



CITY OF STOCKTON
OFFICE OF THE CITY ATTORNEY

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December 20, 2007

VIA U.S. MAIL AND FACSIMILE: 209-468-6725

Dan Burch
Richard N. Buys, M.D.
San Joaquin County Emergency Medical Services
500 W. Hospital Road
Benton Hall, Room 47
French Camp, CA 95231

Re: CQI Information

This will respond to your December 12, 2007, letter to Stockton Fire Chief Ron Hittle.

Your letter principally alleges that the Stockton Fire Department (“SFD”) disclosed confidential public records to three local firefighters’ union chapters. As Fire Chief Hittle explained in his letter to you of December 14, 2007, SFD did not wrongfully disclose any documents to the union locals. Rather, Stockton Firefighters Local 456 served a California Public Records Act request to the City, seeking access to certain public documents pursuant to Government Code sections 6250, et seq. After review of the request, the City Attorney’s office directed that the requested documents be made available. In doing so, the City thus complied with the Public Records Act. Accordingly, we believe that the City acted properly when it provided those public records to Local 456. Consequently, your objections are not well founded.

To begin with, your letter contends that the public records the union locals received from the City disclose patient information in violation of the Health Insurance Portability and Accountability Act (“HIPAA”). Your letter, however, makes no attempt to substantiate that contention. In our view, no substantiation is possible, and no violation of HIPAA has occurred.

Additionally, your letter invokes an “EMS Agency CQI Confidentiality Agreement” and contends that the City’s disclosure of the “log” violates such an agreement. We believe such contention is also unfounded.

In 2006, after AMR took over exclusive emergency ambulance service for most of San Joaquin County and emergency medical dispatch service for part of the County, “unusual occurrences” involving AMR that threatened public safety began to occur. As a result, SFD, as one of the participants in the County’s emergency medical services (“EMS”) system filed “unusual occurrence reports” (“UOR’s”) with the County EMS Agency to report these problems. AMR thereafter responded with UOR’s of its own. The Agency responded by attempting to revise the UOR process that had been in place for years. In particular, the EMS Agency for the first time asserted that UOR’s were part of an EMS “continuous quality improvement” (“CQI”) program in the County, and therefore were confidential pursuant to California Evidence Code sections 1157 and 1157.7. At that time, SFD Fire Chief Hittle wrote to Mr. Burch, objecting to the new approach and explaining the errors in the EMS Agency’s reasoning. (See Hittle letter to Burch, 9/11/06 [copy enclosed].)

In his letter, Chief Hittle objected to the EMS Agency’s attempt to position UOR’s behind alleged CQI “confidentiality,” because SFD believed that the public safety system should be “open and accountable to the public.” Then Chief Hittle specifically pointed out that Evidence Code sections 1157 and 1157.7 could not possibly apply to pre-hospital EMS UOR’s. (See letter of 9/11/06, at 1.) Nonetheless, the EMS Agency continued to assert that: (a) that UOR’s were now part of the CQI process; and (b) that Evidence Code sections 1157 and 1157.7 somehow supported the EMS Agency attempts to shield nonconfidential information from the public.

First, as noted, the UOR process is not part of the CQI program in the County. The formal EMS Agency policies that govern the CQI program do not refer to UOR’s. (See EMS Policies Nos. 6620 & 6630.) The regulations that govern EMS CQI do not mention UOR’s (See 22 Cal. Code Regs. §§ 100400 et seq.) and the California EMS Authority CQI Guidelines do not mention them either. The EMS Agency’s purported reclassification in 2006 of the old UOR system as a CQI component was simply an improper attempt to transform public records into confidential records.

Second, even if the UOR process was part of a CQI program, the UOR’s would not be “confidential” records. As shown by your letter of December 12, 2007, the EMS Agency continues to erroneously rely on Evidence Code sections 1157 and 1157.7 as the course for the alleged confidentiality of the CQI process. Indeed, the CQI Confidentiality Agreement that you enclosed and asserted as the basis for the accusations in your December 12, 2007, letter depends entirely on the purported authority of those inapposite statutes. Neither of those statutes applies.

Section 1157, by its express terms, applies only to the proceedings and records of specific organized committees or peer review bodies.¹ The San Joaquin County EMS Agency CQI efforts do not fall within those Section 1157 categories.

