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October 16, 2008

Mr. Dorrance Collins
Ms. Faith Myers
3240 Penland Parkway
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RE: Ombudsman Complaint J2008-0233

Dear Mr. Collins:

In your complaint dated June 24, 2008, you requested that the ombudsman help you obtain the information you had requested from the Department of Health and Social Services, and find out "if the state is required to keep those statistics." With your complaint form, you enclosed a June 10, 2008 letter to Commissioner Bill Hogan, in which you requested the following information:

We want whatever information is available on the number and type of grievances and/or complaints filed in Behavioral Health grantee facilities.

We also want whatever information is available on the number and type of grievances and/or complaints filed in psychiatric facilities and psychiatric units in hospitals.

You also enclosed a June 12, 2008 letter to Governor Sarah Palin, in which you stated in part:

We want DHSS, Behavioral Health, Office of Licensing to be required to make available to the general public the number and type of grievances/complaints filed at each grantee facility, psychiatric facility, psychiatric unit.

We were able to make changes at Alaska Psychiatric Institute because we were able to receive the statistics. We are not able to receive the statistics from the state on any of the other facilities.

Mr. Hogan's reply to you on July 9, 2008, was not particularly helpful. The letter cited 7 AAC 71.220, which requires that behavioral health grantees each maintain a grievance policy, and then stated in part: "DBH does not maintain records of the number or types of grievances and/or complaints filed in grantee facilities or psychiatric units within other

hospitals, as these private facilities are governed by their own boards of directors who maintain responsibility to oversee corporate compliance.”

You sent a follow-up letter to Mr. Hogan on July 20, 2008. You requested the following information:

1. We want whatever information is available on the number or type of grievances and/or complaints filed in Behavioral Health Grantee facilities.
2. We also want whatever information is available on the number and type of grievances and/or complaints filed in all psychiatric facilities and psychiatric unites in hospitals in Alaska (which includes the number and type of grievances files at Alaska Psychiatric Institute, Fairbanks Memorial, Bartlett Juneau, NorthStar, etc.)
3. How many complaints or grievances made by a psychiatric patient or an interested party on behalf of a psychiatric patient have been investigated by DHSS?

On August 13, Commissioner William Hogan responded in another letter to you:

The community mental health centers and hospitals that we form partnerships with for behavioral health care, including inpatient services, are private entities governed by their own boards of directors with policies and procedures in place. According to the conditions of grant award all centers are to post their grievance procedures and offer assistance to anyone who wishes to file a grievance.

Inpatient facilities must follow procedures set forth by their accrediting bodies such as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) through their own governing bodies. **The Division of Behavioral Health is not involved at this local level and does not require or maintain records of any grievance activities of private providers.** If you desire such records you should direct your inquiries to the executive directors or governing bodies of these entities.

On August 19, 2008, you wrote, in part:

DHSS/Behavioral Health only answered part of our questions in our letter.

1. We want whatever information is available on the number and type of grievances and/or complaints filed in Behavioral Health Grantee facilities.

--- DHSS answer: We don't keep any statistics concerning the number or type of complaints filed by psychiatric patient/clients in grantee psychiatric facilities. (There are approximately 60 grantee facilities.)

2. We also want whatever information is available on the number and type of grievances and/or complaints filed in all psychiatric facilities and psychiatric units in hospitals in Alaska (which includes number and type of grievances filed at Alaska Psychiatric Institute, Fairbanks Memorial, Bartlett Juneau, North Star, etc.)

--- DHSS answer: Again, we keep no statistics of any kind concerning the number of complaints or grievances filed. (DHSS left out API. DHSS should have those statistics. There is no longer a Governing Board at API.)

3. How many complaints or grievances made by a psychiatric patient or an interested party on behalf of a psychiatric patient have been investigated by DHSS?

--- DHSS did not answer question 3. We want an answer to the question.

You requested comprehensive information on grievances against all mental health facilities in Alaska, with the exception of the Department of Corrections. I divided your information request into the following categories: community mental health clinics receiving grant funds from the Division of Behavioral Health (DBH); Alaska Psychiatric Institute (API); and psychiatric hospital facilities other than API.

Community mental health providers receiving grant funds from DBH. I interviewed Stacy Toner, deputy director of DBH, and Brenda Knapp, Treatment and Recovery Manager for DBH. Ms. Toner and Ms. Knapp stated that DBH does not systematically track grievances about mental health grantees.

I also spoke with Kate Burkhart, executive director of the Alaska Mental Health Board. Ms. Burkhart explained that the Mental Health Board wishes to address the underlying issue, which is whether the providers' grievance systems actually work for consumers. She said that the Alaska Mental Health Board is working on a consumer survey to find out whether consumers use the providers' grievance systems and whether they believe that the providers handle grievances fairly. The survey is to be distributed through peer support groups – not through the providers.

