

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT



February 5, 2018

VIA ELECTONRIC MAIL

Emil Hirsch, Esq.
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1401 Eye Street, NW Suite 800
Washington, DC 20005
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**RE: #OOG-0014_12.14.17-AO_UMC Board
#OOG-0015_12.14.17-AO_UMC Board**

Dear Mr. Hirsch:

I have reviewed your February 2, 2018, correspondence which you provide in response to OOG-0014_12.14.17 and OOG-15_12.14.17, wherein you request the OOG “stay the effectiveness of the substantive aspects of the advisory opinions” pending the OOG’s receipt of UMC’s motion for reconsidering by February 9, 2018. Specifically, your February 2, 2018, correspondence indicates that the advisory opinion’s corrective action at issue with UMC is:

“[T]o publish the audio recording of the discussion and roll call vote on the UMC website under the December 13, 2017 Board meeting materials. Also, to the extent the Board reviewed data that is already publicly accessible, that information should also be posted with the December 13, 2017 meeting materials.” OOG-0014_12.14.17_AO, OOG-0015_12.14.17_AO, at page 10.

The OOG appreciates the UMC’s immediate implementation of the protocol for entering into a closed/executive session and for agreeing to undergo training by the OOG to ensure future compliance with the OMA. However, the regulations that implement the OMA, make binding on a public body the corrective action which the OOG finds necessary where a violation occurs. Under the OMA and its regulations there are no provisions that authorize the OOG to stay the effectiveness of a corrective action or to reconsider its findings. The OMA regulation applicable to the instant matter is 3 DCMR § 10406.1, which states:

Based on results of investigation, the Director will issue an Advisory Opinion addressing the complaint that a Public Body violated the Open Meetings Act. An Advisory Opinion explains the Director's findings of fact and understanding of the law. *Where the Director concludes there was a violation, the Advisory Opinion will explain corrective actions completed or a schedule for completion. The advisory opinion is binding.* (Emphasis added).

Please know that the OOG will treat the UMC's forthcoming response to the aforementioned advisory opinions in the same manner it treats all other responses to opinions this Office receives, by publishing it to the OOG website.

In summary, there is no legal authority under the OMA for a reconsideration or stay to delay the release to the public of that portion of the December 13, 2017, UMC closed/executive session containing the discussion and vote to close the UMC obstetrics unit, pending UMC's response. Please know the OOG is available to assist the UMC to comply with the release of the recording. Do not hesitate to contact me if you wish to discuss this matter further.

Sincerely,



TRACI L. HUGHES, ESQ.
Director, Office of Open Government
Board of Ethics and Government Accountability

cc: LaRuby May
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