

Dept. No. 8

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

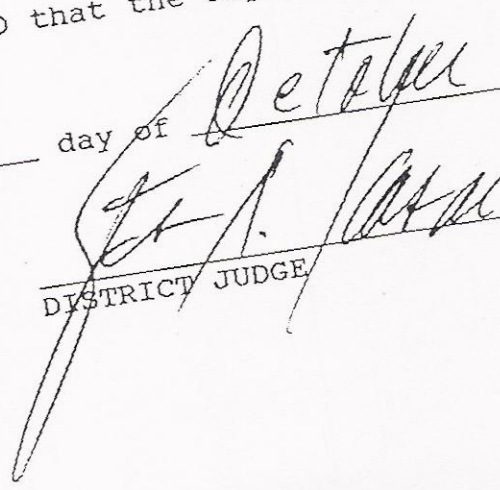
ORDER

IN THE MATTER OF GRAND
JURY INVESTIGATION #94-001
THE WASHOE HEALTH SYSTEM.

This Court having reviewed the Washoe County Grand
Report in the above-entitled matter, as well as the app
law,

IT IS HEREBY ORDERED that the Report be, and the
hereby, published.

DATED: This 6 day of October


DISTRICT JUDGE

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FILED

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JUDI BAILEY, Clerk

By P. Meacham
Deputy Clerk

1 Dept. No. 8

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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
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8
9 IN THE MATTER OF GRAND
10 JURY INVESTIGATION #94-001,
11 THE WASHOE HEALTH SYSTEM.

MOTION TO PUBLISH THE
GRAND JURY REPORT OF
THIS INVESTIGATION

12 _____/

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14 COMES NOW the Washoe County Grand Jury, by and through
15 TERESA DAWN MARTIN, the Grand Jury Foreman, and moves the Court
16 for an Order to publish the attached Report in the above-
17 entitled matter. This Motion is based on NRS 172.175, In re
18 Report of Washoe County Grand Jury, 95 Nev. 121, and Biglieri v.
19 Washoe County Grand Jury, 95 Nev. 696.

20 SUBMITTED this 26 day of September, 1995.

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22 Teresa Dawn Martin
23 TERESA DAWN MARTIN
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REPORT OF INVESTIGATION

I. INTRODUCTION

The Washoe County Grand Jury was asked to investigate the 1985 transfer that changed Washoe Medical Center ("Washoe Med") from a 123 year-old public hospital to a private not-for-profit health care system, Washoe Health System ("WHS"). The inquiry was requested on the basis that NRS 450.500 (3) provides that if a public hospital, once sold, "ceases to be used as a non-profit hospital ... the hospital so conveyed reverts to the ownership of the county." Pursuant to the Grand Jury's authority to inquire into matters affecting the morals, health and general welfare of the inhabitants of the county, the conduct of public offices and the efficiency and competence of government, the Grand Jury undertook to determine:

- 1) if there has been a gifting of a county asset to enable private individuals to gain a competitive advantage in the area's health care market;
- 2) if there has been a failure of Washoe Medical Center to provide for indigent care as required by statute and the transfer and assumption contract;
- 3) if there has been a breach of contract with Washoe County by the failure of WHS to deliver reduced patient costs or more efficient health care delivery as promised to the Nevada Legislature and the general public;
- 4) if the hospital or health system enjoyed excess profits which would result in a reversion to Washoe County;
- 5) if there was evidence of misuse of funds for personal benefit or gain which would defeat the not-for-profit status of the hospital and its health system parent

entity;

6) if the General Membership board formed as a result of the transfer is broadly representative of the public and is functioning effectively in its "community watchdog" role;

7) if members of the governing board of the nonprofit corporation have been exceeding the statutory maximum 6-year term set by NRS 450.500; and

8) if there have been conflicts of interest by county representatives associated with the Washoe Health System which have benefitted the Health System.

The first testimony was taken in March 1994 and since that time, over 25 witnesses have testified and the Grand Jury has considered thousands of pages of documentation. The Washoe County Grand Jury now issues this **Report of Investigation** to comment on matters affecting the public interest and to provide constructive criticism and recommendations intended to protect the public interest, reduce costs, increase efficiency and promote better service to the public. **No indictable criminal activity was found by this Grand Jury.**

II. PROCESS USED BY THE GRAND JURY

Because questions about the "Washoe Med transfer" have arisen so consistently since 1985, the Grand Jury undertook a comprehensive investigation to discover the actual facts and events occurring in the transfer and thereafter; to answer the questions posed for inquiry and, hopefully, to resolve once and for all matters which have consistently come up through rumor, innuendo or other inquiry. In order to do so, the Grand Jury took testimony from current and former county officials, employees or representatives from the offices of County

Manager, Department of Social Services, Treasurer's and Assessor's Offices, bond counsel and the District Attorney's Civil Division. The Grand Jury consulted the State Office of Health Care Financial Analysis. The Grand Jury heard from attorneys and experts in the health care field, current and former employees of entities within the Washoe Health System, financial officers, corporate executives and board members. All witnesses, county officials and Washoe Health System representatives were totally cooperative in testifying and providing documents and materials sought by the Grand Jury.

The documentation reviewed and considered by this Grand Jury included sections of the Nevada Revised Statutes, specifically NRS chapters 211 (medical services in jails); 239B (emergency medical care); 244 (sale or exchange of county property); 361 (non-profit organization exemptions from taxes); 422 (public welfare); 428 (aid and relief to indigents); 439B (indigent assistance as public health); 450 (conveyance of county hospitals); and 630 (medical practitioners). Legislative histories of NRS 450.500 and cost containment legislation were reviewed. Other documents reviewed and considered by the Grand Jury included the following:

- * Transfer and Assumption Agreements;
- * Feasibility Study of Corporate Reorganization and Susan Corning Report (draft and final reports);
- * Ernst & Whinney report of 6-30-85;
- * information on the Kafoury Armstrong report to Washoe County regarding the hospital's value;
- * Organizational Charts for Washoe Health Systems from 1985 to 1995;
- * all available lists of Boards of Directors, Trustees, Governors and General Membership for all Washoe Health System entities from 1985 to 1995;
- * By-laws and Articles of Incorporation for system entities;
- * Treasurer's and Assessor's records for payment of/ exemption from payment of taxes by WHS entities;
- * documents regarding land acquisitions;
- * information regarding WHS incentive program;

- * Opinion 91-6 of the State Commission on Ethics;
- * IRS audit summary information;
- * District Attorney Opinions and files;
- * Indigent Care Reimbursement information from Department of Social Services from 1981 to 1995;
- * information regarding Hospital Health Plan as an HMO insurance option offered to county employees;
- * corporate records, correspondence and memoranda;
- * information regarding government bonds, economic development bonds and the obligations of Washoe County and the health system;
- * WHS annual reports and reports to the community;
- * Washoe Medical Center employee manual;
- * Washoe Medical Center expenses and inflation index of medical costs;
- * Washoe Health Systems charts regarding indigency reimbursements;
- * information from the Nevada Association of Hospitals and Health Systems Compensation and Benefits Survey, 1995.

No comprehensive audit of the books of Washoe Health Systems or its various entities was conducted because: 1) the Grand Jury obtained a summary of results of an Internal Revenue Service audit conducted of the Washoe Health System, Hospital Health Plan, HHP Management Corporation, and the Washoe Professional Center for the fiscal year 1992 and for Washoe Medical Center for fiscal years 1992 and 1993 and, given those results, the Grand Jury could not justify the expenditure of several hundred thousand dollars of taxpayer funds and approximately two additional years time to perform such an audit; and 2) the discovery of excess profits, unrelated business income or retained earnings by WHS would not trigger the reversion clause of NRS 450.500 (3). (This conclusion is discussed in more detail in section VIII below.)

