

MEMORANDUM

To: Members, Governing Board, California Institute for Regenerative Medicine

From: Robert N. Klein and Art Torres

Date: June 30, 2009

Re: Little Hoover Commission Report on CIRM

The Little Hoover Commission issued its report on CIRM on Friday. The report covers three distinct categories of recommendations: (1) modifications to Proposition 71 that would require a new ballot measure; (2) policy changes that CIRM could implement on its own; and (3) modifications to Proposition 71 that would require legislative intervention. These three categories and the recommendations they encompass are set forth below:

Modifications that Would Require a New Ballot Measure

- (1) reduce the size of the Board from 29 to 15;
- (2) reduce board members' terms to 4 years, after the terms of current members expire;
- (3) concentrate appointment authority in the Governor by authorizing the Governor to appoint 11 of 15 members (2 members would be appointed by the Legislature and 2 members would be appointed by the President of UC) with immediate vulnerability to the 2010 election;
- (4) eliminate the Chair's statutory responsibilities; and
- (5) authorize the Board to select the chair and vice chair from among the 15 members.

Policy Changes that CIRM Could Implement

- (6) modify the pre-application review process;
- (7) identify all of the applicants in connection with an RFA on a trial basis;
- (8) poll peer reviewers to determine whether they would resign if they were required to publicly disclose their financial interests;
- (9) amend the minutes of board meetings to disclose vote tallies and recusals;
- (10) add a provision to the board bylaws authorizing removal of members for cause; and

(11) adopt a succession plan for leadership and a transition plan for the eventual expiration of bond funding.

Modifications that Would Require Legislative Intervention

(12) eliminate the 50 employee cap;

(13) eliminate the 15-scientist cap on the GWG (CIRM currently has approximately 150 scientific members and alternates available to serve on peer review, so the cap has not presented a problem – for example, for the tools and technologies applications, we ran two concurrent peer review sessions);

(14) require the Citizens' Financial Accountability Oversight Committee (CFAOC), which was created by Prop. 71 and which is chaired by the Controller, to conduct a performance audit (the CFAOC already conducts a review of CIRM's financial audit, and at its most recent meeting, conducted a quasi-performance review of CIRM);

As the attached analysis demonstrates (see legal opinions from Remcho, Johansen & Purcell and Nielsen, Merksamer), recommendations (1) through (5), above, would require a new ballot measure because they would undermine, rather than further, the intent of the seven million California voters who approved Proposition 71. As a result, recommendations (1) through (5), if adopted, would be an unconstitutional amendment of Prop. 71. As members of the Board, we took an oath to uphold Proposition 71 and could not support these proposed changes.

The legal analysis does not address recommendations (6) through (14), above. Recommendations (6) through (11) are policy issues that could be addressed by the Board and implemented by CIRM. Recommendations (12) through (14) would require legislative intervention. Because they would not undermine the intent of the voters, however, the Legislature could adopt them without proposing a new ballot measure.

We have also attached a letter that we, along with Sherry Lansing, Duane Roth, and Alan Trounson, sent to the Little Hoover Commission before the report was issued. In addition to this communication, last Tuesday, we met with Daniel Hancock, the Chairman of the LHC and Loren Kaye, the Chairman of the LHC Subcommittee on CIRM. We presented them with legal opinions from the Remcho firm and Nielsen Merksamer demonstrating the constitutional problems created by recommendations (1) through (5) and we shared our concerns regarding the implementation problems they would create if adopted. Although the LHC responded to our concerns regarding the immediate replacement of the Board by recommending that the restructuring of the Board occur after the current members' terms expire, they have not addressed the other problems that would ensue if their recommendations were adopted. For example, currently, 12 patient advocates are available to participate on the working groups (GWG -- 7 patient advocates; SWG -- 5 patient advocates; FWG -- 6 patient advocates) and they are already stretched to the limits. The LHC would reduce the number of patient advocates to five,

without addressing the disparity this would create or the work load imposed on the patient advocates. In addition, while the LHC has acknowledged the legal concerns we raised, they have not resolved them and have instead left that issue to the Legislature.

Nonetheless, the LHC has made other recommendations that deserve our thoughtful consideration. We intend to schedule a meeting of the Legislative Subcommittee to study recommendations (6) through (11) to determine how CIRM could implement them. In addition, we plan to ask the Subcommittee to consider whether to recommend that the Board support legislative action on recommendations (12) through (14). We look forward to discussing these items with you at a future meeting.

Attachments