

2023-2024 KERN COUNTY GRAND JURY



North Kern South Tulare Hospital District
Stop the Bleeding; Start the Healing

Release Date
April 2, 2024

NORTH KERN SOUTH TULARE HOSPITAL DISTRICT

Stop the Bleeding; Start the Healing

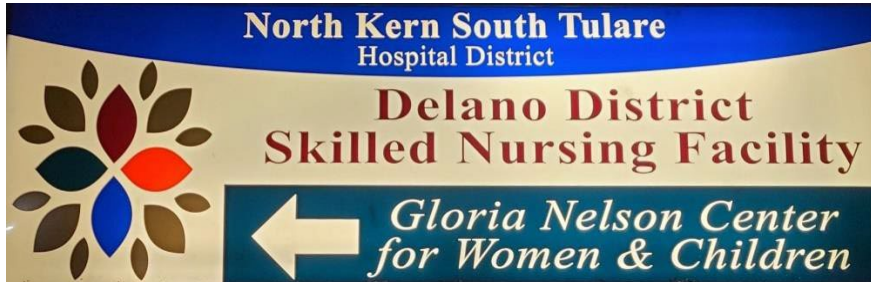


Photo By Grand Jury

SUMMARY:

Is patient care and facility maintenance being sacrificed because funds are being spent elsewhere by a complacent governing board? In the 2020-2021 Fiscal Year, the North Kern South Tulare Hospital District (District) found itself in a legal battle over an employee complaint of harassment and a \$250,000 settlement. Following a major leadership change of the Board of Directors (Board) in the fall of 2022, the District seems to be overspending for legal fees, which are as much as three times more per month than previous years. Hourly rates for legal services have increased by 184%. In a nine-month period, legal fees totaled more than \$276,000. One may ask, can the District offer the best healthcare possible with so many unrelated expenses?

Collaborations between new board members appeared to have taken place, and decisions were reached outside of a public meeting. Some of these decisions involved strategic planning, with the intent to remove an appointed member. Is this a violation of The Ralph M. Brown Act (The Brown Act)?

A power struggle seems to be in play within leadership of the Board. For example, after three members took control of the five-member Board, a Board Member appointed in September 2022, was declared illegally seated and then removed in December 2022. A newly hired general legal counsel advised the Board to declare the appointment illegal and the position vacant. How did legal counsel come to this conclusion? The removed Board Member was represented by their own legal counsel and was present at the board meeting. The Member's legal counsel declared the removal was illegal by citing some of the same codes and laws as the District's legal counsel cited. However, the Member's legal counsel was unable to persuade the Board or the District's own legal counsel, and the Board member was removed with little deliberation.

A Glossary is provided to help understand terms used in this report.

PURPOSE OF INQUIRY:

After an inquiry into the operations and management of the North Kern South Tulare Hospital District, the 2023-2024 Kern County Grand Jury (Grand Jury) began investigating the activities of the Board of Directors and operations of the District. Pursuant to California Penal Code §933.5, the Grand Jury has the authority to investigate and report on the operations and management of special districts within Kern County.

METHODOLOGY:

The Grand Jury researched topics about California's hospital districts, The Brown Act, and other related topics via the internet. Grand Jury members received training on the Fair Political Practices Commission (FPPC) Ethics Training and The Brown Act, which is required for local and State officials. Interviews were conducted with District staff and with past and present Board Members. Multiple documents, minutes of regular and special meetings of the Board, and emails were also reviewed. The Grand Jury watched videos, listened to audio recordings of previous board meetings, and attended board meetings in person. The Grand Jury visited and inspected the District's facilities and met with the Chief Executive Officer (CEO) and the Executive Director.

The Grand Jury also worked closely with the Kern County Counsel and Kern County District Attorney, who are our legal advisors, for clarifications and directions for the investigation and the writing of this report. All material evidence and pronouncements used in this report were gathered by the Grand Jury. This is the first investigation and report on the District completed by the Grand Jury.

Some of the documents and sources reviewed by the Grand Jury include:

- California Health and Safety Codes
- California Government Codes
- California Department of Health Care Access and Information
- California Civil Codes
- California Assembly Bill 2019 (Aguiar-Curry)
- The Ralph M. Brown Act
- California Fair Political Practices Commission (FPPC) website
- Political Reform Act
- North Kern South Tulare Hospital District Bylaws and website
- *Ursino v. Superior Court*, California Superior Court Case
- *People v. Hecht*, California Superior Court Case
- Opinion Bob Bonta, Attorney General, No. 22-803
- Opinion John K. Van de Kamp, Attorney General, No. 83-311
- Cal. App. 3rd 843, *Martin v Ballinger*, California Superior Court Case
- California Elections Code
- Kern County Clerk, Elections Department
- California Special Districts Association (CSDA) website
- Association of California Healthcare Districts (ACHD) website
- Kern Local Agency Formation Commission (LAFCo)

- North Kern South Tulare Hospital District, Basic Financial Statements and Independent Auditors' Reports June 30, 2021 and 2020

DISCUSSION OF FACTS:

History:

The District was formed in December 1966, and operates under the regulations of the California Health and Safety Code §32000 to §32492 as a government non-profit public entity. Income is derived from property taxes from Kern and Tulare Counties, grants, federal and state reimbursements, insurance, and out-of-pocket pay for healthcare services. The District is to provide healthcare services to the communities of Delano, McFarland, Earlimart, Richgrove, and other areas of Kern and Tulare Counties. (See Appendix A)

The District owns and operates two facilities within the City of Delano; the Delano District Skilled Nursing Facility (DDSNF) and the Gloria Nelson Center Family Practice (GNC). (See Appendix E) These facilities allow the District to offer a wide spectrum of healthcare services specializing in senior, obstetric, pediatric, and adult medical care.

In 1991, the District opened the DDSNF, which was a 99-bed skilled nursing facility. As the population grew, the demand increased for servicing the aging population. The DDSNF expanded with another 42 beds and now is a 141-bed facility providing 24-hour nursing care accommodating either short-term or long-term stays for the residents.

In 2013, the District opened the Gloria Nelson Center Family Practice specializing in pediatrics and obstetrics and gynecology (OB/GYN) services. The goal of this facility is to ensure that the citizens within the District have options to receive quality healthcare.

Organization:

The current Bylaws (undated with revisions) are intended for the regulation of authority for the District and organization as a local healthcare district under the California Local Health Care District Law. In accordance with the Bylaws, the jurisdiction, powers, and purpose of the District lies with its five-member elected Board. The Board of Directors shall have and exercise all the powers and responsibilities for health care within the District's boundaries.

Article V of the Bylaws outline the duties for each officer... *The officers of Board shall be a Board President, a Vice President, a Secretary, and a Treasurer... The officers shall be chosen by the Board at the regular meeting of each December, and each officer shall hold office for one-year effective January 1 of the new year, and until a successor shall be elected and qualified, or until the officer is otherwise disqualified to serve... The President shall have served a minimum of 18 months on the Board of Directors before being elected as Board President... The Board President or members of the Board acting as such as above provided:*

- a) *Shall preside over all meetings of the Board.*
- b) *Shall sign as Board President, on behalf of the Board of the District, all instruments in writing which he or she has been specifically authorized by the Board to sign.*
- c) *Shail [sic] have, subject to the advice and control of the Board, general responsibility for management of the affairs of the district during his or her term of office.*

Happenings within the District:

For the District, a quorum is met when three or more Board Members are present. At the September 12, 2022 District Board Meeting, a quorum held interviews and appointed an individual to fill a vacant seat with term ending November 2024. With a vote of 2:1, a new Board Member was appointed and took the oath of office.

On December 6, 2022, three candidates who ran unopposed were automatically appointed by the Kern County Board of Supervisors. The Board Members elected their officers at the regularly scheduled meeting on December 12, 2022. At this meeting, the Board President announced there would be a Special Meeting taking place on December 14, 2022. The agenda for this meeting was posted on December 13, 2022. The previous legal counsel resigned on December 13, 2022, after reviewing the agenda for the Special Meeting, which implied they were going to be dismissed. A new retainer agreement was also signed on December 13, 2022, by the new Board President, via email without an RFP. The new law firm commenced work on December 14, 2022, after Board approval.

The new legal counsel is the same law firm that represented the Board President in a personal lawsuit months earlier. A portion of the retainer agreement with the new legal counsel firm dated December 14, 2022, states ... *the firm will provide advice to [Named Board Member] and will handle any other matter and any other advice as requested by the District.*

The chart below (See Figure 1) illustrates the total fees charged by the legal counsel for the past 21 months. The legal fee amounts were taken from the Income Statements in the approved Board meeting minutes.

Figure 1



Chart developed by the Grand Jury taken from Monthly Income Statements

The rates for legal services with the previous legal counsel were:

- \$190 per hour for attorney \$90 per hour for a clerk or paralegal

The newly employed legal counsel fees are:

- \$350 per hour for a partner attorney
- \$285 per hour for an associate attorney
- \$200 per hour for a clerk or paralegal

Examples of these fees, extracted from the meeting minutes, are indicated in Figure 2 below. The numbers for December 2022 through March 2023 and September 2023 were taken from the check registers. The fees for April through August and October 2023 were taken from the income statements, as we could not find this information on the check registers. We could also not find any fees for April, May, or June of 2023 accounted for in the check registers presented in the meeting minutes. In addition, the fees on the check registers do not always match the fees on the income statements for any given month.