III. HISTORY OF THE WMC TRANSFER.

The Grand Jury has learned that although it was not discussed publicly until 1985, as early as 1982 Washoe Medical Center management began to internally consider the idea of

"going private" as part of its strategic planning. The ideas developed into more concrete concepts through 1983 and further moved toward reality in 1984 when experts in hospital reorganization were hired and paid from Washoe County's hospital enterprise fund. The "study group" formalized the concepts of reorganization into a "Feasibility Study of Corporate Reorganization" at a workshop or retreat in 1984. County officials and staff and Washoe Med personnel participated but the public was not included nor invited. Susan Corning, an expert in financial analysis of health markets, presented a scenario that showed Washoe Med falling into financial loss in the very near future due to increasing indigent care costs, declining patient census, the onslaught of Medicare and growing competition from out-patient services. This trend was based upon what was happening in other parts of the country and was not predicated upon any profitability issues of Washoe Medical Center itself. Indeed, the hospital was then operating with a profit of \$3 million to \$4 million for the years 1983 and 1984 and, according to its Chief of Staff, was offering the lowest priced patient care in the state.

The various possible forms of reorganization were presented to retreat participants and obstacles to reorganization were identified, including statutory restrictions, financing issues, and employee problems. Disadvantages in changing to a non-profit corporate structure were cited, including:

- * less public accountability;
- * subjection to federal labor laws;
- * loss of the power of eminent domain and favorable status regarding zoning and licensure issues;
- * loss of limitations on tort liability;

- * receipt of less revenue from indigent care reimbursements;
- * decreased access to tax dollars.

Participants also identified the benefits of reorganizing into some form of non-profit entity, including:

- * favorable tax treatment;
- * improved hospital governance by self-perpetuating boards of directors/trustees/governors who could develop specialized expertise and not be subject to political pressure;
- * avoidance of open meeting laws, public bidding, public records laws, political budget-making and other governmental regulation that was seen as inhibiting Washoe Med's ability to compete with other area hospitals;
- * increased opportunities for joint venturing with doctors and diversification into other health-related areas;
- * greater flexibility to spread hospital functions among related corporate entities.

The Feasibility Study also predicted that if the hospital converted to a non-profit entity, the hospital would lose over \$1 million annual revenue from indigent care reimbursements from Washoe County as follows:

1985:	\$1,284,000 lost revenue
1986:	\$1,391,000 lost revenue
1987:	\$1,516,000 lost revenue
1988:	\$1,655,000 lost revenue.

This prediction was based upon the fact that prior to the sale, Washoe County was paying Washoe Med "billed charges" rather than "actual cost of indigent care". Under NRS 450.500 (b)(1), the statute that governed conveyances of public hospitals, any hospital that

was sold was required by law to contract to bill the county "actual costs" for all indigent care rendered and the proponents of reorganization recognized that without some redefinition of the term "actual cost", Washoe Med would lose money because of the transfer.

Nevertheless, hospital representatives and Washoe County officials accepted the new paradigm that Washoe Med should no longer be the public hospital but should become a competitive, private enterprise. In statements to the media, to the Legislature, and eventually in public hearings held by Washoe County Commissioners in the days before transfer documents were executed, the people of Washoe County were promised reduced patient costs, more efficient and effective health care delivery and deliverance from the financial doom that was predicted.

The actual transfer of the hospital took place November 12, 1985 with signatures by the five elected Washoe County Commissioners Dick Ritter, Belie Williams, Jim Lillard, Jim King and Gene McDowell. (It is a common misconception that Dianne Cornwall was a Washoe County Commissioner at the time of the sale of the hospital. She was not a commissioner then. She followed Jim King into office in January, 1987.)

Another common misconception is that those commissioners who also served as members of the Washoe Medical Center Board of Trustees (Belie Williams, Jim Lillard and Gene McDowell) demonstrated a conflict of interest when voting on the hospital's Resolution favoring the transfer. All three county commissioner-trustees abstained from voting on the Hospital Trustees' Resolution which was signed October 28, 1985. They did all sign the County Commissioners' Resolution, however.

The Grand Jury was told that no consideration was ever given to putting the question

of sale of Washoe Med to the voters of Washoe County for the reason that elected officials are intended to make such decisions for the people. The public was never given the opportunity to approve or disapprove of the objectives sought to be accomplished by the transfer of the hospital. Based upon the evidence we reviewed, the Grand Jury determined that little or no effort was expended by Washoe County to ascertain the will of the public. The only real public hearing on the question of transfer took place October 29, 1985, at a special county commissioner's meeting, essentially after it was already "a done deal." The public at large was not privy to the details of corporate reorganization, the various plans, the pros and cons of the transfer, the issues of lost or gained revenue from indigent care and the consequences to their pocketbooks, except through media coverage. The public was invited into the process only after all the details were worked out, some documents were already signed and there was virtually no possibility of rejecting the plan. In the opinion of this Grand Jury, the attitude of the public was inconsequential to public officials and staff who had already approved the merits of the conveyance. The Grand Jury feels that if more of the details and consequences of the transfer had been presented to the public prior to the transfer, there would have been more understanding of the transaction and fewer cries for a Grand Jury inquiry over the 10 years that have followed.

Recommendation No. 1:

The Grand Jury recommends that in the future, before consideration is given to conveying a major county asset or privatizing a major governmental function, the "pulse of the public" be taken first, as the essence of representative democracy is a public servant who truly represents the opinions of the constituency. The Grand Jury feels the

public is not well served by public officials who presume to know the will of the people or those who superimpose their own will over that of the people.

One constant criticism of the transfer was the \$12 million sale price of the hospital, and the fact that the "appraised value" was not used to set the sale price, according to NRS 450.490. However, NRS 450.490 was not the applicable statute in the sales transaction. That particular section only applies to sales or leases of hospitals by counties in which the public hospital is the only hospital in the county. Obviously, in 1985 when Washoe Med was sold, other hospitals existed in Washoe County.

Furthermore, it is a misconception that proponents of the sale got the 1985 Legislature to change the NRS 450.500 sales price formula from "appraised value" to "actual capital investment of the county in the hospital, after deducting depreciation and any indebtedness assumed." That language was first inserted into the law in 1969 and a later proposed amendment to restore the "appraised value" formula was defeated by a subcommittee in 1981 when Churchill County officials approached the Legislature for help in dealing with their failing hospital. The sale price for Washoe Med was arrived at according to the proper statutory formula in existence at the time.

The Grand Jury heard opinion testimony that Washoe County essentially "gave away" an \$80 million asset for \$12 million. However, according to the then-existing statutory formula, the actual value of the hospital was set at Washoe County's capital investment of \$35 million, less debts and depreciation of \$23 million, resulting in the \$12 million purchase price. (No interest and no down payment were included). County Manager John MacIntyre and a former Civil Division Assistant District Attorney who served as

Washoe County's legal advisor on this transaction, both testified that Washoe County had its own accountants, Kafoury Armstrong, prepare an estimate of hospital value, which came in at \$16.7 million, somewhat higher than that of Ernst & Whinney, Washoe Med's financial advisor, but that Washoe County was persuaded to reduce its estimated evaluation to that determined by Washoe Med's experts. The Grand Jury found no indication of impropriety in that regard and could draw no conclusions one way or the other on that issue.

Recommendation No. 2:

The Grand Jury has concluded that taxpayers may be better served in future sales of public assets if "appraised value" is restored as the formula for evaluating the sales price of such an asset, as that would enable the owning governmental entity to benefit from the appreciated value of a long-term asset. The Grand Jury urges the 1997 Nevada Legislature to review the statutes regarding sales of public assets in this regard.

