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July 27, 1993

Mr. Eric Wane Schroeder
2199 Kamehameha Highway
Honolulu, Hawaii 96819

Dear Mr. Schroeder:

Re: Right to Inspect Your Medical File Possessed by State
Department of Public Safety

This is in reply to your letter to the Office of Information Practices ("OIP") dated May 10, 1993, requesting an advisory opinion concerning the above-referenced matter.

ISSUES PRESENTED

I. Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA), you must be permitted to inspect and copy your medical records which are maintained by the medical unit of the Oahu Community Correctional Facility ("OCCC") upon request.

II. Whether, the State Department of Public Safety's ("PSD") policy, COR.10E.07, conflicts with your rights under the UIPA, and if so, whether the provisions of the UIPA supersede this PSD administrative policy.

III. Whether, under the UIPA, the PSD may require you to submit your request to inspect and copy your medical records in writing, and whether the PSD may require you to state the reason why you are seeking access to these records in your request.

IV. Whether, under the UIPA, the PSD may require you to indicate the specific government record that you desire to inspect or copy, or whether your request to inspect and copy your entire medical file is sufficient.

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BRIEF ANSWER

I. Yes. With one exception, under section 622-57, Hawaii Revised Statutes, a "health care provider" must provide a patient with copies of the patient's medical records upon request. We conclude that the medical unit of OCCC is a health care provider. Under section 92F-12(b)(2), Hawaii Revised Statutes, an agency must disclose records which under State law are authorized to be disclosed to the person requesting access.

II. Yes. The PSD's policy regarding the disclosure of inmate medical records imposes restrictions that go beyond those set forth in section 622-57, Hawaii Revised Statutes. Accordingly, to the extent that the PSD's policy imposes restrictions that do not appear in section 622-57, Hawaii Revised Statutes, those restrictions are invalid.

III. No. The UIPA does not require a person to make a written request to inspect and copy government records. OIP rules adopted after public hearings will describe the circumstances under which UIPA requests must be submitted to an agency in writing. Additionally, under the UIPA, the reason why a person seeks access to government records is generally irrelevant to the merits of the request. Thus, agencies generally may not require persons to state the reason why the person is seeking access to government records.

IV. No. Under the UIPA, a requester need only furnish an agency with a reasonable description of the record or records the person seeks. A request is reasonable if it enables an agency employee familiar with the subject area to locate the record or records with a reasonable amount of effort.

FACTS

In your letter dated May 10, 1993 to the OIP, you state that you made at least two requests to the PSD to inspect and copy medical files and records in your name maintained by the OCCC. In response to these requests, you were instructed that inmates' access to their medical records is governed by PSD policy COR.10E.07, effective February 7, 1993, which provides:

- .1 Copies of the medical record shall be made available upon receipt of a written request from the inmate to the Custodian of records. The written request shall include the inmate's full

name, social security number, date of birth, the reason the inmate has need for the information and specifically what is being requested.

- .2 Upon receipt of a written request for information from an inmate the Custodian of Records shall screen the record for sensitive information and, if appropriate, shall request that the attending physician or staff psychiatrist make a determination if:
 - a. The information being requested is detrimental to the health of the inmate.
 - b. The information is irrelevant to the needs of the inmate.
 - c. The information could reasonably be expected to cause danger to the life or safety of any individual or the safety of the institution.

In your letter to the OIP, you requested the OIP to advise you concerning several questions, all of which relate to whether the above-quoted policy conflicts with your rights under the UIPA, and if so, whether the UIPA supersedes this policy.

DISCUSSION

The UIPA requires each agency to make available for inspection and copying during regular business hours, any provision to the contrary notwithstanding, "[g]overnment records which, pursuant to a federal law or a statute of this State, are expressly authorized to be disclosed to the person requesting access." Haw. Rev. Stat. § 92F-12(b)(2) (Supp. 1992).

Of relevance to this UIPA provision, the Legislature has adopted a specific State statute concerning a patient's right to inspect and copy the patient's medical records:

§622-57 Availability of medical records. If a patient of a health care provider as defined in section 671-1, requests copies of his or her medical records, the copies shall be made available to the patient unless in the opinion of the health care provider it would be detrimental to the health of the patient to obtain the

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records. If the health care provider is of the opinion that release of the records to the patient would be detrimental to the health of the patient, the health care provider shall advise the patient that copies of the records will be made available to the patient's attorney upon presentation of a proper authorization signed by the patient.

