

Hi Sean,

Thank you for calling me this afternoon to discuss the Chamber's Settlement. I appreciate your call, but I want to document why we are in such disagreement on this issue.

It bothers me that the DPH and the City are allowing a lawsuit to determine public health policy. The Board of Supervisors are supposed to protect and enforce the will of the voters, not circumvent the will of the voter. The last time I checked, San Francisco was still a democracy. Who elected Protection and Advocacy, Inc (PAI), the Chambers settlement attorneys to represent district 7? Who elected PAI to control the Proposition A voters bond money? Who gave PAI a mandate to dictate City health policy? What happened to the voter's voice?

The February 12th dialogue between you and City Attorney, James Emery regarding the proposed Chamber's settlement agreement was clearly scripted to explain that the term "upon completion" would allow the City to continue building skilled nursing facilities (SNF) beds at Laguna Honda Hospital (LHH) in the future. The actual settlement language is shown below:

"San Francisco agrees that upon completion, the total bed capacity of the rebuilt LHH will not exceed 780 SNF beds."

The term "upon completion" is deliberately ambiguous. If your intention is to clear up confusion regarding the Chamber's settlement, simply amend the agreement to read, "after building 780 skilled nursing beds, the City of San Francisco reserves the right to build more SNF bed at Laguna Honda Hospital." Would this new language make make Protection and Advocacy, Inc. (PAI) unhappy? Yes. The City will never be able to build more than 780 SNF beds at LHH. San Francisco will be risking future lawsuits from PAI if the City violates the Chambers settlement agreement's cap of 780 SNF beds in the future.

Upon completion, the 780 beds will be built will probably be designated as "mixed-use-beds by the DPH. This is the same thing that the City did to the Mental Health Rehabilitation Facility (MHRF) in 2004.

My understanding is that Marc Slavin, the Director of Government and Community Relations for LHH, is also asserting that the phrase "upon completion" is being interpreted by the City as only saying that there will be 780 beds at the end of the current construction, and that there is nothing in the Chamber's agreement to prevent the City from building more than 780 beds in the future. This is exactly the same interpretation Mr. Emery provided you on February 12th. It appears that Mr. Slavin and Mr. Emery are ignoring the published minutes of the January 10 Mayor's Long-Term Care Coordinating Council, in which minutes Protection and Advocacy Inc.'s lawyer, Elissa Gershon stated in response to a question about whether the 780 SNF bed cap for LHH means something different to PAI and the City and County, that "her expectation is that no more than 780 beds will be built at LHH."

Clearly, the 780-bed restriction is being interpreted differently between the parties to the Chambers lawsuit.

Two attorneys may agree that a circle is really a square, but San Francisco voters will simply read the Chamber's language to mean that LHH will only be building 780 SNF beds. I noticed that LHH director, John Kanaley in his January 28 memo to LHH

staff misquoted the Chamber's settlement wording by stating "upon completion" the new LHH will have a CAPACITY of 780 residents." What happened to the accurate wording "will not EXCEED 780 skilled nursing beds?" The Proposition A voters in 1999, LHH's staff, the unions and LHH's residents have been misled.

Susan Stofan, a worksite organizer for SEIU 1021, sent a written response to Mr. Kanaley on January 29 - her letter stated:

"SEIU 1021 is aware that Targeted Case Management (TCM) is rapidly running out of community placements for the residents of LHH. We were further shocked to learn at the JCC meeting yesterday that TCM is actively negotiating for SNF beds with out-of-county providers.

Again, we question whether the value statement of residents coming first is truly guiding the DPH. How can such a statement be issued when the Department is actively pursuing the idea of moving some of our most frail citizens of San Francisco into placements outside of their City? Our understanding of the Olmstead decision is that residents be given a choice of where to live. The rapid reduction of the hospital census without appropriate community services, forces the residents to make a choice between leaving their City, living in an SRO or simply being homeless. This absolutely flies in the face of the Olmstead Decision."

