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February 28, 2020

Rules Committee, Board of Supervisors
The Honorable Hillary Ronen, Chair
The Honorable Catherine Stefani, Member
The Honorable Gordon Mar, Member
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Testimony, Agenda Item 4: Administration of Oaths and Subpoenas

Dear Chair Ronen Members of the Rules Committee,

This is testimony for the Rules Committee meeting on March 2, 2020.

I strongly support the Motion to amend the Board of Supervisors Rules of Order regarding administration of oaths to individuals testifying before the Board of Supervisors pursuant to a subpoena, and presumably under the penalty of perjury.

But the legislation doesn't go far enough and **must be strengthened**. First, it should **apply to every City Employee**, not just Department Heads, and second it must be expanded to **cover all subcommittees** of the Board of Supervisors, not just to the Government Audit and Oversight Committee. Here's why.

Two Department Heads Provided False Testimony During Board Hearing

1. On March 20, 2014 the Board of Supervisors Neighborhood Services and Safety Committee held a hearing to consider a $3 million increase in FY 14-15 to funding for the so-called Community Living Fund.

   During that hearing, then-Supervisor David Campos peppered Director of Public Health Barbara Garcia and DAAS' Executive Director, Anne Hinton about discharge location data from SFGH and LHH in an effort to learn whether patients are being "integrated" into San Francisco communities, or whether they are being "integrated" in out-of-county communities. Both Hinton and Garcia did their level best to claim they had no way of tracking discharge data by location and type of facility, and that the aggregate data (scrubbed of any patient identifiers) might be protected somehow under the HIPPA law protecting patient's medical records, a claim that is complete nonsense.

   Hinton asserted during Campos' March 20 hearing that she would have no way of knowing any discharge or diversion data, until I testified during public comment that under the *Chambers* settlement agreement, a Diversion and Community Integration Program (DCIP) was required by the U.S. Department of Justice. I also testified that DPH and DAAS had spent $5.6 million between 2003 and 2014 developing the custom-made SF*GetCare* database that I knew contained patient discharge location data (by type of facility, and discharge location in-county or out-of-county).

   Following my public testimony, Hinton quickly changed her tune with Campos during the remainder of the hearing, back pedaling and creatively claiming she hadn't understood the question Campos had asked her. She remained disingenuous about availability of the discharge data.

   In FY 2013–2014, Hinton was paid $184,498 as a Department Head, and Garcia was paid $266,460 as a Department Head. Both women should have known they were providing false testimony to the Board of supervisors.

Two Senior DPH Employees Provided False E-mail Testimony

2. Following the March 20 Neighborhood Services and Safety Committee hearing, Campos' legislative aide Carolyn Goossen, followed up by asking Ms. Hiramoto questions in an e-mail. Hiramoto then used the working job title of Acting Director of Transitions, San Francisco Health Network in DPH. Goossen had pointedly asked for "*the number of patients discharged from either LHH or SFGH to various "providers" (skilled nursing facilities, board and care homes, private homes, etc.), enumerating the number of aggregated patients discharged to each type of facility* ***in-county***."

   In an e-mail response at 10:21 p.m. on May 29, 2014 Hiramoto replied to Goossen enclosing a handful of data from other reporting sources, rather than culling data from the *SFGetCare* database which contained the information requested. Hiramoto added that "*We did not collect the data in a reportable manner for the years not included.*" That

was nonsense because the data collected in *SFGetCare* is stored in a completely reportable manner.

Goossen had also requested: "*Aggregate data for each fiscal year listing the types of facilities — board and care, SNF's, other facilities, etc. — that patients **diverted from** LHH admission were sent to, stratified by year and types of facilities and the aggregate number of patients involved.*"

In the same May 29 e-mail response, Hiramoto wildly claimed: "*The data that was collected is incomplete. The **software program designed to capture the data did not work as designed***" — a lie I knew to be untrue.

