

Katherine Douglas

Public Comment - League of Women Voters # 2



From: Gail Osherenko (via Google Docs) <gail.osherenko@gmail.com>
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Please share this letter related to Item 2 on the Board of Supervisors' Departmental Agenda for the Dec. 5 meeting. It elaborates on issues from our letter of Nov. 20.

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December 4, 2023

Re Agenda Item 2, December 5, 2023

Dear Chairperson Williams and Members of the Board of Supervisors

In the Sheriff's Office agenda letter¹ (Attachment 1) and the CEO's *Contract Oversight* (Attachment I) both agree that enhanced and improved healthcare service delivery in the jails is necessary and appropriate and urge that this Board adopt increased supervision under the command and control of the Sheriff's Office "in partnership with Public Health (PHD) and Behavioral Wellness (BWell)," as follows.

b) Receive report and provide direction for Public Health expanded monitoring of the Agreement with CFMG/Wellpath and continued partnership with Public Health and Behavioral Wellness over healthcare services at the Sheriff's Office and Probation Department's detention facilities.

P.3/4 of 5, Discussion.

The Sheriff's Office and CEO make it crystal clear that if adopted, a) the Sheriff's Office would continue administration of the County-Wellpath contract for healthcare services and b) the proposed "increased, coordinated clinical oversight of the jail position of the contract can occur and be beneficial to the County."

On page 5 of the agenda letter and CEO PPT, we learn that 'other options [were] considered,' including one option (hereinafter, referred to as **Option 3**) that would:

¹ "California Forensic Medical Group (CFMG)/Wellpath Annual Report for Healthcare Services at the Sheriff's Office Detention Facilities and Contract Monitoring." Attachment 1.

“Transfer contract administration responsibilities from the Sheriff’s Office and Probation to PHD. In this scenario, PHD would work in close coordination with the Sheriff’s Office and Probation to jointly support the provision of services, as well as locating clinical staff on site at the jail to provide health care oversight and compliance monitoring.”

Page 5 of 5, bullet at top of the page (hereinafter referred to as Option 3).

The Sheriff’s Office concedes that this alternative Option 3 “would provide the most direct oversight monitoring by PHD.”

However, the Sheriff’s Office argues that Option 3 would “inappropriately interfere with the elected Sheriff’s sole and exclusive authority to keep and operate the county jail and prisoners within it...” In support of this position, the Sheriff’s Office cites a statute and state regulations that provide that only the Sheriff, as jail “facility administrator,” has the authority to provide “emergency and basic health care services to all incarcerated persons.”

We do not quarrel with these citations. However, these authorities are irrelevant to the discussion and issues before the Board.

In July 2020, the Sheriff’s Office and the County of Santa Barbara agreed (stipulated) in the federal *Murray* case,² that the County (and only the County) would be responsible for implementing, monitoring, and overseeing the federal court-imposed Remedial Plan.³

In *Murray* the inmates alleged that their’ federally guaranteed rights were not adequately protected.⁴ The Stipulated Judgment was signed and agreed to by the parties and signed by the Santa Barbara County Counsel’s office on behalf of the defendants.⁵

² Case No.2:17-cv-08805. Quick link to all Murray case documents.

<https://www.disabilityrightsca.org/cases/murray-v-county-of-santa-barbara#:~:text=Murray%20has%20requested%20but%20received.improvement%20programs%20at%20the%20jail.>

³ The Remedial Plan is attached as Exhibit A and incorporated into the Murray Stipulated Judgment.

⁴ The Murray plaintiffs alleged that Defendants SB County and the SB Sheriff’s Office hold Plaintiffs in deficient facilities that are overcrowded, understaffed, and unsanitary; fail to provide minimally adequate medical and mental health care to people incarcerated in the Jail; and subject people in the jails to the harmful and excessive use of solitary confinement and other custodial restrictions in violation of the Eighth and Fourteenth Amendments to the United States Constitution

⁵ Office of the SB County Counsel by Amber Holderness and Michelle Montez. See pg. 17.

The Sheriff's Office and County agreed that the *Murray v. County of Santa Barbara* Remedial Plan would cure healthcare delivery issues and problems through the implementation of over 80 separately stated duties. More to the point, the Remedial Plan specifically provides that **the County** (not the Sheriff's Office) through its PHD and BWell departments would monitor and oversee the County-Wellpath contract.

II. MEDICAL CARE

A. County Monitoring of Private Medical Contract

1. The County **shall** appoint a County employee or consultant with adequate expertise to provide ongoing monitoring and oversight of the private Jail health care provider contract.

2. The County's Department of Public Health and Behavioral Wellness **shall** actively monitor the Jail health care contract with any private health care services provider.⁶

Further, the County and Sheriff's Office agreed that **the County**, not the Sheriff's Office, would have ownership and control over the policies created from the Remedial Plan process.

