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September 13, 2022

Committee of the Whole, San Francisco Board of Supervisors

The Honorable Shamann Walton, Board President
The Honorable Connie Chan, Supervisor, District 1
The Honorable Catherine Stefani, Supervisor, District 2
The Honorable Aaron Peskin, Supervisor, District 3
The Honorable Gordon Mar, Supervisor, District 4
The Honorable Dean Preston, Supervisor, District 5
The Honorable Matt Dorsey, Supervisor, District 6
The Honorable Myrna Melgar, Supervisor, District 7
The Honorable Rafael Mandelman, Supervisor, District 8
The Honorable Hillary Ronen, Supervisor, District 9
The Honorable Ahsha Safai, Supervisor, District 11

1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Testimony **Laguna Honda Hospital Closure and Patient Relocation Plan**
(Agenda Item 19, File #220619)

(Continued hearing to call of the chair PSNS Committee; Replace Grant Colfax and Health Commission)

Dear President Walton and Members of the Board of Supervisors,

Bombshell News: LHH Had Been Utilizing Wrong Federal Regulations

On August 16, LHH's interim CEO, Roland Pickens made a PowerPoint [presentation](#) on the status of the "*LHH Closure Plan and CMS Recertification*" to the full Health Commission. In it, Pickens noted that LHH is undertaking three major education initiatives, including focusing on Critical Element Pathways (CEP), a relatively new program from CMS that state surveyors from California's Department of Public Health (CDPH) use during on-site inspections of skilled nursing facilities in the State.

Pickens asserted the CEP program seeks to engage and support middle managers so they can support frontline staff. Pickens claimed Laguna Honda will continuously use CEP's to reinforce staff education and assess current hospital practices against the CMS regulations and F-Tags.

One problem is that CMS' CEP program is **not** "new." It was developed long before CMS rolled it out in November 2017. Why LHH is just learning of the CEP processes five years after they were implemented and LHH is now implementing them in LHH's educational arsenal wasn't explained. And Pickens didn't mention whether the CEP state surveyors may have apparently used since 2017 may have contributed to LHH having flunked its serial state inspections between November 2021 and April 14, 2022, setting off LHH's current crisis. A Health Commissioner asked a pointed question to this effect, but Pickens dodged and deflected from answering the direct question on August 16.

During Pickens' slide presentation, he first indicated (on [videotape](#)) that incorporating the CEP's into LHH's staff education curriculum will get LHH on the right track towards CMs recertification:

"[CEP's are] basically a tool that high-functioning nursing facilities use to ensure that all staff at the skilled nursing facility are aware of what the requirements are, but also are aware of how they in their discipline or Departments are expected [to perform] to ensure that, overall, the skilled nursing facility maintains [CMS regulatory] compliance. So, these 39 critical pathways are being rolled out at Laguna. There are 39 and we'll talk a little bit more about how we're implementing those, roughly every week, we go through 10 of the 39, so that on a monthly basis, we've covered all 39 of those CEP's every month at Laguna. It's an on-going process and not a one-and-done. It's baking into the fabric of Laguna Honda Hospital. This [is a] core element of using Critical Element Pathways, and these are the same tools that the [federal and state surveyors] use when they do the [inspection]

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surveys at Laguna. So, we feel confident by incorporating this as the pillar in staff education that we're on the right track."

Pickens was mistaken. There are not 39 CEP's; there are 41 [CEP's](#).

Given the two examples of CEP's in this article above — the *Accidents* CEP and the *Rehabilitative or Restorative Services* CEP — it is hard to believe that whichever LHH staff are being trained on the CEP's can digest and fully comprehend their education about 10 different CEP's each week. That may be an ambitious Johnny-come-lately, wishful-thinking goal in hoping to pass CMS' rigorous recertification process.

Following Pickens' slide show on August 16, Health Commissioner Tessie Guillermo specifically asked him whether the Critical Element Pathways may have played a role in previous regulatory inspection surveys of LHH. In effect, Guillermo was asking whether LHH's failure to follow the CEP's may have played a direct role in LHH flunking its inspection surveys, and whether that may have contributed to CMS decertifying LHH in April 2022. It's a legitimate question ... that deserves an honest answer.