Another area of recurring criticism is the fact that nearly \$9 million in cash assets was also turned over to hospital buyers as part of the sales transaction. The terms of the sale, however, required that the buyer receive all assets of Washoe Medical Center and that cash apparently represented operating capital, cash and short-term investments and funds attributable to debt issuance between June, 1984 and June, 1985, which also constituted debt liability in the same amount. The Grand Jury could find no evidence of impropriety in the inclusion of the cash assets of the hospital as part of the transaction.

Once the transfer was accomplished, Washoe Medical Center had to essentially pay off \$26,215,000 in hospital debt previously funded by Washoe County through General Obligation Bonds. Economic development revenue bonds (with tax-exempt interest) were

subsequently issued by Washoe Medical Center, Inc. to liquidate the existing debt and later to secure funding for system expansion and capital improvements to the non-profit portions of the Washoe Health System. It was the testimony of bond counsel for Washoe County that, under NRS 244A.713, the full faith and credit of Washoe County does not stand behind the bond financing undertaken by any portion of the Washoe Health System. All their bonds must be backed by assets of the hospital. Witnesses agreed, however, that if the health system were to "fold" tomorrow, Washoe County would take over the expansive health system subject to the debt it has incurred since the transfer in 1985.

IV. STATUS OF WASHOE HEALTH SYSTEM TODAY

Through extensive review of annual reports, community reports, articles and by-laws, organizational charts, phone book listings, business license information and tax payment records, lists of boards of directors/trustees/governors and General Membership of WHS entities, and an analysis of almost 10 years of service records, and testimony, the Grand Jury has come to some conclusions about the status and scope of Washoe Health System today.

First, WHS is a virtual "spider web" of entities far broader in scope and complexity than what is usually portrayed to the public through annual reports and community meetings. WHS is anything but a simple parent holding company with a few related "sister" entities. It is a sprawling mega-complex of more than 30 different profit-making and non-profit companies, divisions, departments, programs and sub-organizations separated into entities so confusing that WHS corporate executives could not differentiate some of them to the Grand Jury. The history of the health system has been one of name-changes, management changes and tax-exempt status changes that serve mostly to confuse outside observers.

For example, Washoe Home Care, a non-profit business, used to be called Greater Nevada Home Health Care and seems to provide the same services as Washoe Home Connection, formerly called Home Care Connection. The Reno Cardiac Medical Group was a profit-making physician-owned cardiac practice until recently when WHS purchased it and renamed it Washoe Heart Health Center and changed its status to tax-exempt non-profit. H.H.P. Management Corporation (the H.H.P. does not stand for Hospital Health Plan as that is a separate entity, which itself has just changed its name to Hometown Health Plan), runs Coordinated Care Options Insurance Co. (different from Coordinated Care Options of Nevada) and considers itself a non-profit in Nevada but does not qualify for tax-exempt status under IRS rules. HHP Management runs the Washoe Family Care (which used to be called Family Medical Centers), Baring Village Family Medical Center and Ryland Family and Urgent Care, together with WashoeWorks which was designed to be a profit-making entity but has subsequently become a non-profit business. Casino Health Services, a division of Washoe Medical Center, is listed as a non-profit but provides clinic-style outpatient health services to casino employees, through contracts with local casinos. Washoe Progressive Care Center used to be known as Sierra Health Care Center and Sierra Management Services but occupies a building owned by the HealthCare Equity Group. WHS Enterprises, Inc. used to be the parent company to Washoe Professional Center, Inc. which currently is the parent to nine profit-making businesses and previously had four others which have since closed down. Apparently, WHS decided it did not need so many "parents" and ceased the operations of WHS Enterprises, Inc, making the Washoe Health System now the sole shareholder of Washoe Professional Center, Inc. And WMC Funding, Inc., a Delaware corporation which

financed the Washoe Professional Center office building construction at 75 Ryland St., after accepting an assignment from WMC Nevada, Inc., is claimed by no one, and considered just a "funding mechanism" put together by Merrill Lynch to finance the building of the professional center complex and a parking garage.

In addition to the above, WHS has a 500+ bed hospital, a diabetes center, a cancer center, a senior health center, a pregnancy center, a therapy center, an imaging center, a hotel, a restaurant, a deli, a fitness center, a pharmacy, a uniform shop and dry cleaner, several insurance programs or HMOs, a debt collection company, a daycare service and a fund-raising foundation which is responsible for over \$200,000 annually. (A chart of the Washoe Health Systems is provided by the Grand Jury as an exhibit to this report).

The Grand Jury was not able to ascertain why so many WHS entities change names, functions or personnel but comments that it serves to confuse the public. The Grand Jury noted that none of the annual reports depicts every WHS entity in its organizational chart and therefore feels that the Washoe Health System purposefully represents itself to the public as less of a corporate giant than it actually is, perhaps to distract the public from appreciating the magnitude of the system that the one-time county hospital has become. It also appears that it gives WHS a far broader range of corporate entities over which to spread its earnings, enabling WHS to make a huge income in its operations and continually re-invest it within WHS, thus assuring both its growth and its tax-exempt status.

According to WHS executives, WHS earns about \$400 million in annual revenues (of which 60% is collected), and 80% of that comes from the hospital. WHS carries an approximate \$120 million in debt currently. WHS executives estimated the benefit to WHS

from its tax-exempt status at approximately \$9 million annually. No corporate executive, however, could identify that a given percentage of WHS income has ever been allocated to actually reducing direct patient costs, although all speculate that health care costs have risen less quickly since the transfer than they would have otherwise. It is clear to the Grand Jury that WHS's mission since the transfer in 1985 has been to utilize its tax-exempt status to accumulate and shelter great earnings and allow them to be poured back into various aspects of the WHS conglomerate being developed, rather than any concentration on reducing patient care costs as was represented to the public and to the Nevada Legislature in 1985. WHS executives said they plan the system's future by conducting image surveys and physician and patient satisfaction surveys. Such surveys would necessarily be limited, however, and answering individuals do not have the benefit of the comprehensive overall examination this Grand Jury has conducted. WHS executives testified that they thought it would be short-sighted for the Health System to focus on reducing direct patient costs, as opposed to providing a growing array of health care resources. Yet that is what was promised to the taxpayers when Washoe County's largest asset was sold.

Recommendation No. 3:

The Grand Jury recommends that the Washoe Health System could deliver on its promises to the public by reassessing its goals and redirecting its planning to include positive and definitive steps that directly reduce patient health care costs in areas where that is possible.

V. COMPETITIVE ADVANTAGE

One of the objectives sought by the transfer of the hospital to the private sector was

to enable Washoe Medical Center to better compete with other area hospitals. The question posed to the Grand Jury was whether the "gifting" of the county's largest asset (by transfer on such favorable terms) has resulted in an unfair competitive advantage today for Washoe Health Systems over other area facilities.

We have previously discussed the transfer terms and concluded that they were determined in accordance with existing statutory requirements at the time. Whether or not Washoe County might have received more profit if the sale formula was based upon "appraised value" is a moot question now. The fact remains that the sales price formula was statutorily set and was followed. Thus the Grand Jury cannot conclude that there was a "gifting" of the county's largest asset. The political wisdom of the transfer is a matter for individual determination and it is not the job of this Grand Jury to second-guess county elected officials 10 years after their vote. Rather we have been examining the process and the outcome to determine if the citizens of Washoe County are being properly served as anticipated in 1985.

