



NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE
Thomas Farley, M.D., M.P.H.
Commissioner

Homer Venters, M.D., M.S.
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September 20, 2013

Cathy Potler, Esq.
Executive Director
NYC Board of Correction
51 Chambers Street, Room 923
New York, NY 10007

Dear Ms. Potler:

Pursuant to Section 3-13 of the Board of Correction Health Care Minimum Standards ("the Minimum Standards"), the New York City Department of Health and Mental Hygiene ("DOHMH") requests a continuing variance from Section 3-08(c)(3) of the Minimum Standards, which prohibits, inter alia, health care personnel from reporting specific diagnoses to a chief correctional officer when reporting inmate health information necessary to protect the health and safety of the inmate or others.

Specifically, the DOHMH requests a variance from section 3-08(c)(3) to allow for health care personnel, when reporting to the New York City Department of Correction ("DOC") on injuries sustained by inmates while in correctional custody, to provide specific diagnoses related to the injury. The reporting of diagnoses unrelated to an injury would remain prohibited.

Reason for the Request

During the normal course of business, correctional and health care personnel are required to complete injury-to-inmate reports whenever an inmate sustains an injury, be it from an altercation with another inmate, during a use of force or simply from an accident in the facility. The Minimum Standards, as they currently stand, may prevent health care personnel from communicating the full extent of an inmate's injuries to the DOC by prohibiting the disclosure of specific diagnoses. For example, during an altercation between inmates or between an inmate and staff, if an inmate were to suffer a punctured eardrum, that injury would likely be described as the inmate just having sustained trauma and pain to his ear and/or head, with the existing BOC standard preventing communication that the eardrum was actually punctured. Similarly, if an

inmate's arm were broken when a gate was closed on it, the full extent of the inmate's injuries—and the true nature of the accident—might be lost if it were not reported that the inmate actually sustained a fracture. By being able to paint a more accurate and detailed picture of inmate injuries, health care staff will be assisting DOC in better understanding, investigating and addressing incidents that result in injury. Corrective actions taken in response to the incidents may ultimately result in helping to protect the health and safety of inmates and others.

In addition, it should be noted that HIPAA regulations specifically permit disclosure of this type of patient information where, among other things, it is necessary for the “administration and maintenance of the safety, security and good order of the correctional institution.” 45 CFR 164.512(k)(5). We believe that communicating injury-related diagnoses to DOC will further those objectives.

If the variance is granted, the current injury-to-inmate reporting form will be revised to put health care staff on notice that diagnoses unrelated to an injury may not be included in the report.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Venters', is placed within a light gray rectangular box.

Homer Venters, M.D., M.S.
Assistant Commissioner

c: Patrick Alberts, Esq.
George Axelrod, Esq.