

Patrick Monette-Shaw

975 Sutter Street, Apt. 6

San Francisco, CA 94109

Phone: (415) 292-6969 • e-mail: pmonette-shaw@earthlink.net

January 10, 2009

Whistleblower Program
Office of San Francisco's City Controller
1 Dr. Carlton B. Goodlett Place – City Hall, Room 316
San Francisco, CA 94102-4694

Whistleblower Complaint: Violation of Settlement Agreement Between the U.S. Department of Justice and the City of San Francisco Over Closure of Laguna Honda Hospital's Adult Day Health Care Program

To Whom It May Concern:

- Complaint Area:**
- Office of the Mayor
 - San Francisco Department of Public Health
 - San Francisco Health Commission

If you've lodged this complaint previously, with what agency did you file the complaint?:

- U.S. Department of Justice
- Office of the City Attorney, City and County of San Francisco¹

Complaint Description:

This Whistleblower Complaint involves possible violation of a settlement agreement between the U.S. Department of Justice and the City and County of San Francisco, and may involve improper government activity by City officers and employees for knowingly proposing to violate provisions of the negotiated settlement agreement reached.

On May 23, 2008, Shanetta Y. Cutlar, the Chief of the Special Litigation Section in the U.S. Department of Justice's Civil Rights Division sent a letter to Aleeta Van Runkle, a Deputy City Attorney for the City and County of San Francisco, indicating that a settlement agreement had been reached with San Francisco officials, most notably San Francisco's Director of Public Health Mitch Katz, regarding operations of Laguna Honda Hospital and Rehabilitation Center.

Ms. Cutlar enclosed to her May 23 letter the final settlement agreement, asking that both Ms. Van Runkle and Mitch Katz, San Francisco's Director of Public Health sign the final agreement and return it to the Department of Justice (see Enclosure 1).

Ms. Cutlar noted that her May 23 letter "set forth below [the DoJ's] understanding of the specific steps the City will take in implementing paragraph II.A.6 of the Settlement Agreement."

Paragraph II.A.6 of the Settlement Agreement (see Enclosure 2) stipulates, in part:

"To help achieve this, the City shall develop and implement specified agreed-upon measures as set forth in the United States' letter of May 23, 2008."

The June 13 settlement agreement signed by Ms. Van Runkle on behalf of City Attorney Dennis Herrera and also signed by Dr. Katz, stipulates that the May 23 side letter was to be fully incorporated into the entire settlement agreement with the DoJ as if it were incorporated therein into the entire Settlement Agreement.

¹ This complaint was *previously* filed with the U.S. Department of Justice, but is being filed **concurrently** with San Francisco's Whistleblower Program and San Francisco's City Attorney's office.

January 10, 2009

Whistleblower Complaint: Violation of Settlement Agreement Between the U.S. Department of Justice and the City of San Francisco Over Closure of Laguna Honda Hospital's Adult Day Health Care Program

Page 2

In particular, Paragraph 2b of Ms. Cutlar's May 23 side letter stated:

"The City agrees to continue to expand the community support adult day health services program at LHH (currently at Clarendon Hall), further emphasizing a preventive health care/maintenance component to the day program's offerings."

According to a response I received to a December 2008 public records request, the only mid-year budget cuts facing Laguna Honda Hospital and Rehabilitation Center's FY '08-'09 budget is to its Adult Day Health Program.

On November 25, 2008, San Francisco's Health Commission took testimony regarding mid-year budget cuts ordered by Mayor Gavin Newsom to close an emerging Fiscal Year '08-'09 budget deficit. The Health Commission had been presented with an initial proposal to close Laguna Honda's ADHC program completely. But on November 25, the Health Commission was told that an alternative, cost-neutral proposal to keep LHH's ADHC program open would be presented for its review, and that the alternative proposal was first evaluated as being viable. The minutes of the November 25 Health Commission states:

"Commissioner Illig asked whether the budget neutral proposal from the LHH ADHC is viable. John Kanaley, Administrator for LHH responded that he was given a short time to make cuts and that he tried to make them budget neutral. He added that the ADHC staff has been diligent. The proposal adds a census of 13 additional clients with partial reductions in staff time. He [Kanaley] believed that the proposal looks pretty good at first blush, and agreed to review it further with the [Department of Public Health] finance staff and bring it back to the [Health] Commission."

But the minutes of both the Health Commission's December 2 and December 16 meetings do not mention Laguna Honda at all, nor do the minutes of either meeting show that the budget-neutral proposal to keep LHH's ADHC program open was even discussed by the Health Commission. Additionally, the Health Commission's subcommittee charged with hearing Laguna Honda matters — the LHH-Joint Conference Committee — canceled its December 17 meeting, where the budget-neutral proposal to keep LHH's ADHC open should have been considered before forwarding the matter to the full Health Commission.

Now, a month-and-a-half after the Health Commission was first informed last November by Mr. Kanaley that an alternative proposal to keep LHH's ADHC open was considered viable, the Health Commission has apparently suddenly rejected the ADHC's budget-neutral alternative proposal that was submitted.

I am aware that a number of potential alternative funding solutions to keep LHH's ADHC open have been offered to the Mayor by several community members. There are also anecdotal reports that a member, or several members, of the San Francisco Board of Supervisors met privately with Mayor Gavin Newsom urging him to keep the LHH ADHC open, but that the Mayor was adamant that LHH's ADHC be closed and that he (the Mayor) wouldn't budge on his position.

The Health Commission — and by extension, Mayor Gavin Newsom — must be fully aware of the settlement agreement reached between the City of San Francisco and the U.S. Department of Justice over Laguna Honda Hospital dated June 13, 2008.

Notably, the DoJ settlement agreement does **not** stipulate that LHH's ADHC program can be closed if a cost-neutral funding proposal is judged not to be "viable." There is no mention in the settlement agreement with the DoJ that LHH's ADHC must be kept open and expanded contingent solely on whether operating LHH's ADHC is financially viable. Instead, the City appears to have entered into the settlement agreement to expand LHH's ADHC programming with the U.S. Department of Justice without restrictions as to the program's viability.

January 10, 2009

Whistleblower Complaint: Violation of Settlement Agreement Between the U.S. Department of Justice and the City of San Francisco Over Closure of Laguna Honda Hospital's Adult Day Health Care Program

Page 3

Why is the Mayor, his Department of Public Health, and the City's Health Commission ignoring — and openly proposing to violate — the settlement agreement reached with the U.S. Department of Justice?

I ask that San Francisco's Whistleblower Program investigate who made the decision to close LHH's ADHC program. In particular, there are widespread anecdotal reports that the closure of LHH's ADHC program may have been ordered by Mayor Gavin Newsom, or ordered by staff members in the Office of the Mayor.

I specifically ask that the Whistleblower Program investigate whether Mayor Newsom or members of his staff (in particular, Catherine Dodd, the Mayor's Deputy Chief of Staff for Health and Human Services), Health Commission members, and/or employees in the Department of Public Health, including Dr. Mitch Katz, played any roles in directing that LHH's ADHC program be closed, in possible violation of the settlement agreement with the U.S. Department of Justice.

Respectfully submitted,

Patrick Monette-Shaw
Independent Community Observer

Enclosures:

1. May 23, 2008 Letter From Shanetta Y. Cutlar to Aleeta van Runkle
2. June 13, 2008 Settlement Agreement Between the U.S. Department of Justice and the City and County of San Francisco Regarding the Laguna Honda Hospital and Rehabilitation Center

cc: Shanetta Y. Cutlar, Chief, Special Litigation Section, Civil Rights Division, U.S. Department of Justice