One need only look around the Truckee Meadows to see that there has been a proliferation of health care resources in this community since the Washoe Med transfer in 1985. Obviously, competition was spurred. Recently, a merger of sorts was announced between St. Mary's Regional Medical Center and Northern Nevada Medical Center (formerly Sparks Family Hospital). The Grand Jury has been told that St. Mary's Regional Medical Center is approximately two-thirds the size of Washoe Med and Northern Nevada Medical Center is considerably smaller. Certainly no merger would have occurred unless it were necessary for those hospitals to compete with Washoe Health Systems. The Grand Jury feels

it is an inescapable conclusion that Washoe Health System has been placed at an advantage over other area facilities as a result of the 1985 transfer. The stated goal of increasing Washoe Med's ability to compete has surely been accomplished. The Grand Jury must conclude that the benefits of that decision have certainly inured to those individuals and companies comprising the Washoe Health System. There has been no reduction in patient care costs so the Grand Jury cannot conclude that the citizens of Washoe County have received a direct financial benefit from that decision. They do, however, have access to more health care resources than were previously available which WHS executives assert proves that medical care is more efficient and effective today. That is a matter on which people must draw their own conclusions. The fairness or propriety of the decision to place Washoe Med in a better competitive position is not for this Grand Jury to conclude, as that was a political decision made by Washoe County's elected officials, on advice of paid county staff. Our only conclusion on this question is that WHS has been placed at a competitive advantage.

The Grand Jury heard accusations that WHS entities engage in "self-referral", that is, when ancillary health services are needed by a patient, he or she is only referred to a WHS entity that performs such services. The Grand Jury also received some information indicating that for doctors whose medical practice is managed by a WHS entity, referrals are often kept within the Washoe Health System.

NRS 439B.425 specifically forbids a practitioner from referring a patient to a health facility, lab or commercial establishment in which the practitioner has a financial interest. The violation of this statute is a misdemeanor. NRS 630.305(3) also makes this a ground for

disciplinary action against a medical practitioner, too. Exceptions to these self-referral prohibitions include the situation in which a practitioner is participating in a health maintenance organization (HMO) or a group practice, and makes referral within that HMO or group.

WHS officials testified they only self-refer for health plan or HMO participants. The Grand Jury did not delve into any individual patient files to confirm or deny the self-referrals. The Grand Jury feels that if a specific doctor benefits only indirectly, that is, he may not have a financial interest in the particular health service to which he makes a referral but both businesses benefit by the perpetuation of the Washoe Health System of which they each are a part, even if no violation of the self-referral statute occurs, this nevertheless has the obvious effect of stifling competition to the detriment of non-WHS practitioners in this community.

Recommendation No.4.

The Grand Jury recommends that the Attorney General or Nevada's Board of Medical Examiners, the body charged with doctor discipline, consider instituting a system by which doctors regularly report their financial interests in other health care services. This information would then be available if a complaint for discipline or prosecution is lodged against a medical practitioner. The Grand Jury further recommends that the Attorney General or the Board of Medical Examiners investigate to determine if illegal self-referral is taking place within the Washoe Health System entities.

VI. INDIGENT CARE OBLIGATION

Numerous Nevada statutes make Washoe County government responsible for the health care, or emergency care, of individuals who cannot afford to pay for it. One of the greatest concerns expressed to the Grand Jury was the commitment of Washoe Medical Center, and thereafter Washoe Health System, to continue in its previous indigent care obligation to the citizens of Washoe County. During the legislative hearings on the transfer amendments, and in public statements in the media, hospital representatives constantly assured the public that no change would take place. NRS 450.500 specifically requires that the buyer of a county hospital must contract with the county to continue in that indigent care obligation and to charge the county at a cost "that does not exceed actual cost of providing such care." As stated above, the hospitals's own 1984 Feasibility Study predicted over a \$1 million annual loss of hospital revenues if it had to charge the county under that formula. The Grand Jury has discovered, however, that it did not happen that way at all.

Because hospital proponents recognized the significance of this development, they were able to get Washoe County to agree to re-define "actual costs" from a common sense, statutory meaning to a new interpretation based on "percentages of billed charges". This essentially had the effect of maintaining the billing methods at pre-transfer rates. Figures supplied to the Grand Jury by the Washoe County Department of Social Services for actual indigent care hospital reimbursements from 1981 to 1995 show that not only did the hospital not lose any money for indigent care, it has continued to increase almost yearly in the amounts it recoups from Washoe County:

<u>Fiscal Year</u>	<u>WMC reimbursement</u>
1981-82	\$2,505,434
1982-83	\$2,438,289

1983-84	\$3,059,489
1984-85	\$3,037,061
1985-86 ¹	\$3,790,837
1986-87	\$3,996,310
1987-88	\$4,284,343
1988-89	\$4,067,238
1989-90 ²	\$6,820,799
1990-91 ³	\$6,867,540
1991-92	\$5,757,192
1992-93	\$5,849,377
1993-94	\$5,915,658
1994-95(est)	\$5,850,789.

The Grand Jury received testimony that, during the 1985 negotiations on transfer terms, one deputy district attorney tried to push WMC to negotiate indigent payment rates more favorable to Washoe County, and in so doing he offended the hospital's negotiator so was pulled off the assignment. Thereafter, the Assistant District Attorney for the Civil Division himself participated in the remaining negotiations and approved Washoe Med's redefinition of the billing method. Washoe County thereby lost whatever financial benefit it stood to gain from the transfer, in the area of indigent care. The Grand Jury concludes that in 1985 County financial and legal staff were not diligent in discovering the predicted county savings on indigent care payments identified in the Feasibility Study. By agreeing to diverge from the "actual cost" method stated in the law, Washoe County enabled the hospital to avoid its \$1 million annual decrease in indigent care revenues and that savings was lost to the

¹First year after the transfer of WMC.

² Statutory minimum indigent care obligation of 0.6% waived by Washoe County for Washoe Medical Center only.

³ Statutory minimum indigent care obligation of 0.6% waived by Washoe County for Washoe Medical Center only.

taxpayers of Washoe County.

The Grand Jury has heard testimony that all the discussion regarding "actual cost" billing is irrelevant anymore because the indigent payment rates have been changed numerous times since 1985 by renegotiation, statutory change and Medicare intervention. Further, WHS officials say that Washoe County never pays them the full amount of indigent care charges billed so the question is purely academic.⁴ Nevertheless, the Grand Jury feels compelled to address this issue because of complaints from the public and other hospitals.

Prior to about 1984, Washoe County had taken the position that it only paid for indigent care for patients treated at Washoe Medical Center, the county hospital. Then the Wittenburg decision came down from the Nevada Supreme Court establishing that the county had to pay any hospital which provided indigent medical care. St. Mary's first annual payment occurred in fiscal year 1983-84 for \$86,576. The claim of disparity in treatment of Washoe Med over St. Mary's or other hospitals has continued since then. The Grand Jury found evidence of such a disparity in the fact that for the years 1989-90 and 1990-91, Washoe County staff decided to waive entirely Washoe Med's statutorily mandated minimum percentage of indigent care requirement found in NRS 439B.320. That section, implemented as the Governor's Cost Containment legislation in 1987, imposes a requirement that each hospital must provide a minimum of 0.6% of its net revenue for the preceding fiscal year in free indigent care before a county is obliged to pay for such care.

The Grand Jury received evidence that, despite legal counsel recommending against

⁴ WHS provided the Grand Jury a bar graph showing that percent of reimbursements has dropped from 77.4% in 1984 to 49.3% in 1995.

it, Washoe County staff decided to waive that requirement only for Washoe Med, for the two years above-stated. In checking with the State Office of Health Care Financial Analysis, the Grand Jury learned that while there is no statutory language that specifically allows for such a waiver, the State considers it tantamount to the county paying for indigent care it otherwise need not pay for, and that is one of the acceptable options with which a county can "reward" a hospital that is providing a disproportionately large share of a community's indigent care. The State representative qualified his information, however, by stating that if a county chooses to exercise one of its "reward"-type options, it must do so even-handedly and treat every hospital the same. The Grand Jury also learned that Washoe County has agreed to a system of advanced indigent care payments to Washoe Medical Center but not necessarily to the other hospitals in the area.

