

# Audit Restores \$350,000 to Laguna Honda Hospital's Patient Gift Fund

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First, Marc Slavin brazenly declared LHH's patient gift fund wasn't for patients ...



Fuzzy Dr. Katz then declared not one nickel had been misspent ...



Hirose was left holding the bag when the City Controller's audit demanded \$350,000 be restituted.

A clearly flawed audit of Laguna Honda Hospital's (LHH's) patient gift fund conducted by San Francisco's City Controller was finally released on Monday, November 22, although it appears to vindicate the majority of allegations former LHH doctors Maria Rivero and Derek Kerr raised in multiple whistle-blower complaints about potential mismanagement of LHH's patient gift fund.

Initially, the Controller's office white-washed the gift fund scandal, claiming in an initial protective "review" on May 21, that LHH should segregate staff development funds from the patient gift funds. The City stalled as long as possible before beginning an audit of the gift fund in September. Along the way, Supervisor Sean Elsbernd attempted to broker a "limited audit" focusing only on eight of the initial complaints.

The City also claimed it lacked funds to conduct an audit, until a Sunshine request uncovered the City Services Auditor had been allocated \$400,000 for audits at LHH.

The compromised audit findings have resulted, surprisingly, in restitution of approximately \$350,000 to the gift fund to actually benefit LHH's patients. Had the audit's flawed methodology been modified, it is thought that thousands of dollars in additional restitution may potentially have been required.

Had the whistle-blowers not filed their complaints, not one nickel of the \$350,000 in wrongfully-diverted patient funds would ever have been returned to benefit patients, and the bandits would have got off raiding the cookie jar.

Reasonable observers understand that the Controller's demand resulting in restitution of \$350,000 in funds is clear proof misappropriation of patient funds had occurred. The Controller wouldn't have ordered funds be returned, if there had been no malfeasance.

But the City Controller's audit appears to ask readers to believe that LHH officials were clueless about how the patient gift fund was being mismanaged. Or perhaps they knew, but didn't care. LHH's response to the audit, and director of public health Mitch Katz's comments in the *Chronicle* on November 23, were appalling.

Katz, for his part, told the *Chronicle* on November 23 that "not a single nickel of patient money was spent on anything but patients." As recently as September 2, Katz tried to pawn off that only \$37,102 intended for patients may have been improperly deposited into staff accounts.

If Katz was correct, why would the Controller have directed that \$350,000 — seven million nickels, or nearly ten times more than Katz claimed on September 2, to be precise — siphoned off to benefit LHH's staff and the hospital's operating fund be returned for patient benefit?

For her part, LHH executive administrator Mivic Hirose callously claimed in her November 19 response to the draft audit report that the audit results “definitively ends any question about whether the money donated for patient benefits were used strictly for patient benefit.”

Hirose is wrong: The audit has not ended many questions about the patient gift fund, and it is unclear whether LHH will implement all of the recommendations the Controller included in the audit report.

The audit team noted that not only could LHH not provide supporting documentation for 35 percent of expenditures in the limited sample under investigation, in other cases approval of expenditures was inconsistent to other similar transactions, or didn't have supervisory approval at all. Other transactions didn't identify the purpose of expenditures, and still other transactions had no supporting invoices.

As a result, the Controller noted that “the risk increases that improper accounts will be charged and funds for specific purposes may be misspent,” contributing to the appearance of a lack of transparency. The Controller had to make recommendation #15, that LHH must improve its filing system so staff are familiar with how to file documents, and recommendation #16, that LHH “retain all documents in accordance with an established record retention policy,” both basic accounting chores. LHH tried to quibble that recommendation 16 is their “custom and practice,” but failed to explain why its customs and practices led to incomplete files and missing records.

George Wooding, president of the West of Twin Peaks Central Council that also demanded an audit of the gift fund, said, “The audit results are very sad for LHH's residents. The audit recommendations couldn't put LHH's administration in a much worse light.”

Of the \$350,000 in restitution that has been, or must be, made, the Controller's audit found that \$151,739 was incorrectly deposited into staff accounts and must be refunded to patient accounts.

The Controller also found an additional \$176,481 taken from the patient gift fund during former LHH executive administrator John Kanaley's tenure to “clear a cash deficit” in FY 2006–2007 in the hospital operations account also had to be refunded, since it was improperly moved into an LHH capital fund. Amazingly, the Controller Office admits it had first approved the initial \$176,481 capital fund adjustment, but then arranged to reverse it when additional information was supplied several years later during the current gift fund “performance audit.”

These two amounts total approximately \$328,000 which has been, or will be, restituted, but that excludes approximately \$20,000 in interest on the \$176,481 wrongfully allocated to a hospital operations account that must be also repaid.

Another \$1,800 taken from patient Activity Therapy funds to pay for staff CPR training — which the audit failed to even mention, but which was quietly put back into patient funds — is just one smoking gun proving patient funds had been used for staff.

Amazingly, in its November 19 published “rebuttal” to the Controller's audit, LHH and DPH claimed twice that audit results hadn't been vetted during an audit exit conference and claimed exceptions might not have been accurate. In the City Controller's rebuttal to LHH's response, the Controller bit back, noting that LHH's response cited incorrect information and wasn't entirely accurate.

