

**MINUTES OF THE MARCH 2, 2011 SPECIAL MEETING OF THE  
PETALUMA HEALTH CARE DISTRICT BOARD OF DIRECTORS**

**CALL TO ORDER:**

President Adams called the meeting to order at 6:15 p.m. at 1425 N. McDowell Blvd., building conference room.

**PRESENT:**

Fran Adams, RN, BSN, President  
Robert Ostroff, MD, Vice-President  
Kathryn Powell, MS, Member-At-Large  
Stephen Steady, MD, Secretary  
Josephine S. Thornton, MA, Treasurer

**ALSO PRESENT:**

Suzanne Cochrane, Board Liaison  
Ramona Faith  
Greg Moser, Attorney at Law  
Richard Nadale, Controller

**CONSENT CALENDAR:**

**A motion was made by Director Ostroff, seconded by Director Thornton to approve the consent calendar. This motion was approved by all present.**

**PUBLIC COMMENTS / QUESTIONS**

There were no public comments.

**BOARD COMMENTS / QUESTIONS**

There were no board comments

**MANDATORY BOARD OF DIRECTORS ETHICS TRAINING AND AB 1234  
COMPLIANCE**

Greg Moser, Attorney from Procopio Cory Hargreaves & Savitch, LLP was introduced. Mr. Moser is present at this meeting to provide 2011 Ethics and AB 1234 Compliance Training for the Petaluma Health Care District.

Mr. Moser explained that each Director is mandated to receive at least two hours of ethics training every two years as required by AB 1234.

Mr. Moser confirmed that current PHCD Directors do not receive compensation for participation at each Board meeting but are reimbursed for health benefits and conference expenses. If the Board elects to receive compensation for attendance at board meetings, a board policy would need to be written.

Directors are to provide a verbal report to the full Board upon attending any conference representing the Petaluma Health Care District.

Certificate of compliance training is maintained in the District office record system.

Mr. Moser provided a power point presentation pertaining to AB 1234 Compliance attached to these minutes.

The following topics were discussed and presented by Greg Moser:

- € Review of AB 1234 Policy
- € AB 1234 Compliance
- € Fairness in Government
- € Fair Processes: Due Process, Freedom From Bias, Incompatibility, Bidding,

Competitive bidding is required if federal funding is received. Hospital Districts must bid on materials and supplies costing over \$25,000 with the following exceptions:

Clarification was made that the recent settlement through Toyon is not considered to be federal funding.

Districts must bid on materials and supplies costing over \$25,000 with the following exceptions:

- € Medical or surgical equipment or supplies
- € Professional services
- € Data processing and telecommunications
- € Emergencies
- € Group Purchasing Organization participation

**Prevailing wages must be paid for installation of all carpeting projects and for any construction costs conducted on District property. Discussion ensued regarding the joint venture agreement with Browman Development Company in which the District owns the property but is entering into an LLC. As Browman Development Company is responsible for the construction of the building, clarification needs to be obtained regarding requirements for prevailing wages. Mr. Nadale will follow up on this topic.**

Mr. Moser reviewed Penal Code Section 86 regarding bribery providing various scenarios related to bribery. For example, vote trading is a violation of Penal Code Section 86.

Conflict of Interest is also part of the Political Reform Act and Mr. Moser stated that no official at any level of state or local government shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he knows or has reason to know that he or she has a financial interest.

A public official has a financial interest if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, or a member of his or her family.

It was also noted that income does not include salary, reimbursement, per diem, or benefits received from a state, local or federal agency, or reimbursement for travel from a tax-exempt non profit organization.

Other conflicts include:

- € Business Interest – direct or indirect investment of \$2,000 or more.
- € Real Property Interest – direct or indirect interest worth \$2,000 or more.
- € Any source of income, except gifts or loans by a commercial lender, worth \$500 or more within the prior twelve months.
- € Any business entity in which the official is a director, officer, partner, trustee, employee or holds any position of management.
- € Any donor of gifts, aggregating \$420 or more in the prior 12 months – provided, received, or promised.

Materiality threshold for effect on a nonprofit corporation with \$10-100 million in gross receipts is:

- € Change in gross receipts of \$200,000
- € Change in expenses of \$50,000
- € Change in asset value of \$200,000

Discussion ensued regarding materiality threshold issues pertaining to the Lease with SJHS and PHCD.

Mr. Moser noted that the above mentioned thresholds would increase substantially if thresholds are based on the entire SJHS system and not just PVH.

Director Ostroff explained that the relationship with SJHS indicates that we are 17% of a larger entity called Sonoma County St. Joseph Health System and unclear as to how this affects the materiality threshold.

Mr. Moser explained the next level of net gross receipt numbers rises to \$100 million to \$400 million and then \$400 million and above. Using these gross receipt numbers expenses and asset values would increase.

**Mr. Moser will review the lease between SJHS and PHCD to clarify if gross receipt figures are to be determined using SJHS Corporate or Petaluma Valley Hospital independently for**

**establishing materiality thresholds. A copy of the Lease and Transfer agreement will be sent to Mr. Moser.**

Directors who have a conflict of interest on a Board Agenda item can participate when the general public speaks but must leave the room during the Board discussion and decision making process. Minutes are to reflect when a Director leaves the room.

