



City Attorney Dennis Herrera News Release

For Immediate Release:
October 27, 2015
Contact: Andrea Guzman
(415) 554-4653

Herrera praises Nevada accord assuring care, dignity of transported psychiatric patients

Full settlement made public today by Herrera's office after the City's Board of Supervisors gave its initial approval to agreement in City's class-action suit against Nevada over 'patient dumping' allegations

SAN FRANCISCO (Oct. 27, 2015)—City Attorney Dennis Herrera today praised the terms of an agreement his office reached with the State of Nevada, which will settle San Francisco's litigation over psychiatric patient transportation practices. Herrera's office made the complete settlement terms public today after the City's Board of Supervisors gave its initial approval to the accord, which also requires approval by the San Francisco Superior Court. Nevada's Board of Examiners approved the agreement on Oct. 13, 2015.

"I'm pleased we reached an agreement that will assure the well-being of psychiatric patients when they're transported, and that also offers a model for how jurisdictions can work together to better protect our patients and taxpayers," said Herrera. "Although much of our litigation involved jurisdictional issues, I want to give credit to the Nevada officials who worked with us to hammer out substantive details of this agreement. I'm grateful especially to Nevada Governor Brian Sandoval; Attorneys General Catherine Cortez Masto and Adam Laxalt; and Richard Whitley, Nevada's director of Health and Human Services. It took tireless efforts by Nevada and San Francisco leaders and officials to forge this recommended settlement, which will benefit all of the parties involved, and help make sure our most vulnerable receive the care and dignity to which they're entitled."

As part of the recommended settlement agreement, Nevada will only provide travel assistance to California for patients who meet appropriate criteria, ensuring that the patients are returning to a home address or to a medical facility or program, and that they will be received or accompanied by a responsible individual. Through the end of 2019, Nevada will also provide San Francisco with a semi-annual report about these patients with information that includes the date of discharge, destination city, and name of individuals at any medical facility that has agreed to receive the

[MORE]

patient. The new guidelines address allegations from the 2013 class-action lawsuit Herrera filed against Nevada on behalf of California local governments to which indigent patients were improperly bused.

Both parties also established mutual obligations to improve communications between the appropriate health care agencies in regards to traveling psychiatric patients to identify medical and mental health facilities and programs that the patient may be referred to for follow-up care.

The lawsuit followed an investigation by Herrera's office, which found that Nevada improperly bused indigent patients from Rawson-Neal Hospital, its state-run psychiatric facility in Las Vegas, without prior arrangements for patients' care, housing or medical treatment. The hospital improperly discharged and unsafely transported more than two-dozen patients by Greyhound bus to San Francisco between 2008 and 2013, according to Herrera's investigation. In many cases, patients were transported without adequate food, water or medication, and without instructions or arrangements for their continued care when they reached their destination. Nevada will also pay San Francisco \$400,000 as part of the settlement.

The case is: *City and County of San Francisco v. State of Nevada et al.*, San Francisco Superior Court, Case No. CGC-13-534108, filed Sept. 10, 2013. More information is available on the San Francisco City Attorney's Office's website at <http://www.sfcityattorney.org/>.

#

SETTLEMENT AGREEMENT

This Settlement Agreement (“AGREEMENT”) is entered into by and between the Plaintiff City and County of San Francisco (hereinafter “CITY”) and all Defendants: the State of Nevada; the Nevada Department of Health and Human Services (“DHHS”); Richard Whitley in his official capacity as Director of DHHS; the Southern Nevada Adult Mental Health Services (“SNAMHS”); and Joanne Malay in her official capacity as Hospital Administrator of SNAMHS (collectively hereinafter the “STATE OF NEVADA”). CITY and the STATE OF NEVADA are collectively referred to in this AGREEMENT as “the PARTIES.”