Figure 2

Legal Fees New Law Firm	
December 2022	\$ 3,946
January 2023	\$16,905
February 2023	\$18,340
March 2023	\$19,985
April 2023	\$18,340
May 2023	\$19,985
July 2023	\$10,530
August 2023	\$99,150
September 2023	\$38,535
October 2023	\$28,625
November 2023	\$48,906
Total	\$323,247

Table developed by the Grand Jury from Board Minutes

At the August 31, 2023 District Board Meeting, the Board hired a new Chief Executive Officer to manage the District and medical facilities with a 4:1 vote. The District’s Bylaws outline the authority and responsibilities of the CEO.

State Statutes:

Statutes are laws enacted by a legislative body. Statutes may also authorize administrative regulations and can overturn or modify court decisions. Both the US Congress and California State Legislature have the power to pass statutes and laws. California law consists of the State Constitution, statutes, and 29 codes covering various areas. These are the fundamental laws of the State and authorize local governmental entities to function and perform their duties. The Grand Jury has selected a few codes and statutes that pertain to the District’s operation, which are attached as Appendix C.

District Board Meetings:

A. As per the Bylaws:

ARTICLE IV, MEETING OF DIRECTORS,

*Section 1. **Regular Meeting:** Regular meetings of the Board shall be scheduled for the forth [sic] Thursday of each month. The Board may, from time to time, change the day of the month of such regular meetings as directed...*

*Section 2. **Special Meetings:** A special meeting of the Board may be called by the Board President or at the written request of three (3) Directors... This notice shall state the time and place of the special meeting and the business for which the special meeting*

has been called, and no business other than that stated in the notice shall be transacted at such special meeting.

*Section 3. **Quorum:** A majority of the members of the Board shall constitute a quorum for the transaction of business at any convened meeting of the Board.*

B. The Board President has signed eight Engagement Letters (contract agreements) with the same company, (Accounting and Business Consulting Firm), to provide a variety of ongoing services:

1. The first Engagement Letter dated April 27, 2023, provides initial discovery and consulting services. The fees estimated for 100 hours totaling \$32,500 are to review existing accounting procedures and software.
2. In less than three months, another Engagement Letter dated July 17, 2023, was signed to provide oversight of the Patient Trust Accounts. The scope of services will be jointly and continuously monitored by the Engagement Manager and the District. The requirements or specifications that have not been defined in this Engagement Letter will be evaluated by the Engagement Manager and the District to determine the impact to the overall service plan, including the Patient Trust Account reconciliation.

Fees for these services are generally based on the amount of time required to complete the services at the standard hourly billing rates. The estimated expense is not to exceed 120 hours or \$25,000 per month for three months for the Patient Trust Account, and a maximum of 100 hours or \$35,000 per month for three months for accounting reconciliation services. This Engagement Letter totals \$60,000 per month for three months.

3. The next day, a third letter dated July 19, 2023, provides additional services to include assisting in the preparation of Covid-19 Public Health Emergency reporting. The consulting firm will provide accounting and financial reporting expertise for the above report. Fees for these services are generally based on the time required at the standard billing rate (\$350/hour). *In no event will they charge a fee that they do not consider reasonable under the circumstances.*
4. On July 21, 2023, a fourth Engagement Letter was signed. The professional service fee for this engagement is \$20,000. The purpose of this letter is to provide virtual meetings of basic accounting procedures and to make recommendations for improvement.
5. The fifth Engagement Letter dated July 31, 2023, is to:
 - Prepare the Medicare cost reports
 - Prepare the Medicare home office cost report
 - Prepare the California Medicaid cost report(s)
 - Prepare the California Department of Health Care Services (Medi-Cal) PPS Reconciliation Request
 - Prepare the Financial Transaction Report

- Apply accounting and financial reporting expertise to assist the District in the presentation of the reports above

The fees for this engagement were estimated at \$178,000. This contract was pre-approved by the Board in closed session during the July 12, 2023 District Meeting.

6. The following day, Engagement Letter number six, dated August 1, 2023, provides professional services, advice, and technology consultation for Cybersecurity Health Check. The professional services fee for this Engagement Letter is \$28,000 and will communicate and advise the District of options and additional work.
7. A Change Order to the July 18, 2023, Engagement Letter adds management consulting services starting August 10, 2023, to the Board of Directors and administrative staff. Fees will be progressively billed for time and materials. Time spent will be reported in weekly progress reports with standard hourly billing rates, which are: Partner/Principal \$775; Senior Manager \$625; Manager \$575; Senior Consultant \$425. The estimated cost for this Change Order is \$5,000 per week.
8. At the Board Meeting on December 20, 2023, the Board approved another Engagement Letter dated November 27, 2023, to do the following:
 - Collect data and information for the market demand analysis
 - Collect and analyze demographics for the period 2023 to 2028
 - Collect readily available competitive market data
 - Review planning and zoning data for defined communities for senior living projects
 - Conduct market unit/bed demand assessments for the District

The fees for this engagement will be \$22,500 plus expenses.

FINDINGS:

- F1. The District has a website with public information about the operations and services that the District provides. Unfortunately, it is not well maintained with up-to-date information and does not meet all the requirements of Cal Health and Safety Code §32139. Additionally, contact information is not available for each Board Member. The website fails to provide transparency to the public. Furthermore, the Grand Jury was denied access to contact information of Board Members, causing a delay in this investigation.
- F2. The Board delegates the routine operations of the District to the CEO. As per the District's Bylaws, Board Members shall refrain from interfering in the day-to-day operations; however, they are responsible for implementing policies, retaining legal counsel, and making financial decisions in the best interest of the District. Members of the Board may approve contracts after discussion at public board meetings. Members of the Board or the Board President have no authority to sign contracts and agreements without approval of the Board, at an open board meeting, with public input. However, the Board President, without Board approval and public input, signed many contracts and agreements (Engagement Letters).

- F3. The Bylaws do not indicate the date of ratification nor the date of last revision. The Bylaws need to be reviewed and updated to reflect the current operation of the District, including the duties assigned to the officers and to the District administration with the use of an organizational chart. Discussions of updating the Bylaws have taken place at board meetings, with no action. As per Article XV, *The Board of Directors will review these Bylaws at least biennially and alter them to conform to changes in the law and the standards of the Joint Commission on Accreditation of Healthcare Organization*. Not having an organizational chart and defined roles and responsibilities for the administrative staff indicates a lack of public transparency and fails to provide structure for daily operations.
- F4. Three newly appointed Board Members apparently communicated via phone and text messages in a wheel hub meeting and/or a serial meeting (see glossary) prior to the first day of service at the December 12, 2022 District Board Meeting. The minutes of that meeting do not reflect a swearing of the oath of office for the three new Board Members. Each new member took the oath of office with a notary public at different times, days earlier or days and months later. This would be a violation of the California Constitution, Government Code, and The Brown Act.
- F5. Reportedly, the Board President continued to text and/or call other Board Members prior to District Board Meetings to get the members' positions and/or discussion of District business. Such conversations would be a Brown Act violation.
- F6. Records of the Board Members completing the required FPPC and The Brown Act trainings were not made available to the Grand Jury or to the public, showing a lack of transparency and dedication to the duties of a Board Member. (See Appendix D)
- F7. As per the retainer agreement, dated December 14, 2022, with the newly hired legal counsel, *Commencing December 14, 2022, the firm will provide advice to [Named Board Member] and will handle any other matter and provide any advice as requested by the District*. This appears to give personal legal counsel to the Named Board Member with the invoices paid by the Districts' public funds. This gives the impression that the new legal counsel firm is engaged, first and foremost, to represent the Named Board Member, and then the District.
- F8. In accordance with the District's Bylaws, regular meetings shall be held on the fourth Thursday of each month. However, the District's website indicates that for calendar year 2021, the Board held 28 meetings, of which 16 were special meetings. The website has also recorded 17 meetings (12 regular and 5 special) for the 2022 calendar year. In 2023, the District held at least 19 meetings (11 regular and 8 special). The question is, why so many back-to-back special meetings? Apparently, there was a lack of planning for the monthly agendas that led to using special meetings to handle the District's business. Public transparency may be in question as to the justification for having so many meetings. Is the public being properly informed of the District's business before action is taken?

- F9. The District's meeting agenda and minutes for the meeting of July 12, 2023, indicated that the Board adjourned into closed session. Nevertheless, the report on actions taken from the closed session, as required by The Brown Act, to engage with (Accounting and Business Consulting Firm) for up to \$178,000, was not on the agenda. There was no public information, RFP, or retainer letter provided for inspection prior to the consideration of this item. This item does not meet the requirements for a closed session according to The Brown Act. Such actions of the Board may have also violated Health and Safety Code, Division 23, Chapter 2, Article 2, Section 32138, and lacks public transparency.
- F10. The Board President signed several contracts with vendors and expanded the scope of existing contracts without board approval or public comments. The public has the right to know before action is taken with vendor contracts that are over \$25,000 and to review the purpose of such contracts.
- F11. As per the District's Bylaws, *ARTICLE 1, SCOPE AND PURPOSE, Section 3. Purposes: (c.) To conduct educational and research activities essential to the attainment of its purpose.* This District has done a great job of meeting this purpose by offering Certified Nursing Assistant Classes open to the public to help fill staffing shortages. (See Appendix B)
- F12. The use of seven credit cards by employees leads to excessive spending; the monthly balance as of September 28, 2023, was \$259,462.65. The use of paying routine expenses by credit card does not have the needed checks and balances with justifications for each expense. Not knowing the purpose of each charge leaves the public questioning how their funds are being used.
- F13. The Grand Jury attended District Regular Board Meetings in person and via Zoom, with the following observations: meetings started on time with a quorum of the Board, staff members, and the public present. Legal counsel was live via Zoom to offer advice during the meetings and tracking the motions. Complete board meeting agendas and packets were available for the public. The meetings were conducted in an orderly manner with some discussions from Board Members and staff.