Finally, I spoke at some length with Yvonne Jacobson, a DBH program coordinator. Before being assigned as Traumatic Brain Injury Project Coordinator, Ms. Jacobson was assigned to consumer affairs – essentially, complaints and grievances. She explained that even after the Murkowski administration eliminated that job, many of her previous duties have remained with her. Ms. Jacobson provided the following information:

- She confirmed that although DBH requires mental health grantees to file a grievance policy with DBH, DBH does not require grantees to report how often the policy is used, or to report on the outcome of grievances. X
- DBH does receive calls from consumers complaining about grantees, but DBH has not tracked these numbers. In recent years, Ms. Jacobson estimated that she has received 8-12 calls per year. She said that, at least in the last three years, none of these calls have necessitated an investigation by DBH; all have been resolved by advising the consumer on how to work with the grantee and the grantee's grievance system. *Saying no is considered a resolution* X
- It has been at least five years since Ms. Jacobson was involved in a DBH investigation of a grantee based on consumer complaints. X

From these interviews, I obtained only fragmentary information on DBH handling of patient grievances. I conclude that DBH has simply not made an effort to track this issue. In my closing letters to DBH and to the commissioner's office, I am strongly suggesting that DBH adopt a more systematic approach.

I believe that DBH could do more to systematically track grievances brought to DBH; however, I also believe that you can advocate for that tracking through the contacts you have with made with the Alaska Mental Health Board and the Division of Behavioral Health.

Alaska Psychiatric Institute (API). In your July 20, 2008 letter, in the section titled "Reference Information," you wrote: "Alaska Psychiatric Institute, owned and operated

by the state, occasionally releases the statistics on the number and type of grievances filed (As a note, API receives about 220 complaints a year by patients and guardians).” I suggest that you contact Ron Adler, the CEO for API and the new API advisory board to discuss API’s schedule for releasing these statistics. I suggest those contacts in lieu of writing general demand letters to the commissioner of DHSS. Also, it appears that you have in the past obtained the API grievance statistics, and are likely to obtain updates without needing the ombudsman to supply this information for you.

Psychiatric hospital units other than API. I contacted Kathy Murtiashaw, a health facility surveyor in the state’s Health Facilities Licensing and Certification office, which is part of the Section of Certification and Licensing in the Alaska Division of Public Health. Ms. Murtiashaw explained that her section does receive complaints about Alaska hospitals, including North Star, Bartlett Regional Hospital, Fairbanks Memorial Hospital, etc. These complaints and the results of any investigation are entered into a national database administered by the Centers for Medicare & Medicaid Services (CMS), a section of the federal Department of Health and Human Services. I asked whether the number and type of complaints about each facility was public information, and Ms. Murtiashaw deferred that question to CMS. The licensing staff and CMS do not count complaints about psychiatric care separately from other complaints about a given hospital.

I also asked whether hospitals are required to track patient grievances filed and addressed within the facility. For hospitals accredited by JCAHO (Joint Committee on Accreditation of Health Care Organizations), Ms. Murtiashaw believes that each facility keeps such records as part of its quality assurance data; however, the state does not require hospitals to provide records of internal grievances.

Discussion of Your Complaint

Essentially, your letters are public record requests. DHSS is required to give you access to records that are not protected by confidentiality laws; however, it is not required to do research or compile information for you. After interviewing several DHSS employees, it is clear to me that DHSS does not keep all of the information you requested. It appears that DBH and the Division of Public Health could probably compile a portion of the information you have requested, but the public records act does not require that these agencies do so. For your reference, I have enclosed information on the Alaska public records law, AS 40.25.

You original complaint to this office was that DHSS was not responding to your letters to the commissioner of DHSS. DHSS has responded. The DHSS letters are not models of clarity, and I do not blame you for being dissatisfied with the replies. However, it is clear that DHSS’s failure to provide much of the requested information is because DHSS lacks some of the numbers you have requested. Some of the requested information, such as API records, could probably be more reasonably requested through your contacts with API instead of through demand letters to the DHSS commissioner.

I have considered whether the ombudsman should undertake investigation of the policy issue you have raised, which is whether DHSS should compile and publish the grievance statistics of for both grievances handled within the grantee organizations and complaints brought directly to DHSS. Our office declines investigation of this issue. The ombudsman was created to investigate when citizens could not speak for themselves effectively, and to seek a remedy when individuals have been injured by an agency’s action or inaction. You are able to advocate this policy matter on your own behalf, at least as effectively as an ombudsman investigator could, and frankly, you do not require the ombudsman’s assistance as much as do many citizens who are far less able to address their problems with state bureaucracy. Also, while you object to DBH practice, you do not appear to have suffered injury due to DBH’s failure to gather the statistics you

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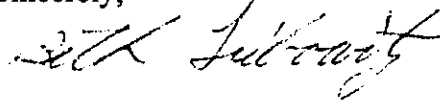
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requested. In other words, the ombudsman will not devote further resources to this policy issue.

Your complaint is now closed, but I hope this information is helpful to you. I recognize that you will likely be dissatisfied with this closure, but our office cannot investigate all issues brought to our attention.

Sincerely,



Beth Leibowitz
Assistant Ombudsman

Enclosures: Public Records Act, AS 40.25;
Regulations 2 AAC 96.100 – 96.900