



April 8, 2013

Honorable Thomas J. Borris
Presiding Judge of the Superior Court of California
700 Civic Center Drive West
Santa Ana, CA 92701

Subject: "CalOptima Burns While Majority of Supervisors Fiddle"

Dear Judge Borris:

Per your request, and in accordance with Penal Code 933, please find the County of Orange response to the subject report as approved by the Board of Supervisors. The respondents are the Orange County Board of Supervisors. If you have any questions, please contact Margaret Cady (714) 834-3646 in the County Executive Office who will either assist you or direct you to the appropriate individual.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Franz".

Robert J. Franz
Interim County Executive Officer

Enclosure

cc: FY 2012-13 Orange County Grand Jury

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2012-2013 Grand Jury Report
“CalOptima Burns While Majority of Supervisors Fiddle”

County of Orange, Board of Supervisors, Responses to Findings and Recommendations

Responses to Findings:

F1. A majority of Orange County's five Board of Supervisors have failed to take an active role in preserving an entity playing a vital role in the healthcare needs of the County's young, disabled, low income and senior residents. Sadly, 20 months ago, CalOptima received glowing reviews from Member organizations, politicians and government officials at all levels and was an entity Orange County's residents could be proud of.

Response – Disagrees wholly with the finding.

The Orange County Health Authority (CalOptima) is authorized by County Ordinance Section 4-11-1 et seq. pursuant to Welfare and Institutions Code section 14087.54. As specified by the Health Authority Ordinance, a primary responsibility of the Board of Supervisors is to determine the membership for the CalOptima Board of Directors. This includes the qualifications for the individual members, the manner of appointment, selection or removal of directors, and how long they shall serve. In addition, the Board of Supervisors has the authority to amend the Health Authority Ordinance to provide broad policy direction for the CalOptima Board of Directors. By design, the Health Authority Ordinance provides no authority for the Board of Supervisors as a body to participate in the detailed operation and oversight of CalOptima.

During the time period under consideration by the Grand Jury, the Board of Supervisors was actively involved in carrying out its responsibilities as specified under the Health Authority Ordinance. Between September 2010 and September 2012, the Board of Supervisors engaged in 15 public discussions regarding CalOptima during its regular Board of Supervisors meetings. Board of Supervisors discussions included State legislation and its potential impact on health care delivery in Orange County; the Health Authority Ordinance relating to CalOptima's future participation in the State's Health Exchange; and Board of Directors composition. Additionally, between November 2011 and September 2012, the Board of Supervisors' staff participated in eight individual recruitments, resulting in the appointments of nine CalOptima Directors.

F2. A Board of Supervisors majority permitted an organization that is a registered lobbyist in Orange County and Los Angeles County to not only write a County ordinance, but have final approval of its language.

Response: Disagrees partially with the finding.

The Grand Jury's finding appears to conflate two, independent ordinances passed in 2011 related to CalOptima. On May 3, 2011, the Board of Supervisors unanimously approved

Ordinance No. 11-104 (hereinafter the "Health Benefit Ordinance"). On December 13, 2011, on a 3-2 vote, the Board of Supervisors approved Ordinance No. 11-021 (hereinafter the "CalOptima Board Qualifications Ordinance"). As to the Health Benefit Ordinance, it was publicly disclosed in the Agenda Staff Report accompanying the proposed ordinance that County staff had met with representatives of the Hospital Association of Southern California and of CalOptima to discuss and amend the proposed ordinance consistent with their concerns and the Board's directives. At no time did a registered lobbyist have final approval on the ordinance language. As to the CalOptima Board Qualifications Ordinance, the Board of Supervisors did not permit a lobbyist to write the ordinance. Nor did the Board of Supervisors permit a registered lobbyist to have final approval of its language.

The apparent basis of the finding is the Grand Jury's claim that, "[a] trail of correspondence between a CalOptima lawyer and an Orange County Deputy Counsel confirmed that a representative from a registered lobbyist helped author the proposed ordinance change (approved by the Board of Supervisors (3-2 vote) on December 6, 2011) that potentially gave Providers control of CalOptima's Board and had final approval of its language." (Report, p. 9.) In its role of assisting the Board of Supervisors with requested changes to the CalOptima Board Qualifications Ordinance, County Counsel had no contact or involvement with any registered lobbyist.

It appears that the Grand Jury concluded that email correspondence between a deputy county counsel and CalOptima's counsel were in connection the December 2011 CalOptima Board Qualifications Ordinance. They were not. The email correspondence between the attorneys was related to the Health Benefit Ordinance of May 2011.

F3. Member organizations have expressed fear of retaliation if they do not support certain causes or candidates and the Board of Supervisors majority has not attempted to curtail or dispel these fears.

