

Wynship W. Hillier, M.S.
3562 20th Street, Apartment 22
San Francisco, California 94110
(415) 505-3856
wynship@hotmail.com

January 3, 2024

Aaron Peskin, Chair
San Francisco Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, California 94102

Sent via email to Victor.Young@sfgov.org

**RE: THE VERY LAST WORD ON FILE NO. 231076, RESIZING, ETC., THE
BEHAVIORAL HEALTH COMMISSION**

Honorable Chair Peskin:

There is no need for a sophisticated theory of cognitive bias to explain why the Behavioral Health Commission has had difficulty obtaining quorum this year. The causes are much more mundane: Lack of appointments to the Commission and poor attendance among current appointees. The latter is in turn caused by rescission of the Governor's Emergency Order. The solutions to these are straightforward and do not call for reducing the size of the Commission, which has been at 17 members since state law required this in 1977, 46 years ago.

The Board of Supervisors and Individual Supervisors Have Not Been Making Adequate Appointments to the Commission During and After the Governor's Emergency Order.

An analysis of the membership roster of the Behavioral Health Commission and other data over the past five years shows a gradual but severe decline in the number of active members of the Commission.

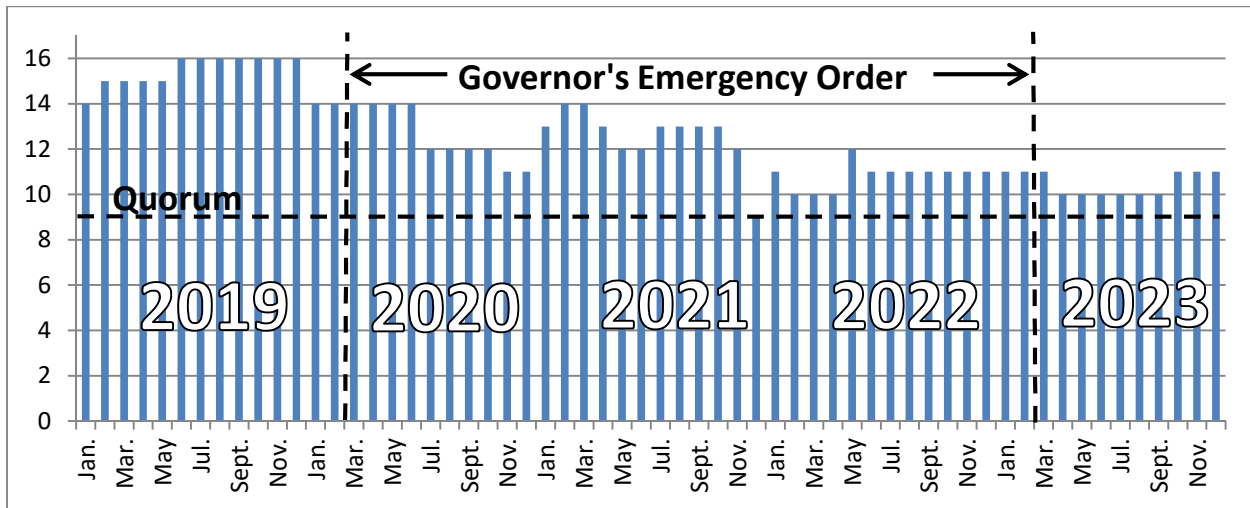


Fig. 1 – Graph showing the number of active members of the Commission over the past five years, noting the duration of the Governor’s Emergency Order and the quorum requirement.

Prior to the Governor’s Emergency Order, the Commission was appointed nearly to capacity and very comfortably above quorum. After the Emergency Order, it has had barely more active members than the quorum requirement.

The Board of Supervisors and individual Supervisors have had plenty of applications from which to make appointments. It is often said at Commission meetings that there are seven or eight applications pending, yet the Board of Supervisors and individual Supervisors rarely make appointments. As of this writing, there are only six members of the Commission with current appointments. Four of these will expire at the beginning of 2024. Meanwhile, seven viable applications are pending. Last year, during which the Commission could hardly meet with quorum, only one appointment to the Commission was made.