¹ Section 1157 applies to “hospital peer review committee” proceedings and records. (See *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 6.) Section 1157 also may apply to peer review committees formed outside the hospital setting if they fall within the “peer review body” definition of Business & Professions Code § 805. (See Evid. Code § 1157(a).) The County EMS CQI process fits neither category—it is not a peer review process within a hospital, and

Perhaps recognizing the foregoing fact, the EMS Agency more recently has invoked Section 1157.7 as purported authority for its claim of CQI confidentiality. In particular, in San Joaquin County EMS Policy No. 6630 (effective date 10/1/06), the EMS Agency asserts that “[a]ll proceedings of the CQI Council are confidential and protected under Section 1157.7 of *[sic]* Evidence Code.” (EMS Policy No. 6630, at 2, § I.B.) Policy No. 6630 then purports to quote section 1157.7 verbatim. Unfortunately, Policy No. 6630 *misquotes* the statute, in a way that suggests the source of the EMS Agency’s apparent confusion.²

Section 1157.7, on its face, in fact extends the protections of section 1157.7 *only* to committees monitoring, evaluating and reporting on “specialty health services . . . provided by a [properly designated] general acute care hospital.” The statute therefore has no bearing on pre-hospital EMS dispatch, paramedic or ambulance service. Section 1157.7 is a very *limited* extension of the privilege created by section 1157.³ Section 1157.7 simply does *not* apply to the CQI process or to the UOR’s EMS providers submit to the County EMS Agency.

In sum, the UOR process never has been subject to the cloak of confidentiality the EMS Agency asserts, and the section 1157 and section 1157.7 bases for “confidentiality” that the County EMS Agency invokes in fact do not exist. Accordingly, there was no basis for the City of Stockton to refuse to disclose the public documents at issue to members of the public who properly requested them, pursuant to the Public Records Act.



RICHARD E. NOSKY, JR.
City Attorney

REN:cn

Enclosure

cc: J. Gordon Palmer, Jr.
Ron Hittle

nothing in the County CQI process brings it within the definition of section 805. (See Bus. & Prof. Code § 805(a)(1).)

² In its EMS Policy No. 6630, the EMS Agency misquoted section 1157.7 by omitting a comma after “specialty health care services” and by omitting a comma after “but not limited to.” As a result, EMS Policy No. 6630 makes the statute sound as if it applies to any “specialty health service.” It does not.

³ As you may know, evidentiary privileges, such as those created by sections 1157 and 1157.7, are always “strictly construed,” so that their application hews closely to the statutory language. Courts have no power to extend the reach of such privileges. (See, e.g., *Fox v. Kramer* (2000) 22 Cal.4th 531, 543-44 [construing section 1157] [citing and quoting *Trammel v. United States* (1980) 445 U.S. 40, 50].)



CITY OF STOCKTON

FIRE DEPARTMENT

CITY HALL • 425 N. El Dorado Street • Stockton, CA 95202-1997 • 209/937-8801 • Fax 209/937-8836
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September 11, 2006

Mr. Dan Burch, EMS Administrator
County of San Joaquin EMS Agency
P.O. Box 1020
Stockton, CA 95201

UNUSUAL OCCURRENCE CQI REPORTING

On behalf of the City of Stockton, and specifically the Stockton Fire Department (SFD), I am writing to address our organization's strong disagreement with your agency's recent decision to place all Unusual Occurrence (UO) Reports into the Continuous Quality Improvement (CQI) Process, thereby imposing a veil of confidentiality and hindering the public's ability to be informed about the true status of the Emergency Medical System (EMS) of San Joaquin County. We believe that the public safety system should be open and accountable to the public, and the public's continued access to the UO Reports is an important element of an open and accountable public safety system. Our position is not to attack AMR. Instead, our position is that **anyone** who serves the public should be accountable.

In addition, we believe that your agency's decision to place the UO Reports into the Continuous Quality Improvement (CQI) Process has not been approved by any proper authority, and specifically violates various state laws. These include:

- California Code of Regulation (CCR), Title 22, Article 4, Section 100404
- California Evidence Code Section 1157
- California Health and Safety Code, Division 2.5 (EMS Act)

Moreover, Evidence Code Section 1157, exempting organized medical committee proceedings and records, does not apply to UO Reports. Likewise, Evidence Code Section 1157.7 does not apply to UO Reports because it is limited to committees related to the specialty health services of certain designated general acute care hospitals.



2004
1999

Unusual Occurrence CQI Reporting

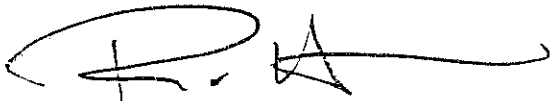
September 11, 2006

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Finally, nowhere in the EMS Act is the Local EMS Agency specifically given the unilateral power to adopt or implement an UO process – or any complaint process – that is confidential or protected under the California Evidence Code.

We request you change your agency's recent decision seeking to impose confidentiality and secrecy on the UO Reports by placing them in the CQI Process in order to comply with these applicable legal requirements.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Hittle', with a large, sweeping flourish extending to the right.

RONALD L. HITTLE
FIRE CHIEF

RH:kg

C: Ken Cohen, Director of Health Care Services
Dr. Buys, EMS Medical Director
J. Gordon Palmer, Palmer, Jr., City Manager

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