

## 2004-2005 MARIN COUNTY CIVIL GRAND JURY

### Marin General Hospital: Moving Beyond the Impasse (Continued)

Date of Report: May 2, 2005

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 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 Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

# MARIN GENERAL HOSPITAL: MOVING BEYOND THE IMPASSE (CONTINUED)

---

## SUMMARY

The 2004-2005 Marin County Civil Grand Jury (current Grand Jury) has found that both the Marin Healthcare District (MHD) and the Marin County Board of Supervisors (Board of Supervisors) have taken steps to adopt the recommendations made by the 2003-2004 Marin County Civil Grand Jury contained in the report, "*Marin General Hospital: Moving Beyond the Impasse.*" The 2003-2004 Grand Jury investigated the discordant relationship between the MHD Board and Marin General Hospital Corporation/Sutter (MGHC/Sutter). Those entities needed to reach an accommodation regarding the future of Marin General Hospital (MGH) and its relationship to MHD. An impasse, however, occurred in making progress toward a necessary agreement. The 2003-2004 Grand Jury report made a series of recommendations aimed at alleviating the impasse. The current Grand Jury has chosen to focus on those recommendations that it believes to be most important. In particular:

- The MHD Board appears to be pursuing a strategic plan to deal with the long-term future of MGH. Elements will include oversight responsibilities, evaluation of long-term hospital management, and evaluation of provision of other healthcare services within MHD.
- The Board of Supervisors is endeavoring to use its good offices to facilitate the interaction between the MHD Board and MGHC/Sutter.

The current Grand Jury is cautiously pleased with the progress being made and recommends that:

- The MHD Board continues to develop its strategic plan.
- The MHD Board employ consultants to help in areas such as: understanding the finances of MGH, lease obligations and lease opportunities, financing of the building or rebuilding of MGH, quality of healthcare, and alternative hospital management possibilities. The MHD Board should take extreme care to make sure that none of these important areas are omitted.
- Members of the MHD Board abandon long-standing biases and act with open minds to fulfill their roles as representatives of the people of Marin County.
- The Board of Supervisors proactively assists the MHD Board by making available expertise and money, as needed.

## BACKGROUND

The 2003-2004 Marin County Civil Grand Jury published a report on June 4, 2004, entitled "*Marin General Hospital: Moving Beyond the Impasse.*" The report examined the discord between the MHD Board and MGHC/Sutter, which created an impasse, stalling progress concerning the future of MGH.

That report made a series of recommendations to the Board of Supervisors, the MHD Board, and MGHC/Sutter (see the Appendix for complete Findings and Recommendations). Responses to the recommendations were received from both the Board of Supervisors and from the MHD Board but not from MGHC/Sutter.

The current Grand Jury focused on two important recommendations and responses to those recommendations that were found to be neither responsive nor to the point. In particular, the current Grand Jury was concerned that:

- The MHD Board had indicated that it would reformulate its strategic mission and develop a strategic plan for the District only “if and when a new lease granting the Board oversight of quality of care and long term options for hospital management and other healthcare services is agreed by the District Board, Sutter/MGH and approved by the electorate.”

The current Grand Jury felt that this response missed the point because the current Grand Jury could not see how a new lease could be let in advance of the formulation of a long-term strategic plan. The existence of a long-term plan should lay the basis for the terms of any new lease agreement.

- The Board of Supervisors, when asked to “Use your good offices to improve relations between the District Board and MGH Corporation/Sutter” indicated that this recommendation had already been implemented.

The current Grand Jury felt that this response was not adequate because it failed to consider the specific problems outlined in the report. Rather, it focused broadly on the general condition of Marin County, without giving proper weight to the specific influence that the Board of Supervisors could wield over the MHD and MGHC/Sutter negotiations.

These responses were troubling because the future of MGH continues to be a matter of major concern regarding the provision of appropriate healthcare in the county, as can be seen in front-page stories in the local newspapers. Due to these continuing concerns, the current Grand Jury decided to look into the progress that is, or is not, being made to move beyond the impasse.

## INVESTIGATIVE PROCESS

The current Grand Jury conducted interviews with:

- Each member of the MHD Board, subsequent to the election and installation of new MHD Board members
- Each member of the Board of Supervisors, subsequent to the election and installation of its new Board member
- Representatives of MGHC/Sutter

Some members of the current Grand Jury attended several regular monthly meetings of the MHD Board.