The Grand Jury did not observe a sign showing that there was a meeting taking place on the front door of the building or outside of the meeting room door, as required. Two Board Members and staff members had their backs to the public, making it difficult to hear when they were speaking. The large TV monitor was not fully visible to the entire public, giving the impression that it is not important to attend meetings and participate in the District's business.

The CEO used the meetings to explain some of the plans he thinks would benefit the District and to meet the healthcare needs of the community. There was also discussion about hiring an additional law firm, developing an organizational chart, and creating guidelines for the CEO duties.

- F14. During a fact-finding visit to the District and its facilities, the Grand Jury noticed an empty lot belonging to the District that is not being utilized nor properly maintained. (See Appendix E). This is ideal for future growth.
- F15. The Grand Jury observed and verified through interviews and videos of board meetings that the current HVAC system for the DDSNF needs repair and/or replacement. The use of portable fans and coolers creates a health and safety concern for the patients, staff, and visitors.
- F16. The Grand Jury could not verify through Board meeting minutes and/or videos of meetings, or from the Kern County Elections Office, that all current Board Members took and subscribed to the Oath or Affirmation of Office before performing the duties of a Board Member. This lack of documentation questions the authority of the Board to act and violates California Government Code.
- F17. The District has been spending in excess of \$340,000 with (Accounting and Business Consulting Firm) without defined expectations, outcomes, and end dates. This has the potential to lead to out-of-control spending and being locked into future expenses.
- F18. The Board did not follow District Bylaws by holding the yearly officer election at the December 2023 Board Meeting. This gives the impression that officers are elected for the duration of their tenure.
- F19. The funds being spent on legal fees are not being properly monitored.

COMMENTS:

The Grand Jury appreciates the input provided by all witnesses and the cooperation of the administrative staff in preparing this report. The District is serving the community and fulfilling the health needs of its residents.

The amount of public funds being spent on professional fees and services is out of control for a district this size. Approximately one sixteenth (1/16) of the total budget is for such fees. In addition, the contracts for the out-sourcing for account reconciliation and audit are not clear-cut. The amount of public funds being spent for this purpose is astronomical. Having memberships with both the Association of California Healthcare Districts (ACHD) and the California Special Districts Association (CSDA) will be helpful in updating District Bylaws and Board Policies, and for the completion of the FPPC requirements.

The lack of transparency and unwillingness to provide District public documents to the Grand Jury, based on the advice of legal counsel, made completing this report more difficult than necessary. The Grand Jury used the subpoena process to request the District Bylaws and District Policies and Operating Procedures. The District produced two sets of bylaws, and the Grand Jury made the assumption that the longer version with 15 articles and duties for the CEO is the most recent. The Grand Jury received the Policies and Operating Procedures via email. These policies and procedures appear to be a generic, incomplete version taken from a consultant website. They

were last updated as far back as 2004 and contain no signatures of acknowledgement of receipt from any District employee. These policies and procedures were not generated specifically for the North Kern South Tulare Hospital District. Not being provided with adopted District Board policies and procedures made it difficult to assess the effectiveness of the Board in meeting their goals. Board Members have no set duties and do not fully understand their roles and responsibilities.

It is time for the Board of Directors to know that the people have entrusted them with overseeing the District's best interests. Instead of blaming previous Board and/or administrative staff for lapses, they shall act as the District's present governing body, guiding the District's long-term goals and policies, and assisting with strategic planning and decision-making. The day-to-day operations of the DDSNF and GNC should be left with the management and administrative staff. More focus should be on patient safety, quality of care, treatment, and services provided District wide. Stop the BLAME GAME! The Board Members must curtail the excessive spending and provide the oversight functions needed to direct the District into the future!

RECOMMENDATIONS:

The Grand Jury recommends that the North Kern South Tulare Hospital District should:

- R1. Establish protocols regarding the use of General Counsel and any outside counsel. This is to be completed before July 1, 2024. (Finding 19)
- R2. By June 1, 2024, the District should re-seat the Board Member who was removed in December 2022. (Findings 4 and 16)
- R3. Seek a decision from the California Superior Court or an opinion of the California State Attorney General's Office, not the opinion of a hired law firm, on the legal grounds to seat and/or remove Board Members. The process should be initiated by June 1, 2024. (Findings 4 and 16)
- R4. Use the RFP with a "competitive means" process to award contracts for goods and services over \$25,000, and seek public input before awarding contracts. This process needs to be included in the District's procedures before June 1, 2024. (Findings 9 and 10)
- R5. Publish by June 1, 2024, the Code of Ethics Policy for Board Members that had been discussed at previous board meetings. (Findings 4, 5, 6 and 7)
- R6. Re-arrange the board meeting room so that all Board Members can address the public directly (facing the public) and be heard by the public. The use of a public address system would be beneficial. Consider re-locating the TV monitor for better visibility for all that attend the meeting. This would be more welcoming for the public to attend. This should be in place by June 1, 2024. (Finding 13)

- R7. By June 1, 2024, place all future contracts over \$25,000 on the Board's agenda to be discussed and approved by the Board before being signed and implemented by the Board President and/or CEO. This allows the public to have input in actions of the Board. (Findings 2, 9, 10 and 17)
- R8. Curtail and re-evaluate the excessive use of credit cards. The lack of accountability of seven cards and the risk of misuse may outweigh the benefit of the card usage. The use of purchase orders has the advantage of tracking the monthly spending and allows for prior approval before spending. This should be incorporated into next year's budget and spending procedures by July 1, 2024. (Finding 12)
- R9. Develop and publish on the District's website, and in binder form for each Board Member to use as a reference, a complete set of the Board Policies and Procedures Handbook. This should include procedures to approve contracts, monthly stipends for Board members, approved users of credit cards, timing for ethics and Brown Act Training, duties and responsibilities of Board Members, and for contracts requiring an RFP. This should be completed by June 1, 2024. (Findings 1, 2 and 3)
- R10. Dedicate funding for the replacement or upgrading of the HVAC system in the DDSNF. Eliminating the use of portable fans and cooling systems in summer months will mitigate the risk of a safety hazard and improve patient care. This should be included in the next budget by July 1, 2024. (Finding 15)
- R11. Update and maintain the District's website at least monthly to meet all the requirements of CA Health and Safety Code §32139, and include biographies, photos, and contact information of Board Members and administrative staff, allowing for better public access to the District and increasing transparency. This should be in place by June 1, 2024. (Findings 1 and 8)
- R12. Refocus and redirect goals toward patient care and staff morale. Excessive administrative staff turnover takes focus away from patient care. This should begin by June 1, 2024. (Findings 2 and 3)
- R13. Invite medical staff from both facilities to report to the Board and public at regular monthly meetings or on a regular basis, to discuss patient care, patient satisfaction, Centers for Medicare and Medicaid Services (CMS) complaints, and employee morale. This item should be placed on the June 2024 Board Meeting Agenda. (Finding 13)
- R14. Re-evaluate and streamline the use of outside vendor contracts to a single contract per vendor including a defined description, scope of expected outcomes, and with a definite timeframe of completion. This should be completed by June 1, 2024. (Findings 12 and 17)

NOTES:

- The North Kern South Tulare Hospital District should post a copy of this report where it will be available for public review.
- Persons wishing to receive an email notification of newly released reports may sign up at: www.kerncounty.com/government/other-agencies/grand-jury
- Present and past Kern County Grand Jury Final Reports and Responses can be accessed on the Kern County Grand Jury website: www.kerncounty.com/government/other-agencies/grand-jury

RESPONSE DEADLINE:

- **REQUIRED WITHIN 90 DAYS FROM:**
 - North Kern South Tulare Hospital District Board of Directors to 1 to 19 Findings and 1 to 14 Recommendations

RESPONSES ARE REQUIRED PURSUANT TO PENAL CODE §§933(c) AND 933.05 WITHIN 90 DAYS TO:

- **PRESIDING JUDGE
SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN
1415 TRUXTUN AVENUE, SUITE 212
BAKERSFIELD, CA 93301**
- **FOREPERSON
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301**

DISCLAIMER:

This report was issued by the Grand Jury with the exception of a Juror pursuant to Penal Code §916.2(a). The Juror was excluded from all parts of the inquiry/investigation, including interviews, deliberations, and the writing and approval of this report.

