

AN APPEARANCE OF A CONFLICT OF INTEREST in the Adoption of the Mental Health Privatization Contract

June 09, 2014

SUMMARY

The 2013-2014 Grand Jury recommends that the ethics policies for Mendocino County be corrected to include time limitations on when County employees must recuse themselves from decisions regarding previous employers. The Grand Jury also recommends that all respective ethics policies are emphasized and County employees are trained to understand and apply these policies.

Enforcement of these policies must be a high priority for all County senior managers. County senior managers and senior staff must recuse themselves from any contract activities when they have or had a financial or business relationship with the contracting party within the last three years.

The Grand Jury received complaints regarding perceived conflicts of interest in awarding the Mendocino County contract for the administration of adult mental health services to the Ortner Management Group. Certain individuals employed by the County with current and previous associations with Ortner had the opportunity to have undue influence in the awarding of this contract.

During the investigation, the Grand Jury determined that no apparent *illegal* activity was carried out by any individual; however, there *were* sufficient opportunities for these individuals to have used undue influence in the selection process.

An employee of Ortner Management Group was contracted as a consultant by the Director of Health and Human Services from February 2011 through March 2012. The actual dates of work were from December 2011 through March of 2012. The newly contracted consultant had access to patient records and County Medi-Cal billing information. This access was not available to other bidders. A concern of the Grand Jury is that the information would have been useful for estimating the cost of the Request for Proposal for administering the billing of adult mental health services in the County. However, there is no indication that information was used inappropriately.

The evaluation summary for Request for Proposal 24-12 for mental health services was scored by seven County employees. These scorers included the County's Mental Health Director. This Mental Health Director had previous business relationships with Ortner Management Group that terminated less than 18 months before the evaluation summary scoring took place.

The complainants alleged that Ortner Management Group was given unfair advantage by the active presence of the consultant and the Mental Health Director during the preparation and scoring of the Request for Proposal. The complainants also alleged that the release of the Request for Proposal was delayed until Ortner Management Group had completed drafting its response.

There is an appearance of impropriety in the process of bidding and awarding the contract to Ortner Management Group because of the previous relationship of the Mental Health Director with Ortner Management Group. There is no evidence that impropriety occurred.

GLOSSARY

ACA	Affordable Care Act
BHRS	Behavioral Health and Recovery Services (a division of H&HS)
BOS	Board of Supervisors
H&HS	Health and Human Services
Medi-Cal	Federal Medicaid program in California
MHD	Mental Health Department (old name for BHRS)
NVBH	North Valley Behavioral Health Service
Ortner	Ortner Management Group
RCS	Redwood Children's Services (now Redwood Management Group)
RFP	Request for proposal
RQMG	Redwood Quality Management Group

BACKGROUND

The Board of Supervisors decided in 2010 to look into the possibility of privatizing the administration of the mental health delivery system in Mendocino County. One of the reasons the Board of Supervisors decided to consider privatization was the inconsistency in the billing and payment of Medi-Cal reimbursements.

The State of California performed an audit in 2013 on County Medi-Cal billing for fiscal year 2007-2008. The auditors found eight specific items out of compliance with State standards for Medi-Cal billing. Out-of-compliance items included the financial management of the Medi-Cal billing system. The results of the audit showed that the County owed the State and Federal programs between \$800,000 and \$900,000.

The Board of Supervisors implemented the privatization of the administration of mental health in the County effective July 2013. The Grand Jury decided to investigate citizen complaints regarding the award of the Mental Health Adult Service Contract.

APPROACH

The Grand Jury gathered documents to establish the timelines for the employment of the consultants, the hiring of the Director of Mental Health, the consideration of the privatization of the mental health department, and the preparation for publication of the request for proposal (RFP). The Grand Jury obtained documents from and/or interviewed management, employees, and staff of Mental Health (BHRS), Health and Human Services (H&HS), General Services, the County Auditor staff, and the contractor. The Grand Jury extensively researched the public records of employment relationships between individual consultants and county employees.

FACTS

The State of California requires that each County maintain a Quality Assurance Program regarding Medi-Cal funds. This program is integral to the County passing audits for monies they have received. Audits are performed annually. The audited year is approximately six years *prior* to the date of the audit.

The Director of H&HS contracted an employee of Ortner Management Group (Ortner) as a consultant in February 2011. The consultant monitored patient records for quality assurance and compliance with State requirements. The consultant worked approximately 27 hours between Dec 2011 and March 2012.

