

Laguna Honda Hospital Scandal

Patient Gift Fund Records Referred to D.A. and Feds

by Patrick Monette-Shaw

As I reported in the *Westside Observer*'s July-August edition, fallout from the Laguna Honda Hospital gift fund scandal has expanded, with citywide implications into City Hall's ethical mess. It's amazing Laguna Honda Hospital's CEO, Mivic Hirose, has retained her job.

The two Sunshine ordinance complaints filed by this author to unearth gift fund records have now been referred to the District Attorney's Office and the Ethics Commission for enforcement. Both the Ethics Commission and the City Controller's Office have refused, willfully, to release public records.

In another action, access to the Whistleblower Program's investigative files has moved into Federal court, in part for failure to release the same records.

In June, the Sunshine Ordinance Task Force issued two separate Orders of Determination to both the Ethics Commission and the City Controller's office, ordering that the records requested must be produced, since the City failed to demonstrate a valid exemption under California's Public Records Act justifying reasons for withholding the records.

The Task Force's compliance committee ruled unanimously on July 12, that both the Controller's Office and the Ethics Commission had failed to comply with the Task Force's two Orders of Determination. The subcommittee returned the two complaints to the full Task Force, with a recommendation that the Task Force find Tonia Lediju, the manager of the City Controller's whistleblower program, and John St. Croix, Executive Director of the Ethics Commission, engaged in willful failure and official misconduct for failure to comply with the SOTF's initial Orders of Determination.

The SOTF's referral for enforcement to the D.A. cited City Charter section 15.105(e), Official Misconduct, and Sunshine Ordinance Sections 67.34 (regarding willful failure) and 67.21(e) (requiring the D.A. to insure compliance when records custodians refuse to comply with a Sunshine Order).

On July 26, 2011, the full Task Force adopted the recommendation from its Compliance and Amendments Subcommittee, adding that in addition to referring the two cases to the District Attorney and the Ethics Commission, the two new "Referrals for Enforcement" should also be sent to Interim Mayor Ed Lee and to the San Francisco Civil Grand Jury.

The final determination by the SOTF highlights the City's resistance to releasing patient gift fund whistleblower records.

It will be interesting to see if appointed District Attorney George Gascón — who is busy running to be elected as one of our top law enforcement officials — will step up to the plate and order enforcement, or whether he's too busy with his election campaign to uphold his oath of office.

Surprisingly, news just surfaced that the Ethics Commission's Chief Enforcement Officer, Richard Mo — who unsuccessfully defended the Ethics Commission when my Sunshine complaint was heard on April 26 — is suddenly no longer employed at Ethics, effective mid-August. His defense didn't work, and now he's gone?

It will also be interesting to see what our Interim Mayor — Ed "The Liar" Lee — does with the referrals on the Sunshine complaints.

In another development, former Laguna Honda Hospital hospice physician Derek Kerr's wrongful termination and whistleblower retaliation lawsuit has moved into Federal court. Kerr's legal team sought access to both the Ethics' and Whistleblower Programs' investigative files involving the Laguna Honda Hospital patient gift fund

scandal, and sought in their Federal motion to compel depositions from Ethics and Whistleblower Program staff. Both agencies declined allowing some of their respective employees to be deposed in Kerr's lawsuit.

On August 11, the Federal Magistrate assigned to Kerr's case requested all documents acquired to date during discovery. He apparently wanted to review them all, in addition to a potential *in camera* review of other whistleblower program records.

In camera reviews allow judges to review documents in private, before determining admissibility in open court.

This signaled that the issues were being taken seriously by the Magistrate and that he did a lot of background work. The Magistrate ordered on August 24 release of any documents showing communication between the Ethics Commission and the Whistleblower Program to and from anyone in the Department of Public Health's staff, for the Magistrate's further *in camera* review. The Magistrate will then decide whether to order additional staff be deposed.

The good news is that there has been some movement on the other whistleblower complaints doctors Kerr and Rivero filed that I mentioned in the last issue. Sadly, there has been no action regarding the whistleblower complaint against former Director of Public Health Mitch Katz, who I reported last month had received consulting fees from the Chicago firm, Health Management Associates. HMA collected \$103,000 from a DPH consulting contract, during the same period it paid \$30,000 to Katz over three years. The sin? DPH paid HMA, while HMA paid the DPH boss who approved and oversaw HMA's contract.

