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September 3, 2008

RIVERSIDE COUNTY GRAND JURY
c/o Mr. John B. Todd, Foreperson
P.O. Box 829
Riverside, CA 92502

RE: RESPONSE TO 2007-2008 GRAND JURY REPORT - PALO VERDE HEALTH CARE DISTRICT

Members of the Grand Jury,

I have been retained by the Palo Verde Health Care District ("District") as its General Counsel and in that capacity have been asked to respond to the 2007-2008 Grand Jury Report ("Report") regarding the District. This response is provided pursuant to Penal Code Section 933(c) and 933.05.

The Report contains a number of blatant misunderstandings about the District and its operation along with a number of damaging statements that are not supported by evidence. The Report is a wide ranging discussion citing little hard evidence with recommendations and findings concerning legal, financial, business and political matters. Needless to say, the Report was met with a great deal of skepticism by the community at large and the Members of the Health Care District Board. Among other things the Report fails to comprehend the distinction between the District and the Medical Staff which are separate entities that are independent of one another. The Grand Jury should understand that the doctors who practice at the Hospital are not employees of the Hospital and few of them have a contract with the District as alleged in the Report. The Report fails to account for the unique labor market in Blythe which is separated by nearly one hundred miles of desert from Indio where the Grand Jury and its advisors are located. The Report is the result of investigation over two years by the Grand Jury and it contains recommendations and conclusions that do not appear to be based on the current status of the District. Had the Grand Jury spent as much time and effort in doing its job as did the District and its representatives in responding to the Grand Jury's requests and addressing the Report the product would have been a better thought out set of Findings and Recommendations.

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RESPONSE TO GRAND JURY FINDINGS

1. *"The annual fees are disproportionate with the size and financial capability of PVH. The present fees charged by AHM, is approaching a million dollars annually for two executives."*

AHM is made up of three (3) executives, not two, as stated in the report. The District has, and will continue to have a great many challenges that AHM is charged with overcoming that involve a great deal of work. First and foremost is the all important job of maintaining control of the Hospital which is currently being held hostage by the MEC which is comprised of Drs. Sahlolbei, Lucero, Mofu and Paglinawan. The Report does not contain any guidance as to what the Grand Jury believes to be a reasonable fee for AHM's services, nor does it contain evidence of the fees paid to comparable management companies and there is no evidence that the Grand Jury sought the opinion of a qualified consultant regarding this issue. Therefore the Grand Jury merely made a guess that the fee for the services should be less than one million dollars. It should be noted that the previous management company's fees came to approximately one million eight hundred thousand dollars (\$1,800,000) per year and that was some time ago. The size of a facility is only one contributing factor when considering annual fees. However, in determining the appropriateness of the annual fee the Grand Jury should have considered the scope of services and expertise required from AHM to transition the hospital, developing ongoing services, regulatory compliance status, human resource issues and the expertise required to maintain a solid operation in the face of the current environment. As for financial capability, the Grand Jury only had to look at the audited financials of the past two (2) fiscal years to see that the Health Care District realized a positive bottom line inclusive of the annual fees. The District Board of Directors would suggest that the Grand Jury perform greater due diligence and secure the services of competent advisors in the future.

2. *AHM staff wage rates are not consistent with other hospitals. A wage comparison of hospitals similar in size and location is shown in the following chart [omitted].****

First, the District, not AHM (the designated management company), sets the compensation scales of the employees. The wages are set by the forces of supply and demand applicable to Blythe area which is unique in and of itself due to location. The Report compares the staff wage rates with those paid in Big Bear California and Parker Arizona. It is much easier to recruit in Big Bear as a recreational resort area and Arizona with its easy lifestyle generally has lower wages than California. The Board of Directors does not consider either of these salary ranges to be an accurate basis for comparison. The Hospital must compete against two of the largest employers in the area, those being Chuckwalla and Ironwood State Prisons which offer comparable pay and a strong benefits package when compared to Palo Verde Hospital. The Hospital's wage rates are a direct result of the compensation health care professionals demand to

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relocate to Blythe combined with the aggressive salary scales required to compete against the State of California in a supply and demand environment. The Grand Jury should be aware that the District at one time based its pay scale on a statewide average and was unable to recruit sufficient employees requiring it to use the costly temporary services of travelers and registries which made the overall cost greater to the District. The additional cost of these temporary services would be even greater now with the increased cost of gas.

