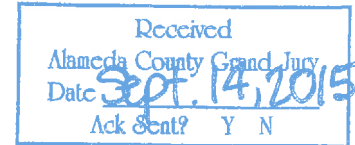




1411 East 31st Street  
Oakland, CA 94602



Via U.S. Mail

September 11, 2015

The Honorable Winifred Y. Smith  
Presiding Judge  
Alameda County Superior Court  
1225 Fallon Street, Department One  
Oakland, CA 94612

George Phillips  
Foreman  
Alameda County Civil Grand Jury  
1401 Lakeside Drive, Suite 1104  
Oakland, CA 94612

**RE: Response by Alameda Health System to 2014-2015 Civil Grand Jury Report**

Dear Presiding Judge Smith and Foreman Phillips:

This letter constitutes the formal response of Alameda Health System (“AHS”) to the section of the 2014-2015 Civil Grand Jury Report entitled, *Alameda Health System Governance and Oversight*. The Grand Jury has asked AHS to respond to Findings 15-9, 15-10 and 15-12, 15-13 and 15-14 and Recommendations 15-10, 15-11, 15-13 and 15-14.

At the outset, the Board of Trustees of AHS thanks the Civil Grand Jury for its efforts and attention to the issues reflected in its report. We also appreciate that the Grand Jury provided an opportunity for a personal review of the findings and opportunity for personal response by our Board leadership.

The issues of governance and oversight addressed in the report have been the focus of both our Board, staff and stakeholders and the recommendations from the Civil Grand Jury for the most part have already been implemented and incorporated into our regular processes. We share the concern expressed by the Civil Grand Jury for effective communication between AHS and the County and ongoing and efficient collaboration in providing health services to the residents of Alameda County.

## Background

AHS was created to discharge the County's obligation to provide safety net services for its indigent population. AHS was created under authority of California Health & Safety Code Section 101850 et seq., and in doing so, the Legislature noted that this obligation would be impacted by "changes in the public and private health industries" and that:

The board of supervisors has further determined that the creation of an independent hospital authority strictly and exclusively dedicated to the management, administration, and control of the medical center, in a manner consistent with the county's obligations under Section 17000 of the Welfare and Institutions Code, is the best way to fulfill its commitment to the medically indigent, special needs, and general populations of Alameda County.

The Report of the Grand Jury highlights the special relationship between Alameda County and AHS and the parallel, and evolving, responsibility of each organization to provide safety net health services for the residents of Alameda County. The issues addressed in the Report also highlight challenges for each organization in discharging these responsibilities as a result of the rapidly changing environment of health care services/management that places services for indigent populations more squarely in the commercial marketplace. Nonetheless, AHS is confident that recent changes in its processes and collaboration with the County adequately address the Grand Jury's concerns and these challenges.

## Conclusion

AHS reiterates its commitment to achieving the goal of meaningful and timely communication and collaboration between the AHS Board of Trustees and the Board of Supervisors and to addressing the concerns identified by the issues raised in the Civil Grand Jury Report.

Respectfully Submitted,



Michele Lawrence  
President, Alameda Health System Board of Trustees

Cc: Alameda Health System Board of Trustees  
Alameda County Board of Supervisors  
Susan Muranishi, Alameda County Administrator  
Alex Briscoe, Executive Director, Alameda County Health Care Services Agency  
Delvecchio S. Finley, Chief Executive Officer, Alameda Health System

## AHS Responses to Findings

*Finding 15-9: The Alameda Health System Board of Trustees failed to ensure that a prudent and professional due diligence process was conducted from the period of May to October 31, 2013, allowing the financially damaging acquisition of San Leandro Hospital to be completed.*

### AHS Response to Finding 15-9:

AHS disagrees with this finding.

This Finding appears to suggest that the Board of Trustees was unaware of the risks associated with the acquisition of San Leandro Hospital ("SLH") and failed to insure that AHS management had properly identified and explained the potential risks. This conclusion is premised on the fact that ultimately SLH was not profitable at the time of acquisition and continued to operate in a manner that required resources from AHS beyond the revenue that it generated. In our view, this approach confuses two separate and distinct issues - what the Board knew and what the Board decided - in a fashion that unfairly characterizes the quality of the decisions made by the Board. "Prudent and professional due diligence" does not concern a question of whether the SLH acquisition proved unsuccessful, but, rather, whether in evaluating the acquisition, the Board of Trustees had, or requested from management, sufficient and appropriate information

- to determine the risks of the proposed transaction in light of the organizations current circumstances,
- to evaluate the risks of the transaction, and
- to make an informed decision to proceed with the transaction.

There is ample evidence that the Board satisfied this standard and completed its due diligence, notwithstanding the ultimate outcome - which AHS would point out is yet indeterminate. The Board considered three options regarding the acquisition of San Leandro Hospital:

1. Continue to operate the hospital in its current configuration while pursuing service line additions, surgical volume increases, and stronger payer relationships.
2. Convert the hospital to a rehabilitation facility immediately, cease acute care operations, and continue performing outpatient procedures.
3. Convert two floors of the hospital to a rehabilitation facility, maintain the acute care operation, and pursue service line and volume opportunities.