The consulting contractor's duties included monitoring data in the Quality Improvement Program. The Quality Improvement Program held information that would be useful in determining cost structures for privatization. (Appendix A) In the position as advisor to the Quality Improvement Program, the consultant had access to this information. The consultant was under contract to the County during the initial writing stages of the privatization RFP. (Appendix B) The consultant's contract included a confidentiality clause with respect to personal information of clients, but not for the compiled statistics.

Complainants stated concerns about the presence of an Ortner employee as a consultant and a former Ortner employee in a management position at H&HS. These concerns are:

- This resulted in the postponement of the privatization bid offering
- The perception Ortner had an unfair advantage in the bid process

North Valley Behavioral Health, LLC, (NVBH) is a wholly owned and operated subsidiary of Ortner and/or its officers and management, providing psychiatric facilities and associated services. Two individuals, one employed by Ortner, one acting as an administrator of a NVBH facility, specifically North Valley Behavioral Health-Fairfield (NVBH-Fairfield), were hired separately as consultants to H&HS between 2010 through 2012. This was the time period for the writing of the RFP requesting bids for mental health services. The administrator for the NVBH-Fairfield facilities later became the Director of Behavioral Health and Recovery Services (BHRS). (Appendix C)

The RFP and the two amendments contained the information deemed necessary to bid on the RFP. This information included:

- The total current number of mental health staff, including professional staff
- Various current programs and their funding
- A List of current contractors performing mental health services
- The current number of adult active clients
- The number of adult clients served during the year
- The number of clients currently in a psychiatric hospital
- The number of minutes billed to Medi-Cal/Medicare

Subsequent to this time period, H&HS issued a document to the bidders titled: *Request for Proposal Addendum No. 1*,

“No County employee should answer any questions regarding the RFP, either on or off work. The RFP process clearly defines a question and answer period (inquiries were allowed in writing through the inquiry period of November 12, 2012, as well as at the meeting to be held November 19, 2012). Vendors that seek information outside of this process run the risk of being disqualified from the RFP process.”

The *Addendum* continues: “If a County employee or group of employees is/are part of a group submitting a bid, their names need to be included in the proposal.”

The current BHRS Director had a previous working relationship with an Ortner subsidiary. The Director was previously an officer/administrator for NVBH-Fairfield in December 2009. NVBH-Fairfield supplied adult mental health services to Solano County. (Appendices B and C)

The BHRS Director was an employee of H&HS during the writing of the Privatization RFP 24-12. The BHRS Director also scored the bid responses along with the Director of H&HS and staff.

The following table represents the evaluation of RFP 24-12 Mental Health Services by the scorers:

Table 1. RFP 24-12 Evaluation

RFP bidder	BHRS/MHD Director	H&HS Director	Staff 1	Staff 2	Staff 3	Staff 4	Staff 5	Total
Ortner	650	625	540	460	440	530	670	3915
RCS	595	560	540	460	440	560	645	3800
Optum	345	445	420	375	0	495	290	2370

After scoring the bid submittals, the BHRS Director spoke before the Board of Supervisors in favor of granting the bid to Ortner.

Subsequent to the BHRS Director’s presentation, the Board of Supervisors voted to award the contract to Ortner.

FINDINGS

- F1. NVBH and Ortner are clearly linked in both business and professional matters.
- F2. As administrator of NVBH-Fairfield, the BHRS Director had a business and financial relationship with Ortner through NVBH-Fairfield immediately prior to coming to work for the County.
- F3. The Grand Jury perceived a possible conflict of interest in the selection of Ortner for the privatization contract for adult mental health services.
- F4. There was a lack of transparency to the public regarding the timelines and the changing work relationships between the consultants and the management of H&HS.

- F5. There was a lack of transparency to the public as to the legal relationship and responsibilities of the concerned parties during the changing work relationships.
- F6. The Grand Jury noted that when timelines and contractual relationships were reviewed, there did not appear to be any illegal activities by the individuals involved in the selection of Ortner.
- F7. Given the response published by the County in the *Request for Proposal Addendum No. 1*, the Grand Jury finds the County guidelines are insufficient to address perceptions of undue influence.
- F8. It is not entirely clear to the Grand Jury whether or not there was undue influence in the selection process.

