

Thirty-Fourth Judicial District Court of Louisiana

PARISH OF ST. BERNARD

THE STATE OF LOUISIANA

STATE OF LOUISIANA

NUMBER: 16-04339

IN RE

DIVISION: C

ST. BERNARD PARISH HOSPITAL

DATE FILED: _____

DEPUTY CLERK

REPORT OF THE GRAND JURY

On the 30th day of November, 2016 the **Grand Jurors** of the State of Louisiana, duly empanelled and sworn, in and for the body of the PARISH OF ST. BERNARD, in the name and by the authority of the said State, upon their Oath, present:

Pursuant to Code of Criminal Procedure Article 414, no grand jury shall be impaneled for more than eight months. This Grand Jury expires by law on December 5, 2016. In investigating the operations of the St. Bernard Parish Hospital, this Grand Jury has extensively reviewed documents and heard testimony over the course of these eight months. The Grand Jury just recently received the Louisiana Legislative Auditor's Investigative Report and the 2015 audit of the St. Bernard Parish Hospital. These reports are quite extensive and uncover financial problems at the Hospital much worse than were expected. Due to the time constraints imposed by the law, we inform this Honorable Court that additional investigation may be needed to gather additional documents and hear additional testimony before criminal responsibility can be determined. Therefore, this Grand Jury feels it appropriate to report its findings and conclusions by the issuing of this report pursuant to its authority as per La. R.S. 15:121 and pretermits a decision on any criminal charges.

A. Summary:

1. The St. Bernard Parish Hospital was grossly mismanaged since at least 2012. During this period, the Hospital lost more than \$32,000,000.00 and has been placed in danger of being taken over by an administrator appointed by the Louisiana Fiscal Review Committee as per La. R.S. 39:1351. The income and losses during this period are summarized as follows:

INCOME/LOSS:

Fiscal Year 2012 -	loss of \$9,407,523.00
Fiscal Year 2013 -	loss of \$3,672,095.00
Fiscal Year 2014 -	income of \$64,045
Fiscal Year 2015 -	loss of \$19,513,387.00

TOTAL FOUR-YEAR LOSS OF \$32,528,960.00

2. The Hospital had a decrease in revenue from fiscal year 2014 to 2015 of over \$20,000,00.00. This severe decrease in revenue was only recently revealed due to the late filing of the 2015 Audit with the Louisiana Legislative Auditor.

3. The Hospital Service District under Wayne Landry, as Chairman of the HSD Commission and as Hospital Director, and Jim DiFatta, as Chairman of the HSD Commission, engaged in a conspiracy to remove ultimate control of the Hospital away from the St. Bernard Parish Council, the appointing authority for the Commission of the HSD, in favor of a private foundation controlled by Landry and DiFatta. Due to the investigation conducted by this Grand Jury, this conspiracy was revealed and its object of removing the Hospital from public control thwarted and reversed.

4. The Grand Jury finds that Wayne Landry may have violated provisions of the Louisiana Ethics Law by assuming the position of hospital director, under the titles of CEO and "executive director," while he was either a member of the HSD Commission or within two years of his resignation from the Commission.

5. The Grand Jury discovered that the administration of the St. Bernard Parish Hospital, with the approval of Wayne Landry and Jim Difatta, spent public money on holiday parties, meals, alcohol and gifts. These expenditures, while appropriate for a private hospital, may be in violation of State law.
6. The Grand Jury finds that the expenditure of over \$1,500,000.00 in public funds on an undocumented and unwritten contract with Executive Resources from 2012 until 2016 and the expenditure of legal fees in excess of \$1,500,000.00 since 2009 were unreasonable, especially in light of the financial distress of the Hospital.
7. The Grand Jury finds that one or more thefts appear to have occurred at the Hospital, which were not reported to local and State authorities as required by state law.
8. Due to the time constraints imposed by Louisiana Code of Criminal Procedure article 414 on this regular Grand Jury for the Parish of St. Bernard, the Grand Jury was unable to reach a final determination as to criminal culpability in our review of the operations of the St. Bernard Parish Hospital.