If an attorney for a patient asks a health care provider for copies of the patient's medical records and presents a proper authorization from the patient for the release of the information, complete and accurate copies of the records shall be given to the attorney within a reasonable time not to exceed ten working days.

Reasonable costs incurred by a health care provider in making copies of medical records shall be borne by the requesting person.

Haw. Rev. Stat. § 622-57 (1985) (emphases added).

The term "health care provider" is defined in section 671-1(1), Hawaii Revised Statutes, to include "a health care facility as defined in section 323D-2." Section 323D-2, Hawaii Revised Statutes, defines the phrase "health care facility" in pertinent part as follows:

"Health care facility" . . . includes any program, institution, place, building, or agency, or portion thereof, private or public, other than federal facilities or services, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventative care to any person or persons.

Haw. Rev. Stat. § 323D-2 (Supp. 1992) (emphases added).

Based upon the expansive definition of the term "health care facility" above, we conclude that the medical unit of a State correctional facility is a "health care provider" within the

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meaning of section 622-57, Hawaii Revised Statutes. We also conclude that under section 622-57, Hawaii Revised Statutes, the medical unit must provide you with copies of your medical records unless it determines that disclosure of the same will be detrimental to your health. Even then, this statute requires disclosure of your medical records to your attorney, if the attorney submits a proper authorization from you.

We note that the PSD's policy appears to allow withholding of inmate medical records from the inmates to whom they pertain if disclosure is "irrelevant to the needs of the inmate," or if disclosure could reasonably be expected to endanger the life or safety of any individual or the safety of the institution. To the extent that the PSD intends its policy to authorize the withholding under either of these two circumstances, we believe that the policy conflicts with sections 622-57 and 92F-12(b)(2), Hawaii Revised Statutes, and is therefore void.

It is axiomatic that an agency administrative rule or policy that restricts or conflicts with a legislative enactment is invalid. Agsalud v. Blalack, 67 Haw. 588, 591 (1985); U.S. Nat. Trans. Safety Bd, 888 F.2d 767 (11th Cir. 1989); Calif. Ass'n of Psychology Providers v. Bank, 793 P.2d 2 (Cal. 1990). It is also a principle of statutory construction that with the Legislature's express mention of one thing, the exclusion of others is implied, in the absence of a clear legislative intent to the contrary. 2A N. Singer, Sutherland Statutory Construction § 47.23 (Sands 5th ed. rev. 1992). Because section 622-57, Hawaii Revised Statutes, creates only one exception to an individual's right to inspect the individual's medical records (that being a determination by the health care provider that disclosure would be detrimental to the individual's health), the OIP must infer that the Legislature intended no other exceptions to the right conferred by this statute.

We also note that under part III of the UIPA, the following exemption provides that an agency is not required to disclose personal records to the individual to whom they pertain when the records are:

- (1) Maintained by an agency that performs as its or as a principal function any activity pertaining to the prevention, control, or reduction of crime, and which consist of:

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. . . .

- (B) Reports prepared or compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.

Haw. Rev. Stat. § 92F-22(1)(B) (Act 250, 1993 Haw. Sess. Laws ___).

Even assuming that medical records compiled by the medical unit of OCCC fit within the language of this exemption,¹ the Legislature intended the UIPA's provisions and exemptions to yield or defer to specific State statutes which either require or restrict the disclosure of government records.

Thus, the UIPA provides that "[a]ny provision to the contrary notwithstanding, each agency shall also disclose . . . [g]overnment records which, pursuant to federal law or a statute of this State, are expressly authorized to be disclosed to the person requesting access." Haw. Rev. Stat. § 92F-12(b)(2) (Supp. 1992). See also OIP Op. Ltr. No. 92-22 at 9 (Nov. 18, 1992).² Additionally, it is a cardinal rule of statutory construction that where a plainly irreconcilable conflict exists between a law of general application and a law of

¹Section 92F-22(1), Hawaii Revised Statutes, is nearly identical to exemption (J)(2) of the Federal Privacy Act, 5 U.S.C. § 552a(J)(2) (1988). The federal courts have construed the phrase "an agency . . . which performs as its principal function any activity pertaining to the enforcement of criminal laws," to include the Federal Bureau of Prisons. Duffin v. Carlson, 636 F.2d 709, 711 (D.C. Cir. 1980).

²As to the records described in section 92F-12, Hawaii Revised Statutes, the Legislature stated that "this list merely addresses some particular cases by unambiguously requiring disclosure." H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988); S. Conf. Comm. Rep. No. 235, Haw. S.J. 689, 690 (1988).

