Case 11-09C

Oak Valley Hospital
A Division of Oak Valley Hospital District
AN AFFILIATE OF CATHOLIC HEALTHCARE WEST

June 27, 2011

Presiding Judge Ricardo Cordova
Superior Court Stanislaus County
Post Office Box 3488
Modesto, CA 95353

Dear Judge Cordova:

As the CEO of Oak Valley Hospital, I am responding as required to the findings and recommendations of the Stanislaus County Civil Grand Jury in its communication dated May 5, 2011.

Response to Findings

The Grand Jury Findings (F1) specified violations of the Brown Act in five specific areas. The following are my responses to each of those five areas.

Public meeting agendas. *We concur that in a few instances meeting agendas lacked specificity in detailing some agenda items. There was no intent to mislead, but we agree more clarity is desirable. However, we can find no instance where we failed to provide 72 hours notice of a public meeting as required.*

Conduct of public meetings. *The finding that the District Board took action on items not on the agenda is puzzling. We can find no instance of that occurring. We were once challenged that an action item was not as clearly defined as it could have been, as stated above. However, we do not agree that action was ever taken on an item that was not on the agenda. While we have always allowed time for public comment or questions at the beginning of a meeting, we have not typically allowed questions during Board discussion of a specific agenda item. We will review with counsel how to address that option.*

Release of confidential information. The finding stated that "a District Board member had disclosed to a non board member physician, confidential information discussed during a closed door meeting." *I am personally not aware of that incident and without further information as to the individuals involved, I am unable to respond. I would certainly concur that the action described would be a violation of the Brown Act.*

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Serial meetings. The finding stated that "District Board members discussed board-related information, via e-mail messages, without an agenda or in a public setting." *Again, I am not personally aware of this occurring as I may not have been in the email chain.*

Release of public information. *Until we established a clear policy on how the public could obtain information and meeting agendas in a timely manner, we were not consistent in our response to inquires. A policy was approved in September 2010 to correctly and uniformly release information.*

F2 relates to the bid process for a remodeling project. *The finding is correct. We did not realize when we awarded the bid that it required approval by OSHPD. Once we were advised of that fact, the bid qualifications changed and we re-issued the bid accordingly. Although we underestimated the scope of the project, there was no intent to bypass our own policies and process.*

F3 states that legal counsel does not routinely attend Board meetings and that may have led to the Brown Act omissions referenced in the report. *It is correct that legal counsel only personally attends meetings in which major legal issues are discussed, although legal counsel often does participate via phone conferences, as necessary. I think whether regular participation by counsel at every meeting would have precluded other findings is speculative.*

F4 finds that January 2011 agendas were in compliance with the Brown Act *and I concur.*

F5 finds that there was inadequate notice made to the public concerning the change from the original replacement hospital construction project to the revised project as a result of defeated bond issues O and Q. *I cannot agree with the finding. We publicly announced that we would address options for moving forward with the project at a public board meeting. At that meeting, architects, engineers and other experts presented a detailed power point presentation explaining the change. Handouts were provided to a large audience. Board members reported on their discussions with officials in Sacramento to obtain approval of the change. Reporters from the Modesto Bee and the Oakdale Leader attended the meeting and wrote extensive stories about the change. The Building Committee and the Citizens Volunteer Oversight Committee were provided full details of the changes. We sent a letter to 7500 households in our District explaining the change. We posted a chronology of events, including the change, on our website. We dedicated an entire webpage to construction details and monthly updates beginning in September 2009. I honestly thought that we had utilized every public information channel available to us.*

F6 found no evidence to support the allegation of financial misappropriation on misconduct. *I agree.*

F7 found no evidence to support the allegation of conflict of interest issues. *Since I am unaware of what specific conflict of interest allegations were made, I cannot knowledgably respond. In a small community, there are frequent questions and concerns about potential conflict of interest and I always investigate and address each one individually.*

F8 found no evidence to support the allegation of contract bid manipulation concerning the replacement hospital construction project. *I agree.*

F9 found no discrepancies in the hospital's financial reports. *I agree.*

F10 found that the CEO's expenditures on the hospital credit card were in compliance with the Employee Travel Business Entertainment Expense Reimbursement Policy. *I agree.*

F11 found no evidence of arbitrary or unauthorized wage or bonus distribution on the part of the CEO. *I agree.*

Response to Recommendations

R1 recommends that we revise the format and language of the meeting agendas and restructure the format of public meetings to allow for better public comment or questions.

