

Response to the Mariposa County Grand Jury 2015-2016
Page 19 of the Final Report

Concerning the
John C. Fremont Healthcare District Board of Directors
August 31, 2016

The Board of Directors of the John C. Fremont Healthcare District welcomes the report of the Mariposa County Grand Jury, and applauds its careful attention to detail. Outside eyes can identify opportunities for improvement, and can be useful in serving as hindsight. Our Board is dedicated to positive growth, and we are always looking for ways to improve our ongoing board training process.

We wish to point out that the Grand Jury's concerns are of an administrative nature, and have nothing to do with the medical care our District offers to our patients. We are proud of the professionalism of our staff and healthcare providers, and the lifesaving services the District brings to this community.

As pointed out in the Grand Jury's final report, each of our Board members is sincerely dedicated to our mission: "To excel in the provision of quality health care services" and our vision: "To be the organization of choice for community health care."

Barely three weeks after the report was issued, on July 20, 2016, the Grand Jury's Final Report was reviewed by the District's Board Education Committee so that procedural training could be instituted rapidly.

The Grand Jury Report was placed on the board agenda for the next regular board meeting held on July 27, 2016, so that public comment could be elicited with the intention of providing a response in a timely manner.

Binders containing the John C. Fremont Health District's Bylaws, the *Ralph M. Brown Act*, *Rosenberg's Rules of Order*, and other guidelines for board conduct were prepared for each Board member, and placed on the agenda for distribution at the District Board meeting scheduled on August 31, 2016.

In addition, a board training session on legal guidelines is being scheduled with Colin Coffey, the legal counsel for the District, for all current Board members and candidates for future board membership who are currently running for office. Their terms will begin in December 2016. We are currently trying to schedule an evening in September or October for this event.

FINDINGS:

John C. Fremont Healthcare District is a vital asset for Mariposa County and it is imperative that the District remain a viable operation in the community. The Board of Directors and staff appear to be sincerely dedicated to their mission "to excel in the provision of quality health care services" and their vision "to be the organization of choice for community health care."

However, numerous issues surfaced during our investigation that appear problematic and have the potential to negatively impact the District and distract the Board of Directors from its mission of continued service to the community.

After reviewing the agendas and minutes of the JCFHD Board of Directors for the period of January 2015 through February 2016, as well as conducting numerous interviews, the Grand Jury has determined that:

Board members and staff appear to violate the provisions of *The Brown Act* and how they apply to the District, and;

Board members and staff appear to violate the overall intent of *The Brown Act* §54950 which states, in part, "It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."

The intent of the Board of Directors of the John C. Fremont Healthcare District has always been to comply with both the letter and spirit with the *Ralph M. Brown Act*. If there have been any slip-ups, they have been accidental, and we apologize.

The John C. Fremont Healthcare District routinely takes active measures to safeguard public participation in open meetings. All board and standing committee meetings are posted according to the requirements of the *Ralph M. Brown Act* in accessible public places and on the District's Website.

Interested members of the public are always welcome to attend open meetings of the Finance Committee, the Board Education and Development Committee, the Policies, Procedures and Bylaws Committee, and the Community Outreach Committee and other open meetings as well as the regular monthly board meetings usually held the last Wednesday of the month. The public frequently participates by expressing opinions and contributing information.

We listen to public comments and respond to them when appropriate. For Instance, a search for a larger venue for board meetings was initiated by a public comment. Because the District does not own a room large enough for a well-attended open meeting on its campus, the board has varied the locations of the board meetings, experimenting with other venues in a search for a room that can seat as many members of the public as wish to attend.

Agendas and minutes of both committee meetings and Board meetings often lack clarity and appear confusing and/or incomplete with conflicting information. Examples are:

Minutes of Board meetings do not reflect consistent following of Rosenberg's Rules of Order including establishment of a quorum, discussion of action items and the calling for or recording of a vote.

When changes/corrections are made to minutes, the nature of the changes is not noted making it impossible to know if the changes are minor or substantive.

Attendance at committee meetings by more than two Board members is prohibited unless additional members are observing only.

Discrepancies between the agenda and the minutes including: items listed on the agenda with no record of any consideration in the minutes, items taken up at a meeting which were not on the agenda and discrepancies between regular committee meeting minutes and the information in Board minutes regarding the same subject.

The District does not deny that some mistakes have been made; however the intent has always been to make information as clear as possible, and a great deal of energy is spent to try to perform to perfectionistic standards.

The following details have been addressed in administrative discussions: exact address of the meeting; recording whether a quorum was in attendance; recording calling for a vote; who voted against the motion; disclosure of voting record in closed session; reporting changes made to previous minutes.

