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Northern Inyo Healthcare District

INYO CO. SUPERIOR COURT
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October 11, 2022

The Honorable Stephen M. Place and Members of the Grand Jury
PO Box 401
Independence, CA 93526
Via email to: Alyse.Caton@InyoCourt.ca.gov

Re: Comments of the Northern Inyo Healthcare District to the Presiding Judge of the Superior Court in Response to the 2021-2022 Inyo County Grand Jury Report: Sustainability and Transparency of Home Healthcare Services Under Northern Inyo Healthcare District

Dear Judge Place and Members of the Grand Jury:

The Northern Inyo Healthcare District ("NIHD") is in receipt of the 2021-22 Inyo County Grand Jury report titled "Sustainability and Transparency of Home Healthcare Services Under Northern Inyo Healthcare District." Per your request, and that of the Grand Jury, and in compliance with section 933 of the California Penal Code, please find below the response of NIHD. As an initial matter, NIHD thanks the Grand Jury for its efforts at improving sustainability and transparency in Inyo County, and it welcomes the efforts, findings, and recommendations of the Grand Jury.

The Grand Jury's investigation was prompted by concerns regarding the relationship between NIHD and Pioneer Home Health Care, Inc. ("PHHC"), which is a nonprofit corporation providing home health care services in the Northern Inyo/Southern Mono region. As an initial matter, NIHD wishes to clarify that although it has in the past provided funding to PHHC's Board pursuant to the agreement between the parties, PHHC remains a separate private nonprofit company, subject to limited statutory and contractual transparency and disclosure obligations.

The Grand Jury summarized its report as follows:

"Given the importance of professional home health care to the patients of [Northern Inyo Hospital] and the Northern Inyo/Southern Mono area currently served by PHHC, the jury advises that NIHD continue to develop policies to support its home health care component in a forward-looking manner. Concerning transparency, the jury found that since the purchase, PHHC has existed in a penumbra between transparency and privacy, but there is a reasonable expectation, if not legal requirement, for transparency which emanates from NIHD as a public



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agency; therefore, the jury advises that NIHD and PHHC examine PHHC's transparency as a legal and de facto subsidiary of NIHD." (P. 1.)

RECOMMENDATIONS

R1. The Inyo County Grand Jury recommends that the Northern Inyo Health District Board of Directors request the Inyo County District Attorney, or NIHD legal counsel, to review the applicability of Government Code 54950, also known as the Ralph M. Brown Act, to Pioneer Home Health Care by September 30th 2022.

Response: This recommendation has been implemented. Specifically, legal counsel for NIHD have reviewed whether the Brown Act applies to PHHC, and has determined that it does not. As relevant here, Government Code section 54952(c)(1)(B) provides that a legislative body is subject to the Brown Act if it is a board or other multimember body that governs a private corporation that receives funds from a local agency and where the membership of the body includes a member of the legislative body of the local agency appointed to that governing body, by the legislative body of the local agency, as a full voting member. (Emphasis added.) Here, although PHHC does receive funds from a local agency (NIHD), NIHD does not appoint any of its own Board members to PHHC's governing body. Rather, PHHC's Bylaws are clear that the current PHHC Board is responsible for nominating new directors when needed, and that NIHD's role is limited to final approval of such nominees. The plain language of section 54952(c)(1)(B) therefore supports NIHD's conclusion that, because it exclusively approves PHHC's own nominations and does not appoint its own selected members to PHHC's board, PHHC's board is not subject to the Brown Act.

The 1987 case Yoffie v. Marin Hospital District (193 Cal.App.3d 743) the critical factor in determining whether the Brown Act applies to a private nonprofit public benefit company over which a public hospital district has oversight is whether the public hospital district has appointment authority over directors for the nonprofit's governing board. In that case, the court examined the legislative history of Health and Safety Code section 32121(p), which governs the ability of healthcare districts to transfer assets to a nonprofit public benefit corporation. The court stated:

"In 1985, however, Health and Safety Code section 32121 was again amended, to permit a transfer [of a hospital district's assets to a nonprofit public benefit corporation] with or without consideration. As amended, the section also no longer requires that the district appoint the board members of the transferee corporation. Instead, it plainly states, 'The initial members of the board of directors of the nonprofit corporation ... shall be approved by the board of directors of the hospital district....' [citation].) ... The Legislature apparently intended not only to permit district hospitals to enter into a lease and transfer agreement such as that at issue here, but also to permit the transferee corporation to operate free from the open meeting requirements



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of the Brown Act, provided the District did not retain power to appoint the transferee corporation's board." (Yoffie at p. 754 [emphasis added].)