As District 7 Supervisor, you must be aware that there are now almost no new admission into LHH and that LHH is moving as rapidly as possible to reduce their patient census from 1040 residents to 780 residents (260 residents in total). This 260 patient population reduction is being done to save money. San Francisco has few places to either relocate all of these LHH residents nor any comprehensive system to monitor their medical care and treatment. Also, due to budget restrictions the DPH is cutting back on the very services that should be provided to LHH residents that are being placed back into the community. I would recommend that LHH change their value statement from "The residents come first," to the new value statement of "The residents go first." Let me be the first San Francisco voter to tell you that this situation stinks.

The short-term, 90-day-stay patients have always been a relatively small population component of LHH's continuum of health care services. An April 1999 report from the LHH Replacement Committee noted that in 1999, one-third of LHH's residents stay there for less than one year. Data from LHH's patient population on October 31, 2007 indicates the number of residents currently at LHH for less than a year has risen from 33% in 1999 to 38% in 2007, but 62% continue to need long-term care for longer than a year. But more importantly, testimony that has been presented to you, the Board of Supervisors and the Health Commission which shows that on October 31, 2007, only 16% of LHH residents resided at LHH for 90 days or less, indicating that fully 84% of LHH's residents will not meet the 90-day short-stay provisions of the Chambers settlement.

After accepting the terms of the Chambers settlement, short-term patients will now become the dominant population component. LHH's short-term patient population will again be increased at the expense of LHH's long-term care patients. The only long-term patients left at LHH will either suffer from severe dementia, Alzheimer's, extensive brain stem trauma, etc. When the voter's learn that Grandma has been shipped off to live with four other residents at a City-funded residence at 6th and

Howard, or shipped out of County so that a 30 year old patient needing 90-day short-term IV therapy to clear up a soft tissue infection resulting from injecting illegal drugs can take Grandma's LHH bed, San Francisco voters will understand that they have been betrayed (so will Grandma). Grandma won't have to worry about being run over by a reindeer, because she will already have been mowed down by the Chambers settlement agreement.

The voting public was told that LHH would remain being a long-term care health facility. Yet again, Proposition A voters have been lied to.

THE ANATOMY OF THE CHAMBERS SETTLEMENT

The connections between between the City and the Chamber's lawsuit are very suspicious. Details are shown below:

-In 1999, Mayor Willie Brown and San Francisco Board of Supervisors placed Proposition A, Laguna Honda Hospital rebuild on the ballot. The voters were asked to approve a \$299 million bond measure that would be coupled with \$102 million in tobacco revenue funds (totaling \$401 million). The Proposition A bond measure was poorly written, vague and poorly planned. The proposition was based more on what then Mayor Willie Brown and the Board of Supervisors thought the public was willing to pay for the bond measure than what the actual true costs of the project would be. In order to promote the Proposition A bond measure, the San Francisco voters were specifically told that the old LHH facility was going to be torn down and four new state-of-the-art hospital buildings were going to replace the old hospital. Voters were led to believe that 1,200 skilled nursing facility beds were going to be built and an additional 140 assisted living bed would be built. The new LHH facility was going to be a long-term care health facility for San Francisco's low income, frail elderly population and the severely disabled.

-Based on the promises made by Mayor Willie Brown and the Board of Supervisors, 73% of the San Francisco voters voted to approve Proposition A

-2003 -2004 Due to poor bond planning, unexpected structural steel costs and high contractor bids, the LHH rebuild is badly over-budget.

-March 18, 2005, Susan Mizner, the Director of the Mayor's Disability Council holds a disability council meeting that includes item number 7.B "Community options and alternatives - existing services and barriers to community-based living." Herb Levine, the Director of the Independent Living Resource Center (ILRCSF) spoke about the issue of Olmstead Decision implementation in Community living. Elissa Gershon, Staff Attorney for Protection and Advocacy, Inc. (PAI) expressed concerns for individuals who receive poor or no in-home supportive services. She stated that the community safety net needs to be stronger to avoid institutionalization. She pointed out that LHH is not the only alternative and there is a need to develop more alternatives, including assisted living and community supported housing.

