



Washington Township Health Care District

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September 15, 2014

TRANSMITTED VIA U.S. MAIL

The Honorable Winifred Y. Smith
Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, CA 94612

RE: Response of the Washington Township Health Care District to Civil Grand Jury Report issued on June 23, 2014

Dear Presiding Judge Smith:

This letter constitutes the formal response of the Washington Township Health Care District ("District") to the report entitled *Washington Hospital Health Care District – Brown Act/Conflicts of Interest* issued as part of the 2013-2014 Alameda County Grand Jury Final Report on June 23, 2014. The Grand Jury has asked the District to respond to Findings 14-9 through 14-15 and Recommendations 14-9 through 14-16.

By way of introduction, the Board of Directors wishes to express its gratitude for the Grand Jury's efforts. The Board appreciates the time it took for the Grand Jury to review the thousands of pages of records the District provided to the Grand Jury. The District also appreciates that the Grand Jury provided both our Board President and our Chief Executive Officer the opportunity to personally respond to the Grand Jury's questions.

Rest assured that the District takes its responsibilities regarding transparency and conflicts of interest seriously. The District always welcomes suggestions for improvements. As you will see below, some of the Grand Jury's recommendations have already been implemented. We would be remiss, however, if we did not point out that in the effort to provide more transparency, the District must always consider its obligations to safeguard patient and physician privacy. With over 50,000 patient encounters annually in the Emergency Room alone, issues regularly arise which cannot be discussed in an open forum. In addition, certain other aspects of the District's operations are allowed to be held in closed session (see below).

Finding 14-9: The long tenure of Washington Hospital Healthcare System's board members has led to a perception of complacency.

District Response to Finding 14-9

The District respectfully disagrees with this finding. Long tenure does not automatically result in complacency. To the contrary, the long tenure of the Board is a strength of the District.

The District operates in a complex and highly regulated environment. Providing quality healthcare to the community has grown increasingly complex over the past few years, particularly over the past 18 months during the initial implementation of the Affordable Care Act. The Board's knowledge and experience has been an asset in guiding the District as it strives to continue providing high quality cost effective healthcare to the residents and patients of the District. By way of example, during the last fiscal year, the Board approved an affiliation with UCSF which will improve access to high quality physician services and serve as a possible foundation for the creation of a comprehensive, sustainable and integrated health care network to serve the District's residents. The Board's knowledge and experience in understanding the historical needs of the District combined with its knowledge of current healthcare issues greatly facilitated the approval of this key affiliation.

In addition, it should be noted that Board members attend many community events throughout the District, a further example of an engaged and active Board of Directors.

Finding 14-10: Both the Washington Hospital Healthcare System and DEVCO conduct a good portion of their meetings in closed session. Reasons for closed sessions and their results are rarely reported in open session, which discourages public involvement and scrutiny.

District Response:

The District agrees in part and disagrees in part. The District Board acknowledges that it conducts a good portion of its meetings in closed sessions. Unlike a city or county, a health care district routinely deals with unique issues which require closed sessions. Section 1461 of the California Health & Safety Code provides for closed sessions for hospital medical audit or quality assurance committee reports. Section 1462 provides for closed sessions involving hospital trade secrets. In addition, the District, like other public agencies, may hold closed sessions for other matters that require confidentiality including, but not limited to, certain personnel matters, labor negotiations and liability claims.

While the District appreciates the need for public involvement and scrutiny, the public need must be balanced against other interests which require confidentiality. The District

acknowledges that the District needs to do a better job of educating the public on the need for closed sessions when operating a complex multifaceted healthcare system.

Finding 14-11: The Washington Hospital Healthcare System and its entities' board packets and non-confidential material are not routinely made available nor are they accessible online, which inhibits public involvement and scrutiny. Minutes of DEVCO and the Foundation are not available online.

District Response:

The District agrees in part and disagrees in part. The District's board packets have not been available online but as described below under the discussion for Recommendation 14-11, board packets for the District, Washington Hospital Healthcare Foundation and DEVCO are now available online.