3. *The President of the Board has failed in his authority to appoint standing, special, or community ad-hoc committees of non-board members to act as an advisory group to the Board. ****

The Board of Directors, led by the President of the Board, prefers to address District business and policy directly and in public without the additional layer of committees. The Board of Directors represents all of the diverse ethnic and other groups of Blythe. Additionally, the President does not intend to establish the committees referred to in the Bylaws for this purpose now or in the future. The Board and community do not understand the need for an additional layer of bureaucracy since a community of this size has the ability to contact and communicate directly with the members of the Board of Directors. Furthermore, the use of committees often means that the Board is prevented from taking action while the committee mulls over the issue. For these reasons and others the Board President does not believe that establishment of committees would assist the Board of Directors in its decision making and so it is likely that the Board will amend the Bylaws to eliminate the provisions calling for committees to be established which is within its discretion. This is a "housekeeping" issue and does not amount to the Board President having "failed in his authority".

4. *"Interviews with existing Board members revealed a lack of understanding of the By-Laws governing the PVHD. This lack of understanding exists in spite of the fact that each elected or appointed Board Director is provided with a training manual. This manual contains the current District and Medical Staff By-Laws, as well as a copy of the Brown Act, and the complete California Health and Safety Codes, Division 23, "The Local Health Care District Law".*

Members of the Board have commented that when the Grand Jury was first impaneled some Board Members were just beginning to study the Bylaws as some of them had just taken office and the District only recently took over the operation of the Hospital from a private management company. However, since that time they have studied the Bylaws and applicable laws. District lawyers have advised the Board regarding the Bylaws and legal issues where appropriate and all the members have taken SB 1234 training to assist in that aspect of governance. This law firm will continue to advise them on these issues as well.

5. *AHM has failed to respond to some of the doctors' complaints, as exemplified by assigning nurses with insufficient training for their assigned departments.*

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Certainly after an investigation covering two years, the Grand Jury understands the different roles the District Board and Medical Staff assume in providing patient care in the hospital setting. The Grand Jury should be aware the District and the Medical Staff are in fundamental disagreement on who should have the authority to run certain aspects of the Hospital. Certain members of the Medical Staff have confused the autonomy and self governance afforded to them by the District Board and equate that to controlling the day to day operations of the Hospital. However, State and Federal law and good business practices require the District govern and oversee the management and operation of the Hospital. As the result of this conflict a great deal of misinformation has been broadcast regarding the interrelations between the District and the Medical Staff. Therefore, the Grand Jury should consider this as the background to comments it has heard. That being said, all complaints from the Medical Staff that have been put in writing and properly delivered to the administration, have been and will continue to be responded to appropriately. It should be made absolutely clear that AHM has implemented the systems and processes to maximize the assurance that the Hospital does not hire and retain unqualified nurses and if this were to occur AHM and the management team would take immediate action. The Grand Jury should also be aware that in the May 31, 2007 public Board of Directors meeting the Chief of Staff, Dr. Hossain Sahlolbei alleged that the nursing staff at Palo Verde Hospital were not "up to par". This allegation of incompetence raised a firestorm of opposition from members of the nursing staff and motivated the California Department of Public Health (formerly the Department of Health Services) to conduct an onsite review of random nursing personnel files. In conclusion, the Department found NO SUBSTANTIATION for Dr. Sahlolbei's claim. Also the Grand Jury should be aware that repeating allegations that are not true can be harmful to the Hospital's reputation, the livelihood of those who work at the Hospital and the community of Blythe which relies on the Hospital for health care services. Therefore, statements questioning the competency of people the Grand Jury has not met and have no ability to assess professionally should be more carefully considered before being broadcast in a public forum. It is difficult to imagine that the Grand Jury sitting in a room in Indio can make a valid determination of the competency of nurses working in a Hospital nearly one hundred miles away especially when the Grand Jury did not have a qualified expert on nursing advising them.