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

GLOSSARY:

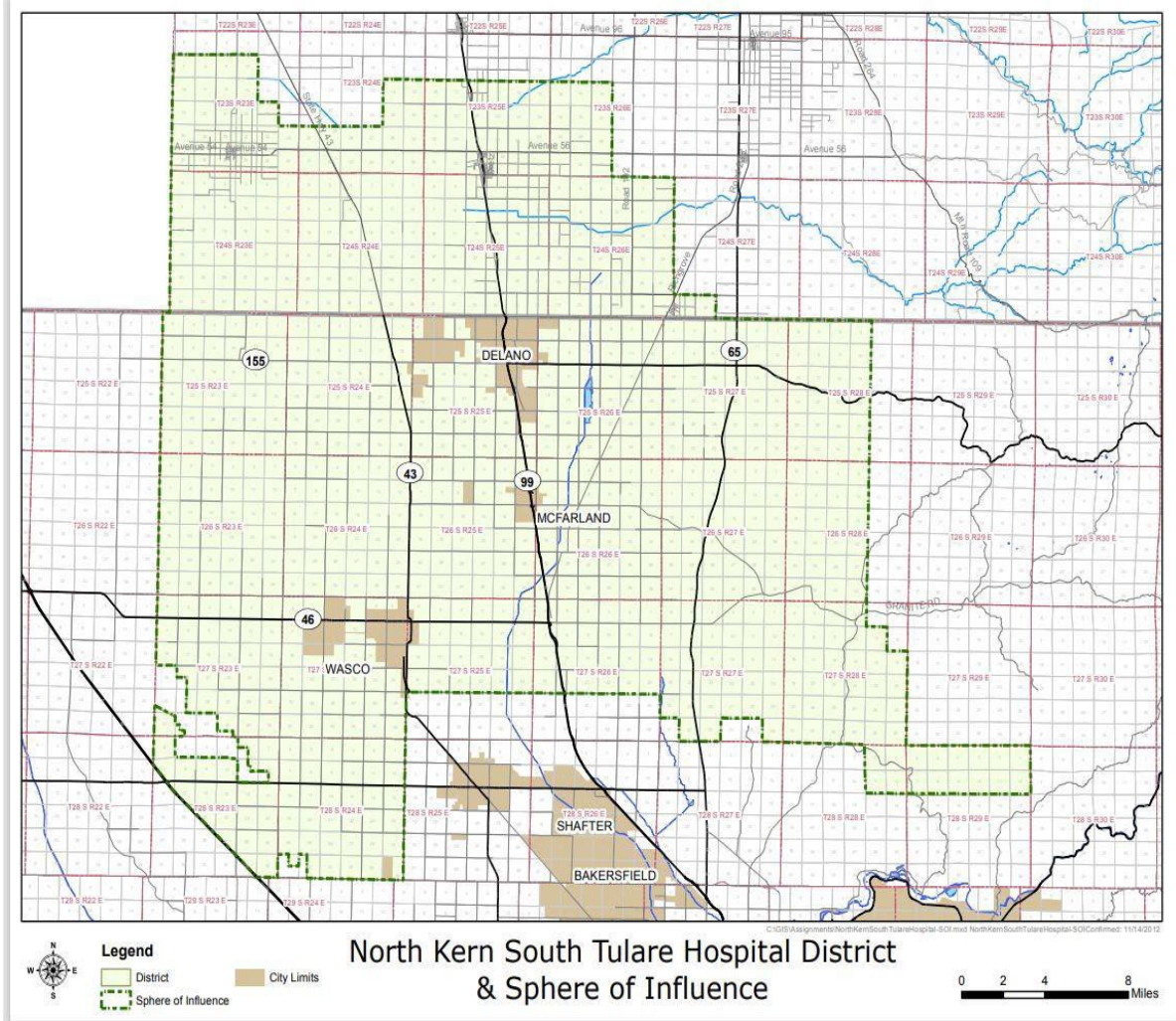
1. **CMS:** Centers for Medicare and Medicaid Services is the federal agency that oversees and administers Medicare, Medicaid, and the Affordable Care Act. CMS serves the public as a trusted partner and steward, dedicated to advancing health, equity, expanding coverage, and improving health outcomes.
2. **FPPC:** Fair Political Practices Commission oversees many public officials that are required to take an ethics training course to educate them on the ethical standards required of any individual who works in state or local government. Cities, counties and special districts in California are required by law (AB 1234, Chapter 700, Stats. of 2005) to provide ethics training to their local officials.
3. **HVAC:** stands for heating, ventilation, and air conditioning; a system that controls the indoor environment for comfort and health.
4. **LAFCo:** Local Agency Formation Commissions are local agencies mandated by the State legislature to encourage the orderly formation of local governmental agencies, preserve agricultural land resources, and discourage urban sprawl.
5. **MSR:** Municipal Service Review is a comprehensive study designed to better inform LAFCo, local agencies, and the community about the provision of municipal services. Service reviews attempt to capture and analyze information about the governance structures and efficiencies of service providers, and to identify opportunities for greater coordination and cooperation between providers. The service review is a prerequisite to a sphere of influence determination and may also lead a LAFCo to take other actions under its authority.
6. **OB/GYN:** is a doctor of obstetrics and gynecology. These doctors specialize in pregnancy, childbirth, and the female reproductive system.
7. **PPS Reconciliation Request:** is a Prospective Payment System (PPS) in which Medicare payment is made based on a national rate, which is adjusted based on the location of where the services are furnished.
8. **Quorum:** is the minimum number of members of a body that when duly assembled is legally competent to transact business.
9. **The Ralph M. Brown Act:** is a California law that guarantees the public's right to attend and participate in meetings of local legislative bodies. Located at California Government Code 54950 et seq., it is an act of the California State Legislature, authored by Assembly Member Ralph M. Brown and passed in 1953.

10. RFP: is a Request For Proposal, which is a document that an organization, often a government agency or large enterprise, posts to elicit a response (a formal bid) from potential vendors. The RFP specifies what the customer is looking for and describes each evaluation criterion on which a vendor's proposal will be assessed.
11. Serial Meetings: Any type of communication is prohibited if that communication allows the majority of the members of the body to engage in a communication that should instead occur at a public meeting. The Brown Act prohibits “serial meetings” that lead to a concurrence among the majority of the members of the legislative body.
12. Skilled Nursing Facility: is an in-patient rehabilitation and medical treatment center staffed with trained medical professionals. They provide the medically necessary services of licensed nurses, physical and occupational therapists, speech pathologists, and audiologists. Skilled nursing facilities give patients round-the-clock assistance with healthcare and activities of daily living. There are numerous federal and state regulations regarding what skilled nursing facilities can and cannot do.
13. Wheel Hub Meeting: is a meeting when one person acts as the hub of a wheel and communicates individually with the various spokes (i.e., board members A, B, C, etc.). This type of serial meeting violates The Brown Act, which mandates that a majority of a legislative body may not use any series of communications, either directly or through intermediaries to discuss, deliberate, or take action on an item of business that is within the legislative body’s subject matter jurisdiction.

APPENDICES:

APPENDIX A

MSR MAP OF NORTH KERN SOUTH TULARE HOSPITAL DISTRICT



Map is provided by Kern County LAFCo

APPENDIX B

CNA CLASS

North Kern South Tulare Hospital District

CERTIFIED
NURSING ASSISTANT *Class*
Delano District Skilled Nursing Facility
North Kern South Tulare Hospital District

Enrollment
Now Open!

CNA Program

Immediate job openings upon successful completion of program available with a sign-on bonus!

- Program is 12 weeks, M-F
- No cost to students, including exam and background check
- Supplies and uniform provided
- Must be fully immunized, including having received the COVID-19 vaccine & booster
- Rules and restrictions apply

CONTACT US For more information, please call Luella Tamsi at (661)720-2100 or email us at ddsnf_CNAprogram@nksthd.org

North Kern South Tulare Hospital District

Provided through the NKSTHD website

APPENDIX C

State Statutes

- A. Assembly Bill 2019 (Aguiar-Curry) Chapter 257 imposes additional requirements for California's health care districts. Under prior law, health care districts were mandated by Health and Safety Code §32139 to maintain a website listing contact information for the district. AB 2019 significantly expands the information that MUST be shared on the districts' websites:
- The districts' annual budgets
 - A list of current board members
 - Information regarding public meetings required pursuant to the Ralph M. Brown Act
 - An MSR or special study conducted by a LAFCo
 - Recipients of grant funding or assistance provided by the district, if any
 - Audits of districts' accounts and records prepared pursuant to existing law
 - Annual financial reports to the Controller (State of California), submitted pursuant to existing law
 - Any other information the board deems relevant
 - The districts' policies for providing grants or assistance
- B. The Ralph M. Brown Act is the most important open-meetings law for local governments in California. Compliance with The Brown Act is critical for all governing bodies and board members. The following is a summary of pertinent key provisions of the act:
- Each regular meeting agenda must provide an opportunity for public comment
 - Writings distributed to all or a majority of the board at a public meeting are public records
 - Closed sessions are meetings conducted in private without the attendance of the public
 - Generally, to preserve the confidentiality of closed sessions, only essential staff should attend a closed session
 - Agendas for closed sessions (Gov Code §54954.2) must describe information to be considered and is limited:
 - To instruct negotiations on real property transactions
 - To instruct labor negotiations
 - To discuss pending litigations
 - To consider the appointment, employment, evaluation, discipline, or dismissal of a public employee
 - To consider employee complaints or charges
 - To discuss threats to security of public buildings or essential public services
 - To meet among joint powers agencies formed for insurance pooling and local agency self-insurance authorities to consider liability issues
 - Each member of a legislative body who attends a meeting where action is taken in violation of The Brown Act, and where the member intends to deprive the public

of information which the member knows or has a reason to know the public is entitled, is guilty of a misdemeanor (Gov. Code §5459)

- C. California Civil Code, Preliminary Provisions, section 12 and Code of Civil Procedures, Preliminary Provisions, section 15 both states: *Words giving a joint authority to three or more public officers or other person are construed as giving such authority to a majority of them, unless it is otherwise expressed in the Act giving the authority.*

See *People v. Coghill*, 47 Cal. 621, 627 [38 P. 941]; *Jacobs v. Board of Supervisors*, 100 Cal. 121, 132 [34 P. 630]; *People v. Coghill*, 47 Cal. 361, 363.] for more clarification. *...Accordingly, unless it is otherwise expressed in the act giving authority, the authority, although joint were given to three or more, can be exercised by the majority which, for all practical purposes, becomes the full board. [...] The action of the quorum is the action of the Board and action of a majority of such quorum is valid and binding. (People v. Hecht, supra, at p. 628; People v. Harrington, 63 Cal. 257,258.)*

