mark Kennedy  
Physicians Committee for Responsible Medicine



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**STEPHEN M. LEITZELL**  
*Partner*

stephen.leitzell@dechert.com  
+1 215 994 2621 Direct  
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December 4, 2023

**VIA E-MAIL**

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

**Re: Select Medical Holdings Corporation – Exclusion of Shareholder Proposal Submitted by the Physicians Committee for Responsible Medicine**

Dear Sir or Madam:

This letter is to inform you that our client, Select Medical Holdings Corporation (the “Company”), intends to exclude from its proxy materials for its 2024 annual meeting of shareholders (the “2024 Proxy Materials”), a shareholder proposal submitted to the Company by the Physicians Committee for Responsible Medicine and by Anna Herby (Anna Herby, together with the Physicians Committee for Responsible Medicine, the “Proponents”) in a letter dated November 2, 2023 (the “Shareholder Proposal”).

The Company requests confirmation that the staff (the “Staff”) of the Securities and Exchange Commission (the “Commission”) will not recommend to the Commission that enforcement action be taken against the Company if the Company excludes the Shareholder Proposal from its 2024 Proxy Materials pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on the basis that, in accordance with Rule 14a-8(i)(7) of the Exchange Act, the Shareholder Proposal deals with matters relating to the Company’s ordinary business operations.

Pursuant to the Exchange Act and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), the Company is submitting electronically to the Commission this letter and the exhibits attached hereto, and is concurrently sending a copy of this correspondence to the Proponents, no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission.

Exchange Act Rule 14a-8(k) and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit

additional correspondence to the Commission or the Staff with respect to the Shareholder Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

### **The Shareholder Proposal**

On November 2, 2023, the Company received the following Shareholder Proposal from the Proponents for inclusion in the 2024 Proxy Materials:

#### **Shareholder Resolution for Revenue Savings and Improved Health**

##### **RESOLVED:**

Select Medical Holdings Corporation shall achieve significant revenue savings, improve patient satisfaction, improve staff health, reduce absenteeism, and enhance its image as a healthcare leader by adopting the American Medical Association policy for healthful foods for healthcare facilities and adopting the innovative program for healthful hospital food developed by the New York Health + Hospital System.

##### **SUPPORTING STATEMENT:**

In 2017, the American Medical Association adopted a policy calling on U.S. hospitals to improve the health of patients, staff, and visitors by providing a variety of healthful food, including plant-based meals and meals that are low in fat, sodium, and added sugars, eliminating processed meats from menus, and providing and promoting healthful beverages. These healthful changes enjoy strong support from patients. Subsequently, the New York Health + Hospital system implemented a program following these guidelines and improving upon them in certain ways. Patient satisfaction has been greater than 90%, staff satisfaction has been similarly high, and costs have dropped by approximately 60 cents per food tray. Media coverage has been strongly favorable, greatly boosting the system's image.

Failure to adopt this approach would mean forfeiting millions of dollars in cost savings and the opportunity to improve patient health and our corporate image. By enhancing the health of patients and staff, this approach addresses the significant social issue of public health and transcends ordinary matters of business, while also reducing food costs and potentially reducing medical costs and absenteeism among employees.

Recent research shows that plant-based foods present, on average, a 16% revenue savings. When scaled to an institutional level, these savings increase exponentially. Employee health improves and absenteeism decreases when the food environment is improved. A multicenter study for GEICO employees found that providing plant-based food offerings and simple educational messages improved employee health and reduced health-related productivity impairments by 40-46%. With improved employee health, Select Medical may lower healthcare costs, increase productivity, and significantly increase revenue.

Select Medical values inclusion, equity, and healing with empathy and compassion. Service healthful, climate-friendly, socially responsibly, and financially conservative meals is a straightforward way to put these values into action. When we achieve revenue savings, improve patient satisfaction, and boost

employee health and moral with inexpensive healthful foods, everyone wins, most of all the shareholders who have invested in the company's future.

In light of the marked financial benefits, the potential improvements in employee health, and the enhanced prestige that will result from these initiatives, we respectfully ask shareholders to support this resolution.

A copy of the Shareholder Proposal from the Proponents is attached hereto as Exhibit A.

### **Basis For Exclusion**

We respectfully request that the Staff concur in our view that the Shareholder Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) of the Exchange Act because such Shareholder Proposal deals with matters relating to the Company's ordinary business operations.

### **Analysis**

#### **I. The Shareholder Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7) Because it Involves Matters Related to the Company's Ordinary Business Operations.**

##### *A. Background*

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Staff stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," noting that this underlying policy rests on two central considerations.

Regarding the first consideration, the Staff acknowledges that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." Examples of the tasks cited by the Staff in the 1998 Release include "management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers." The second consideration is the degree to which the proposal attempts to "micro-manage" the company by "probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* Despite the two central considerations, the Staff has noted that a proposal relating to a company's ordinary business operations is not excludable if the proposal focuses on "sufficiently significant social policy issues" that "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Id.* In this regard, when assessing proposals under Rule

14a-8(i)(7), the Staff considers “both the proposal and the supporting statement as a whole.” Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005).

As outlined below, the Shareholder Proposal engages the central considerations that form the foundation of the ordinary business exclusion. The subject matter of the Shareholder Proposal is fundamental to management’s ability to run the company on a day-to-day basis. The content of the Shareholder Proposal aims to micromanage the Company by restricting its discretion in dealing with a large, complicated daily operation. Finally, the Shareholder Proposal does not concentrate on any social policy issues of sufficient significance that would transcend day-to-day business matters. Consequently, because the Shareholder Proposal is related to, and does not transcend, the Company’s ordinary business operations, it thus may be excluded from the 2024 Proxy Materials in accordance with Rule 14a-8(i)(7).

