

Date February 21, 2012

Item No. 4  
File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

### COMPLIANCE AND AMENDMENTS COMMITTEE AGENDA PACKET CONTENTS LIST

#### ITEMS

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Order of Determination  
Correspondence

#### OTHER

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Completed by: Andrea Ausberry Date February 16, 2012  
Completed by: \_\_\_\_\_ Date \_\_\_\_\_

\*An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document is in the file.

**SUNSHINE ORDINANCE  
TASK FORCE**



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**ORDER OF DETERMINATION  
December 5, 2011**

**DATE THE DECISION ISSUED**  
November 29, 2011

*JASON GRANT GARZA v DEPARTMENT OF PUBLIC HEALTH (CASE NO.11081)*

**FACTS OF THE CASE**

Jason Grant Garza ("Complainant") alleges that the San Francisco Department of Public Health ("DPH") violated the Sunshine Ordinance by failing to provide documents responsive to his Immediate Disclosure Request dated October 4, 2011.

**COMPLAINT FILED**

On October 6, 2011, Mr. Garza filed his complaint against DPH.

**HEARING ON THE COMPLAINT**

On November 29, 2011, Complainant presented his case to the Task Force. Eileen Shields, DPH Public Information Officer, and Chona Peralta, DPH Compliance Manager, represented DPH.

Mr. Garza told the Task Force his case is about a request for documents, emails, correspondence, logs, and notes regarding denial of services at the Tom Waddell Health Center clinic on two occasions.

He said he made an Immediate Disclosure Request for the following from DPH:

- (1) A copy of his medical records from his visits to the clinic in June 2010 and August 2011;
- (2) A copy of his signed Health Insurance Portability and Accountability Act ("HIPPA") form releasing his clinic health care information from San Francisco General to the Haight Ashbury Free Clinic;
- (3) Documentation provided to state and federal regulatory agencies noticing an investigation and finding of a HIPPA violation against San Francisco General;
- (4) Information on how to file a complaint against clinic security staff, and
- (5) All notes and reports relating to the denials that the clinic sent to Chona Peralta to "create a false misleading representation."

Mr. Garza said he did not receive the requested information. He said he believes he is not

required to sign a HIPPA release form to receive copies of his own medical records because the HIPPA law was meant to allow an individual to control review of his own records by third parties rather than restrict an individual's access to his or her own records. In addition, he said, the Task Force concluded in previous cases that he was not required to sign the HIPPA release to receive his own records.

Eileen Shields, DPH Public Information Officer, told the Task Force the first three of five parts of the request are the same as those in a case that was previously heard where no Sunshine Ordinance violation was found. She said DPH requires the signature of the client to release medical records pursuant to HIPPA requirements. She said Mr. Garza refuses to sign the release.

Chona Peralta, DPH Compliance Manager, said DPH would release the medical records requested in part one when Mr. Garza signed a release pursuant to HIPPA requirements. She said she received emails from Mr. Garza regarding the denial of services at the clinic and then explained the situation to the medical director of the clinic. The medical director, she said, conducted an investigation and found that Mr. Garza was offered services. During the first clinic visit, she said, he was referred to a social worker to discuss applying for benefits. Ms. Peralta said when the social worker arrived, Mr. Garza had left. On the second occasion, Mr. Garza and his companion were escorted out of the clinic by security personnel for not complying with staff's request to stop videotaping in the clinic. Mr. Garza, she said, was offered a chance to speak to a social worker but he failed to attend the appointment.

On questioning, Ms. Shields said Mr. Garza was sent the signed HIPPA release form requested in part two on September 30. Mr. Garza said he had received a release form signed in 2006 but no release forms signed in 2010 and 2011. Ms. Shields admitted DPH has only the form from 2006.

Ms. Shields said the documents regarding the HIPPA notice of investigation and violation requested in part three were previously provided to Mr. Garza after the hearing in August. She said DPH did not respond to part four of the request asking for information on filing a complaint against clinic security personnel. She told the Task Force security was provided by the Sheriff's Department, and Mr. Garza would need to contact that department to file a complaint against a deputy. She said there were no documents responsive to part five of the request.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the statements of complainant and respondent and the email exchanges provided as supporting documentation, the Task Force concluded additional research was required regarding the interpretation of HIPPA release requirements to an individual's own medical records based on state and local open government laws. The Task Force was concerned about the medical provider's right to adequately document release of protected public information.

The Task Force further concluded that parts two and five of the request had been satisfied. Both parties agreed DPH released the 2006 HIPPA release form requested in part two, and

DPH admitted that form was the only one in its possession. Respondents stated no documents were responsive to part five of the request.

Based on respondents' own admissions, the Task Force found that DPH failed to provide the records and information requested in parts three and four. Although respondents claimed DPH previously provided Mr. Garza with the same documents requested in part three, the Task Force concluded DPH was required to provide the documents as requested under this new and separate request. In addition, DPH failed to direct Mr. Garza to the Sheriff's Department for information on filing a complaint against a deputy as requested in part five.

### DECISION AND ORDER OF DETERMINATION

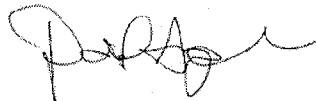
The Task Force finds that DPH violated Sunshine Ordinance Sections 67.25(a) for failure to respond to an Immediate Disclosure request in a timely manner and 67.27 for not providing justification for withholding the information by not responding to parts three and four of Complainant's public information request. The Task Force further finds that DPH violated Sunshine Ordinance Section 67.21(c) for failing to assist the requestor by not directing Complainant to the Sheriff's department for further assistance.

