

GOVERNANCE PROBLEMS IN THE TRI-CITY HEALTHCARE DISTRICT

SUMMARY

The Tri-City Healthcare District (Tri-City) operates the Tri-City Medical Center (Center) which provides full service medical care serving residents in northern San Diego County centered around the three cities of Carlsbad, Oceanside, and Vista. The 2008/2009 San Diego County Grand Jury (Grand Jury) received a citizen complaint alleging a variety of improprieties in connection with a special meeting that was held by the Tri-City Board of Directors (Board) on December 18, 2008. The Grand Jury's investigations related to that complaint led to the conclusion that Tri-City faces several serious problems, and that its current model of governance appears to be a hindrance to finding good solutions. The Grand Jury concludes that the Board should take a proactive approach to find new solutions that may include changing the model of governance.

PURPOSE AND BACKGROUND

Tri-City is a regional healthcare district that was formed in 1957. The original Tri-City Hospital opened in 1961. In the years since 1961 Tri-City has opened additional health care facilities and the original Tri-City Hospital has expanded into what is now the Center.

Tri-City is governed by a seven member Board that is elected by residents of the Tri-City District (District). Board members are elected for four year terms, and the terms are staggered so that the members are not all elected at the same time. The basic qualification for Board members is that they be registered voters in the District. Under the current model of governance the Board essentially has full control over all operations of Tri-City.

The Grand Jury received a complaint indicating that a special meeting of the Board was held on December 18, 2008, and that actions taken at that meeting violated provisions of the Brown Act¹. It was also alleged that there was other misconduct by the Board in connection with actions taken by the Board, specifically the action placing a number of Tri-City administrative officers on administrative leave.

Although the Grand Jury has determined that there are serious problems and questions related to the December 18 meeting, it is not the purpose of this report to make any conclusions of law relating to the Brown Act or to take sides in problem areas that involve differences of opinion.

PROCEDURES

The Grand Jury determined that the complaint alleged serious problems concerning actions of the Board, and that an investigation should be conducted to examine actions taken by the Board at the December 18 meeting. The Grand Jury conducted interviews with a number of current and former Board members. Although interviews were requested with all of the current Board members, three of those members failed to respond to interview requests.

¹ This reference is to the Ralph M. Brown Act which is contained in section 54950 *et seq.* of the California Government Code.

Other interviews were conducted with current and former Tri-City staff members and with some of the administrators who were placed on administrative leave at the December 18 meeting. The Grand Jury also reviewed documents related to the Board's activities including: bylaws, procedures, related statutes, written Board meeting agendas, minutes, and the contract of the Tri-City CEO. Additional information was obtained from recent newspaper articles about Tri-City and from the Tri-City website. A Grand Jury member has attended a few of the public Board meetings held at Tri-City.

DISCUSSION

Tri-City has been in operation as a full service health care provider for over 50 years. When Tri-City was established, it provided the only hospital facility in what was essentially a rural area of Southern California. It received widespread support from the community it served.

Today Tri-City remains popular in its community. From information the Grand Jury has obtained it appears that the staff at Tri-City continue to provide excellent patient care. However, the community served by Tri-City has changed dramatically in the years since 1961 into what is now a large urban area, which has led to dramatic changes in the challenges faced by Tri-City in maintaining a full service health care facility.

Changes in the community have been accompanied by changes in a variety of rules and regulations that all health care organizations must comply with, such that it has become increasingly necessary to employ full time experts to enable those organizations to comply. In addition, Tri-City has gone from a situation in which it was the only full service health care provider to one in which it now faces serious competition from other providers such as Palomar Pomerado Health and Scripps Health.

As currently operated, Tri-City is managed by a Board of seven elected members. Those Board members may or may not have any expertise in the management of large health care organizations. All of the people who were interviewed by the Grand Jury, including current and previous Board members, clearly have the best interests of Tri-City in mind. However, there are also clear differences of opinion as to how best to pursue Tri-City's best interests. As elected officials, Board members may be subject to political motives that influence decisions made on issues concerning the management of Tri-City. It is also likely that important policies relating to governance of Tri-City can quickly change as new elections are held.

The kinds of problems that can result from governance by an elected board of directors are illustrated by the December 18 special meeting of the Tri-City Board. Before discussing that meeting itself, it is useful to look at some events that preceded December 18. From interviews conducted by the Grand Jury, it appears that there have been continuous problems involving strained relations between various members of the Board for a number of years. Differences between the Board members have resulted in changing policies as the election of new Board members has changed the balance of power on the Board. The election held in November 2008 resulted in the election of four Board members who all ran for election with support from the two employee unions that represent employees at Tri-City. Those unions are: the Service Employees International Union (SEIU) and the California Nurses Association (CNA). Two of those Board

members had extensive prior experience serving on the Board, while two of them had no prior experience on the Board.