Rather than answering Guillermo's direct question, Pickens dodged answering, but blurted out a damning admission, however inadvertently, that LHH had been using the wrong regulatory guidelines:

"And an analogy would be that, you know, we've talked before that one of the findings that Laguna was structured more like an acute care hospital, so Laguna really focused on, for example, the State of California Title 22 [regulations]: For acute hospitals [are] driven by the Title 22 regulations and that's okay if you're a [general acute care hospital] — but Laguna is a skilled nursing facility. Like San Francisco General, they [LHH] utilize Title 22 general acute care hospital guidelines and the Joint Commission [on Accreditation of Hospital] guidelines as their pathways towards regulatory compliance. So, while Laguna wasn't a Joint Commission survey [facility], but it [LHH has] a State of California license so it had been using Title 22 and not using the CEP [guidelines] which are the standards for skilled nursing facilities, and Laguna wasn't using them. But now we are using the CEP's [guidelines] and so, one would hope, one would think that perhaps had we been utilizing CEP's in the past, perhaps, the facility could have been more in line with regulatory compliance and we're moving forward to put that in place, because now we've learned and been educated that CEP's are what high performing nursing homes use to maintain their [regulatory] compliance developed by CMS."

There you have it: Pickens seems to have clearly acknowledged LHH *had* been following the wrong regulatory guidelines by using California's Title 22 "Acute Care Hospital Guidelines," not using CMS' "Skilled Nursing Facility Regulatory Guidelines" and CMS' CEP's.

Pickens also clearly stated that "*had we been utilizing CEP's in the past, perhaps, the facility could have been more in line with regulatory compliance ...*" — say, between October 2021 and April 14, 2022 when LHH's problems with state surveyors began and LHH lost its CMS certification — LHH might have come into compliance with CMS' regulatory guidelines, and might have prevented it being ordered to discharge and transfer all of LHH's residents out of county.

The meeting minutes of the Commission's August 16 meeting reported that Pickens also said "*that prior to the current LHH consultants coming on board, CEPs were not on LHH's radar. Instead, much of the LHH regulatory focus was on Title 22 acute hospital and Joint Commission guidelines. [Pickens] noted this was a deficit.*"

For his part, Health Commissioner Edward Chow was quoted in the meeting minutes that "*The LHH-JCC [the Health Commission's LHH-Joint Conference Subcommittee] has been following the state regulatory results, but the existence of the CEPs was not mentioned in the JCC meetings until recently.*"

This appears to be another damning admission that apparently even the Health Commission was unaware that CMS had rolled out and implemented the CEP program in November 2017, and that Pickens and senior members of LHH's management team had not educated or mentioned to the three Health Commissioners assigned to the LHH-JCC "until

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recently” that LHH was going to rapidly focus on rolling out the CEP’s as part of LHH’s education arsenal to regain CMS certification!

That’s where the problem of LHH’s long *culture of silence* history comes in. To the extent LHH was following the wrong regulatory guidance of Title 22 acute-care hospital regulations, LHH’s Nursing Education and Training Department, LHH’s Director of Nursing (DON), LHH’s senior nursing department managers, and even LHH’s front-line nursing staff all should have spoken up and broken the *culture of silence* by saying something like: “*Wait! We should be following CMS’ skilled nursing facility regulations, not Title 22.*”

Apparently, the culture of silence is so ingrained and embedded at LHH that nobody spoke up ... leading to LHH’s current dire situation.

The Board of Supervisors should investigate further and get a clear answer to Commissioner Guillermo’s direct question of whether the lack of implementing the *Critical Element Pathways* when CMS first rolled them out in 2017 may have played a role in previous regulatory inspection surveys of LHH, and whether that failure may have contributed to LHH losing its CMS certification.

After all, if the answer to that question is “*Yes,*” then anyone and everyone who was involved in **not** implementing the *Critical Element Pathways* program much earlier at LHH should also be terminated. It should not be just former LHH CEO Michael Phillips whose head rolled and was terminated. And if it involved Director of Public Health Grant Colfax, then he should be terminated, too.

As I [wrote](#) on the August 22 issue of the *Westside Observer*, former-District 1 Supervisor Sandra Lee Fewer had published a [commentary](#) in the August 5 *Richmond Review/Sunset Beacon* that SFDPH hadn’t taken ownership of the problems at LHH. Fewer had astutely noted that “*“[The problems of substandard care at LHH] clearly could have been prevented and could have been remedied” and that “... [San Francisco’s] Department of Public Health and CMS need to own this ...”*

I agreed with Fewer that SFDPH hadn’t acknowledged ownership that it was *itself* responsible for the violations and potential closure of LHH, and it was long past time the health department and the Health Commission take ownership of its mistakes.