B. Factual Findings:

1. The Hospital Service District (HSD) of St. Bernard Parish is a political sub-division and a public body formed by the Parish of St. Bernard under the authority of La R.S. 46:1051 et seq. on or about November 6, 2007 via Ordinance SBPC #797-11-07. The district is governed by a commission of five members appointed by the St. Bernard Parish Council. As per the requirements of La. R.S. 46:1056, the Commission of the Hospital Service District appointed a hospital director to operate the St. Bernard Hospital.
2. On or about May 19, 2009, the St. Bernard Parish Council, with Wayne Landry as its vice-chairman, voted to appoint Wayne Landry to the Commission of the Hospital Service District. Only five of seven council members were present for the vote. Two members of the Council voted against the appointment; three members, including Wayne Landry voted for his appointment.
3. On or about November 19, 2009, the Commission of the HSD voted to employ the law firm as Sullivan Stolier L.L.C. as general counsel for the HSD.
4. On or about March 10, 2010, the Arlene and Joseph Meraux Charitable Foundation donated a portion of the land known as the Meraux Airport Tract to the Hospital Service District for the construction of a new hospital.
5. On or about July 19, 2010 a contract was signed between the Hospital Service District and the Lemoine Company, LLC for site clearing and fill for the construction of the new hospital building. The total amount of the contract was \$1,191,492.00.
6. The St. Bernard Hospital Foundation, Inc. was a non-profit quasi-public corporation formed under the laws of the State of Louisiana on or about September 21, 2010 by the Hospital Service District of St. Bernard Parish "to assist in raising additional capital to construct, equip, and operate the hospital facility in order to provide the medical underserved and particularly the uninsured, underinsured and indigent citizens of the Parish, with access to quality, affordable and indispensable emergency and related healthcare services."
7. On or about November 2, 2010, the voters of St. Bernard Parish approved a 8-mil property tax for a term of ten years for the Hospital Service District.
8. On or about November 29, 2010, a contract was signed between the Hospital Service District and Citadel Builders, LLC for the "construction of a new forty (40) bed general acute care hospital consisting of approximately 109,000 square feet which will be operated and owned by the St. Bernard

Parish Hospital Service District.” The total sum of the contract was \$33,163,00.00.