There are currently two family-member-of-a-consumer seats available on the Commission, one seat that could go to a consumer or a family member, two seats for the general interest, and one seated Supervisor seat. Of the three consumer or family-member-of-a-consumer seats, one must be an older adult advocate under current law. Under recent state law, one member must be a veteran or veteran advocate. The seven viable pending applications contain four general interest applicants (Humphrey, Kelsen, Leonardi, and Lucas), one of whom (Kelsen) is ethnically Asian when there is a directive in local law that the membership of the Commission must reflect the ethnic diversity of the client population of the City, *S.F. Admin. Code* section 15.12(f) (first sentence), and there are currently no ethnically Asian active members, and a large proportion of clients of Behavioral Health Services are Asian. Humphrey, Kelsen, and perhaps Leonardi all reside in districts the Supervisors of which have not had an active member appointed to the Commission for years. As for family members of consumers, there is an applicant (Zepeda) who claims this designation. As for consumers, there are three applicants (Leslie, Zepeda, and

Giannelli) who claim this designation. Humphrey or perhaps Leonardi could be appointed by Supervisor Preston to Seat 7. Kelsen could be appointed by Supervisor Chan to Seat 9, Zepeda could be appointed by the Board to Seat 15 or 16, either Leslie or Giannelli could be appointed by the Board to Seat 16 or 15, and the Board could appoint any member thereof to Seat 17, for a total of five additional active members. This would put the membership of the Commission at 15, allowing for one current member to drop out, no matter who that member is. The Commission would then have two active members short of the current maximum of 17, and this would solve the membership aspect of its quorum problems as well as shrinking it to size 13 and appointing members.

The needed appointments are easily made. In 2022, Geoffrey Grier, then staff for the Commission, asked the Board of Supervisors for two appointments solely for the purpose of bringing attendance up to 12 active members so that the Commission could amend its bylaws. Right away, the Board made the needed appointments. Now this Committee pretends that it cannot do the same with seven viable applications pending, when five of the seats over which it has power lack current appointments, three of which have sat vacant for almost two years. On Dec. 11, Dorsey said putting all of the seats under the control of the Board would help the Commission to attain quorum. Indeed, the Board has done a lot worse than individual Supervisors, with responsibility for half the seats!

Two Thirds of the Current Active Members of the Commission Were Appointed During the Governor's Emergency Order and Are Reluctant to Meet in Person.

At the meeting of the Rules Committee on Dec. 11, 2023, Committee Chair Dorsey said that the Commission has had difficulty attaining quorum for a long time. This is false! Even as recently as 2022, while the Commission had between ten and 12 active members, the Commission attained a quorum of nine at *nine* of its 11 meetings that year. The Behavioral Health Commission is not a Charter board or commission. Consequently, it was required to meet remotely during the entire period of the Governor's Emergency Order. The higher attendance during the Emergency Order was because remote meetings were easier to attend. Since it has begun meeting in person, the Commission has attained a quorum of nine at but *one* of its six meetings.

Only three of its 11 current active members were members before the Emergency Order, and two of them had perfect attendance at in-person meetings in 2023. Of the seven active members who were appointed during the Emergency Order, two had perfect attendance at in-person meetings in 2023, and four of the remaining five attended but half of in-person meetings of the Commission in 2023.

Seat No.	Name	Mar. 15	Apr. 19	May 17	Jun. 21	Jul. 19	Aug. 16	Sep. 21	Oct. 19	Nov. 16	ABSENCES		
1	Vigil (h)	Canceled due to Unconstitutional interference by Behavioral Health Services	A	P	A	Canceled due to "ongoing security concerns and inability to make quorum"	Summer recess	P	P	A	3		
2	Vasconez		P	P	A			A	P	A	3		
3	Jackson-Lane (h)		A	P	P			A	P	A	3		
4	(vacant)												
5	(vacant)/Murphy										A	A	2
6	Mason		A	A	P					A	P	P	3
7	(vacant)												
8	Banuelos		P	P	P					P	P	P	0
9	(vacant)												
10	Stevens (h)		P	P	P					P	P	P	0
11	Williams		A	P	A					A	P	P	3
12	Parks (h)		P	P	P					P	P	P	0
13	Wynn (h)		A	A	P					P	P	P	2
14	Murawski		P	P	P					P	P	P	0
15	(vacant)												
16	(vacant)												
17	(vacant)												
Appointed			10	10	10			10	11	11			
Present			5	8	7			6	10	7			
Quorum			9	9	9			9	9	9			
% of quorum			56%	89%	78%			67%	111%	78%	80%		
% of appointed			50%	80%	70%			60%	91%	64%	69%		