It is undisputed that those four Board members met together on November 20, 2008. Also attending that meeting was an attorney who was subsequently hired by the Board at the December 18 special meeting of the Board. The Grand Jury was only able to interview one Board member who attended that meeting. That Board member indicated that there were no discussions involving any of the actions that were taken by the Board on December 18.

The December 18 special meeting of the Board was announced with exactly one day's notice. No one interviewed by the Grand Jury disputes that there was 24 hours notice, as is required for special meetings. However, it turned out that only the four newly elected Board members attended most of the meeting, and those four went into closed session to take actions that had serious consequence for Tri-City.

Three Board members did not participate in making the most important decisions during the closed session. One member arrived at the meeting late, after the actions of consequence had been taken. One member was out of the area on December 18. The third member concluded from reading the Agenda for the special meeting that nothing of consequence was on the Agenda, and decided not to attend on such short notice. Also attending the Board meeting was the attorney who attended the November 20 meeting.

At that December 18 meeting the four Board members, who now constituted a majority of the seven-person Board, took several actions. The most notable actions were: placing nine Tri-City administrators, including the CEO, on administrative leave; putting in place a new interim CEO; firing the existing Tri-City general counsel and labor attorney; hiring a new labor attorney; and hiring the attorney who attended the November 20 meeting. The reason given by the Board for putting the administrators on leave was to state that a forensic investigation would be performed at the direction of the new interim CEO. Prior to the December 18 meeting the two new lawyers had met on occasion with some of the newly elected Board members. It has been stated that all such meetings were held on a *pro bono* basis.

The new interim CEO was an accountant who had no prior experience running a large health care organization. That interim CEO has been replaced by a new interim CEO who does have such experience.

The Grand Jury reviewed the Agenda that was circulated for the December 18 meeting. That Agenda does indicate that the evaluation and contracts of the existing legal counsel would be reviewed. The Agenda makes no specific mention of placing nine administrators on administrative leave. The administrators had no advance notice that any such action would occur. Other than the CEO, no one has been hired to replace the administrators placed on leave.

As a result of the actions taken at the December 18 meeting eight of the nine administrators joined in filing a lawsuit against Tri-City and the Board. The ninth administrator has not been publicly identified. It was recently announced that all of those administrators except the CEO recently received termination letters from the current interim CEO. Those letters indicate the terminations are *for cause*. Among the claims of those administrators, and other interested persons, is that there were several violations of the Brown Act in connection with the December 18 meeting. The Brown Act and case interpreting it provide a variety of rules regarding meetings held by the governing bodies of public organizations. Those rules cover things such as holding unannounced private meetings beforehand to discuss what will be done at upcoming publicly announced meetings, and requirements about what must be included in meeting agendas.

The Grand Jury only notes that Brown Act violations have been alleged, and this report discusses some of the circumstances leading up to the December 18 meeting. No opinion should be inferred from this report as to whether there actually were such violations.

Interviews conducted by the Grand Jury have indicated that a number of other problems may have resulted from the actions taken at the December 18 meeting. This report lists some of those possible problems, but does not offer any opinion about those possible problems. Some of the problems are centered on the abrupt management changes. It has been suggested by some of the people interviewed and in newspaper accounts that the December 18 actions resulted in: decreased public confidence; decreased staff morale; potentially large legal costs; decreased patient confidence; reduced ability to recruit new staff; and an unnecessary interruption in a variety of management projects that in some cases were simply terminated. It has also been suggested by those sources that questions were raised by insurers regarding the appointment of the initial interim CEO. It is clear that in the aftermath of the December 18 meeting there has been a major increase in press coverage of Tri-City's Board, and that much of that coverage has been negative.

There are definitely two sides to the question of whether changing the top Tri-City management was desirable. On the side of the administrators it has been suggested by some people interviewed that: Tri-City was just coming off of a very successful financial year; there had been no prior suggestion of any serious dissatisfaction with those administrators; and a few of the Board members were really pursuing personal agendas, and possibly personal grudges. On the other side some of those interviewed suggest that there were real problems at Tri-City that call into question the performance of the administrators. Among the problems cited are: the inability to get voter approval for new bond financing; problems that became particularly acute with regard to variable rate financing that arose in the past year; and the sale of the Sharp Mission Park Medical Group to Scripps Health which resulted in a significant loss of physicians and patients for Tri-City.

