

## Patrick Monette-Shaw

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Cassie Dunham  
California Department of Public Health  
Center for Health Care Quality  
1615 Capitol Avenue, MS 3201  
Sacramento, CA 95814

Jean Ay  
Director  
San Francisco and Seattle Survey & Enforcement Division  
Survey & Operations Group  
Center for Clinical Standards and Quality  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
CMS Region IX  
90 Seventh Street, Suite 600  
San Francisco, California 94103

Dear Ms. Ay and Ms. Dunham,

I believe CDPH and CMS should quickly investigate whether Laguna Honda Hospital is potentially violating a key stipulation of the *LHH Settlement Agreement*.

Paragraph 41 of the *Settlement Agreement* — titled “*Public Disclosure*” — explicitly provides that all parties (CMS, CDPH, and LHH as signatories) had agreed that the *Settlement Agreement* may be “*subject to public disclosure in accordance with the FOIA and/or in accordance with applicable [local] laws and processes.*”

By extension, it seems reasonable that the mandatory **initial** “*Root Cause Analysis*” (RCA) LHH had submitted by the December 1, 2022 deadline is a document that should be subject to public disclosure.

By report, CMS approved the initial RCA on December 12 per San Francisco’s own City Attorney, who asserted in his January 13 letter to CMS and CDPH requesting an extension of the pause on discharges that had been scheduled to resume on February 2 that CMS had, in fact, approved the initial RCA on December 12 — 11 days after it had been submitted by December 1.

So, the **initial** RCA should be subject to public disclosure **now**, per paragraph 41 of the *Settlement Agreement*.

I initially submitted a records request on December 1 to LHH and SFDPH records request staff under San Francisco’s Sunshine Ordinance (our local version of FOIA) requesting CMS’ December 12 letter approving the initial RCA. Today on February 1, DPH records staff denied my records request for CMS’ letter saying:

“[SFDPH has a “*communication from CMS marked ‘confidential,’ [and] we are reaching out to CMS to confirm whether CMS is asserting that the communication in question is confidential and protected from disclosure.*”

I also requested the actual initial RCA LHH submitted to CMS before December 1 that CMS reportedly approved on December 12.

DPH records staff also denied that request today saying:

*“With respect to item #2, the record responsive to your request is subject to the official information privilege under California Evidence Code §1040. Once the federal Centers for Medicare and Medicaid Services (CMS) accepts Laguna Honda’s ‘Action Plan’ that corresponds to the record you seek, the ‘Root Cause Analysis’ document that you seek will become available for public disclosure.”*

In fact, I’ve requested the initial *RCA* multiple times starting on December 1, and SFDPH has repeatedly denied my many subsequent records requests for this document.

I don’t believe California’s Evidence Code 1040 has anything to do with control over the *Settlement Agreement*, because Section 1040 provides that if parties have consented to public disclosure, then Section 1040 can’t be asserted. Since signatories of the *Settlement Agreement* consented that Public Disclosure under FOIA is required, the Section 1040 provision should be moot and shouldn’t have been invoked to withhold the initial *RCA*.

First, the notion that the initial *RCA* document is tied to whether subsequent smaller *RCA*’s responding to follow-on CMS concerns or deficiencies that may — or may not — arise in the future is also moot, precisely because they are **separate** documents, (*RCA #1* vs. *RCA #2*, etc.), since *RCA #2* may never be required. Therefore, since *RCA #1* has been approved by CMS it should be released to members of the public now under the *Settlement Agreement* paragraph 41, and not tied to whether additional *RCA*’s may be required in the future. The two or more *RCA* documents are separate and distinct public records.

Second, the initial *RCA* approved should not be contingent on gaining CMS approval of LHH’s separate *Action Plan*, and DPH records staff should not be tying them together under the Evidence Code 1040.

The public, LHH’s residents, and San Francisco’s Board of Supervisors deserve to see immediately LHH’s initial *RCA* to help us understand what corrective actions at LHH are necessary to protect the health and safety of LHH’s residents.

I request that CDPH or CMS provide me under the FOIA with the initial *RCA* now via an e-mail attachment, given that CMS had approved it on December 12.

In the alternative, I am asking CDPH and CMS to quickly direct San Francisco Deputy City Attorneys Sara Eisenberg, Tara Steley, and Henry Lifton, along with LHH’s acting CEO Roland Pickens, release immediately LHH’s initial *RCA* CMS approved on December 12.

Respectfully submitted,

**Patrick Monette-Shaw**  
*Columnist,*  
*Westside Observer* Newspaper