9. On or about March 1, 2011, the Hospital Service District entered into a Management Services Agreement with the Franciscan Missionaries of Our Lady Health System Management Services – St. Bernard, LLC to provide services for the management and operation of the Hospital. Pursuant to this agreement, the Franciscans agreed to provide the Hospital Service District with executives to manage the day to day affairs, advise and assist in opening and operating the Hospital, and to provide accounting services.
10. On or about July 20, 2011, the Articles of Incorporation for the St. Bernard Hospital Foundation, Inc. were amended and restated. This change was part of a complex legal plan to utilize New Market Tax Credits for the construction of the hospital. Under this plan, the St. Bernard Hospital Foundation, Inc. would lease the hospital building and be the employer of all hospital personnel. A board of directors of five people governed the St. Bernard Hospital Foundation, Inc. as per the amended articles. Four members were to be commissioners of the Hospital Service District as designated by the Commission. The fifth member was to be appointed by Access Health Louisiana, the operator of the St. Bernard Parish Clinic.
11. In order to utilize the New Market Tax Credits in a timely fashion to construct the Hospital, the tax credits were sold to Goldman Sachs. As part of this agreement with Goldman Sachs, the Hospital was to maintain a third party administrator such as the Franciscans.
12. On or about August 23, 2011, the St. Bernard Parish Foundation, Inc. and the Hospital Service District entered into a “Joint Venture Cooperative Endeavor Agreement.” This agreement was to ensure that the Hospital could fully use the New Market Tax Credits as described above. Under the agreement, the hospital building, but not the land, would be leased to the Foundation for a term of fifty years. The Hospital Service District “shall provide the ultimate administrative, professional, and financial management of the business, policies and operations of the Hospital . . .” The Foundation “will employ or contract with all of the physicians, health professionals, administrative staff, employees and contractors required for the operation of the Hospital . . .”
13. The HSD contracted with Executive Resources, LLCC to provide healthcare consulting services, specifically an interim Chief Financial Officer, for three months for the period July 2012 to October 2012. This contract did not provide for a month-to-month continuation option after expiration, but Executive Resources continued working for the HSD from October 2012 to September 2014 and was paid at the same rate at the original contract term although there was no written contract. In October 2014 and January 2016, the HSD entered into two more written contracts with Executive Resources that extended its work for the HSD to March 2016. The third contract was for the period January 2016 to March 2016 and included a month-to-month renewal clause. The original contract and two subsequent contracts required Executive Resources to provide an interim Chief Financial Officer or Special Projects Officer four days a week at a minimum of 35 hours per week. Payments were made to Executive Resources from 2012 to 2016 for over \$1,521,940.00, which includes \$319,940.00 for expenses alone, to provide an interim CFO.
14. At sometime in or about August 2012, the Commission of the Hospital Service District adopted By-Laws for the governance of the Hospital. Section 8.1 of the By-Laws establishes the position of Chief Executive Officer (CEO) of the Hospital. It states in part that the CEO “shall be the “hospital director” as described in Louisiana Revised Statute 46:1051, et seq....”
15. On or about July 31, 2012 the St. Bernard Parish Hospital held a ribbon cutting ceremony and open house of its new facility.
16. On or about October 6, 2012, the Franciscan Missionaries of Our Lady Health System Management Services – St. Bernard, LLC withdrew from the management agreement due in large part to the interference with its administration of the Hospital by Wayne Landry and the HSD Commission.
17. On or about November 13, 2012, the Commission of the Hospital Service District voted to appoint Wayne Landry the *interim* CEO of the St. Bernard Parish Hospital. At the time of the appointment,

Wayne Landry was the chairman of the Commission and voted in favor of his own appointment as interim CEO. On behalf of the Hospital, Wayne Landry announced that he would seek permission to from Goldman Sachs for the Hospital Service District to self govern the Hospital. Wayne Landry further stated that a search would be conducted for a new CEO while he preferred to “groom” the next CEO from inside the hospital. The appointment of Wayne Landry as the CEO possibly violated the Louisiana Dual Office Holding Law as found in La. R.S. 42:61 et seq. and/or the Louisiana Code of Governmental Ethics, specifically La. R.S. 42:1113(B) and La. R.S. 42:1121(A)(2).