Belatedly, City Controller Ben Rosenfield (himself) finally took action on Kerr's and Rivero's whistleblower complaint about Davis Ja and Associates, which involved conflict-of-interests between DPH employee Deborah Sherwood and her husband Davis Ja, who had been awarded a \$1.9 million consulting gig. It turns out that because Sherwood co-wrote the RFP eventually awarded to her hubby, Ja; was the Project Manager for the contract; was an official answering questions about the RFP and possibly the final contract; and had allowed a direct-report to serve on the interview panel, Controller Rosenfield belatedly cancelled the contract "for convenience," after he recently "discovered" through a public records request, that there was any problem at all.

This may potentially result in a refund to the City of some \$400,000, based on scheduled payments to Mr. Ja that were canceled on July 29, 2011.

Rosenfield only canceled the Ja contract on July 29, almost two years after the whistleblower complaint had been submitted. Had Rosenfield's whistleblower staff never informed him of the initial whistleblower complaint filed against Ja in September 2009?

Rosenfield claims he's informed of all "high-risk" whistleblower complaints, but now he claims he only learned of this case just weeks ago through a public records request. Rosenfield didn't admit the new records request was placed by doctors Kerr and Rivero, even though they had filed a whistleblower complaint fully two years ago.

Sherwood — whose pal is her husband Davis Ja — was formerly supervised by Dr. Bob Cabaj, who abruptly resigned from the Health Department in May 2011. Two months later, Ja's contract was suddenly revoked, and Richard Mo also suddenly vanished.

What's wrong with this picture? Could any of this be related?

Despite Rosenfield suddenly yanking the contract, the Ethics Commission is still dragging its feet and may still be "investigating." Why did it take the City Controller two years to arrive at yanking Ja's contract, and why is Ethics still investigating it? Should we start referring to this as the "Jerwood scandal"?

The Civil Grand Jury released its report on the Whistleblower Program after the *Observer*'s last edition went to press. Their report is highly critical of the Controller's whistleblower program, noting that the Ethics Commission's efforts to protect City employees against retaliation for exposing wrongdoing isn't working.

During the Citizen’s General Obligation Bond Oversight Committee’s hearing on August 11, Controller Ben Rosenfield’s proposed “response” to the Grand Jury’s findings was debated. Remarkably, CGOBOC approved the Controller’s response to the Grand Jury that there is no need to implement an “appeals” process for whistleblowers who are not satisfied with the disposition of their cases.

Rosenfield brazenly responded to the Grand Jury that citizens and employees can petition a court, or can appeal to the Board of Supervisors’ heartstrings, if the outcome of their whistleblower complaints aren’t resolved satisfactorily. Rosenfield’s slap in the face is appalling, since most citizens can’t afford mounting a Court challenge, nor do they have easy access to an incompliant Board of Supervisors. The idiocy of CGOBOC’s stamp of approval on Rosenfield’s response is appalling, but may be explained by who appointed each CGOBOC member to their “oversight” seats.

It’s not too surprising Rosenfield “disagreed” with most of the Grand Jury’s findings. Had he “agreed,” he would be admitting the whistleblower program is a failure, as the Grand Jury tried to explain. Even the *San Francisco Examiner* published an editorial spanking Rosenfield for resorting to “damage-control,” rather than restoring public faith in the whistleblower program.

It took CGOBOC seven years to even get around to forming a subcommittee to review whistleblower complaints, despite clear language in the 2003 Prop “C” measure requiring them to investigate all whistleblower complaints. The subtext of CGOBOC’s remarks on August 11 is that they may want to reevaluate what their role is in investigating whistleblower complaints. They still don’t know what their role is, going on eight years later.

Candidate for mayor Dennis “The Ultimate Clean-Government Menace” Herrera, and his so-called “public integrity unit,” have been missing in action, and hasn’t lifted a finger in any of these whistleblower and sunshine complaints. Neither has D.A. George Gascón’s — or his predecessor, Kamala Harris’ — public integrity unit lifted a finger.

Is this what Laguna Honda patients — robbed of probable misappropriated funds — or we the voters, deserve by way of an ethical government? So far there have been few consequences of these abuses of government powers.

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