



June 16, 2011

RECEIVED

JUN 16 2011

The Honorable Kevin A. Enright
Presiding Judge, to be filed with Clerk of Court
San Diego County Superior Court
Main Courthouse, Department SD-P
220 West Broadway, Third Floor
San Diego, CA 92101

Re: Tri-City Healthcare District Board of Directors Response to Civil Grand Jury
Report Issued March 24, 2011 Regarding Certain District Matters

Dear Judge Enright:

In accordance with Penal Code §933.05, this letter presents the comments of the Board of Trustees of the Tri-City Healthcare District upon the Findings and Recommendations made by the 2010-2011 San Diego Civil Grand Jury in its March 24, 2011 report. The contents of this letter were considered and approved by the Board at its meeting of May 26, 2011.

Comments on Finding No. 1.

The Board of Directors of the Tri-City Healthcare District agrees that the Tri-City Medical Center and its related facilities now deliver healthcare services that are more complex, use state-of-the-art technology, and serve more people than when the Medical Center opened in 1961. The Board appreciates the commendation of the Grand Jury for the District's provision of highly-rated and compassionate patient care, and programs which exceed national standards.

Comments on Finding No. 2.

The Board also agrees that a fiscally sound model of accounting and reporting is now in place.

Comments on Finding No. 3.

The Board of Directors agrees that the behavior of a board member has been disruptive of board meetings, but believes that the work of the District has, nonetheless, proceeded in a timely and constructive manner. The District has continued to make progress in all areas of its operations, despite the pattern and practice of disruptive conduct which has been costly and stressful for employees, physicians, contractors and Board members, as well as for members of the communities served by the District.



Comments on Recommendations: Grand Jury should commence removal proceedings under Government Code section 3060

Before addressing the Grand Jury's three recommendations, we note that they are premised on an incorrect factual finding. The Grand Jury "finds" that an elected board member "can be removed only by recall, a felony conviction or from a finding of election fraud." This is incorrect. The grand jury *itself also* has the power to remove an elected official for "willful or corrupt misconduct in office" under Government Code section 3060. Misconduct punishable under Section 3060 includes willful malfeasance, misfeasance or nonfeasance in office. "Misconduct" must be more than negligence, but may be less than criminal (although criminality is good evidence that the acts constitute misconduct), as explained further below. The Board of Directors urges the Grand Jury to take action, or at a minimum, recommend that Section 3060 proceedings be started.

In July 2010, the Board of Directors sent a letter asking the grand jury to remove the disruptive board member (who is the focus of the Grand Jury report) for violations of law under Government Code section 3060. While that referral did result in the commencement of criminal proceedings for bribery (a felony) and conflict of interest law violations (a misdemeanor) which are currently pending (*People v. Sterling*, CN28493, Vista Superior Court), to date the grand jury has not acted under Government Code section 3060.

The Board of Directors is doing all it can to control the disruptive behavior. After adopting what is one of California's most stringent policies on Board conduct at public meetings (Board Policy No. 10-039) in January 2010, the Board of Directors has aggressively enforced it. Director Sterling's misconduct at meetings and elsewhere has been sanctioned by removing her from Board committees, declaring her ineligible for compensation and reimbursement of expenses (including attendance at conferences), and requiring her to participate in meetings exclusively by teleconference.

At its April 2011 meeting, the Board of Directors censured this director for additional misconduct, including the unlawful disclosure of attorney-client privileged and closed session information. An additional request for formal censure for alleged misconduct is being considered at the May 2011 meeting of the Board. Many of the acts condemned publicly by the Board of Directors in these censures, including those which are the subject of the ongoing prosecution, constitute misconduct under Section 3060. The Grand Jury has access to this information, yet it has not recommended initiation of proceedings for removal of this director.