Recommendation No. 5

The Grand Jury recommends that Washoe County government strive to treat all health care provider systems equally in all respects, according them the same advantages or benefits in dealing with the governmental entities in the Truckee Meadows.

The Grand Jury wants to clarify to the public that under both state and federal law, every hospital with emergency room facilities is obligated to provide a minimum level of emergency treatment to anyone presenting for care. Any hospital receiving certain federal funding is also required to meet an indigent care obligation as a condition of that funding. Thus, there should be no further argument that only Washoe Med is obligated to treat indigents. Essentially, all hospitals in this area must meet their civic responsibility to our community's less fortunate.

Recommendation No. 6

The Grand Jury feels that if more funding were put into preventative medical care for indigents, taxpayers would pay less for emergency and long-term care. Neighborhood clinics and other such programs are increasingly being utilized in the Truckee Meadows and the Grand Jury applauds and encourages health care providers to expand all efforts in this regard.

County representatives told the Nevada Legislature in 1985 that annual county audits would guarantee that Washoe County paid no more than its proper share for indigent care. Yet Social Services and County Manager representatives told this Grand Jury that to their knowledge, there has been no annual county audit ever done of indigent care billings to Washoe County. The State Office of Health Care Financial Analysis is the group today charged by law with monitoring a hospital's statutory indigent care obligation.

Recommendation No. 7

This Grand Jury recommends that Washoe County periodically audit hospitals to review the types of indigent care services for which they are billing the county and make the report of audit available to the public. This would provide the public a look at the services it is paying for, instill public confidence and dispel accusations that Washoe County is gouged on indigent care billings.

VII. BREACH OF CONTRACT

The Grand Jury was asked to determine if there has been a breach of contract between Washoe County and the transferees of the former public hospital. As discussed hereafter, only a cessation of Washoe Health System's charitable purpose coupled with

private inurement of benefits would cause of reversion of the hospital back to Washoe County. Legally, a distinction must be made between what the transferees contracted to do and what they promised the public or Legislature they would accomplish. A breach of contract can only be found if they failed to satisfy the terms they contracted to perform.

Whether the public hospital would have eventually "crashed" under the weight of indigent care and decreased patient census as predicted by Susan Corning and others is a matter of speculation. While the public may not have had the opportunity to approve or disapprove of the other objectives sought to be accomplished by the hospital sale, the fact is that County Commissioners decided for them that such objectives were desirable. Even if their decisions are deemed by the public now to have been politically unwise, that cannot be seen as a breach of contract attributable to the Washoe Health System. Washoe Health System transferees contracted to make payments of \$12 million to Washoe County, and they have. They promised the public they would become a competitive, progressive health care complex, and they have. They promised to become more effective and efficient in health care delivery and the Grand Jury cannot say they have not done so. They contracted to continue to provide for indigent care, and they are doing so. They contracted to accept all the debt and liabilities of the hospital and provide for the employees and they have done so.

This Grand Jury has already concluded that the public has not seen the reduced patient care costs it was promised in 1985. WHS executives and health services experts claim that no hospital in the country has seen decreased patient costs. WHS claims it has contained the rise in patient costs. Inasmuch as reducing patient care costs was the strongest "selling point" made to the public, this Grand Jury concludes that Washoe County citizens

have not received the full benefit of the bargain of the hospital transfer, because what was "promised" was not delivered. But that cannot be considered a legal breach of contract because reducing patient costs was never written in as a term of the sale of the hospital. Nor did Washoe County achieve a savings in indigent care payments, because of renegotiation of reimbursement definitions, but that is partially attributable to Washoe County's own mistakes. Reduced indigent care payments was not a written term of the contract either. Thus, this Grand Jury cannot conclude that there has been a legal breach of the terms of the contract to transfer the hospital to the Health system, even though the pre-transfer representations may have given the public differing expectations. The Grand Jury believes that future sales should be conducted in an open, straight-forward manner that more accurately and fully informs the public.

Recommendation No.8:

The Grand Jury recommends that if county assets are going to be sold in the future, county officials advise the public in clear, unambiguous language of the exact terms of any contracts so people will not have inaccurate expectations.

VIII. NON-PROFIT STATUS AND PRIVATE BENEFIT

The Grand Jury has learned that the public's concept of "non-profit" is different from that of state and federal taxing agencies. While the reversion clause of NRS 450.500 says that the hospital (and the system which it has spawned) would revert to Washoe County "if the hospital ceased to be used as a non-profit hospital," that is not synonymous with the concept that WHS can make no profits. All who testified before the Grand Jury agree that "non-profit status" is a two-fold concept. First, an entity must have a charitable purpose (as

recognized by section 501(3)(c) of the Internal Revenue Code--and health care is such a recognized purpose) and secondly, profit can be earned and returned into the system as long as no improper benefit inures to a particular individual.

While some witnesses suggested that only a full-scale audit of WHS entities by a major national accounting firm will determine for sure if WHS is still a non-profit entity, the fact is that a finding of huge profits, or excess retained earnings, or unrelated business income would not defeat the tax-exempt, non-profit status of Washoe Health Systems. Essentially, WHS would have to totally discontinue its health care delivery function and provide private inurement before the hospital would ever revert to Washoe County. And if that ever happened, Washoe County would assume responsibility for a \$100+ million debt-laden system, rather than the \$23 million encumbered public hospital it transferred in 1985.

The IRS audited WHS' main entities in 1994, concluding a year long examination of records for fiscal year 1992 (and also 1993 for the hospital), and found no irregularities or problems that could jeopardize the system's tax-exempt status under IRS regulations. Included in the examination were tax returns, compensation levels, employee pensions, incentive bonus pay programs, tax-exempt bond financing, unrelated business income and appropriateness of tax payments thereon. IRS auditors scrutinized the activities of the non-profit entities to determine if any private benefit was being created for individuals or businesses, if the charitable purpose was being carried out and if the community was benefiting from those operations. WHS provided the Grand Jury with an audit summary which essentially gave them a "clean bill of health" for the year 1992 (and 1993 for the hospital only).

While the Grand Jury received some evidence of mixing of profit-making and non-profit operations, manipulation of programs and cost-shifting between entities, we were not able to further substantiate the allegations and thus, can draw no conclusions of improprieties.

Based upon the IRS' audit results, and the inability of Washoe County to fund a full-scale audit which experts estimated would cost a minimum of \$200,000 and take 2 full years to complete, the Grand Jury must accept the 1992 IRS audit results as dispositive.

That is not to say, however, that the Grand Jury agrees that no individuals are benefitting as a result of the hospital transfer and health system expansion. While they may not be sufficient to defeat tax-exempt status, the Grand Jury found several areas in which it feels that both the spirit and intent of the non-profit law are being manipulated in a way inconsistent with the best interests of the public and in a manner not anticipated by the citizens of Washoe County when its most valuable asset was sold in 1985.