I. RECITALS

On September 10, 2013, CITY filed a putative class action in the Superior Court for the City and County of San Francisco in case number CGC-13-534108 against the STATE OF NEVADA (hereinafter, the “LITIGATION”), alleging that the STATE OF NEVADA wrongfully transported former patients of the Rawson-Neal Psychiatric Hospital located in Las Vegas, Nevada to CITY and to other cities and counties in the State of California, and caused CITY to incur expenses in providing necessary medical and mental health care, housing and other supportive services to the transported patients. The STATE OF NEVADA denies and disputes all of the allegations in CITY’s complaint, maintains that the courts of the State of California lack personal jurisdiction over it, and further maintains that it has sovereign immunity from suit in the courts of the State of California. To avoid the time and expense of LITIGATION and the further use of judicial resources, the PARTIES seek to resolve their differences and reach an end, compromise, and settlement for all disputes, existing or potentially existing between them, arising out of this matter.

II. DUTIES AND RESPONSIBILITIES OF EACH PARTY

To settle and resolve the LITIGATION and all issues presented, or which could have been presented, in the LITIGATION as to the PARTIES, without any admission of liability or fault, and

to avoid further uncertainty, delay, and expense of litigation, the PARTIES have agreed to a settlement of the matter as set forth below.

The following terms shall be binding and enforceable upon the EFFECTIVE DATE of this AGREEMENT:

A. THE STATE OF NEVADA'S OBLIGATIONS

1. AMENDED NEVADA POLICIES AND PRACTICE

a. The STATE OF NEVADA will amend its current Client Transportation Back To Home Communities policy (PF-COC-07, effective 8/15) to provide:

(i) *Criteria for Travel Assistance.* The STATE OF NEVADA will provide travel assistance to California only to patients discharged from Rawson-Neal Psychiatric Hospital who are confirmed to meet one of the following criteria:

(aa) The patient was a resident of the California destination city or county at the time the patient entered Rawson-Neal and at the time of discharge, and has a residential address in the destination city or county that the patient owns, rents or shares with a family member or friend;

(bb) The patient has a family member or adult friend in the destination city or county whom the STATE OF NEVADA has confirmed is willing and able to care for and support the patient;

(cc) A medical facility or mental health services program in the destination city or county has agreed to accept the patient into its program. If the receiving program is an out-patient program, the medical or mental health services provider must agree to assist the patient with housing and other subsistence needs.

(ii) *Warm Transfer Provision.* The STATE OF NEVADA will provide travel assistance to California only to those individuals who have a family member, friend, or other

responsible individual who will act as chaperone during the travel to California and who will be present at the time of discharge within the State of Nevada to accompany him or her.

b. The STATE OF NEVADA will amend its current Discharge Planning And Interdisciplinary Continuity of Care Plan (effective date 12/2014) to provide in section III.A.16.f that any transportation to California must be provided in conformance with Client Transportation Back To Home Communities policy (PF-COC-07, effective 8/15) as amended pursuant to Section II.A.1.a. of this AGREEMENT.

c. The STATE OF NEVADA will ensure that any future amendments of its Client Transportation Back To Home Communities policy (PF-COC-07, effective 8/15) and its Discharge Planning And Interdisciplinary Continuity of Care Plan (effective date 12/2014) continue to conform with the provisions of sections II.A.1.a. and II.A.1.b. of this AGREEMENT, and to remain consistent with regulations promulgated by the Centers for Medicare and Medicaid Services, United States Department of Health and Human Services, at 42 Code of Federal Regulations § 482.43, and with the State Operations Manual (“SOM”), Hospital Appendix A – Interpretive Guidelines for 42 Code of Federal Regulations § 482.43, including the “advisory practices” stated in the SOM, issued by the Centers for Medicare and Medicaid Services.

d. The STATE OF NEVADA will provide to CITY a semi-annual report regarding patients of SNAMHS to whom the STATE OF NEVADA provides assistance to travel to California for the time period January 1, 2015, through December 31, 2019. For any such assisted patients discharged during January through June of a given year, the STATE OF NEVADA will provide a report by July 15 of that year. For any such assisted patients discharged during July through December of a given year, the STATE OF NEVADA will provide a report by January 15 of the following year. Each report will contain the following information for each patient who received travel assistance from the STATE OF NEVADA:

(i) The date of the patient's discharge, the patient's destination city, and under which of the three categories listed in Section II.A.1.a.(i) of this AGREEMENT the patient is eligible for travel assistance;