To the extent a member of the Grand Jury was told that board packets are not normally provided to the public, the District acknowledges that this should not have happened. In the past, the District has provided copies of reports and other agenda items on request. While the District does not receive many requests, the District acknowledges it still needs to make the information more readily available. By posting the packets online, the District will be making the packets available to anyone via computer, tablet or smartphone.

Finding 14-12: In violation of the Brown Act, a public sign-in was required at a September 2013 board meeting, which discourages public participation.

District Response:

The District agrees in part and disagrees in part. To the extent that members of the public were directed by security and staff to sign in, that should not have happened and clearly there was a misunderstanding. It is not the policy of the District to require anyone to "sign in" to participate at a public meeting.

Finding 14-13: Washington Hospital Healthcare System's poor adherence to the requirements of the Public Records Act prevents interested citizens from obtaining information about the management and finances of the district.

District Response:

The District disagrees with this finding. Over just the last six months alone, the District estimates it has produced over 260,000 hard copy pages of records and 140 gigabytes of

electronic records in response to Public Records Act requests. The District believes that with regard to the one instance mentioned in the letter, there may have been a miscommunication or an error. The District's general adherence to the requirements of the Public Records Act should not be evaluated on the basis of one instance.

Finding 14-14: The Washington Hospital Healthcare System's financial support of a community non-profit outside its district boundaries that involved the CEO's spouse led to the perception of conflict of interest.

District Response:

The District agrees that while there may have been a perception of a conflict of interest, as the Grand Jury noted, no violation of law occurred. The District's support of the community non-profit started when the Chief Executive Officer learned that the community non-profit may have to close its doors. This particular non-profit served a unique and heart wrenching purpose: namely, the provision of a compassionate, dignified and caring environment for gravely and terminally ill children and their families, including District residents. At the time, this community non-profit was the only children's hospice in the State of California.

When the Chief Executive Officer learned that the community non-profit had decided to extend a paid position to her spouse (converting him from his volunteer role), she immediately declared her conflict in writing, and stepped away from administering any grant. At that point in time, no one else in the community had stepped up to support this community non-profit. Had the District decided to renege on its anticipated grant, the community non-profit would likely have folded. While the District acknowledges that some may believe the District should avoid even the appearance of a conflict of interest, in this instance, the District believed that following through on the grant was the appropriate course of action. It should be noted that the Fair Political Practices Commission reviewed the Chief Executive Officer's letter (disclosing the conflict) and recusal. Based on that review, the Commission determined it would not take any action.

Finding 14-15: The Washington Hospital Healthcare System's practice allowing for the CEO's reimbursement of personal charitable donations led to the appearance of impropriety.

District Response:

The District disagrees in part and agrees in part. This Finding 14-15, as written, could lead to a perception that the Grand Jury concluded that the District automatically reimburses the Chief Executive Officer for any and all personal charitable donations. This is not the case.

The practice of reimbursing the Chief Executive Officer for certain expenditures is based on Section 9.e of the Chief Executive Officer's Employment Agreement which has remained largely unchanged since 1994.

9.e. It is the desire of DISTRICT that FARBER become involved in charitable, academic, civic, social and professional organizations and activities in order to promote and enhance the relations of WASHINGTON HOSPITAL with the Medical Staff and the community it serves. In addition, the DISTRICT desires that FARBER be hereby authorized to make appropriate donations or contributions in the best interests of the DISTRICT. Accordingly, expenses incurred for these activities together with other reasonable business expenses incurred by FARBER will be paid by DISTRICT upon submission of an appropriate written request for reimbursement for the same.

Similar language existed in the employment agreement of the past Chief Executive Officer, Richard Warren (prior to 1994).

The District has had a long standing policy of supporting community service organizations that provide services which would otherwise need to be provided by the District. Rather than compete with these community service organizations, the District provides financial support.

The Chief Executive Officer's expenditures for which she was reimbursed all fit within the above language. In many instances, the Chief Executive Officer merely made the same or similar expenditure as in prior years. However, the District acknowledges that it must adjust its policy to make it clear that the amount paid is coming from the District.

