

TO: BOARD OF SUPERVISORS
FROM: William Walker, M.D., Health Services Director
DATE: February 6, 2007
SUBJECT: Approval of the creation of a Joint Powers Authority between the County and the West Contra Costa Healthcare District for the management oversight of Doctors Medical Center.



Contra Costa County

SPECIFIC REQUEST(S) OR RECOMMENDATION(S) & BACKGROUND AND JUSTIFICATION

RECOMMENDATIONS:

1. ACKNOWLEDGE that the County is presently assisting in the development and implementation of a long term Recovery Plan for Doctors Medical Center pursuant to the authority of the Board issued at a public hearing on October 31, 2006.
2. ACKNOWLEDGE that a structure has been developed and documents drafted whereby the County will jointly participate with the West Contra Costa Healthcare District in management oversight of Doctors Medical Center, pursuant to the authority of the Board issued at a public hearing on October 31, 2006.
3. ACKNOWLEDGE that the District is a local healthcare district formed under Health and Safety Code section 32000 et seq. District owns and operates Doctors' Medical Center San Pablo, a duly licensed general acute care hospital located in San Pablo, California ("DMC").
4. ACKNOWLEDGE District is seeking ways to operate DMC within budgetary constraints, while continuing to deliver comprehensive, high quality acute medical care, emergency services, health and wellness services, and community health benefits, responsive to the diverse needs of the community. District has sought assistance from County to accomplish these goals.

CONTINUED ON ATTACHMENT: X YES

SIGNATURE: *William Walker MD*

____ RECOMMENDATION OF COUNTY ADMINISTRATOR
 ____ APPROVE

____ RECOMMENDATION OF BOARD COMMITTEE
 ____ OTHER

SIGNATURE(S): _____

ACTION OF BOARD ON _____ APPROVE AS RECOMMENDED _____ OTHER _____

VOTE OF SUPERVISORS

____ UNANIMOUS (ABSENT _____)
 AYES: _____ NOES: _____
 ABSENT: _____ ABSTAIN: _____

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MINUTES OF THE BOARD OF SUPERVISORS ON THE DATE SHOWN.

ATTESTED _____
 JOHN CULLEN, CLERK OF THE BOARD OF SUPERVISORS AND COUNTY ADMINISTRATOR

Contact Person: Patrick Godley, 957-5405
 CC: Health Services Admin, 50 Douglas Dr. #310-A, Mrtz

BY: _____, DEPUTY

5. ACKNOWLEDGE County operates a comprehensive county health system that provides integrated health care services to residents of Contra Costa County. County has a statutory obligation under California Welfare & Institutions Code §17000 to relieve and support incompetent, poor and indigent residents of Contra Costa County who are incapacitated by age, disease, or accident and lack insurance or other health care resources.
6. ACKNOWLEDGE District and County believe that county residents are best served by the preservation of DMC as a health care resource in West Contra Costa County under the terms and conditions of this Agreement.
7. ACKNOWLEDGE District and County believe that a vehicle is needed for development of healthcare services, education, and programs of common interest and benefit to the communities served by both the District and the County.
8. ACKNOWLEDGE that the best structure to provide management oversight of Doctors Medical Center has been determined to be the creation of a Joint Powers Authority.
9. ACKNOWLEDGE that the District has set February 5, 2007 for approval of the Joint Powers Authority between the County and the West Contra Costa Healthcare District.
10. APPROVE the Joint Powers Agreement establishing Doctors Medical Center Management Authority, which will allow the County and the District to exercise their common powers to create an authority that will provide management oversight of DMC for the benefit of the communities that both parties serve.
11. AUTHORIZE the Chair of the Board of Supervisors to sign the Joint Powers Agreement on behalf of the Board of Supervisors.
12. AUTHORIZE the first meeting of the Doctors Medical Center Management Authority on February 12, 2007 at 1:30 at Doctors Medical Center San Pablo.
13. APPROVE the following agenda for the initial meeting of the Doctors Medical Center Management Authority:
 - I. Call to Order
 - II. Roll Call
 - III. Election of Chair
 - IV. Future meeting dates and general organizational issues
 - V. Bankruptcy Update
 - Presentation
 - Discussion
 - Public Comment
 - VI. Huron Financial Report
 - Presentation
 - Discussion
 - Public Comment
 - VII. CEO Report
 - Update on current operations
 - VIII. Public Comment
 - IX. Adjournment

FISCAL IMPACT:

The proposed action will have no impact on the General Fund and the risk of legal exposure to the General Fund is relatively low. The County itself will not assume any responsibility for management oversight or direction of DMC. While the Joint Powers Authority will do so and will be controlled by a majority of County representatives, the Joint Powers Agreement provides that the District will indemnify both the Joint Powers Authority and the County against all liability arising out of the management of DMC, except to the extent of the County's or the Joint Powers Authority's sole negligence or sole willful misconduct. Most legal actions against DMC will be covered by DMC's insurance, and if the Joint Powers Authority were to be named as a defendant in any such action, or if the Authority were to be separately sued for its activities at DMC, it would normally be covered by DMC's insurance and by the District's indemnity. The Joint Powers Authority will also carry its own insurance coverage against such potential liability.