Under Section 3060, misconduct punishable by removal from office must be more than mere neglect of a duty, but it does not have to be criminal. (E.g., *Steiner v. Superior Court* (1997) 50 Cal.App.4th 1771, 1777-82; *People v. Elliott* (1953) 115 Cal.App.2d 410 (government did not have to prove fraud, and absence of fraud was no defense).) Misconduct is a volitional act or failure to discharge a duty with knowledge of the facts—a willful act or failure—even if it

The Honorable Kevin A. Enright
June 16, 2011
Page 3

is not accompanied by any “criminal intention.” (*Steiner, supra*, at p. 1779; *People v. Hawes* (1982) 129 Cal.App.3d 930, 938; *Mazzola v. City and County of San Francisco* (1980) 112 Cal.App.3d 141, 149-50; *Coffey v. Superior Court* (1905) 147 Cal. 525, 530.) Misconduct under Section 3060 includes conduct that is “below the standard of decency rightfully expected of a public official such as drunkenness during work hours,” or a “gross and repeated failure to carry out [an] official routine.” (*People v. Hale* (1965) 232 Cal.App.2d 112, 119.)

Courts construe Section 3060 to include acts which are prohibited by statute or ordinance. “It is [] difficult to conceive of an act constituting ‘willful or corrupt misconduct in office’ which does not violate one of the long list of crimes of public officers.” (*Steiner, supra*, at p. 1778.) Under Government Code section 1222, every omission to perform “any duty enjoined by law upon any public officer” is punishable as a misdemeanor, unless it is otherwise specifically punishable by statute. Thus, repeated violations of Board Policy No. 10-039 would appear to qualify as misconduct under this broad statute.

Section 3060 has been used to remove public officials for misuse of public funds and conflicts of interest. (*People v. Harby* (1942) 51 Cal.App.2d 759 (city councilman took city car on long vacation trip in violation of city ordinance on which he had voted prohibiting private use of car); *People v. Becker* (1952) 112 Cal.App.2d 324 (school district board member received portions of insurance premiums for policies provided to school district); school district board member had financial interest in nine transportation contracts made by board (*People v. Elliott, supra*, at p. 410).

For these reasons, the Board urges the Grand Jury to again review the available information to determine whether initiation of proceedings under Government Code section 3060 is warranted.

Response to Recommendation 11-05:

The Grand Jury recommends development of a plan of action to educate voters on Board member roles, responsibilities and qualifications. The Board’s regular meetings are already televised by KOCT, giving the voters and the community at large insight into the responsibilities and activities of the Board. Community members—recruited through advertising open seats to the public—participate actively on a number of Board-established committees. This allows the public to provide direct input on Board matters. The District maintains an active public information program managed by its in-house communications staff. The District has recently taken steps to enlarge the board of the TriCity Healthcare Foundation, which engages the community and raises awareness of the mission, vision, and needs of the agency.

The Board has not asked for programs to focus specifically on *voter* education, as public funds may not be expended for political purposes, such as to promote one candidate over others.

Response to Recommendation 11-06:

The Grand Jury recommends hiring a consultant after each election to train board members on teamwork. In fact, this is already Board policy and practice.

Board Policy No. 10-039, as amended in 2010 and referenced above, already requires newly elected and re-elected board members to participate in an orientation session as a condition of receiving compensation. In addition, to satisfy the accreditation standards of the Joint Commission, the District Board has long followed a policy of annually conducting a board self-evaluation process. This year, for example, the Board held a workshop to review the annual self-evaluations of the board, and retained a consultant to assist the Board in improving its efficiency and effectiveness. This resulted in a number of recommendations for streamlining Board meetings, which are in the process of being implemented.

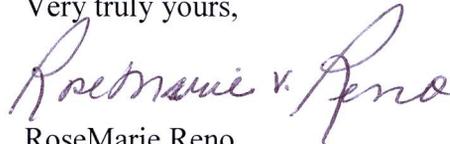
Response to Recommendation 11-07:

The Grand Jury recommends publicizing the strategic plan for the District, and adopting a policy regarding updating the plan.

The District has an adopted short and longer-range strategic plan which is regularly updated and approved at public meetings. These plans reflects initiatives that, while strengthening patient care and community health, also address the competitive position of the hospital and health care services provided by the agency. While the District has an interest in communicating its needs to the community, it is unclear how wider distribution of its strategic plans would address the disruptive conduct which is the focus of the Grand Jury report, or further the interests of the District. The Board sees little value in changing its current practices in this area.

In conclusion, the Board welcomes the Grand Jury's recognition of the progress being made by the District on many fronts, and looks forward to its assistance in addressing the disruptive conduct it has observed.

Very truly yours,



RoseMarie Reno
Chair, Board of Directors
Tri-City Healthcare District