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specific application, the specific authority will be favored. State v. Wallace, 71 Haw. 541 (1990).

With respect to your request that the OIP address that portion of the PSD policy which requires an inmate to state the reason why the inmate "has a need for" the inmate's medical records, in several opinion letters, the OIP has observed that under the UIPA, a requester's reason or purpose in requesting access is generally irrelevant to the merits of the person's request. See OIP Op. Ltr. No. 90-29 (Oct. 5, 1990). The only relevant considerations are whether the agency maintains records responsive to a request, and whether they fall within one of the exceptions in section 92F-13, Hawaii Revised Statutes, or exemptions in section 92F-22, Hawaii Revised Statutes. As was stated by the U.S. Supreme Court concerning an analogous law, the federal Freedom of Information Act, 5 U.S.C. § 552 (1988) ("FOIA"), the purpose for which records are sought by a person "has no bearing" upon the merits of the request. Dep't of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 771 (1989).

With respect to your question concerning whether, under the UIPA, you must submit a request for government records to an agency in writing, the UIPA does not expressly require individuals to make their requests in writing. Such a requirement did exist in the bill which created the UIPA, but was deleted from the final version of the bill. See H.B. No. 2002, § 1, 14th Leg. (1988).

Rules to be adopted by the OIP under section 92F-42(12), Hawaii Revised Statutes, after public hearings, will set forth agency procedures for processing record requests and the circumstances under which requests must be made in writing. These rules will also set forth provisions which address the circumstances under which an agency may require verification of a requester's identity. The OIP recommends, however, that individuals submit requests under the UIPA to an agency in writing, particularly after an oral request has been denied. Such a practice provides individuals with evidence that they have made a request, in case they elect to pursue the judicial remedies provided in section 92F-15, Hawaii Revised Statutes.

In reply to your question concerning whether the PSD may require you to specify the particular record you wish to inspect or copy, it is the opinion of the OIP that a UIPA requester need only furnish the agency with a reasonable description of the

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record, or records, the individual seeks. Court decisions under the FOIA, and its legislative history indicate that a request is reasonable if it enables a professional agency employee familiar with the subject area to locate the record with a reasonable amount of effort. Marks v. Dep't of Justice, 578 F.2d 261, 263 (9th Cir. 1978); Brumley v. Dep't of Labor, 767 F.2d 444, 445 (8th Cir. 1985). We believe that your request for access to your medical file at OCC medical unit reasonably describes the records to which you sought access.

CONCLUSION

Under section 92F-12(b)(2), Hawaii Revised Statutes, each agency must make available for inspection and copying "[a]ny provision to the contrary notwithstanding, . . . [g]overnment records which, pursuant to a federal law or a statute of this State, are expressly authorized to be disclosed to the person requesting access." With one very limited exception, under section 622-57, Hawaii Revised Statutes, a "health care provider" is required to make copies of a patient's medical records available to the patient upon request.

We conclude that the medical unit of a State correctional facility is a health care provider, since: (1) the statutory definition of this term includes a "health care facility," and (2) the term "health care facility" includes any institution, place, or building, or portion thereof, private or public, used, operated, or designed to provide medical treatment. Haw. Rev. Stat. § 323D-2 (1985).

We also conclude that the PSD's administrative policy is invalid insofar as it imposes restrictions upon your right to inspect and copy your medical records, that go beyond the one restriction set forth in section 622-57, Hawaii Revised Statutes, that permits such records to be withheld if in the opinion of the health care provider the disclosure of such records would be detrimental to the patient's health.

Based upon previous OIP advisory opinions, we also believe that the PSD may not, under the UIPA, require an individual to state the reason why the individual is seeking access to government records. A requester's purpose in seeking access to government records is generally irrelevant to the merits of the request.

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Finally, rules to be adopted by the OIP, after public hearings, will prescribe the circumstances under which UIPA requests must be submitted to an agency in writing. However, the UIPA does not expressly impose such requirement.

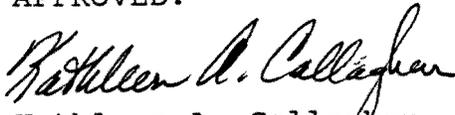
If you should have any questions concerning this opinion, please contact me at 586-1400.

Very truly yours,



Hugh R. Jones
Staff Attorney

APPROVED:



Kathleen A. Callaghan
Director

HRJ:sc

c: Mr. Guy Hall
Administrator, OCCC