On June 1, 2014 I placed a records request to Nancy Sarieh, DPH's then Public Information Officer asking which software program did not work as designed. On June 9, 2014 at 8:14 a.m. Sarieh responded saying: "*The software program involved that did not work as designed is SF GetCare.*"

Concerned about the potential for reputational harm to the company that created *SF GetCare*, RTZ, on June 15, 2014 I contacted RTZ's founder, Dr. Rick Zawadski — who is a nationally-recognized authority on long-term care policy — for comment. On June 23, Zawadski responded, saying "*RTZ Associates stands behind the functionality and integrity of the software we have developed for the City of San Francisco. Any data fields related to LHH Diversions requested by the City of San Francisco are fully functional and work as designed.*"

I shared Zawadski's response standing by the functionality of his database with DPH staff, and I believe to Ms. Goossen. As a result, at 5:25 p.m. on Tuesday, June 24, 2014, Hiramoto e-mailed Ms. Goossen an update, saying: "*The RTZ **software, did in fact, work as designed**. We were able to run the report for the time period requested.*" Hiramoto provided amended responses to Goossen.

Had I not investigated with Zawadski, Hiramoto's false information would not hzave been corrected.

The point of this story is that ***had I not challenged Garcia's and Hinton's veracity*** during Campos' March 20 hearing, and ***had I not pushed Hiramoto, Sarieh, and Dr. Zawadski*** for information following the March 20 hearing, these four City employees would have essentially gotten away with providing inaccurate and untruthful data to the Board of Supervisors in the performance of your legislative duties.

All four of them should have been held to the requirement to provide truthful information under the penalty of perjury.

In FY 2013–2014, Hiramoto wwas paid $133,438 and Sarieh was paid $59,148.

All City Employees Already Prohibited From Providing False Testimony

3. In August 2008, San Francisco's Campaign and Government Conduct Code was amended, adding §4.125 *to **prohibit the furnishing of false information** in, and require cooperation with, whistleblower investigations conducted by the Controller or any other officer or department*. §4.125(b) specifically requires that all City employees cooperate.

    SEC.4.125. FURNISHING FALSE OR MISLEADING INFORMATION; DUTY TO COOPERATE.

    (a) FURNISHING FALSE OR MISLEADING INFORMATION PROHIBITED. When making or filing a complaint pursuant to this Chapter or participating in an investigation conducted by the Controller, Ethics Commission, District Attorney, City Attorney or any other department or, commission, or any of their agents, as authorized under this Chapter, City officers and employees may not knowingly and intentionally furnish false or fraudulent evidence, documents or information, act, or conceal any evidence, documents, or information for the purpose of misleading any officer or employee or any of their agents.

To the extent all City employees are already prohibited from providing false information during whistleblower investigations, all City employees should be held to the same standard in providing truthful testimony to the Board of Supervisors during all subcommittee hearings under the penalty of perjury.

All City Employees Take an Oath of Office Upon Hiring

4. Since all City employees have to take an Oath upon being hired to defend the U.S., State, and City constitutions, they should all be required to provide truthful testimony to the Board of Supervisors under penalty of perjury. This should not be restricted to only Department Heads, as it certainly does **not** change terms and conditions of employment, no matter what City labor unions may have tried to assert.

I urge the Board to strengthen this proposed legislation by expanding it to cover all City employees, and each subcommittee of the Board of Supervisors.

Respectfully submitted,

Patrick Monette-Shaw
Columnist
Westside Observer Newspaper

cc: The Honorable Sandra Lee Fewer, Supervisor, District 1
The Honorable Aaron Peskin, Supervisor, District 3
The Honorable Dean Preston, Supervisor, District 5
The Honorable Matt Haney, Supervisor, District 6
The Honorable Norman Yee, Supervisor, District 7
The Honorable Rafael Mandelman, Supervisor, District 8
The Honorable Shamann Walton, Supervisor, District 10
The Honorable Ahsha Safai, Supervisor, District 11
Victor Young, Clerk of the Rules Committee
Carolyn Goossen, Legislative Aide to Supervisor Hillary Ronen
Lee Hepner, Legislative Aide to Supervisor Aaron Peskin