*B. The Shareholder Proposal May Be Excluded Because its Subject Matter Relates to the Company’s Ordinary Business Operations.*

The Shareholder Proposal requests the Company’s board of directors to adopt the American Medical Association’s policy for healthful foods for healthcare facilities that would include “providing a variety of healthful food, including plant-based meals and meals that are low in fat, sodium, and added sugars, eliminating processed meat from menus, and providing and promoting healthful beverages.” The Shareholder Proposal also requests the Company’s board of directors to adopt the “innovative program for healthful hospital food as developed by the New York Health + Hospital System,” which it notes “improv[es] upon [the American Medical Association policy] in certain ways.” The Shareholder Proposal’s overarching goal attempts to control the specific food and beverage products being provided by the Company to the patients, directly involving the Company’s “ordinary business.” The Company, as an operator of long-term acute care hospitals and inpatient rehabilitation hospitals, manages offered food options as a fundamental part of its day-to-day operations. The decisions regarding food and beverage service operations are made at the hospital level, with each hospital adopting a distinct approach to managing these operations. These decisions range from employing in-house staff, to engaging third-party vendors, to contracting for food services to be provided by host hospitals. Specific employee food and beverage requests are also taken into account at each hospital, as demonstrated by the diverse food and beverage operations and amenities such as kiosks, cafeterias, and self-service cafes implemented across the hospitals in response to these requests. Additionally, the Company’s operations already align with standards set forth by The Joint Commission, the Academy of Nutrition and Dietetics and state and local regulatory agencies.

The hospital-level decision-making behind the food and beverage operations includes conducting nutritional screenings, creating patient-specific care plans, consulting with medical staff, addressing patient nutritional concerns, and assessing drug-nutrient interaction risks. This level of personalized care can only be effectively managed at the hospital level and cannot feasibly be dictated by shareholders. Each hospital is optimally equipped to provide food that is safe, nutritious, of high quality and tailored to each patient’s unique needs, because food plays a crucial role in the recovery process for many patients. For instance, patients relearning how to eat and swallow require a dedicated dietary team and specific types and consistencies of food, determined on an individual and daily basis. A new food policy could limit food recovery options for patients struggling with eating, potentially hindering their recovery. Daily meticulous

planning is required to cater to the diet prescriptions ordered by physicians as well as patient food, cultural and religious preferences to ensure their health and safety. Furthermore, the management's ability to adapt food services to changing patient needs, regulatory guidelines, and operational circumstances is crucial for the smooth running of the Company's hospitals and daily operations. The needs of each hospital can vary as well, depending on patient population and the hospital type (e.g., the dietary needs of patients in a long-term acute care hospital may be different than those at an inpatient rehabilitation hospital). Handling the operation of the food and beverage options available to employees and patients is "so fundamental to management's ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." 1998 Release.

The Staff has regularly allowed companies to exclude shareholder proposals relating to food options and products offered by a company. In 2023, the Staff allowed exclusion of shareholder proposals received by three healthcare companies encouraging the boards of directors of those companies to require "plant-based food options to patients at every meal, within vending machines and in the cafeterias used by outpatients, staff and visitors," noting in each case that the shareholder proposal "relates to, and does not transcend, ordinary business matters." See *Elevance Health, Inc.* (Mar. 6, 2023); *HCA Healthcare, Inc.* (Mar. 6, 2023); *UnitedHealth Group Incorporated* (Mar. 16, 2023). All three companies emphasized that the complexity of the decision-making process involved in determining which products to offer their patients is beyond the capabilities and scope of shareholders. *Id.* Although these proposals did not explicitly demand the implementation of a specific policy, they were, in substance, aiming for the same outcome. In *McDonald's Corp.* (Mar. 24, 1992), the Staff allowed the exclusion of a shareholder proposal that suggested healthier cooking practices and requested the company offer a "[low-fat] burger, switch to an all-vegetable cooking oil and offer salads . . . in keeping with enlightened medical research findings and nutritional practice." The Staff has also allowed exclusion of menu expansion requests. For example, in *Papa John's International, Inc.* (Feb. 13, 2015), the Staff allowed exclusion of a proposal to expand its menu options to include vegan cheese and meats.

Therefore, consistent with Staff precedent, the Shareholder Proposal is properly excludable under Rule 14a-8(i)(7) because focusing on specific guidelines regarding the food products and options that the Company could offer is an ordinary business matter that only the Company can address.

*C. Inclusion of the Shareholder Proposal Would Permit Shareholders to Micromanage the Company's Ordinary Business Operations.*

The Shareholder Proposal seeks to "micro-manage" the Company by "probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." SLB 14. Shareholders lack access to much of the information that the Company considers when making decisions about food operations, including but not limited to the costs and demands that vary by hospital location and type, the health conditions and needs of each patient that also vary depending on the type of hospital they are receiving care from, and allergies and other dietary restrictions of patients and employees. Instead of "providing high-level direction of the board or management," the Shareholder Proposal could "inappropriately limit discretion of the board or management" by directing the day-to-day decisions that management and hospital-level managers make to handle employee issues, such as employee health and safety, absenteeism, and employee morale. Additionally, decisions regarding "enhancing [the

Company's] image as a healthcare leader" and deciding on activities to garner "strongly favorable" media coverage are day-to-day business operations. These are handled by management with strategic planning expertise that analyze complex Company information that shareholders do not have access to.

