

**Patterson Del Puerto Health Care District
Grand Jury Cases # 06-32, 06-33, 06-34, 06-38
2005-2006**

SUMMARY

In April 2006, the Civil Grand Jury (CGJ) received four complaints concerning the Del Puerto Health Care District (District.) These complaints are comprised of Brown Act violations, District inefficiencies in scheduling and waiting times, administrative interference with a doctor's provision of care causing possible harm to patients, and a conflict of interest among the administrative staff.

The CGJ reviewed applicable laws regarding the Brown Act, the Health Insurance Portability and Accountability Act of 1996 (HIPPA) requirements, government publications and reports, and District agendas and minutes from past proceedings. The CGJ also conducted interviews with key District personnel, members of the Del Puerto Health Care District Board (Board), and complainants.

The CGJ determined that a letter dated April 28, 2006, to the District established intent to litigate their inefficiencies, administrative interference and potential harm to patients. As personnel and matters of litigation are out of the purview of the CGJ, these issues will not be addressed.

The CGJ concluded that although some of the actions alleged in sworn testimony may have violated the Brown Act, these actions did not appear to compromise the public's participation in meetings. During the investigation it became apparent that while there was no intent to violate the Brown Act, the District will need to refine skills with additional training and mentoring to improve their working relationship with the public.

The CGJ recommends the following:

- 1) The Brown Act is very specific in regard to its requirements for an open meeting. The District shall implement an aggressive training session for all officials conducting the public's business, particularly in areas that provide for public comment or interaction with the Board.
- 2) Although the Brown Act requires at least a 24-hour notice for special meetings, the Board shall consider scheduling them consistent with the publication of the local biweekly paper. The Board shall also ensure that the notices and any other matters available that are of interest to the general public are included on the District's telephone answering system.

- 3) The District shall develop and approve competitive recruitment and hiring policies and implement them through its "Clinic Policy Manual."

INTRODUCTION

In April 2006, the CGJ received four complaints concerning the District. The four complaints originated at a time when the Medical Director for the District, asked to terminate his contract and requested to begin new contract negotiations. The complaints can be categorized as follows:

- 1) Brown Act Violations:
 - a. Intimidation of a member of the public who wished to speak at a public Board meeting.
 - b. A Board member publicly requiring that members of the audience identify their selves in order to speak.
 - c. The Board has conducted too many special meetings.
 - d. The Board inappropriately called closed sessions.
 - e. The classification of a contract physician as a public employee for the purpose of calling a closed session.
 - f. The Board conducted secret ballots.
 - g. The Board withheld information from the public.
- 2) The district is inefficient.
- 3) Appointments are scheduled every 15 minutes.
- 4) Two-hour waits for scheduled appointments.
- 5) Administrative interference with a doctor's provision of care.
- 6) Harm to patients due to the interference of the District administration.
- 7) Violation of the patient/physician privilege of confidentiality.
- 8) A conflict of interest among the administrative staff at the District.

METHOD OF INVESTIGATION

The CGJ conducted its investigation from March through April 2006 and included many sources of information and documented facts. Major sources included the following:

- 1) Interviews with District personnel including the complainants, members of the Board, the District Administrator/CEO and the former contract Medical Director.
- 2) Announced field trip to the District facilities.
- 3) Review of applicable laws regarding Brown Act and patient confidentiality.
- 4) A review of the agendas and minutes of the District's meetings.
- 5) Public information including government publications and reports and other pertinent sources.

With the exception of field interviews, all other interviews were scheduled in advance and conducted under oath during recorded testimony. Local newspaper articles were reviewed to identify key recent events and how they were presented to the public. Pertinent Internet sites were reviewed and relevant documents downloaded for reference and retention.

STATEMENT OF FACTS

- 1) Government Code sections 54950-54963, The Ralph M. Brown Act. See Appendix 1 for the full text.
 - a. Section 54954.3 (c) – provides for no restriction on speech.
 - b. Section 54953.3 – A member of the public is not required to register his/her name.
 - c. Section 54956 – A special meeting may be called at any time with 24-hour advance notice.
 - d. Section 54957 - A closed session may be called for certain defined reasons.
 - e. Section 54957 (b) (1) – A closed session may be held to discuss certain personnel issues.
 - f. Section 54957 (b) (4) – An independent contractor functioning as an officer may be considered an employee.
 - g. Section 54954 (e) - Specific agenda description of employee related closed session item.
 - h. Section 54957 (5) - Reporting the Board actions coming out of a closed session.
- 2) Government Code section 87100 – Defines a conflict of interest.
- 3) The iCare Contract.
 - a. On June 20, 2003, the District entered into a contract with iCare Professional Corporation (iCare) for the provision of specialized health care by “. . . physicians, nurse practitioners, physician assistants and other allied health professionals . . .” A physician, the President of iCare Professional Corporation, was named in said contract to provided a minimum of 30 hours/week of direct patient care as well as

serve as Medical Director for the District.