Another item of contention at Tri-City results from discontent over payments of bonuses to the administrators. Some argue that the payments were excessive. Some people interviewed argue that the payments are not even correctly characterized as *bonuses*, but were strict contractual payments made according to fixed formulas that were determined

in advance. In addition, some people interviewed indicated that the unions at Tri-City felt that the prior administration at Tri-City was hostile to union interests.

It is not disputed that Tri-City has been losing money on its financing, and has been losing both patients and physicians. Some of these problems can be blamed on unforeseen changes in the economy, but it can be argued that the prior Tri-City administration bears at least some of the blame. The new administration has made significant efforts to change the financing in order to reduce interest costs that have become a major burden for Tri-City. It is suggested by the new administration that ongoing discussions about the future of Tri-City may be hindering efforts to secure new financing.

From all of the interviews conducted by the Grand Jury it can be concluded that, while a change of Tri-City leadership may have been justified, the manner of implementing the change should have been handled differently. An abrupt change in leadership with no advance warning and no real transition plan was almost certain to lead to undesirable disruptions, as well as lawsuits. The lawsuits threaten to result in significant costs to Tri-City. Newspaper reports indicate that Tri-City has recently reached a settlement with the CEO who was put on administrative leave. Those reports indicate that the CEO will receive over \$1 million.

There continues to be turmoil at Tri-City Board meetings. Newspaper reports point to strong and acerbic disagreements among the Board members. One newspaper reported a disparaging comment directed by the interim CEO to the Medical Chief of Staff at the Board meeting held on April 30, 2009. At the Board meeting held on April 23, 2009, new Board officers were elected including a new Board chair. It is not clear if the Board will now change its direction on any particular issues before it. The Medical Staff has expressed dissatisfaction with the current governance at Tri-City and has recommended that an independent study be conducted to produce recommendations relating to possibly changing the model of governance.

From interviews the Grand Jury has learned that a forensic investigation was completed and a report of that investigation was produced. However, the content of that report has not been made public.

FACTS AND FINDINGS

Fact: Four members were elected to the Tri-City Board in November, 2008.

Fact: Those four members met together, along with a lawyer who was subsequently hired by Tri-City, on November 20, 2008.

Fact: A special meeting of the Board was held on December 18, 2008.

Fact: Only the four newly elected Board members attended most of the December 18 meeting.

Fact: The lawyer who attended the November 20 meeting also attended the December 18 meeting and was hired as new counsel for Tri-City when the existing counsel was fired at that meeting.

Fact: The December 18 meeting resulted in placing nine Tri-City administrators, including the CEO, on administrative leave.

Fact: The Agenda for the December 18 meeting did not indicate that the actions regarding the administrators would be considered.

Finding #01: The facts raise the possibility of Brown Act violations regarding the December 18 meeting of the Tri-City Board of Directors.

Fact: The actions taken with regard to the Tri-City administrators at the December 18 meeting led to the filing of lawsuits by eight of those administrators against Tri-City which may result in significant costs to Tri-City.

Fact: Following the December 18 meeting there has been a significant amount of negative press coverage of Tri-City.

Fact: It has been alleged by some of those interviewed and in newspaper accounts that other negative consequences for Tri-City have resulted from the December 18 meeting, such as lowered public confidence in Tri-City and lowered staff morale at Tri-City.

Fact: There is a dispute among those interviewed as to whether replacing the administrators was justified or not.

Finding #02: The actions taken at the December 18 meeting led to negative consequences for Tri-City.

Fact: Tri-City is facing increasing competition from other health care organizations in its district area.

Fact: Rules and regulations that apply to health care organizations have become increasingly complex over time.

Fact: The area served by Tri-City has changed from largely rural to largely urban.

Fact: Tri-City has recently lost patients and physicians.

Fact: Tri-City has recently had problems with its debt load.

Finding #03: The challenges faced by modern health care organizations are much different than they were when Tri-City Hospital opened in 1961.

Finding #04: All of the circumstances surrounding the actions taken at the December 18 meeting lead to the conclusion that the current model of governance by elected Board members may not be a productive model for use in meeting the kinds of complex problems faced by modern health care organizations.

RECOMMENDATIONS

The 2008/2009 San Diego Grand Jury recommends that the Board of Directors of the Tri-City Healthcare District:

09-40: Authorize a complete, independent review of the model of governance at Tri-City Healthcare District, as well as governance models in use by other health care organizations. A panel of qualified stakeholders should be formed to conduct the review. That review should form the basis for making a considered decision as to whether the interests of the public who reside in the Tri-City District would be best served by making changes in the current model of governance.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Date</u>
Board of Directors, Tri-City Healthcare District	09-40	8/31/09