The ability of the Company to analyze ever-changing regulatory, employee and patient population-focused, dietary, and hospital-level information is crucial to the Company's daily business operations and cannot be effectively micromanaged by shareholders.

*D. The Shareholder Proposal Does Not Focus on Any Significant Social Policy Issue That Transcends the Company's Ordinary Business Operations.*

The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." Specifically, the Staff noted that focusing on such significant social policy issues "generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers "both the proposal and the supporting statement as a whole." Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005).

Here, the Shareholder Proposal requests that the Company adopt specific policies to "achieve significant revenue savings, improve patient satisfaction, improve staff health, reduce absenteeism, and enhance its image as a healthcare leader" without focusing on any significant social policy issues that transcend the Company's ordinary business operations. The Shareholder Proposal's principal focus is on adopting policies that would offer specific food and beverage products, which is an established ordinary business concern for management. The management of staff productivity and absenteeism, as well as patient satisfaction, are also all components of day-to-day operational matters. Additionally, the Supporting Statement mentions that New York Health + Hospital's adoption of such a policy resulted in media coverage that has been "strongly favorable, greatly boosting the system's image" and that failing to adopt to such a policy would forfeit the "opportunity to improve ... [its] corporate image." However, building and maintaining a company's image or reputation is a standard part of business strategy handled by management.

Further, under the pretense of addressing the significant social issue of public health, the Supporting Statement instead focuses on broad, ordinary course economic issues which are the responsibility of management, such as cost savings and revenue. The Supporting Statement makes multiple references to economic issues, arguing that the New York Health + Hospital system's costs have dropped by approximately 60 cents per food tray, "[f]ailure to adopt this approach would mean forfeiting millions of dollars in cost savings" and "recent research shows that plant-based foods present, on average, a 16% revenue savings." The Shareholder Proposal argues that with the adoption of the proposal, "everyone wins, most of all the shareholders." This Shareholder Proposal is distinguishable from those proposals that the Staff has previously denied exclusion of for raising significant policy issues as such proposals instead focused on a company's prioritization of financial returns over its healthcare purpose. *See CVS Health Corporation* (Mar. 15, 2022) (denying exclusion of a proposal requesting the company publish a report regarding "the link between the public-health costs created by the Company's food, beverage and candy business and its prioritization of financial returns over its healthcare purpose").

Office of Chief Counsel  
Division of Corporation Finance  
December 4, 2023  
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Although the Supporting Statement mentions in passing that adopting the policies of the American Medical Association and the New York Health + Hospital system would “enhanc[e] the health of patients and staff” and that the Shareholder Proposal “transcends ordinary matters of business” because it “addresses the significant social issue of public health,” as established above, public health is not the focus of the Shareholder Proposal. Even if the Proponent had raised a significant social policy issue, Staff precedent establishes that merely referencing such topics in passing does not transform an ordinary business proposal into one that transcends ordinary business, especially when these topics do not shape the actions proposed and only indirectly relate to the issues that are the central concern of the proposal. *See Wells Fargo (Harrington Investments, Inc.)* (Feb. 27, 2019); *Amazon.com, Inc. (Domini Impact Equity Fund and the New York State Common Retirement Fund)* (Mar. 28, 2019). Further, the Staff has allowed exclusion of shareholder proposals that reference nutritional benefits when the shareholder proposal also references the products a company offers. *See McDonald’s Corp.* (Mar. 24, 1992); *Papa John’s International, Inc.* (Feb. 13, 2015).

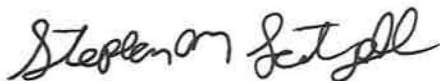
Accordingly, the Shareholder Proposal may be excluded under Rule 14a-8(i)(7) as it is directly related to the Company’s ordinary business operations and does not transcend ordinary business operations, consistent with the precedents discussed above.

**Conclusion**

Following our analysis, the Company plans to omit the Proposal from its 2024 Proxy Materials. We kindly ask for the Staff’s agreement that the Proposal can be excluded under Rule 14a-8.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this letter. Correspondence should be sent to [stephen.leitzell@dechert.com](mailto:stephen.leitzell@dechert.com). If we can be of any further assistance in this matter, please do not hesitate to call me at 215-994-2621.

Sincerely,



Stephen M. Leitzell

Enclosures

cc: Michael E. Tarvin, Select Medical Holdings Corporation  
Anna Herby, Physicians Committee for Responsible Medicine



**EXHIBIT A**

Shareholder Proposal

# PhysiciansCommittee

for Responsible Medicine

PCRMLONG

5100 Wisconsin Ave. NW, Suite 400 • Washington, DC 20016 • Tel: 202-686-2210 • Fax: 202-686-2216 • pcrm@pcrm.org

November 2, 2023

Via FedEx Express

Michael E. Tarvin  
Executive Vice President, General Counsel and Secretary  
Select Medical Holdings Corporation  
4714 Gettysburg Road  
Mechanicsburg, PA 17055

Re: Shareholder Proposal for Inclusion in the 2024 Proxy Statement

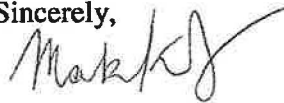
Dear Mr. Tarvin:

Enclosed with this letter is a shareholder proposal submitted by the Physicians Committee for Responsible Medicine (PCRM) for inclusion in the proxy statement for the 2024 annual meeting. Also enclosed is a letter from RBC Wealth Management, PCRM's brokerage firm, confirming PCRM's ownership of 1,572 common stock shares, acquired at least one year ago. PCRM has held at least \$25,000 worth of such shares continuously since acquisition and intends to hold at least this amount through and including the date of the 2024 shareholders meeting.