6. *Current Medical Staff By-Laws, Section 6.4-1, requires only an authorized certified member of the medical staff to be the only one to admit patients to the hospital. This section is used by some physicians to withhold the admission of patients, bringing the hospital to near bankruptcy.*

The Medical Staff Bylaws do not contain a Section 6.4.1. While I have no firsthand knowledge that admissions of patients has been refused by physicians, the ER admission records do indicate a reduced admission percentage from prior years. As the Grand Jury is aware, certain physicians have ceased providing services at the Hospital at certain times which has effectively caused the closure of the surgical and obstetrical departments at the Hospital. In a bold and unprecedented move the Board, led by its President recently appointed an Anesthesiologist and approved resolutions allowing both of these departments to reopen. This is where the Grand Jury needs to be reminded that the subject of the Report, the Palo Verde Health Care District, has no direct control over the doctors

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making up the Medical Staff who practice at the Hospital. The Hospital is composed of a physical plant, property, personnel, administrative staff, equipment and supplies only. The physicians are independent practitioners and are not employees of the District. If a physician decides to stop rendering services or admitting patients there is nothing the District can do to stop or require the physician to start working again. This lack of understanding is shown by the statement in the Report that "each doctor is under contract to the hospital by mutual consent between the individual doctor and AHM". Nothing could be further from the truth. Some doctors have contracts with the District but most do not and they are not and cannot legally be employees of the Hospital. Therefore the Grand Jury's criticism should be directed to the Palo Verde Medical Staff, or more accurately certain members of the Palo Verde Medical Staff, not the District.

7. *The existing contract between the PVHD and AHM authorizes an automatic five-percent increase in the fees paid to AHM in January of every year. The automatic increase has no performance targets as a requirement to receiving this increase.*

The referenced increase is slightly above the increase in the Consumer Price Index which reflects the rate of inflation. The Consumer Price Index for All Urban Consumers increased 4.5% from May 2007 to May of 2008. Therefore, the increases are slightly more than the cost of living and therefore do not represent real or significant increases in compensation as asserted by the Grand Jury. Any significant increases in AHM's compensation will require the approval of the majority of the Board of Directors going forward. The recommendation of performance targets is noted and certainly "management by objectives" is in vogue at the present time. The Board, which is the ultimate judge of AHM's performance may give consideration to this recommendation at a later time.

8. *PVHD Board Members receive agenda packets just prior to board meetings, giving them little time to study the financial and operational data, regulatory compliance issues, and previous Board meeting minutes.*

This issue further demonstrates the Grand Jury's lack of understanding of the issues surrounding the governance and operation of the hospital. For months, the Board has been put in the position of responding with little or no warning to legal issues caused by the Medical Staff. Another tactic used by the Medical Staff is the inability of the Chief of Staff to provide Medical Staff committee reports, including the MEC reports in a timely fashion. On numerous occasions the information has been provided to the Board President just minutes prior to the meeting. In fact the Medical Executive Committee Report for the District Board of Directors meeting to be held on July 24, 2008 was delivered to Hospital management signed by Dr. Hossain Sahlolbei on July 22, 2008 after the Board Packets had already been delivered to the Board members. The President of the Board has made it perfectly clear to management (AHM) that he expects every effort to be made to give the Board Members at least 72 hours to review the Board packet materials. To the extent that it is in the control of the District and AHM, AHM will endeavor to

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provide Board Members with Agenda Packages at least 72 hours or more in advance of the meetings.

9. *PVHD By-Laws grant the Board primary responsibility on matters of policy. The Board is responsible for the regular review of PVH budgetary and financial matters related to, and including, the annual audit. The Board has relinquished its oversight to AHM. These inactions approach misfeasance.*

The Board of Directors strongly disagrees with this statement. The Board members, who are essentially volunteers, utilize the services of experts and consultants to advise them on specialized matters. Management and financial issues are undertaken with the advice and assistance of the designated management company, AIIM. To assist the Board in its ability to discharge these duties, AIIM has provided an open door policy for ALL the Directors to interact and discuss with any member of the Executive Management Team budgetary and financial matters. Most Board Members take advantage of these opportunities and frequently come to the hospital to discuss matters of concern including financial matters. There has not been any abdication or misfeasance by the Directors. Misfeasance is a serious allegation would be a class of misconduct in office under Penal Code Section 919(c). Such an allegation seems to be a gross overstatement of a perceived problem. Nor is there any evidence in the Report to support this finding of the Grand Jury. Again, the Grand Jury is making statements that are harmful to the Hospital and the community of Blythe without any supporting evidence.

