



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR
ATTORNEY GENERAL

April 12, 2016

CAPITOL BUILDING, SUITE 118
700 CAPITOL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

Harry L. Dadds, Esq.
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801

Dear Mr. Dadds:

As you know, this office has received an open records appeal from Dr. Lachin Hatemi. At issue is the Kentucky Medical Services Foundation's denial of his request to review certain records on grounds of attorney-client privilege. Dr. Hatemi requested "[t]he coding and billing audit of the Hazard Cardiology Practice for the year 2012, 2013, 2014."

You have indicated your position that all responsive records are exempt from public inspection. The withheld records have been described as "reports and related documents generated by outside counsel or consultants engaged by outside counsel, all at the request of counsel for the University of Kentucky," to ensure compliance with applicable laws and to analyze possible problems with billing documentation by the University's Hazard cardiology clinic.

We have determined that an *in camera* review of the records in question would assist this office in evaluating KMSF's claim of privilege. Therefore, in light of KMSF's burden of proof under KRS 61.880(2)(c), we ask that you provide us with a copy of the withheld documents not later than April 28, 2016. Pursuant to KRS 61.880(2)(c), we acknowledge our obligation not to disclose these documents.

In addition, pursuant to KRS 61.880(2)(c), we request that you provide the following in substantiation of your position:

1. In correspondence received by this office, counsel for the University of Kentucky refers to a "routine audit" which brought to light possible problems with billing documentation by the University's Hazard cardiology clinic. Please advise us as to the nature of this "routine audit," and specifically whether it constitutes any part of the "coding and billing audit" requested by Dr. Hatemi.
2. If the "routine audit" constitutes any part of the requested "coding and billing audit," please explain the applicability of any exemption(s) under the Open Records Act to this routine audit.
3. With regard to all withheld records, please substantiate the applicability of KRS 61.878(1)(c)1.
4. With regard to all withheld records, please substantiate the applicability of KRS 61.878(1)(i) and (j).
5. With regard to all withheld records, please substantiate any claim of exemption from disclosure under federal law pursuant to KRS 61.878(1)(k).
6. With regard to all withheld records, please substantiate any applicability of KRS 61.878(1)(l) beyond the claim of attorney-client privilege or the work product doctrine.
7. With regard to all withheld records, please substantiate your argument regarding "information that is personal in nature."
8. Please take this opportunity to substantiate in greater detail your claim of attorney-client privilege and/or the work product doctrine.
9. The affidavit of Dr. Marcus E. Randall states that the disputed records "were provided to KMSF for compliance purposes subject to a joint de-

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fense arrangement with the University of Kentucky." To facilitate our review of your claim of privilege, please explain the nature and purpose of this joint defense arrangement.

Thank you for assisting our evaluation of this matter.

Sincerely,

Andy Beshear
Attorney General

A handwritten signature in black ink, appearing to read "James M. Herrick". The signature is fluid and cursive, with a long horizontal stroke at the end.

James M. Herrick
Assistant Attorney General

#121

cc: Lachin Hatemi, M.D.
William E. Thro, Esq.

**NOTIFICATION OF EXTENSION OF TIME
FOR ISSUANCE OF ATTORNEY GENERAL'S
DECISION IN OPEN RECORDS APPEAL**

Re: Open Records appeal filed by Lachin Hatemi, M.D.

Due to the need to obtain additional documentation or a copy of the records involved, the deadline for a decision in the above-styled open records appeal will be extended an additional thirty work days. You may expect a decision on or before May 24, 2016.

Please refer to Log Number 201600121 when making an inquiry. Inquiries should be directed to:

Office of the Attorney General
Attention: James Herrick
Capitol Building, Suite 118
700 Capital Avenue
Frankfort, Kentucky 40601-3449

A copy of this notice was mailed on April 12, 2016, to:

Lachin Hatemi, M.D.
333 West Vine Street, Suite 300
Lexington, KY 40507

Marc Randall, M.D.
Kentucky Medical Services Foundation, Inc.
2333 Alumni Park Place, Suite 200
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