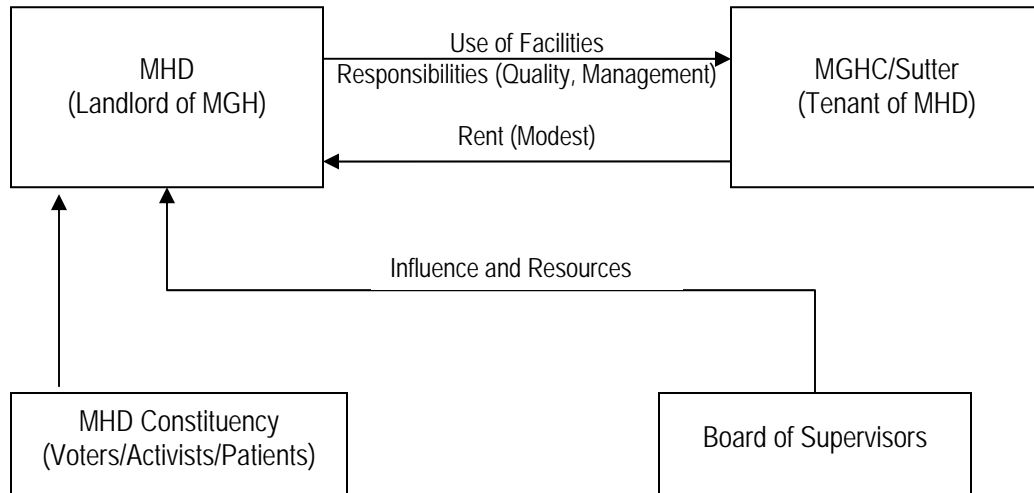
The current Grand Jury reviewed:

- Numerous newspaper articles
- The MHD website – see Bibliography
- The Sutter Health website – see Bibliography
- Agendas, including attachments, for the regular monthly meetings of the MHD Board
- Documents pertaining to the negotiations between MGHC/Sutter and the MHD Board
- The 2003-2004 Grand Jury report, “Marin General Hospital: Moving Beyond the Impasse” – see Bibliography
- Response to the above 2003-2004 Grand Jury report from Board of Supervisors – see Bibliography
- Response to the above 2003-2004 Grand Jury report from MHD Board – see Bibliography

The current Grand Jury pursued a renewed understanding of the position of MGHC/Sutter, of the likely future actions of the MHD Board in its efforts to shepherd MGH, and of the likely future actions of the Board of Supervisors in its capacity to facilitate an optimal resolution of the impasse to the benefit of the County.

**DISCUSSION**

Figure 1 shows the relationships between the key parties who could and should play a major part in resolving the impasse and gives an indication of the roles they play:



**Figure 1 Key Parties Involved in Resolution of Marin General Hospital Impasse**

### What the Current Grand Jury Learned from MGHC/Sutter

MGHC/Sutter wants to continue its presence as a major provider of healthcare in Marin County. This is clear from its issuance of a letter on January 7, 2005, labeled *Sutter's hospital ultimatum* (Sutter's Ultimatum) in an article published in the Marin Independent Journal (IJ). Sutter's Ultimatum offered the MHD Board three options:

- Option A – MHD receives \$10,000,000 up front, plus \$1,000,000 per year, for the community benefit; MHD receives \$1 per year for 50 years for lease of the land on which MGH sits; the hospital meets statutory quality standards; a new hospital is built on the current premises; Marin Community Health (a Sutter-appointed group that oversees and coordinates operations of MGH and Novato Community Hospital) owns, operates, manages, and governs the hospital; the current lease is superseded by a new lease; and Marin Community Health pays the MHD Board \$500,000 to evaluate Option A or Option B.
- Option B – This is the same as Option A except the hospital is built on a new site; MHD takes possession of district property to provide health services that do not compete with those being provided by the hospital; and MHD retains all revenue from rental of facilities on its property.
- Option C – Marin Community Health endeavors to extract itself from the existing lease and builds its own hospital on another site.

Subsequent to the issuance of Sutter's Ultimatum, the CEO of MGH was replaced by a new CEO who is experienced in building hospitals.

In separate discussions with a top-level representative from MGHC/Sutter, statements were made to the effect that the cash flow from MGH was on the order of \$15,000,000 per year, in addition to an estimated \$2,000,000 to \$3,000,000 management fee for Sutter. When asked about the use of the \$15,000,000, the representative indicated that much of this money might be reinvested in MGH. However, the representative could not tell the current Grand Jury how much, if any, of the \$15,000,000 went to the Sutter system.