A massive amount of written material is involved in recording agendas and minutes of the District, usually on a tight schedule, and the bulk of this work reflects the honorable intent of the Board Clerk to accurately convey the actions taken in running the District. Frequently the agendas have been used as templates for the minutes to minimize discrepancies.

Oversights in this gargantuan endeavor are addressed and corrected internally by the administration as soon as they are discovered.

Board members, too, may be distracted by the content of the meetings and may overlook process at times. This, too, is unintentional. We are grateful for input from the Grand Jury, and appreciate their zeal in helping us to improve our processes. We have already used these observations for training purposes.

There is general disagreement among staff and Board members as to who has the ultimate responsibility, and each has tried to evade responsibility, for the accuracy of the agendas and minutes of Board meetings and for ensuring adherence to both the provisions of *The Brown Act* and to policies established by the Board of Directors.

We do not contest the Grand Jury finding that individual staff and Board members may have expressed different impressions of lines of responsibility. This is important for us to know. Lines of responsibility will be made clear to Board members in future Board training, and have been referred to the Policies, Procedures and Bylaws Committee for inclusion in the Bylaws.

The District's practice has always been that while the Board Clerk records the minutes of the District both at board meetings and committee meetings, minutes of all meetings are subjected to the scrutiny of the participating Board members before being accepted. The accuracy of those minutes is the shared responsibility of the Board members who participated in those meetings.

Board members also share responsibility for guarding the rights of the public under California's *Ralph M. Brown Act*. Staff execute administrative functions under the guidance of the Board of Directors.

There is a difference of opinion among those interviewed if sufficient opportunity is afforded for discussion or question of agenda items during Board meetings.

This feedback is an interesting revelation, and the Chair is already taking this into consideration in board meetings.

The Grand Jury found that not all Board members received background information for all items added as "emergencies" even when the "emergency" items were known prior to the meeting.

Since the Grand Jury found that some Board members did not feel sufficiently prepared with background material for certain Board emergency action items, we have doubled our efforts to check that adequate background material is provided for all action items.

Packets of background material are routinely supplied to Board members before board meetings. They are lengthy, and occasionally stretch to over 100 pages. For the most part, excessive information is the norm.

During the investigation of the complaint the Grand Jury discovered specific issues of concern as summarized below:

Consistent use of the consent agenda to approve non-routine and controversial items.

It is true that for a period of several months, the Board experimented with using lengthy consent agendas to shorten board meetings, which sometimes lasted into the darkness of night. However, the Board quickly came to the conclusion that use of a consent agenda could be taken too far.

We agree that consent agendas are for routine issues only, and by the time the Final Report was made public, we had already taken steps to limit consent agendas to routine, non-controversial agenda items, and to assure that any agenda items requiring action are scheduled for open discussion.

However, we wish to highlight the statement made in the Final Report that at any time, "items on the consent agenda are still open to discussion and debate if a Board member requests same." During the period when we experimented with increasing the length of the consent agenda, Board members frequently exercised the right to remove items from the consent agendas so that they could be subjected to open discussion.

Furthermore, as of this date, no Board member has made a request to reconsider any decisions made at that time despite the retroactive focus on several of those agenda items. The decisions we made serve the needs of the District.

Attendance at committee meetings by Board members not named to the committee not documented as "observers only" and contributed comments that may have influenced outcome.

Agreed. Two Board members constitute both the number of committee members making up committee membership and the quorum for that committee.

Visiting Board members may observe if they determine they need extra information to self-educate, but at no time should a third Board member participate in any way in a committee meeting unless he or she is a member. Visiting Board members who attend committee meetings as extra observers must sit quietly and avoid participation. Visiting Board members are now being carefully recorded as "observers only" in committee minutes.

Since it has come to our attention, this issue is currently under discussion. We are examining the practices used elsewhere, which include the options of holding two board meetings per month, one for in-depth financial discussions and the other for regular Board actions, or, alternatively, changing Financial Committee meetings to posted open board study sessions.

Agendas for committee meetings of the Board of Directors for January-September 2015 do not contain the time and place of the meeting. NOTE: Agendas for February 2016 committee meetings show

the time of the meeting. However, the location is shown only as "Board Room" with no specific information as to exact address. Brown Act §54954.2 (a) (1).

