

PUBLIC STATEMENT BY MARY ANN BERNARD MHSA STEERING COMMITTEE, 10/14/21

I was cut off in the middle of posting a comment for the MHSA Steering Committee, 10/14 meeting. Since I cannot read what was already written I will repeat myself here.

I expect this to be included in the meeting record.

I am an attorney and represented agencies and boards at the federal, then state, then local level for roughly thirty years. I sympathize with the need to provide extra funds for contractors due to increased costs from covid, and was happy to learn that federal funds may be available for this. No one, including the federal government, could object to creating a pool of money for such a purpose, particularly if federal covid funds could be used (as was mentioned), and in any event because you have a documented \$89 million surplus.

Unfortunately, that is not what happened. ***I do not fault board members for what did, because they have been given incorrect or at least imprudent advice.***

I have reviewed and attach the most recent Conflict of Interest policy of this Steering Committee that I could find online, which contained provisions in line with every other board I have ever dealt with or represented. It is dated 2014. I also was present at and the minutes of a number of meetings. Here is what I see:

1. In August of this year, a board member who admitted she had a conflict of interest moved to give MHSA contractors an across-the-board 7% raise due to presumed covid costs. The 7% raise was for everyone, ***regardless of documented need and with no stated restrictions on use of the funds.***

She withdrew her motion because of her admitted conflict of interest, but staff assured her to the effect that "it was OK, they had done this many times" or words to that effect. I was totally shocked and in my public comments, suggested they seek advice of counsel. Notation in the next month's minutes indicated that counsel said what was done was just fine, or words to that effect.

I will not name names but having researched it online, it appears that this board member's employer is small and may be heavily dependent on MHSA funds---meaning her own job could be at stake. Minimally, there is an appearance of impropriety when such an individual moves and provides the deciding vote for giving money to contractors, including her own employer, whether they need it or not. By definition, her employer benefits and she may as well.

By the way, giving money to people who have demonstrated no need for it is often called "featherbedding." You might want to look that up.

2. I was not present for the October meeting, but the minutes reflect that, at that meeting, another board member with a conflict of interest as defined by the 2014 Conflict of Interest Policy introduced a similar motion, which as amended, gave contractors a 10% raise due to covid with "the hope" (to quote Dr Quist) that they would use it to hire or give raises to staff that they are having difficulty keeping because of covid. Again, no showing of need has been

required. No limitations on the use of funds was suggested. The motion requires no guarantee that recipients will not use the funds to benefit stockholders, for example, instead of hiring staff.

The board member who proposed this motion has an employer that obviously receives considerable MHSA funds, though unlike the earlier movant, his own job is not likely threatened by how much money he brings in through the Steering Committee. Nonetheless, he still fits the definition of an individual with a conflict of interest pursuant to the 2014 Conflict of Interest policy.

That 2014 policy—which I attach-- is very clear about what board members with conflicts of interest as the policy defines that term are supposed to do—even if they are more remote conflicts, such as the one described above. They are to recuse themselves, leave the room, and neither discuss nor vote on the issues, much less provide the deciding motion. That, to me, is Ethics 101---consistent with the policies and practice of every public agency or board I have ever represented in this state or two other jurisdictions where I have practiced. I recall advising such individuals not even to ask questions about how the vote went—it looks bad. This is why I was so shocked by staff assurances that this had happened numerous times and was not a problem.

This raises several possibilities:

1. You have a new Conflict of Interest Policy which is inconsistent with the old one, and simply not readily available to the public. **Pursuant to the Public Records Act, I hereby request a copy of any such policy and expect to receive it within ten days.** I question whether it exists because those policies have to be approved by the state Fair Political Practice Commission and I doubt what you are doing would get by them.
2. Your staff got bad advice of counsel.
3. Counsel advised your staff to the effect that, “Don’t worry, the FPPA has no teeth. Nothing will happen.” Which is usually true. However, people such as me are watching you now. Everything I have just told you is well-documented. Suppose the press were to learn that you have been repeatedly advised that your Three Year Plan is not in compliance with statute, that there is a crying need for funds for the programs you are required by law to create but haven’t despite a \$89 million surplus, and that board members with conflicts of interest as defined in your last published Conflict of Interest policy keep giving money to contractors for expenses they may or may not have, including money to their own employers, without stated restrictions on its use?
\$89 million in documented excess MHSA funding

Quite apart from what the public might think, I can pretty much guarantee you (having been a federal attorney once myself) that if you are using federal covid funds (which was discussed) and you are unable to document that the funds were used properly, they will get clawed back by the feds at some point. You don’t want that to happen.

In conclusion, please pay attention to your current Conflict of Interest policy, and rethink what you are doing here.

Sacramento County
Mental Health Services Act Steering Committee
Conflict of Interest Policy and Statement

Conflict of Interest Policy

This Conflict of Interest Policy and Statement applies to Mental Health Services Act (MHSA) Steering Committee members and alternates. It is intended to define direct and remote conflicts of interest in relation to the MHSA Steering Committee's role as a recommending body related to MHSA planning/funding.

This policy is not intended to inhibit, prevent or discourage agencies affiliated with MHSA Steering Committee members from applying for MHSA funding. Rather, it is to ensure a fair and impartial planning process related to MHSA activities, program development and funding.

MHSA Steering Committee members have a commitment to conduct all responsibilities of the Steering Committee in a manner consistent with the best interest of the MHSA mission. This requires that all decisions and actions of members on behalf of the MHSA Steering Committee must be made or taken solely with a desire to serve in the best interest of the community, rather than a desire to serve in the best interest of an individual and/or agency.

