



Crystal Rhoades
Douglas County
Clerk of the District Court & Jury Commissioner
Hall of Justice
1701 Farnam Street. STE 300
Omaha NE 68183
(402) 444-7018

Re: Outstanding issues related to the Board of Mental Health - updated from previous letter sent
June 25, 2024

August 11, 2025

To the District Court Bench & Douglas County Board of Commissioners:

I have been trying since June of 2023 to find resolutions to these matters. While progress has been made and some of the civil rights violations have been remedied, there are still a number of outstanding issues. I have continued to communicate the deficiencies to all stakeholders.

The order prohibiting my staff from attending the hearings and taking the minutes, is inconsistent with Nebraska Revised Statute §71-917, which *requires* my staff to attend *all hearings and keep the minutes*.

I am interpreting your most recent order as *retaliation* for my persistence in attempting to force a correction of deficiencies in the administration of the Board of Mental Health.

My staff continues to report to the hearings and are being turned away. I'm not going to stop talking about the problems until they are resolved.

Thank you,

Crystal Rhoades

CC: District Court Bench & Douglas County Board of Commissioners
Douglas County Board of Mental Health & Douglas County Attorney &
Douglas County Public Defender

Due Process Violations

1. **Hearing Delays:** Subjects are to be evaluated within thirty-six hours of being detained on a warrant and initial hearings must be held within seven days for an initial hearing or fourteen days for a rehearing.

From January through July 2025, there were 473 petitions filed. Of those subjects detained on warrants, *11 subjects had a hearing within the seven days* mandated by statute.

From January through July 2025, there were 8 requests for review hearing and *only 3 of those hearings occurred within the fourteen days* mandated by statute. The petitions needing hearings are overdue by *up to fifty-six days*.

- a. Neb. Statute §71-919(4) “...evaluation...within *thirty-six hours of admission to the facility.*”
- b. Neb. Statute §71-923 “...The summons shall fix a time for the hearing within *seven calendar days after the subject has been taken into emergency protective custody.*”
- c. Neb. Statute §71-935. “...subjects under commitment may request a rehearing and those hearings must be held *within fourteen days.*”

2. **Indefinite Continuances:** Subjects are having their hearings continued without being given a future hearing date. Currently, there are *29 cases that have been indefinitely continued.* There are *19 additional subjects who are on a ninety-day continuance with no hearing date scheduled.*

- a. Example: Board of Mental Health (BOMH) case a subject was placed on a BOMH petition in January 2023. Subject remained in DCCC until June of 2023 on his criminal charges. In June 2023, the petition was continued without a date for hearing. The Clerk of District Court (CDC) staff attempted to schedule the hearing multiple times between June of 2023 and May 2024. The order for treatment was filed May 2024. The BOMH didn't issue a mittimus for release until June 25, 2024. This subject was held in the county jail for over a year, without any pending charges on a BOMH hold. *At a cost of \$120 per day the estimated cost of the subject's stay was \$45,240.00, no treatment plan was in place during that detention.*
- b. Example: BOMH case, a subject was placed on a BOMH petition in January 2024. The case was continued indefinitely without a future hearing date on a motion by the public defender. The county attorney and the public defender's office were reminded about this subject repeatedly between January 2024 and April 2024. On April 19, 2024, the CDC spoke to Tom Riley, Public Defender, regarding this situation. On the same day, the CDC attempted to meet with Judge Stratman and Judge Engleman regarding this situation; both judges were out of

the office. The CDC met with duty judge, Judge Lux. Judge Lux instructed CDC staff to follow up with Judge Stratman on the following Monday, April 22, 2024. The petition was dismissed April 29, 2024, without a hearing being held.

- c. Example: BOMH case, a subject was placed on a BOMH petition on July 7, 2025, with a hearing date of July 10, 2025. An indefinite continuance order was filed on July 17, 2025. (See exhibit 1)
3. **Possible Illegal Use of Restraints**: During transport and at hearings, DCSO shackles and chains subjects. State and Federal law do not require it. The practice may violate both state and federal laws, administrative policy and procedures of Nebraska DHHS, Medicaid rules and regulations, and the 14th Amendment of the United States Constitution. Facilities are prohibited from use of restraints with few exceptions.
 - a. This continues to be a concern as subjects consistently are transported to and from BOMH hearings restrained. Many remain restrained throughout the hearing.
 - b. See LRC policy PC-02
 - i. [https://dhhs.ne.gov/Behavioral%20Health%20Documents/PC_02\(LRC\)Seclusion_and_Restraint.pdf](https://dhhs.ne.gov/Behavioral%20Health%20Documents/PC_02(LRC)Seclusion_and_Restraint.pdf)
 - c. Conditions for Participation for Hospitals. §482.13 e 1-16(f) Federal Register/Vol. 71, No. 236/Friday, December 8, 2006/Rules and Regulations
 - i. <https://www.cms.gov/regulations-and-guidance/legislation/cfcsandcops/downloads/finalpatientrightsrule.pdf>
4. **Orders for Inpatient to Outpatient Treatment**: When a committed subject moves from inpatient to outpatient treatment, an outpatient commitment order is needed. There are *316 subjects currently classified as outpatient commitment* and treatment plans have been approved, but the *BOMH never entered an order of outpatient commitment*.
 - a. Neb. Statute §71-935.(2) *"The board shall immediately discharge the subject or enter a new treatment order with respect to the subject whenever it is shown by any person or it appears upon the record of the periodic reports filed under section 71-932 to the satisfaction of the board that (a) cause no longer exists for the care or treatment of the subject or (b) a less restrictive treatment alternative exists for the subject."*

