

MICHAEL L. ALLAN
ATTORNEY AT LAW
2181 EAST FOOTHILL BOULEVARD
SUITE 102
PASADENA, CALIFORNIA 91107

TELEPHONE
(626) 683-7027 (D)

FACSIMILE
(626) 683-7032

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By E-Mail

Linda Wilbourn, Chairman
Tulare Local Health Care District
869 Tulare Street
Tulare, California 92374

Re: Violation of the Ralph M. Brown Act by the Board of Directors of Tulare Local Health Care District

Dear Chairman Wilbourn,

On behalf of my client, Dr. Parmod Kumar, MD, I am submitting this letter to you in your capacity as the Chairman of the Board of the Tulare Local Health Care District, to call your attention to what I believe was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by the Board of the Tulare Local Health Care District as well as any future action taken by the Board.

The nature of the violation is as follows: On 25 July 2017, with a majority of the board's members in attendance, including you, Director Michael Jamaica, and Director Kevin Northcraft, action by the Board appeared to be taken to allow Senovia Gutierrez to assume a position as a Board Member of Tulare Local Health Care District 3, inter alia by having Honorable Walter Gorelick, Judge Superior Court Tulare County administer the official oath of office to Ms. Gutierrez. The action taken appears to demonstrate by consensus of the Board that Senovia Gutierrez has assumed office as representative for District 3, despite there having been no publication of a Notice of any planned declaration by the Board, and despite the earlier filing of a timely request for recount with the Registrar of Voters of Tulare County. In addition, Directors Jamaica and Northcraft took the microphone to opine upon business pertaining to matters pertinent to the Board, to those assembled which included members of the Press, and at least one City Council member, in addition to the individuals identified above.

The action taken was not in compliance with the Brown Act because there was no adequate notice to the public on a posted agenda for the meeting or that the matters acted upon or discussed would be discussed or acted upon, nor was there a finding of fact made by the Tulare Local Health Care District that urgent action was necessary on a matter unforeseen at the time the agenda was posted. In the event it appears to you that the conduct of the Tulare Local Health Care District specified herein did not amount to the taking of action, I call your attention to Section 54952.6, which defines "action taken" for the purposes of the Act expansively, i.e. as "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 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 you are aware, the Brown Act creates specific agenda obligations for notifying the public with a “brief description” of each item to be discussed or acted upon, and also creates a legal remedy for illegally taken actions—namely, the judicial invalidation of such actions upon proper findings of fact and conclusions of law. As you may be aware, an official action to request the recount of the ballots cast in the 11 July 2017 recall election for the Tulare Local Health District 3 has been filed. Pursuant to these provisions, including Government Code Section 54960.1, I hereby demand that the Tulare Local Health Care District cure and correct the above discussed illegally taken action as follows:

- 1) Cease and desist the declaration of the 11 July 2017 election for District 3 until such time as administrative remedies have been exhausted;
- 2) If you contend that Ms. Gutierrez is a Member of the Board at this time, then cease and desist the taking of any and all official action by Senovia Gutierrez, acting in a capacity as Director of the Tulare Local Health Care District 3, including those actions which may result in the selling or issuing notes, bonds or other indebtedness, or any related contracts or agreements or decisions creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services upon which a party has in good faith relied to its detriment;
- 3) Properly notice and provide to the public the awareness and opportunity to comment of which it was deprived, i.e. the formal administration of the oath of office to Senovia Gutierrez, and explicit withdrawal from commitments made at that meeting, coupled with a disclosure at a subsequent meeting as to why individual members of the Board took the position that they did, accompanied by the full opportunity for informed comment by members of the public at the same meeting, notice of which is properly included on the posted agenda, i.e. discussion of the Board matters made by Directors Northcraft and Jamaica.

A copy of this notice is being provided to Tulare District Attorney Tim Ward and shall serve as a request to determine the applicability of the Brown Act and take reasonable action thereon. In addition, a copy of this notice is being provided to Investigations Division of the California Secretary of State.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or to inform me of your decision not to do so. If the Board fails to cure or correct as demanded, such inaction may leave me no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case I would also ask the court to order the Board to pay court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

Respectfully submitted,

Michael L. Allan,
Attorney for Parmod Kumar, MD

cc Tim Ward, Tulare County District Attorney
California Secretary of State, Investigations Division
Bruce Greene, Legal Counsel to Tulare Hospital District Board