For example, one WHS executive testified that his salary prior to the transfer was \$47,000 and today it is over \$160,000. Even accounting for inflation over the 10 year span and his increased responsibility for a health care system, (he formerly supervised 120 staff and now oversees 500 employees), his salary has quadrupled. Comparing WHS salaries for some key management positions with salary figures found in the "Nevada Association of Hospitals and Health Systems Compensation and Benefits Survey, 1995", WHS salaries ranged from 62% to 70% higher than their counterparts in the North Region of the State. And that is without considering their 30% possible annual bonuses! (See below for discussion of bonuses.) That is a tremendous difference which the Grand Jury sees as

excessive and characterizes as an individual benefit. The Grand Jury learned that many corporate positions were in similar circumstances.

Another example is Washoe Medical Center's Incentive Program which pays salary bonuses to management employees. In 1989, a professional consultant was hired to assist WMC in developing and implementing a pay-for-performance plan. The plan was initially designed only for executives but was expanded to directors and managers in 1991 and to supervisors in 1994. (While the program is called "Washoe Medical Center's Incentive Program", it is open to non-WMC employees in the Washoe Health System if approved by the Incentive Plan Committee. All of the WHS corporate executives appear to be participating in the program.)

Under the Incentive Plan, an employee is eligible to receive a certain percentage of his base pay as a bonus if his or her division or company reduces expenses from those budgeted and improves quality, as measured by patient satisfaction surveys. Highest level corporate executives receive up to 30% of their annual base pay as a bonus. Managers and directors receive up to 15% of their annual base pay as bonuses and supervisory-level employees can receive up to 5% of their annual base pay as a bonus.

Dollar figures for bonuses were provided to the Grand Jury only for the years 1993 and 1994. In 1993, 64 persons were eligible to participate and of those, 51 received bonuses totalling \$310,248 for generating savings of \$2,869,096 overall. In 1994, 191 individuals were eligible and 178 of those employees actually received bonuses totaling \$653,614. Those employees allegedly generated savings of \$7,398,716 for 1994.

The individual impact of such a bonus is lost in the overall figures, but the corporate

executive referenced above who now earns over \$160,000 annually receives a full 30% bonus each year, or an additional \$48,600. Another top executive earning \$204,000 annually receives a 30% bonus, increasing his salary to \$265,200.

While the IRS might not see that as a private inurement or individual benefit sufficient to defeat tax-exempt status, this Grand Jury believes that such high compensation levels do indeed constitute an individual benefit to employees who were not so fortunately situated when Washoe Medical Center was a public hospital. Clearly, the transfer has been a great benefit to a handful of supervisors, managers, directors and corporate executives. The Grand Jury notes that in the "Nevada Association of Hospitals and Health Systems Compensation and Benefits Survey, 1995", more than 70% of the top executive positions in our state's hospitals are not eligible for cash bonuses on top of their salary. The Grand Jury feels the 30% bonuses for top executives are excessive.

Recommendation No. 9

The Grand Jury suggests that public confidence could be improved if corporate management of the Washoe Health Systems would re-consider and re-evaluate its current bonus program for top-level executives.

Another example the Grand Jury would characterize as private benefit is the circumstances wherein WMC or WHS buys out a privately-owned business. In 1986, Sierra Nevada Labs ("SNL"), with 200 employees, was acquired by WHS Enterprises Inc. (the former "parent" company of Washoe Professional Center, Inc.) for \$2.24 million. A group of doctors then owned 18% of it. The purchase money came from a loan to WHS Enterprises, Inc. from Washoe Medical Center or Washoe Health Systems. The Washoe

Med lab, with 90 employees, merged with SNL. In the early 1990s, the expanded 450-employee Sierra Nevada Labs was sold to a group from California for over \$16 million. According to corporate executives, the profit from that sale went to Washoe Professional Center, even though the loan to purchase SNL initially came from Washoe Medical Center or the Washoe Health System.

A similar transaction was the purchase by WHS of the Reno Cardiac Medical Group (now Washoe Heart Health Center) for \$247,700 in 1991. The cardiac practice was purchased from a group of doctors who then began to practice their specialty as employees or contractors to the Washoe Health System.

In both cases, physician-owners clearly profited and benefitted from the System's purchase of their privately-owned businesses, allowing them to continue their practice without overhead expenses, as contract providers to the Washoe Medical Center or the Washoe Health System. In some cases, some of those individuals maintain seats on one or more of the various boards of directors/trustees/or governors of the various WHS entities, and have done so since the formation of said boards with the transfer of the hospital from public to private in 1985. While the cardiac practice transaction apparently was reviewed by the IRS and passed muster, the Grand Jury notes that such situations carry the appearance of "insiders" engaged in self-dealing and benefitting from financial dealings within the hospital or the Health System, especially when few details of the transactions are revealed to the public. One expert testifying to the Grand Jury said that in many states today, the Attorney General requires annual reports and conducts periodic audits of nonprofit "community" businesses like Washoe Health Systems, in order to assure the public that no one individual or

group is over-reaching with regard to benefits derived from such quasi-public assets.

Recommendation No. 10

The Grand Jury recommends that there be more candid advance public disclosure of the facts of "insider" transactions before any purchase or sale is made by Washoe Medical Center or the Washoe Health System. If the public is provided the details, together with assurances that said transactions comport with state and federal regulations, this could quell public suspicions and restore confidence in the Health System.

Recommendation No. 11

The Grand Jury further recommends that Nevada's Attorney General undertake to monitor the Washoe Health System as a "community owned asset" and make periodic reports to the people, assuring there is no violation of the public trust or over-reaching in terms of private benefits or "insider" transactions.

IX. BOARD MEMBERSHIPS

While it may be customary for corporations to pay people to serve on policy-making boards, members of the various boards within the Health System appear to be privately benefitting because of their extended tenures on the boards or within the System. The Grand Jury has learned that members serving on the Washoe Health System Board of Directors are compensated the sum of \$500 per board meeting and the board meets monthly. The chairman of the board receives \$1,000 per board meeting.

The Board of Governors of Washoe Medical Center also meets monthly and the chairman receives \$1,000 per meeting with other board members being paid \$500 per

meeting. Subcommittee members are paid an additional \$100 per committee meeting. The Medical Director of the hospital is not paid for board membership.

The Hospital Health Plan, Inc. Board of Governors meets monthly and also pays its members. The chairman is paid \$250 per monthly meeting, and other board members and subcommittee members each receive \$100 per meeting attended.

On none of the boards are employee staff members paid as their board membership and attendance is considered part of their ordinary job. While eight other entities within the Health System have boards, they do not pay their policy-makers.

The Grand Jury analyzed eight to 10 years worth of board membership lists provided for the major governing boards within the Health System. Twenty six individuals were found to have served on two or more of the paying boards, and most of those persons have served nearly all of the 10 years since the transfer, and continue as board members today. The Washoe Health System Board of Directors has been comprised of seven to twelve members annually. Nearly half of the WHS Directors have served since the transfer. Half of the H.H.P., Inc. Board (which averages 11 to 13 members annually) has served over 5 years since its founding in 1987. The Washoe Medical Center Board of Governors has averaged from 11 to 15 members annually. Nearly one-third of the members of the hospital Board of Governors have consistently served six or more of the last 10 years. A notable example is former County Commissioner Gene McDowell who has served on the hospital Board of Governors since 1985, the WHS Board of Directors since 1985, the Washoe Medical Foundation since 1985 and the General membership since 1985. If each paying

board was meeting monthly, and paying at the rate of \$500 per meeting for the last 10 years⁵, Commissioner McDowell could have earned as much as \$12,000 per year or a total of \$120,000 for serving the Health System for the last 10 years. The Grand Jury notes that this is not an isolated example as there are a number of physicians, former WMC administrators, and long-time community representatives in the same position.

WHS corporate executives told the Grand Jury that the various boards were designed and intended to be self-perpetuating boards that could enable the System to develop some expertise in its health care system. However, while the executives testified that the community is still the "owner" of Washoe Medical and the Health System in a sense, the Grand Jury feels that members serving such extended terms within the Health System give the public the impression that a "closed shop" runs the organization.