That same top-level representative was asked to discuss the healthcare quality issues that were being faced at MGH. The most visible quality issue existed over most of 2004, when MGH was threatened with loss of its Medicare reimbursements on account of sequential failure to comply with government regulations. In fact, MGH failed three successive inspections. The representative responded by indicating that the failures were trivial failures; that the inspections were from a secondary accrediting entity that conducts inspections of a small number of hospitals; that most other hospitals would fail their inspections if inspected by this entity; and that MGH had finally passed the inspection, putting it ahead of many hospitals.

That representative then stated that MGH attained high marks when measured by the accrediting standards of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). When the current Grand Jury noted that the 2003-2004 Grand Jury report had found MGH's quality only to be average, the representative demurred, stating that it is a relatively simple matter to log onto the JCAHO website and find the citation attesting to the superiority of MGH's

quality. The current Grand Jury then logged onto the JCAHO website and found that it indicated that MGH's quality was average.

In a separate interview with another top-level representative from MGHC/Sutter, questions on healthcare quality were repeated. The representative indicated that alleged quality problems are reported to the state incessantly and suggested that groups of interested citizens (i.e., public activists) have magnified the situation by telephoning the "State Board," filing complaints, and stating that their messages were being taped to ensure follow up. The representative stated that the quality at MGH was good but not perfect. When asked to comment on two drug-related staff deaths, involving hospital drugs, that occurred on-site at MGH, the representative indicated that the deaths were not related to any shortcomings at MGH. The deaths were attributed to personal situations that every employer faces. The representative concluded by saying that employees on drugs will do foolish things and will circumvent any reasonable precaution that a hospital might take. Subsequent to this interview (in early March), the State's Division of Occupational Safety and Health declined to issue citations to MGH regarding these deaths.

Finally, both representatives were asked to comment on the timing of Sutter's Ultimatum. The first representative noted that MGHC/Sutter simply had to act and that the MHD Board had let things go for too long. This comment was amplified by the second representative who said that continuing difficulty in working with the MHD Board had made progress on negotiations impossible.

#### What the Current Grand Jury Learned from the MHD Board

When viewed individually, the MHD Board is fragmented. A minority (of two) of the five-member board seems to be unequivocally in the anti-Sutter camp:

- These members of the MHD Board have been hypercritical in their denunciation of Sutter.
- These members lauded the initial defeat of Sutter's Ultimatum.

However, at the meeting in which a revised agreement between the MHD Board and the Marin General Hospital Board was adopted, these members walked out of the MHD Board meeting. They did so, notwithstanding the fact that this revised agreement provided the MHD Board with \$500,000 to study options and obligated the MHD Board to no particular option.

Another minority (of one) seems to be unequivocally in the pro-Sutter camp:

- This member of the MHD Board routinely supports Sutter in votes of the MHD Board.

At the time Sutter's Ultimatum was issued, MGHC/Sutter could not be viewed in a positive light with the prospect of loss of Medicare reimbursement for MGH imminent. Sutter's Ultimatum included financial terms that would not obviously be optimal for MHD, thus requiring evaluation. And, it provided payment of \$500,000 to MHD only if an option that would transfer ownership to MGHC/Sutter were elected. Still, MGHC/Sutter issued its ultimatum, giving the MHD Board a mere three weeks to respond. Despite the short timeframe and the important unanswered questions, this member of the MHD Board voted to enter into the agreement.

Notwithstanding the three apparently closed-minded Board members, the remaining MHD Board members appear to be open-minded. These MHD Board members permit the Board to operate as a whole in a more effective manner.

The implication of this is that the MHD Board has the ability to look objectively at the issues that it faces in determining the long-term future of MGH and the options available to determine that future. Moreover, based on their recent actions, it appears that the MHD Board is undertaking the formulation of a long-term strategy in advance of entering into negotiations with MGHC/Sutter, and is investigating other important issues:

- The MHD Board retained a new general counsel, who is substantially experienced in the law of healthcare districts.
- The MHD Board has retained a firm to assist in formulating a strategic plan.
- The MHD Board has retained an architectural firm to conduct a seismic analysis review.
- The MHD Board has identified a consultant to assist in making “financial decisions regarding funding of improvements to existing, or the construction of new, health facilities including the possible issuance of tax-based indebtedness.”

