

Chronology: Kaiser Permanente's Mental Health Crisis

2010: Kaiser's 2,500 mental health clinicians in California vote to join the National Union of Healthcare Workers (NUHW) in elections conducted by the National Labor Relations Board. The clinicians are Psychologists, Licensed Clinical Social Workers, Licensed Marriage & Family Therapists and other therapists who care for patients with conditions such as depression, anxiety, bipolar disorder, and schizophrenia at more than 100 of Kaiser's clinics, emergency rooms, and hospitals across California.

2011: During negotiations between the mental health clinicians and Kaiser, Kaiser's officials refuse to discuss severe under-staffing problems that force patients to endure lengthy waits to receive basic care. In response, NUHW surveys clinicians across California to gather details about the problems. NUHW prepares a 35-page report on these issues – entitled "Care Delayed, Care Denied" – and presents it to Kaiser. Despite the survey and report, Kaiser officials continue to refuse to discuss the problems.

November 29, 2011: NUHW files a complaint with the California Department of Managed Health Care (DMHC) alleging Kaiser's violations of California's Timely Access Regulations and other laws. NUHW's complaint is detailed in a 34-page paper entitled "Care Delayed, Care Denied."¹

August 8, 2012: The DMHC concludes its investigation of Kaiser's mental health services and, per its protocols, provides a confidential "Preliminary Report" to Kaiser with the DMHC's findings. The DMHC requires Kaiser to prepare a "Corrective Action Plan" to remedy the violations. Source: p. 3 of the DMHC's Final Report on Kaiser's Behavioral Services, March 18, 2012.²

March 18, 2013: The DMHC publicly releases its "Final Report," which cites Kaiser for multiple "serious" and "systemic" violations of California's Timely Access Regulations, the California Mental Health Parity Act, and other laws. The agency says that due to the seriousness of Kaiser's violations, it has referred its findings to the DMHC's "Office of Enforcement" for possible financial penalties and/or legal action against Kaiser. Furthermore, the DMHC orders an expedited follow-up inspection of Kaiser, which is scheduled to commence in six months, in order to determine whether Kaiser has corrected its violations.

June 25, 2013: The DMHC announces a \$4 million fine against Kaiser for its mental health violations.³ This is the second largest fine in the DMHC's history. The DMHC also files a "Cease and Desist Order"⁴ against Kaiser instructing the HMO to "cease and desist" from committing further violations of California law.

July 2013: Kaiser files an appeal of the DMHC's \$4 million fine. The appeal is referred to the California Office of Administrative Hearings where the matter will be resolved by an Administrative Law Judge following a public hearing.

July 31, 2013: NUHW submits a whistleblower-retaliation complaint to the California Attorney General after Kaiser disciplines psychologist Dr. Alex Wang for making a clinical note in a patient's medical chart indicating that the first-time patient needs more rapid access to Kaiser's services. Dr. Wang 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. Kaiser disciplined Dr. Wang for writing "Patient needs to be seen sooner" in the patient's medical chart.

September 4, 2013: NUHW files a suit to compel California's Health Benefit Exchange (aka, "Covered California) to enforce its own rules that bar HMOs from participating in the Exchange if they've been substantially sanctioned by state regulators during recent months. NUHW argues that Kaiser should first fix its systemic mental health violations before enrolling hundreds of thousands of additional members into the HMO via the Exchange. (NUHW v. California Health Benefit Exchange filed in Sacramento Superior Court, California)⁵

September 18, 2013: NUHW files a complaint with the California Fair Political Practices Commission (FPPC) alleging that a top DMHC official provided illegal assistance to Kaiser during the course of the DMHC's investigation into Kaiser's substandard mental health services. The official, Marcy Gallagher, was leading the DMHC's investigation into Kaiser when she abruptly resigned her position and took a job inside of Kaiser's so-called "regulatory response unit." NUHW's complaint alleges that Gallagher violated multiple provisions of California's Political Reform Act such as its "Permanent Ban on Switching Sides by State Officials" and its "Ban on Influencing Prospective Employment."