- D. California Health and Safety Code, Division 23, Hospital Districts, Chapter 2, Article 1, Election and Organization, Section 32106. *(a) Except as provided in this section, Section 32155, of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of Government Code) all of the sessions of the board of directors, whether regular or special, shall be open to the public, and a majority of the members of the board shall constitute a quorum for the transaction of business.*
- E. California Health and Safety Code, Division 23, Hospital Districts, Chapter 2, Article 2, Powers, Section 32138.
(a) The board of directors shall acquire electronic data processing and telecommunications goods and services with a cost to the district of more than twenty-five thousand dollars (\$25,000) through competitive means, except when the board determines either that (1) the goods and services proposed for acquisition are the only goods and services which can meet the district's need, or (2) the goods and services are needed in case of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety.
(b) As used in this section, "competitive means" includes any appropriate means specified by the board, including, but not limited to, the preparation and circulation of a request for a proposal to an adequate number of qualified sources, as determined by the board in its discretion, to permit reasonable competition consistent with nature and requirements of the proposed acquisition.
(c) When the board awards a contract through competitive means pursuant to this section, the contract awards shall be based on the proposal which provides the most costs-effective solution to the district's requirements, as determined by the evaluation criteria specified by the board. The evaluation criteria may provide for the selection of a vendor on an objective basis other than cost alone.
- F. California Government Code, Title 1. GENERAL, Division 4 PUBLIC OFFICERS AND EMPLOYEES, CHAPTER 2. Appointments, Nominations, Commissions, and Oaths, ARTICLE 4. Oath of Office, Section 1360. *Unless otherwise provided, following any*

election or appointment and before any officer enters on the duties of his or her office, he or she shall take and subscribe the oath or affirmation set forth in Section 3 of Article XX of the Constitution of California. Section 1363, (a)(4) The oath of all officers for any independent special district, as defined in Section 56044, in the office of the clerk or secretary of that district.

California Constitution, ARTICLE XX MISCELLANEOUS SUBJECTS, Section 3, Members of the Legislature, and all public officers and employees, executive, legislative, and judicial, except such inferior officers and employees as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation ...

APPENDIX D

Regulations of the **Fair Political Practices Commission**, Title 2, Division 6, California Code of Regulations §18371

Local Agency Ethics Training

(a) Core Content Topics. The topics enumerated in subdivisions (a)(1) through (a)(4) of this regulation are considered to be the core content of the ethics law component of an ethics orientation course conducted by a local agency pursuant to Government Code section 53235. The course should include instruction on each of the following topics to the extent they are relevant to the official's public duties:

- (1) Laws relating to personal financial gain by public servants, including, but not limited to:
 - (A) Laws prohibiting bribery
 - (B) Conflicts of Interest under the Political Reform Act
 - (C) Contractual Conflicts of Interest
 - (D) Conflicts of Interest and Campaign Contributions
 - (E) Conflicts of Interest When Leaving Office
- (2) Laws relating to claiming perquisites of office, including, but not limited to:
 - (A) Limitations on the Receipt of Gifts
 - (B) Honoraria Ban
 - (C) Misuse of Public Funds
 - (D) Prohibitions against gifts of public funds
 - (E) Mass mailing restrictions
 - (F) Prohibitions against acceptance of free or discounted transportation by transportation companies
- (3) Government transparency laws, including, but not limited to:
 - (A) Economic interest disclosure under the Political Reform Act
 - (B) Brown Act
 - (C) Public Records Act
- (4) Laws relating to fair processes, including, but not limited to:
 - (A) Common law bias prohibitions
 - (B) Due process requirements
 - (C) Doctrine of Incompatible Offices
 - (D) Competitive bidding requirements for public contracts
 - (E) Disqualification from participating in decisions affecting family members (anti-nepotism laws)

(b) The training may be in separate segments so long as all of the required training is completed by January 1, 2007, and every two years thereafter.

APPENDIX E

District Photos provided by the Grand Jury



DDSNF Front Visitor Entrance



GNC Front Visitor Entrance



Back Corner of Vacant Lot



Vacant Lot Next to GNC

June 28, 2024

North Kern South Tulare Hospital District Response to Kern County Grand Jury Report

Findings

F1. The District has a website with public information about the operations and services that the District provides. Unfortunately, it is not well maintained with up-to-date information and does not meet all the requirements of Cal Health and Safety Code § 32139. Additionally, contact information is not available for each Board Member. The website fails to provide transparency to the public. Furthermore, the Grand Jury was denied access to contact information of Board Members, causing a delay in this investigation.

Response: The District disagrees partially with this finding for the reasons set forth below.

First, the Grand Jury misinterprets the statute. Specifically, listing contact information for each individual board member is not required by law. According to Health & Safety Code § 32139 (b) the website shall list contact information for the District. Health & Safety Code § 32139 (b) (2) states the District shall also list the current board members. Notably, contact information for individual board members is not mandated by this statute. Accordingly, the District's website did in fact provide the required contact information for the District, as well as the requisite list of current board members. While contact information for board members is not required, the District has nonetheless included board member contact information on the site as of this time. The District has since added the information needed to meet all the requirements listed in Health & Safety Code § 32139 (b). (See Exhibit I)

With respect to the Grand Jury's finding that it was denied access to the contact information of board members causing a delay in the investigation, the District wholly disagrees. The statement is false. Specifically, upon District staff receiving a request for board member contact information, including phone numbers, the foreperson was contacted by email and phone to verify the request. Once verified, the foreperson was told they could have the contact information. The foreperson responded that the information had already been obtained by other means. Board members were not contacted by the grand jury until at least two weeks after this contact was made. (See Exhibit J)

F2. The Board delegates the routine operations of the District to the CEO. As per the District's Bylaws, Board Members shall refrain from interfering in the day-to-day operations; however, they are responsible for implementing policies, retaining legal counsel, and making financial decisions in the best interest of the District. Members of the Board may approve contracts after discussion at public board meetings. Members of the Board or the Board President have no authority to sign contracts and agreements without approval of the Board, at an open board meeting, with public input. However, the Board President, without Board approval and public input, signed many contracts and agreements (Engagement Letters).

Response: The District disagrees wholly with this finding for the reasons set forth below.

All engagement letters, contracts and agreements signed by the board president were approved by the Board at a duly noticed meeting with an opportunity for public comment.

The Retainer Agreement with the law firm of Garcia, Hernandez, and Sawhney was approved at a duly noticed meeting with an opportunity for public comment, on December 14, 2023. After obtaining board approval the President signed the agreement. (See Exhibit A)

With respect to the Wipfli contracts for forensic accounting, and accounting and consulting services, the engagement was approved by the Board at the July 12, 2023 special meeting for a total amount. One engagement totaled \$75K, for account reconciliation, and the other \$178K, for various accounting and consulting services listed in the proposal, including finance and accounting, cybersecurity, and staff training. Action taken during closed session with an opportunity for public comment, was reported out to the public in open session, including the amounts approved (\$75,000 and \$178,000).

Following board approval, Wipfli sent separate engagement letters for each of the services it was providing as part of the overall services proposed and approved by the Board. Each service was sent as a contract, per Wipfli protocol. The July 12, 2023 meeting minutes and July 27, 2023 meeting minutes reflect Board approval of a total amount, to engage with Wipfli for the above stated services. The engagements were signed after board approval at the duly noticed meetings.

WIPFLI Engagements Approved at 6/12/23 Meeting:

Finance & Accounting - \$105,000
P&P Documentation - \$20,000
Patient Trust Account Training - \$25,000
Cybersecurity - \$28,000
Total: \$178,000

Patient Trust Account Reconciliation: \$75,000
Total: \$75,000

(See Exhibit C: Wipfli Proposal, Exhibit D: Engagements approved under Wipfli Proposal, and Exhibit E: Board meeting minutes of July 12, 2023 and July 27, 2023 recording approval of engagements/contracts under Wipfli Proposal)

F3. The Bylaws do not indicate the date of ratification nor the date of last revision. The Bylaws need to be reviewed and updated to reflect the current operation of the District, including the duties assigned to the officers and to the District administration with the use of an organizational chart. Discussions of updating the Bylaws have taken place at board meetings, with no action. As per Article XV, the Board of Directors will review these Bylaws at least biennially and alter them to conform to changes in the law and the standards of the Joint Commission on Accreditation of Healthcare Organization. Not having an organizational chart and defined roles and responsibilities for the administrative staff indicates a lack of public transparency and fails to

provide structure for daily operations.

Response: The District disagrees partially with this finding for the reasons set forth below.

With respect to the portion of the finding stating that the Bylaws need to reflect the duties assigned to District administration and operations with the use of an organizational chart, the Grand Jury's statement that the Bylaws need to include job descriptions of District administration and an organization chart is unsupported by law, policy, custom or best practices. Bylaws do not typically include organizational charts nor job descriptions of staff other than the highest executive position, which in this case is the CEO. (See Exhibit P)

Furthermore, the District did, and still does, have an organization chart. The organization chart presented was in the process of being revised and approved during the months of October-January, due to several personnel changes.