If there are any issues with this proposal being included in the proxy statement, or if you need any further information, please contact PCRM's designated representative, Anna Herby, RD, at \_\_\_\_\_, Washington, DC 20016, \_\_\_\_\_, or

\_\_\_\_\_ . Ms. Herby is available to meet via teleconference Mondays, Wednesdays, Thursdays, and Fridays—including during the regulatory period of "no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal"—during the hours of 12 noon through 3:00 p.m. ET.

Sincerely,



Mark Kennedy  
Senior Vice President of Legal Affairs

Enclosures: Shareholder Resolution  
RBC Wealth Management letter

## **Shareholder Resolution for Revenue Savings and Improved Health**

### **RESOLVED:**

Select Medical Holdings Corporation shall achieve significant revenue savings, improve patient satisfaction, improve staff health, reduce absenteeism, and enhance its image as a healthcare leader by adopting the American Medical Association policy for healthful foods for healthcare facilities and adopting the innovative program for healthful hospital food developed by the New York Health + Hospital System.

### **SUPPORTING STATEMENT:**

In 2017, the American Medical Association adopted a policy calling on U.S. hospitals to improve the health of patients, staff, and visitors by providing a variety of healthful food, including plant-based meals and meals that are low in fat, sodium, and added sugars, eliminating processed meats from menus, and providing and promoting healthful beverages. These healthful changes enjoy strong support from patients. Subsequently, the New York Health + Hospital system implemented a program following these guidelines and improving upon them in certain ways. Patient satisfaction has been greater than 90%, staff satisfaction has been similarly high, and costs have dropped by approximately 60 cents per food tray. Media coverage has been strongly favorable, greatly boosting the system's image.

Failure to adopt this approach would mean forfeiting millions of dollars in cost savings and the opportunity to improve patient health and our corporate image. By enhancing the health of patients and staff, this approach addresses the significant social issue of public health and transcends ordinary matters of business, while also reducing food costs and potentially reducing medical costs and absenteeism among employees.

Recent research shows that plant-based foods present, on average, a 16% revenue savings. When scaled to an institutional level, these savings increase exponentially. Employee health improves and absenteeism decreases when the food environment is improved. A multicenter study for GEICO employees found that providing plant-based food offerings and simple educational messages improved employee health and reduced health-related productivity impairments by 40-46%. With improved employee health, Select Medical may lower healthcare costs, increase productivity, and significantly increase revenue.

Select Medical values inclusion, equity, and healing with empathy and compassion. Serving healthful, climate-friendly, socially responsible, and financially conservative meals is a straightforward way to put these values into action. When we achieve revenue savings, improve patient satisfaction, and boost employee health and morale with inexpensive healthful foods, everyone wins, most of all the shareholders who have invested in the company's future.

In light of the marked financial benefits, the potential improvements in employee health, and the enhanced prestige that will result from these initiatives, we respectfully ask shareholders to support this resolution.



**Wealth  
Management**

200 Park Avenue, 2nd Floor  
FLORHAM PARK, NJ 07932

November 2, 2023

Physicians Committee for Responsible Medicine  
Attn: Betsy Wason  
5100 Wisconsin Ave NW 400  
Washington, DC 20016-4131

Re: Certification of Shareholder Ownership in Select Medical Holdings Corporation

Dear Mrs. Wason:

This letter certifies that the Physicians Committee for Responsible Medicine holds 1,572 shares of Select Medical Holdings Corporation common stock and has continuously held at least \$25,000 in market value of such shares for at least one year prior to and including the date of this letter.

Should you have any questions or require additional information please contact me at (973) 410-3375.

Sincerely,

Jenilee Hill, APP  
Senior Registered Client Associate  
RBC Wealth Management

Investment and insurance products: • Not Insured by the FDIC or any other federal government agency  
• Not a deposit of, or guaranteed by, the bank or an affiliate of the bank • May lose value

# PhysiciansCommittee

for Responsible Medicine

PCRM.ORG

5100 Wisconsin Ave. NW, Suite 400 • Washington, DC 20016 • Tel: 202-686-2210 • Fax: 202-686-2216 • pcrm@pcrm.org

January 5, 2024

## **VIA ONLINE SHAREHOLDER PROPOSAL FORM**

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

**Re: Response to “Select Medical Holdings Corporation - Exclusion of Shareholder Proposal Submitted by the Physicians Committee for Responsible Medicine”**

Dear Staff:

I write on behalf of the Physicians Committee for Responsible Medicine (“Physicians Committee”) pursuant to Rule 14a-8(k) in response to a request by Select Medical Holdings Corporation (“Company”) that the Staff of the Division of Corporation Finance (“Division”) concur with its view that it may exclude the Physicians Committee’s shareholder resolution and supporting statement (“Proposal”) from the proxy materials to be distributed in connection with the Company’s 2024 annual meeting of shareholders (“No-Action Request”).

The Company seeks to exclude the Proposal on the basis of Rule 14a-8(i)(7). As the Proposal focuses on “sufficiently significant social policy issues” that “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote,” the Physicians Committee urges the Staff to deny the Company’s No-Action Request.

