

Appendix 2: Revised QA-530 OMH Sample Agreement

MEMORANDUM OF UNDERSTANDING

-between-

(Facility Name(s))

-and-

(Law Enforcement Names (e.g., Local Police Department and District Attorney)

-regarding-

REPORTING AND INVESTIGATION OF CRIMINAL COMPLAINTS

This Memorandum of Understanding is entered into by and between the following NYS Office of Mental Health Psychiatric Center(s): *(identify facility name and address)*

hereinafter referred to as "Facility") and *(identify name of local police and District Attorney)*

hereinafter referred to as "Law Enforcement."

WITNESSETH:

WHEREAS persons with mental illness have the right to be free from abuse by staff and other residents while receiving care at facilities of the Office of Mental Health (NYS Mental Hygiene Law §33.02); and

WHEREAS, the NYS Office of Mental Health is charged with ensuring that persons with mental illness receive high quality care and that the safety and well-being of persons served are of the highest priority; and

WHEREAS, pursuant to NYS Mental Hygiene Law §7.21(b), Executive Directors of facilities of the Office of Mental Health have an obligation to notify law enforcement officials when it appears that a crime may have been committed on the grounds of a facility; and

WHEREAS, Facility and Law Enforcement share an interest in protecting the safety and well-being of patients, employees and visitors in assuring that serious crimes are appropriately investigated and prosecuted; and

WHEREAS, Facility and Law Enforcement agree that with respect to minor criminal offenses when clinical considerations outweigh law enforcement interests, and the safety and well being of patients, employees and visitors are not at significant risk, it may be inappropriate to obligate law enforcement resources; and

WHEREAS, Facility is a “covered entity” for purposes of 45 C.F. R. Parts 160, 164 (the HIPAA Privacy Rules) and is therefore bound by the provisions of these rules; and

WHEREAS, Facility wishes to ensure that all Protected Health Information received or created from, for or on behalf of the Facility is in accordance with all applicable state and federal laws, including, without limitation, NYS Mental Hygiene Law §33.13 and the HIPAA Privacy Rules, and associated Office of Mental Health policies and procedures; and

WHEREAS, pursuant to both State law and the HIPAA Privacy Rules, Facility may disclose Protected Health Information to a law enforcement official, for law enforcement purposes, including in response to a law enforcement official’s request for such information to identify and locate a suspect, fugitive, material witness, or missing person; and/or to a district attorney, when the request for information is in connection with and in to the furtherance of a criminal investigation of patient abuse (NYS Mental Hygiene Law §§7.21(b); 33.13(c)(9)(ii), (vi); 45 CFR §164.512(f) (1),(2),(3); OMH Official Policy Directive QA-530); and

WHEREAS, pursuant to the HIPAA Privacy Rules, Facility may use and disclose protected health information without individual authorization to the extent the disclosure is required by law, including by statute, regulation, or court orders.(45 C.F.R. § 164.512(a)); and

WHEREAS pursuant to NYS Mental Hygiene Law §7.21(b), if it appears that a crime may have been committed, the director of a Facility is required by law to give notice to the district attorney or other appropriate law enforcement official as soon as possible and in any event within 3 working days, provided, however, that immediate (or in any event, within 24 hours), notification must be provided when it appears that the crime includes an employee, intern, volunteer, consultant, contractor, or visitor and the conduct causes physical injury, or the patient was subject to unauthorized sexual contact; or the crime endangers the welfare of an incompetent or physically disabled person, pursuant to Penal Law Section 260.25; or the crime was a felony under state or federal law; and

WHEREAS, Facility and Law Enforcement wish to identify those actions that Facility and Law Enforcement mutually agree should be referred to Law Enforcement for potential criminal investigation and the means by which Law Enforcement will assist Facility in ensuring that Law Enforcement response to such referrals is appropriate;

NOW THEREFORE, in consideration of the mutual rights and obligations set forth

herein, the parties agree to the following:

1. For purposes of this Agreement, a crime is defined as an event which is or appears to be a crime as defined by the Penal Law of the State of New York, or any Federal Law. Crimes include but are not limited to the following: arson, assault, homicide, possession of a deadly weapon, possession and/or sale of narcotics and controlled substances, robbery or sex offense.