The MHD Board also had a lot to say about dealing with MGHC/Sutter. A majority of MHD Board members feel that MGH’s quality is not superior, that it is not even average. They pointed to a litany of problems, featuring MGH’s 2004 problems with its Medicare reimbursement status and two drug-related staff deaths. In addition, some on the MHD Board pointed to MGHC/Sutter as the reason that negotiations had not proceeded. They said that MGHC/Sutter had effectively stalled negotiations for the entire year of 2004, in direct contradiction of the statements made by representatives from MGHC/Sutter.

### What the Current Grand Jury Learned from the Board of Supervisors

Each member of the Board of Supervisors was asked the following question: “What is your view of the importance of MGH to the people of the County?” The responses to this question were strikingly parallel: “extremely important,” “critically important,” “critically important,” “vitaly important,” and “critically important.” These responses were gratifying to the current Grand Jury in light of the appearance given in response to last year’s report, that the Board of Supervisors was disinclined to bring its resources to bear on the MHD and MGHC/Sutter impasse.

Further inquiry provided a new perspective. It turned out that the Board of Supervisors was not, indeed, sitting on the sidelines waiting for the negotiations between MHD and MGHC/Sutter to sort themselves out. Rather, members of the Board of Supervisors had interceded to the extent of offering the County’s expertise to facilitate negotiations (e.g., from the County’s Health and Human Services Department and the County Administrator). Moreover, they had gone so far as to suggest that money could be made available if needed by the MHD Board.

Members of the Board of Supervisors noted that their ability to control the negotiations between MHD and MGHC/Sutter is limited. On the whole, the Board of Supervisors did not seem to want

to usurp the prerogative of the MHD Board, while keeping open the opportunity for the MHD Board to use resources controlled by the Board of Supervisors.

Additionally, one of the members of the Board of Supervisors strongly implied that the MHD Board would likely find itself at a substantial disadvantage in dealing with MGHC/Sutter. That supervisor suggested that the Board of Supervisors, not the MHD Board, was better suited to dealing with the complexities (politics, public relations) of the situation.

### Let's Look at the Whole Picture

The IJ, in its February 13, 2005, issue, had two articles on the MGH situation. The major (front page) article discussed the 20-year history of the dispute. The second article, on page 9, focused on control of the hospital and brought up a number of important issues:

- The true focus of Sutter Health – economics vs. healthcare quality
- Continued provision of required services for Marin County
- The costs being charged for services
- The ability to manage hospitals effectively

Even though the current Grand Jury is optimistic about the progress of the MHD Board concerning the future of MGH, there are a number of reasons for caution. While the MHD Board is purportedly going to use consultants to help them better understand the issues and opportunities they face, it has indicated that it will not hire a consultant to look at healthcare quality. Apparently, the MHD Board believes it has the answers to questions that exist in this critical area. This would be a surprising conclusion in light of the difference of opinion regarding healthcare quality between the MHD Board and other doctors in the community (e.g., doctors on the MGH Corporation Board).

Similarly, while the MHD Board apparently intends to hire a consultant to help in making financial decisions in regard to building improvements, it is not clear that the MHD Board is going to hire a consultant to understand the finances of MGH and Sutter. It seems that this type of knowledge is critical to understanding whether MGH is an efficient provider of healthcare. Also, this knowledge should be useful in establishing a proper rent if the lease is extended or renewed.

MHD Board representatives were asked about the ability to find a replacement manager for MGH, under the hypothesis that Sutter would be replaced at or before the end of the lease. The representatives indicated that it would be rather easy to find a replacement, either a new managing organization similar to Sutter or a management team as is found in some independently operated healthcare district hospitals. Other interviewees demurred, stating that they felt the MHD Board would find it difficult to find replacement hospital management. The current Grand Jury believes that a fruitful resolution of any discussions should start with complete knowledge of which organizations are available, capable, and willing to replace Sutter.

One could make the argument that retaining Sutter Health to manage MGH makes complete sense:

- Sutter Health is the incumbent. Removing the incumbent would likely cause considerable disruption.
- Sutter Health is experienced in delivering healthcare through its network of hospitals in Northern California.
- There are only a few other substantial hospital management companies with comparable experience in Northern California.
- A major reason that MGH was leased in 1985 was to obtain the efficiencies of a large network.

Thus, despite the views of the anti-Sutter critics, there appear to be arguments for the long-term retention of Sutter Health as manager of MGH. And, it appears that the MHD Board is on the right track, potentially with assistance from the Board of Supervisors. Nonetheless, there is reasonable concern that the MHD Board may be omitting important considerations, e.g., evaluation of quality of healthcare, analysis of the financial relationship of MGH and Sutter, and determination of the availability of potential replacement hospital management.