Pursuant to Rule 14a-8(k) and *Announcement: New Intake System for Rule 14a-8 Submissions and Related Correspondence* (Nov. 7, 2023), the Physicians Committee submits this letter electronically and is concurrently submitting a copy to the Company.

### **I. The Proposal**

The Proposal’s proposed resolution states,

#### **RESOLVED:**

Select Medical Holdings Corporation shall achieve significant revenue savings, improve patient satisfaction, improve staff health, reduce absenteeism, and enhance its image as a healthcare leader by adopting the American Medical Association policy for healthful foods for healthcare facilities and adopting the innovative program for healthful hospital food developed by the New York Health + Hospital System.

The Proposal’s supporting statement describes the public health and environmental benefits that such a resolution would effectuate, among them “enhancing the health of patients” via “healthful, climate-friendly, socially responsibly” meals.

## **II. The Proposal Focuses on a Significant Social Policy Issue and May Not Be Excluded Pursuant to Rule 14a-8(i)(7)**

Rule 14a-8(i)(7) provides that a company may exclude a proposal “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.” Only “business matters that are mundane in nature and do not involve any substantial policy or other considerations” may be omitted under this provision. Adoption of Amendments Relating to Proposals by Security Holders, 41 Fed. Reg. 52,994, 52,998 (Dec. 3, 1976).

A proposal relating to a company’s ordinary business operations is not excludable if the proposal focuses on “sufficiently significant social policy issues” that “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 40018 (May 21, 1998). “In determining whether the focus of these proposals is a significant social policy issue, [Staff] consider both the proposal and the supporting statement as a whole.” Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). “In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.” Staff Legal Bulletin No. 14L, part B.2 (Nov. 3, 2021).

To the extent that the Proposal touches on the Company’s ordinary business operations, the Proposal may not be excluded because it focuses on “sufficiently significant social policy issues” that “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.”

The American Medical Association (“AMA”) is the nation’s largest professional association of physicians. Founded in 1847, its mission is “to promote the art and science of medicine and the betterment of public health.” AMA, *About*, <https://www.ama-assn.org/about> (last accessed Jan. 4, 2024). To achieve this mission, the AMA’s House of Delegates periodically issues policy statements to serve as guidance for physicians on healthcare issues. These “policies are based on professional principles, scientific standards and the experience of practicing physicians.” AMA, *Developing AMA Policies*, <https://www.ama-assn.org/house-delegates/ama-policies/developing-ama-policies> (last accessed Jan. 4, 2024).

As summarized in the Proposal, in 2017, the AMA updated policy *H-150.949: Healthful Food Options in Health Care Facilities* by inserting additional text that “calls on all health care facilities to improve the health of patients, staff, and visitors by: (a) providing a variety of healthy food, including plant-based meals, and meals that are low in saturated and trans fat, sodium, and added sugars; (b) eliminating processed meats from menus; and (c) providing and promoting healthy beverages.” AMA, *Healthful Food Options in Health Care Facilities H-150.949*, <https://policysearch.ama-assn.org/policyfinder/detail/H-150.949?uri=%2FAMADoc%2FHOD.xml-0-627.xml> (last accessed Jan. 4, 2024).

As stated in the Proposal, NYC Health + Hospitals (“NYCHH”) thereafter “implemented a program following these [AMA] guidelines and improving upon them in certain ways.” NYCHH is the nation’s largest municipal healthcare system, treating more than one million patients per year. NYCHH, *NYC Health + Hospitals Now Serving Culturally-Diverse Plant-Based Meals As Primary Dinner Option for Inpatients at All of Its 11 Public Hospitals* (Jan. 9, 2023), <https://www.nychealthandhospitals.org/pressrelease/nyc-health-hospitals-now-serving-plant-based-meals-as-primary-dinner-option-for-inpatients-at-all-of-its-11-public-hospitals/>. Of particular significance, NYCHH began serving plant-based meals as the default lunch and dinner option for inpatients at all of its 11 public hospitals. *Id.*

It is well-established that plant-based dietary patterns are particularly effective in the prevention<sup>1,2,3</sup> and treatment of overweight and obesity,<sup>4,5</sup> as well as body weight maintenance,<sup>6</sup> and reduce the risk of cardiovascular disease<sup>7,8,9</sup> and type 2 diabetes<sup>10,11</sup> at the same time. These benefits have been repeatedly demonstrated in large prospective cohort studies, such as the EPIC study (European Prospective Investigation into Cancer and Nutrition),<sup>12,13</sup> the Adventist-Health Study,<sup>9,10</sup> the Nurses’ Health Study,<sup>14,15</sup> and the Health Professionals Follow-Up Study.<sup>16,17</sup>

For type 2 diabetes in particular, the 2020 American Association of Clinical Endocrinologists and American College of Endocrinology’s consensus statement on type 2 diabetes management recommends a plant-based diet.<sup>18</sup> A study published in the *International Journal of Cancer* found that vegetarians have reduced breast cancer risk, compared to meat-eaters, most likely due to the abundance of healthful foods and avoidance of meat throughout their lives.<sup>19</sup>

Evidence suggests that the amount of animal-derived foods consumed is an independent risk factor for being overweight, and limiting their consumption is an effective strategy for weight loss and a healthy body composition, as well as for body weight maintenance. Vegetarians typically have lower body mass index values, compared with nonvegetarians.<sup>1</sup> Body mass index values tend to increase with increasing frequency of animal product consumption. In the Adventist Health Study-2, body mass index values were lowest among vegans (23.6 kg.m<sup>-2</sup>), higher in lacto-ovo-vegetarians (25.7 kg.m<sup>-2</sup>), and highest in nonvegetarians (28.8. kg.m<sup>-2</sup>).<sup>2,3,10</sup> The average individual yearly weight gain is reduced when people limit consumption of animal foods.<sup>20</sup>

