



C A L I F O R N I A D E P A R T M E N T O F
Mental Health



1600 Ninth Street, Room 250
Sacramento, CA 95814

August 27, 2009

Ms. Kimberly Kirchmeyer, Deputy Director
The Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

**SUBJECT: The Union of American Physicians and Dentists (UAPD) Complaint Filed
Against Mohamed El-Sabaawi**

Dear Ms. Kirchmeyer,

The California Department of Mental Health ("Department") is responding to the above-captioned complaint. The Department is very concerned about this issue as it relates to our compliance with the United States District Court for the Central District of California's ("Court") order in the Civil Rights for Institutional Persons Act (CRIPA) litigation, and could impact the Department's ongoing efforts to enhance the quality of treatment and care of the individual patients within our facilities. The following link to the Department's website provides the background and current status of the CRIPA litigation:

[http://www.dmh.ca.gov/Services and Programs/State Hospitals/CRIPA/default.asp](http://www.dmh.ca.gov/Services_and_Programs/State_Hospitals/CRIPA/default.asp)

Mohamed El-Sabaawi (Court Monitor) was appointed by the Court as a court monitor to assess, review, independently report findings, and make recommendations, where appropriate, with regard to the implementation of the Enhancement Plan at the Department's state hospitals. The Enhancement Plan is part of the Consent Judgment between the Department and the United States Department of Justice, approved by the court, and resulting from an investigation under CRIPA.

Neither the Consent Judgment nor the Court directed that the Court Monitor engage in the practice of medicine or that he holds a California medical license. The Court Monitor's scope of work is set forth in his contract with the Department. That role is consistent with his role enumerated in the Consent Judgment, and does not include the diagnosis, treatment, or medical care of any persons in the state hospitals.

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The Department has no information that the Court Monitor had deviated from his Court appointed role, or engaged in the practice of medicine, as such practice is defined in the Business and Professions Code Section 2050, et seq. In fact, State Attorney General's Opinion 10 Op.Atty.Gen. 121 opined that the administration, promotion, and development of public health programs and consultation in connection therewith do not require a medical license in California. The Court Monitor's role as enumerated in the Consent Judgment and in his contract with the Department to assess, review, independently report findings, and make recommendations, where appropriate is in line with the administration, promotion and development of the Department's public mental health programs covered by the Attorney General's Opinion.

It is the responsibility of the Department and its Medical Directors, not the Court Monitor, to ensure that appropriate medical care is provided. All level-of-care services for individuals in the Department's facilities are provided and supervised by the Department's licensed clinical staff. The Court Monitor's role is only to independently review the Department's implementation of the Enhancement Plan and make recommendations related only to the effective implementation of the Plan. As such, the role of the Court Monitor is similar to the reviews conducted by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO). It is not the practice of medicine.

It is important to note that the Department's facilities, covered under the Consent Judgment, are accredited by JCAHO, and have met all compliance standards to receive accreditation, including providing appropriate medical care by licensed staff.

Thank you for your consideration of our response. We stand ready to answer any questions you may have, or to provide any additional requested information or documentation in order to reach the proper decision regarding the complaint.

Respectfully,



CYNTHIA A. RADAUSKY
Deputy Director

cc: Renee Threadgill, Chief of Enforcement
The Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815