Before undertaking the acquisition, the record demonstrates that AHS identified each of the potential risks associated with the proposed alternatives, including the historical deficits incurred in the operation of SLH as an acute care facility and the need for and potential impact of subsidies from Sutter, the City of San Leandro, and the County (in the first year) and Eden, the

City and the County (in the second year) to mitigate the adverse impact of those deficits during that period. The Board also considered as a risk the need to establish (and the cost thereof), and the potential impact of, a rehabilitation care service at the location (in the third year of operation) to generate a distinctive, sustainable revenue stream upon termination of the outside subsidies. All of these considerations are reflected in the Board discussions of July 20 and August 27, 2013, the report of the outside consultant (provided to the Board in advance of those meetings), and the advice of the General Counsel and CFO in due diligence memoranda provided to the Board for review.

The Report appears to suggest that the Board's decision to enter into an assessment of the proposed transaction by signing the letter of intent in May 2013 is, in and of itself, a violation of its fiduciary duty to effect a prudent due diligence. However, at that juncture and now, AHS was required to pursue opportunities to resolve the need for relocation of its rehabilitation services from the Fairmont campus. Exploring the opportunities offered by the SLH acquisition - under a letter of intent that presented no binding obligations - was an appropriate course to consider given the statutory imperative to find a new location for AHS rehabilitation services.

The potential risks of the transaction were balanced against the opportunity for a solution to the County's need to relocate rehabilitation services from the Fairmont campus and community interest in avoiding an immediate closure of SLH as an acute care facility. After entering into the letter of intent, management undertook appropriate steps to weigh the risks:

- engaged an outside consultant to evaluate the potential success of differential financial configurations for the facility post acquisition;
- engaged outside counsel, with substantial experience in hospital acquisition transactions, to assist in developing an appropriate acquisition plan; and
- presented the findings of the outside consultant and outside counsel, augmented by staff evaluations from the General Counsel and CFO, to the Board before a definitive agreement committing AHS to the transaction was concluded.

In the course of this process, the Board articulated specific concerns regarding the potential acquisition project and directed management to conduct additional analysis and evaluation to address those concerns. The record - discussions at the Board meetings in July and August - establishes a probing inquiry by the Board and robust discussion of the pros and cons of the transaction based upon the prior analysis conducted by management and management's response to the concerns raised by the Board. The record also establishes that the Board undertook these

discussions in the context of the potential financial issues that had evolved in mid-2013 as the result of the cash flow problems encountered with the launch of the Soarian<sup>1</sup> system.

"Due diligence" concerns the principle of a responsible governing board undertaking appropriate inquiry and evaluation to determine that a potential transaction is what it seems and that it will potentially result in anticipated outcomes. In this instance, circumstances that ultimately affected the outcome of the SLH acquisition - the failure to realize anticipated subsidies, the impact of the industry changes resulting from how the Affordable Care Act played out in Alameda County and California as a whole - were neither ignored nor unreasonably anticipated. On the contrary, the record demonstrates that the ultimate outcome - the realization of all of the subsidies and the impact of ACA - simply did not comport with the Board's initial positive evaluation of the development of these circumstances. There is no evidence to suggest that the Board's expectations were unrealistic to the point of recklessness or irresponsibility. In the first year, Sutter, the City, and the County came through with the promised subsidies. In the second year, the City and the County made good on their promises. The fact that the subsidies anticipated from Eden did not materialize because of a change in position by Eden, while unfortunate and unanticipated, was not an unreasonable risk against the need to obtain the benefit of the transaction at the time it was pursued. While hindsight analysis of the transaction may confirm that a different approach would have yielded a different result, it is not appropriate to conclude that such hindsight judgment establishes a failure by the Board based on the information that it had and considered at the time these decisions were made.

That said, the AHS Board has gained valuable insight and experience from its post-mortem consideration of its action in this matter. That analysis has resulted in more rigorous analysis of the current and future assessment of its financial metrics and analysis (see discussion of the Civil Grand Jury Recommendations below). Moreover, despite the initial difficulties encountered with the transaction, the circumstances have shifted to a positive outlook for the ultimate success of the transaction:

1. The facility has continued to operate as a valuable community asset providing a much-needed community resource for acute care and emergency services.
2. The SLH facility has improved its performance, capitalized on market opportunities and is on a trajectory to contribute in a positive fashion to the overall mission of AHS
3. A viable plan is in place to realize the value AHS services will bring once relocated to SLH. (A recent briefing on the status of SLH is attached as Attachment A.)

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<sup>1</sup> The Soarian Financials system is patient accounting software package that had been scheduled for deployment in 2013. AHS experienced significant difficulties implementing the new system and as a result, financial operations were negatively impacted, particularly in the areas of patient billing and charge capture.

***Finding 15-10: By the end of November 2013, the Alameda Health System Board of Trustees was fully aware of the major financial issues Alameda Health System faced and the fact that Alameda Health System would not meet its year-end financial obligation to the county, but failed to provide the contractually obligated written notice to the county.***

**AHS Response to Finding 15-10:**

AHS agrees with this finding in part and disagrees with this finding in part.

It appears that AHS did not provide a specific written notice to the Alameda County Auditor-Controller that it was in jeopardy of meeting the terms of its year-end financial obligation. However, the record is equally clear that AHS was transparent in the financial performance issues that would affect its ability to meet its obligation to the County and that it collaborated with the County staff, including the County Administrator and Auditor-Controller, to mitigate the consequences of its inability to meet the terms of the debt reduction. Ultimately, AHS worked with the Auditor-Controller to revise the terms of its debt obligation and to establish a new framework for debt reduction in light of the financial pressures that it was experiencing. Under the new reporting procedures that have been adopted by AHS and the County to guide collaboration on financial issues, it is unlikely that this situation will recur. As explained below, AHS will share and report on its financial condition to the Health Committee and HCSA on a regular basis, providing each agency ongoing insight into potential issue that require action before they reach a critical point.