In 2015, the World Health Organization’s International Agency for Research on Cancer (“IARC”) classified processed meat—which includes bacon, deli slices, sausage, hot dogs, and other meat products preserved with additives or otherwise manipulated to alter color, taste, and durability—as carcinogenic to humans.<sup>21</sup> IARC made this determination after assessing more than 800 epidemiological studies investigating the association of cancer with consumption of red meat or processed meat in many countries, from several continents, with diverse ethnicities and diets. Group 1 is the agency’s highest evidentiary classification; other Group 1 carcinogens include tobacco smoking, secondhand tobacco smoke, and asbestos.<sup>22</sup>

Investigators in the EPIC study, which followed 448,568 men and women, discovered an 11 percent increased risk of dying from cancer with the consumption of 50 grams of processed meat per day.<sup>12</sup> In contrast, substitution studies have found that replacing one serving of processed meat per day with nuts decreased risk for disease by 19 percent and replacement with legumes

decreased risk by 10 percent.<sup>23</sup>

This overwhelming body of scientific consensus underlies the Proposal’s stated aims to “improve patient health,” of “enhancing the health of patients,” and to “bring about “improved employee health.” Indeed, in announcing NYCHH’s program, president and CEO, Mitchell Katz, MD, stressed “the importance of a healthy diet and how it can help fend off or treat chronic conditions like type 2 diabetes, high blood pressure, and heart disease. . . . Our new meal program is rooted in evidence for health benefits and environmental sustainability[.]” Fiona Holland, *Plant-based Food to Become the Default Meals in New York City’s Public Hospitals*, Food Matters Live, Dec. 10, 2022, <https://foodmatterslive.com/article/plant-based-meals-default-at-new-york-city-public-hospital>.

Regarding the latter issue, environmental sustainability, the Proposal focuses on the “climate-friendly” and “socially responsible” benefits the Proposal would bring about. For example, researchers in a report published in *The Lancet* concluded after reviewing the effects of food production that a dietary shift toward plant foods and away from animal products is vital for promoting human health and the health of the planet.<sup>24</sup> The researchers found that food production is responsible for up to 30% of total greenhouse gas emissions, with animal products accounting for the vast majority—about three-quarters—of these effects. The report stated that projections for the future show that “vegan and vegetarian diets were associated with the greatest reductions in greenhouse-gas emissions.”

Research published in the *Proceedings of the National Academy of Sciences of the United States of America* found that an immediate shift to a plant-based diet could, by 2050, reduce greenhouse gases caused by food production by 70%.<sup>25</sup> A study in the *American Journal of Clinical Nutrition* found that even modest reductions of animal product consumption could potentially provide significant environmental benefits: a vegetarian diet reduced emissions by 29%, while a semi-vegetarian diet reduced emissions by 22%, compared with nonvegetarian diets.<sup>26</sup>

A report from the United Nations Environment Programme says that “animal products, both meat and dairy, in general require more resources and cause higher emissions than plant-based alternatives.”<sup>27</sup> The World Health Organization says, “Studies show that cutting back on red meat production reduces the nitrous oxide released into the atmosphere by fertilizers and animal manure. Nitrous oxide is the third most important man-made greenhouse gas and the most important anthropogenic contributor to stratospheric ozone destruction. Reducing livestock herds would also reduce emissions of methane, which is the second largest contributor to global warming after carbon dioxide.”<sup>28</sup>

In Staff Legal Bulletin No. 14C, the Division considered proposals related to the environment and public health, which it had previously found to be significant policy considerations, and advised that “[t]o the extent that a proposal and supporting statement focus on the company minimizing or eliminating operations that may adversely affect the environment or the public’s health, we do not concur with the company’s view that there is a basis for it to exclude the proposal under rule 14a-8(i)(7).” Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). Thus, there is no question that these issues involve a “broad societal impact.” See Staff Legal Bulletin No. 14L, part B.2 (Nov. 3, 2021).



The Company mistakenly argues that the Proposal’s “Supporting Statement mentions in passing” issues of public health but that “public health is not the focus of the Shareholder Proposal.” It goes without saying that it is not possible in a proposal’s limited confines, *see* Rule 14a-8(d), to provide detailed scientific references for every statement in a proposal. Nor should it be necessary to do so when, as here, the Company’s business is public health. The Company’s stated mission is “to provide an exceptional patient care experience that promotes healing and recovery in a compassionate environment.” Select Medical, *Select Medical*, <https://www.selectmedical.com/> (last accessed Jan. 4, 2024). The scientific consensus underlying the Proposal should be as well-understood by, and is as readily available to, the Company’s “54,000 healthcare professionals [who] help to restore quality of life for thousands of people and their families every day,” *see id.*, as it is for the healthcare professionals of the American Medical Association and NYCHH.