In 1985, the WHS General Membership was described by transfer proponents to the Nevada Legislature as the "community watchdog" board which would assure broadly representative community involvement and control over the new health system. The Grand Jury feels that the contrary has been true. While the by-laws authorize as many as 60 members of the General Membership Board, no more than 46 have ever served on a single board and the average yearly membership has been 43 people. Of the eight years of records provided to the Grand Jury by WHS, 15 members have served from the beginning. Eighteen people have served seven years of the eight; 36 people have served more than five terms on General Membership. Over 27 of the repeat members on those General Membership boards have been WHS-related, either being doctors, nurses, administrators or 10-year system

⁵ While the Grand Jury did not have testimony on past compensation, we recognize that payment for board meetings was probably less in prior years than it is now.

members. Yet, WHS's own health system expert, attorney Tom Collins, told this Grand Jury that no majority of the General Membership should come from the same field of interest or representation.

The Grand Jury feels that the General Membership has failed in its goal of providing broad-based community involvement in the Washoe Health System, especially because so many of the long-term members have become entrenched throughout the Washoe Health System. After such extended terms in the WHS, members necessarily become committed to the interests of the System and cease to satisfy the role of overseer for the people of this community.

Recommendation No. 12

The Grand Jury recommends more diversification on the various boards of the Health System and urges Washoe Health System to make a concerted effort to recruit more non-System members onto the General Membership to restore the "community watch-dog" function promised to the Legislature and to the people.

X. "GOVERNING BODY" TERMS

The one board specifically addressed in NRS 450.500(1)(a) is the "governing body of the nonprofit corporation" whose members, according to the statute, are to serve terms "not to exceed 6 years." Of the 30 people who have served on the Board of Governors of the Washoe Medical Center since the transfer, eight individuals have served more than 6 years. Of the 24 people who have served on the Washoe Health System Board of Directors, eight have served more than 6 years.

Health system expert Tom Collins agreed that the intent of Nevada's law was to start

out with a board of former incumbent trustees but to rotate them out through 6-year terms. WHS executives explain that because the by-laws of the System provide for 3-year terms, instead of six, and a director can succeed himself and serve three separate terms, they feel they are in compliance with NRS 450.500(1)(a). The Grand Jury disagrees. Whichever of those two boards is considered the "governing body of the nonprofit corporation", both of them have, in the opinion of this Grand Jury, violated both the letter and the spirit of the law. As Mr. Collins testified and the Grand Jury agrees, the statute intends to limit governing body membership to a maximum of 6 years to prevent an entrenched clique from controlling the business of the nonprofit corporation.

Recommendation No. 13

The Grand Jury recommends that corporate leadership immediately take steps to comply with NRS 450.500(1)(a) and limit governing body directorships to a maximum of 6 years per person.

XI. CONFLICT OF INTEREST

The question of County Commissioners' conflicts of interest was resolved by the Nevada State Ethics Commission in Opinion 91-6 issued in December, 1991. The Grand Jury concurs with that finding and feels it should not have taken that long for such a conclusion to be reached. Health System expert Tom Collins told the Nevada Legislature and this Grand Jury that one's fiduciary obligation alone should be sufficient to alert one to a conflict of interest when a county official or employee stands to make a pecuniary gain on an issue affecting his health system involvement. A steady salary or consistent Board of Directors compensation is just such a pecuniary gain. The Grand Jury heard testimony that

in 1988 or 1989 a former Assistant District Attorney advised Commissioner Dianne Cornwall

Danner that she did not have to abstain from voting on Washoe Health System issues merely by virtue of her employment and lucrative salary from WHS. That former Assistant District Attorney testified that he did so advise her but also told her that only an Ethics Commission ruling could definitively resolve the question, yet none was sought until 1991. The Grand Jury feels that such salary would indeed create divided loyalties and an obvious conflict of interest, in addition to the appearance of impropriety. The Grand Jury feels that any contrary legal advice was misguided and erroneous and an Ethics Commission ruling should have been sought immediately.

As discussed in section IX above, the total accumulation of boards of directors fees by then-Commissioner Gene McDowell would also undoubtedly create a conflict of interest which should have long ago required his abstention of voting on any Washoe Med issues. The same would have been true as to other commissioners (Lillard and Williams) serving in dual capacities on paying boards of the Washoe Health System.

The Grand Jury also undertook to determine if the commissioners' conflicts of interests benefitted Washoe Health System with regard to its insurance coverage program. The Grand Jury examined the circumstances by which WHS's Hospital Health Plan health maintenance organization became one of the two insurance programs available to county employees while certain County Commissioners were also serving Washoe Health System.

County Manager John MacIntyre informed the Grand Jury that in 1984, Health Plan of Nevada was offered to county employees as one of its insurance options. In March, 1989, Hospital Health Plan took over Health Plan of Nevada. Insurance benefits is one of the

subjects of mandatory bargaining between Washoe County and its employee organizations. During contract negotiations with employee groups in 1989, the employee groups approved a self-funded indemnity program only, and sought to drop HHP as an option. County Commissioner Minutes for May 2, 1989 reveal that County Risk Manager Ray Sibley recommended that HHP be canceled. Commissioners Lillard, McDowell and Cornwall nevertheless voted to include HHP in the insurance offering to county employees, despite the contrary recommendation of the Risk Manager and the employees association. Commissioners Beck and Reid opposed it. Prior to voting, Commissioner Cornwall disclosed that legal counsel advised her that her employment with Washoe Medical Foundation did not cause her a conflict of interest and she could vote on the insurance issue.

County Commissioner Minutes for May 24, 1994 indicate that Washoe County's benefits advisor recommended the dropping of HHP as an insurance option because \$240,000 could be saved by switching to another program, Mutual of Omaha's HMO. This time a vote was taken with Commissioners McDowell and Cornwall being required to abstain from voting as a result of the 1991 Ethics Opinion. The remaining three county commissioners voted to drop HHP.

The Grand Jury feels that there was a definite conflict of interest and the three commissioners associated with Washoe Health Systems should not have voted on this issue initially in 1989. The Grand Jury further concludes that the county commissioners' conflicts of interest worked to the benefit of Hospital Health Plan, a WHS entity to whom they owed an allegiance, in that the HMO was approved despite contrary recommendations from county staff and employees association.

Recommendation No. 14

The Grand Jury recommends that in the future, any county commissioner employed by or associated in any way with a party seeking a favorable vote from the Board of County Commissioners, should both declare his or her conflict and then totally abstain from discussion and voting on the issue. While Ethics Opinion 91-6 does not require the county commissioner to refrain from any discussion of such an issue, this Grand Jury recommends it to prevent even the appearance of conflict of interest, to assure the integrity of the process and to restore public confidence in the fairness of the vote.

XII. CONCLUSION AND SUMMARY OF RECOMMENDATIONS

No indictable criminal activity was found by this Grand Jury. There are areas, however, in which this Grand Jury feels Washoe County citizens did not get the full benefit of their bargain in the transfer of their public hospital to private interests. There is room for improvement in certain areas that this Grand Jury feels will result in better service to the public, savings to the taxpayers, increased efficiency and promotion of the public interest. A summary of our recommendations follows:

1. The Grand Jury recommends that in the future, before consideration is given to conveying a major county asset or privatizing a major governmental function, the "pulse of the public" be taken first, as the essence of representative democracy is a public servant who truly represents the opinions of the constituency. The Grand Jury feels the public is not well served by public officials who presume to know the will of the people or those who superimpose their own will over that of the people.

