



April 5, 2007

Dorrance Collins  
3240 Penland Parkway  
Space 35  
Anchorage AK 99508

RE: Ombudsman Complaint A2006-0485 (Discontinued)

Dear Mr. Collins:

The Office of the Ombudsman reviewed your complaint regarding the governing board of the Alaska Psychiatric Institute. We have information that we think will be helpful to you as you continue to interact with this state agency.

You asked the ombudsman to look into three questions regarding the governing board:

1. What is the role of management on the governing board?
2. What is the role and authority of the governing board as far as voting on issues such as patients' rights?
3. What authority does the board have in terms of requiring what they voted on be implemented

You were concerned about these issues because you said that the board told you at its March 2006 API meeting that it had no authority to address patients' rights issues.

The ombudsman has not been able to verify what transpired at the March 2006 meeting. Although governing board meetings are usually recorded, the tape of this meeting was damaged and so was not available to us. Neither Board minutes nor witness accounts provide the kind of detail necessary to resolve the facts at issue.

I spoke to an attorney who was at the meeting. This attorney was not there to represent the board, but to monitor an issue unrelated to the one you presented to us. Her memory of the meeting differed slightly from yours in that she did not recall the board telling you it had no jurisdiction to address patients' rights issues. Her recollection is that the board thanked you for your comments and then moved on to other business.

Reply to:

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The issue of exactly what was said at the meeting, however, seems of subsidiary importance in light of the questions you have asked us. I will address your questions below:

**What is the role of API management on the governing board?**

In conversations and written messages, you clarified your concern regarding API management. You said you thought the governing board was dominated by management, and thus the governing board was unable to provide independent oversight of API. You said that this was contrary to the purpose of such boards.

The governing board by-laws provide specific requirements for governing board membership. Members of the board are as follows:

The DH&SS commissioner, or the commissioner's designee;

The API Chief Executive Officer;

API's Medical Director;

A representative of the Alaska Mental Health Board;

A representative of the Alaska Behavioral Health Association, and

Six public members, including three mental health consumers.

The board at full strength has 11 members, two of whom will be administrators of API and at least three of whom will be employees of the Department of Health & Social Services (DH&SS). The by-laws further provide that an employee of DH&SS may not serve as an officer of the governing board. Public members of the governing board are appointed by the commissioner of DH&SS. The by-laws were adopted by the governing board. They can be changed by a two-thirds vote of the board membership

With API administrators outnumbered 9 to 2 on the governing board, the ombudsman cannot conclude that the by-laws give too much authority to them. One might argue that because the six public members are appointed by the DH&SS commissioner, they are really management representatives, but we see no reasonable option for selecting board members that does not include some governmental appointment process.

The by-laws are subject to review by the governing board, which may revise them with a two-thirds vote.

**What is the role and authority of the governing board as far as voting on issues such as patients' rights?**

Apparently, from the adjective "governing" in the board's by-laws, and from the by-laws themselves, the board is intended to have a significant role in developing API policies. Stacy Toner, Acting Director of the Division of Behavioral Health, agrees. She said that it is her division's opinion that the board has the authority to change patient rights policies.

The by-laws state that the governing board "guides and directs the development and promulgation of Hospital policy and procedures, as well as in the overall administration of the Hospital."

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Specifically, the by-laws authorize the governing board to do the following:

1. Ensure compliance with licensing statutes, administrative regulations, accreditation standards, and certification standards.
2. Approve the appointment and termination of the medical director and the medical staff.
3. Review and adopt API's mission statement, strategic plan, medical staff by-laws, medical staff rules and regulations, and API's quality improvement program.
4. Regularly review and take necessary action on reports, data, and information provided or presented by API's staff.
5. Monitor and assess the quality of patient care, including a biennial review of hospital policies and procedures.
6. Conduct an annual performance evaluation of the CEO, and provide a copy of that evaluation to the CEO and to DH&SS.
7. Submit a list of names of potential candidates for the DH&SS commissioner's consideration whenever the CEO's position becomes vacant.
8. Solicit, evaluate, and take action, as appropriate, on public comment regarding the overall functioning and treatment processes of the hospital.
9. Plan API's future direction and service delivery mission, strategies, and processes.

**What authority does the board have in terms of requiring what they voted on be implemented?**

The governing board's by-laws establish the relationship between the board and the API administration. Under Article VI, B, Role and Responsibilities of the Hospital CEO, the by-laws state:

The CEO is responsible for conveying the policies supplied by the Governing Body to the staff, and ensuring that any necessary action is taken to implement these policies.

That said, you should be aware that the board operates under the delegation of authority from DH&SS. State law at AS 47.30.660 provides that DH&SS shall "operate and maintain treatment facilities equipped and qualified to provide inpatient and outpatient care and treatment for persons with mental disorders."

The governing board by-laws echo this in noting that the commissioner of DH&SS is the "final authority" on matters relating to API:

The Commissioner of DHSS is the final authority on all matters relating to the operation and administration of the Hospital; however, the Commissioner will consult with the Governing Body when

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considering changes in Hospital policy or when making changes that may otherwise impact the Hospital.

You may find helpful some additional information we found that is related to this issue. In communications to us, you had quoted CFR Title 42, Chapter 4, Part 482, which lists conditions for participation of a hospital in Medicare and Medicaid programs. The part you quoted states: "The hospital must have an effective governing body legally responsible for the conduct of the hospital as an institution." This seems to indicate that all hospitals must have a governing board. However, the next sentence reads: "If a hospital does not have an organized governing body, the persons legally responsible for the conduct of the hospital must carry out the functions specified in this part that pertain to the governing body." In other words, a governing body is not a requirement under the federal Medicare and Medicaid programs.

In summary, our review leads us to the conclusion that the API governing board is not weighted toward hospital administrators. Our review and interviews with Stacy Toner, Acting Director of the Division of Behavioral Health, also lead us to believe that the Division agrees that the governing board would be within its jurisdiction to address issues of patients' rights. During one of your conversations with Mark Kissel, who investigated this complaint, you alleged that the Board had refused to take action on patients' rights issues. As I stated earlier in this letter, we were not able to prove that by reviewing meeting minutes or interviewing impartial witnesses.

Our review also leads us to believe that the API Board by-laws give the governing body a great deal of authority to address issues relating to the operation of API, but final authority clearly rests with DH&SS. Because DH&SS has indicated that the Board has oversight on patients' rights issues and we have found no proof to the contrary, I am discontinuing our review and closing this complaint with this letter. If you have further concerns about the API Board's authority you might consider discussing your concerns with Ms. Toner at the Division of Behavioral Health. Her phone number is 465-2817.

I hope this information is helpful to you in your role as an advocate for better mental health services in Alaska. With this letter I am closing your complaint.

I also want to apologize for the length of time it has taken to complete this review. We have spoken several times about the fact that my office has fewer staff than we need to do our work. Unfortunately, this can lead to delays in completion of our investigations. I apologize that you experienced this delay.

Sincerely,



Linda Lord-Jenkins  
Alaska Ombudsman