***Finding 15-12: There was a need for at least \$50 million in cost reductions to provide the Alameda Health System with a sufficient operating margin to repay the county loan and pension obligations, while attempting to achieve its strategic vision. This was first identified in November 2013, but little action was taken for at least one year in response to this need.***

**AHS Response to Finding 15-12:**

AHS disagrees with this finding.

The Report suggests that AHS delayed until November 2014 before taking steps to address financial issues.<sup>2</sup> This conclusion ignores a key underlying issue for the cash flow problems that

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<sup>2</sup> As the Report notes, the problematic implementation of the Soarian system resulted in revenue shortfall of as much as \$50MM+ at the beginning of FY 2013-2014. This unanticipated event was correctable and the organization reasonably determined that the problems with the system could be fixed and the lost revenue

occurred early in the fiscal year – the Soarian implementation and overlooks several facts that are key to understanding and appreciating proactive interventions undertaken by the organization to control costs and to improve efficiencies before Soarian became an issue.

As early as 2012, AHS had undertaken a series of Financial Performance Initiatives (“FPI”) to address process and structural improvement opportunities across the organization. FPI #14 was the Building Excellence Through Timely Expense Reduction (BETTER I) initiative that was launched by the organization in September 2012 to address cost management, operational improvements, and personnel realignment. BETTER I was designed to identify and to capture a fiscal improvement of just under \$20M. BETTER I was targeted to meet its goal by December 2013. BETTER II, a continuation of savings and reductions started under BETTER I and a comprehensive assessment of the revenue cycle, was already in the planning stages before BETTER I was completed. As early as October 2013, AHS had initiated a further round of cost-saving activity under BETTER II that targeted an additional \$20MM in savings and revenue improvements.

BETTER II is nearing a successful conclusion. AHS has adopted across-the-organization cost reductions that have been fully implemented and will result in a projected EBIDA margin of 5% for FY 2015-2016.

At the Governance level, the AHS Board of Trustees communicated its concerns as early as February 2014 for added expertise in financial matters as the Board of Supervisors considered new Trustee appointments. The need for this expertise and support was reiterated to the Board of Supervisors in June of 2014.<sup>3</sup> Recommendations for appointment to the Board of Trustees will continue to focus on background and experience and health care management.

***Finding 15-13: The resulting delay in implementing the cost savings program of at least \$50 million means that Alameda Health System will need to add additional savings projects of similar magnitude in subsequent years to remain financially viable.***

**AHS Response to Finding 15-13:**

AHS disagrees with this finding.

As explained in the foregoing section, AHS had undertaken timely steps to align its costs with its revenue capabilities and has continued that approach since 2012. More importantly, in the course of implementing BETTER II, and with the full implementation of the Affordable Care

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recaptured. The problems with Soarian would not have been cause for sweeping permanent changes, given the anticipated temporary impact of the problems experienced.

<sup>3</sup> Copies of correspondence to the Board of Supervisors are attached as Attachment B.

Act, AHS leadership shifted focus to refining and strengthening its revenue cycle performance and, as a result, has steadily improved the organization's capability and capacity to capture revenue from the services that it provides.

***Finding 15-14: Had open, transparent communications and proper oversight by both the Alameda Health System Board of Trustees and the Alameda County Board of Supervisors been in place from July 2013, the cash flow issues would have been controlled earlier and cost restructuring targets achieved sooner, mitigating the impact of the current delay.***

**AHS Response to Finding 15-14:**

AHS disagrees with this finding.

The finances of AHS and the provision of safety net services at the core of its mission are not susceptible of the analysis reflected in this finding. Add to that, the inherent unpredictability and variability of the prior reimbursement-based revenue structure and the need to incorporate fee-for-services structures as the result of the implementation of the Affordable Care Act, determining the trajectory of AHS's financial issues is not as one-dimensional as portrayed in the Report.

The AHS Board of Trustees has communicated regularly with the Board of Supervisors regarding its operations and financial situation, having appeared regularly before the Board of Supervisors Health Committee. These communications have addressed the cash flow issues faced by the organization and the assistance from the County needed to mitigate the issue. The County and AHS are working on a revised operating agreement that incorporates a specific communication plan, on a going forward basis, for sharing financial information between the organizations.

## AHS Responses to Recommendations

***Recommendation 15-10: The Alameda Health System Board of Trustees must make available online, board audio or video recordings for all of its public meetings and ensure that agendas, minutes and board packets are posted in a timely manner.***

### AHS Response to Recommendation 15-10:

AHS currently posts its meeting agendas and materials provided to the Governing Body (board packets) in accordance with the requirements of the Brown Act and will continue to do so.

AHS has also instituted a practice of posting minutes from meetings of the Board and its committees within 30 days of the conclusion of a meeting and will continue to do so.

AHS records its open meetings (audio) and has approved a practice to provide for posting of the audio recording along with the written meeting minutes.

***Recommendation 15-11: The Alameda Health System must provide detailed, accurate, ongoing financial reports to the Alameda County Board of Supervisors health committee to ensure data is available to support effective oversight.***

### AHS Response to Recommendation 15-11:

AHS has implemented this recommendation through regular reports on its finances and operations to the Health Committee that have been in place for more than a decade. Effective June 2015, AHS adopted a revised report, formatted according to the requirements of the Alameda County Health Care Services Agency (“HCSA”) and patterned on the recommendations of Toyon Group. A sample of the report is attached as Attachment C. AHS has committed to providing this information to the Board of Supervisors, through the Health Committee, on a monthly basis.