With respect to the Grand Jury's finding that discussions about updating the Bylaws have taken place with no action, the statement is misleading and false. First, the Bylaws were mentioned at some meetings in the context of other agenda items. Given the Bylaws were not actual agenda items, no action was required, nor should have been taken, otherwise it would have been a Brown Act violation. Second, what is noteworthy is that the Bylaws were indeed an agenda item for discussion and action at the January 25, 2024 Board meeting, and action was taken by the Board. The Grand Jury knew this, as it attended and observed said Board meeting. The Grand Jury omitted this pertinent information from its report and ignored the facts to support the allegation that action was never taken. (See Exhibit N)

F4. Three newly appointed Board Members apparently communicated via phone and text messages in a wheel hub meeting and/or a serial meeting prior to the first day of service at the December 12, 2022 District Board Meeting. The minutes of that meeting do not reflect a swearing of the oath of office for the three new Board Members. Each new member took the oath of office with a notary public at different times, days earlier or days and months later. This would be a violation of the California Constitution, Government Code, and The Brown Act.

Response: The District disagrees wholly with this finding for the reasons set forth below.

First, board members who took office in December 2022 were elected, not appointed. Second, the Brown Act did not apply to them until after the election was certified in late November 2023. The Grand Jury does not find, or otherwise state, that these alleged conversations took place after certification. Third, individual members are permitted to talk to one other board member about any single topic. The Grand Jury does not find, or otherwise state, that any board member talked to more than one other board member on any single topic. Finally, communication between board members is only a prohibition if official business is discussed. The grand jury does not find, or otherwise state, that the topic of the conversation(s) was about official business.

The elected board members took their oaths before they commenced duties on Dec 12, 2023. There is no legal requirement that the oaths must be taken at the same time. The other two members were appointed months later, and they also took their oaths before commencing duties.

Gov. Code 1360 requires board members to take the oath of office before performing the duties of office. There is no requirement that the oath is taken at a meeting, only that the oath be taken. Accordingly, there is no requirement that the oath confirmation be recorded in the meeting minutes. The same is true under the California Constitution. (See Exhibits H and I)

F5. Reportedly, the Board President continued to text and/or call other Board Members prior to District Board Meetings to get the members' positions and/or discussion of District business. Such conversations would be a Brown Act violation.

Response: The District disagrees wholly with this finding for the reasons set forth below.

The Board President contacting another board member prior to a meeting to get their position on an item does not constitute a violation of the Brown Act. Specifically, hub and spoke serial meetings only occur if a board member has contacted a quorum of board members regarding District business. (Gov. Code § 54952.2 (b)(1) and (2)). Moreover, individual members are permitted to talk to one other board member about any single topic. It is noteworthy that the grand jury did not find, or otherwise state, that any board member talked to more than one other board member on any single topic. (See Exhibit I)

F6. Records of the Board Members completing the required FPPC and Brown Act trainings were not made available to the Grand Jury or to the public, showing a lack of transparency and dedication to the duties of a Board Member. (See Exhibit J)

Response: The District disagrees wholly with this finding for the reasons set forth below.

The finding is inaccurate and ignores law and evidence. Specifically, Gov. Code § 53235.1(b) states that the ethics trainings referenced must be completed within the first year of office for locally elected officials, and not all board members had completed their training at the time of the request. Two members were within the first year of their offices, and accordingly, were still within the window of time allowed to complete training under the statute. The District submitted proof of training for those who had already completed it. Therefore, contrary to the Grand Jury's finding, the records were in fact made available for those members who had already completed the trainings.

The Grand Jury was informed in writing of the fact that two members were still within the statutory window and were provided legal authority. For these reasons their finding ignores the evidence and the law. (See Exhibit J)

F7. As per the retainer agreement, dated December 14, 2022, with the newly hired legal counsel, [C]ommencing December 14, 2022, the firm will provide advice to [Named Board Member] and will handle any other matter and provide any advice as requested by the District. This appears to give personal legal counsel to the Named Board Member with the invoices paid by the Districts' public funds. This gives the impression that the new legal counsel firm is engaged, first and foremost, to represent the Named Board Member, and then the District.

Response: The District disagrees wholly with this finding for the reasons set forth below.

The finding is misleading and omits facts. The Grand Jury states the retainer letter “appears” to give personal legal counsel to the Board President. It also states that it gives the “impression,” the firm represents the Board President. The only way those statements can be accurate is if one ignores the following facts:

First, the letter is addressed to the District, not the president’s personal or business address. Notably, it is also addressed to the President in his capacity as Board President. Second, the letter was signed by the Board President in his capacity as “President of the Board.” Third, the engagement with the law firm was approved by the Board in open session with an opportunity for public comment, at the Dec. 12, 2022 meeting. No one at the time considered, and much less raised the objection, that this letter was a retainer for personal services. (See Exhibits A and B)

F8. In accordance with the District's Bylaws, regular meetings shall be held on the fourth Thursday of each month. However, the District's website indicates that for calendar year 2021, the Board held 28 meetings, of which 16 were special meetings. The website has also recorded 17 meetings (12 regular and 5 special) for the 2022 calendar year. In 2023, the District held at least 19 meetings (11 regular and 8 special). The question is, why so many back-to-back special meetings? Apparently, there was a lack of planning for the monthly agendas that led to using special meetings to handle the District's business. Public transparency may be in question as to the justification for having so many meetings. Is the public being properly informed of the District's business before action is taken?

Response: The District disagrees wholly with this finding for the reasons set forth below.

Notably, this is a contradictory complaint because special meetings are all held in public, and more public meetings means more transparency, yet the Grand Jury is complaining that there is not enough transparency. Furthermore, it makes the complaint without reference to any standards for governance or law, as there is no rule for how many special meetings the Board can have. The Brown Act as incorporated in Govt Code § 54956 does not place a limit on the quantity of special meetings that a public body may call. It merely prohibits the calling of special meetings for salaries, salary schedules, or compensation paid in the form of fringe benefits. (See Exhibit I)

F9. The District's meeting agenda and minutes for the meeting of July 12, 2023, indicated that the Board adjourned into closed session. Nevertheless, the report on actions taken from the closed session, as required by The Brown Act, to engage with (Accounting and Business Consulting Finn) for up to \$178,000, was not on the agenda. There was no public information, RFP, or retainer letter provided for inspection prior to the consideration of this item. This item does not meet the requirements for a closed session according to the Brown Act. Such actions of the Board may have also violated Health and Safety Code, Division 23, Chapter 2, Article 2, Section 32138, and lacks public transparency.

Response: The District disagrees wholly with this finding for the reasons set forth below.

The Wipfli engagement was approved by the Board at the July 12, 2023 special meeting for a total amount. The item was on the agenda as closed session, anticipated litigation. The action

taken by the Board to engage with Wipfli, and the total amount approved, was reported to the public in open session, immediately following the closed session.

Following board approval Wipfli sent a separate engagement letter for each of the services it was providing. Each was labeled as a contract rather than an addendum, due to Wipfli protocol, and the total cost was broken up into separate letters for each service. (See Exhibits C, D and E)

With respect to the Grand Jury's statement that there was no RFP or retainer letter provided for inspection, Gov. Code § 54957.1 simply does not require documents discussed in closed session to be available for public inspection before closed session. The requirement is that the final action be reported out. The report need only include what the final action was, and not the actual documents. Further, documentation discussed in closed session resulting in a final action only needs to be disclosed upon request. That such actions of the Board may have violated the law is false innuendo. The Grand Jury could not have found it violated the law because the Board met in a confidential closed session matter, permitted by law.

The Grand Jury's statement that actions of the Board may have violated Section 32138 of the Health & Safety Code is misleading and unsupported by law. This section of the statute is a provision regarding the acquisition of electronic data processing and telecommunication goods and services. It does not reference any requirements for special services. Finally, pursuant to Gov. Code §§ 53060 and 37103, RFPs are not required for special services such as accounting. (See Exhibits I and K)

FI0. The Board President signed several contracts with vendors and expanded the scope of existing contracts without board approval or public comments. The public has the right to know before action is taken with vendor contracts that are over \$25,000 and to review the purpose of such contracts.

Response: The District disagrees wholly with this finding for the reasons set forth below.

At the April 6, 2023, board meeting, the Board directed counsel to work with the President to retain forensic accounting services to conduct a preliminary investigation regarding a confidential matter which posed the threat of litigation to the District. The documentation was discussed in closed session, under the threat of the anticipated litigation safe-harbor of the Brown Act. The needs and scope were unknown at the time. (See Exhibit L)

At the April 27, 2023 board meeting, direction was given to counsel to work with the President to retain Wipfli to conduct a preliminary investigation to determine the needs, contours and scope of forensic accounting services needed for a confidential matter. (See Exhibit M) Authority was delegated to the Board President to retain Wipfli for those services once the scope was determined. Wipfli was retained and these contracts were signed with Board approval under the rubric of direction to counsel, in connection with the confidential matter which posed a threat of litigation. (See Exhibit F) A change order was made for one of the services that was approved by the board on July 12, 2023 and approved by the new CEO in October 2023. Three engagement letters were for services under \$25,000. (See Exhibits D and E)

F11. As per the District's Bylaws, ARTICLE I, SCOPE AND PURPOSE. Section 3. Purposes: (c.) To conduct educational and research activities essential to the attainment of its purpose. This District has done a great job of meeting this purpose by offering Certified Nursing Assistant Classes open to the public to help fill staffing shortages.

Response: The District agrees.

F12. The use of seven credit cards by employees leads to excessive spending; the monthly balance as of September 28, 2023, was \$259,462.65. The use of paying routine expenses by credit card does not have the needed checks and balances with justifications for each expense. Not knowing the purpose of each charge leaves the public questioning how their funds are being used.

Response: The District agrees.

The former Controller had unilaterally decided to order routine monthly purchases like medical supplies and food on the corporate AMEX using reward points.

