

December 16 2020 Regular Meeting

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AGENDA
NORTHERN INYO HEALTHCARE DISTRICT
BOARD OF DIRECTORS REGULAR MEETING
December 16, 2020 at 5:30 p.m.
2957 Birch Street, Bishop, CA

Northern Inyo Healthcare District invites you to attend this Zoom meeting:

TO CONNECT VIA ZOOM: (A link is also available on the NIHD Website)
<https://zoom.us/j/213497015?pwd=TDIiWXRuWjE4T1Y2YVFWbnF2aGk5UT09>
Meeting ID: 213 497 015
Password: 608092

PHONE CONNECTION:
888 475 4499 US Toll-free
877 853 5257 US Toll-free
Meeting ID: 213 497 015

1. Call to Order (at 5:30 pm).
2. **Public Comment:** The purpose of public comment is to allow members of the public to address the Board of Directors. Public comments shall be received at the beginning of the meeting and are limited to three (3) minutes per speaker, with a total time limit of 30 minutes for all public comment unless otherwise modified by the Chair. Speaking time may not be granted and/or loaned to another individual for purposes of extending available speaking time unless arrangements have been made in advance for a large group of speakers to have a spokesperson speak on their behalf. Comments must be kept brief and non-repetitive. The general Public Comment portion of the meeting allows the public to address any item within the jurisdiction of the Board of Directors on matters not appearing on the agenda. Public comments on agenda items should be made when that item is considered.
3. New Business:
 - A. Election of Board officers for calendar year 2021 (*action item*).
 - B. Chiller plant upgrade (*information item*).
 - C. Workplace Investigation Policy and Procedure (*action item*).
 - D. Board of Directors Access to Personnel Information (*information item*).
 - E. General principles of Board Governance (*information item*).
 - F. Stark Law and contract considerations relating to Fair Market Value (*information item*).

- G. Covid-19 vaccine overview (*information item*).
 - H. Board acknowledgement of District operations in 2020 (*information item*).
 - I. Policy and Procedure approval, *Leaving Hospital Against Medical Advice Refusal of Treatment or Transfer* (*action item*).
4. Chief of Staff Report, Charlotte Helvie, MD:
- A. Policy and Procedure approvals (*action items*):
 - 1. *Emergency Management Plan*
 - 2. *Administration of Drugs and Biologicals*
 - 3. *Cardiac Monitoring Policy*
 - 4. *Dead on Arrival*
 - 5. *Leaving Hospital Against Medical Advice Refusal or Treatment or Transfer*
 - 6. *Qualitative Fit Testing*
 - 7. *Safely Surrendered Baby Policy and Procedure*
 - B. Medical Staff and APP Staff Appointments (*action items*):
 - 1. *David Plank, MD (plastic surgery) – Provisional Consulting Staff*
 - 2. *Sarah Starosta, PA-C (RHC physician assistant) – Advanced Practice Provider Staff*
 - C. Medical Staff and APP Reappointments for Calendar Years 2021-2022 (*action items*):
 - 1. *Anu Agarwal MD, Cardiology*
 - 2. *Abhilash Akinapelli MD, Cardiology*
 - 3. *David Amsalem MD, Emergency Medicine*
 - 4. *Lara Jeanine Arndal MD, OB/GYN*
 - 5. *Thomas J. Boo MD, Family Medicine*
 - 6. *Sierra Bourne MD, Emergency Medicine*
 - 7. *Robbin Cromer-Tyler MD, General Surgery*
 - 8. *Tracy Drew NP, Family Nurse Practitioner*
 - 9. *Joy Engblade MD, Internal Medicine*
 - 10. *Matthew Ercolani MD, Urology*
 - 11. *James Fair MD, Emergency Medicine*
 - 12. *Anne Gasior MD, Family Medicine*
 - 13. *Anne Goshgarian MD, Emergency Medicine*
 - 14. *Charlotte Helvie MD, Pediatrics*
 - 15. *Samantha Jeppsen MD, Emergency Medicine*