Perhaps Pickens’ admission to the Health Commission on August 16 — that the lack of implementing the *Critical Element Pathways* program at LHH earlier may have contributed to LHH’s decertification, and Pickens’ acknowledgement that LHH had been following the wrong regulatory guidelines by using California’s Title 22 “*Acute Care Hospital Guidelines,*” rather than using CMS’ “*Skilled Nursing Facility Regulatory Guidelines*” had been a major mistake — may have been the first step in LHH and SFDPH taking ownership of its past mistakes. We can only hope so.

Among other of LHH’s problems, its *culture of silence* must be stopped in order to end its substandard quality of patient care inspection violations!

Afterword

LHH’s CEO Roland Pickens is set to update the Health Commission’s LHH-JCC on Tuesday, September 13. Unfortunately, his PowerPoint [presentation](#) shows on pages 8 through 10 that as far as LHH’s CMS recertification preparation goes, three Weekly [CMS] “*Survey Readiness and Compliance Assessments*” show that as of September 2, LHH is not meeting 90% or greater progress towards its goals:

- The **Environment of Care (EOC)** standard as of September 2 showed 88% compliance, with only 10 of LHH’s patient care units prepared for CMS reinspection. In the week between August 13 and August 19, only 5 of LHH’s 13 units were in *EOC* compliance.

Pickens reported that key areas for improvement still include: 1) Call light response time; 2) Trash, linen, and

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cleanliness compliance; 3) Medication cart compliance; and 4) Biohazard/sharps containers.

- The **Hand Hygiene (HH)** standard as of September 2 showed 78% compliance, but with only 4 of LHH's patient care units prepared for CMS reinspection, nowhere near close to the 90% goal. For the three weeks between August 6 and August 26, none of LHH's 13 units were in *HH* compliance.

Pickens reported that key areas for improvement still include: 1) Proper glove use; and 2) Ensuring soap and water is utilized when necessary [to wash hands].

- The **Infection Prevention and Control (IPC)** standard as of September 2 showed 87% compliance, but again with only 7 of LHH's patient care units prepared for CMS reinspection. For the three weeks between August 6 and August 26, none of LHH's 13 units were in IPC compliance.

Pickens reported that key areas for improvement still include: 1) PPE (personal protective equipment) properly stocked on units; 2) Donning and doffing of PPE appropriately; 3) Clean linen compliance; and 4) Prompt disposal of open food items.

This presentation about LHH's preparedness for a CMS reinspection survey should alarm the three Health Commissioners assigned to the LHH-JCC, and should alarm both the full Health Commission and the City's Board of Supervisors. After all, LHH's problems in passing CMS and CDPH on-site survey inspections reared its ugly head in October 2021. We're now just weeks shy of that one-year anniversary, and reportedly just weeks away from the CMS recertification survey inspections process to begin.

In addition, various vacancy reports for LHH's staffing in the *Executive Team* report presented by Roland Pickens to the three Health Commissioners for the September 13, 2022 LHH-JCC (LHH Joint Conference Committee) meeting are alarming:

- Of 1.0 budgeted FTE Psychiatric technician at LHH, the single position is vacant, for a 100% vacancy rate. Pickens June 3 Pilot Org chart said there would be two psych tech positions. What happened?
- Of 2.0 budgeted FTE Clinical Psychologists at LHH, both positions are vacant, for a 100% vacancy rate.
- Of 2.0 budgeted FTE Psychiatric Social Workers at LHH, one of the positions is vacant, for a 50% vacancy rate.
- Of 5.0 budgeted FTE Senior Psychiatric Physician Specialists, 2.2 FTE positions are vacant, for a 42.7 vacancy rate.
- Of 2.0 budgeted FTE Medical Social Worker Supervisors at LHH, one position is vacant, for a 50% vacancy rate.
- Of 16.2 budgeted FTE Medical Social Workers at LHH, 3.5 FTE positions are vacant, for a 17.8% vacancy rate.

Given alarming staff vacancies and LHH's high percentage of behaviorally challenged residents, how is LHH providing appropriate care for these residents safely?

Is this what San Franciscans are getting for its \$15 million investment to date for the three consultant contracts designed to help guarantee LHH obtains CMS recertification?

Respectfully submitted,

Patrick Monette-Shaw

Columnist,

Westside Observer Newspaper

cc: Angela Calvillo, Clerk of the Board