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November 18, 2010

Richard P. McKee, Vice President  
Californians Aware  
2218 Homewood Way  
Carmichael, California 95608

Re: Brown Act Demand for Cure or Correction

Dear Mr. McKee:

This office is General Counsel for the Grossmont Healthcare District ("District") located in La Mesa, California. An unsigned copy of your letter dated November 17, 2010 demanding a cure or correction of the actions that were reported out of the closed session meeting held by the District Board on November 15, 2010 has been referred to the undersigned for response.

Exception is taken to your contention that the closed session was unauthorized pursuant to the Brown Act. Please consider the following facts and legal authorities:

As you correctly note, the agenda notice contained the following item:

**E. Closed Session**

1. Conference with Legal Counsel Pursuant to Government Code Section 54956.9(b)(1) Regarding Significant Exposure to Litigation (one case)

By way of factual background, Board Member Jim Stieringer submitted the attached Exhibit "A" Memorandum to the District indicating that he had decided to retire as a member of the Board. The Memorandum was received by the Board members on November 8, 2010. The need for a closed session was precipitated by Mr. Stieringer's email two days later on November 10, 2010 to

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all Board members, which is attached as Exhibit "B," notifying them that "my retirement notice is rescinded."

Both the Memorandum and rescission of retirement email were widely shared with the local media and interested parties and caused a fair amount of controversy.

In my legal opinion, Mr. Stieringer's attempt to rescind his retirement raised a number of legal concerns which included a significant exposure to litigation against the local agency.

I shared my legal concerns with the Board President and asked that she call a special meeting in accordance with Government Code Section 54956.9(b)(1) so that I could confidentially advise the Board of my concerns and the legal exposure to the District. Prior to the closed session meeting, I provided the Board with a confidential written opinion which set forth my legal analysis and the basis for the significant exposure to litigation. My letter was a confidential attorney/client communication in accordance with Roberts v. City of Palmdale (1993) 5 Cal.4th 363. In addition, prior to asking for the closed session the following sections of the Brown Act were reviewed to confirm that a closed session was authorized.

Section 54956.9 provides in part:

"Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of counsel, from holding a closed session to confer with, receive advice from, its legal counsel regarding pending litigation...." (Emphasis added.)

Later on the section provides:

"For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:...

(b)(1) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.... (Emphasis added.)

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(3) For purposes of paragraphs (1) and (2), "existing facts and circumstances" shall consist only of one of the following:

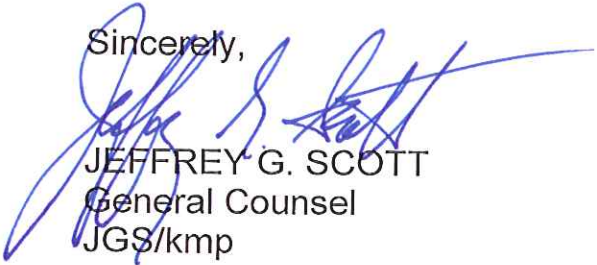
(A) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed." (Emphasis added.)

In my legal judgement as counsel for the District, it was not appropriate to discuss in open session the specific facts that could result in litigation and which were not yet known to potential plaintiffs.

If you still believe that the Board was not authorized to hold a closed session under these circumstances, it would be appreciated if you would provide to me as soon as possible, your legal authority and in particular why section 54956.9(b)(1)(A) does not apply to this situation so that it may be considered by the Board.

Thank you for your prompt attention to this request.

Sincerely,



JEFFREY G. SCOTT  
General Counsel  
JGS/kmp

Enclosures

cc: Board of Directors  
Barry Jantz, CEO  
Terry Franke via email  
Kelly Aviles via email  
Dennis Winston via email  
Ken Stone, La Mesa Patch

# EXHIBIT A



## MEMORANDUM

To: Grossmont Healthcare District Board of Directors

Subject: Retirement

Date: November 5, 2010

After serving on the board since 1992, and having attended 300+ consecutive regular meetings, I have decided to retire as a member of the GHD board. My major goals have been achieved thanks entirely to the efforts of current and past board members and staff. During those eighteen years we have:

- (1). Established an arms length relationship with our tenant Sharp HealthCare/Grossmont Hospital Corporation, and
- (2). Created a meaningful local outreach through a grants program that addresses our communities' otherwise unmet health needs, (including the award of more than \$30 million in grants to local nonprofits and government entities and awarding nearly 400 scholarships to deserving local students), and
- (3). Preserved the District as a full participant in the political and social fabric of East County.

My retirement is engendered by my intent to apply for the Projects Liaison Monitor position posted last week on the District's website. Although there is no certainty that my application will result in success, I believe that I can make a persuasive argument that my combination of education and experience will augur well toward the continued success of the District in its role as East County's leader in health care issues.

The vacancy created by my retirement gives you an opportunity to select a successor. I hope that the selected applicant will embrace our shared values concerning the role of the District as the owner of the hospital. Although we presently enjoy a cordial relationship with our tenant,



we must never forget that there is an inherent adversarial relationship between landlords and tenants whose best interests are not necessarily the same.

My successor would ideally support our shared values, including:

- (1). Operating the District in a spirit of oneness with our East County constituents by encouraging them to enjoy the free use of our facilities including the Dr. William C. Herrick Community Health Care Library and Grossmont Healthcare District Conference Center.
- (2). Maintaining and improving the East County's Gallery of Honor, thereby assuring that present generations and unborn generations will enjoy a firm tie to the past.
- (3). Completing the Dr. John W. Hardebeck Health Occupations Training Center (HOTC), further confirming our role as the region's leading advocate for health education.
- (4). Successfully implementing Proposition G, thereby assuring that Grossmont Hospital will continue its service well into the current century and beyond.

The Board has already begun thinking ten years ahead to 2021 when, if approved by the voters, a new updated lease will replace the existing document that has served us well for the past 20 years.

I congratulate each of you for the work you are doing and for the future successes that I know lie in store for the District.

Jim Stieringer,

Copy:  
Barry Jantz  
Jeff Scott

# EXHIBIT B

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**From:** Jim Stieringer [mailto:stieringer@cox.net]  
**Sent:** Wednesday, November 10, 2010 12:03 PM  
**To:** Gloria Chadwick  
**Cc:** Michael Emerson; 'Michael T. Long; Deborah McElravy; Barry Jantz; Jeff Scott  
**Subject:** Rescission of Retirement

Dear President Chadwick:

I earlier indicated that I would retire as a board member in order to be considered for appointment to the Projects Liaison Monitor position. The earlier notice was predicated on the assumption that the position was to be filled and that, if so, I would be considered amongst the various applicants.

I subsequently learned that the position, as included in the District's 2010-2011 budget, will not be filled notwithstanding the fact that it had been widely and publicly noticed in various media.

My understanding is that the board has neither approved nor disapproved the retirement notice and has not taken action to fill the board position had it become vacant.

Accordingly I notified you today that my retirement notice is rescinded. I will not retire at this time. Please note that a follow-up letter of resignation (as spelled out by the Government Code) would have been issued by me if the position had been valid and if I had been considered for it.

My intention is to fulfill my obligation during the remaining two years of my four year term to which I was elected on November 4, 2008.

James Stieringer  
Member, Board of Directors,  
Grossmont Healthcare District