

The City Attorney
City of San Diego
MEMORANDUM
236-6220

DATE: July 16, 1987

TO: Jack Doherty, Sergeant Medical Assistants
Unit

FROM: City Attorney

SUBJECT: Confidentiality of Medical Records Act

In your memorandum dated March 26, 1987 you asked a number of questions regarding the application of the Confidentiality of Medical Records Act (hereinafter the Act), California Civil Code section 56 et seq., and whether the Police Department forms regarding occupational injuries, sick leave requests as well as procedures and Instructions appropriately reflect the requirements of the Act. In this reply, we will restate your questions and answer each seriatim.

1. Do the authorizations contained on the attached forms meet the requirements of the Act? Is an authorization under the act required on the forms dealing with occupational injuries (RM-1531-A and CS-1425B) or the sick leave request (CS14-25C)?

You attached a Request for Leave of Absence, Form CS-14-25C, an Employee-Employer Report of Occupational Injury or Illness, Form RM-1531-A (State Form 5020), and a Request for Leave of Absence

for Occupational Injury or Illness, Form CS-14-25B, which I attach hereto as Attachments A, B, and C respectively.

First, as to the Request for Leave of Absence form, Attachment A, the Act does apply and an authorization for release of medical information to the employer is required. The following is a list of requirements of the Act that are not met by the form as it is now:

The signature line for the requester should serve no other purpose than to execute the authorization. Civil Code section 56.11(b).

The specific uses of and limitations on the types of medical information to be disclosed should be stated.

Civil Code section 56.11(d). If the only information to be disclosed by the treating physician is in the Doctor's Statement to be filled out as part of the form, it should be referred to within the authorization statement. If records or other information is to be released, that should also be specified.

The authorization should state the names or functions of the persons or entities authorized to receive the medical information. Civil Code section 56.11(f). The current authorization implies but does not directly state that it would be released to "my employer." Further, "my employer" may not be sufficiently specific.

The authorization should state the specific uses of and limitations on the use of the medical information by the persons or entities authorized to receive the medical information. Civil Code section 56.11(g). A statement that the information is to be used to corroborate the employee's statement of reasons for taking a leave of absence, worker's compensation claims, or other personnel functions should suffice. Leave a space where the employee can state objections, conditions and limitations on the use of the information or advise the employee that he/she has a right to do so.

The authorization should state the specific date after which the provider of health care is no longer authorized to disclose the medical information. Civil Code section 56.11(h).

The authorization should advise the person signing it of the right to receive a copy of the authorization. Civil

Code section 56.11(i). Providing forms that have a pressure - sensitive duplicate to be kept by the requestor would fulfill this requirement.

The Employee-Employer Report of Occupational Injury or Illness form, Attachment B, and the Request for Leave of Absence for Occupational Injury or Illness Form, Attachment C, contain authorizations for release of medical information and records acquired, maintained or disclosed for purposes of investigation of on-the-job accident or illness. As such, they are not subject to the limitations of the Act. Civil Code sections 56.30(f), 56.30(h) and 56.30(k).

You further included two versions of an Authorization to Obtain Information form, attached hereto as Attachments D and E. Attachment D fails to fulfill all the requirements of the Act by omitting the specific uses and limitations on the use of medical information by the persons and entities authorized to receive medical information which is required under Civil Code section 56.11(g). The form marked as Attachment E meets all the requirements of the Act.

Finally, you included a form entitled Consent to Release Confidential Records, attached hereto as Attachment F. The following requirements under the Act are not met by this form:

The name or functions of the persons or entities authorized to receive the medical information are not included. Civil Code section 56.11(f).

The specific uses and limitations on the use of medical information by the persons or entities authorized to receive medical information need to be included. Civil Code section 56.11(g).

An advisement to a person signing the authorization of the right to receive a copy of that authorization needs to be included. Civil Code section 56.11(i).

2. Do the procedures established in Department Instruction 1.48 (Division and Personnel Files) and Personnel Regulation and Index Code J-4 qualify as "appropriate procedures" under Civil Code section 56.20(a)?

Department Instruction 1.48, Divisional and Personnel Files, needs no revision in order to meet the requirement under the Act.

