

COUNTY OF MILWAUKEE
Inter-Office Communication

Date: March 22, 2016
To: Scott Manske, Milwaukee County Comptroller
From: Jerome J. Heer, Director of Audits
Subject: Audit of Behavioral Health Division (BHD) Patient & Staff Safety

Effective today, we are suspending the audit of patient and staff safety at the Behavioral Health Division. Successful completion of the audit requires access to records that, at this point, have not been provided to our office.

You recall that we began this project as a follow up on a report we issued in 2010 as requested by the Milwaukee County Board. While the County Board no longer has oversight of the Behavioral Health Division, we believed that the subject was significant enough that the follow up was warranted. In addition, we advised the previous Behavioral Health Administrator that we planned to present the final audit report to the Mental Health Board. Indeed, as you know, it is standard practice to present our reports to those charged with governance. We repeated this commitment to the Chairman of the Mental Health Board last week.

The specific record for which access has been denied is the Incident/Risk Management Report form. This form is used by BHD staff to capture pertinent data related to a wide variety of events involving patient and staff safety. This form is the basis for documenting, analyzing and reporting safety-related trends that may exist. BHD management has provided us with summary data related to these forms. However, without access to the source documents, we have no assurance that the summary data is complete or accurately presented.

Timeline of Communications Concerning Access to Records

We have had numerous conversations (meetings, emails, phone calls, etc.) on planning and executing the audit with BHD management since last Fall. At the initial planning meeting, we discussed the audit scope, objectives, timetable and process. As is typical for any audit involving health care, we also discussed our expectation for full access to records needed to meet our audit objectives. At that meeting, we were not made aware of any plans to restrict our access to needed records.

However, we learned early on during our field work that we would not be allowed access to any record or document containing a patient's name. We immediately objected to this restriction, which led to a series of meetings and other communications concerning this scope impairment:

- September 9, 2015 – Initial planning meeting with BHD management.
- October 10, 2015 – First time during field work we became aware of record restrictions.
- December 18, 2015 – Meeting with BHD management to discuss/clarify need for access to records. At this meeting, we were provided with an August 2015 legal opinion obtained from the private law firm regarding the discretion for the Medical Director to allow us access to medical records.
- January 26, 2016 – Meeting with Director of Health and Human Services (DHHS) to discuss access to records. The DHHS Director said he had not seen the August 2015 legal opinion, requesting time to review and respond.

- February 22, 2016 – Meeting with BHD Acting Administrator, who expressed concern over the possible personal legal repercussions if we were granted access to medical records.
- February 25, 2016 – We were provided with a Corporation Counsel opinion on this issue, dated February 22, 2016, with the conclusion that BHD is within its legal rights and has discretionary authority to release (or not release) incident reports.
- February 29, 2016 – Meeting with DHHS Director, BHD management and Corporation Counsel, at which time the BHD Medical Director asked for additional time to consider our request for access to records.
- March 3, 2016 – We provided BHD management with a list of seven items for which we were requesting information. Of primary concern is access to incident reports.
- March 7, 2016 – We provided BHD management with a status update for each of the seven outstanding items. No progress on access to incident reports.
- March 11, 2016 – BHD Medical Director provided a status update. Incident report access was not addressed.
- March 14, 2016 – BHD Acting Administrator provided her own status update to each of the seven outstanding items. She deferred responding on incident reports to the Medical Director.
- March 17, 2016 – Milwaukee County Mental Health Board Chairperson called to introduce himself and discuss the audit.
- March 17, 2016 – BHD Medical Director stated he will not be able to address access to incident reports stating that he needs to review the matter with the Milwaukee County Mental Health Board at a special meeting of the Executive Committee that is scheduled for April 7, 2016.

Over the course of those meetings and conversations we made several points:

Confidentiality of patient records is a matter of law that applies to auditors as it does others who view medical records. We acknowledge that body of law and have established protocols to ensure compliance.

The Audit Manager and I collectively have over 70 years of experience in auditing sensitive information and we have never had a problem.

As employees of Milwaukee County, we are agents of the County and our access to records has generally been viewed the same as other employees using records within the scope of their employment.

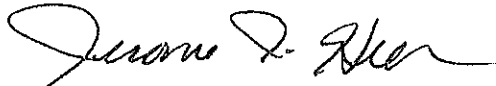
County Ordinances require that records be provided to our office for purposes of audit or investigation.

In spite of these points, we have acknowledged the concerns raised by BHD administration. We agree with all parties that maintaining the privacy of all patients is essential. Further, we have considered opinions offered by both Corporation Counsel and attorneys for BHD. Our reading of those opinions leads us to the conclusion that it is within the discretion of BHD's Medical Director to release the records

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to us. We do not attempt to minimize the gravity of that decision on his part. However, as auditors, we have concerns any time a legitimate request for records access is denied. In the past, efforts to block audit access has indicated underlying problems. That may, or may not, be the issue in this instance. In the absence of the audit, we may never know.

The audit will resume when we receive access to the records that we need to complete the field work phase of our review. Given the seriousness of the audit subject and the need for the highest level of accountability for services to BHD clients, we hope this matter is resolved soon. We will be attending the meeting of the Mental Health Board Executive Committee that has been scheduled for April 7 to consider the issue of records access. If the access is not granted, we will issue a memo summarizing observations our staff made prior to termination of the audit.



Jerome J. Heer

JJH/cah

cc: Chris Abele, Milwaukee County Executive
✓ Supervisor Theodore Lipscomb, Sr., Chairman, Milwaukee County Board of Supervisors
Duncan Shrouf, Chairman, Mental Health Board
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