AHS has also implemented an ongoing practice of reviewing and reporting on the same financial information in the regular meetings of the Finance Committee of the Board of Trustees. The financial reports from those meetings are made available to the public as explained under Recommendation 15-10.

***Recommendation 15-13: Alameda Health System must develop a set of metrics satisfactory to the Alameda County Health Care Services Agency, linking its financial performance and delivery of medical services to provide an additional layer of oversight and support.***

**AHS Response to Recommendation 15-13:**

AHS has implemented this recommendation. As noted in the response to Recommendation 15-11, AHS collaborated with HCSA and Toyon Group to refine a set of metrics that capture the key elements of the financial performance of AHS and has instituted a practice of reporting that information to HCSA on a monthly basis and to the Board of Supervisors Health Committee on a quarterly basis.

***Recommendation 15-14: Alameda Health System must provide the Measure A Oversight Committee with performance indicators consistent with the requirements of the measure.***

**AHS Response to Recommendation 15-14:**

AHS has implemented this recommendation to the extent that it has met regularly with the Measure A Oversight Committee and provided an operational report addressing the issues identified by the Committee.

AHS will continue to implement this recommendation by incorporating a report on the metrics identified by HCSA as part of its report to the Oversight Committee and direct coordination with the Oversight Committee on the form and content of AHS's annual and special reports to the Committee.

# **ATTACHMENT A**

Pillar	Metric	Target	Alameda Health System	Highland	John George	Fairmont	San Leandro	Alameda	Ambulatory
Access	Primary Care 3 <sup>rd</sup> Next Available	10 days							
	Specialty Care 3 <sup>rd</sup> Next Available	14 days							
	Operating Margin Ratio	3%							
	EBIDA Margin Ratio	5%							
	Net Days in Accounts Receivable	75							
	Cash Collections as % of Net Patient Revenue	100%							
	% Billed Accounts Receivable (AR) >90 Days	< 30%							
	Labor Cost as % of Total Net Revenue	< 65%							
	FTE's per Adjusted Occupied Bed	< 5.0							
	Cost per Adjusted Patient Day	< \$3,200							
Sustainability	% Visits by Payer	No Target							
	Medicare		28.4%	20.0%	34.3%	28.4%	45.8%	44.8%	10.5%
	Medi-Cal		47.9%	59.5%	53.0%	47.9%	7.6%	32.1%	70.0%
	Other Gov		9.2%	6.3%	1.1%	9.2%	25.9%	1.2%	16.1%
	Insurance		10.5%	9.7%	6.2%	10.5%	18.6%	16.2%	2.0%
	Self Pay		4.0%	4.5%	5.4%	4.0%	2.1%	5.7%	1.4%
	Total		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
	Assigned MediCal Managed Care Enrollees	35,000							
	Billable Clinic Visits	85,000							
	Accounts Payable	Report							
Total Professional Services Revenue	TBD								
Total Professional Services Billed	TBD								

Pillar	Metric	Target	Alameda Health System	Highland	John George Fairmont	San Leandro	Alameda	Ambulatory
Quality	Incidence of Preventable Harm	0.85 incidents per 1000 patient days						
	Inpatient Overall Satisfaction	76% Top Box						
Service	Outpatient Overall Satisfaction	92.5% Top Box						
	Employee Engagement	4						
Work Force	Physician Engagement	4						

# **ATTACHMENT B**



1411 East 31st Street  
Oakland, CA 94602

February 24, 2014

Supervisor Keith Carson, President  
Board of Supervisors of Alameda County  
County of Alameda Administrative Building  
1221 Oak Street, Suite 536  
Oakland, CA 94612

Re: Trustee Appointments

Dear Supervisor Carson:

I enjoyed seeing you and appreciated your attendance at the Annual Meeting last week. Between Wright's comments and the video presentation, I believe the story was told in a compelling way.

This letter is to follow up on our recent discussions regarding trustee appointments. As you may recall, three of our most experienced trustees, and those with the deepest experience in finance and planning, will be leaving the board in the first half of this year. For this reason, we believe it is in everyone's best interest to fill the seats with new trustees who bring both geographic diversity and the specific skill sets we will be losing.

In this regard, we have previously requested the board to appoint James Lugannani, who you met briefly at the meeting. We believe Jim is an unusually good candidate not only because he is a resident of Dublin, a part of the County not previously represented on the board, but also because he brings deep expertise in finance and planning. In addition, he has extensive experience and interest with mental health issues, something no one else on the board presently has.

Our bylaws also call for the medical staff to recommend one of its members as a trustee. For the past three years Barry Zorthian, M.D., has filled this role, but her term expired in January. The medical staff has nominated her to again serve as its board representative. Dr. Zorthian has been an excellent contributor, particularly in the area of quality of care, and by this letter I am requesting that the board of supervisors reappoint Dr. Zorthian for another three-year term.

*AHS Trustee Appointments*  
*Supervisor Keith Carson*  
*February 24, 2014*  
*Page 2*

Thank you very much for your attention to in consideration of this matter. Please feel free to contact me with any questions or thoughts you have regarding these candidates or this process.