(ii) For any patient eligible for travel assistance under the criteria stated in Section A.1.a.(i)(cc), the name of the medical facility or mental health services program that has agreed to accept the patient, and the name of the individual at that facility or program whom the STATE OF NEVADA contacted to confirm the patient's acceptance; and,

(iii) Written certification by the Hospital Administrator of SNAMHS that the STATE OF NEVADA complied with SNAMHS' then current Client Transportation Back To Home Communities policy (PF-COC-07) and Discharge Planning And Interdisciplinary Continuity of Care Plan in providing an appropriate discharge plan to each patient listed in the report.

(e) The STATE OF NEVADA's obligations under this AGREEMENT shall expire on December 31, 2019.

2. MONETARY PAYMENT

In settlement of CITY's claims asserted in the LITIGATION, and/or to include attorney's fees incurred, the STATE OF NEVADA agrees to pay CITY the amount of \$400,000 (four hundred thousand dollars). The above monetary payment by the STATE OF NEVADA under this AGREEMENT is subject to approval by the Nevada Board of Examiners ("BOE") as a matter of law. The STATE OF NEVADA shall seek approval of the BOE as stated in Section III.C.1. of this AGREEMENT.

Within 10 business days of the EFFECTIVE DATE of this AGREEMENT, the STATE OF NEVADA will pay CITY the amount of \$400,000 (four hundred thousand dollars) by wire transfer to an account identified by CITY.

B. CITY'S OBLIGATIONS

1. DISMISSAL OF CITY'S CLAIMS

Within five (5) business days of the STATE OF NEVADA's satisfaction of its obligations stated in Sections II.A.1.a. and b. and II.A.2. of this AGREEMENT, CITY shall forever dismiss with prejudice any and all claims stated against the STATE OF NEVADA in case no. CGC-13-534108 that have been or could have been raised in this LITIGATION.

2. RELEASE

CITY agrees to fully and forever release and discharge the STATE OF NEVADA, including its agencies, officers, agents and employees, from any and all claims, actions, causes of action, liabilities, damages, demands, attorney's fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which are alleged or set forth or attempted to be set forth in the Complaint in this action. CITY certifies that it has read Section 1542 of the California Civil Code, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." CITY hereby waives application of Section 1542 of the Civil Code. CITY understands and acknowledges that, as a consequence of this waiver of Section 1542, even if CITY should eventually suffer additional or further loss, damages or injury arising out of or in any way related to any of the events which gave rise to the LITIGATION or any of the claims made therein, CITY will not be permitted to make any further claims against the STATE OF NEVADA to recover for such loss, damages or injury. CITY acknowledges that it intends these consequences even as to claims that may exist as of the date of this Release but which CITY does not know exist, and which, if known, would materially affect CITY's decision to execute this Full and Final Release, regardless of whether CITY's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

C. MUTUAL OBLIGATIONS FOR COMMUNICATIONS REGARDING PATIENTS TRAVELING BETWEEN THE PARTIES' JURISDICTIONS

At times, a patient who is receiving care from one of the PARTIES, or who is being discharged from a facility operated by one of the PARTIES, will travel voluntarily to the jurisdiction of the other PARTY. Recognizing that the health and well-being of such patients are best served if such patients are provided information for follow-up care at their destination, the STATE OF NEVADA and CITY each agree to work cooperatively together as follows:

1. to the extent a PARTY is aware of a patient's plans to travel to the other PARTY's jurisdiction, it will communicate with appropriate health care agencies of the destination jurisdiction to identify medical and mental health facilities and programs in the destination jurisdiction to which the traveling patient may be referred for follow-up care, and will provide such information to the traveling patient; and

2. to the extent the PARTY is authorized to do so by such a traveling patient, it will schedule a follow-up appointment for the patient with an appropriate medical or mental health facility or program in the destination jurisdiction.