Minutes for regular meetings where "emergency items" were added to the agenda do not reflect a vote to approve such action. Brown Act §54954.2 (b) (2)

Minutes of regular Board meetings reviewed state "*Open session disclosure pursuant to Government Code §54957.7*" but do not reflect that the items to be discussed in closed session were actually disclosed prior to going into closed session. Brown Act §54957.7

None of the minutes of regular Board meetings reviewed reflect a vote relative to the decisions made in closed sessions. Brown Act §54957.1 (a)

These omissions were inadvertent. Board training is focusing on these issues, and administrative errors are being corrected by the administration.

Convening a committee meeting and conducting business without a quorum.

This observation by the Grand Jury is unclear.

It is not allowable for a single Board chair to call a meeting to order and make decisions by him/herself.

It is, however, allowable for a Board member to converse casually with non-board members.

Addressing a potentially controversial item of business under "Other Business" rather than a clear and separate agenda item giving the perception the topic was being shielded from public view.

This feedback on the perception of shielding information is useful. Hiding information from the public was never the intent. "Other business" has been eliminated as an agenda item in committee agendas.

Of particular interest to the Grand Jury was the handling of a specific committee meeting and subsequent regular Board meeting:

A Finance Committee meeting agenda was posted at 1:05 PM. The agenda for the subsequent regular meeting was posted on the same day at 2:30 PM. The Finance Committee is always on the agenda for every regular meeting as the committee always has important and timely business for review, action or approval. It is questionable why the Finance Committee was left off the regular meeting agenda as the information needed to place it on the agenda was known at the time of preparation of the agenda.

The "emergency" items in question were four agreements and one action item. One of the agreements was related to a controversial subject. Background information on this particular agreement was not given to all Board members for review prior to the meeting.

Subsequently, the four agreements were added to the regular meeting as "emergencies" with no vote to do so. Brown Act 54954.2(b)(2).

Additionally, the minutes reflect that there was neither discussion of the four emergency items nor a vote to approve, reject or to dispense with them in any way.

The four agreements were moved to the consent agenda with no vote to do so. The consent agenda was then approved in total, including the four “emergency” agreements, by a vote of the Board with no discussion.

Later in the same Board meeting another agenda item was added as an “emergency” and placed under Discussion/Action Items without a vote to do so.

Placing “emergency items” into a consent agenda is not only improper but gives the impression of “ramrodding” something through without public scrutiny and violating the public trust.

The District admits that this meeting was not handled well.

During the time that the Board was attempting to shorten Board meetings by making use of a consent agenda, there was a confluence of concurrent pressures, such as the absolute necessity for immediate action, inadequate time for preparation, missed contacts and misunderstood communications, that came together like the forces of an overwhelming North Sea wave to influence the way it was handled.

Since that time the issues have been addressed both by the Board of Directors, who stepped back from overuse of the consent agenda, and by the administration, which has detangled the various sources of confusion that lead to this event.

We are taking greater care today. The District has moved on. Although we regret the circumstances under which those decisions were made, those decisions still stand, and have served the District well.

The Grand Jury found that all relevant Government and Elections Code provisions were followed regarding the noticing and calling of a special election and subsequent appointment by the Mariposa County Board of Supervisors to fill an open seat on the John C. Fremont Healthcare District Board of Directors. (Board of Supervisors Resolution 2015-55)

The election code was handled in close partnership with County personnel at that time. State procedures were followed very carefully.

RECOMMENDATIONS

The Grand Jury understands the issues associated with long agendas, prolonged meetings and subsequent lengthy minutes. However, it is the responsibility of the Board of Directors to make certain that all business is conducted in accordance with the law, both in letter and in spirit, and in compliance with their own policies.

Agreed. As stated previously, the use of the consent agenda for major decisions was curtailed prior to the Grand Jury’s report.

The minutes are the official, permanent and legal record of the deliberations and decisions of the Board and must be clear, concise, accurate and intelligible.

Agreed. The minutes are now undergoing more intense scrutiny.

Efforts to reduce the volume of agendas, length of meetings as well as simplify the complexity of minutes should never take precedence over clarity of public information, accuracy of the permanent record and compliance with applicable laws and policies.

Agreed. These oversights are being corrected.

The agenda for all meetings of the Board and its committees must always include the date, time and sufficient detail regarding the location of the meeting.

Agreed. These oversights are being corrected.

The Chairperson should allow sufficient time for questions and/or discussion of agenda items to the satisfaction of all Board members.

Agreed. The Chair of the Board of Directors has studied the CD made by David Rosenberg on *Rosenberg's Rules of Order*.

At the call to order of committee meetings and for recording in the minutes the chair should announce all directors present, announce any that are "observing only" and that they are not allowed to participate in the discussion or decisions made by the committee.