-May 19, 2005, At Mayor Newsom's bidding, City Controller, Ed Harrington releases a report titled "Laguna Honda Hospital Replacement Program, Where do we go from here? Harrington's report offered the City only two options:

OPTION 1) Use all reasonably available funds to complete a 1,200 bed skilled nursing facility at LHH. This option will cost San Francisco \$621 million. \$220 million more than the project was forecast to cost.

OPTION 2) Use most funds to complete three buildings at Laguna Honda with 780 skilled nursing beds and use the remaining funds plus operational savings to purchase other long-term care services in assisted living, supportive housing, home care or other community based settings. Option 2 was based on excerpts from an April 2005 report written by Susan Mizner, the Director of the Mayor's Office of Disability.

Rather than debate the pros and cons of the LHH rebuild in an open public forum, City and DPH officials chose to keep the public uninformed.

-October, 2006. The ILRCSF which is run by Herb Levine, Mark Chambers, and five other LHH residents quietly file a class-action lawsuit against the City of San Francisco called the Chambers settlement. The Chambers settlement is practically identical to Ed Harrington and Susan Mizner's option 2. Elissa Gershon, staff attorney for PAI files the lawsuit.

-November, 2007. San Francisco officials agree to settle the Chambers lawsuit. This settlement is remarkable for the following reasons 1) The intent of the San Francisco voters has been completely compromised without the voters knowledge or involvement, 2) elected City officials and the DPH did absolutely nothing to notify San Francisco voters of the ramifications of the Chambers settlement, 3) Because public policy changes were being made through a lawsuit, all discussions regarding the Chambers settlement were made in closed door sessions, 4) a legal settlement that will completely change the DPH's health policy was settled in 13 months, 5) Rather than litigating and having the facts and truth about LHH be heard fairly before a judge at trial, the City quietly opted to settle the Chambers lawsuit, 6) The City did not utilize the discovery or interrogatory process, 7) there were no depositions taken by the City and 8) PAI is only asking for a \$300,000 settlement fee. Finally, Marc Slavin was quoted in the November 28th edition of the San Francisco Chronicle stated, "The reasons we are settling is because there is not a lot of disagreement." Interestingly, this article which is titled, "Help for people leaving LHH" never once mentions the Chambers settlement by name.

WAS THE CITY ACTUALLY FIGHTING THIS LAWSUIT OR EMBRACING IT?

Judging from my discussions within the community, I am certain that 99 percent of the San Francisco voters have never heard of the Chambers settlement and have no idea how this settlement effects LHH and/or City health policy. It is important for the San Francisco voter's to understand what has happened to the LHH rebuild project and the Proposition A bond money. There is a great disconnect between what the public is being told and what is actually happening. If the City of San Francisco and the DPH cannot keep their promises to the voters, future bond projects such as the upcoming \$800 million San Francisco General Hospital are in jeopardy.

The City of San Francisco accepts the Chambers settlement with the full knowledge that they cannot provide the required housing. The quality of medical services and other health related services are unknown. The actual, open-ended costs to the City's general fund are variable and unknown (very poor planning). The City's budget deficits are causing community based health services to be reduced at the exact same time that LHH residents are being placed back into the community (very poor planning)

The savings from this lower-level-of-care settlement will be more than offset by increases in its human costs. The quest for cost reductions should not come at the expense of peoples health. Rather than balance the City budget on the backs of its most vulnerable citizens, it is time for the City's leaders to seek restructured federal financing, cut waste, be honest and forthright with the voters and simply do a better job of setting priorities.

Thank you for your consideration.

Regards,

George Wooding
MTHOA/West of Twin Peaks Central Council