Table 1 – Attendance at meetings of the Behavioral Health Commission in 2023 since the recession of the Governor’s Emergency Order. (h) = In 2023, this member served beyond the expiration of their appointment.

Of the five who were absent for half of the in-person meetings, at least four appear to have also triggered the penalty for dismissal for four unexcused absences in a 12-month period set by *San Francisco Administrative Code* § 15.13(d). The same four also either were serving on expired appointments in 2023 or are serving on expired appointments now. Thus, they may be replaced by making new appointments. These and appointments to two vacant seats would also improve the Commission’s quorum problem.

Of the five who have attended only three of the six in-person meetings since the rescission of the Emergency Order, four of them have exceeded the maximum number of absences in *S.F. Admin. Code* § 15.13(d). (The remaining two automatic dismissal members had perfect attendance and 2-in-3 attendance during the in-person meetings.) Given recommendations by the Commission, these six could be replaced exactly with the current applicants (meaning no change in the current distribution of types of members) except that the Commission would lose a mental health professional. This would “use up” all of the applications but one to replace existing members,

and would increase the probability of obtaining quorum from 18% to 34% with no change in the number of active members (except one. We do not know who this is, but Dorsey said on Dec. 11 that there would be ten active members on the proposed new Commission with no dismissals, requiring one voluntary departure.).

The Board of Supervisors and Individual Supervisors Have a Responsibility to Keep the Behavioral Health Commission Fully Appointed.

San Francisco Administrative Code § 15.12(b) states that individual Supervisors and the Board of Supervisors “shall appoint” all members of the Commission. Individual Supervisors and the Board of Supervisors are thus willfully failing, refusing, or neglecting to perform duties enjoined upon them by law by not making these appointments from viable applications. This is a misdemeanor under *California Government Code* § 1222.

There Is a Political Reason Why Individual Supervisors and the Board of Supervisors Would Willfully Fail, Refuse, or Neglect to Make the Necessary Appointments.

There is a plausible political reason why the Board and its members would fail, refuse, or neglect to make appointments in order to use the resultant lack of quorum to size the Commission down. They may want to size it down in order to make it as unlikely as possible for the Commission to accomplish its duties because its duties are thought to be politically intolerable.

The first and oldest task of the 65-year-old Commission is to review and evaluate the City and County’s mental health needs, services, facilities, and special problems. *S.F. Admin. Code* § 15.14(a)(1). They are to provide an independent and objective view of the mental health situation in San Francisco,¹ and this may be thought to be politically intolerable. The first step in such a task would be an assessment of the mental health needs of San Francisco. The Commission cannot do this because it would mean asking who is considered to be mentally ill, who is being currently being treated, and how. Even Behavioral Health Services is going through violent convulsions over this issue, now claiming that their active patient census is appx. 20,000. Just four years ago, they were claiming that it was appx. 30,000. They cannot account for a one-third decline in their patient population in just four years! That is because one third or 10,000 of their patients are politically sensitive and their very status as patients cannot be openly acknowledged.

Mental health is inherently political. This was the reason for the Short-Doyle Act in 1957 and the beginning of deinstitutionalization in California. What is considered mentally ill should be determined as a matter of local politics, and this will differ depending on the community. Behaviors that are considered to be evidence of mental illness in San Francisco are not considered to be such in San Joaquin County. This is both because they cause stress to others in San Francisco that they don’t cause in San Joaquin County, and are themselves caused by stress

¹ Jane P. Schubert, p. 2 of letter to Marcia C. Buck dated Feb. 20, 1975, “Conflicts of interest in Mental Health Advisory Boards, and in sub-boards,” file no 78-75.

that is imposed on residents of San Francisco that is not imposed residents of San Joaquin County.² The causes and manifestations of stress in San Francisco were to be the subject of the Commission's deliberations when it was first created.