Definition of Direct or Remote Conflict of Interest

The following is provided to identify the types of relationships and activities that may create direct or remote conflicts of interest:

- a. If a member or alternate, or their family, will receive a direct financial benefit, such as a payment, dividend, increase in a value of a commodity or real estate, etc. by an action taken by the Steering Committee, the member or alternate has a direct conflict of interest.
- b. A member or alternate has a remote conflict of interest if their employer will, or could, receive a benefit from an action of the Steering Committee.

Declaration of Conflict and Recusal

Government Code Section 1090 et. seq. addresses conflict of interest. The MHSA Steering Committee can take guidance from this code section to ensure there is an impartial decision-making process. MHSA Steering Committee members are encouraged to have open dialogue and share personal experiences and any bias which may influence opinions one way or other during the discussion. When there is a direct or remote conflict of interest, MHSA Steering Committee members and alternates will:

- a. Declare the nature of the direct or remote conflict;
- b. Recuse themselves from the discussion by leaving the room; and
- c. Recuse themselves from any vote/action regarding the specific matter.

Failure to Declare a Conflict of Interest

Failure to declare a conflict of interest may invalidate any said action taken by the MHSA Steering Committee.

Disclosure of Potential Conflicts of Interest

MHSA Steering Committee members and alternates must complete, sign and submit the attached Conflict of Interest Statement to disclose any direct or remote personal or familial conflict financial stake/affiliation (within the past two years) with community based organizations providing behavioral health services in Sacramento County.

**Sacramento County
Mental Health Services Act Steering Committee Member/Alternate
Conflict of Interest Statement**

I, _____, understand and agree to comply with the attached Conflict of Interest Policy.

I certify that the following statements are true to the best of my knowledge:

- A. I have a financial stake/affiliation currently, or within the past 24 months, with the following community based organization(s) providing behavioral health services in Sacramento County. *Attach additional pages, if necessary. If none, so state.*

- B. My family member(s) has a financial stake/affiliation currently, or within the past 24 months, with the following community based organization(s) providing behavioral health services in Sacramento County. *Attach additional pages, if necessary. If none, so state.*

Should there be a change in my involvement in any activity or circumstances that constitutes a direct or remote conflict of interest, I will notify a member of the MHSA Executive Committee immediately. I will complete, sign and submit an updated MHSA Steering Committee Conflict of Interest Statement form.

SIGNATURE: _____

NAME: _____ DATE: _____
(PLEASE PRINT)

MHSA PROVISIONS MANDATING FUNDING FOR PROGRAMS FOR DIVERSION AND REENTRY PROGRAMS FOR SMI'S HEADING INTO OR OUT OF LOCAL JAILS, AND ALLOWING FUNDING FOR LAURA'S LAW (11/21)

The Mental Health Services Act has since its inception required (meaning it is mandatory) programs for severely mentally ill individuals headed for or leaving local jails and lockups. As of 11/2021, Section 5813.5 of the Act provides, in relevant part:

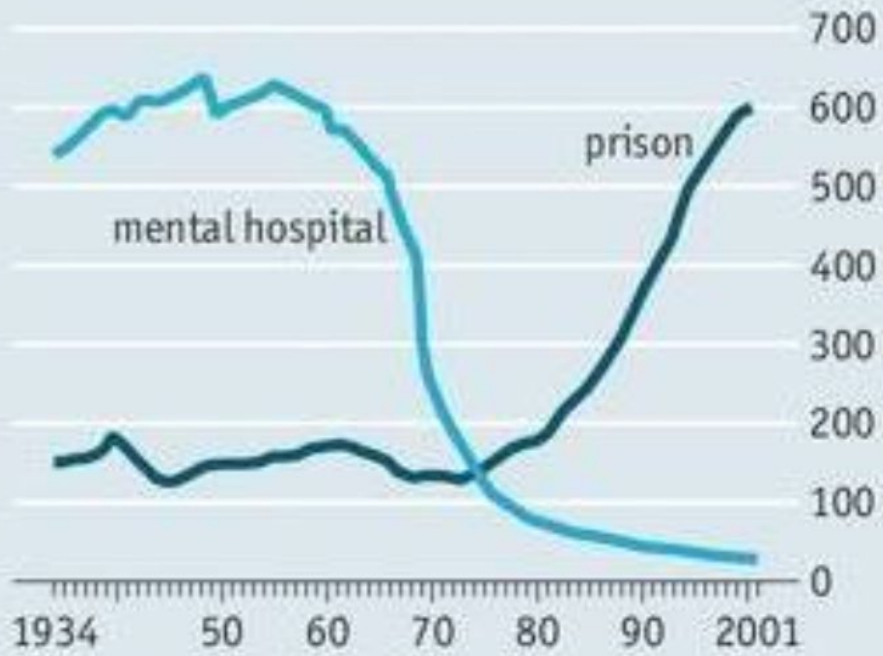
(f) Each county plan and annual update pursuant to Section 5847 **shall** consider ways to provide services similar to those established pursuant to the Mentally Ill Offender Crime Reduction Grant Program. Funds shall not be used to pay for persons incarcerated in state prison. Funds may be used to provide services to persons who are participating in a presentencing or postsentencing diversion program or who are on parole, probation, postrelease community supervision, or mandatory supervision. When included in county plans pursuant to Section 5847, funds may be used for the provision of mental health services under Sections 5347 and 5348 in counties that elect to participate in the Assisted Outpatient Treatment Demonstration Project Act of 2002 (Article 9 (commencing with Section 5345) of Chapter 2 of Part 1).

Note that the last sentence of this provision also allows MHSA funding for Laura's Law.

Out of sight...

America's mentally ill held in:

Per 100,000 adults



Source: B.E. Harcourt, "An Institutionalisation Effect"