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MEMORANDUM

VIA EMAIL

To: Art Torres, Acting Chair
Legislative Subcommittee
California Institute for Regenerative Medicine

From: James C. Harrison

Date: August 5, 2009

Re: Little Hoover Commission Recommendations (Our File No.: 2297-0)

INTRODUCTION

You have asked us to comment on two recommendations made by the Little Hoover Commission. These recommendations are identified as items 9 and 10 in the June 30, 2009, memorandum from you and Chairman Bob Klein to members of the Governing Board: (9) amend the minutes of board meetings to disclose vote tallies and conflicts of interest; and (10) add a provision to the board bylaws authorizing removal of a member for cause. We discuss these items below.

ANALYSIS

A. Amend Board Minutes to Include Vote Tallies and Conflicts

The Little Hoover Commission recommended that that the Governing Board amend the minutes of its meetings to include a tally of votes and recusals on grant applications. We are in the process of amending the minutes of Governing Board meetings back to January 1, 2008, to include this information, and we will include this information in the minutes of meetings going forward. This information will be posted on CIRM's website.

B. Add a Removal Provision to the Board's Bylaws

The Little Hoover Commission recommended that the Governing Board add a provision to the Board's bylaws providing for the removal of members of the Board for cause. Under Proposition 71, members are appointed to serve fixed terms. (Health & Saf. Code, § 125290.20(c).) In upholding Proposition 71 against a constitutional challenge, the First District Court of Appeal construed this provision to permit removal of members only through a quo warranto action initiated by the Attorney General. (*California Family Bioethics Council v. California Institute for Regenerative Medicine* (2007) 147 Cal.App.4th 1319, 1354-1355.) The court's reading of Proposition 71 is consistent with California law, which provides that a member of an appointed body serves at the pleasure of the appointing authority only when the member's term is not fixed by law. (See Gov. Code, § 1301; *Brown v. Superior Court* (1975) 15 Cal.3d 52, 55-56.) Because the members of the Governing Board are appointed to serve terms prescribed by law, they are not subject to removal by the appointing authority. Furthermore, Proposition 71 provides no authority for the Board to remove members. Indeed, the inclusion of a removal power in the Board's bylaws would interfere with the authority of the appointing powers to select the members whom the appointing authority believes are best suited for the position. The Governing Board, therefore, has no power to amend its bylaws to provide for the removal of members of the Board.

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