Warmest and best wishes,

Sincerely,



Kirk E. Miller  
President, Board of Trustees

KEM/mdc

c: Wilma Chan, Board of Supervisors of Alameda County  
Wright Lassiter, III, CEO, Alameda Health System



March 29, 2013

**HAND DELIVERED**

Supervisor Keith Carson, President  
Board of Supervisors of Alameda County  
County of Alameda Administrative Building  
1221 Oak Street, Suite 536  
Oakland, CA 94612

RE: **Trustee Appointments**

Dear Supervisor Carson:

I have been directed by the Board of Trustees of Alameda Health System to express the Board's deep concern about the recent action by the Alameda County Board of Supervisors. Wednesday, we were advised that the Board of Supervisors appointed Anthony B. Varni to the AHS Board. In light of our recent and ongoing conversations about such appointments, we were surprised and disappointed by the unilateral action. Based on our last conversation, the Trustees understood at a minimum that the Supervisors would consult with the Board on appointments and consider the skill sets we need when vacancies occur. This has been the practice for the past three years. There was no such consultation with respect to this appointment.

We also understand that Mr. Varni has been appointed for a four-year term. The AHS Bylaws only provide for three year terms. There is no provision for a four year appointment.

The Trustees have been looking for opportunities to constructively engage with the Supervisors for many months. We have forwarded the names of two Trustees for reappointment, Valerie D. Lewis, Vice President and myself as President, but the Supervisors have taken no action on these appointments. We have also asked the Board of Supervisors to approve important Bylaw changes that will permit us to better discharge our obligations to the Hospital Authority, but we have not been able to engage the Supervisors in even a dialogue about them. These are simple but important changes and have been stalled for years. While these delays continue, the governance function of our Board is being compromised.

The challenge of healthcare reform is substantial and we are still desirous and hopeful of finding a format for constructive engagement with the Supervisors. We believe doing so is in the best interest of both Alameda County and Alameda Health System, and seek your guidance about how to make that possible.

Very truly yours,



Kirk E. Miller, President  
Board of Trustees  
Alameda Health System

KEM/blm

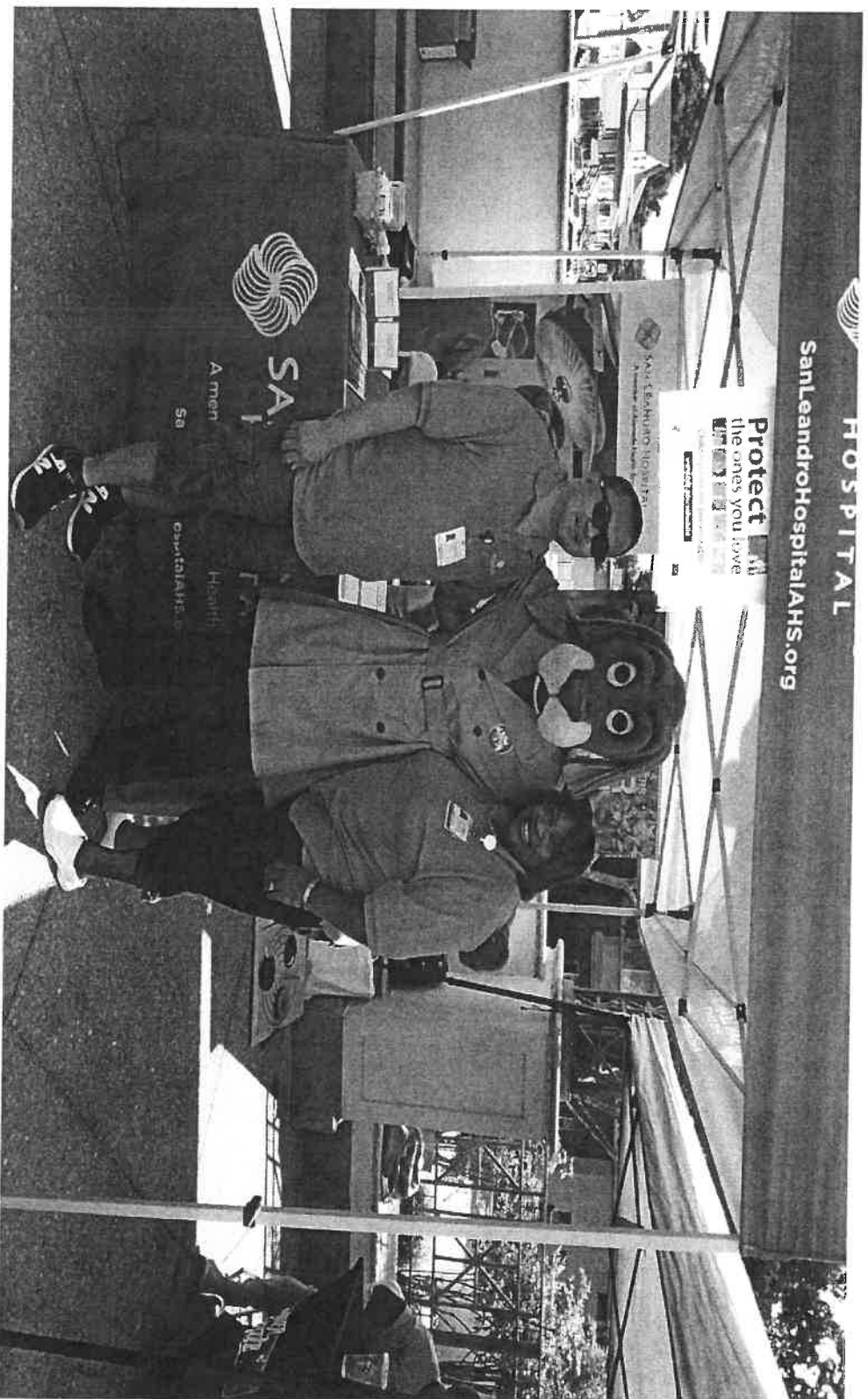
c: Susan Muranishi, County Administrator  
Wright Lassiter, III, CEO, Alameda Health System