18. On or about September 15, 2013, the HSD reported its contract audit for fiscal year 2012 to the Louisiana Legislative Auditor. For the year, it reported operating revenue of \$6,211,546.00 with operating expenses of \$13,861,216.00 for a loss of \$7,649,670.00. These figures were later restated to \$4,901,635.00 in revenue, \$14,309,158.00 in expenses, and a loss of \$9,407,523.00.
19. On or about April 4, 2014, the voters of St. Bernard Parish rejected a one year property tax of 30-mils for the Hospital Service District. It was estimated that the tax if passed would have collected about \$9,000,000.00.
20. On April 28, 2014, the Louisiana Board of Ethics issued an opinion at the request of the St. Bernard Parish Council regarding Wayne Landry serving as both chairman of the HSD Commission and the interim CEO. The Board opined that La. R.S. 42:1113(B) prohibited Wayne Landry from serving on board the HSD Commission and as CEO. The Board further provided that his working without compensation would not alleviate the ethical prohibition if the position of CEO required an “appointment” by the HSD Commission.
21. On May 20, 2014, Wayne Landry resigned from the Commission of the Hospital Service District. Despite the opinion of the Board of Ethics, he maintained his position as the *interim* CEO. Upon Landry’s resignation, Jim DiFatta was elected the chairman of the Commission.
22. On or about October 14, 2014, the HSD reported its contract audit to the Louisiana Legislative Auditor for fiscal year 2013. Operating revenue was reported as \$23,694,715.00, operating expenses as \$27,366,809.00, and a loss of \$3,672,094.00 was reported.
23. On or about November 20, 2014, a special meeting was held of the St. Bernard Hospital Foundation, Inc. The only item on the agenda was an amendment to the Bylaws of the Foundation. By unanimous vote, article 3 of the bylaws were amended to give the executive power of the Foundation to the newly created position of “executive director” and to remove the appointing authority of the Commission of the Hospital Service District for four members of the board of directors for the Foundation in favor of the current board of directors of the foundation. This was an attempt to remove ultimate control of the Foundation from the Commission of the HSD, a public body appointed by democratically elected St. Bernard Parish Council members, to a private board controlled outside of the control of the public.
24. On or about February 10, 2015, the Commission of the Hospital Service District voted to appoint Wayne Landry’s chosen successor, Charles Lindell, as the CEO of the Hospital due to the alleged retirement of Wayne Landry. Landry’s retirement was celebrated with a farewell dinner and the presentation of a trophy memorializing his tenure.
25. At an unknown date, Wayne Landry assumed the position of “executive director” of the Hospital.
26. On or about April 14, 2015, the Commission of the HSD voted unanimously to add-on an item to the regular agenda to provide the “executive director,” a position created by the Foundation, Wayne Landry with “the powers and duties assigned by state law [La] R.S. 46:1056.” This maneuver stripped Charles Lindell of all legal power he obtained by his appointment as CEO less than two months prior and reappointed Wayne Landry as the statutory head of the Hospital. Despite re-assuming legal control of the Hospital, Wayne Landry allowed the public records on file with the Department of Health and Hospitals to maintain that the CEO appoint on February 10, 2015 was the person who was “responsible for the operation of the hospital commensurate with the authority conferred the governing body.”

27. On or about September 4, 2015, the contract audit for fiscal year 2014 was reported to the Louisiana Legislative Auditor. Operating revenue was reported of \$43,547,253.00, operating expenses of \$43,483,208.00, and a income of \$64,045.
28. On or about December 5, 2015, a subpoena duces tecum was issued to the HSD in part for records concerning the hiring of outside counsel.
29. On or about December 10, 2015, the HSD received a letter from the office of the recently defeated Louisiana Attorney General James "Buddy" Caldwell retroactively approving the hiring of several law firms, including the firm of Sullivan Stolier L.L.C.
30. On July 18, 2016, the Louisiana Board of Ethics issued an opinion to HSD Commission Chairman Jim DiFatta concerning Wayne Landry serving as the "executive director" of the Hospital. The Board provided that the HSD Commission could appoint Wayne Landry the "executive director" of the Hospital as long as two years had elapsed from his May 20, 2014 resignation from the HSD Commission. It does not appear that Chairman DiFatta informed the Board of Ethics that Wayne Landry had already been appointed the "executive director" by the Commission since at least April of 2016.
31. On or about August 4, 2016, the Medical Executive Committee of the Hospital voted to approve Wayne Landry as the "executive director."
32. By late August 2016, Wayne Landry and James DiFatta became increasingly concerned that they would lose the three member majority of the Commission of the Hospital Service District that favored their agenda and continued leadership of the Hospital. On August 31, 2016 at about 5:57 P.M. public notice was provided of a special meeting to be called on September 1, 2016 at 6:00 P.M. The posted agenda of the meeting provided for seven items. Four of these items were to authorize an employment contract between the Commission and Wayne Landry as the "executive director." Item number 7 was a motion "to ensure that any changes in marketing strategies, CEO, and Executive Director positions must receive joint concurrence from the HSD Board and the Hospital Foundation." If passed this motion would have removed ultimate control of the Hospital from the Commission and transferred it to the control of the Foundation, which was no longer under the ultimate control of the St. Bernard Parish Council. The Commission elected to cancel this meeting. Shortly thereafter, James DiFatta and Andrew Sercovich resigned from the Commission.
33. On September 13, 2016, the Commission of the HSD voted to eliminate the position of "executive director" and grant the authority of hospital director as per La. R.S. 46:1056 to the CEO of the Hospital. This vote removed Wayne Landry from authority over the hospital.
34. On or about November 2, 2016, the Louisiana Legislative Auditor issued an investigative audit of the HSD and the Foundation. The LLA found that the HSD and the Foundation had possibly improperly spent public funds on parties, meals, and gifts, extended the contract with Executive Resources without a written contract and without proper evidence of work, and failed to cooperate with the LLA's investigation.
35. On or about November 16, 2016, the Foundation, with new board members appointed by the HSD Commission, voted to re-affirm that the 2011 bylaws were the valid bylaws of the Foundation.
36. On or about November 21, 2016, the contract audit for fiscal year 2015 was reported to the Louisiana Legislative Auditor. Operating revenue was reported at \$23,530,034.00, operating expenses was reported as \$43,043,421.00 and an operating loss of \$19,513,387.00 was reported.