Notably, the credit card issue was brought to the attention of the Grand Jury when the new CEO was asked what his initial concerns were at the District, since he had taken over less than 90 days prior. The CEO informed them that the former Controller was not qualified for his position, and he did not follow Generally Accepted Accounting Principles (GAAPs) across the board.

This was not an issue of too many users, as the Grand Jury asserted, but the irresponsible use of the credit card by the former Controller, who was the very individual ultimately responsible for making sound financial recommendations.

F13. The Grand Jury attended District Regular Board Meetings in person and via Zoom, with the following observations: meetings started on time with a quorum of the Board, staff members, and the public present. Legal counsel was live via Zoom to offer advice during the meetings and tracking the motions. Complete board meeting agendas and packets were available for the public. The meetings were conducted in an orderly manner with some discussions from Board Members and staff.

The Grand Jury did not observe a sign showing that there was a meeting taking place on the front door of the building or outside of the meeting room door, as required. Two Board Members and staff members had their backs to the public, making it difficult to hear when they were speaking. The large TV monitor was not fully visible to the entire public, giving the impression that it is not important to attend meetings and participate in the District's business.

The CEO used the meetings to explain some of the plans he thinks would benefit the District and to meet the healthcare needs of the community. There was also discussion about hiring an additional law firm, developing an organizational chart, and creating guidelines for the CEO duties.

Response: The District disagrees partially with this finding for the reasons set forth below.

With respect to the Grand Jury's statement that the District is required to post a sign showing on the front door or outside the meeting room showing that there a meeting taking place, it misstates the law. Specifically, Gov. Code § 54954.2 merely requires that the meeting agenda be placed "in a location that is freely accessible to members of the public." There is no requirement that it be on the front door of the meeting room or front of the building in which the meeting is taking place.

Gov. Code § 54955 requires a copy of the order or notice of adjournment shall be conspicuously posted on or near the door when a meeting is adjourned. In this case, the Grand Jury misinterpreted the law when they stated that the Board was required to place signage on the door of the meeting room signaling that a meeting was in session. Pursuant to Gov. Code § 54955, the Brown Act imposes no such requirement. Signage posted on or near the door is only required when a meeting has been adjourned to a new place and time.
(See Exhibit I)

F14. During a fact-finding visit to the District and its facilities, the Grand Jury noticed an empty lot belonging to the District that is not being utilized nor properly maintained. (See Appendix E). This is ideal for future growth.

Response: The District disagrees partially with this finding for the reasons set forth below.

This finding was not a deficiency but meant to be a compliment according to the Grand Jury. According to the District CEO, the Grand Jury complimented the District for being forward-thinking on how to best serve their community by using the vacant land they owned by having a needs assessment conducted to confirm the needs of the community. This assessment has just been completed. Kern Family Health has also indicated a significant demand for additional affordable senior housing beds in North Kern County.

F15. The Grand Jury observed and verified through interviews and videos of board meetings that the current HVAC system for the DDSNF needs repair and/or replacement. The use of portable fans and coolers creates a health and safety concern for the patients, staff, and visitors.

Response: The District disagrees partially with this finding for the reasons set forth below.

The DDSNF is regulated by the State of California Department of Health (CDPH). The CDPH conducted the required five routine annual surveys in 2024 and DDSNF passed all surveys. Notably, the HVAC system was not cited on any of them. With that said, the NKSTHD Board unanimously approved the replacement of chilling coils at the April 22, 2024 board meeting, and staff is working towards a recommendation to the board to replace the HVAC system in its entirety. (See Exhibit O)

F16. The Grand Jury could not verify through Board meeting minutes and/or videos of meetings, or from the Kern County Elections Office, that all current Board Members took and subscribed to the Oath or Affirmation of Office before performing the duties of a Board Member. This lack of

documentation questions the authority of the Board to act and violates California Government Code.

Response: The District disagrees wholly with this finding for the reasons set forth below.

This finding is unsupported by fact and law. Specifically, Gov. Code § 1360 et seq provides that every oath of office for members of an independent special district shall be filed in the office of the clerk or secretary of that district. All Board Members were properly sworn in, in a timely manner. Moreover, there is no requirement to record documentation of oaths taken into the meeting minutes. The law also does not require that the oaths are filed with the Elections Office. The oath of all officers for any independent special district shall be filed in the office of the clerk or secretary of that district. (Gov. Code § 1360(4)). Again, the grand jury misinterpreted the code and misapplied the law to the facts. See Explanation to F4, above. (See Exhibit I)

FI7. The District has been spending in excess of \$340,000 with (Accounting and Business Consulting Firm) without defined expectations, outcomes, and end dates. This has the potential to lead to out-of-control spending and being locked into future expenses.

Response: The District disagrees wholly with this finding for the reasons set forth below.

This finding is unsupported by evidence. The Grand Jury was not present in the closed session, and consequently, it does not know the facts, the scope of the assignment or direction given to counsel and the consulting firm regarding confidential matters. Similarly, it is not privy to the recommendations of the accounting consultants. Accordingly, it is unable to make conclusions as to whether the expectations were undefined or whether the spending was inappropriate. In fact, the District has benefitted from the services of the accounting consultants and recovered funds which would have been lost had the Board not engaged their services.

FI8. The Board did not follow District Bylaws by holding the yearly officer election at the December 2023 Board Meeting. This gives the impression that officers are elected for the duration of their tenure.

Response: The District disagrees partially with this finding for the reasons set forth below.

Their statement omits key facts and ignores evidence, and as such is misleading with respect to the statement that holding the officer election one month later gives the impression that the officers are elected for the duration of their tenure. While it is true that the Board did not hold the elections in December 2022, the Grand Jury knew that officer elections were held at the January 25, 2024 board meeting because they were present at that meeting. (See Exhibits P and N)

FI9. The funds being spent on legal fees are not being properly monitored.

Response: The District disagrees wholly with this finding for the reasons set forth below.

This finding is unsupported by the facts and cannot be made without knowledge of what was discussed in closed session and subject to the attorney-client privilege. Moreover, it is based on inaccurate numbers due to the Grand Jury's overcalculation and misrepresentation of the legal

fees. The Grand Jury double counted, miscalculated and overstated the legal fees. Consequently, the graphs represent inaccurate figures, which inflate the fees.

The Grand Jury misstated and miscalculated the total legal fees spent on what it characterizes as the “new law firm,” which began its representation of the Board on December 14, 2022. The firm’s first statement for legal services was for January 2023. In Figure 2 of its report, the Grand Jury misrepresents the fees between December 2022 and November 2023. Specifically, the fee statement used for December 2022 was from the prior law firm. Figure 2 shows a total of \$323,247 spent in legal fees for the “new law firm.” This amount is derived from the miscalculation and overstatement of the numbers, and as such, a misrepresentation of the facts. The actual total amount of fees for the new law firm (Garcia, Hernandez, Sawhney, LLP), between January 2023- November 2023 was \$254,248. The Grand Jury’s figure is overstated by \$68,999. (See Exhibit K)

It is noteworthy that the grand jury is not privy to the scope of the assignments or direction given to counsel, the privileged discussions in closed session, nor the advice the law firm provides. In addition, the firm provides detailed legal invoices by matter and billed in increments of 1/10.

In summary, the Grand Jury overstated fees and relied on inaccurate numbers to make the finding, and had no knowledge of privileged discussions, or direction to counsel. Thus, it is unable to make conclusions to support its finding regarding spending on legal fees.

Recommendations:

Recommendations numbered: R4, R5, R7, R8, R9, R10, R11, R12 have been implemented in part or wholly. Please see below.

Recommendation numbered: R6 has not yet been implemented but will be implemented in the future.

Recommendations require further analysis in part or wholly: R1, R13

Recommendations numbered: R2, R3, R14 respectfully cannot be implemented because they are not warranted and/or are not reasonable.

R1. Establish protocols regarding the use of General Counsel and any outside counsel. This is to be completed before July 1, 2024.

Response: This recommendation requires further analysis in part or wholly. Timeframe for study is November 2024.

This recommendation requires further analysis. How the board and CEO decided to use legal counsel is a matter of discretion based upon present and future needs. Any protocol needs to be sufficiently general as to allow for and protect privileged discussions and communications, and to maintain the attorney client relationship, such that there are no barriers or obstacles to seeking advice, direction and counsel on all district matters whenever needed or requested. Further

analysis is needed on what these general protocols should look like, as there is no one size fits all when it comes to the relationship between attorney and client. Protocols of such a sensitive nature should not be rushed and July 1, 2024 does not allow sufficient time to conduct the analysis needed.

R2. By June 1, 2024, the District should re-seat the Board Member who was removed in December 2022.

Response: The District will not implement this recommendation because it is not warranted or reasonable.

The Ralph M. Brown Act applies to the legislative body of every local agency in California (Gov. Code § 54958). The North Kern South Tulare Hospital District (“NKSTHD” or “District”) is a local hospital district formed pursuant to its authorizing act, the Local Healthcare District Law, commencing at § 32100 of the Ca Health & Safety Code. Accordingly, the District is the local agency (Gov. Code § 54951), and the governing board is the legislative body. (Gov. Code § 54952) The District’s board, as the legislative body, is therefore subject to the Ralph M. Brown Act (Gov. Code §§ 54950-54963).

The Healthcare District Law affirms that the board must comply with the requirements of the Brown Act. Specifically, pursuant to § 32106 (a), all sessions of the board shall be open to the public and a majority of members of the board shall constitute a quorum for the transaction of business. Importantly, § 32106 (d) goes on to state that “action taken” at a board meeting is defined by Gov. Code § 54952.6, of the Brown Act.