Recommendation 14-9: The Washington Hospital Healthcare System should consider term limits for its board members.

District Response

The District Board has considered term limits but will not take action to implement term limits. As previously noted in the discussion under Finding 14-9, the District believes the long tenure of the Board is an asset to the District.

The District follows existing law related to Board member qualifications and term of service. The voters have ample power to make a change, should they decide to do so.

The issue of term limits may be of state wide concern and if deemed appropriate, term limits should be adopted on a state wide basis and applied to all special districts in the state.

Recommendation 14-10: The Washington Hospital Healthcare System must better comply with open meeting laws and educate the public about closed sessions.

District Response:

The District will endeavor to improve its process regarding meetings and will also take steps to educate the public about closed sessions. We have a responsibility to the public which is twofold: we want to be transparent and we want to be responsible stewards of the operations of the District. With regard to the latter, we must be cognizant that our health care system competes for patients, employees and physicians with other nonprofit and for-profit entities. The District does not have a monopoly to provide healthcare to District residents.

Also, the District must hold, in the strictest confidence, certain information related to patients and physicians pursuant to HIPAA, the California Confidential of Medical Information Act and California Business and Professions Code Section 809 *et seq.*

As noted above and below, the District has already started posting board packets online. Within the next six months, the District will provide education sessions to the public about closed sessions. In addition, the District will consider additional ways of improving its processes regarding meetings.

Recommendation 14-11: The Washington Hospital Healthcare System must make available to the public, board packets and other non-confidential material provided to board members before and at public meetings. The board packet must include all relevant material that will be discussed or considered at board meetings.

District Response:

The Grand Jury's recommendation has been implemented. The Washington Hospital Healthcare System has already started posting board packets online. The Board packets include all relevant material that will be discussed or considered at board meetings with the exception of those items related to matters which are properly discussed in closed session.

Recommendation 14-12: The Washington Hospital Healthcare System must eliminate any requirement of public sign-in at its board meetings.

District Response:

The Grand Jury's recommendation has been implemented. The Washington Hospital Healthcare System never intended to have a required public "sign in" at its meetings. However, if members of the public want to be added to the District's mailing list, they will be provided an opportunity to do so.

Recommendation 14-13: The Washington Hospital Healthcare System must provide conflict of interest training pursuant to the AB 1234 requirement for all board members and senior staff.

District Response:

This recommendation has already been implemented. The Washington Hospital Healthcare System already provides conflict of interest training for all Board members and staff pursuant to AB 1234. At the December 12, 2012 Board meeting, the Compliance Officer provided an education session which included AB 1234 compliance. In addition, each Board member completed AB 1234 training in January 2013.

The Washington Hospital Healthcare System will continue to provide AB 1234 training.

Recommendation 14-14: The Washington Hospital Healthcare System must comply with the Public Records Act when responding to citizen's requests for information.

District Response:

This recommendation has already been implemented. The Washington Hospital Healthcare System acknowledges its obligation to comply with the Public Records Act.

Recommendation 14-15: The Washington Hospital Healthcare System must publish board packets, minutes and related materials for all of its entities online.

District Response:

The Washington Hospital Healthcare System has already implemented this recommendation. The referenced records are available online or will be available online within 90 days.

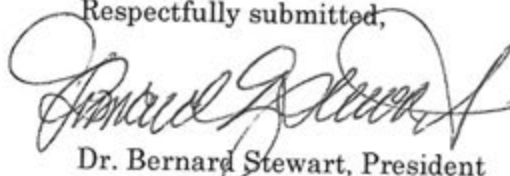
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Recommendation 14-16: The Washington Hospital Healthcare System must publish the CEO's contract on the district's website.

District Response:

This recommendation has already been implemented. The contract is available online.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bernard Stewart", written in a cursive style.

Dr. Bernard Stewart, President
Washington Township Health Care District

CC: Alameda County Grand Jury
1401 Lakeside Drive, Suite 1104
Oakland, CA 94612

Washington Township Health Care District Board of Directors