DPH shall release the records and information requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday, December 13, at 4:00 p.m. in Room 406 at City Hall. The Committee will review compliance with this Order. In addition, the Committee will conduct research on HIPPA requirements to resolve ongoing issues related to part one of the request for medical records. An expert presentation may be conducted at the December 13, 2011 meeting or at a future meeting as agreed upon by the Committee.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011, by the following vote: (Johnson/Washburn)  
Ayes: Snyder, Knee, Washburn, Wolfe, West, Johnson  
Excused: Costa  
Absent: Cauthen, Manneh, Chan



Hope Johnson, Chair  
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1\*  
Sunshine Ordinance Task Force

cc: Jason Grant Garza, Complainant  
Eileen Shields, Respondent  
Chona Peralta, Respondent  
Jerry Threet, Deputy City Attorney

\*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.

Mr. Garza,

The form to request release of your medical records is included in the attachments which you have received and included below.

You may complete the form entitled "Authorization to Disclose Health Information" and bring it with you to our meeting.


Please do let me know which of the times work for you to meet with us.

Joseph L. Pace, MD  
Director of Primary Care Homeless Services  
Community Oriented Primary Care  
San Francisco Department of Public Health

This message and any attachments are solely for the intended recipient and may contain confidential or privileged information. If you are not the intended recipient, any disclosure, copying, use or distribution of the information included in this message and any attachments is prohibited. If you have received this communication in error, please notify me by reply e-mail immediately and permanently delete this message and any attachments. Thank you.

(See attached file: HIPAAPrivacy-AuthorizationPol04200B3.pdf)(See attached file: Authorization to Disclose Health Information.pdf)(See attached file: cfr164.524.jpg)



Re: SOTF hearing reminder: #11081\_Jason Grant Garza v Public Health   
Eileen Shields to: SOTF

12/12/2011 02:18 PM

Dear SOTF:

The San Francisco Department of Public Health, Public Information Office, has completed both of the outstanding issues on this complaint as directed by the SOTF. Your office was cc'd on our response. I believe we have responded thoroughly to his inquiry on this matter.

I will be attending a training session at San Francisco General Hospital on December 13th from 1 p.m. - 5 p.m. and will be unable to attend this hearing. I believe the SOTF has all of the information you need to ensure that we have followed up on our obligations to Mr. Garza.

Regarding the HIPAA issue, my understanding was that Mr. Wolfe was going to seek an expert from another agency to come and present testimony on this subject. Inasmuch as I did not see this item on the agenda, I am assuming it will not be addressed at this hearing. If this assumption is incorrect and the SOTF committee hears this item, I submit the following as the Department's statement.

The Sunshine Ordinance and Public Records Act are based on the principle that records in the possession of the government generally belong to the people. But not all records possessed by the government are public. Patient-protected health information is not a public record. Here, the government is a health provider--including a provider of care for those who have been diagnosed as mentally ill, HIV-positive or in need of substance use treatment--such treatment records clearly do not belong to the public.

The medical records of private and public medical providers are subject to laws on allowable access. Medical records and health information are protected by the Constitutional and statutory rights to privacy. Only the judiciary may determine the appropriate degree of access permissible under the specific facts presented. And the courts must apply the stringent requirements set forth in federal and state law and regulation. Specific state laws apply where a patient requests a copy of his file. The California Health and Safety Code Sections 123110 *et. seq.* governs a patient's request for his or her medical records. *See also* 45 C.F.R. Section 164.524(b) and (c).

These California standards for responding to a patient's request for access are more strict than those in the Health Insurance Portability and Accountability Act (HIPAA) and therefore apply here. A patient's access to mental health treatment information may be limited under certain circumstances. But again, the courts decides the issue. In sum, patient medical information is not public. If an individual challenges the breadth of information released his or her recourse lies with the judicial system. Enforcement also lies within the exclusive jurisdiction of the courts.





**Sunshine Complaints: #11081 and #11070 and accommodations** 

Eileen Shields to: SOTF

11/16/2011 02:54 PM

Cc: Barbara.Garcia, Chona Peralta, Joseph.Pace

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History: This message has been replied to and forwarded.

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Dear Sunshine Task Force:

I note with interest Mr. Jason Grant Garza's most recent complaint against the Department of Public Health. I refer you to complaints 11081 and 11070.

If you read through Mr. Garza's complaints, you will note that they are identical, except for the dates of his submitting the complaints. The only difference I can surmise is his inclusion of Dr. Joseph Pace in the complaint.

Complaint 11070 has already been scheduled and staff already attended a hearing on October 25th. The item was continued and has yet to be heard.

Since October 25th, Mr. Garza's activity and behavior towards individuals in this department has escalated from telephone harassment to personal visitations and demands (e.g., he called 911 on 11/14 asking that the Police arrest DPH staff), we are asking for the following accommodations:

1. That the SOTF combine complaints 11081 and 11070 into a single agenda item
2. That the SOTF provide security to any DPH staff that must attend these meetings that are scheduled until 11 p.m. Please contact me for details.
3. That the SOTF provide DPH staff with remote audio capability to monitor the hearings so that we can remain in our offices until the item is ready for hearing

Finally, it is the position of this Department, that we have provided Mr. Garza with all of the documents he has requested, including his medical records that are not subject to Sunshine but have made available to him and are ready for pick up. The records still await his attention.