



**San Francisco Regional Office**

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**IMPORTANT NOTICE PLEASE READ CAREFULLY**

HAND DELIVERED - September 22, 2006

September 22, 2006

Antoinette Smith Epps, Hospital Administrator  
Martin Luther King, Jr./Charles R. Drew Medical Center  
12021 South Wilmington Avenue  
Los Angeles, CA 90059

RE: Termination Notice: Medicare Provider Number: 05-0578

Dear Ms. Epps:

The Centers for Medicare & Medicaid Services (CMS) has spent a significant amount of time working with Martin Luther King Jr./Drew Medical Center (MLK/DMC) during the last 32 months. During that period, this office, in coordination with the California Department of Health Services, conducted no fewer than 15 surveys that repeatedly identified events in and practices by the hospital that were found to have severely compromised patient health and safety. Indeed, these multiple, separate Medicare surveys disclosed an array of violations and, on three separate occasions, conditions of immediate jeopardy. The hospital was fully informed of these findings and in each case assured CMS of prompt and effective remedial action. To assist and facilitate correction, CMS took extraordinary measures and allocated exceptional federal resources including numerous telephonic and on-site consultations and technical assistance, most notably a day and a half of hospital-wide education and training on Medicare survey and regulatory compliance.

Despite these and many other efforts, the September 22, 2006, survey revealed the hospital's continuing inability to meet the Medicare Conditions of Participation. Consequently, in the interest of patient health and safety, CMS must now exercise its statutory enforcement responsibility by terminating the hospital's Medicare provider agreement effective November 30, 2006.

The survey documented that serious violations remain, including Condition Level Non-Compliance in the following areas:

- 482.12 Governing Body
- 482.13 Patients' Rights
- 482.21 Quality Assessment Performance Improvement
- 482.23 Nursing
- 482.25 Pharmacy
- 482.41 Physical Environment
- 482.42 Infection Control

482.51 Surgical Services  
482.56 Rehabilitation Services

The most recent survey that ended on September 22, 2006, identified numerous violations of federal requirements for quality of care in a hospital environment. The findings indicate that many previously-identified systemic problems persist. The survey also documented the inability of the hospital's governing body to identify and take appropriate measures to eliminate clear threats to patient health and safety.

The following examples are representative of major and serious problems identified in the recent survey. In the area of **Nursing** (42 CFR **482.23**), this survey identified that there were no appropriately trained and competent staff, on the 3E unit, assigned to watch the heart monitors of seriously ill patients who required cardio-respiratory monitoring. This is especially troublesome because previously documented cases showed that patients died when nurses at King/Drew failed to heed heart monitor warnings.

In the area of **Nursing and Pharmacy** (42 CFR **482.23** and **42 CFR 482.25**), staff admitted to surveyors that they had "hit the pump" at least five times to deliver additional doses of morphine to a sedated patient through a device that is intended to only be self-administered—a very unsafe practice that can lead to over sedation, respiratory depression, or even death. In this particular case, there was no indication that staff had notified a physician of this practice or asked a physician for increased doses if the current pain regimen was not adequately relieving the patient's pain.

In the area of **Infection Control** (42 CFR **482.42**), patients were placed at serious risk for exposure to blood borne pathogens, such as Hepatitis B, through the use of point-of-care testing devices (blood glucose monitors for example) which were visibly stained with blood in a number of units and on a number of testing devices. This is contrary to well-publicized CDC guidelines for the use of this type of equipment and poses a serious, unnecessary risk to the health and safety of patients.

These problems were brought to the attention of hospital staff and administrators both during the survey and at the exit conference. All survey findings are detailed in the enclosed 200 page Statements of Deficiencies Report, Form CMS-2567.

As you are aware, to participate in the Medicare program, a hospital must meet the statutory requirements in 42 U.S.C. § 1395x(e) and be in compliance with each of the applicable regulatory Conditions of Participation for hospitals at 42 C.F.R. Part 482. When MLK/DMC entered into a Medicare provider agreement it specifically undertook to comply with Federal statutes and regulations governing Medicare certified hospitals. See section 1861(e) of the Social Security Act, 42 U.S.C. § 1395x(e); 42 C.F.R. Parts 482 and 488.

Termination of the Medicare provider agreement is final. Given both recent findings and the 32 months of recent history, we will decline to approve further Medicare re-surveys for compliance under the existing provider agreement.

Pursuant to 42 CFR 489.55, federal payments will be available for up to 30 days after the effective date of termination for inpatient hospital services. After the termination of the provider agreement, the county could transfer ownership to a new entity. That new entity could apply for Page Three – Martin Luther King, Jr./Charles R. Drew Medical Center

a new provider agreement only when it believes it can provide reasonable assurance that it fully meets the Medicare Conditions of Participation. CMS will continue to provide financial support for all care arrangements that ensure effective access to high quality inpatient and outpatient care for California residents currently served by Martin Luther King Hospital.

Once terminated, MLK/DMC may apply for reinstatement. See 42 C.F.R. § 489.57. However, a CMS will not accept a new agreement unless the reasons for termination of the previous agreement have been removed and there is reasonable assurance that the hospital can maintain compliance with the applicable Medicare Conditions of Participation. 42 C.F.R. § 489.57(a). Compliance will be verified by on-site surveys conducted at the beginning and end of a reasonable assurance period determined by CMS. Prior to issuance of a new provider agreement, the hospital also must fulfill, or make satisfactory arrangements to fulfill, all of the statutory and regulatory responsibilities of its previous agreement. 42 C.F.R. § 489.57(b).

### **Appeal Rights**

If you do not agree with this determination, you may request a hearing before an administrative law judge of the Department of Health and Human Services, Departmental Appeals Board, in accordance with 42 C.F.R. Part 498. Such hearing request must be filed in writing no later than 60 days from receipt of this notice. The request should be sent to the following address:

Deborah C. Romero, Manager  
Hospital and Community Care Operations Branch  
Division of Survey and Certification  
Centers for Medicare & Medicaid Services  
75 Hawthorne Street, Suite 408  
San Francisco, CA 94105

Your request must identify the specific issues as well as the findings of fact and conclusions of law with which you disagree and explain your basis for contending that the findings and conclusions are incorrect. You will have an opportunity to present evidence and further argument at an in-person hearing, where counsel may represent you. Completion of the administrative review process established by 42 C.F.R. Part 498 is a prerequisite to obtaining judicial review.

We are coordinating this action with the Medicaid State Agency, which will take similar action under Title XIX of the Social Security Act.

Copies of this letter are being sent to the California Department of Health Services, California Medicaid Agency. And, as required by law, we are concurrently publishing notice of the termination in the Long Beach Press Telegram. See 42 C.F.R. 489.53 (c) (4). That notice is scheduled for publication on November 9, 2006.

Should you have any questions concerning this matter, please contact me at (415) 744-3682.

Sincerely,

Steven D. Chickering  
Western Consortium Survey and Certification Officer  
Division of Survey and Certification

CC: Kim Belshé, Secretary, California Health and Human Services Agency  
Kathleen Billingsley R.N., Deputy Director, DHS Licensing and Certification Program  
Mark McClellan, Ph.D, MD, CMS Administrator  
Jeff Flick, CMS Regional Administrator  
Dennis Smith, Director, CMSO  
Thomas Hamilton, Director, Survey & Certification