October 2013: The DMHC commences its follow-up investigation of Kaiser to determine whether it has corrected the violations cited in its "Final Report" issued on March 18, 2013.

October 2, 2013: Kaiser patients file a class action lawsuit against Kaiser for systemic denial of timely access to mental health services. (Futterman v. Kaiser Foundation Health Plan, Inc. filed in Alameda County Superior Court, California)⁶

October 7, 2013: A second class-action lawsuit is filed against Kaiser on behalf of patients due to Kaiser's mental health violations. (Eagle v. Kaiser Foundation Health Plan, Inc. filed in Los Angeles County Superior Court, California)⁷

February 5, 2014: NUHW submits a second whistleblower-retaliation complaint to the California Attorney General following Kaiser's retaliation against a psychologist who voiced concerns to the DMHC and the National Committee for Quality Assurance (NCQA) about Kaiser's substandard mental health care.

March 17, 2014: A Kaiser patient and the executor of his deceased wife's estate file a lawsuit against Kaiser alleging that Kaiser's poor psychiatric care led to a murder and attempted suicide by a Kaiser patient. A Kaiser patient in Georgia murdered his wife of 40 years and attempted suicide after allegedly receiving improper care for his mental illness, including psychosis, paranoia, delusions, impaired judgment, physical aggression, loose association and racing thoughts. (Blatt v. Kaiser Foundation Health Plan, Inc. filed in State Court of Gwinnett County, Georgia)⁸

March 21, 2014: A Superior Court judge dismisses a motion filed by the California Health Benefit Exchange that seeks to dismiss NUHW's suit regarding the Exchange's allegedly improper inclusion of Kaiser as an option for consumers enrolling in "Obamacare" via "Covered California." Instead, the judge orders NUHW's case to proceed and orders Covered California to produce records requested by NUHW.

March 25, 2014: A third class-action lawsuit is filed against Kaiser on behalf of Kaiser patients for denial of mental health care services. (Dion v. Kaiser Foundation Health Plan, Inc. filed in Alameda County Superior Court, California)⁹

April 11, 2014: California's Office of Administrative Hearings holds a pre-trial hearing involving DMHC and Kaiser to consider Kaiser's appeal of the DMHC's \$4 million fine. Kaiser files a motion to bar public observation of hearing. The judge denies Kaiser's motion.

May 8, 2014: An Administrative Law Judge postpones a month-long hearing (scheduled to begin May 8, 2014) regarding the DMHC's \$4 million fine so that Kaiser and the DMHC can continue confidential negotiations aimed at reaching an out-of-court settlement of the matter.

Early September 2014: Kaiser and the DMHC intensify their negotiations aimed at reaching an out-of-court settlement on the \$4 million fine in advance of September 8,¹⁰ the new starting date for the month-long hearing to consider Kaiser's appeal of the DMHC's fine. Kaiser officials reportedly enlist support from the California Governor's office to press the DMHC to accept an out-of-court settlement. NUHW and patient advocates press the DMHC to hold Kaiser accountable for its violations.

September 8, 2014: The judge conducts a brief procedural hearing on the morning of September 8 after the settlement talks between Kaiser and the DMHC are unsuccessful. The judge overrules a motion by Kaiser to conceal records of the hearing from the public. Then, on the night of September 8, Kaiser suddenly announces that it will pay the \$4 million fine, thereby canceling the month-long public hearing at which Kaiser clinicians and patients were scheduled to testify about Kaiser's continuing mental health violations.