C. Legal findings:

1. The Grand Jury finds that the St. Bernard Parish Hospital, the Hospital Service District of St. Bernard Parish, and the St. Bernard Hospital Foundation, Inc. were grossly mismanaged under Wayne Landry, as HSD Commission Chairman and Hospital Director, and Jim DiFatta, as HSD Commission member

and later as Chairman. This mismanagement caused the Hospital to lose over \$32,000,000.00 and placed it in danger of being taken over by an administrator appointed by the state of Louisiana, through its Louisiana Fiscal Review Committee as per La. R.S. 39:1351. The Grand Jury finds that this loss was primarily caused by the Hospital's chronic inability to collect payment for services rendered.

2. And the Grand Jury further finds that Wayne Landry and Jim DiFatta, individually, together, and with others known and unknown, engaged in a prolonged conspiracy to inhibit public control of the Hospital and conceal from the public the true financial distress of the Hospital.
 - a. The HSD under Landry and DiFatta engaged in a conspiracy to remove ultimate control of the Hospital away from the St. Bernard Parish Council, the appointing authority for the Commission of the HSD, in favor of a privately controlled entity, the Foundation as reformulated in late 2015. This was done in an attempt to ensure the Hospital would not be run by a third party administrator if desired by a future majority of the Council appointed HSD Commission.
 - b. The HSD under Landry and DiFatta also engaged in a conspiracy to hide from the public and investigating agencies the finances of the Hospital by delaying the 2015 audit while this Grand Jury was conducting an investigation of the Hospital and by failing to cooperate with the Louisiana Legislative Auditor.
3. And the Grand Jury further finds that Wayne Landry may have violated provisions of the Louisiana Ethics Law by assuming the position of hospital director, under the titles of CEO and "executive director," while he was either a member of the HSD Commission or within two years of his resignation from the Commission.
4. And the Grand Jury further finds that Wayne Landry and Jim DiFatta, individually, together, and with others known and unknown, engaged in a prolonged conspiracy to conceal from the public Wayne Landry's role as the statutory hospital director after his alleged retirement as the CEO. This conspiracy involved attempting to alter the bylaws of the Foundation to create the position of "executive director," holding a retirement party for Landry, providing Landry with a retirement gift, hiring an alleged replacement CEO, and misleading the Louisiana Department of Health and Hospitals as to the true leader of the Hospital. These actions cost the Hospital, and ultimately the taxpayers money, as extra and unneeded public expenditures were made in furtherance of this conspiracy, including but not limited to the salary for Landry's alleged replacement.
5. And the Grand Jury further finds that the St. Bernard Parish Hospital under the direction and leadership of the Wayne Landry and Jim DiFatta spent public money on meals and gifts as documented in the Louisiana Legislative Auditor's Investigative Report. By spending public money on such activities and items, the administration effectively operated the public hospital as if it was a private entity. The Grand Jury has been instructed that Louisiana law allows for the expenditure of public funds for the recruitment of medical staff, the Grand Jury finds that these expenditures do not appear to be for the recruitment of employees. Based on the evidence submitted to the Louisiana Legislative Auditor and to this Grand Jury, some of the expenditures of Mr. Landry and approved by Jim DiFatta as Chairman, may be unreasonable and outside the scope of a public benefit. However, due to the legal time constraints of this grand jury we could not conclude our inquiry/investigation, as additional evidence needs to be gathered before criminal responsibility can be determined. This Grand Jury also finds that the administrators of the Hospital failed to maintain adequate documentation for many of these expenditures. The expenditures may be in violation of Article VII, Section 14 of the 1974 Constitution of the State of Louisiana as they may be gratuitous spending of the public funds entrusted to the Hospital Service District and the St. Bernard Hospital Foundation, Inc.
6. The Grand Jury further finds that the hiring of Sullivan Stoiler L.L.C. by the HSD Commission to act as general counsel for HSD possibly violated La. R.S. 42:262 and La. R.S. 42:263 which requires the approval of the District Attorney and the Attorney General. While the Grand Jury understands that a hospital may from time to time be required to hire special counsel with experience in health care, it