The Controller's report acknowledged LHH failed to obtain Health Commission approval before changing its gift fund policy, a violation of the Administrative Code, and failed to report gift fund expenses to the Health Commission, also required by the City's Administrative Code.

Importantly, the Controllers' audit recommended that LHH restore its Gift Fund Management Committee with a patient representative, and recommended that detailed quarterly expense reports presented to the Health

Commission be resumed — all recommendations that doctors Rivero and Kerr have advocated for, for nearly a year.

Many of the Controller's audit recommendations mirror issues Kerr and Rivero had first reported between March and September 2010.

The Controller notes on page seven of its audit report that LHH's chief financial officer (presumably Tess Navarro) had brought the \$176,481 adjustment to the Controller's attention.

This is nonsense. Drs. Rivero and Kerr had first pointed out the \$176,481 discrepancy on September 16, specifically asking in a records request that the City's auditors to look into this questionable transaction during the audit. Indeed, LHH's public relations flack, Marc Slavin, refused to supply the records sought on September 16, saying he couldn't release them while the audit was underway.

Slavin, a lawyer, must know that there is no provision in the Sunshine Ordinance that permits withholding of documents for over two months simply because the records sought are being audited.

The Controller admits it conducted a performance audit, not a forensic audit. Professional accounting staff believe that the City Services Auditor team should have reviewed all expenditures, since the sample size of 2,000 expenditures was so small to begin with.

The Controller set out to examine 2,000 gift fund expenditures between 2004 and 2010, but used a sampling methodology. They selected 324 expenditures for review, but in the end reviewed just 212 expenditures — approximately 10 percent of all expenditures — since LHH claimed it didn't have supporting documentation for 112 (35%) of the 324 requested expenditures.

LHH chose to quibble about the number of documents missing, but the Controller's Office noted in its rebuttal to LHH's response that whether the missing documentation stood at 35 percent or 29 percent of the requested sample expenditures was irrelevant, since the Controller's findings and recommendations remained accurate.

Brazenly, Laguna Honda's accounting staff claims — according to the Controller's audit report — that the lack of documentation for the 112 records was because various Sunshine Ordinance public records requests had somehow caused the misplacement of documents later needed by, but never presented to, the City's auditors.

Huh? When has a public records request then resulted in the loss of the public records that had been provided?

LHH would have us believe that while it was able to find many transactions to respond to records requests, it then did not have copies of the records provided in either accounting files, or in administrative files documenting what records had been provided, many of which were provided electronically and must be available in e-mail records.

For its part, the audit team failed to contact either Rivero or Kerr to obtain records given to the two doctors, nor does it appear that the audit team located the missing documentation among the extensive enclosures Kerr and Rivero included in multiple complaints to the Ethics Commission, the Controller's whistle-blower program, and other oversight bodies.

Hirose further claimed on November 19 that the Controller stated on page 19 of the audit report that “*for the sample of expenditures reviewed*, the audit team found that Laguna Honda charged patient Gift Fund expenditures to patient subaccounts and charged staff development Gift Fund expenditures to staff development subaccounts.”

Hirose — undoubtedly with public relations director Marc Slavin's editorial advice — was disingenuous on multiple levels. The key phrase here is “for the sample of expenditures reviewed.” Since approximately 1,800 expenditures weren't even reviewed by the audit team, there is no definitive proof that other expenditures not reviewed may have involved funds in patient subaccounts that were potentially spent on staff, instead.

For instance, this author placed a records request on October 16 — before the audit had concluded — specifically asking for the source of funds used to award \$50 employee-of-the-month incentive awards, a practice thought to have begun in 2005 under John Kanaley’s tenure. The Controller’s Office has stalled for over a month and has failed to respond to this request, leading to the suspicion that the \$50 rewards may have been funded by the patient gift fund. If so, thousands of dollars in employee-of-the-month incentives may also need to be restituted to the gift fund for patient use.

Hirose was also disingenuous for failing to note that the \$350,000 ordered restored to patient subaccounts should never have been diverted from patient subaccounts to begin with, and then spent on staff. Further, Hirose ignored that three pages later, the Controller indicated on page 22 that the audit team was not able to “determine the cause of the discrepancies, nor determine in many cases, whether the subaccounts charged were incorrect.”

If the Controller couldn’t determine whether the correct subaccounts had been charged, how can Hirose claim this “definitively end questions” whether patient funds were indeed expended on staff members?

Although the audit concluded that multiple sections of the City’s administrative code appears to have been violated, the audit report fails to note why other City oversight agencies have failed to look into the patient gift fund abuses.

Dr. Maria Rivero concludes, “The Controller’s audit recommendations may not be enough. We already had codes, policies and rules, but they didn’t help. Preserving the patient gift fund requires continued public oversight and follow-up audits.”

Restitution of \$350,000 to patient benefit is a good first step, and the improved oversight recommended by the Controller is a good result. It has taken over a year to obtain both outcomes. Going forward, eternal public vigilance of LHH’s administration appears to be in order.

“At the very least, LHH’s administration owes a huge apology to its residents and donors who contributed believing they were assisting LHH’s residents,” Mr. Wooding said.

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