The Company states that “the Staff allowed exclusion of shareholder proposals received by three healthcare companies encouraging the boards of directors of those companies to require ‘plant-based food options to patients at every meal, within vending machines and in the cafeterias used by outpatients, staff and visitors,’ noting in each case that the shareholder proposal ‘relates to, and does not transcend, ordinary business matters.’” *See UnitedHealth Group Incorporated* (Mar. 16, 2023); *Elevance Health, Inc.* (Mar. 6, 2023); *HCA Healthcare, Inc.* (Mar. 6, 2023). However, as noted in the Company’s No-Action Request, “these proposals did not explicitly demand the implementation of a specific policy.” Additionally, in all three instances, the proponent, Beyond Investing LLC, opted not to respond to the no-action requests, depriving the Staff of the opportunity to consider whether significant social policy issues were involved. *McDonald’s Corp.* (Mar. 24, 1992) and *Papa Johns International, Inc.* (Feb. 13, 2015), also cited by the Company, do not apply here because those dated cases involved companies engaged solely in the sale and marketing of retail products.

### III. Conclusion

The Physicians Committee respectfully requests that the Staff decline to issue a no-action response and inform the Company that it may not exclude the Proposal in reliance on Rule 14a-8(i)(7). Should the Staff need any additional information in reaching a decision, please contact me at your earliest convenience.

Sincerely,



Mark Kennedy  
Senior Vice President of Legal Affairs  
(202) 527-7315  
[mkennedy@pcrm.org](mailto:mkennedy@pcrm.org)

## **SCIENTIFIC REFERENCES**

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January 11, 2024

**VIA ONLINE SHAREHOLDER PROPOSAL FORM**

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

**Re: Select Medical Holdings Corporation  
Shareholder Proposal of Physicians Committee for Responsible Medicine**

Dear Sir or Madam:

On behalf of Select Medical Holdings Corporation (the “Company”), we are submitting this letter to respond to the Physicians Committee for Responsible Medicine’s (the “Proponent’s”) letter response on January 5, 2024 (the “Response”), objecting to the Company’s intention, expressed in our letter to the staff of the Securities and Exchange Commission (the “Staff”) dated December 4, 2023 (the “Initial Letter”), to omit the Proponent’s shareholder proposal and supporting statement (the “Proposal”) from the Company’s proxy materials for its 2024 annual meeting of shareholders (the “2024 Proxy Materials”). We believe that the Proponent’s arguments in its Response are deficient for the reasons outlined below and respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) of the Securities Exchange Act of 1934, as amended, because the Proposal deals with matters relating to the Company’s ordinary business operations.

This letter has been submitted electronically, with a concurrent copy sent to the Proponent, pursuant to Rule 14a-8(k) and *Announcement: New Intake System for Rule 14a-8 Submissions and Related Correspondence* (Nov. 7, 2023).

The Proponent's Response shows a lack of comprehension regarding the complexity of the health challenges facing the Company's patient population and their individualized nutritional needs. The Proponent's Response erroneously treats health and nutrition as a “one-size-fits-all” concept in its quest to further its political and social agenda, demonstrating its lack of understanding regarding the industry in which the Company operates. The Company's role as a provider of long-term acute care and inpatient rehabilitation services necessitates that dietary decisions be made by trained medical professionals for each individual patient on a case-by-case basis. Many of the Company's patients have specific dietary

requirements due to conditions such as stroke or catastrophic critical illness and may require enteral feedings, a therapeutic diet integrating specific food textures or a high calorie diet. A patient re-learning how to eat and swallow or using a feeding tube cannot be forced into the Proponent's suggested dietary restrictions without potentially harming their recovery process and endangering their health. The importance of these highly personalized dietary decisions cannot be overstated. It is neither feasible nor clinically responsible to allow shareholders to micro-manage these patient-care decisions, which must be managed at the hospital level by professional health care providers and reevaluated daily.

The Proponent's Response indicates a misunderstanding of the Company's operational structure. Many of the Company's facilities operate as a "hospital within a hospital" ("HIH") model, leasing space from a general acute care "host hospital" and functioning as a separately licensed entity. Of the Company's one hundred and three critical illness recovery hospitals, seventy-one operate as HIHs. In most HIHs, food procurement is controlled not by the Company but by the host hospital. As explained previously, all decisions about food and beverage services are made at the individual hospital level, with approaches ranging from in-house staff to third-party vendors or contracting with such host hospitals. The Company's management handles the relationships with host hospitals and vendors as part of its daily ordinary course operations, but the Company cannot dictate what a vendor or host hospital provides at its establishment or that either change their business model because of a shareholder proposal.

The Company already provides plant-based and healthful food options to all patients and employees across its facilities. As previously stated, the Company's operations align with standards set by The Joint Commission, the Academy of Nutrition and Dietetics, and state and local regulatory agencies. The Company already offers a variety of vegetarian and vegan options on its menus and is also in the process of introducing a plant-based tube feeding option and supplement. The Staff has recognized that certain tasks, such as "management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers," are fundamental to management's ability to operate on a day-to-day basis and could not practically be subject to direct shareholder oversight. Exchange Act Release No. 34-40018 (May 21, 1998). The Company's management routinely assesses the quality and quantity of all food offerings it provides to each patient and employee as part of its essential business operations, and proactively complies with all applicable healthcare guidelines.