Agreed. This practice has already been implemented.

The CEO, Board members and the Clerk of the Board should receive sufficient training in order to obtain thorough knowledge of the Brown Act and how it applies to the John C. Fremont Healthcare District.

Members of the Board, CEO and Clerk of the Board are encouraged to review and maintain a thorough understanding of the following:

1. Appropriate use of the consent agenda.
2. Rosenberg's Rules of Order for the conduct of meetings.
3. John C. Fremont Healthcare District Bylaws for established policies and procedures.

Agreed. A binder containing the Bylaws of the John C. Fremont Healthcare District, the *Ralph M. Brown Act* and *Rosenberg's Rules of Order* has been prepared for each member of the John C. Fremont Board of Directors and senior administrative staff to be distributed at the regular Board meeting on August 31, 2016. An extra copy will be kept in the administrative office.

Judge David Rosenberg of Yolo County Superior Court, after years of experience running meetings of various public entities, has made a CD about *Rosenberg's Rules of Order* widely available on the Internet. There is no cost to watch it. Board members are encouraged to access the CD on the Internet and watch this free training at home for their professional development.

The CEO is making arrangements for a formal presentation to the current Board of Directors and candidates running for office for Board terms that begin in December 2016. The presenter will be Colin Coffey, Corporate Counsel to the John C. Fremont Healthcare District. His practice is in healthcare law and regulation. He has been recognized as one of San Francisco's Top Rated Lawyers. His presentation for healthcare district board members and management highlights the *Ralph M. Brown Act*, public records, conflicts of interest, and fiduciary responsibilities and liability protections. It focuses on issues unique to healthcare districts.

As previously stated, the use of the consent agenda was addressed by the District prior to the release of the Grant Jury Final Report.

It is imperative that the Board of Directors designate in their bylaws who is ultimately responsible for compliance with the provisions of the Brown Act, for adherence to Board policies and for the accuracy of the agenda and minutes.

Agreed. Each individual Director on the Board of Directors shares responsibility for compliance with the *Ralph M. Brown Act*, adherence to policies listed in the *John C. Fremont District Bylaws*, and oversight for the accuracy of agenda and minutes that are prepared by staff.

Administration is responsible for doing a professional job of preparing the agendas and minutes as directed by the Board.

A Memo has been sent to the Policies, Procedures and Bylaws Committee as a reminder to request preparation of an appropriate amendment to the bylaws designating Director responsibility.

Because compliance with the Brown Act and other policies and procedures related to agendas, meetings and minutes are vital to the overall conduct of business and well-being of the organization the Board of Directors is encouraged to consider utilizing the services of an attorney who specializes in open meeting laws and other related issues.

The Grand Jury may be unaware that the District retains the legal services of Colin Coffey, a partner in Archer Norris, a professional legal corporation. Although he does not appear in person at Board meetings, the District's CEO is in frequent contact with him electronically on legal issues.

Colin Coffey serves as General Counsel to large and complex medical entities and Corporate Counsel to their boards of directors. He has attained an AV rating, the highest rating available, from Martindale-Hubbell, and has been identified as one of San Francisco's Top Rated Lawyers™.

Other highly recognized attorneys have recently been accessed as well.

At one time, we obtained the services of an attorney with Neumiller & Beardslee who routinely attended Board meetings in person at significant cost to the public. We paid both for his time at meetings and time he spent driving to and from our meetings.

Ultimately, that legal entity strongly suggested we discontinue that practice, and have one of their staff listen in by telephone. That did not work out as well for us.

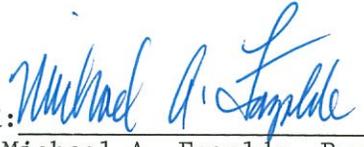
We can only speculate that this costly former practice may be what the Grand Jury is proposing that we consider trying to do again. We have concerns about its cost effectiveness.

In addition to being maintained in permanent written form, all meetings (committee, regular, special, emergency or other) of the Board of Directors should be recorded, retained for a period of not less than three years, available for public review upon request and posted on the district's official website.

The Ralph M. Brown Act does not require that we make audio recordings of our meetings. However, if they are made, it does require they be kept for 30 days. We routinely exceed that legal requirement by keeping them for three months.

Tapes of Board meetings are made available for inspection upon request by calling 209-966-3631 during office hours. If requested by the public, tapes are replayed at the administrative office of the District located at 5189 Hospital Road in Mariposa California.

Potential Brown Act violations have been referred to the Mariposa County District Attorney for review.

Reviewed: 
Honorable Michael A. Fagalde, Per PC933