Democratic systems have weaknesses, and these were stressed by a Nazi legal theorist Carl Schmitt. Unfortunately, Schmitt's theses have since been taken up by prominent political theorists on both the left and the right. They seem to be supported by the legacy of political violence in the United States, violence that came to a head in the 1990's in the cases of Timothy McVeigh and, with particular relevance to involuntary mental health treatment, both because his violence was intended in part to combat it and because a court adjudicated him to be in need of it, Ted Kakzynski. Others have recognized these weaknesses in a more pragmatic fashion. In their book, *Tragic Choices*, Calabresi and Bobbitt discussed phenomena such as the distribution of kidney dialysis machines when the technology was in its infancy and the number of available machines was badly inadequate to serve the number of patients who needed them. Some body (such as the "God committee" in Seattle) literally had to decide who would live and who would die by allocating access to the machines, and these decisions obviously had to be made in secret. While the choices in involuntary mental health treatment are not as stark as this, Kakzynski made them one of the subjects of his political violence, and there is other supporting evidence. In the hearings in the California Legislature on A.B. 1800 in 2000, the LPS Dialogue Project was mentioned, a large and roving event involving thousands of Californians across the state, including San Francisco, seeking to find common ground on the subject of involuntary treatment. It was disclosed to have been a failure. No common ground could be found. The topic was not discussable. It remains so today, and the Commission's primary task cannot be achieved without extraordinary effort.

On the legal level, open meetings laws do not allow the Behavioral Health Commission to have any deliberations in secret, except those extremely narrow categories enumerated in *California Government Code* § 54954.5, and does not allow the Commission to keep any of its actions in secret whatsoever. *Id.* §§ 54953(c)(2) and 54957.1(a). However, since a connection was admitted between mental health and political violence, i.e., terrorism, by the one of the nation's top experts on them, Nicholas Kittrie, *see* his *The War against Authority*, both have become the subject of official secrecy, which springs from federal law, *Exec. Order No.* 13,526, which preempts all contrary state and local law, *U.S. Const.* Art. VI, Section 2. By the same token, the President's war powers under the Authorization for the Use of Military Force of Sept. 18, 2001, allow him to detain, i.e., involuntarily treat, i.e., as a mental health outpatient, anyone whom they find to be dangerous to the public. Although there was U.S. Supreme Court precedent, narrowly split along party lines, from the Civil War era, requiring judicial review of such decisions, *Ex*

² The examples of San Francisco and San Joaquin County are made up, but this principle of the Short-Doyle Act is stated in a legislative report, *Improving California's Mental Health System: Policy Making and Management in the Invisible System* (1978), available at the Public Library, Call No. REF L500 H248 1978 no. 2.

Parte Milligan, this appears to have been effectively overruled *sub silentio* by *Bush v. Gore* and *Gore v. Bush*, also narrowly decided upon party lines, this time to the advantage of the other party. As a consequence, involuntary mental health patients are no longer inducted through court procedures to which the patient is summoned, and Supreme Court precedent regarding involuntary treatment, as well as the LPS Act, no longer apply. Both remain “on the books,” like the Behavioral Health Commission, as window-dressing. Thus, they may be used to invalidate the complaints of involuntary mental health patients about their involuntary treatment, and turn the same complaints against the patients who made them, as supposed evidence of their mental illness, thus to coerce them to substitute voluntary mental health treatment for involuntary. Meanwhile, it cannot be said that Behavioral Health Services acts without democratic oversight because the Behavioral Health Commission exists, and the Board of Supervisors has even assigned it additional tasks beyond the state minimum.