Saliently, Brown Act § 54952.6 clearly states that “action taken” means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

As stated above, the NKSTHD board is a legislative body subject to the Brown Act. Accordingly, an “action taken” on a motion is not a legal act of the board, unless a majority of the members vote for it. The September 19, 2022 appointment of the board member referred to by the Grand Jury in recommendation 2, was therefore a plainly unlawful act. Specifically, the Board did not have legal authority to take action to make an appointment to fill a vacancy on a 2-1 vote, where the Brown Act and the District’s own enabling statute define “action taken” as that which is voted on by a majority of the members of the legislative body. Consequently, the two affirmative votes to appoint said member did not lawfully constitute an official act of the board as defined by Gov. Code § 54952.6 or Health & Safety Code § 32106, thereby making the appointment illegal. Subsequently, on December 28, 2022, the *unlawfully* appointed board member was *lawfully* removed, and a vacancy was declared.

By contrast, the currently seated Board Member is lawfully appointed. Specifically, said Board Member was appointed to fill the vacancy by a majority of the legislative body in March 2023. It is extremely noteworthy that removing the current board member on the Grand Jury’s

recommendation would be patently unlawful.

Pointedly, the grand jury is recommending that the District commit an unlawful act and is simultaneously questioning the board's authority. Yet, the grand jury admits by way of their own recommendation that this Board does indeed have authority. By telling the board to remove the current, lawfully appointed board member so that the unlawfully appointed board member can be reinstated, the grand jury is acknowledging the authority of this board. Moreover, the action to remove the unlawfully appointed board member was taken on advice of counsel, who was correct, and accordingly, the Board disagrees vehemently with this recommendation as unfounded in law.

R3. Seek a decision from the California Superior Court or an opinion of the California State Attorney General's Office, not the opinion of a hired law firm, on the legal grounds to seat and/or remove Board Members. The process should be initiated by June 1, 2024.

Response: The District will not implement this recommendation because it is not warranted or reasonable.

The District lawfully removed the unlawfully appointed board member pursuant to Ca. Gov. Code §§ 1770 and 1771. Section 1770 provides that an office becomes vacant upon the happening of certain events before the expiration of the term. In this case, the Board Member's appointment was declared void due to the illegal appointment explained and analyzed above in Response to R2. The Board Member was therefore removed. These two events, 1) the appointment declared void, and 2) the board member removed, caused the seat to become vacant. Section 1771 provides that when an officer is removed or when her or his election or appointment is declared void, the body empowered to fill the vacancy shall have notice. The District had notice and began the process of filling the vacancy according to Section 1780 of the Gov. Code. Accordingly, because the Board Member's appointment was void, the District does not need to seek additional decisions or opinions as to whether it had legal grounds to remove said Board Member.

R4. Use the RFP with a "competitive means" process to award contracts for goods and services over \$25,000 and seek public input before awarding contracts. This process needs to be included in the District's procedures before June 1, 2024.

Response: This recommendation has been implemented wholly or in part.

The recommendation to use the RFP process with an opportunity for public comment is already an on-going practice in the District, pursuant to the statute. The statute applies to contracts for materials and supplies and for work to be done (i.e. construction), and does not apply to professional services, or to telecommunication or electronic data processing, or medical surgical equipment (H&S Code § 32132). Therefore, with respect to professional services, telecommunications or electronic data processing or medical surgical equipment, the District is not required to use the RFP with a competitive means process. Moreover, the District awards contracts in compliance with the Brown Act, as explained in the responses to Finding 9 in the previous section.

R5. Publish by June 1, 2024, the Code of Ethics Policy for Board Members that had been discussed at previous board meetings.

Response: This recommendation has been implemented wholly or in part.

The District does not have a Code of Ethics, rather it has a Code of Conduct which includes a provision addressing ethics and the training requirements. In discussions between the Grand Jury and the CEO, members indicated that they did not see Certificates of Completion on file for all board members for the required online Ethics Training each new board member is required to complete. This is addressed in Response to Finding 6, above. At present, all Board members have completed the Ethics training and certificates are on file.

R6. Re-arrange the board meeting room so that all Board Members can address the public directly (facing the public) and be heard by the public. The use of a public address system would be beneficial. Consider re-locating the TV monitor for better visibility for all that attend the meeting. This would be more welcoming for the public to attend. This should be in place by June 1, 2024.

Response: This recommendation has not yet been implemented but will be in the future. Timeframe for implementation is August 2024.

There is no requirement that all board members face the public. Resources in most skilled nursing facilities are scarce and while Delano District SNF is no exception and has traditionally used a board room table that can only accommodate three individuals on each side. With that said, the District is making efforts in their new headquarters that open July 2024 to install a board table long enough to accommodate all five board members and the CEO on one side so they can all face the audience.

R7. By June 1, 2024, place all future contracts over \$25,000 on the Board's agenda to be discussed and approved by the Board before being signed and implemented by the Board President and/or CEO. This allows the public to have input in actions of the Board.

Response: This recommendation has been implemented wholly.

This recommendation has already in place and is on-going. Notably, if a contract for special services must be discussed and approved by the board in closed session due to a matter regarding anticipated litigation, any amount approved for such contract is reported out to the public pursuant to the Brown Act. See responses to Findings 2, 9, 10 and 17.

R8. Curtail and re-evaluate the excessive use of credit cards. The lack of accountability of seven cards and the risk of misuse may outweigh the benefit of the card usage. The use of purchase orders has the advantage of tracking the monthly spending and allows for prior approval before spending. This should be incorporated into next year's budget and spending procedures by July 1, 2024.

The District implemented this in whole, prior to the recommendation being made by the Grand Jury. Notably, this issue was brought to the Grand Jury's attention by the CEO who informed it that the former Controller was not implementing best practices or even GAAPs (Generally Accepted Accounting Practices). The CEO had already made the decision to implement best accounting practices after the separation with the former Controller.

R9. Develop and publish on the District's website, and in binder for each Board Member to use as a reference, a complete set of the Board Policies and Procedures Handbook. This should include procedures to approve contracts, monthly stipends for Board members, approved users of credit cards, timing for ethics and Brown Act Training, duties and responsibilities of Board Members, and for contracts requiring an RFP. This should be completed by June 1, 2024.

Response: This recommendation has been implemented in part.

This recommendation had already been implemented in part prior to the Grand Jury's investigation being completed, and in some cases, before the investigation even started. Procedures are already in place for approving contracts, credit card users, timing for ethics and Brown Act training. The District is in the process of creating and completing a complete Policies and Procedures Manual including but not limited to the recommended topics.

R10. Dedicate funding for the replacement or upgrading of the HVAC system in the DDSNF. Eliminating the use of portable fans and cooling systems in summer months will mitigate the risk of a safety hazard and improve patient care. This should be included in the next budget by July 1, 2024.

Response: This recommendation has been implemented in part.

Delano District SNF was not cited during any of its five annual surveys in 2024 for issues with the HVAC. However, as the CEO advised the Grand Jury during their facility tour, an RFP was being posted to take bids on repairing and/or replacing the chillers and HVAC units. A bid was accepted, and repairs began in May 2024. Replacement of some parts of the unit are anticipated prior to the end of 2024.

R11. Update and maintain the District's website at least monthly to meet all the requirements of CA Health and Safety Code § 32139, and include biographies, photos, and contact information of Board Members and administrative staff, allowing for better public access to the District and increasing transparency. This should be in place by June 1, 2024.

Response: This recommendation has been implemented in whole.

The CEO has confirmed that the website has been updated and is in compliance with all requirements.

R12. Refocus and redirect goals toward patient care and staff morale. Excessive administrative staff turnover takes focus away from patient care. This should begin by

June 1, 2024.

Response: This recommendation has been implemented wholly.

This statement by the Grand Jury lacks merit or consideration. DDSNF had a strong survey in 2024 and was recently awarded more than \$90,000 for quality excellence in our skilled nursing facility for care provided in 2022 and 2023. Accordingly, this recommendation has already been implemented in whole and is on-going. Prior to the Grand Jury's investigation, the Board hired a CEO to lead and guide the District specifically with the goal of achieving the District's mission to provide quality patient care and expand services to meet the community's current and future health and wellness needs. In doing so, those goals included bringing stability to the District's finances, fiscal management, and operations, and based upon the strong survey in 2024, patient care and staff morale have only continued to improve.

R13. Invite medical staff from both facilities to report to the Board and public at regular monthly meetings or on a regular basis, to discuss patient care, patient satisfaction, Centers for Medicare and Medicaid Services (CMS) complaints, and employee morale. This item should be placed on the June 2024 Board Meeting Agenda.

Response: This recommendation requires further analysis. Timeframe of study is December 2024.

DDSNF does not employ physicians but contracts with independent practitioners. Medical staff members are not required to present to the board and have stated that it can be an inconvenience as most live out of the area and board meetings are in the evening. With that stated, the District is hopeful to have medical staff present at board meetings at least two times annually, in person or virtually.

R14. Re-evaluate and streamline the use of outside vendor contracts to a single contract per vendor including a defined description, scope of expected outcomes, and with a definite timeframe of completion. This should be completed by June 1, 2024.

Response: This recommendation cannot be implemented because it is not warranted or reasonable.

This request is not always a possibility as many vendors have different companies or departments under one organization that work independently. With that stated NKSTHD always requests an amendment as a preferred option for new services being provided by an existing vendor. However, when the vendor has an internal policy that does not allow for this, the District will simply put the contract through normal procedures to have it approved by the Board in open session.