16. Jennifer Joos PA, *Family Practice*
17. Felix Karp MD, *Internal Medicine*
18. Katrinka Kip MD, *Pediatric Cardiology*
19. Earl Landrito MD, *Radiology*
20. Catherine Leja MD, *Family Medicine*
21. Bo Nasmyth Loy MD, *Orthopedic Surgery*
22. Tamara Loy NP, *Pediatric Nurse Practitioner*
23. Joseph Ludwick MD, *Pediatric Cardiology*
24. Atashi Mandal MD, *Internal Medicine*
25. Colleen McEvoy NP, *Pediatric Nurse Practitioner*
26. Monika Mehrens DO, *Family Medicine*
27. Jayson Morgan MD, *Cardiology*
28. David L. Nicholson CRNA, *Anesthesia*
29. Vlad Radulescu MD, *Cardiology*
30. Allison Robinson MD, *General Surgery*
31. Anna Rudolphi MD, *Emergency Medicine*
32. Jeanette Schneider MD, *Psychiatry*
33. Stefan Schunk MD, *Internal Medicine*
34. Uttama Sharma MD, *Family Medicine*
35. Saif H. Siddiqi MD, *Radiology*
36. Daniel Su MD, *Urology*
37. William Timbers MD, *Emergency Medicine*
38. Thomas-Duythuc To MD, *Cardiology*
39. Matthew Wise MD, *OB/GYN*
40. Mara Yolken NP, *Adult Nurse Practitioner*

D. Request for Extension of Appointment as per Bylaws Section 6.13.4 (*action items*):

1. Arrash Fard MD (*Cardiology*) – Adventist Health, Telemedicine Staff
2. Mark Robinson MD (*Orthopedic Surgery*) – Active Staff
3. J. Daniel Cowan MD (*Anesthesiology*) – Active Staff

E. Resignations (*action items*):

1. Robert Nathan Slotnick MD (*Obstetrics/Gynecology & Genetics*) – effective 9/4/20
2. Benjamin Ge MD (*Teleradiology – Quality Nighthawk*) – effective 9/2/20

3. Joe Miller, MD (*Urology*) – effective 11/2/20
 4. Tamara McBride MD (*Family Medicine*) – effective 12/31/20
 5. Stuart Souders MD (*Diagnostic Radiology*) – effective 12/31/20
 6. Jake Ichino MD (*Cardiology, Renown*) – effective 12/31/20
- F. Medical Executive Committee Meeting Report (*information item*).
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Consent Agenda (action items)

5. Approval of minutes of the November 18 2020 regular meeting
 6. Financial and Statistical reports as of October 31 2020
 7. Cerner Implementation update
 8. Board Ad Hoc Committee meeting minutes
-
9. NIHD Committee updates from Board members (*information items*).
 10. Reports from Board members (*information items*).
 11. Adjournment to Closed Session to/for:
 - A. Public Employee Performance Evaluation (*pursuant to Government Code Section 54957(b)*)
Title: Interim Chief Executive Officer.
 12. Return to Open Session and report of any action taken (*information item*).
 13. Adjournment.

In compliance with the Americans with Disabilities Act, if you require special accommodations to participate in a District Board meeting, please contact administration at (760) 873-2838 at least 48 hours prior to the meeting.

**NORTHERN INYO HEALTHCARE DISTRICT
POLICY AND PROCEDURE**

Title: Workplace Investigations	
Scope: District Wide	Manual: Human Resources – Employee Handbook
Source: Human Resources	Effective Date: 1/1/2021

Purpose

The purpose of this policy is to provide guidance for conducting internal investigations of alleged violations of NIHD policies which prohibit unlawful discrimination, harassment, retaliation and alleged violations of other NIHD policies, rules and standards of conduct by employees. This policy also covers investigative procedures for investigations alleging policy violations by Chief Officers, including the CEO, COO, CFO, CNO and CMO.

Policy

Northern Inyo Healthcare District is committed to ensuring that all NIHD-initiated investigations are conducted in a fair, impartial, and thorough manner.

Procedures

Upon notification to a District supervisor or manager, including any Officer, Chief, Director, Manager or elected member of the Board of Directors, of a complaint or other information alleging a violation of district policy, an investigation will be conducted.

Responsibility

NIHD will initiate an appropriate investigation into allegations of violations of NIHD policy. The Director of Human Resources, or their designee, will have primary responsibility for investigating complaints relating to allegations of employee violations of NIHD policies.