Bush v. Gore and *Gore v. Bush* ostensibly had nothing to do with *Ex Parte Milligan*, and the 2000 Presidential election nothing to do with involuntary mental health treatment, but this may have been an illusion. While involuntary mental health treatment was never mentioned as an issue in the 2000 Presidential election, it was very much on the mind of the public. There were several indicia of this, but one of the most prominent was A.B. 1800, which was to lower the standard for involuntary treatment in California, whose flagship LPS Act had set the standard for the civilized world and which the U.S. Supreme Court gave Constitutional status in 1975 through *O'Connor v. Donaldson*. A.B. 1800 passed the California State Assembly in 2000 by a 3 to 1 majority, but was never voted by the California Senate, nor was it reintroduced the following year. This was because presidential candidate George W. Bush was a proxy for the use of Presidential war powers to involuntarily treat mental health patients below then-current standards (this was inevitable) but without any of the usual lawmaking, court procedure, or even any open acknowledgement of the relationship. By contrast, Al Gore was a proxy for the position of involuntarily treating patients through the traditional and relatively open procedures of legislation and confidential induction by courts. By declaring George W. Bush to be the winner of the 2000 Presidential election, the Supreme Court effectively placed their Constitutional seal of approval on both the rollback of the right to refuse mental health treatment and the use of authoritarian and antidemocratic methods to implement it. The theory of prominent Constitutional scholar Bruce Ackerman, *see his We the People*, which theory was subsequently approved by the U.S. Supreme Court, states that Constitutional change may occur through means other than formal amendment. I.e. Constitutional change may occur through a proxy decision, such as a Presidential election. The authoritarian approach also contributed to the “therapeutic” goal of giving involuntary patients nothing, absolutely nothing, on the basis of which to lodge any complaint, stake any identity, or take any form of political action, thus to resist treatment. It was a conspiracy of silence, and this is what stands to be threatened by the accomplishment of its duties by the Behavioral Health Commission.

The U.S. Congress rejected authoritarian responses to the Oklahoma City bombing in the Antiterrorism and Effective Death Penalty Act of 1996, and no major terrorist incidents on U.S.

soil followed, so the election of George W. Bush had to have been motivated by the promise of therapy for the patients, at least among democratic-leaning constituents. Take it from me, a prisoner of involuntary outpatient mental health treatment for decades running, these benefits are completely illusory. This and other canards need the sunshine that the Behavioral Health Commission was intended to work within, not a continuation of Nazi-era *nacht und nebel* (“night and fog”). The Board of Supervisors should reject downsizing the Behavioral Health Commission and instead solve the Commission’s quorum problem by appointing at least some of the many eager applicants thereto.

There are Constitutional arguments that can be raised against the authoritarian methods being used to treat involuntary mental health patients. However, they currently cannot even be raised because the members of the public who have been subjected to involuntary treatment under the new norm have been excluded from the conversation thereby. This offends another theory of Constitutional law. *See, generally, John Hart Ely, Democracy and Distrust.*

Errata

In my previous correspondence of Oct. 29, 2023, I said that the Behavioral Health Commission had responsibility for reviewing 334 pages of performance contracts. I forgot to include the Mental Health Services Act Plan! This brings the total to 532 pages. I also said that the proposal would bring the size of San Francisco’s local mental health board to those of Alpine and Sierra Counties. Actually, counties such as these with populations below 80,000 have a lower minimum size for their mental health boards, so a more apt comparison would have been with Mendocino and Yuba Counties, each of which have appx. 1/10 the population of San Francisco. Supervisor Dorsey has subsequently increased the size of the Commission in his proposed ordinance by one member to twelve, one above the minimum for San Francisco under state law.

Very Truly Yours,

/s/

Wynship Hillier

Attachments:

- Application of Alexander Humphrey
- Application of Aage Keldsen
- Application of Dominique Leslie
- Application of Francesca Zepeda
- Application of Joseph Leonardi
- Application of Joel Giannelli
- Application of Marvellus Lucas

BOARD of SUPERVISORS



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Application for Boards / Commissions / Committees / Task Forces INSTRUCTIONS AND APPLICATION

San Francisco is a diverse City and County with a wide range of people and issues affecting it. In order to take advantage of the extensive experience and knowledge available throughout our communities, various Boards/Commissions/Committees/Task Forces have been established to bring that knowledge together. These groups and their membership requirements are established by legislation approved through the local, state, and/or federal government.

In addition to setting up the purpose and goals of the various groups, the governing legislation outlines the type of person - in terms of desirable skills and/or knowledge - who can contribute their knowledge and perspective. In this manner, a group of San Franciscans, who are representative of the City and County, can be active participants in addressing issues affecting the entire City and County.