Additional Areas of Concern:

1. **County Attorney Not Addressing Non-Compliant Subjects**: As of August 8, 2025 there are *84 "non-compliant subjects"*. No actions have been taken by the Board or County Attorney to address these non-compliant subjects. *Some of the non-compliant subjects have been charged with serious offenses including sex trafficking and murder.* This is going largely undetected because the records of these commitments are

confidential. This creates a serious threat to public safety and significant liability to the taxpayers of Douglas County.

2. The County Attorney is directing hospitals to release subjects without obtaining an order from the Board of Mental Health.
3. There is also a history of *dismissing petitions after a 90 day continuance even if the subject has been non-compliant with treatment.*

- a. Neb. Statute §71-933 (1) Any provider of outpatient treatment to a subject ordered by a mental health board to receive such treatment shall report to the board and to the county attorney if (a) the subject is not complying with his or her individualized treatment plan, (b) the subject is not following the conditions set by the mental health board, (c) the treatment plan is not effective, or (d) there has been a significant change in the subject's mental illness or substance dependence. Such report may be transmitted by facsimile, but the original of the report shall be mailed to the board and the county attorney no later than twenty-four hours after the facsimile transmittal.

- (2)(a) Upon receipt of such a report, the county attorney shall have the matter investigated to determine whether there is a factual basis for the report.

- (b) If the county attorney determines that there is no factual basis for the report or that no further action is warranted, he or she shall notify the board and the treatment provider and take no further action.

- (c) If the county attorney determines that there is a factual basis for the report and that intervention by the mental health board is necessary to protect the subject or others, the county attorney may file a motion for reconsideration of the conditions set forth by the board and have the matter set for hearing.

- (d) The county attorney may apply for a warrant to take immediate custody of the subject pending a rehearing by the board under subdivision (c) of this subsection if the county attorney has reasonable cause to believe that the subject poses a threat of danger to himself or herself or others prior to such rehearing. The application for a warrant shall be supported by affidavit or sworn testimony by the county attorney, a mental health professional, or any other informed person. The application for a warrant and the supporting affidavit may be filed with the board by facsimile, but the original shall be filed with the board not later than three days after the facsimile transmittal, excluding holidays and weekends. Sworn testimony in support of the warrant application may be taken over the telephone at the discretion of the board.

4. **Board of Mental Health Refuses to Add Hearing Dates:** The Board of Mental Health currently restricts hearings to two afternoons per week. Consequently, subjects experience prolonged waiting periods—days, weeks, or even months—for their hearings, as the Board's meeting frequency is insufficient to meet the community's mental health demands.
- a. Neb. Statute 71-915 “*The presiding judge in each district court judicial district shall create **at least one but not more than three mental health boards** in such district...*”

Recommended Solutions:

- ⦿ *Direct the Board of Mental Health to schedule additional hearing dates.*
- ⦿ *Direct the Board of Mental Health to enter outpatient commitment orders for subjects moving from inpatient to outpatient mental health care.*
- ⦿ *Appoint new Board of Mental Health members and remove Board Members who are not adhering to statutes.*
- ⦿ *Appoint additional Boards of Mental Health or members to accommodate needs of the community.*
- ⦿ *Direct the County Attorney to investigate and act upon non-compliance of subjects.*
- ⦿ *Direct the Sheriff to remove restraints during hearings.*

Exhibit 1

IN THE DISTRICT COURT, DOUGLAS COUNTY, NEBRASKA
BEFORE THE MENTAL HEALTH BOARD OF THE
FOURTH JUDICIAL DISTRICT OF THE STATE OF NEBRASKA, COUNTY OF DOUGLAS

IN THE INTEREST OF

ALLEGED TO BE A MENTALLY
ILL AND DANGEROUS PERSON

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CASE NO
ORDER OF CONTINUANCE

The hearing in this proceeding is continued on the unopposed Motion of the County Attorney.

According to information before the Board, the subject of this proceeding is a patient in a mental health treatment facility and is receiving treatment or being evaluated.

A hearing should be scheduled when appropriate under the circumstances or when Counsel requests that a hearing be scheduled.

IT IS SO ORDERED.

Dated: July 17, 2025

MENTAL HEALTH BOARD OF THE FOURTH JUDICIAL DISTRICT

Michael D. McClinton
Chairperson