In certain situation at the discretion of the Human Resources Director or the Board of Directors, NIHD’s legal counsel may be delegated the responsibility to oversee investigations and be authorized to instruct other NIHD personnel to gather information for the investigation. In such cases, the assigned investigator(s) will follow legal counsel’s instructions relating to communications and evidence to ensure that “attorney-client” and “attorney work product” privileges are preserved.

Situations to be investigated

The following list, while not all-inclusive, provides examples of the types of situations that NIHD will investigate:

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- Alleged conduct that potentially deprives a company employee or third party (i.e., customer, persons or entities desiring to engage in business with the company) of rights because of race, color, religion, sex, sexual orientation, national origin, age, disability, marital status or other characteristics protected by law.
- Alleged verbal or physical conduct that potentially denigrates or shows hostile feelings toward any individual because of race, color, religion, sex, sexual orientation, national origin, age, disability, marital status or other characteristics protected by law. This includes conduct that has the purpose or effect of any of the following:
 - Creating an intimidating, hostile or offensive work environment.
 - Unreasonably interfering with an employee’s work performance.
 - Affecting an individual’s employment opportunity at the company.
- Alleged conduct or intentional behavior that potentially violates NIHD policy or affects the safety or well-being of fellow employees, visitors, operations or other NIHD-related activities. Such conduct includes threatening communication, physical injury or potential physical harm to another, aggressive or hostile action, intentional damage to company property, and possession of any weapon, regardless of government licensing.
- Claims relating to unfair labor practices.
- Conduct that violates NIHD rules, policies or standards of conduct or the law.

Third-party investigator requirements

The Director of Human Resources or Chief Executive Officer may approve the retention of a third party for purposes of conducting a NIHD-initiated investigation regarding allegations of employee violations of NIHD policy. The third party shall be qualified and must provide evidence of professional liability insurance (i.e., errors and omissions coverage) prior to conducting any NIHD-initiated investigation.

Confidentiality

NIHD investigator(s) will inform the complainant(s), respondents, and witnesses that the NIHD-initiated investigation is confidential and that information can only be shared on a need-to-know basis; however, if information is learned that personnel action or legal action is required, there is a potential that disclosure of this information may occur in the process.

Retaliation

NIHD prohibits retaliation including making threatening communication by verbal, written or electronic means against any individual who reports or provides any information concerning unlawful discrimination, harassment or other violations of NIHD policies, rules and standards of conduct. Any employee found to be engaging in retaliation will be subject to disciplinary action up to and including termination.

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Risk assessment

NIHD investigator(s) will make a reasonable effort to ensure that the complainant(s) or person(s) providing information during an investigation are not exposed to any threats of violence, intimidation or personal risk. If any such situations are identified or have occurred, NIHD will proceed with the appropriate response, as advised by the Human Resources Department, legal counsel, security department or other appropriate professionals. Any NIHD employee found to have engaged in threatening behavior will be subject to disciplinary action up to and including termination, in accordance with NIHD’s Workplace Violence Prevention Policy.

Investigative timeline

NIHD will make all reasonable efforts to initiate an investigation into the allegation(s) and conclude the investigation in a timely fashion, as appropriate.

Investigative tasks

The following steps should be undertaken as appropriate for the particular investigation:

Step	Action
1.	Obtain verbal and written statements from all parties involved, including the complainant and accused. Secure all publicly available reports from police or other agencies concerning the reporting (<i>if applicable</i>).
2.	Take photographs/video of any injury or damage (<i>if applicable</i>).
3.	Preserve all evidence, and secure the evidence in a locked location. Document all evidence obtained. The NIHD investigator will be responsible for maintaining the chain of custody for the evidence.
4.	Determine if there is a potential for risk occurrence. If there is a potential, take all measures appropriate to protect employees, visitors and property.
5.	Complete an investigation report, and provide all relevant and necessary information, including findings.

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Documentation of findings

Based on the investigation, NIHD investigator(s) should determine whether the allegation(s) were founded, unfounded or inconclusive. This determination should be documented in writing and made part of the investigative report. The determinations are as follows:

- **Violation found.** Where a violation of NIHD policies or workplace rules is found to have occurred, the accused should be notified of the finding and of the specific or corrective actions to be taken. The accused employee’s supervisor will also be notified if appropriate. No details about the nature or extent of disciplinary or corrective actions will be disclosed to the complainant(s) or witness (es) unless there is a compelling reason to do so (e.g., personal safety).