If the Joint Powers Authority were to lose a lawsuit and be exposed to a judgment, the foregoing insurance would be available in most cases. In the worst-case scenario that a judgment exceeded insurance policy limits, the Joint Powers Authority is a legal entity separate from the County and therefore liability imposed against the Authority would not normally be independently enforceable against the County. Although there are legal theories that might allow a court to award a separate judgment against the County itself in some circumstances, the risk of such an outcome is expected to be quite low. In fact, the Authority was created as a separate entity in part because it provides the County with additional liability protection over and above a simple management contract or similar relationship between the District and the County. Finally, if in future liability becomes an increasing concern, the parties could pursue special legislation to obtain additional liability protection for the Authority and, derivatively, for the County.

For the above reasons, while it is impossible to avoid at least some business and legal risk, in crafting the Authority staff and counsel believe they have taken all reasonable steps to protect the County's general fund as much as possible.

BACKGROUND:

On October 31, 2006 the Board approved and directed that the County take several actions to begin the implementation of a recovery plan for Doctors Medical Center, owned and operated by the West Contra Costa Healthcare District. The approved actions included: (i) transfer of certain sums to the State of California for the benefit of Doctors Medical Center; (ii) the execution of an agreement with the State of California for the purpose of securing federal matching funds for Doctors Medical Center; (iii) the execution of a Tax Exchange Agreement with the West Contra Costa Healthcare District to provide for the allocation of certain ad valorem property tax revenues to the County; and (iv) the execution of a Memorandum of Understanding with the West Contra Costa Healthcare District for the establishment of a joint management vehicle between the County and the District for Doctors Medical Center.

The Tax Exchange Agreement with the District, the agreement with the State of California for the purpose of obtaining federal matching funds for Doctors Medical Center, and the Memorandum of Understanding with the County have been executed, and certain sums have been advanced as previously contemplated.

As provided for in the Memorandum of Understanding the parties and their counsel reviewed the various joint management options available. They included establishing a new subcommittee of the District Board, executing a hospital management agreement between the District and the County, and creating a new Joint Powers Authority as a separate entity. After due consideration, the parties decided to create a Joint Powers Authority, which provides maximum operational flexibility while maintaining the greatest level of protection for the County's General Fund among the various options. Under the chosen option, the Joint Powers Authority is delegated maximum decision-making authority over the operations of Doctors Medical Center, San Pablo ("DMC") that is consistent with the requirements of DMCs' state licensure, Joint Commission accreditation and participation in federal health care programs (e.g., Medicare/Medi-Cal).

The major policy issues concerning the Joint Powers Agreement is addressed in the following question and answer format:

1. What is the Doctors Medical Center Management Authority?
A: The Authority is a Joint Powers Authority formed by Contra Costa County and the West Contra Costa Healthcare District to manage Doctors Medical Center, San Pablo ("DMC").
2. What is a Joint Powers Authority?
A: A Joint Powers Authority may be thought of as a "joint venture" of local government agencies, who contract with each other for the purpose of jointly exercising their governmental powers.
3. What is the purpose of the Authority?
A: The Authority will be responsible for overseeing and directing the management of Doctors Hospital San Pablo.
4. What does "oversee and direct" mean? Will the Authority make day-to-day management decisions at DMC? Will it hire and fire people?
A: The Authority does not intend to make daily management decisions or to hire or terminate employees. Those matters will remain the responsibility of DMC's Executive Officers. The Executive Officers will report to and consult with the Authority regarding important operations, policy and strategic decisions affecting the future of DMC.
5. Who will run the Authority?
A: The Authority will have a seven (7) member board comprised of three (3) representatives from the District and four (4) from the County. The District representatives will be two District Board members chosen by the District Board, and a member of the DMC Medical Staff chosen by the DMC Medical Executive Committee. The District Board members will appoint one alternate, and the physician member will designate his or her own alternate. The County's

representatives will be the Supervisor from District 1 together with one of the other Supervisors from Districts 2, 3, 4, and 5 on a rotating basis as determined by the County from time to time, as well as the County Health Services Director and the County Health Services Chief Financial Officer. The County Health Services Public Health Director and the County Administrative Officer or designee will be the County's alternate representatives. Alternates will only vote if the representatives for whom they act as alternates are absent.