September 9, 2014: The family of a Southern California patient files a class action lawsuit against Kaiser alleging that Kaiser is illegally "dumping" its members with acute mental illness onto county health systems, thereby shifting the cost of their care off of Kaiser and onto public taxpayers. (Douglas Kerr vs. Kaiser Foundation Health Plan, Inc., Los Angeles Superior Court, Central District, Case No. BC556863)

September 24, 2014: Local, state, and federal elected officials hold a "listening session" in Santa Rosa, California to hear the public's opinions on mental health care. An overflow crowd of 150-200 mental health consumers, family members, and the public attend the forum. 90% of the speakers are Kaiser patients and virtually all of them sharply criticize Kaiser's services, with some speakers describing suicides and other tragedies affecting their loved ones. On the following day, the *Santa Rosa Press Democrat* publishes a front-page article entitled, "Kaiser Blasted at Mental Health Forum." The forum was conducted by Congressperson Mike Thompson, Sonoma County Supervisor Shirlee Zane, California Assemblywoman Mariko Yamada, Bonnie Preston (U.S. Department of Health and Human Services), Sherrie Lowenstein (California Department of Managed Health Care), and Brenda Grealish (California Department of Health Care Services).

January 12 thru 19, 2015: Kaiser's 2,600 therapists conduct a week-long, statewide strike to protest Kaiser's failure to staff its mental health clinics with adequate numbers of clinicians to care patients. The strike brings unprecedented media attention to Kaiser's mental health services including more than 700 print articles and 500 radio and television stories. In addition, numerous Kaiser patients and their family members contact NUHW with their own stories about delayed care and suicides at Kaiser, including a member of the Milpitas City Council and a popular columnist with the San Francisco Chronicle.

February 24, 2015: The DMHC issues a 33-page report detailing the results of its follow-up survey of Kaiser's mental health services. The agency cites Kaiser for ongoing "serious" and "significant" violations of state law including California's timely access regulations and the California Mental Health Parity Act. The DMHC reports that 22% of Kaiser's Northern California patients and 9% of its Southern California patients experienced excessive appointment delays. The agency refers Kaiser's violations to the DMHC's Office of Enforcement "for further investigation and possible disciplinary action."

April 2015: Kaiser wrongfully fires Dr. Alex Wang, a Bay Area psychologist and whistleblower whom Kaiser earlier disciplined for noting "patient needs to be seen sooner" in a patient's medical chart after the patient was scheduled to wait three weeks for his first appointment after contacting Kaiser's mental health triage system for help. California law requires HMOs to see patients within at least two weeks of their request for such care.

May 11–15, 2015: Kaiser mental health clinicians engage in a series of actions to protest Kaiser's wrongful termination of psychologist Dr. Alex Wang. Clinicians picketed and leafleted at Kaiser facilities throughout California, resulting in media coverage exposing Kaiser's retaliation against its mental health clinicians for advocating for timely, appropriate care for their patients.

¹ <http://nuhw.org/wp-content/uploads/2014/01/CareDelayedCareDenied.pdf>

² <http://www.dmhc.ca.gov/desktopmodules/dmhc/medsurveys/surveys/055bh031813.pdf>

³ <http://wpso.dmhc.ca.gov/enfactions/docs/1974/1372174518706.pdf>

⁴ <http://wpso.dmhc.ca.gov/enfactions/docs/1974/1372174528050.pdf>

⁵ <http://nuhw.squarespace.com/storage/mentalhealth/NUHW%20Lawsuit%20vs.%20CA%20Exchange%20re%20Kaiser%209.4.13.pdf>

⁶ <http://www.courthousenews.com/2014/03/04/Kaiser.pdf>

⁷ <https://drive.google.com/file/d/0B0eLK1hU54KidENQSkTKNW9IbTQ/edit?usp=sharing>

⁸ <http://www.courthousenews.com/2014/04/04/66789.htm>

⁹ <https://docs.google.com/file/d/0B0eLK1hU54Kia09ET19FMjJFOGs/edit>

¹⁰ <http://www.dgs.ca.gov/oah/GeneralJurisdiction/Calendar/AgencyView.aspx> (search by agency)

More Information: www.NUHW.org/kaiser