- **No violation found.** In this situation, the complainant and the accused should be notified that NIHD investigated the allegation(s) and found that the evidence did not support the claim.

- **Inconclusive investigation.** In some cases, the evidence may not conclusively indicate whether the allegation(s) was founded or unfounded. If such a situation occurs, the notification to the complainant and the accused should state that NIHD completed a thorough investigation but has been unable to establish the truth or falsity of the allegation(s). NIHD will take appropriate steps to ensure that the persons involved understand the requirements of NIHD’s policies, and that NIHD will monitor the situation to ensure compliance in the future.

Disclosures to third parties

No NIHD employee or agent may make any disclosure to third parties (e.g., lawyers, investigators, insurance representatives, media reporters) regarding the particulars of any NIHD-initiated investigation without prior approval from legal counsel.

Retention of investigative records

Unless advised otherwise by legal counsel or the Human Resources Director, or their designee, NIHD will retain records relative to a NIHD-initiated investigation for a maximum of a period of five years or the minimum retention period required by law.

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Release of investigative records

NIHD will not release any investigative files, including interviews and findings, unless authorized by the Director of Human Resources, legal counsel or pursuant to a court-authorized request (i.e., subpoena, court order).

Any information obtained and reported by third parties employed or engaged by NIHD concerning an employee’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living will be considered to be a “consumer report” under the Fair Credit Reporting Act. Accordingly, NIHD will provide notice to the employee that such reports have been received. The employee may request and obtain a copy of the consumer report.

Notice to government agencies

Before notifying any government agency concerning a NIHD-initiated investigation, legal counsel may conduct a full review of the investigation and determine what information, including documents, should be released to the government agency.

Approval	Date
Board of Directors	
Last Board of Directors Review	

Developed:
Reviewed:
Revised:
Supersedes:
Index Listings:

MEMORANDUM

To: Board of Directors, Northern Inyo Healthcare District
From: Keith F. Collins, General Counsel
Date: December 1, 2020
Subject: Board of Director Access to Personnel Information

ISSUE PRESENTED

The District Board members find themselves hearing from amongst the community about personnel actions involving District staff, including one or more supposed terminations, about which they had no knowledge in their elected capacity. The Board wishes to know whether and to what extent they may be made aware of such personnel actions and the reasons therefor.

SUMMARY

Personnel information is confidential under California law. Accordingly, the Board may only be made aware of personnel information that the Board has a need to know and a right to know. This means that because the District has delegated personnel matters to District executive staff, there are only very limited instances where Board members can properly be made aware of personnel information.

RULE

The general rule of law in California government is that employee personnel records are confidential¹ and may be made known only to those who have a legitimate business-related necessity to inquire into these records. Under existing rules and practices, District employee personnel files are considered confidential and the District has a duty to protect those files from unnecessary disclosure. There are exceptions to this general rule, such as the right of the public to know of the compensation afforded public employees. But operationally the general rule governs, and access to information in employee personnel files is limited to a so-called “need to know and right to know” basis.

A variant of this rule is that one’s “need to know and right to know” may not exist at one point in time but may accrue at another point in time. For instance, a governing body may have delegated personnel administration to a designated executive, in which case day-to-day personnel matters would not come before the governing body and the “need to know and right to know” would not routinely exist. Yet, locally adopted rules -- whether in an ordinance, adopted personnel rules or a labor agreement -- might designate the governing body as the level to which employee grievances or discipline would be taken for adjudication if not resolved at an earlier level of such processes. In such a scheme, the governing body’s “need to know and right to know” would be triggered only at such time as an employee exercised his/her rights under the grievance and/or discipline processes.

¹ Cal. Const. Art. 1, Sec. 1; Cal. Gov. Code Sec. 6254(c).

And, finally, there may exist a “need to know and right to know” for certain limited and generally anonymous personnel information in furtherance of the role of the governing body in supervising and evaluating operational and executive performance.

ANALYSIS

Under existing NIHD rules and labor agreements, the Board of Directors is not a level to which grievances or disciplinary appeals are taken. Further, the duty of direct management and oversight of the services provided and the work performed by District employees is vested in the Chief Executive Officer (“CEO”). The Board of Directors of course supervises the performance of the CEO, but the Board does not directly perform that work; including as germane to this analysis, the personnel administration of the District work force.