Mr. Moser noted that there are several health care districts that have leased their facilities and believes that the FPPC, Fair Political Practices Commission, has exempted board members to participate on specific conflict of interest topics. Mr. Moser also believes that the FPPC would be amenable for PHCD Directors to also be exempt and allow participation in a specific topic.

Director Thornton asked for clarification: when the lease of the hospital was written, three members of the board at that time were physicians on the medical staff and were not allowed to vote on the Lease. One physician resigned from the medical staff in order to be able to vote on the Lease. Is this policy still in effect?

Mr. Moser noted that the rules still remain the same but the rules on leasing hospitals within your district have changed. There is a bill introduced that would prohibit leasing the hospital to a for profit organization which changes the rules.

Mr. Moser stated that under the Political Reform Act physicians would be disqualified from voting. Political Reform Act relates to participation in decision making. The other statute, Government Code Section 1090, allows an exemption for the deal to be completed. This section talks about being on both sides of the contract which is where the medical staff members and medical directors have a statutory exception allowing a deal to be made between the hospital and physicians. However, this does not mean that you can participate in voting or decision making due to the Political Reform Act which is a much broader statute stating that you can not participate in any way.

The Political Reform Act and Government Code Section 1090 needs to be resolved separately. For example under the Political Reform Act possible regulation changes could be requested and the FPPC could issue an open rule making on this topic. The Government Code Section 1090 states that you can not be on both sides of the contract directly or indirectly.

Discussion ensued regarding several scenarios used in determining when it is appropriate for Directors to participate on discussions and/or approval of projects. The question to be raised on various topics is to ask if it is reasonably foreseeable that the decision will have a material financial effect on the public official or member of their family.

Question was raised; are there issues if the District provides financial assistance to a program that would benefit the hospital? If funds were to be given through equipment purchases, would this be in violation? How can the physicians and the allied health care professionals discuss processes in relationship with SJHS to avoid any conflict of interest issues?

Mr. Moser explained that using gross receipts of \$10-\$100 million, and expenses are reduced by \$50,000, materiality threshold would result in a financial effect. If money was provided to extend care to the indigent, that would benefit the general public. Mr. Moser recommended communicating directly to the FPPC to approve an exception in the regulations due to the fact that PVH/SJHS's source of income has cascading impacts on the scope of disqualifications even though the specific decisions that you are making do not have affect on the District but rather the public in general.

Mr. Moser further explained that if there is a group of physicians who also participate on the PHCD Board and the group of physicians and the community would benefit from the project, this could fit the Public Generally exception and allow for participation.

Discussions ensued regarding various scenarios noting that each case would need to be reviewed and evaluated individually to determine if participation was a code of conflict violation.

Mr. Moser reviewed the Government Code 1090 that applies when:

- € A staff member has a financial interest in a contract if the staff member participates in making the contract.
- € A financially interested director is a member of the Board that actually approves the contract.
- € Developing a contract includes:
  - Preliminary discussions, negotiations, compromises, reasoning, drawings of plans, solicitations for bids, modifications to contracts.
  - There is an exception to 1090 for remote interests and non-interests as defined by statute and for existing contracts.

Mr. Moser discussed financial gain conflicts relative to employment restrictions as follows:

“Local elected official, chief administrative officer of a county, city manager or general manager shall not, for a period of one year after leaving employment, act as agent or attorney for, or otherwise represent, for compensation, any other person by making appearance or oral or written communications to that local government agency for the purpose of influencing administrative or legislative action or any action on a proceeding involving amendment, award, revocation of a permit, license, grant or contract.”

The above statute could affect the Regional Action Plan process. Mr. Moser suggested clarification be obtained by writing to the FPPC and ask for written guidance.

**Ramona Faith discussed the ability to contract outside of the CEO position provided that the contracted services do not affect her position. Ms. Faith will contact Mr. Moser for further clarification.**

Discussion ensued regarding Directors not being allowed to receive a gift of over \$420.00 within any 12 month period. Directors are prohibited to receive payment for honorary services.

Special Districts are not allowed to provide bonuses without a pre-written contract; a contract that has been entered into and performed in whole or in part can be revised to reflect a bonus. This is for all employees of the special district not just exempt employees. A District policy can be written specific to this issue.

Mr. Moser explained spending or allowing below-cost use of public resources for purpose beyond agency authority is a misuse of public funds. Examples include donations of medical services or used medical equipment or paying for dinner for health care district directors' spouses. Advertisement in the Chamber of Commerce publication must have a public purpose.

Mr. Moser also explained that under the section pertaining to gifts of public funds, Districts are not able to guarantee private debt, mortgage public property, or hold stock. The development of a LLC is appropriate. Mr. Nadale will follow up with Richard Abbey, District's Real Estate Counsel, regarding the allowance of Districts to secure a mortgage.

Newsletter's can be sent out to the community regarding District information but elected official's pictures can not be included in the newsletter.

Information regarding the Brown Act was reviewed. The Brown Act does not allow action to be taken in closed session when trade secrets are conducted in closed session. Closed sessions minutes are not required and do not have to be recorded.

**DISCUSSION OF PUBLIC COMMENTS:**

There were no items discussed.

**ADJOURNED:**

Director Adams adjourned the meeting at 8:45 p.m.

Respectfully submitted,

Stephen Steady, MD, Board Secretary

**RECORDED BY:**

Suzanne Cochrane, Board Liaison