In Yoffie, the court reviewed the legislative history of section 32121 and concluded that the Legislature's intention, in giving hospital districts the ability to create separate nonprofit entities, was that the resulting nonprofit board would not be subject to the Brown Act as long as the hospital district did not appoint the nonprofit's board. Here, because NIHD's board does not appoint any of its own members to PHHC's board, but only approves PHHC's own nominations, PHHC's board is not subject to the Brown Act. This conclusion is also supported by PHHC responding "no" to line 7a of Form 990 Part VI ("Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body?").

R2. The Inyo County Grand Jury recommends that the Northern Inyo Health District Board of Directors establish a policy to review and publish a quarterly report on Pioneer Home Health Care's fiscal status which includes at least a 6-month forward projection, starting with the 1st Quarter of 2023.

Response: This recommendation has been partially implemented. The Grand Jury is correct that NIHD has certain rights as the sole General Member of PHHC, including (in theory) access to some of PHHC's financial records, and an annual report of PHHC's financial accounting for the prior fiscal year. NIHD has previously attempted, by virtue of its status as the sole General Member of PHHC and Article 8 of PHHC's bylaws, to inspect and copy certain financial books and records maintained by PHHC with respect to its business operations. This included requests for listings of all bank and investment accounts held by PHHC, cash reconciliations, bank statements, patient receivables, a summary of all fixed assets, accounts payable and accruals, PHHC's net position, data concerning revenue and expenses calculations, and other general organizational and policy-oriented documentation. To the extent PHHC has complied and will in the future comply with these requests, and turns over the requested financial records over which NIHD has examination rights, NIHD will comply with the Grand Jury's request to establish a policy to review the documents and publish a quarterly report at open, agenda meetings. However, in the event that PHHC does not turn over all requested documents or there are financial documents to which NIHD does not have access by virtue of its status as sole General Member, NIHD's role is more limited.

Other than the inspection rights provided for by private agreement, PHHC is subject to certain financial reporting requirements under California's Corporations Code. For instance, under Corporations Code § 6320, public benefit corporations are required to keep "adequate and correct books and records of account; [and] minutes of the proceedings of its members, board, and committees of the board...". And, under Corporations Code § 6321, public benefit corporations are required to send an annual report to members and board of directors within 120 days of the close of the fiscal year, containing (in "appropriate detail") (1) a list of the corporation's assets and liabilities; (2) the principal change in assets and liabilities during the fiscal year; (3) the corporation's revenues or



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receipts for the fiscal year; (4) the corporation's expenses or disbursements; and (5) a statement of transaction and information involving self-dealing, indemnifications, or advances between the corporation and any parent, subsidiary, director, officer, or holder of more than 10% voting power.

To the extent the Grand Jury believes PHHC is not in compliance with its statutory recordkeeping and reporting obligations, NIHD advises that the Grand Jury handle such matters with PHHC directly, as NIHD remains a separate legal entity with its own legal recordkeeping and reporting obligations, which are not the subject of this Grand Jury Report. NIHD is in compliance with all of its own financial reporting and recordkeeping obligations, and will continue to exercise its rights of inspection over PHHC's documents under the loan agreement and PHHC's bylaws. To the extent it receives financial records from PHHC, NIHD will establish a policy to review those documents and publish a quarterly report as to its fiscal status (with the understanding that said report is based only on NIHD's review of the documents PHHC turned over or which are otherwise publicly accessible). NIHD will begin working toward this goal and looks forward to demonstrating its compliance moving forward. In addition, NIHD wishes to make the Grand Jury aware that it is coordinating an effort with PHHC to formally separate the two entities moving forward, such that PHHC operates without further funding or involvement by NIHD. When that separation is completed, NIHD will continue to apprise the public of its own financial status in accordance with legal requirements, but will have no connection with PHHC's financial statements or disclosures.

R3. The Inyo County Grand Jury recommends that the Northern Inyo Health District Board of Directors establish a policy to conduct and publish an annual review of Pioneer Home Health Care's business model and operations that evaluates its viability for the following 3 to 5 years, starting with FY 2023.

Response: This recommendation has been partially implemented. As discussed in the previous response, NIHD is willing to prepare a policy for reviewing the business operations of PHHC, based upon the records which NIHD is entitled to access pursuant to state law and its contractual arrangement with PHHC. NIHD will begin working toward this goal and looks forward to demonstrating its compliance moving forward. As mentioned, if NIHD and PHHC come to an agreement to formally separate such that NIHD is no longer the sole corporate member of PHHC, NIHD will comply with its own business reporting obligations but will have no connection with PHHC's own reporting going forward.

If you have any questions, please contact District Counsel, Noel Caughman, at (925) 977-3334.

Sincerely,

Jody Veenker
Chair, Northern Inyo Healthcare District Board of Directors