



Activist Sues San Francisco Officials to Stop Downsizing of Laguna Honda Hospital And Rehabilitation Center

San Francisco healthcare accountability activist Patrick Monette-Shaw has filed a lawsuit to stop the downsizing of San Francisco's City-operated skilled nursing home, Laguna Honda Hospital and Rehabilitation Center, which has historically served indigent frail elderly San Franciscans. The lawsuit was filed by public health and public-interest lawyer Lynn Carman, who can be reached at (415) 927-4023 after November 29, or by e-mail at a7827@comcast.net (note address change).

If you are interested in supporting this public interest lawsuit, whether financially or in spirit, please contact Patrick at (415) 292-6969, or by e-mail at pmonette-shaw@earthlink.net.

The new public-interest lawsuit contains three "causes of action":

First Cause of Action: Creation of an Express and Implied Trust

An express and implied trust between the City and voters was created by a combination of paid voter guide ballot arguments and the language of Proposition A in 1999. City officials promised voters that **all** tobacco settlement revenues would be used for the LHH replacement facility construction costs and to service Proposition A bond debt.

The lawsuit alleges there has been a material breach of the public trust in that the City improperly — by way of Ordinance 191-03, which was passed unanimously by the 11-member Board of Supervisors, including then Supervisor Gavin Newsom — misappropriated \$25 million from tobacco settlement revenues earmarked to rebuild LHH, to the City's general fund. The lawsuit seeks to:

1. Repeal and cause to be voided changes made to the City Administrative Code by passage of Ordinance 191-03.
2. Repay the misappropriated \$25 million, together with interest, to the tobacco settlement fund for use in rebuilding a facility or facilities to replace LHH at its present site.

Second Cause of Action: Estoppel

To stop the City from, first, denying it has a ministerial duty to repeal Ordinance 191-03, and second, to prevent the City from denying it has a ministerial duty to repay the misappropriated \$25 million.

Third Cause of Action: Violation of the Proposition A Compact

Due to diverse representations made by officials representing San Francisco — including the Board of Supervisors, then Mayor Willie Brown, the Health Commission and the Director of Public Health, Congresswoman Nancy Pelosi and Senator Dianne Feinstein — proposition A was passed in 1999 by 73% of San Francisco voters.

The Compact, a public trust, requires the City to construct a replacement facility for LHH capable of serving 1,200 SNF patients. However, the City breached the Compact, as well as violated the public use to which tobacco settlement revenues are impressed under Proposition A, by misappropriating the \$25 Million in the Summer of 2003. In October 2004 the Board of Supervisors and Mayor Gavin Newsom again materially breached the Compact by enacting a new ordinance. The effect of the new Ordinance is that several floors in the replacement facility will potentially be eliminated, thereby reducing the number of skilled nursing beds promised voters in the Compact from 1,200 beds to between 850 and 950 beds.

The new Ordinance is based on improper standards considered by the Board of Supervisors, its Budget Analyst, and, implicitly, the City Controller, and each of them failed to consider that by restoring the misappropriated \$25 million and budgeting for additional tobacco settlement revenues expected to be received in future years, the 1,200 beds could easily be built. A substantially different and improved financial situation was not presented for consideration, which better financial condition is a required factor to be considered before reducing the scope of the LHH replacement facility, with a concomitant reduction in the number of skilled nursing patients to be served by the new LHH. The failure to consider an improved financial condition, and the City's refusal to restore the misappropriated \$25 million, are a gross abuse of the Board of Supervisors' discretionary powers. The Board, had it considered an improved financial picture, may have reached a different conclusion about downsizing the LHH replacement facility simply to have the project come in "on budget," not on its promised full "scope" of 1,200 beds.

The lawsuit also seeks a permanent injunction commanding the Board from further considering, or issuing contracts, reducing the size of the replacement facility until the misappropriated \$25 million is repaid with interest, and an analysis of whether future tobacco settlement revenues could fund all 1,200 beds.

For additional information, visit www.stopLHHdownsize.com.