# **ATTACHMENT C**

# San Leandro Hospital

James Jackson, CAO  
San Leandro Hospital

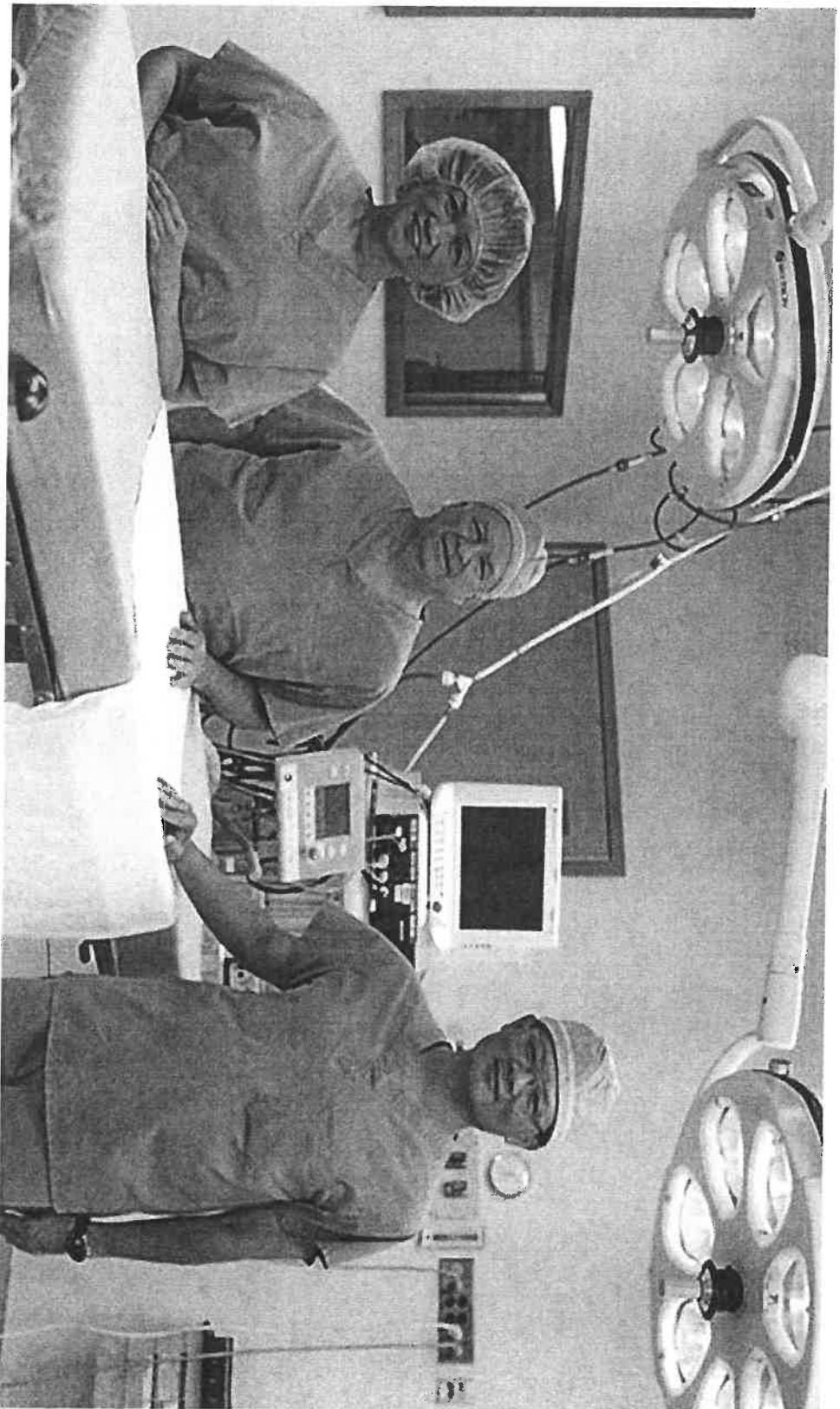
# Community Engagement



**SAN LEANDRO  
HOSPITAL**

A member of Alameda Health System

# Physician Relationships



**SAN LEANDRO  
HOSPITAL**

A member of Alameda Health System

# Providing Quality Care



Hatch is back at home now ... after a recent stay in San Leandro Hospital where Delane said he got excellent care. — San Leandro Times