3. These mutual obligations shall expire on December 31, 2019.

III. SETTLEMENT CONTINGENT ON APPROVAL

A. The terms of this AGREEMENT shall become effective and enforceable upon the latest of the following dates:

1. The date on which the AGREEMENT is approved by the San Francisco Board of Supervisors through the formal adoption of an ordinance authorizing the AGREEMENT;
or

2. The date on which the Nevada BOE approves the monetary payment; or

3. The date on which the AGREEMENT is approved by the Superior Court for the City and County of San Francisco, reflected by entry of an order approving settlement of the LITIGATION.

B. The date on which the latest of the three approvals specified in Section III.A. occurs shall be the “EFFECTIVE DATE” of this AGREEMENT.

C. Within 10 business days of the execution of this AGREEMENT by both the Attorney General of the State of Nevada and by the San Francisco City Attorney evidencing approval by these officials of the form and content of this AGREEMENT:

1. the STATE OF NEVADA shall place any monetary payment negotiated pursuant to this AGREEMENT upon the agenda of the next scheduled Nevada BOE meeting for review and approval; and

2. the San Francisco City Attorney shall submit this AGREEMENT to the San Francisco Board of Supervisors for approval in the form of an ordinance approving this AGREEMENT.

D. Within 21 business days of the date by which both approvals described in Section III.C. of this AGREEMENT have been obtained, the PARTIES shall jointly file a motion with the San Francisco Superior Court seeking approval of the Court for settlement pursuant to this AGREEMENT and for dismissal of the LITIGATION.

E. Should the San Francisco Superior Court deny the PARTIES’ motion for approval of this AGREEMENT and dismissal of the LITIGATION, the PARTIES shall make a good faith effort to reach agreement regarding modification of this AGREEMENT to meet any objections expressed by the Court as grounds for denial of the motion.

IV. ATTORNEY’S FEES, COSTS, AND EXPENSES

Except as expressly provided in this AGREEMENT, CITY waives any additional claims to attorney’s fees, costs, and other expenses, and the STATE OF NEVADA waives any and all claim to attorney’s fees, costs, and any other expenses associated with the matters being settled here, including expenses associated with negotiation, preparation, and execution of this AGREEMENT.

V. NO ADMISSIONS OF LIABILITY OR FAULT

The PARTIES stipulate that this AGREEMENT *does not* constitute an admission of liability or an admission of any of the facts alleged in CITY's complaint in the LITIGATION. The PARTIES further stipulate that this AGREEMENT *does not* constitute a waiver on the part of the STATE OF NEVADA of sovereign immunity or any defense based on sovereign immunity and/or jurisdiction.

VI. INTEGRATION

This is an integrated document. This AGREEMENT constitutes and contains the entire agreement and understanding between the PARTIES and supersedes and replaces all prior negotiations and agreements proposed or otherwise, whether written or oral, concerning the subject matter of this AGREEMENT.

VII. EXECUTION OF AGREEMENT IN COUNTERPARTS

This AGREEMENT may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This AGREEMENT may also be executed by facsimile or by electronic scanned copy, and signatures on a facsimile or electronic scanned copy hereof shall be deemed authorized original signatures.

VIII. FURTHER COMMUNICATIONS

The PARTIES agree they have entered this AGREEMENT in good faith. Prior to commencing any enforcement action in a court of law, the PARTIES shall employ the following procedures to attempt to amicably resolve any disputes:

1. *Notice.* If a PARTY is aggrieved, it shall provide written notice to the alleged offending PARTY of the nature of the dispute, and allow 30 days for a written response. The PARTIES agree to discuss the issue in good faith and attempt to resolve it without delay or the need for further proceedings.

2. *Mediation.* If the PARTIES are unable to amicably resolve any dispute within 90 days of the written response from the alleged offending PARTY, they shall pursue resolution through mediation employing the services of mutually agreed upon mediator, with each PARTY bearing its own attorney's fees and costs. The PARTIES shall equally split any mediation fees and costs.

3. *Enforcement.* If after mediation, the PARTIES are unable to resolve any dispute, the aggrieved PARTY may bring an enforcement action. This AGREEMENT shall not be construed as a waiver of any sovereign immunity defense by the STATE OF NEVADA. The STATE OF NEVADA expressly reserves the right to raise any defenses related to sovereign immunity. Nothing in this AGREEMENT shall be construed as agreement by CITY that administration or enforcement of this AGREEMENT is subject to any defense based on a claim of sovereign immunity by the STATE OF NEVADA.