- 4) Health Insurance Portability and Accountability Act of 1996, (HIPAA) Patient/Physician Privilege. HIPAA establishes standards for the privacy of patient health related information. It gives patients privacy rights over their health information and sets rules and limits on who can look at and receive such information. HIPAA has four parts:
 - Electronic transactions and code set
 - Security
 - Unique identifier
 - Privacy
- 5) The April 28, 2006, letter to the District from the President of iCare, describes various issues between the District and iCare. Among the issues identified are the following; administrative support, communications, billing, Brown Act violations, personnel termination, HIPAA violations, and other items. iCare also requested that the District enter into negotiations with iCare for the purpose of payment of all fees owed to iCare through April 15, 2006, and damages. The letter concludes with an admonition that if the matter proceeds to litigation, iCare will seek punitive damages.

FINDINGS

- 1) The letter dated April 28, 2006 to the District establishes intent to litigate several of the issues identified in the complaints. Personnel and matters of litigation are out of the purview of the CGJ and as such those issues will not be addressed in this report.
- 2) Under sworn testimony it was reported that on January 26, 2006, a member of the District Board interrupted and may have appeared to intimidate a member of the public wishing to speak during a public comment section of the agenda.
- 3) Under sworn testimony, and viewed on DVD video, a member of the Board requested a speaker to identify himself or be removed from the building during the public comment portion of the agenda. The member of the public continued to speak without identifying himself and was not removed.
- 4) The District has its regular meeting monthly. During October 2005 through May 2006, the District had an equal number of regular and special meetings. All meetings were properly noticed and minutes prepared for each meeting.
- 5) The CGJ reviewed the agendas and minutes of the Board meetings. Contrary to the complainant's allegations, the District's Board meeting minutes reported any action taken in public or in closed session.

- 6) On December 17, 2005 the Board received two letters dated December 16, 2005 from the President of iCare. The first letter provided a 120-day notice to terminate the iCare contract under Article VI, section 6.3, and the second letter offered to renegotiate the contract. The Board posted a special meeting notice on December 23, 2005, for a December 26, 2005, meeting at the District headquarters. Included on the agenda was a closed session item, "Employee Performance Evaluation, Clinic Medical Director."

The minutes reflect that on coming out of closed session, in open session, the Board voted to accept the iCare letter of termination, and took no action regarding the offer to renegotiate.

- 7) Under sworn testimony, the CGJ determined that the District's Executive Director had been hired from a consulting firm that was providing contract services to the District. The consultant had been performing the work of the Executive Director and then was hired for that position as a permanent employee. In addition, the brother of the owner of the consulting firm, who was also an employee of the firm, was hired by the District to provide consulting services.

Government Code section 87100 defines a conflict of interest as having the decision-maker have a financial interest in the hiring of staff or consultants. Although the CGJ found no conflict of interest involved, there are no competitive hiring practices in place at the District.

RECOMMENDATIONS

- 1) The District shall implement an aggressive training session for all officials conducting the public's business, particularly in areas that provide for public comment or interaction with the Board.
- 2) Although the Brown Act requires at least a 24-hour notice for special meetings, the Board shall consider scheduling them consistent with the publication of the local biweekly paper. The Board shall also ensure that the notices and any other matters that are of interest to the public are recorded on the District's telephone answering system.
- 3) The District shall develop and approve competitive recruitment and hiring policies and implement them through its "Clinic Policy Manual."

APPENDIX 1

Selected Sections of the California Government Code

Ralph M. Brown Act

1. Section 54954.3 (c) (no restriction on speech)

The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

2. Section 54953.3 – (public not required to register)

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

3. Section 54956 (Special Meeting Notice)

A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

4. Section 54957 (Closed Sessions)

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with

the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

- (b) (1) Subject to paragraph (2), nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.*
- (2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.*
- (3) The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.*
- (4) For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. Nothing in this subdivision shall limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.*

5. Section 54957 (b) (4) (employee definition)

For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative

body or other independent contractors. Nothing in this subdivision shall limit local officials' ability to hold closed session meetings pursuant to Sections 1461,32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

6. Section 54954.5 (closed session description - Public Employee Performance Evaluation)

For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

7. Section 54954 (e) (Specific agenda description of Closed Session item)

With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title officer, or name of applicable agency representative and title)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

8. Section 54957 (5) (reporting the actions coming out of a closed session)

Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting

during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

Conflict of Interest

9. Section 87100 (conflict of interest)

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.