

July 31, 2013

Kamala D. Harris, Attorney General  
California Department of Justice  
455 Golden Gate, Suite 11000  
San Francisco, CA 94102-7004

**RE: WHISTLEBLOWER COMPLAINT AGAINST KAISER PERMANENTE**

Dear Attorney General Harris:

I am writing to request that your office initiate an investigation into Kaiser Permanente's apparent violations of California's whistleblower protection laws.

During recent weeks, Kaiser Permanente ("Kaiser") has retaliated against its own licensed mental health clinicians after they voiced concerns about substandard care delivered to Kaiser's enrollees.

For example, on July 17, 2013, Kaiser disciplined one of its licensed psychologists after he made a clinical note in a patient's medical chart indicating that this first-time patient needed more rapid access to Kaiser's services. The psychologist evaluated the patient via a telephone triage assessment and discovered that the clinic's first available appointment was more than three weeks later. Under California's Timely Access regulations, HMOs are required to offer patients non-urgent mental health appointments within ten business days of the patient's request for an appointment.<sup>1</sup> In disciplining the psychologist, Kaiser claimed that the psychologist's clinical note – which stated "patient should be seen sooner" – was "a political statement." Kaiser has announced it will now monitor the notes that the psychologist places in patients' medical charts during the next three months.

Kaiser's retaliation against the psychologist comes just three weeks after Kaiser was fined \$4 million by the California Department of Managed Health Care ("DMHC") for committing serious violations of California's Timely Access regulations, mental health parity law, and other regulations and statutes. This fine is the second largest in the DMHC's history.

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<sup>1</sup> Title 28 of California Code of Regulations section 1300.67.2.2.

The DMHC, in issuing a “Cease and Desist Order” against Kaiser on June 24, 2013, stated: “The Department finds that the Plan’s deficiencies are serious and may have put some of its members at risk of harm.”<sup>2</sup>


The DMHC’s sanctions resulted from a complaint<sup>3</sup> brought by the National Union of Healthcare Workers (“NUHW”), whose members include approximately 2,500 mental health clinicians at Kaiser – including the psychologist who was recently disciplined by Kaiser. NUHW and its members have been actively assisting the DMHC in its investigation for nearly two years.

As you know, California Labor Code Section 1101 et seq. prohibits employers from retaliating against employees for disclosing information that is reasonably understood to indicate a violation of state or federal statutes or regulations. Furthermore, this law prohibits employers from retaliating against an employee for refusing to participate in an activity that would result in a violation or noncompliance with state or federal rule or regulation. Employers who violate California’s whistleblower protection law are subject to penalties up to \$10,000 and may be subject to misdemeanor criminal penalties.

NUHW urgently requests that the Attorney General’s office initiate an investigation into Kaiser’s apparent violations of whistleblower protection laws. This matter merits an urgent response given that Kaiser’s retaliatory actions have a chilling effect on other caregivers and appear to be designed to conceal substandard care delivered to Kaiser’s patients. Kaiser is our state’s largest HMO and provides care to 7 million California consumers. The DMHC has informed Kaiser that it will be conducting a follow-up investigation of the HMO’s mental health services in approximately two months in order to determine whether Kaiser has corrected its violations of California’s Timely Access regulations as well as other statutes and rules.

We look forward to your response and stand ready to assist your investigation in whatever way we can.

Sincerely,



Sal Rosselli, President

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<sup>2</sup> DMHC, “Cease and Desist Order on Kaiser Foundation Health Plan, Inc. Matter No: 11-543,” June 24, 2013, p. 7.

<sup>3</sup> NUHW, “Care Delayed, Care Denied: Kaiser Permanente’s Failure to Provide Timely and Appropriate Mental Health Services,” November 2011.