10. *The PVH Obstetrics Department was closed in June 2007, as a result of some doctors refusing to admit patients to PVH. Women are currently being transported great distances to other hospitals, putting them at risk.*

As mentioned in # 6 above, it is not accurate that physicians have refused to admit patients, but they have ceased performing services at the Hospital which results in the loss of the service. The Grand Jury is obviously aware that you cannot have an obstetrical service without the support of anesthesia services. When the only active general surgeon and Chief of Staff removes himself from the ER on-call panel and refuses to perform surgeries the District no longer has the revenue stream available to maintain anesthesia services which led to the closure of the Obstetrics Department. The Board of Directors has heard its constituency, understands the severity of this issue and are taking all actions possible to reopen and maintain obstetrical services. However, as mentioned above, the Board of Directors does not have control over the doctors on the Medical Staff. They are largely free to do as they please. The District recently re opened the Obstetrics Department, however, a lawsuit by the Medical Staff and resulting injunctions against the District have resulted in its closure once again.

11. *CVSP and ISP Prisoners with surgical needs are being transported to outlying hospitals in Riverside, Brawley, or San Diego. Each incident requires two vehicles, one for a*

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guard and the prisoners, and a second for back-up guards. These costs, totaling over \$3.3 million annually, do not include the high cost of fuel. Concurrent with these costs to the prisons is a substantial loss of revenue to PVH.

This comment is akin to "preaching to the choir". The District has good relations with the Wardens and Chief Medical Officers of the prisons and works hard to communicate with them and meet the health care needs of the prison populations. The District is well aware of the inconvenience and cost to the prisons as a result of the closure of the Hospital but once again the closure is the direct result of doctors on the Medical Staff ceasing to perform services at the Hospital or more recently filing a lawsuit and obtaining an injunction against the District. The District has always provided a working Hospital but if the doctors who are on the medical staff of the Hospital are not providing services and are rejecting physicians who wish to practice medicine at the Hospital patients cannot be treated at the Hospital. Again, the doctors on the Medical Staff are not employees of the District, they control which doctors can practice at the Hospital and the Grand Jury should investigate this situation instead of leveling criticism against the District over the actions of the Medical Staff which the District does not control.

RESPONSE TO GRAND JURY RECOMMENDATIONS

1. *The Board must terminate AHM, with cause, based on the fact that the hospital is near bankruptcy under their management.*

The Grand Jury has no basis for this recommendation. As previously stated the Grand Jury needs to look at the AUDITED fiscal year end financials for the past two years and they will see the institution is far from bankrupt. Ironically, the Grand Jury didn't seem to have a problem when AHM was engaged by the District to initiate a transition with \$60,000 in the bank. The Grand Jury does not clearly identify what the "Cause" for termination would be but presumably it would be the financial condition of the District. However, Section 5.1 of the Agreement with AHM states that "District and AHM agree and understand that the Hospital is experiencing financial difficulties and its financial viability is uncertain." The Hospital was facing bankruptcy prior to AHM's tenure and it was understood that notwithstanding competent management it might still face bankruptcy in the future. As mentioned in the Grand Jury Report AHM brought the Hospital to a profitable situation in 2007 until certain doctors who are members of the Medical Staff ceased performing services at the Hospital. Until July 16th 2008 the District had the surgery and other departments open again. Then the Medical Staff filed a lawsuit against the District and AHM and secured injunctions against the District, once again, shutting down the surgery and other departments. Since that time these departments have been reopened. It should be noted that Section 9.4 of the agreement with AHM provides that if the Hospital files for bankruptcy that AHM shall have the option to act as the contract administrator during the bankruptcy proceedings, so bankruptcy was expected as something that could occur at any time even with competent management.

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2. *Re-evaluate the present staff's wage rate structure and reduce them to be more in line with hospitals of similar size and location.*

As mentioned above the Hospital's primary competition is from Chuckwalla and Ironwood state Prisons which pay relatively high wages. Wage rates for Palo Verde Hospital are competitive with the prisons, as they must be, to attract employees.

3. *The Board President must appoint citizens from the Blythe community who want to be involved and have skills to serve on advisory, standing, or ad-hoc committees. This community involvement should enhance the capabilities and the functioning of the Board.*

The recommendation of the Grand Jury is noted. The members of the Board of Directors and the President are all residents of Blythe, involved in the Blythe community, and are in a far better position than the Grand Jury nearly one hundred miles away to determine whether establishment of committees utilizing members of the local community is in the best interests of the District. At this time the Board believes that it is able to most effectively and efficiently handle the District's business without establishing any committees. However, it may form committees in the future if it determines that they are advisable.