The Proponent's Response attempt to rectify and recast the shortcomings of its Proposal, which neglects to focus on significant social policy issues, misrepresents the Proposal's focus. When assessing proposals under Rule 14a-8(i)(7), the Staff considers "both the proposal and the supporting statement as a whole." Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). As previously mentioned, Staff precedent establishes that merely referencing significant social policy issues in passing does not transform an ordinary business proposal into one that transcends ordinary business, especially when these topics do not shape the actions proposed and only indirectly relate to the issues that are the central concern of the proposal. *See Wells Fargo (Harrington Investments, Inc.)* (Feb. 27, 2019); *Amazon.com, Inc. (Domini Impact Equity Fund and the New York State Common Retirement Fund)* (Mar. 28, 2019). The Proponent uses its Response to introduce arguments regarding weight loss, obesity, cardiovascular disease and cancer, while its Proposal mentions health outcomes only in passing as a means to reduce employee

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Division of Corporation Finance  
January 11, 2024  
Page 3

absenteeism, increase employee productivity, enhance corporate image and reduce food costs. Additionally, the Proposal being referred to as “climate-friendly” in its Response is the only mention of the environment in its Proposal, one in a list of adjectives at the end of its supporting statement. The Proponent’s attempt to mask its deficiencies does not change the fact that these topics do not shape the actions proposed, and only indirectly relate to the economic goals the Proponent made the central focus in the “limited confines” of its Proposal. The Response submitted by the Proponent on January 5, 2024, is nothing more than an attempt to recast their deficient proposal to try and save it from being properly excluded under Rule 14a-8(i)(7).

The Proponent is incorrect in its statement that examples cited in the Initial Letter do not apply. The Proponent’s Response argues that the three precedents where healthcare providers successfully excluded similar shareholder proposals that were cited in our Initial Letter do not apply because those proposals did not explicitly demand a specific policy be implemented. However, all three examples occurred within the last year, were provided to healthcare companies, the shareholder proposals covered similar topics and all three companies had similar concerns regarding why such proposals should be properly excluded. *See Elevance Health, Inc.* (Mar. 6, 2023); *HCA Healthcare, Inc.* (Mar. 6, 2023); *UnitedHealth Group Incorporated* (Mar. 16, 2023). The Proponent also makes the bizarre argument that those examples should not be given deference because the proponent in those examples chose not to respond to the issuer’s request for no action relief, which is not relevant to the issue of whether the proposals can be properly excluded under Rule 14a-8. Further, it is less relevant that *McDonald’s Corp.* (Mar. 24, 1992) and *Papa Johns International, Inc.* (Feb. 13, 2015) involved companies engaged in the sale and marketing of retail products and more so that Staff recognized that shareholders were attempting to micro-manage food operations in areas that should be left to the Company’s discretion and could impact the Company’s ability to effectively operate. Food is an integral portion of the patient care model and thus the Company’s purpose. Without the ability to make food decisions with discretion, the Company similarly cannot effectively operate and cannot provide appropriate care to its patients.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this letter. Correspondence should be sent to [stephen.leitzell@dechert.com](mailto:stephen.leitzell@dechert.com). If we can be of any further assistance in this matter, please do not hesitate to call me at 215-994-2621.

Sincerely,



Stephen M. Leitzell

# PhysiciansCommittee

for Responsible Medicine

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January 18, 2024

## **VIA ONLINE SHAREHOLDER PROPOSAL FORM**

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

**Re: Response to “Select Medical Holdings Corporation - Exclusion of Shareholder Proposal Submitted by the Physicians Committee for Responsible Medicine”**

Dear Staff:

I write on behalf of the Physicians Committee for Responsible Medicine (“Physicians Committee”) pursuant to Rule 14a-8(k) in response to correspondence (“Letter”) dated January 11, 2024, submitted by Select Medical Holdings Corporation (“Company”) in support of its view that it may exclude the Physicians Committee’s shareholder resolution and supporting statement (“Proposal”) from the proxy materials to be distributed in connection with the Company’s 2024 annual meeting of shareholders (“No-Action Request”). Pursuant to Rule 14a-8(k) and *Announcement: New Intake System for Rule 14a-8 Submissions and Related Correspondence* (Nov. 7, 2023), the Physicians Committee submits this letter electronically and is concurrently submitting a copy to the Company.

The Company’s Letter is curiously self-contradictory. It says that “[o]f the Company’s one hundred and three critical illness recovery hospitals, seventy-one operate” in settings in which “food procurement is controlled not by the Company but by the host hospital,” such that “the Company cannot dictate what a vendor or host hospital provides.” Despite this purportedly insurmountable challenge, the Letter shortly thereafter states that the “Company already provides plant-based and healthful food options to all patients and employees across its facilities.” Yet earlier on the same page, the Letter seems to say that doing this very thing would be “neither feasible nor clinically responsible” because the “Company’s role as a provider of long-term acute care and inpatient rehabilitation services necessitates that dietary decisions be made by trained medical professionals for each individual patient on a case-by-case basis.”

The Company dismisses the Proposal as part of the Physicians Committee’s supposed “quest to further its political and social agenda,” as if the cited public health achievements by the American Medical Association—the nation’s largest professional association of physicians—and NYC Health + Hospitals (“NYCHH”)—the nation’s largest municipal healthcare system—resulted from a nefarious conspiracy. The fact remains that, as noted in the Proposal and supplemental correspondence, NYCHH serves plant-based meals as the default option to its

more than one million annual patients due to, in the words of its CEO, “the importance of a healthy diet and how it can help fend off or treat chronic conditions like type 2 diabetes, high blood pressure, and heart disease. ... Our new meal program is rooted in evidence for health benefits and environmental sustainability[.]” As noted by the Physicians Committee previously, the overwhelming body of scientific consensus underlies the Proposal’s stated aims to “improve patient health,” of “enhancing the health of patients,” and of bringing about “improved employee health” via “healthful, climate-friendly, socially responsibly” meals.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Kennedy". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Mark Kennedy  
Senior Vice President of Legal Affairs  
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