



City Attorney Dennis Herrera News Release

For Immediate Release:
August 20, 2013
Contact: Gabriel Zitrin
(415) 554-4653

Herrera vows class action lawsuit over Nevada ‘patient dumping’ scandal

Silver State can avoid litigation, according to demand letter, with commitment to reimburse California localities for costs, adopt strict mental health protocols

SAN FRANCISCO (Aug. 20, 2013)—City Attorney Dennis Herrera today vowed to file a class action lawsuit against the State of Nevada on behalf of California local governments to recover costs they incurred to care for indigent patients Nevada improperly bused from its state-run psychiatric hospital, and to secure a court-ordered injunction to bar Silver State officials from continuing to transfer patients into California without prior arrangements for their care, housing or medical treatment.

Herrera informed Nevada State Attorney General Catherine Cortez Masto of his intent to pursue the litigation in a demand letter today, outlining conclusions from his ongoing investigation that found Nevada’s patient discharge and busing practices to constitute a misappropriation of California taxpayers’ funds in destination cities and counties. The improper transfers unlawfully burdened California local government resources, Herrera contends, in order to provide care and services “which Nevada was legally obligated to provide to its own indigent residents.” Herrera’s letter left open the door to avoid litigation, providing Nevada officials respond by Sept. 9 to negotiate a reimbursement agreement with California local governments, and adopt binding protocols to ensure that the improper patient busing practices end for good.

“While our prospective litigation asserts the rights of California taxpayers, it’s equally necessary to protect society’s most vulnerable from continued institutional abuse,” said Herrera. “Homeless psychiatric patients are particularly defenseless from the kind of lawless ‘patient dumping’ practices Nevada officials engaged in. It’s my hope that our investigation and possible class action will send a strong message to public health facilities nationwide that there is a price to pay for such inhumane treatment in the future—especially when California jurisdictions are being victimized, too. I’m grateful to the public agencies and officials, non-profit service providers, patients and family members who continue to work with us on our investigation. I’m also thankful to the

[MORE]

journalists whose reporting helped expose Nevada’s improper patient discharge and busing practices, which may otherwise have gone unnoticed.”

In April, in response to news reports that Nevada’s Rawson-Neal Psychiatric Hospital in Las Vegas had questionably bused more than 1,500 psychiatric patients to locations throughout the nation, the San Francisco City Attorney’s office launched an investigation to determine whether any of the 31 Greyhound bus tickets Rawson-Neal purchased for trips to San Francisco conveyed improperly discharged patients. The preliminary conclusion of Herrera’s investigation is that among 24 patients bused to San Francisco (including some who made multiple trips), 20 sought and were provided emergency medical care shortly after their arrival. Though the City Attorney’s investigation remains ongoing, Herrera’s letter to Nevada officials notes that San Francisco expended nearly half a million dollars for medical care for the patients who were not city residents at the time that they were improperly bused here from Rawson-Neal.

Herrera’s investigative team spent months reaching out to local homeless shelters, non-profit service organizations, and medical facilities, interviewing patients, family members and health care providers to determine the facts and then build an actionable record in support of possible litigation. Despite obstacles from Nevada public health officials, Herrera’s office successfully identified the nearly 500 patients bused from Rawson-Neal to locations throughout California, and is continuing to cooperate with multiple jurisdictions as well as federal officials.

Accompanying his demand letter today, Herrera sent Nevada a set of proposed mental health care protocols “developed with reference to the regulations and guidance of the federal Centers for Medicare and Medicaid Services, which states best practices concerning out-of-state transfer of mentally ill patients.” The protocols, to which Nevada would need to voluntarily stipulate to avoid litigation, would apply to all counties and cities in California.

In March, the *Sacramento Bee* first reported the story of 48-year-old James Flavy Coy Brown, a former Rawson-Neal patient who was sent on a 15-hour bus ride to Sacramento—despite having never before visited, having no friends or family members in the area, and with no prior arrangements for his care, housing or medical treatment. The Nevada-run hospital had discharged Brown in a taxicab to the Greyhound bus station with a one-way ticket to Sacramento, snacks, and a three-day supply of medication to treat his schizophrenia, depression and anxiety. Brown was instructed to call 911 when he arrived. A Rawson-Neal physician reportedly recommended “sunny California” to Brown as a destination, according to the *Sacramento Bee*, because they “have excellent health care and more benefits than you could ever get in Nevada.”