4. *Admissibility.* The PARTIES agree that for purposes of enforcing this AGREEMENT, including but not limited to enforcing the release contained herein, this AGREEMENT may be admitted into evidence in any judicial proceeding to enforce the terms of this AGREEMENT. The PARTIES further agree that this AGREEMENT shall be subject to interpretation and enforcement pursuant to the laws of the State of California. The PARTIES agree that this provision shall not be construed or interpreted as a forum selection clause.

IX. NOTICE

For the purpose of this AGREEMENT, notices shall be sent as follows:

- A. Notices to CITY shall be sent by first class mail and email to:

Kristine A. Poplawski
Deputy City Attorney
1390 Market Street, 6th Floor
San Francisco, California 94102

B. Notices to the STATE OF NEVADA shall be sent by first class mail and email to:

Director
Nevada DHHS
4126 Technology Way, Suite 100
Carson City, Nevada 89706-2009

Assistant Attorney General
Nevada Attorney General's Office
555 East Washington Avenue
Las Vegas, Nevada 89101

X. SIGNATURES

AGREED to and EXECUTED by the PARTIES hereto:

Dated this _____ day of September, 2015.

Approved as to form and content:

DENNIS J. HERRERA, CITY ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO

SAN FRANCISCO BOARD OF
SUPERVISORS
ORDINANCE/RESOLUTION NO. _____
Final as of _____, 2015.

KRISTINE A. POPLAWSKI
Deputy City Attorney
1390 Market Street, 6th Floor
San Francisco, California 94102

Attorneys for the Plaintiff

Dated this 8 day of September, 2015.

RICHARD WHITLEY, DIRECTOR
DHHS



4126 Technology Way, Suite 100
Carson City, Nevada 89706-2009

On behalf of the Defendants

Dated this _____ day of September, 2015.

Approved as to form and content by:

ADAM PAUL LAXALT,
ATTORNEY GENERAL OF NEVADA

LINDA C. ANDERSON
Chief Deputy Attorney General
Office of the Nevada Attorney General
Bureau of Litigation
555 East Washington Avenue
Las Vegas, Nevada 89101

Attorneys for the Defendants

B. Notices to the STATE OF NEVADA shall be sent by first class mail and email to:

Director
Nevada DHHS
4126 Technology Way, Suite 100
Carson City, Nevada 89706-2009

Assistant Attorney General
Nevada Attorney General's Office
555 East Washington Avenue
Las Vegas, Nevada 89101

X. SIGNATURES

AGREED to and EXECUTED by the PARTIES hereto:

Dated this ____ day of September, 2015.

Approved as to form and content:

DENNIS J. HERRERA, CITY ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO

SAN FRANCISCO BOARD OF
SUPERVISORS
ORDINANCE/RESOLUTION NO. _____
Final as of _____, 2015.

KRISTINE A. POPLAWSKI
Deputy City Attorney
1390 Market Street, 6th Floor
San Francisco, California 94102

Attorneys for the Plaintiff

Dated this ____ day of September, 2015.

RICHARD WHITLEY, DIRECTOR
DHHS

4126 Technology Way, Suite 100
Carson City, Nevada 89706-2009

On behalf of the Defendants

Dated this 4 day of September, 2015.
Approved as to form and content by:

ADAM PAUL LAXALT,
ATTORNEY GENERAL OF NEVADA



LINDA C. ANDERSON
Chief Deputy Attorney General
Office of the Nevada Attorney General
Bureau of Litigation
555 East Washington Avenue
Las Vegas, Nevada 89101

Attorneys for the Defendants

B. Notices to the STATE OF NEVADA shall be sent by first class mail and email to:

Director
Nevada DHHS
4126 Technology Way, Suite 100
Carson City, Nevada 89706-2009

Assistant Attorney General
Nevada Attorney General's Office
555 East Washington Avenue
Las Vegas, Nevada 89101

X. SIGNATURES

AGREED to and EXECUTED by the PARTIES hereto:

Dated this 4th day of September, 2015.