B. Policies and Procedures

1. The County will develop and implement policies and procedures related to the delivery of medical care specific to the County's Jail system. The County will have ownership and control over the final policies that are created from this process.⁷

In *Murray*, the Sheriff's Office did not reserve a right to assert administrative control superimposed over the County-Wellpath contract. On the contrary, the Sheriff's Office specifically and unambiguously agreed that the County acting through PHD and BWell was responsible for monitoring and overseeing the County-Wellpath contract. The Sheriff's Office authorized its counsel to enter into the Remedial Plan. It is not in a position to argue that it has the right or the power to prevent the County from fully exercising its legal obligations under the federal judgment. The time for the Sheriff's Office to raise objections to full County control over the County-Wellpath contract was in July 2020 and not three and a half years later in a different forum.

To monitor means "to keep track of or check." Oversight means to supervise.⁸ In keeping with this common understanding of these terms, the Remedial Plan squarely places **all performance duties** on the County and not the Sheriff.⁹ Option 3 fully

⁶ Remedial Plan, pp. 3/4 of 5

⁷ Remedial Plan, p. 4 of 56

⁸ Source: <https://www.merriam-webster.com/dictionary/oversight>.

⁹ The County's duties under the Remedial Plan apply to health care, mental health care, suicide prevention, disability accommodations, environmental health and safety, custody operations and staffing for health care services and treatment of prisoners with special needs. The Sheriff's Office is mentioned only one time in the entire Remedial Plan. See

squares with the federal court-ordered Remedial Plan. Adopting Option 3, the County recognizes its obligations to monitor and oversee the County-Wellcare health care contract. Adopting Option 1 effectively alters the County's obligations under the Remedial Plan. Only the federal court may change its judgment.

The County and Sheriff's Office agreed to hire "subject matter experts," who were empowered to evaluate the policies, procedures, practices, and conditions at the jails and to provide periodic reports. One of those chosen by all parties is Homer Venters, MD. On September 5, 2023, Dr. Venters filed his third report.

"This is the third monitoring report regarding medical care in this case and there is one consistent and concerning theme throughout these reviews: **Santa Barbara County lacks meaningful and organized clinical oversight of the vendor providing health services in the jails.** There are some areas of cooperation and review of jail health services with the Department of Public Health and Behavioral Health, but there is no clear County jail health authority or correctional health office that ensures the policies are adequate, that analyzes quality assurance data independently, or that reviews clinical data regarding deaths and formulates independent findings. Many of these tasks that should be conducted by the County are left to the vendor, Wellpath. In many cases, Wellpath provides adequate care, but this does not remove the County from a responsibility that is clearly identified in the Stipulated Judgment and Remedial Plan, and which it currently does not meet."¹⁰

Another subject matter expert, Teri McDonald, filed her third report on October 4, 2023. She states,¹¹

*Despite gains, three areas continue to hamper forward progress: Staffing challenges, lack of information technology (IT) solutions and **insufficient compliance oversight and project management.***

As mentioned in the last report, the County team responsible for implementing and auditing internal compliance with the Remedial Plan does not appear sufficiently resourced to adequately project manage an agreement as comprehensive and complex as this agreement, which impacts forward progress and the County internally monitoring compliance. Emphasis added.

p. 4 of 56, II. D. 2 regarding cooperation for renovations necessary to create suitable clinical treatment and office space.

¹⁰ Venters-3 Murray et al. v. Santa Barbara County.

<https://www.disabilityrightsca.org/system/files/file-attachments/2023-09-05%20FINAL%20Venters.Third%20Round%20Medical%20Care%20Report.pdf>

¹¹ Remedial Plan Third Status Report, Terri McDonald Consulting LLC Sacramento,, CA October 4, 2023, pg. 2.

Still another subject matter expert, Timothy Belavich PhD, filed his third report on October 6, 2023.¹² He states,

*The County needs to work through Wellpath in the development of a meaningful audit for the County's intake process, with oversight from County health agencies. This should include a process for corrective actions and follow-up when low compliance is found. **The County also needs to provide the Behavioral Wellness monitoring documentation that reflects the quality review of the intake process as the Mental Health Expert was not able to find it in documents provided by the County.** Emphasis added.*

Finally, Dr. Venters pointed out that current jail health operations do not include a critical component, i.e., a utilization management (UM) system that ensures that health decisions about patient care are made with sufficient input from Providers and meaningful consideration of patients' health history and needs. Dr. Venters included this specific recommendation.

Recommendations: The County must implement and maintain a system that includes its own team (including physician level review) conducting correctional health care oversight to ensure the adequacy of vendor UM decisions.¹³

If the Board adopts Option 1, it will endorse the continuation of the status quo, which according to multiple appointed experts and by any other reasonable measure is and ought to be unacceptable to the Board of Supervisors and County of Santa Barbara.

For all of the foregoing reasons, we urge the Board to adopt Option 3, i.e., effective monitoring and oversight control of the County-Wellpath contract.

Respectfully submitted,

Stan Roden, Member, LWVSB, Criminal Justice Reform Task Force
s/ *Stan Roden*

Gail Osherenko, Chair, LWVSB, Criminal Justice Reform Task Force
s/ *Gail Osherenko*

Pam Flynt Tambo, LWVSB, Leadership Team
s/ *Pam Flynt Tambo*

Maureen Earls, CLUE, CoChair Criminal Justice Committee
s/ *Maureen Earls*

¹² Remedial Plan Status Report, Murray, etc. et al. Third Report. Timothy Belavich PhD. October 6, 2023, page 60.

¹³ Pp. 42-43.