

(was MCCMH Policy 3-02-050)

Chapter: **DIRECTLY-OPERATED PROGRAM MANAGEMENT**  
Title: **LAWSUITS**

Prior Approval Date: N/A  
Current Approval Date: 3/25/11

Approved by: \_\_\_\_\_

Executive Director

Date

**I. Abstract**

This policy establishes the standards and procedures of the Macomb County Community Mental Health Board (MCCMH) when MCCMH employees are served with a complaint, summons, subpoena, or order to show cause on a lawsuit against the MCCMH Board or a MCCMH employee acting in his/her official capacity.

**II. Application**

This policy shall apply to employees of MCCMH.

**III. Policy**

It is the policy of the MCCMH Board that:

- A. MCCMH employees shall ensure that prompt and complete information concerning the receipt of a complaint, summons, subpoena, or order to show cause is forwarded to the MCCMH Deputy Director, and
- B. MCCMH employees shall ensure that information necessary to the defense of the lawsuit is promptly forwarded to Corporation Counsel, or counsel so designated to represent the individual or program named in the lawsuit, so that effective representation can be provided for the employee(s) and the MCCMH Board. The employee(s) will be directed as to how said information shall be

provided, either through the MCCMH Deputy Director or directly from Corporation Counsel or other legal counsel assigned to represent the individual or MCCMH.

#### **IV. Definitions**

- A. **Complaint**  
The first pleadings on the part of the party suing in a civil (non-criminal) lawsuit. It includes the title of the cause of action, the statement of facts, and a demand for relief (money, injunction, etc.).
- B. **Order to Show Cause**  
A court order to a person to give reasons at a hearing why the court should not take a particular action requested by one of the parties.
- C. **Service**  
The delivery of official documents (usually the summons and the complaint) to the defendant either in person by someone authorized to deliver the documents or by registered or certified mail, return receipt requested, and delivery restricted to the addressee.
- D. **Summons**  
A court notice informing a person of the filing of a lawsuit against him or her and of the need to respond to the complaint.
- E. **Subpoena**  
An order from the court notifying an individual to appear in court or at another place to give sworn testimony or to produce certain documentary evidence.

#### **V. Standards**

- A. An MCCMH employee who receives a complaint, summons, subpoena, or order to show cause shall immediately provide the documents to the MCCMH Deputy Director who shall, in consultation with County Corporation Counsel, assist in determining the manner in which to proceed.
- B. Compliance to MCCMH MCO Confidentiality Policies (Chapter 6) and MCCMH MCO Policy 10-012, "Access to Administrative Records/Documents," shall be maintained, as applicable.
- C. MCCMH employees shall comply fully with the MCCMH Deputy Director and County Corporation Counsel in providing relevant information necessary to the defense of the lawsuit.

#### **VI. Procedures**

- A. An MCCMH employee who is served in person or by mail with a summons, complaint, subpoena, or order to show cause shall notify his/her supervisor and

Division Director, and forward the documents immediately to the MCCMH Deputy Director.

- B. The employee's supervisor or Division Director shall immediately contact the MCCMH Deputy Director to notify him/her of the existence of the lawsuit.
- C. The MCCMH Deputy Director shall forward the original documents to County Corporation Counsel and seek consultation from that office.
- D. The MCCMH Deputy Director shall ensure that the original complaint, summons, subpoena, or order to show cause and information on Exhibit A, the "Request for Legal Representation by Corporation Counsel," or on Exhibit B, the "Letter of Notification of Professional Liability Coverage," are immediately provided to County Corporation Counsel.
- E. If the MCCMH employee named in the complaint, summons, subpoena, or order to show cause does not have any professional liability insurance, the MCCMH Deputy Director shall assist the employee in filing a statement that the individual named in the suit is an employee and wishes representation by Corporation Counsel with a sworn statement that the individual does not have professional liability insurance (Exhibit A).
- F. If the MCCMH employee is sued personally and has professional liability insurance coverage, the employee ordinarily will not be represented by County Corporation Counsel. The employee shall forward the name of the insurance carrier and a copy of the professional liability policy to the MCCMH Deputy Director, who shall forward it to County Corporation Counsel (Exhibit B).
- G. If the lawsuit involves an employee relations matter (i.e., discrimination, harassment, workers' compensation, etc.) and the MCCMH Board is a named party, the MCCMH Deputy Director shall forward the complaint, summons, subpoena, or order to show cause to County Corporation Counsel and seek consultation on the manner in which to proceed.
- H. The MCCMH Deputy Director shall assist the employee in the manner directed by County Corporation Counsel.
- I. If the lawsuit involves an employee relations matter and the MCCMH Board is not a named party, the MCCMH Deputy Director shall provide a copy of the complaint, summons, subpoena, or order to show cause to County Corporation Counsel and give the summons and complaint to the employee.
- J. In the event that a lawsuit is initiated against MCCMH or an employee, any pertinent clinical or non-clinical records which are due for disposal pursuant to MCCMH retention policies (MCO 6-008, "Retention and Disposal of Clinical Records," 10-015, "Retention and Disposal of Non-Clinical Records") shall not be destroyed until resolution of the lawsuit.