These issues had all been identified by the current Board and were corrected prior to or during the time of the Grand Jury investigation. For example, in July 2010 we began posting Board agendas and minutes on our website and at the August 2010 Board meeting, the agenda was expanded to include specific Brown Act language offering a period of public comment on all agenda items or other matters of interest to the public. The Board Chair also read this notice in full at the beginning of the meeting. We continued to fine tune the agenda and, as the Grand Jury report states, by January 2011 we appeared to be in full compliance.

R1 also recommends that legal counsel attend more public meetings or be available via conference call for the duration of the meeting to allow for compliance with the Brown Act.

I respect the Grand Jury's belief that the presence of legal counsel at all meetings could be beneficial. However, in this instance I do not believe it would be financially feasible or necessary to accomplish the objective of Brown Act compliance. We are a small hospital with a small administrative staff. We have no in-house counsel and retain highly specialized and expensive legal counsel for all legal matters. It would not be a wise expenditure of limited resources to utilize counsel simply to comply with the Brown Act. The Grand Jury has reminded us that it is essential we pay attention to the details of compliance. We

have the internal resources to give this subject priority and we have already demonstrated that we will do so.

R1 recommends that Board members refrain from discussing board subjects outside of the public meeting so as not to constitute a serial meeting in violation of the Brown Act.

When new members are elected or appointed to the Board, they are provided extensive orientation including copies of the Brown Act and definitions of what they can and cannot do in accordance with that Act. I will recommend to the Board Chairman that we set aside a portion of one meeting annually to review the Brown Act and remind Directors of their obligations to comply. I will also recommend that any Director who perceives that a serial meeting may be in process should report that activity to both the Board Chairman and the CEO so that we can take action internally and/or instruct legal counsel to intervene.

R2 recommends that OVHD consistently adhere to its own established bid proposal guidelines so as to prevent the public perception of favoritism and/or conflicts of interest.

As explained in the findings, on a single occasion we underestimated the scope of a remodeling project and prematurely issued a bid. Once we were aware of our error, we immediately corrected the situation. We make every effort to adhere to our well established policies for bids and to correct our actions in case of an error. We will certainly raise our awareness and be mindful of the need to avoid any perception of favoritism or conflict of interest.

R3 recommends that we improve our dissemination of public information, stating that we mailed out 8000 letters to the community regarding the "revised" hospital construction plan and that the Grand Jury does not believe that amount of information to be adequate for a service area of 75,000 residents.

The mailing referenced is only one of many information channels used to communicate our messages. However, it should be noted that the mailing went to 7500 ***"households"****, not individuals. Households often include two or more adults as well as several children so the reach is far beyond 7500 residents. With regard to the "revised" hospital plan, as stated in the findings section, both the Modesto Bee and the Oakdale Leader covered this story extensively. We included the information on our website and via other committees and organizations.*

We routinely communicate hospital related information to our communities with regular features, columns and stories in the Oakdale Leader. We routinely submit information to the Modesto Bee seeking coverage. We regularly update our website with information including a chronological history of the project, the final report of the Citizens' Oversight Committee and monthly updates. We direct

people to our website at every opportunity. We conduct frequent tours of the new hospital and use the local media to encourage District residents to join the tours. We strongly encourage residents to attend open meetings to learn more. Dates of those meetings and minutes of previous meetings are on our website.

As with most companies and public agencies, the hospital has faced difficult financial challenges during this recession. Like others, we have been forced to trim our budgets. We have reduced the workforce and salaries. We have made significant budget reductions throughout the organization. Certainly our marketing, advertising and public information budgets have been impacted in the past two years. We simply do not have the financial resources to conduct extensive media or public information campaigns.

I appreciate and respect the Grand Jury's desire that we should do more. I would like very much to do more, but candidly, it is just not financially feasible at this time. I believe we do a reasonable job with the limited resources available.

Should Your Honor desire or require additional information, we will be happy to respond.

Sincerely,

John Friel, CEO
Oak Valley Hospital District