**SAN LEANDRO  
HOSPITAL**

A member of Alameda Health System

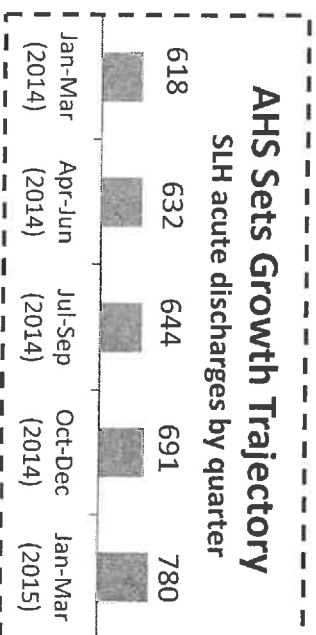
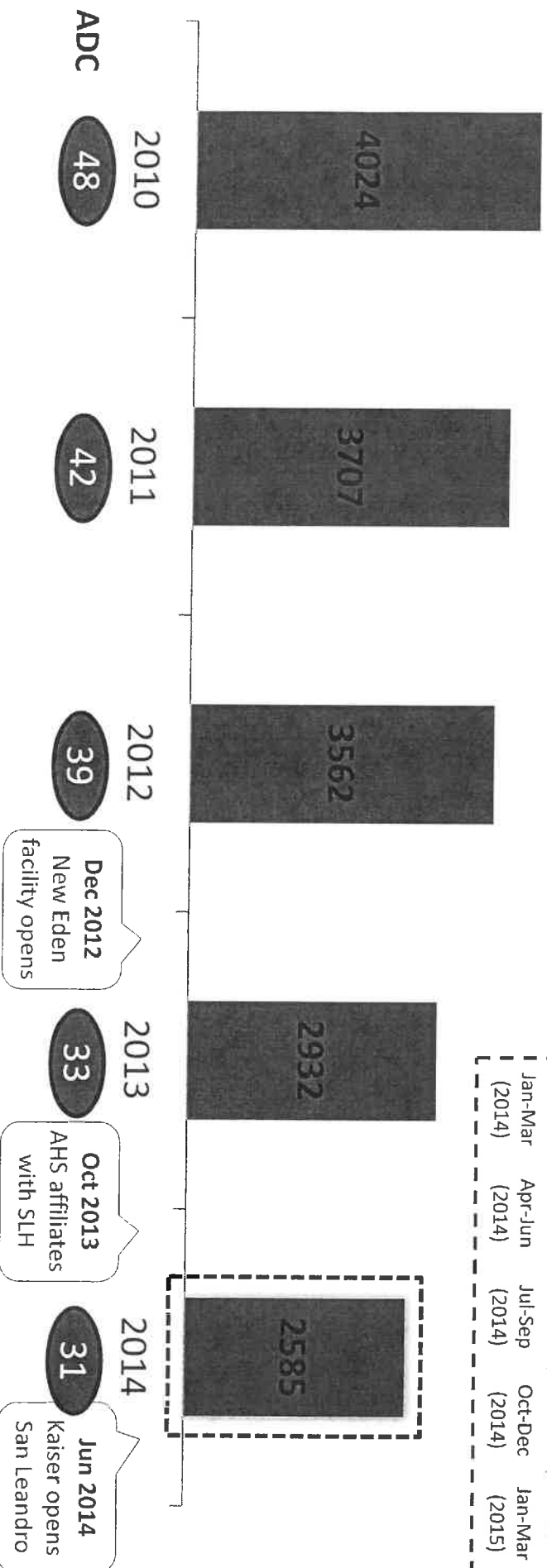
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UPDATED

# Current Performance: Historical Trend

AHS inherited extended declines in utilization (services were transitioned out over time)

## SLH Inpatient Discharges (2010-14)



SOURCE: OSHPD hospital utilization data (2010-2013);

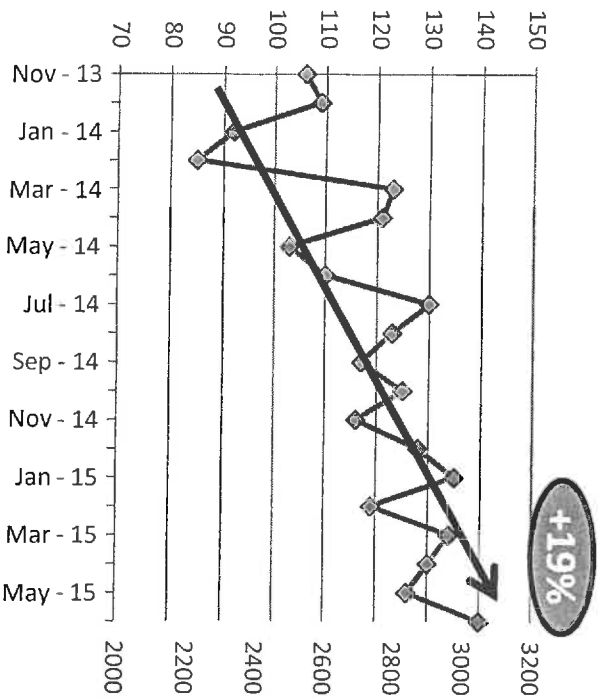
2014 and 2015 East Bay Census Reports - Hospital Council of Northern and Central California.

UPDATED

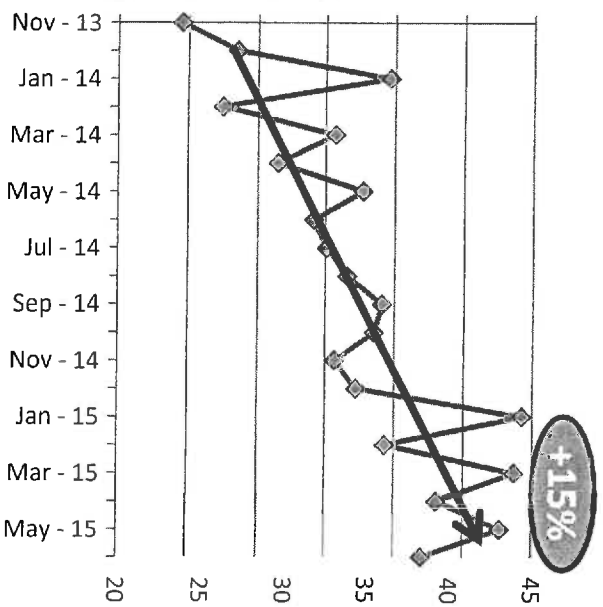
# Current Performance: Volume Growth

SLH turnaround achieved: 4<sup>th</sup> Qtr trend continues significant year-on-year growth