appears unreasonable to hire a law firm to act as general counsel for the HSD when Louisiana law provides an uncompensated one in the District Attorney. From 2009 until 2016, the law firm of Sullivan Stolier L.L.C. billed the HSD over \$1,500,000.00.

7. The Grand Jury further finds that the continuation of the interim CFO contract with Executive Resources from October 2012 until September 2014 without a written contract is unacceptable. The Grand Jury also finds that the expenditure of over \$1,500,000.00 in public funds on the contract with Executive Resources from 2012 until 2016 was unreasonable in light of the financial distress of the Hospital.
8. The Grand Jury further finds that one or more thefts appear to have occurred at the hospital, which were not reported to local and state authorities as required by state law. These thefts appear to have been hidden and/or documents filled out falsely to hide the thefts from the general public.

D. Recommendations of the Grand Jury

1. The Grand Jury recommends that the Commission of the Hospital Service District for St. Bernard Parish immediately hire a competent entity or person to manage the St. Bernard Parish Hospital. While the true financial toll has yet to be determined, the Grand Jury concludes that the self-management of the Hospital by the Commission under the leadership of Wayne Landry and Jim DiFatta has been a failure.
2. The Grand Jury further recommends that the Commission of the Hospital Service District and the board of directors of the St. Bernard Hospital Foundation, Inc. take immediate steps to return the Foundation its organizational structure as envisioned in its July 2011 Article of Incorporation and Bylaws.
3. The Grand Jury further recommends that the Commission of the Hospital Service District for St. Bernard Parish strongly considers engaging in a long term management service agreement and/or lease with an entity that ensures that the Parish of St. Bernard and its taxpayers will have quality health care for the citizens of St. Bernard Parish and further that the citizens of St. Bernard will not have to be concerned with its public hospital being taken over by the state of Louisiana.
4. The Grand Jury further recommends that the Commission of the Hospital Service District for St. Bernard Parish follow all recommendations of the Louisiana Legislative Auditor as detailed in the 2106 investigative audit. Specifically, the Grand Jury recommends that the HSD adopt rules and procedures to ensure that public money is properly spent and all expenditures are properly documented.
5. The Grand Jury further recommends that the Louisiana Board of Ethics be forwarded a copy of this report and that it examines its finding for possible violations of the Louisiana Ethic Laws.

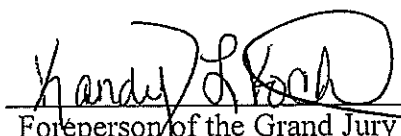
E. Conclusion

Due to the time constraints imposed by Louisiana Code of Criminal Procedure article 414 on this regular Grand Jury for the Parish of St. Bernard, the Grand Jury was unable to reach a final determination as to criminal culpability in our review of the operations of the St. Bernard Parish Hospital. The Grand Jury informs this Honorable Court that additional investigation may be needed before criminal responsibility can be determined. In order to inform the public and successor grand juries of these findings and conclusions, the Grand Jury respectfully issues this report pursuant to its authority as per La. R.S. 15:121 and preterms a decision on any criminal charges.

Respectfully submitted;



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