**VI. References / Legal Authority**

- A. MCR 2.103
- B. MDCH/PIHP and MDCH/CMHSP Contracts FY 2011
- C. Commission on Accreditation of Rehabilitation Facilities (CARF) 2010 Standards Manual, §1.E., "Legal Requirements"
- D. MCCMH Policy 6-003, "Release of Confidential Information - Court Orders / Subpoenas"

**VIII. Exhibits**

- A. Request for Legal Representation by Corporation Counsel
- B. Letter of Notification of Professional Liability Coverage

<Date>  
Corporation Counsel  
1 S. Main Street  
Administration Building  
8th Floor  
Mt. Clemens, MI 48043

RE: REQUEST FOR LEGAL REPRESENTATION BY CORPORATION COUNSEL

IN THE CASE OF:

COURT:  
CASE NO:

TO WHOM IT MAY CONCERN:

I hereby request that your office request legal representation for me in the above matter from Corporation Counsel.

I understand that:

- (a) I have the right to employ my own attorney (at my own expense) to represent and defend me in this lawsuit;
- (b) Representation by Corporation Counsel does not involve or include counsel or advice regarding any claim I may have for recovery by way of a new lawsuit or a cross-complaint, counter-complaint or any other affirmative remedy in this lawsuit; and I understand that if I wish to secure an evaluation and/or seek recovery of any damages I may have sustained in the occurrence that is the subject of this lawsuit, I must employ my own attorney at my own expense;
- (c) The Corporation Counsel may withdraw its representation of me if it is determined (i) that my interest in this case is in conflict with that of another employee of Macomb County Community Mental Health (MCCMH), or with that of the MCCMH Board; (ii) that I failed to act in good faith to protect the public interest or (iii) that the alleged acts of omissions which gave rise to this lawsuit did not occur during the course of my employment by MCCMH or where beyond the scope of my authority as a MCCMH employee.

I agree as follows:

- (a) To timely provide your office with full cooperation and information relating to this matter including making myself available as needed at all reasonable times.
- (b) To refrain from discussing with anyone (except those persons authorized by my attorney and my supervisor or facility director) any matters which are the subject of this lawsuit;
- (c) To advise your office of any insurance coverage which may exist with respect to the events giving rise to this lawsuit.

I swear, on penalty of perjury, that I had no professional liability insurance of any sort at the time the events complained of herein took place.

Sincerely,

(Employee)

Attachment

**Request for Legal Representation by Corporation Counsel (rev. 3/11), MCCMH MCO Policy 10-018, Ex. A, page 1**

To be filled out by Defendant -- Please attach to letter

NAME: \_\_\_\_\_

HOME ADDRESS: \_\_\_\_\_

WORK ADDRESS: \_\_\_\_\_

WORK TELEPHONE NUMBER: \_\_\_\_\_

IMMEDIATE SUPERVISOR'S TELEPHONE NUMBER: \_\_\_\_\_

WERE THE COMPLAINT AND SUMMONS DELIVERED PERSONALLY TO THE NAMED DEFENDANT? Yes \_\_\_ No

If yes, on what date? \_\_\_\_\_

By Whom? \_\_\_\_\_

Location Where Served: \_\_\_\_\_

WERE THE COMPLAINT AND SUMMONS RECEIVED IN THE MAIL?  
Yes \_\_\_ No

If yes, on what date? \_\_\_\_\_

<Date>  
Corporation Counsel  
1 S. Main Street  
Administration Building  
8th Floor  
Mt. Clemens, MI 48043

TO WHOM IT MAY CONCERN: \_\_\_\_\_  
(Name of Complaint, Court and Docket No.)

The above-referenced complaint was served on me by \_\_\_\_\_  
on \_\_\_\_\_, at \_\_\_\_\_.

I am/was (or am not/was not) an employee of Macomb County Community Mental Health at the time of the events cited in this complaint.

I have professional liability insurance. My insurance carrier is \_\_\_\_\_.  
My policy number is \_\_\_\_\_. Attached is a copy of my insurance policy. The representative for my insurance carrier is \_\_\_\_\_.

I will advise representatives of the insurance company to contact the Macomb County Community Corporation Counsel if they have questions about the legal defense on behalf of other defendants, if any.

If you wish additional information, my office phone number is \_\_\_\_\_, and my home phone number is \_\_\_\_\_.

Sincerely,

(Employee)