RECOMMENDATIONS

The Grand Jury recommends that:

- R1. The Board of Supervisors develop and adopt policies and procedures to require senior management and/or staff to recuse themselves from any board or department activity that could have, or might have the appearance, of a positive financial impact on themselves or any of their immediate family. (F1, F2, F3, F4, F5, F7)
- R2. A clause be added to any consultant contract stating explicitly: “All information gathered by the consultant under this contract shall be considered privileged and confidential. It shall not be divulged to a third party without the express written consent of the *appropriate* agency head.” (F1, F2, F3, F4, F5, F7)
- R3. The Board of Supervisors adopt a policy prohibiting any County employee from participating in any decision regarding the selection or rejection of any RFP or other contract that involves any former employer within three years of the employee’s termination from the former employer. (F1, F2, F3, F4, F5, F7)

RESPONSES

Pursuant to Penal Code §933.05, responses are *required* from the following individuals:

- Director, Health and Human Services, Mendocino County (All findings and All recommendations)
- Director, Behavioral Health and Recovery Services, Mendocino County (All findings and All recommendations)

Pursuant to Penal Code §933.05, responses are required from the following governing bodies:

- Mendocino County Board of Supervisors (All findings and All recommendations)

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

Appendix A. Definition of the Quality Improvement Program

“The Quality Improvement (QI) program coordinates quality improvement activities throughout the continuum of care. The QI Program is designed to provide QI oversight functions for contracted providers with a focus on continuous improvements in service delivery. The QI program also assures periodic assessment of client care and satisfaction. Contracted providers are expected to use the results of beneficiary/family satisfaction survey outcomes required by the External Quality Review Organization (EQRO) State clinical audits to continuously improve services. The QI Program focus areas are categorized as follows:

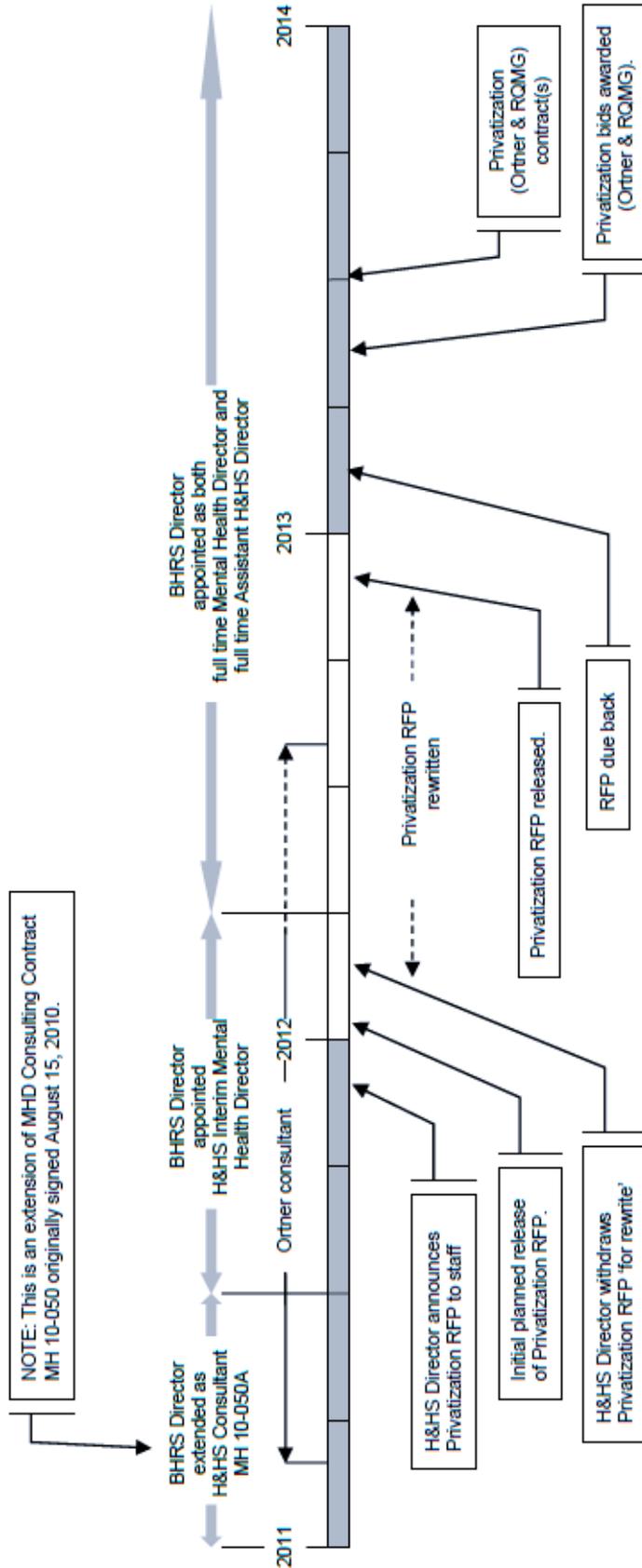
- Service delivery capacity
- Service delivery system and meaningful clinical issues
- Service accessibility
- Continuity of care and coordination of care
- Beneficiary satisfaction
- Clinical and fiscal outcomes

The Quality Improvement Program oversees program compliance to all local, State, and Federal Guidelines for quality of care, certification and utilization management.”