4. *Members of the Board must understand and follow their By-Laws, including the California Health and Safety Code, Division 23.*

The members of the Board of Directors have and continue to review, study and seek guidance from professionals regarding the Bylaws, Division 23 of the Health and Safety Code and other applicable laws.

5. *Complaints registered by the MEC must be made in writing and submitted to AHM and the Board for review and disposition. AHM must respond in writing with a positive approach to solving the problems in no more than seven calendar days after submission. Should any conflict arise the Board will resolve the conflict.*

The Board is in agreement that complaints from the Medical Executive Committee should be made in writing and submitted to the Management. However, again the Grand Jury should remember that the MEC is a separate and independent entity from the District. The District, with the assistance of its management company AHM, has and will continue to respond to written complaints from the MEC. The Grand Jury's suggestion that the Board of Directors resolve conflict with the MEC will be difficult to implement given that the Medical Staff filed a lawsuit against the District and AHM and obtained injunctions against the District that effectively shut down surgical and obstetrical services on July 16th. Recently the injunction was lifted and the

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District and MEC are headed to mediation with the assistance of a special master. The District is hopeful the special master will resolve some of the issues between the parties.

6. *Modify the MEC By-Laws to allow a Hospitalist, "A physician who specializes in seeing and treating other physicians' hospitalized patients in order to minimize the number of hospital visits by the patients' regular physician" to admit patients, a practice common in other hospitals.*

The creation of a "Hospitalist" position at the Hospital does not depend on the Bylaws in any way. First the Medical Staff must be willing to admit a doctor willing to serve as the Hospitalist to the Medical Staff, which it is often unwilling to do, and there must be enough work for the Hospitalist. However, the District has and will consider creating such a position if all of the Medical Staff obstacles can be overcome.

7. *Amend the future administrative contracts to add performance targets that must be achieved prior to granting any increase in compensation.*

Of course, this assumes that the existing contract with AHM contains a clause calling for increased compensation without meeting performance targets which as pointed out in # 7 of Findings is not true. Meaningful increases in compensation must be approved by the vote of the Board of Directors of the District.

8. *The PVHD By-Laws need to include a policy that the Board of Director's agenda packets must be prepared and distributed to the five-member Board a minimum of three days prior to a Board meeting. This allows time for the members to study critical data and request any additional information, if necessary.*

This is the policy of the District and is followed wherever reasonably possible regardless of whether it is in the Bylaws. Placing this in the Bylaws will not serve any real purpose.

9. *Prior to the monthly Board meeting, the Board must routinely review in detail the PVH budgets and financial performance with the hospital's Financial Officer, and take necessary action.*

The Board cannot meet with the Financial Officer as recommended by the Grand Jury to discuss the budgets and financial information as it would amount to a criminal violation of the Ralph M. Brown Act. Individual Board members may, and often do, consult with the CFO. Each member of the Board of Directors is required to review and act appropriately on the financial statements.

10. *Reopen the Obstetrics Department and hire qualified personnel to staff it.*

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The Hospital did reopen the Obstetrics Department. As has always been the case, the District hires and retains only qualified personnel. Since reopening the Obstetrics Department the Medical Staff sued the District and obtained injunction against the District which effectively caused the Obstetrics department to be shut down again. This injunction was lifted and the Obstetrics department is now reopened.

11. *The Board should:*

a. Resolve the conflict among the Board, AHM and the MEC; and

The Board has attempted to resolve issues with the MEC in all ways that are practical without giving up the operation and control of the Hospital to certain members of the Medical Staff. The MEC filed a lawsuit against the District and obtained an injunction preventing certain Certified Nurse Anesthetists and an Anesthesiologist from practicing at the Hospital which effectively shut down the Hospital. Now the injunction has been lifted and the issues raised by the Medical Staff will be decided by a Special Master.

b. Reopen the surgical services, thus giving the state prisons a nearby hospital

The Hospital has always stood ready able and willing to allow surgeons to provide surgical services at the Hospital and the District retained a qualified surgeon, Dr. Arko, to provide services at the Hospital.

Sincerely,



Robert L. Patterson

BEST BEST & KRIEGER LLP