6. Who will the Authority report to?

A: As an entity created and maintained by both the District and the County, the Authority will be answerable to both. With respect to its management oversight duties at DMC, the Authority will act as an agent of the District and will report to the District Board, but it will have broad discretion to make and implement operational and policy decisions at DMC, within budgetary and business plan guidelines approved by the District Board. The District Board will delegate some of its decision-making power over DMC to the Authority but will retain final authority to approve the guidelines within which the Authority will act. For example, the District Board will retain approval rights over the annual budgets, business plans and financial recovery plans for DMC. The District will retain approval rights over all other matters required by applicable licensing and certification requirements for DMC.

7. Why is management of DMC being transferred to the Authority?

A: DMC has experienced financial difficulty in recent years and it is now under Chapter 9 bankruptcy protection. The District and County share a common belief that DMC is a very important health care resource for residents of Contra Costa County and that DMC must be kept open and healthy to continue serving this mission. County has already provided financial assistance in order to facilitate matching funds for enhanced Medi-Cal payments to the District, but the parties believe that money alone will not accomplish the objective – DMC also needs close management oversight and assistance from trained health care professionals. The creation of an Authority was determined to be the best way to make that happen.

8. What kinds of operations, policy and strategic decisions at DMC will be within the jurisdiction of the Authority?

A: The Authority will give advice and direction to DMC's CEO and Executive Officers on management issues, personnel matters and policies, finances and budget development, licensing, certification and compliance matters, contracts and contracting policies, marketing, legal disputes and other similar matters. The Authority will not "micromanage" these matters, but will oversee and give direction to management in these areas. These matters are listed in the Joint Powers Agreement.

9. What kind of things will be retained for approval exclusively by the District?
A: The District will be the holder of all DMC licenses and will be the contracting party in all DMC contracts. In all such matters, the Authority will act for, and in the name of the District, as the District's agent. The District will retain approval rights over appointment of DMC's CEO, handling of all District funds, all professional medical matters concerning DMC (in conjunction with DMC's medical staff), any District matters *not involving* DMC, and certain major business decisions of DMC, such as the sale or merger of DMC, the incurrence of large unbudgeted expenditures, and the approval of annual operating budgets, a financial recovery plan, and annual business plans for DMC. Once again, these matters are listed in the Joint Powers Agreement.

10. Where will the Authority get its money? Who will pay for the Authority's services?
A: The Authority will develop a budget each year and, upon approval by the District Board, the District will fund the Authority's operations out of DMC revenues, in lieu of paying the Authority a management fee. Because the Authority will rely on DMC management to implement its decisions and it will have minimal staff of its own, it is not expected to be a financial burden to the District or DMC. The County Treasurer will be the Treasurer of the Authority, and the County Auditor/Controller, who performs the functions of auditor and controller for the County, will be the Authority's Controller.

11. Will members of the Authority's governing board be paid?
A: No, they will not be entitled to any compensation for acting as governing board members. They will be entitled to reimbursement of their approved out-of-pocket expenses incurred in the course of their duties as members of the Authority's governing board.

12. Will the Authority hold regular meetings? Will they be open to the public?
A: Yes, the Authority will hold regular meetings and, when necessary, special meetings. All meetings will be governed by the Ralph M. Brown Act and will be open to the public as required by that statute.

13. What kind of vote will be necessary before the Authority can act?
A: All matters coming before the Authority must be decided by the affirmative vote of a majority of all members (i.e., 4 of 7). It will also take a majority of all governing board members to constitute a quorum (i.e., once again, 4 of 7).

14. Will the Authority be exposed to liability? Will it have insurance?
A: Like any manager of a business, the Authority will be responsible for its actions (or inaction). Anyone can be sued by anyone, and the Authority will certainly not be immune from criticism, or even lawsuits. However, the Authority's exposure to liability should be no greater than that of any other business manager performing similar tasks. The Authority will carry insurance to protect against such exposure.

15. How long will the Authority last?
A: If the Authority is successful in helping DMC achieve financial stability, the parties intend that it continue indefinitely. However, the District and County can terminate the Authority at any time by mutual consent. Additionally, the County may withdraw, causing termination of the Authority, at any time upon ninety (90) days' notice to the District. The District may also withdraw upon ninety (90) days'

notice to the County, at any time after the County has recovered all funds it has expended to assist the District keep DMC open. That period is expected to be about four (4) years.

16. What will happen if the District and County disagree how to run the Authority?
A: If the parties have a dispute, their agreement provides that they will attempt to solve it by informal conference. If that is unsuccessful, they must go to mediation, and if that fails either party may go to court. Of course, they also have options to withdraw from or mutually terminate the Authority as discussed in question 15 above.