2. Reporting:

(a) The Facility Safety Department shall immediately investigate and will file a criminal complaint within 24 hours of discovery, when it appears that a crime has been committed on Facility grounds and it further appears, given information reasonably available to Facility staff at the time, that the apparent crime includes an employee, intern, volunteer, consultant, contractor, or visitor and the conduct has caused physical injury, or a patient was subjected to unauthorized sexual contact; or the apparent crime endangered the welfare of an incompetent or physically disabled person, pursuant to Penal Law Section 260.25; or the crime appears to be a felony under state or federal law. Upon the next business day, Facility will notify by telephone the applicable District Attorney's office, with follow-up dispatch of a copy of the criminal complaint, as requested. Specific information (e.g., form and format of filed reports, telephone numbers, other procedures/protocols, etc.) to facilitate the implementation of this paragraph follows below:

(b) All other types of apparent crimes shall be investigated by the Facility Safety Department in accordance with OMH Official Policy directive QA-510 and reported to Law Enforcement within 3 working days.

(c) If a matter reported to Law Enforcement under the notification protocols does not result in prosecution, the matter will be timely referred back to Facility for any action it deems appropriate.

3. The scene of any apparent crime that requires immediate notification to the police will be protected and maintained undisturbed to the extent possible until the arrival of the police.

4. The Facility Risk Management and Safety Departments and Law Enforcement will cooperate fully under applicable laws and regulations in furtherance of any criminal investigation.

5. The identity of patients and any confidential information about such patients obtained in the course of police investigation *prior to arrest* shall not constitute a public record and shall not be disclosed. Similarly, it is understood that records of criminal proceedings against patients *after an arrest is made* may be a matter of public record.

6. The parties have designated the following individuals to act as Liaison Officers:

Police:

District Attorney:

Psychiatric Center(s):

7. The parties to this Agreement will maintain lines of communication with each other so that consultations on specific cases can be timely held. When clinical considerations warrant limiting police investigations or justify a decision against prosecution of an act which may be a crime, Facility clinical staff will so advise Law Enforcement. Such clinical opinions will be taken into consideration during the course of an investigation by Law Enforcement.

8. Individual patients or employees of the psychiatric center may wish to file criminal complaints in some cases for which Facility has determined Law Enforcement notification is not warranted. These individuals will be referred the Facility Safety Department, who will facilitate them in pursuing their complaint in the proper manner. Facility may also inform Law Enforcement if it appears there is a lack of credible evidence to support a complaint. Nothing in this Agreement will be construed to limit the right of a person to make a complaint directly to Law Enforcement.

9. Warrants for the arrest of any inpatient of Facility will be delivered to the Facility Safety Office. In the event that a patient's clinical condition precludes an arrest or court appearance, Law Enforcement will be so informed. In such a case, service of the warrant on the patient will be deferred, arraignment on the charges deferred, or other action will be taken by Law Enforcement to defer criminal proceedings.

10. Nothing herein shall be deemed to restrict or impair the statutorily authorized jurisdiction of any Party hereto.

11. If staff of the Facility or Law Enforcement are dissatisfied with any aspect of their working relationship, the liaison officers will attempt to resolve the problem. When necessary, the Facility director, police chief, or district attorney will be asked to help to resolve a dispute.

12. This Agreement shall remain in effect until a Party requests alteration or cancellation. It may be revised at any time whenever conditions may require written Agreement of the parties. This review will be done by the liaisons with a report given to the principal signatories.

13. The Parties agree to use any information obtained under this Agreement only as necessary to properly discharge the obligations provided hereunder.

14. This Agreement may be revised at any time upon written consent of the Parties.

15. Any Party may withdraw from this Agreement after providing 60 days' prior written notice to all Parties. Such notice shall contain the rationale for the intended action and shall schedule a meeting among the parties within 30 days for the purpose of review of the matter.

16. This Agreement shall become effective on: _____

THEREFORE, the foregoing is accepted and agreed to by:

(identify all signatories)