The 2003-2004 Grand Jury report noted a number of working models that MHD could adopt to resolve the impasse. The current Grand Jury's concern is that the MHD Board takes advantage of all resources available to resolve the situation optimally and promptly...and that they get it right!

## FINDINGS

- F1. MGHC/Sutter issued Sutter's Ultimatum in January 2005, giving MHD less than four weeks to respond. MGHC/Sutter was under a cloud with respect to quality of care. The continuing failure to meet the standards required for Medicare reimbursement and the two staff deaths from drug overdose were extraordinary black eyes at that time.
- F2. The composition of the MHD Board appears to be such that the Board, when viewed in the aggregate, can operate with an open mind, with two MHD Board members solidly in the anti-Sutter camp and another MHD Board member solidly in the pro-Sutter camp. Neither camp has a clear majority.
- F3. The MHD Board eventually acquired from MGHC/Sutter a commitment for \$500,000 to be used to develop and evaluate options regarding the future of MGH (the revised agreement).
- F4. Every member of the Marin Board of Supervisors agrees that MGH is of paramount importance to the people of Marin County.
- F5. Contrary to the response provided by the MHD Board to the 2003-2004 Grand Jury report, it seems that the MHD Board is proceeding to formulate a strategic plan in advance of entering into a new lease (or lease extension) with MGHC/Sutter.

- F6. The MHD Board has taken or is in the process of taking the recommendation of the 2003-2004 Grand Jury to employ consultants to assist it in understanding the issues that are important to the future of MGH and to develop a strategic plan needed for the long-term. However, it is not clear that all relevant issues, such as quality of healthcare, analysis of the financial relationship between MGH and Sutter, and availability of potential replacement hospital management, are being addressed.
- F7. The Marin County Board of Supervisors has taken steps to make both consulting and financial assistance available to the MHD Board.

## RECOMMENDATIONS

The Marin County Civil Grand Jury recommends:

- R1. That the MHD Board continue to develop a strategic plan to determine and implement the long-term future of MGH, including elements of oversight responsibilities, evaluation of long-term hospital management, and evaluation of provision of other healthcare services within MHD.
- R2. That the MHD Board employ qualified consultants to accumulate information and provide guidance in areas including but not limited to:
- The current and future finances of MGH
  - Lease obligations and lease opportunities both in the present and the future
  - Optimal financing of building (or rebuilding) all or part of MGH
  - Quality of healthcare
  - Potential alternative hospital management
- The MHD Board should take extreme care to make sure that none of these important areas are omitted.
- R3. That each member of the MHD Board abandons his/her long-term biases, acts with an open mind and defers making final decisions until sufficient information is procured and processed.
- R4. That the Board of Supervisors proactively assist the members of the MHD Board to successfully complete recommendations R1 to R3, including making available both expertise and money if needed by the MHD Board.

## REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the Grand Jury requests responses as follows:

- To the MHD Board: F1, F3, F5-F6, R1-R2
- To individual MHD Board members: John Severinghaus, M.D.; Suzanna Coxhead, M.B.A.; Archimedes Ramirez, M.D.; Lawrence Arnstein, M.D.; and Sharon J. Jackson, M.B.A.: F2 and R3
- To the Board of Supervisors: F1, F4, F7, R4.

## BIBLIOGRAPHY

Website address for the Marin Healthcare District: <http://www.marinhealthcare.org>

Website address for Sutter Health: <http://www.sutterhealth.org>

Website reference for 2003-2004 GJ report:

<http://www.co.marin.ca.us/depts/GJ/Main/cvgrjr/2003gj/HealthcareOptionsFinalReport.pdf>

Website reference for response from the Marin County Board of Supervisors:

[http://www.co.marin.ca.us/depts/GJ/Main/cvgrjr/2003gj/responses/Healthcare/BOS\\_response.pdf](http://www.co.marin.ca.us/depts/GJ/Main/cvgrjr/2003gj/responses/Healthcare/BOS_response.pdf)

Website reference for response from the Marin Healthcare District Board:

[http://www.co.marin.ca.us/depts/GJ/Main/cvgrjr/2003gj/responses/Healthcare/MarinHealthcareDistrict\\_response.pdf](http://www.co.marin.ca.us/depts/GJ/Main/cvgrjr/2003gj/responses/Healthcare/MarinHealthcareDistrict_response.pdf)