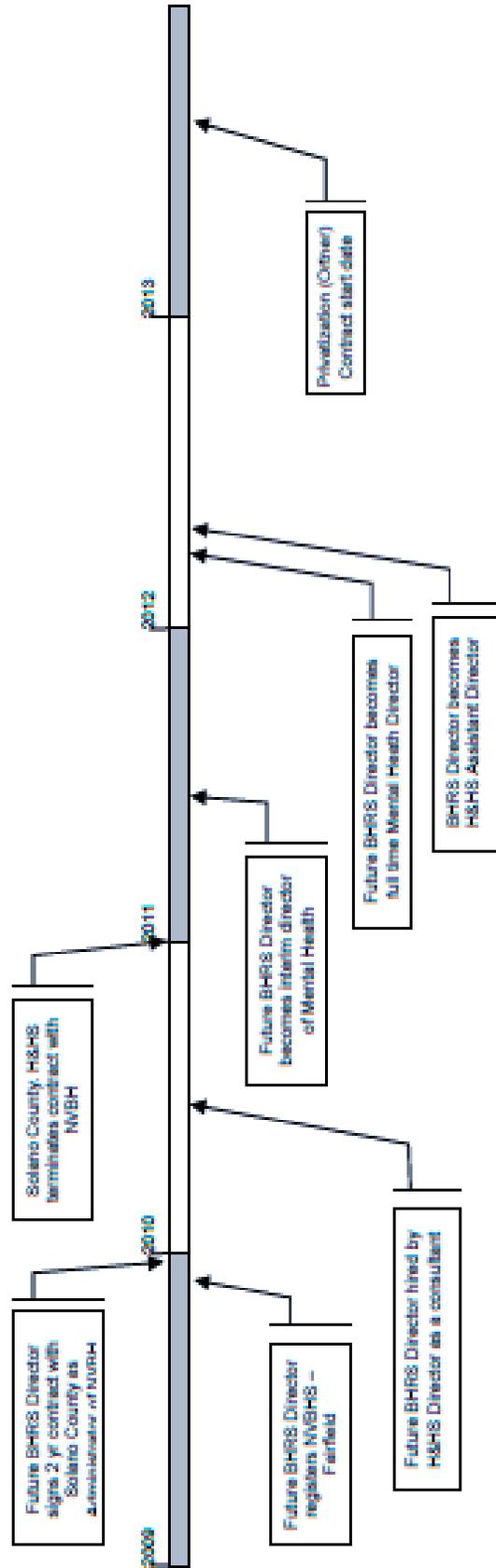
County of Mendocino, California
Official County Government Online Resource
Quality Improvement – Quality Control
March 27, 2014

**Appendix B. Timelines for Mental Health Director
with respect to the issuance of the
Mental Health Privatization RFP**

The following materials relate to the timeline of the current Mental Health Director and the Mendocino County bidding process for the Mental Health Services Privatization Contract. The relationship of activities is displayed in the follow-on timeline charts.



TIMELINE 1. Events Regarding RFP 24-12 – Jan 2011 to Jan 2014



TIMELINE 2. Relationship of the BHRIS Director to Ortner – Jan 2009 to Jan 2014

Appendix C. Ortner and North Valley Behavioral Health Relationship

The following table shows contemporary (November 2013) business, financial and administrative relationships between the Ortner Management Group (Ortner) and North Valley Behavioral Health Services, LLC, (NVBH). This table shows the crossover of managerial responsibilities of persons involved in winning the award of the H&HS contract for Ortner Management Group.

Person	Ortner*	NVBH
Primary share holder	CEO	President and CEO of NVBH, Officer
Consultant contracted by the County H&HS director	Chief Compliance Officer of Ortner	Served as Director of Patient Care Services at NVBH
Mendocino County Behavioral Health Director	Identified by at least two witnesses as having been on the Ortner Organization Chart around 2009	Chief Administrative Officer (NVBH-Fairfield)**

*These duties come from the Ortner web site: <<http://www.theomg.us/OMG/>> November 2013.

** This 'organization" may now be defunct.