Response – Disagrees wholly with the finding

The finding lacks specific information required for further analysis. The County of Orange takes seriously its obligation to investigate issues of fraud, intimidation, and possible acts to subvert the application of appropriate laws, rules, regulations, and procedures. For example, the County maintains an anonymous Fraud Hotline managed by the Internal Audit Department. Any complaint resulting in an investigation is reported to the Audit Oversight Committee, which is appointed by the Chairman of the Board and includes two sitting members of the Board of Supervisors. To date there is no record of any complaints or investigations relating to "fear of retaliation reported by member organizations."

F4. A majority of the five Supervisors have allowed CalOptima senior executives, highly qualified individuals who performed their duties with passion and a belief they were making a difference, leave highly specialized positions.

Response – Disagrees wholly with finding.

As stated above, the Health Authority Ordinance provides no authority for the Board of Supervisors as a body to participate in the detailed operation and oversight of CalOptima. Since CalOptima is a separate legal, financial, and programmatic entity, personnel matters relating to current and former executives are not within the purview of the Board of Supervisors.

F5. A CalOptima Board member and two CalOptima lawyers have been disruptive and created an atmosphere that according to current and former CalOptima employees is “unsafe for senior executives.”

The Board of Supervisors is not required to respond to this finding. The response will be prepared by CalOptima.

F6. Having a single Supervisor on the CalOptima Board lends to a perception of intimidation either real or perceived. County employees are reluctant to vote against a Supervisor.

Response – Disagree wholly with the finding.

A board composition including a Supervisor and County employees is not unique to CalOptima. Individual Orange County Supervisors routinely serve on community and/or regional boards and commissions along side County employees. One example is the Orange County Children and Families Commission, which was established by Proposition 10 as an independent entity. Like CalOptima, both the Social Services Agency Director and the Health Care Agency Director serve on the Commission along with one voting Supervisor.

Participation of a Supervisor and the HCA and SSA Directors is typical of other County Operated Health System (COHS) boards in the State. The HCA Director and SSA Director serve on the CalOptima Board of Directors in order to represent the perspective and expertise of their respective agencies. The HCA and SSA Directors report to the CEO, who in turn is responsible to the Board of Supervisors as a whole.

F7. Several current CalOptima Board members and recent hires lack the healthcare experience to understand the complexity of CalOptima as proven by their comments and questions during CalOptima Board meetings.

The Board of Supervisors is not required to respond to this finding. The response will be prepared by CalOptima.

Responses to Recommendations:

R1. The Board of Directors of CalOptima should include more than one County Supervisor. This would minimize potential conflict of interest and reduce any opportunity for CalOptima to be used for political gain or to advance personal agendas. The entity is larger than OCTA, which currently has all five Supervisors on its Board.

Response – *The recommendation requires further analysis.*

Any change to the composition of the CalOptima Board of Directors would require an amendment to the County's Health Authority Ordinance. The ability to amend the County's Ordinance rests solely with the Board of Supervisors. The Board has appointed an ad hoc committee to work with County staff and Cal Optima to review the governance structure as it exists and to evaluate if it should be reformed. Pursuant to subdivision (b) of California Penal Code Section 933, the ad hoc committee will report back any findings and recommendations within six months from the date of publication of the grand jury report.

R2. Remove County employees from the Board of Directors of CalOptima since they report to the CEO of Orange County, who is selected by the Board of Supervisors.

Response – *The recommendation requires further analysis.*

Any change to the composition of the CalOptima Board of Directors would require an amendment to the County's Health Authority Ordinance. The ability to amend the County's Ordinance rests solely with the Board of Supervisors. The Board has appointed an ad hoc committee to work with County staff and Cal Optima to review the governance structure as it exists and to evaluate if it should be reformed. Pursuant to subdivision (b) of California Penal Code Section 933, the ad hoc committee will report back any findings and recommendations within six months from the date of publication of the grand jury report.

R3. In order to attract more qualified individuals to fill vacant positions, offer salaries and incentive packages that are competitive in the healthcare industry.

Response – *The recommendation will not be implemented because it is not warranted or is not reasonable.*

As stated above, the Health Authority Ordinance provides no authority for the Board of Supervisors as a body to participate in the detailed operation and oversight of CalOptima. Since CalOptima is a separate legal, financial, and programmatic entity, personnel matters related to hiring, salaries, and salary incentives are not within the purview of the Board of Supervisors.

R4. Educate CalOptima's Board of Directors on the agency's role now and in 2014; why it operated effectively as a hybrid between private industry and County agency; its relevance to the County's less fortunate's well-being and healthcare needs and why CalOptima should be free from lobbyists and those who want to use it for political gain.

The Board of Supervisors is not required to respond to this recommendation. The response will be prepared by CalOptima.

R5. Ensure CalOptima Board members reaffirm their accountability to Members, Member organizations, staff and each other and refrain from leaking closed session details or partial reports to the media.

The Board of Supervisors is not required to respond to this recommendation. The response will be prepared by CalOptima.