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MUSICK, PEELER & GARRETT
A LAW PARTNERSHIP

SUITE 1900
225 BROADWAY
SAN DIEGO, CALIFORNIA 92101-5201

TELEPHONE (619) 231-2500
FACSIMILE (619) 231-1234

LOS ANGELES OFFICE
ONE WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90017
(213) 629-7600

BAY AREA OFFICE
SUITE 500
577 AIRPORT BOULEVARD
BURLINGAME, CALIFORNIA 94010-5201
(415) 375-1000

FRESNO OFFICE
SUITE 101
5088 NORTH FRUIT AVENUE
FRESNO, CALIFORNIA 93711-3061
(209) 228-1000

SACRAMENTO OFFICE
SUITE 100
1121 "L" STREET
SACRAMENTO, CALIFORNIA 95814
(916) 442-1200

ELVON MUSICK 1890-1968
LEROY A. GARRETT 1906-1963
JOSEPH D. PEELER (RETIRED)

February 25, 1991

RECEIVED
FEB 25 1991
Ans'd HP

The Honorable John MacDonald, Chairman
San Diego County Board of Supervisors
1600 Pacific Highway
San Diego, California 92101

Re: Bielenson Hearings/County Medical Services Program

Dear Supervisor MacDonald:

Health & Safety Code section 1442.5 requires a county to hold public hearings before eliminating or reducing the level of medical services provided by the county to medically indigent adults. As you know, on February 14, 1991, the County of San Diego notified all area hospitals participating in County Medical Services ("CMS") Agreements of its intent to terminate those contracts because of the reduction in state funding for the program. The notice stated that the Board of Supervisors will publicly discuss actual termination of the CMS program on Tuesday, February 26, 1991 and then will take formal action.

On behalf of the hospitals participating in the San Diego County Medical Services Agreement, the Hospital Council of San Diego and Imperial Counties requests that the San Diego County Board of Supervisors comply with its statutory obligations and provide public notice of public hearings (i.e., Bielenson hearings) so that the Board properly can determine the effect the proposed contractual termination will have on healthcare services for the medically indigent of this county. Until the Board complies with its statutory obligations, we believe that it cannot legally terminate the existing contracts.

The statutory hearing requirements are explicit and have been strictly enforced by the courts. [See, Smith v. Board of Supervisors, 216 Cal.App.3d 862 (Dec. 1989)]. The county's February 14, 1991 Notice does not begin to comply with the statute. For example, section 1442.5 requires the Board to provide public notice, including notice posted at the entrance of

all county or contracting healthcare facilities, of public hearings to be held by the Board before any decision to reduce or to eliminate services. The notices must be posted not less than 30 days before the hearings and must contain a detailed list of the proposed reductions or changes by facility or service.

Since section 1442.5 expressly requires hearings before elimination or reduction of services, now is the time for you to comply with the statute and to hear both from hospitals and from patients served by the CMS program. As a result of testimony and evidence presented at the hearings, the county, as well as the state government, can evaluate the detrimental impact the contract cancellations will have on the healthcare needs of the medically indigent adults of this county. Because of the lack of detailed, advance notice of the proposed contract cancellations, tomorrow's public meeting will not suffice to discharge the county's statutory obligation.

The county may argue that it is not required by section 1442.5 to conduct public hearings, as its only obligation to provide medical care for medically indigent adults continues to be met through the Third Operating Agreement with the University of California, San Diego Medical Center. While we believe that the county's legal obligations to the medically indigent extend beyond the UCSD contract, that issue is not important in an analysis of the county's obligation to hold Bielenson hearings now: The only relevant consideration is recognition that the proposed termination of contracts with twenty-two hospitals clearly will eliminate existing county services to medically indigent adults, thereby triggering the duty to hold hearings.

In sum, we believe that section 1442.5 compels the Board to do the following before terminating current CMS Agreements:

1. Provide public notice, including notice posted at the entrance of all county and contracting health care facilities, of public hearings to be held by the Board. The notice should be posted not less than 30 days before the hearings and, under the statute, "should contain a detailed list of the proposed reductions or changes, by facility and service." (In this regard, we believe that the county must specify the amount of funds which have been and will be withdrawn each month from each provider under the current

Agreement, as well as comply with the other notice requirements set forth in the statute.) (See, Smith v. Board of Supervisors, 216 Cal.App.3d 862, regarding notice requirements);

2. The Board should make findings based on evidence and testimony presented at the hearings as to whether or not the proposed contract cancellations will have a detrimental impact on the healthcare needs of indigents of San Diego County.

As we do not believe that it is in the public interest to spend tax dollars or hospital funds on legal fees and court costs, we are hopeful that the Board will comply with its statutory obligations immediately and that the question of hearings can be resolved amicably. If the Board is not inclined to go forward with hearings, we will be compelled to seek a court order requiring the county to comply with section 1442.5. While we are confident that we should prevail in such a proceeding, we are hopeful that it will not be necessary. In any event, we would appreciate notification by 5:00 p.m., March 1, 1991, as to how the county intends to proceed.

We will look forward to hearing from you and thank both you and the Board in advance for your consideration and cooperation.

Very truly yours,

Carol Isackson

Carol Isackson
Of Counsel to
MUSICK, PEELER & GARRETT
Attorneys for The Hospital
Council of San Diego and
Imperial Counties

CI:gvb

cc: Supervisor Brian P. Bilbray, 1st District
Supervisor George F. Bailey, 2nd District
Supervisor Susan Golding, 3rd District
Supervisor Leon Williams, 4th District
J. William Cox, M.D., Ph.D., Director
Department of Health Services