Yet the Board can and does have a legitimate interest in being aware of and informed about how the CEO is performing his/her duties. But due to the confidentiality of personnel records, this interest of the Board in personnel administration would more appropriately be described as a need to know “what” is being done without need of knowing the “who” (i.e., the employee’s identity).

In practical terms, this could take the form of asking for a closed session briefing by the CEO regarding any significant personnel actions, perhaps to include discipline at or above the level of a lengthy suspension, demotion, or termination. Such a briefing would be done without identifying the concerned employee, thus protecting the confidentiality of personnel records while still providing the Board of Directors with an awareness of the “what” and the “why” of significant personnel actions while preserving the “who” of such actions. Additional personnel information shared with the Board would go beyond the Board’s “need to know and right to know” and would infringe on the employee’s privacy interest in his/her personnel information.

Another practical example where the Board may be made aware of additional personnel information is when a personnel action exposes the District to potential litigation that is discussed in a properly noticed closed session. In this situation, the Board would have both a “need to know and right to know” certain personnel information as it relates to assessing risk and deciding how to respond to potential litigation.

CONCLUSION

Board members can only be made aware of confidential personnel information when there is both a need to know and a right to know. Evaluating the performance of the CEO and assessing risk stemming from employee discipline are two such examples of when Board members may have a need and a right to know. Accordingly, Board members can respond to community inquiries about personnel matters by explaining that such matters are handled by District staff and Board members are only made aware in limited circumstances. Further, when confidential information is properly made known to Board members, members are also under the obligation to preserve its confidentiality.

MEMORANDUM

To: Board of Directors, Northern Inyo Healthcare District
From: Keith F. Collins, General Counsel
Date: December 8, 2020
Subject: General Principles of Board Governance

ISSUE PRESENTED

What are the general rules that apply to how members of the Northern Inyo Healthcare District ("District") Board of Directors govern the District?

SUMMARY

There are several rules that govern the personal conduct of board members. For example, the Brown Act requires board members deliberate and take action in public meetings, and conflict of interest laws prohibit board members from participating in decisions that have an impact on their personal finances. Board members are also required to receive two hours of ethics training every two years and make required campaign and financial disclosures. However, in terms of how board members exercise their discretion to set District policy, there are no legal restrictions. Board members are only accountable to the voters for how they function in their official capacity, although a board member can be censured by the Board for conduct that the Board considers detrimental to the District. Board members should use good judgement when discussing matters in public meetings that may increase the exposure to liability for the District, and make such inquiries or comments outside the context of a public meeting.

ANALYSIS

The enclosed summary of the Brown Act, conflict of interest laws, and financial disclosure requirements provides a comprehensive review of the most commonly applicable rules governing the conduct of elected officials as it relates to their public service. While the summary is geared toward city councilmembers, the same rules generally apply to board members of special districts.

Regarding board member conduct during public meetings, rules of parliamentary procedure should be followed to conduct District business efficiently. Enclosed please find a summary of basic parliamentary procedure that should be followed by board members when conducting District business.

If a board member consistently violates these rules or engages in conduct that is otherwise detrimental to the District, the Board can vote to formally censure the offending member. Censure is accomplished by passing a resolution describing the offending conduct and any remedies the Board has power to impose, if appropriate.

In terms of how a board member exercises his/her discretion in deliberating and making official decisions, board members are only accountable to the voters. Under Health & Safety Code § 32125(a), the role the Board of Directors is to set broad policy for the District. The Board

delegates authority for day-to-day operations to executive staff and makes decisions that are properly brought to the Board in a noticed public meeting. While deliberations and decisions are to be conducted in public, board members should exercise discretion when deliberating or making staff inquiries during public meetings that may increase the exposure of the District to liability. Such deliberations and inquiries should be made privately to District staff or within a properly agendized closed session.

CONCLUSION

Board members should familiarize themselves with the laws governing their personal conduct as elected officials and take care to comply with each legal requirement. Board members are accountable to the voters for how they exercise their discretion in setting District policy and conducting District business, and should refrain from engaging in deliberations that might increase the exposure to liability for the District or “micromanaging” operational matters that have been delegated to executive staff.



Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg