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DENNIS J. HERRERA
City Attorney

Direct dial: (415) 554-4748
Email: tara.collins@sfgov.org

BY FIRST CLASS MAIL AND FACSIMILE

August 20, 2013

The Honorable Catherine Cortez Masto
Attorney General of the State of Nevada
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, NV 89701

Re: Discharge of Nevada mental health patients into California

Dear Madam Attorney General:

I write to inform you of my intention, barring an agreement by the State of Nevada to the relief outlined below, to pursue a class action against Nevada for its unlawful practice of transporting patients who suffer from mental illnesses and other ailments to locations in California without prior arrangements for their care, housing or medical treatment upon arrival, and its misappropriation of the medical and indigent services resources of the California cities and counties to which the patients were bused. The prospective action on behalf of affected California cities and counties contemplates full reimbursement of public expenditures to provide medical care, housing and basic necessities for those patients who were not residents of the destination California city or county at the time they were bused and were neither sent to responsible family members who were willing and able to care for them nor sent to a medical facility with which prior arrangement had been made for the patient's continued care. The action will also seek injunctive relief to prevent further improper transfers of patients into California in the future.

You will recall that my letter of May 1, 2013 (attached) requested a meeting with your office along with counsel for several other California cities and counties to which Nevada's state mental health hospitals had improperly transported discharged psychiatric patients. My letter explained that we wished to discuss Nevada's existing policies regarding out-of-state transfers of mental health patients as well as the creation of reciprocal agreements between Nevada and California counties to govern future patient transfers. These proposed protocols would ensure that no further patients be transferred to our jurisdictions unless prior arrangements were made for their ongoing care. My letter also

The Honorable Catherine Cortez Masto
Attorney General of the State of Nevada
August 20, 2013
Page 2

requested that you meet to discuss how Nevada might best assist us in identifying mental health patients who had been bused to our jurisdictions previously, so that we might ensure that they receive necessary medical care and medications.

Unfortunately, the meeting we requested never occurred. Neither did we receive the assistance we requested from the State of Nevada in identifying the patients bused to California cities and counties.

My office has continued to investigate the matter, and what we have learned has raised additional concerns about Nevada's policy of busing mentally ill patients out of state, and in particular about the almost 500 patients that Rawson-Neal Psychiatric Hospital bused to California since April 2008. Our investigation has discovered information indicating that a number of these patients were not residents of the destination cities and counties in California to which they were bused, and did not have family members there who were willing or able to care for them. As a result, these individuals—who apart from suffering from mental illnesses are also homeless and indigent—have turned to the public resources of the destination California cities and counties for necessary ongoing medical care and medications, shelter and subsistence, and social support services.

I now write to demand that Nevada agree to reimburse the California destination cities and counties for the costs we have incurred in providing medical and other necessities to the mental health patients who, at the time they were bused, were not our residents, were not sent to be cared for by responsible family members residing in the destination jurisdictions, and were not sent by prior arrangement with a medical facility in the destination city or county. Nevada's busing of such patients to California constituted a misappropriation of the destination cities' and counties' resources for health care and basic necessities, which Nevada was legally obligated to provide to its own indigent residents.

The experience of patients bused by Nevada to San Francisco is illustrative of the scope and degree of harm to the destination California cities and counties and to the bused patients. As part of my office's investigation, we have obtained the names of the almost 500 patients whom Rawson-Neal discharged and sent by Greyhound bus to California since April 2008. Among the 24 patients who were bused to San Francisco, 20 sought and were provided emergency medical care within a short time—some within mere hours—of their arrival.

To date, San Francisco has spent approximately \$500,000 and possibly more on medical care, housing and subsistence grants for these patients subsequent to their discharge from Rawson-Neal and transportation to San Francisco. We seek reimbursement for these expenditures except to the extent Nevada is able to establish San Francisco residency, family members here who were willing and able to provide care, or prior arrangements with a medical facility here. My investigation is continuing with regard to San Francisco's

The Honorable Catherine Cortez Masto
Attorney General of the State of Nevada
August 20, 2013
Page 3

expenditures to care for non-San Francisco residents bused here by Nevada's state mental hospitals, and San Francisco's ultimate demand for reimbursement may exceed the amount stated above.

My office's investigation has also determined that Rawson-Neal staff were well aware that the 24 patients bused to San Francisco since April 2008 were all indigent and homeless, suffering from mental illnesses requiring ongoing medical care and medication, and in most cases were non-residents of San Francisco with no family members here to care for them. Rawson-Neal staff understood and expected that the bused patients would rely on San Francisco's public health resources for continuing medical care; indeed, they specifically directed some of the bused patients to seek care at San Francisco public health clinics and San Francisco-supported shelter and housing upon their arrival here. If Rawson-Neal had not transported them out of state, these indigent patients would instead have been reliant upon Rawson-Neal or other public hospitals in Nevada for their continued medical care.

By busing to California indigent patients whom the State of Nevada knew were non-California residents in need of ongoing medical care and other services, Nevada officials intentionally misappropriated the resources of the destination cities and counties in California which had to provide medical care and basic necessities to these non-resident patients. Accordingly, Nevada must reimburse the destination California cities and counties for their expenditure of public resources to provide medical care and basic necessities to the patients that Nevada improperly bused to us.

Apart from the public costs borne by California taxpayers for Nevada's unlawful patient discharge and busing practices, the manner in which these patients were transported was inhumane and unacceptable. These patients were transported without escorts; without prior arrangements for a responsible party to receive them at their destination; without adequate provisions of medication or food; and without proper instructions for these patients' follow-up medical care, housing or support services. In order to avoid the improper transfer of patients in the future, I demand that the State of Nevada stipulate to an enforceable contract governing the future transfer of mentally ill patients from Nevada to California pursuant to protocols consistent with its obligations under the law.

Enclosed with this letter is a proposed set of protocols, developed with reference to the regulations and guidance of the federal Centers for Medicare and Medicaid Services, which states best practices concerning out-of-state transfer of mentally ill patients. My office has worked with other California counties and cities to develop these protocols. Nevada should voluntarily stipulate to these protocols for all counties and cities in California.

The Honorable Catherine Cortez Masto
Attorney General of the State of Nevada
August 20, 2013
Page 4

I intend to file a class action on behalf of affected California cities and counties against the State of Nevada for the above-referenced causes of action unless I hear from you within twenty days indicating your willingness to enter a settlement agreement along the lines just described. It remains my hope that a more cooperative and substantive engagement by State of Nevada officials can avoid litigation costs, and achieve a better, more just result for our respective residents and client agencies.

I welcome your response by September 9, 2013. If you have questions or require additional clarification, I invite you to contact Deputy City Attorney Kristine Poplawski at kristine.poplawski@sfgov.org, or by telephone at (415) 554-3878.

Sincerely,



DENNIS HERRERA

Exhibits

EXHIBITS



DENNIS J. HERRERA
City Attorney

DIRECT DIAL: (415) 554-4748
E-MAIL: tara.collins@sfgov.org

May 1, 2013

The Honorable Catherine Cortez Masto
Attorney General of the State of Nevada
Office of the Attorney General
5420 Kietzke Lane Suite 202
Reno, NV 89511

Re: Transfer of Patients from Nevada Mental Health Facilities to California

Dear Madam Attorney General:

We write on behalf of the City and County of San Francisco, the counties of Alameda and Santa Clara, and the cities of Los Angeles and Sacramento to propose a meeting to discuss issues of common concern regarding the transfer of patients from Nevada mental health facilities to California.

We have been following recent articles by the Sacramento Bee regarding the busing of patients from Nevada state hospitals to various cities and counties in California over the past several years. In California, cities and counties are responsible for providing medical care and other necessary services to the indigent within their jurisdictions and spend hundreds of millions of dollars each year to provide those services. As you can understand, we are very concerned about the manner in which patients in need of mental health services are transferred to our respective jurisdictions.

The Sacramento Bee has identified more than 450 possible instances where a Nevada state hospital has transferred a mentally ill person to California cities and counties, including ours, without informing us or providing an escort. Our own investigations, although still in preliminary stages, have confirmed that Nevada's practice of transferring mental patients to California without an escort and without prior arrangement for an institution or responsible person to receive the patient, is more widespread than the single instance of Rawson-Neal patient James Flavy Coy Brown's transportation to Sacramento.

We are pleased that Nevada has recently changed its policy regarding out-of-state transfers of mental health patients to require that the patient be accompanied by a responsible adult. However, the news reports do not indicate whether the new policy addresses other concerns we have. For example, the reports do not state whether the new policy requires that patients be transferred only when pre-trip arrangements have been made for the patient to be received at his or her destination by a health facility or a responsible adult. Nor do the reports state whether the new policy requires the patient's chaperone to personally deliver the patient to a facility or responsible person at the destination. These and other additional provisions are necessary to ensure that a transferred patient is not left at the destination without necessary medical care and supportive services, or a means to obtain them. We therefore wish to learn the arms and scope of the new patient transfer policy,¹ and to discuss ways in which it may be implemented with respect to patients being transferred to California.

¹ Some of us have served requests for public records from the Nevada Department of Health and Human Services. We do not intend this letter to in any way withdraw or amend such records requests.

Letter to The Honorable Catherine Cortez Masto
Page 2
May 1, 2013

As we understand it, the Administrator of the Division of Mental Health and Developmental Services may enter into reciprocal agreements with officials of other states for the transfer of persons who are patients of a mental health facility in one state but have legal residence in another. Nev. Rev. Stat. § 433.444(a). To the extent such agreements exist between Nevada and the State of California or any of its subdivisions, it appears that these have been unable to ensure proper communication between the transferring hospital in Nevada and the appropriate receiving authorities in California. We therefore wish to discuss how such agreements may best be created and implemented to ensure that patients are not transferred without prior arrangements for continued medical care.

Finally, we are concerned about the patients who were transferred by Nevada hospitals to our jurisdictions before the recent policy change. The lack of advance arrangements for such patients' delivery into the custody of a facility or responsible adult has meant these patients may not have seen a medical doctor or mental health professional or received necessary medications since their arrival in our communities. Thus, we also wish to discuss how Nevada may best assist us in identifying such individuals so we may ensure that they receive necessary medical care or medications.

We request a meeting with you at the earliest possible date to begin this important discussion. Thank you for considering our request. We look forward to receiving your response.

Very truly yours,


Dennis Herrera
San Francisco City Attorney

Orry P. Korb
County Counsel, County of Santa Clara

James Sanchez
Sacramento City Attorney

Carmen Trutanich
Los Angeles City Attorney

Donna R. Ziegler
County Counsel, County of Alameda

Placement Coordination for Interstate Discharges By Nevada State Health Facilities

1. Prepare a discharge plan for each patient for whom interstate transfer is contemplated.

- a. The discharge plan must include an evaluation of the likelihood of a patient's capacity for self-care or of the possibility of the patient being cared for in the environment to which the patient is being transferred.
- b. If the patient is not able to provide some or all of the required self-care, the evaluation must also address whether the patient has family or friends available who are willing and able to provide the required care at the times it will be needed, or who could, if willing, be trained by the hospital sufficiently to provide the required care.
- c. The discharging hospital will take reasonable steps to identify the medical and/or mental health services that will be available to the patient at the destination city or location.
- d. The discharge plan must include an evaluation of the patient's ability to pay out of pocket for services, insurance coverage, or reliance on community services or public assistance (including Medicare, Medicaid, or SSI).

2. Assess appropriateness of discharge destination.

- a. Determine and confirm that patient has at least one of the following connections to destination city or location:
 - i. destination city or location was patient's place of residence at time client entered medical facility and at time of discharge;
 - ii. patient has family in destination city or location who are willing and able to care for patient;
 - iii. non-family member responsible adult who is willing and able to care for patient resides in the destination city or location, and has agreed to care for patient.
- b. Confirm availability of appropriate mental health treatment services within or near the destination city or location.

3. Coordinate Mental Health/Medical Care as Clinically Indicated.

- a. The hospital must transfer or refer the patient, along with necessary medical information, to appropriate facilities, agencies, or outpatient services, as needed, for follow-up or ancillary care.
- b. For both patients being transferred to a health care facility and those being discharged to their homes, the hospital must provide the following necessary medical information in writing to the facility and to the patient, as applicable:
 - Brief reason for hospitalization and principal diagnosis;
 - Brief description of hospital course of treatment;
 - Patient's condition at discharge, including cognitive and functional status and social supports needed;
 - List of medications needed by patient;
 - List of allergies, and
 - Contact information for transferring medical facility.

- c. Communicate with the local mental health agency and, to the extent possible, the patient, to identify a new treatment provider or coordinator within the destination city or location.
- d. Document in patient's medical record and discharge plan the date and substance of communication with the person (family member, responsible adult) or entity receiving patient regarding their willingness and ability to manage the patient's care.
- e. Provide medical records of prior treatment directly to new treatment provider or coordinator. Obtain necessary consents to provide these records.
- f. Notify new treatment provider or coordinator of date of transfer at least three (3) business days prior to date of transfer. Ensure new treatment provider or coordinator is given the patient's new contact information if the patient will be receiving treatment as an outpatient.
- g. If patient can live independently provide patient with information on the below:
 - Mental Health Clinic, Medical appointment(s),
 - Substance Abuse Treatment,
 - Case Management.
- h. Complete transfer summary, if needed.

4. Clinically Assess Patient's Ability to Travel. Determine whether an escort is necessary due to patient's physical and/or mental conditions. Coordinate with Psychiatric/Medical Team and patient for safe travel, i.e.; determine best escort: male vs. female, 1 vs. 2 escorts, nurse vs. social worker, non-medical ambulance staff, or non-professional (family, friend).

- a. Determine if durable medical equipment is needed during patient's transport or upon arrival, i.e., wheelchair, oxygen.
- b. Determine if medication supply is needed during patient's transport or upon arrival, and provide patient with appropriate supply,
- c. Determine any public safety issue(s) presented by patient on basis of history or current condition.

5. Coordinate Transportation.

- a. Coordinate where the patient will be received:
 - Family/responsible adult/care manager to meet patient in destination city or location, at airport/bus station/or other;
 - For patient being transferred to a medical or mental health facility, delivery to doorstep of agency, clinic, or hospital.
- b. Arrange transport for escort if one is needed. Most returns are accomplished by flying, non-medical ambulance, bus, or car (driving the patient to destination).
- c. Select mode of transport for safe travel and if possible, include client in planning to make sure s/he is comfortable with mode (i.e., not afraid of flying):
 - Fly,
 - Non-medical ambulance,
 - Car,
 - Bus.
- d. If patient has the ability to travel independently, call receiving family/responsible adult/care manager to advise time of arrival and coordinate who is meeting patient at destination. Confirm safe arrival if possible.

6. Post-Return. Remain available if family or friends have questions or need further assistance with service referrals.



DENNIS J. HERRERA
City Attorney

Direct dial: (415) 554-4748
Email: tara.collins@sfgov.org

April 22, 2013

Mike Willden, Director
NEVADA DEPARTMENT OF HEALTH AND HUMAN SERVICES
4126 Technology Way, Room 100
Carson City, NV 89706-2009

Re: Public records request (pursuant to Nevada Revised Statutes Chapter 239) for investigation by the Office of the City Attorney of San Francisco

Dear Mr. Willden:

I write to request copies of the public records enumerated below under the Nevada's Public Records Law (NRS Chapter 239), and to provide notice that my office has opened a formal investigation into practices by the Nevada Department of Health and Human Services, its divisions, employees, or contractors, that may be civilly actionable under federal, state and local laws. Pursuant to NRS § 239.0107, I ask that the requested public records be made available to my office within five (5) business days of your receipt of this request.

My office's investigation arises out of information recently brought to light by *The Sacramento Bee* that the Rawson-Neal Psychiatric Hospital, a mental health services facility under your department's control, has reportedly transported hundreds of patients suffering from mental illnesses to out-of-state locations—including the City and County of San Francisco—with inadequate provisions of food and medication, and without prior arrangements for their care, housing or medical treatment upon arrival.

Please provide copies of the following records relevant to my office's investigation:

1. All public records provided to *The Sacramento Bee* pursuant to its investigative reports into Nevada's practice of discharging patients from its psychiatric and mental health facilities and transporting them to out-of-state locations, including but not limited to receipts for transportation of such discharged patients by bus or other forms of travel since July 2008.
2. All documentation regarding challenged discharges of patients from psychiatric and mental health services facilities under the control of your department, and

April 22, 2013

Page 2

specifically any discharges challenged on the basis of inadequate discharge planning since July 2008 (redacting personal information on patients or clients as required by law).

3. Copies of citations imposed by state or federal regulatory bodies on mental health, psychiatric, psychosocial rehabilitation, substance abuse, and co-occurring disorders programs and facilities under the control of the Nevada Division of Mental Health and Developmental Services, including appeal documentation and Plans of Correction submitted in response to such citations since July 2008 (redacting personal information on patients or clients as required by law).
4. Copies of current licenses to operate for mental health, psychiatric, psychosocial rehabilitation, substance abuse, and co-occurring disorders programs and facilities under the control of the Division of Mental Health and Developmental Services.
5. Documentation identifying federal, state and local sources of funding since July 2008 for the Division of Mental Health and Developmental Services' mental health, psychiatric, psychosocial rehabilitation, substance abuse, and co-occurring disorders programs and facilities.
6. Copies of any reciprocal agreements from July 2008 to date between the Administrator of the Nevada Division of Mental Health and Developmental Services on the one hand, and any board, commissioners or officers of the State of California, on the other hand, for the mutual exchange of consumers confined in, admitted or committed to a mental health or mental retardation facility in one state whose legal residence is in the other, as authorized by Nevada Revised Statutes § 433.444.
7. Copies of records of written permission given by any board, commissioners or officers of the State of California for the return to California of any consumer confined in, admitted or committed to a mental health or mental retardation facility in the State of Nevada, from July 2008 to date (redacting personal information on patients or clients as required by law).
8. Copies of any records of approval of the Administrator of the Nevada Division of Mental Health and Developmental Services of the transfer of any non-resident of Nevada confined or admitted to a Division facility to the State of California pursuant to Nevada Revised Statutes § 433.444, from July 2008 to date (redacting personal information on patients or clients as required by law).

As City Attorney of San Francisco, I am authorized to pursue investigations, and to commence legal proceedings on civil causes of action that may arise from them on behalf of the City and County of San Francisco and/or the People of the State of California.

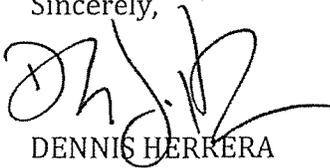
April 22, 2013

Page 3

This request represents my prior authorization to pay all search, copying and shipping fees pursuant to NRS § 239.052. In the event that records I have requested are not disclosable in their entirety, please release all segregable nonexempt portions of the records, and all parts of the records that can be rendered disclosable by redaction. As to any portion of the documents that you withhold, please state with specificity the legal and factual basis for withholding each such portion, as required by NRS § 239.0107 (c) and (d).

Should you have questions about my office's investigation, or require additional clarification about this request, please contact Deputy City Attorney Kristine Poplawski at kristine.poplawski@sfgov.org, or by telephone at (415) 554-3878.

Sincerely,



DENNIS HERRERA

Cc: The Honorable Brian Sandoval, Governor of the State of Nevada
The Honorable Catherine Cortez Masto, Attorney General of the State of Nevada