## APPENDIX

Findings and Recommendations of the report of the 2003-2004 Marin County Civil Grand Jury:  
MARIN GENERAL HOSPITAL: Moving Beyond the Impasse:

### FINDINGS FROM THE 2003-2004 CIVIL GRAND JURY REPORT

- F1. Appropriate healthcare planning in the county is being blocked because of poor interactions among three entities: The District Board, MGH Corporation/Sutter, and a small subset of the public that attend District Board meetings (i.e., the Public Activists).
- F2. Each of these groups displays qualities that fuel dissension. The District Board is weak and ineffectual, MGH Corporation/Sutter is arrogant and uncooperative, and the Public Activists are rude and disruptive.
- F3. Several factors appear to undermine the effectiveness of the District Board:
- a. the terms of the existing lease which conveyed much of the District Board's authority to MGH Corporation/Sutter
  - b. insufficient financial resources to be an effective healthcare provider
  - c. the abuse of the Brown Act by the Public Activists during District Board meetings
  - d. an inability to be forceful in controlling disruptive remarks from the public
  - e. lack of necessary expertise to deal with healthcare management issues
  - f. lack of balance among the membership of the board (a shortage of directors with business acumen)
- F4. The attitude of MGH Corporation/Sutter seems attributable to:
- a. the ineffectiveness of the District Board
  - b. the terms of the existing lease which conveyed much of the District Board's original authority to MGH Corporation/Sutter
  - c. the professional and financial strength of Sutter
  - d. the ability to do its work in private and without including any members of the District Board on the MGH Board (and the board of Marin Community Health)
- F5. The attitude of the Public Activists seems to stem from:
- a. a refusal to accept the decision regarding the legal case against MGH Corporation/Sutter
  - b. a desire of some former members of the District Board (and others) to continue to exert influence
  - c. the conviction that MGH Corporation/Sutter is only interested in the "bottom line" and is willing to sacrifice quality healthcare
  - d. a belief that the quality of care at MGH has declined under Sutter's stewardship

- F6. Multiple allegations of conflict of interest have hamstrung the District Board and prevented it from carrying out its duties.
- F7. Valuable lessons, both good and bad, can be learned from studying the operations of other healthcare districts.
- F8. Sutter pays minimal cash rent, receives substantial management fees, but also has made capital improvement payments beyond what is required by the lease.
- F9. The BOS has broad-based responsibilities regarding the healthcare needs of the county.

RECOMMENDATIONS FROM THE 2003-2004 CIVIL GRAND JURY REPORT

For the District Board

- R1. Reformulate the board's mission and develop a strategic plan for the District with concrete goals and operations. Elements should include:
  - a. specific oversight responsibilities with respect to the mix of services and the quality of care at MGH
  - b. feasible long-term options with regard to hospital management
  - c. feasible long-term options with regard to the provision of other healthcare services within the district
- R2. Develop more effective ways to negotiate privately with MGH Corporation and/or any management group.
- R3. Employ consultants with expertise in hospital management to:
  - a. develop feasible options
  - b. help implement a long-term strategy that would enhance the provision of healthcare in the District
  - c. guide negotiations with Sutter about the terms of any future lease or sale and with others regarding future management responsibilities
- R4. Negotiate an adequate rent or compensation in any new lease arrangement or sale of the hospital.
- R5. Consider hiring a CEO.

- R6. Control disruptive behavior at meetings by enforcing the Brown Act more strictly. For example:
- a. Allow comments from the public only before an agenda item is discussed by the District's Board (not during the Board's discussion)
  - b. Limit comments to one per person per issue
  - c. Limit time for comments to two minutes per person
  - d. Insist that the comments deal only with the agenda item itself
  - e. Do not tolerate personal attacks
  - f. Do not engage in any discussion with the public during the period for public comments
  - g. If necessary, remove those who disrupt meetings and refuse to obey the rules

R7. Request a seat on the Boards of MGH and Marin Community Health.

**For MGH Corp/Sutter Health**

- R8. Be more transparent and comply in a timely fashion with requests for information.
- R9. Respect and acknowledge the authority of the District Board and its responsibilities to the public.
- R10. In future lease or sale arrangements, pay the District adequate compensation.
- R11. Include a voting representative appointed by the District Board to the MGH/Sutter Board.

**For Board of Supervisors**

- R12. Use your good offices to improve relations between the District Board and MGH Corporation/Sutter.

**For Public Activists**

- R13. Recognize that you are not members of the District Board and at meetings adhere to the rules adopted by the District Board.