2. The Grand Jury has concluded that taxpayers may be better served in future sales of public assets if "appraised value" is restored as the formula for evaluating the sales price of such an asset, as that would enable the owning governmental entity to benefit from the appreciated value of a long-term asset. The Grand Jury urges the 1997 Nevada Legislature to review the statutes regarding sales of public assets in this regard.

3. The Grand Jury recommends that the Washoe Health System could deliver on its promises to the public by reassessing its goals and redirecting its planning to include positive and definitive steps that directly reduce patient health care costs in areas where that is possible.

4. The Grand Jury recommends that the Attorney General or Nevada's Board of Medical Examiners, the body charged with doctor discipline, consider instituting a system by which doctors regularly report their financial interests in other health care services. This information would then be available if a complaint for discipline or prosecution is lodged against a medical practitioner. The Grand Jury further recommends that the Attorney General or the Board of Medical Examiners investigate to determine if illegal self-referral is taking place within the Washoe Health System entities.

5. The Grand Jury recommends that Washoe County government strive to treat all health care provider systems equally in all respects, according them the same advantages or benefits in dealing with the governmental entities in the Truckee Meadows.

6. The Grand Jury feels that if more funding were put into preventative medical care for indigents, taxpayers would pay less for emergency and long-term care. Neighborhood clinics and other such programs are increasingly being utilized in the Truckee

Meadows and the Grand Jury applauds and encourages health care providers to expand all efforts in this regard.

7. The Grand Jury recommends that Washoe County periodically audit hospitals to review the types of indigent care services for which they are billing the county and make the report of audit available to the public. This would provide the public a look at the services it is paying for, instill public confidence and dispel accusations that Washoe County is gouged on indigent care billings.

8. The Grand Jury recommends that if county assets are going to be sold in the future, county officials advise the public in clear, unambiguous language of the exact terms of any contracts so people will not have inaccurate expectations.

9. The Grand Jury suggests that public confidence could be improved if corporate management of the Washoe Health Systems would re-consider and re-evaluate its current bonus program for top-level executives.

10. The Grand Jury recommends that there be more candid advance public disclosure of the facts of "insider" transactions before any purchase or sale is made by Washoe Medical Center or the Washoe Health System. If the public is provided the details, together with assurances that said transactions comport with state and federal regulations, this could quell public suspicions and restore confidence in the Health System.

11. The Grand Jury further recommends that Nevada's Attorney General undertake to monitor the Washoe Health System as a "community owned asset" and make periodic reports to the people, assuring there is no violation of the public trust or over-reaching in terms of private benefits or "insider" transactions.

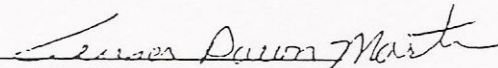
12. The Grand Jury recommends more diversification on the various boards of the Health System and urges Washoe Health System to make a concerted effort to recruit more non-System members onto the General Membership to restore the "community watch-dog" function promised to the Legislature and to the people.

13. The Grand Jury recommends that corporate leadership immediately begin to comply with NRS 450.500(1)(a) and forthwith limit governing body directorships to a maximum of 6 years per person.

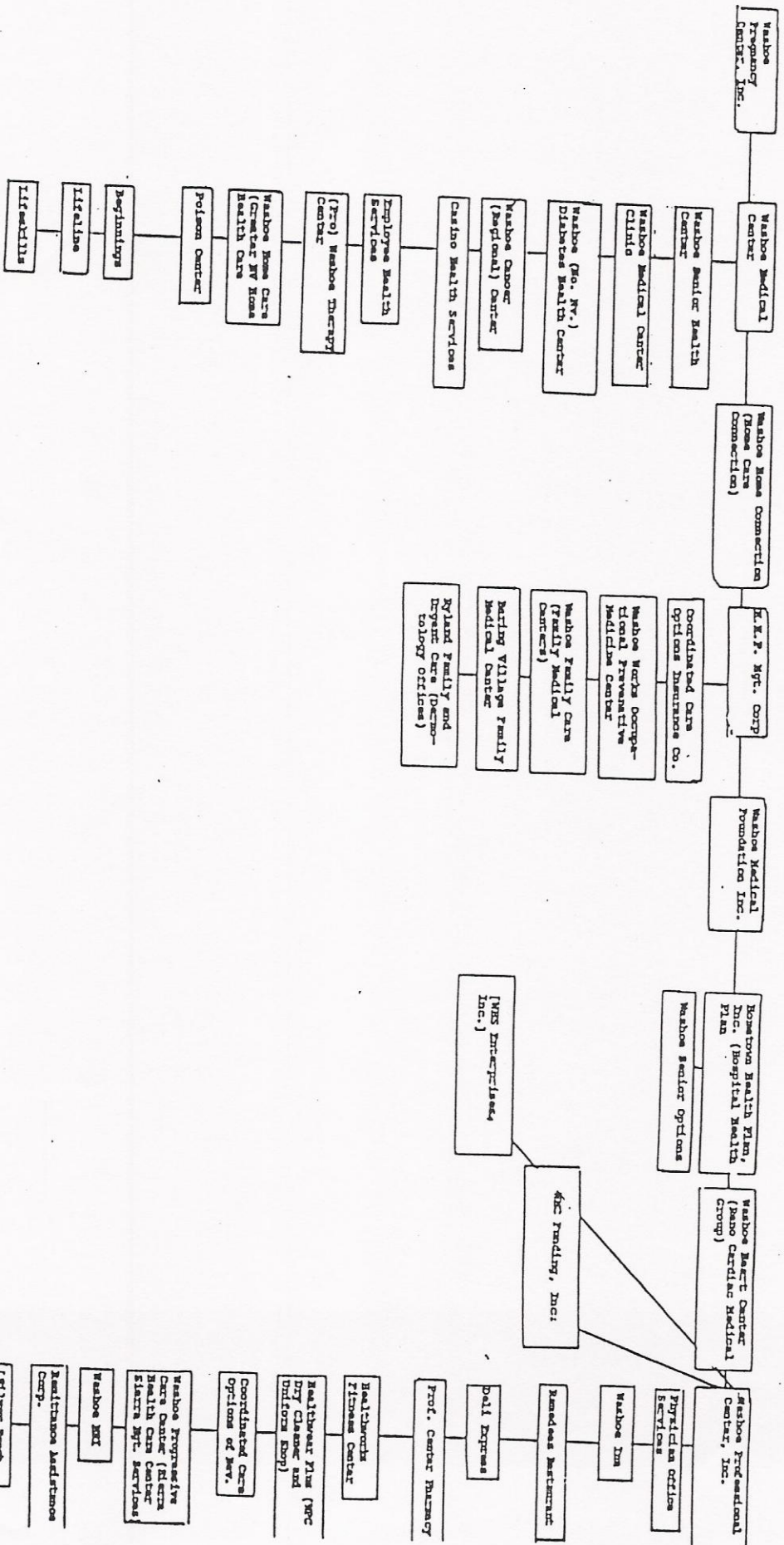
14. The Grand Jury recommends that in the future, any county commissioner employed by or associated in any way with a party seeking a favorable vote from the Board of County Commissioners, should both declare his or her conflict and then totally abstain from discussion and voting on the issue. While Ethics Opinion 91-6 does not require the county commissioner to refrain from any discussion of such an issue, this Grand Jury recommends it to prevent even the appearance of conflict of interest, to assure the integrity of the process and to restore public confidence in the fairness of the vote.

Respectfully submitted this 26 day of September, 1995.

WASHOE COUNTY GRAND JURY

by 
TERESA DAWN MARTIN
Foreman

WASHOE HEALTH SYSTEM, INC.



() Former Name
 [] Now Defunct