Personnel Regulation J-4, Disclosure of Personal Information, needs revision in order to comply with the requirements of the Act. Medical information in an employee's records which may be accessed and disclosed upon request "to other city departments with a legitimate business need for the information" is too vague and general. Sections II, C 1 and II, D 1 need revision to "insure the confidentiality and protection from unauthorized use and disclosure of medical information" as required under Civil Code section 56.20(a). We recommend amending to add a procedure for screening requests and a warning against further dissemination or disclosure.

3. Is the existing procedure for psychological evaluations pursuant to Department Instruction 1.5, sections V, B5 and V, B6 in conformance with the Act? What "use" limitations does the Department face upon receipt of the psychological reports? The procedure does not provide that the psychological reports themselves be disclosed to the Department. It states instead that, where a psychiatric evaluation is requested and performed, "the officer shall not return to full field duties until completion of the examination and a release has been given by the psychiatrist." According to the procedure in section V, B5, the services of "the psychiatrist will be furnished at City expense and arrangements for the service will be made with the Department Personnel Division." Pursuant to Civil Code section 56.10(c) 8b, when services of the psychiatrist are conducted at the specific prior request and expense of the Department, the psychiatrist may disclose to the Department without first obtaining an authorization "that part of the information which describes functional limitations of the patient that may entitle the

patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided no statement of medical cause is included in the information disclosed." Therefore, the psychiatrist may report to the Department his or her conclusion regarding the officer's ability and fitness to return to full field duties after being required to be examined by a City psychiatrist without full authorization under the Act.

4. Can the Department "use" a statement made to a doctor treating an employee for an occupational injury in a disciplinary or criminal proceeding if the statement evidences an intent to defraud the City? For instance, does the Act apply to such a case?

Because the information has been acquired, maintained and disclosed for purposes of investigation of an occupational

illness or injury for Worker's Compensation proceedings, they are not covered by the Act. Civil Code sections 56.30(f), 56.30(h) and 56.30(k).

5. Can a "Doctor's Statement" as contained on the Request for Leave of Absence Forms CS-14-25C or CS-14-25B properly be maintained in a payroll file as opposed to a file maintained in the Personnel Division?

The authorization on the forms, Attachments A and C, state that the person or entity to receive the medical information is "my employer." "My employer" is The City of San Diego and, therefore, it is immaterial whether the information is maintained in a personnel or payroll file. In either case, the City is authorized to have and to maintain the medical information in a payroll file for the purpose of determining eligibility for paid and unpaid leave of absence for medical reasons. Civil Code section 56.20(c)(3).

If the Request for Leave of Absence form is amended so that the authorization is more explicit as to the person or entity entitled to receive medical information, this issue should be considered. Any amendment should specifically include disclosure to supervisors, the personnel division and payroll offices of the City for personnel and payroll purposes.

6. Should the Department adopt a statement of "Limitation of Authorization to Use" medical information pursuant to Civil Code section 56.23?

The Act requires that when the Department discloses medical information pursuant to an authorization required by section 56.20, the Department shall communicate to the person or entity to which it discloses the medical information any limitations in the authorization regarding the use of the medical information.

Civil Code section 56.20. It thus follows that the Department should adopt a statement of limitation of authorization to use "medical information" and such statement should accompany any disclosure of medical information that the Department makes.

7. May the Department "use" information in medical reports obtained in connection with compensation or sick leave claims?

- (a) to take disciplinary action against an employee (e.g., termination for physical or mental incapacity pursuant to Civil Service Rule XI, section 3(c).); or
- (b) to transfer or deny a transfer of the employee.

The Department may use or disclose medical information which it possesses without full authorization if disclosure is compelled by judicial or administrative process, if it is requested by subpoena, Request for Production of Documents, or other order of a court or administrative judge. Civil Code sections 56.20(c)(1) and 56.20(c)(2). Under the latter section, the Department may use that relevant part of the medical information which it possess in a law suit, arbitration, grievance, claim or challenge if (1) both the employee and the Department are parties to the proceeding, and (2) the employee has placed in issue his or her medical history, mental or physical condition, or treatment. The information may be released or disclosed in a retirement hearing, grievance procedure, disciplinary action or any other type of hearing which is focused upon the employee's conduct or claim involving the medical condition of the employee. The disclosure then may be made in connection with that proceeding only.

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By

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Attachments