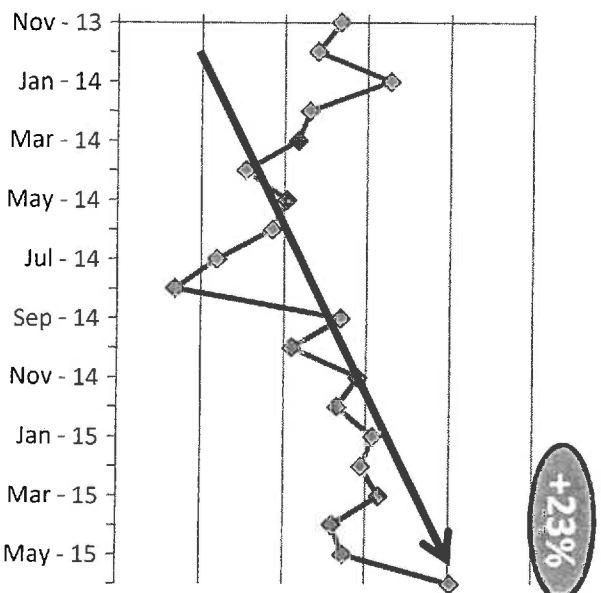
### Monthly Surgical Cases



### Emergency Dept. Visits



### Average Daily Census



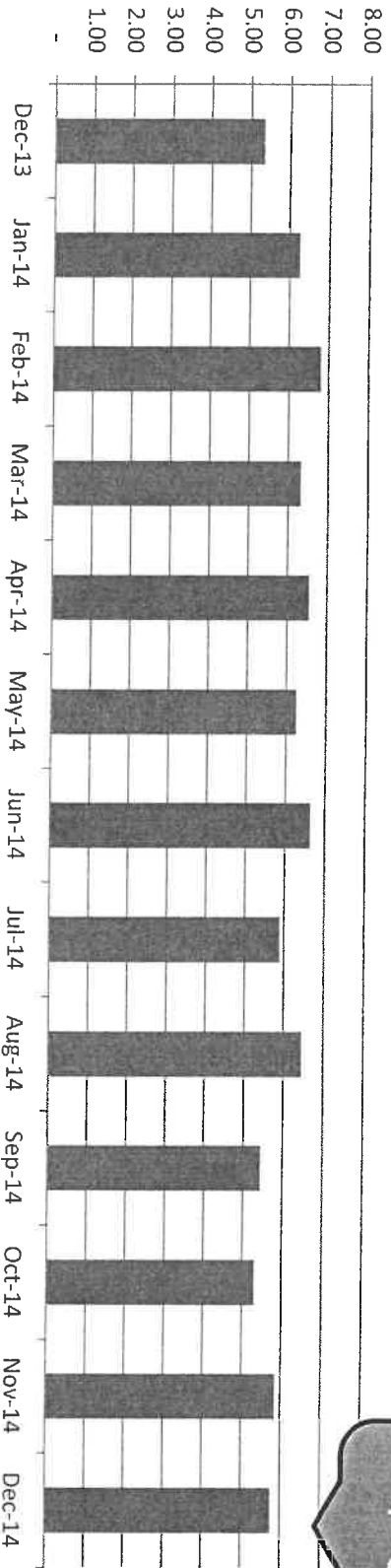
%

Indicates percent change in volume during 4<sup>th</sup> Qtr FY15 vs. FY14

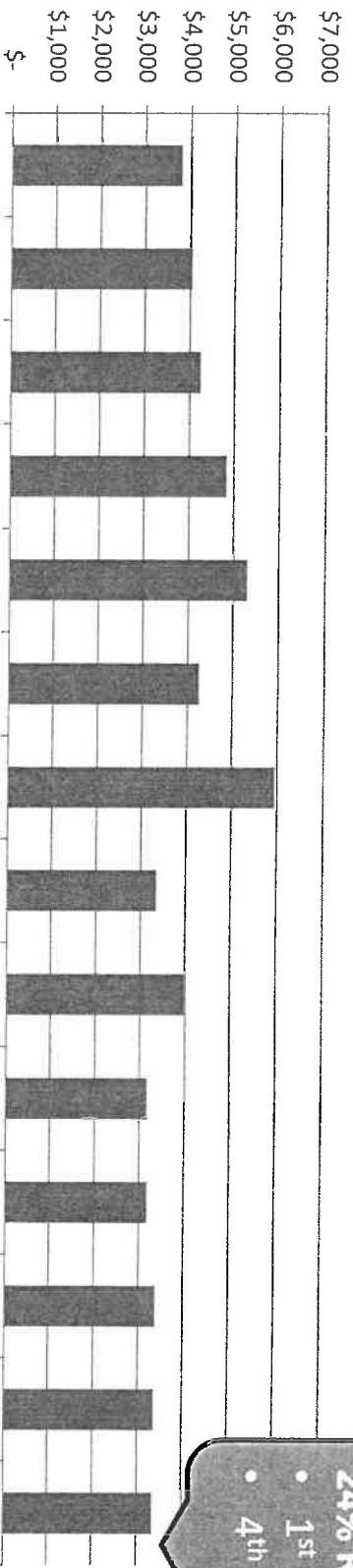
# Current Performance: Cost Improvement

## Significant cost efficiencies achieved

### Paid FTE's per adjusted occupied bed



### Expenses per adjusted patient day



Source: SLH Financial Statements, Jan-15 final reports; OSHPD Hospital financial data