Approved as to form and content:

DENNIS J. HERRERA, CITY ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO



KRISTINE A. POPLAWSKI
Deputy City Attorney
1390 Market Street, 6th Floor
San Francisco, California 94102

Attorneys for the Plaintiff

SAN FRANCISCO BOARD OF
SUPERVISORS
ORDINANCE/RESOLUTION NO. _____
Final as of _____, 2015.

Dated this _____ day of September, 2015.

RICHARD WHITLEY, DIRECTOR
DHHS

4126 Technology Way, Suite 100
Carson City, Nevada 89706-2009

On behalf of the Defendants

Dated this _____ day of September, 2015.

Approved as to form and content by:

ADAM PAUL LAXALT,
ATTORNEY GENERAL OF NEVADA

LINDA C. ANDERSON
Chief Deputy Attorney General
Office of the Nevada Attorney General
Bureau of Litigation
555 East Washington Avenue
Las Vegas, Nevada 89101

Attorneys for the Defendants

1 [Settlement of Lawsuit - State of Nevada, the Nevada Department of Health and Human
2 Services; Southern Nevada Adult Mental Health Services - City to Receive \$400,000]

3 **Ordinance authorizing settlement of the lawsuit filed by the City and County of San**
4 **Francisco against State of Nevada, the Nevada Department of Health and Human**
5 **Services (“DHHS”); Richard Whitley in his official capacity as Director of DHHS; the**
6 **Southern Nevada Adult Mental Health Services (“SNAMHS”); and Joanne Malay in her**
7 **official capacity as Hospital Administrator of SNAMHS for \$400,000; the lawsuit was**
8 **filed on September 10, 2013, in San Francisco Superior Court, Case No. CGC-13-**
9 **534108; entitled City and County of San Francisco v. State of Nevada, the Nevada**
10 **Department of Health and Human Services (“DHHS”); Richard Whitley in his official**
11 **capacity as Director of DHHS; the Southern Nevada Adult Mental Health Services**
12 **(“SNAMHS”); and Joanne Malay in her official capacity as Hospital Administrator of**
13 **SNAMHS; other material terms of the settlement are contractual obligations limiting**
14 **Defendants’ practices relating to transfer of patients from Defendants psychiatric**
15 **hospital to any city or county in the State of California.**

16
17 Be it ordained by the People of the City and County of San Francisco:

18 Section 1. Pursuant to Charter section 6.102(5), the Board of Supervisors hereby
19 authorizes the City Attorney to settle the action entitled City and County of San Francisco v.
20 State of Nevada, the Nevada Department of Health and Human Services (“DHHS”); Richard
21 Whitley in his official capacity as Director of DHHS; the Southern Nevada Adult Mental Health
22 Services (“SNAMHS”); and Joanne Malay in her official capacity as Hospital Administrator of
23 SNAMHS, San Francisco Superior Court, Case No. CGC-13-534108 by the payment of
24 \$400,000 by the State of Nevada and by Defendants’ undertaking of a contractual obligation
25

1 to limit their transportation to the State of California those patients discharged from
2 Defendants' state psychiatric hospital.

3 Section 2. The above-named action was filed in San Francisco Superior Court on
4 September 10, 2013, and the following parties were named in the lawsuit: Plaintiff City and
5 County of San Francisco; and Defendants State of Nevada, the Nevada Department of Health
6 and Human Services ("DHHS"); Richard Whitley in his official capacity as Director of DHHS;
7 the Southern Nevada Adult Mental Health Services ("SNAMHS"); and Joanne Malay in her
8 official capacity as Hospital Administrator of SNAMHS.

9
10
11 APPROVED AS TO FORM AND
12 RECOMMENDED:

13 DENNIS J. HERRERA
14 City Attorney

15 _____
16 YVONNE MERE
17 Chief of Complex and Affirmative Litigation

18
19 n:\cxlit\li2015\131066\01048067.docx
20
21
22
23
24
25