If you are interested in serving the City and County of San Francisco, the following procedures are provided:

1. A list of vacancies and expected vacancies, with their qualifications, can be found at the Office of the Clerk of the Board of Supervisors, at the San Francisco Main Public Library, and online on the Board of Supervisors' website (<http://www.sfbos.org/vacancy>). Please review this list for positions of interest.
2. Submit an application (http://www.sfbos.org/vacancy_application)
(List all of the appropriate seat number(s) and/or category/categories for which you qualify. We request applications be received ten (10) days before the scheduled hearing.)

Applicants may also need to submit a Form 700, Statement of Economic Interests (<https://www.fppc.ca.gov/Form700.html>), along with their application for all bodies listed in [Campaign and Governmental Conduct Code, Section 3.1-103\(a\)\(1\)](#).

3. If the seat(s) you are applying for is vacant and requires the Board of Supervisors' confirmation, the Rules Committee may schedule your application for review. Applicants should expect to appear before the Rules Committee to speak on their qualifications and answer questions during a public hearing.
(There are no set instructions on what you are expected to present to the Rules Committee; however, a brief description of how your qualifications distinguish you from other applicants, reasons for your interest in the subject, and/or a short summarization on why you would make a good candidate is appropriate.)
4. The Rules Committee may or may not make a recommendation for appointment. If a recommendation is made by the Rules Committee, the recommendation is forwarded to the Board of Supervisors for approval. It generally takes approximately 15 days from the date the Rules Committee makes their recommendation, for the individual to become officially appointed.
5. Depending on the type of organization, a new appointee may need to take an Oath of Office.

If there are no vacancies, your application will be retained for one year. If any openings occur during this time, your application will be submitted to the Rules Committee for review.

If you have any further questions, please contact the Rules Committee Clerk at (415) 554-5184. If you require detailed information concerning the operations of a particular Board/Commission/Committee/Task Force, please contact the administering department directly.

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Application for Boards, Commissions, Committees, & Task Forces

Name of Board/Commission/Committee/Task Force: _____

Seat # (Required - see Vacancy Notice for qualifications): _____

Full Name: _____



Zip Code: _____

Occupation: _____

Work Phone: _____ Employer: _____

Business Address: _____ Zip Code: _____

Business Email: _____ Home Email: _____

Pursuant to Charter, Section 4.101(a)(2), Boards and Commissions established by the Charter must consist of residents of the City and County of San Francisco who are 18 years of age or older (unless otherwise stated in the code authority). For certain appointments, the Board of Supervisors may waive the residency requirement.

Resident of San Francisco: Yes [] No [] If No, place of residence: _____

18 Years of Age or Older: Yes [] No []

Pursuant to Charter, Section 4.101(a)(1), please state how your qualifications represent the communities of interest, neighborhoods, and the diversity in ethnicity, race, age, sex, sexual orientation, gender identity, types of disabilities, and any other relevant demographic qualities of the City and County of San Francisco:

Large empty rectangular box for providing qualifications.

Business and/or Professional Experience:

Civic Activities:

Have you attended any meetings of the body to which you are applying? Yes No

An appearance before the Rules Committee may be required at a scheduled public hearing, prior to the Board of Supervisors considering the recommended appointment. Applications should be received ten (10) days prior to the scheduled public hearing.

Date: _____ Applicant's Signature (required): _____

*(Manually sign or type your complete name.
NOTE: By typing your complete name, you are hereby consenting to use of electronic signature.)*

Please Note: Your application will be retained for one year. Once completed, this form, including all attachments, become public record.

FOR OFFICE USE ONLY:

Appointed to Seat #: _____ Term Expires: _____ Date Vacated: _____

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[Redacted] _____
_____ Zip Code: _____
_____ Occupation: _____

Work Phone: _____ Employer: _____

Business Address: _____ Zip Code: _____

Business Email: _____ Home Email: [Redacted]

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[Large empty box for response]

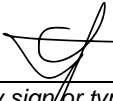
Business and/or Professional Experience:

Civic Activities:

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