



11 Beacon Street, Suite 925
Boston, Massachusetts 02108
(617) 723-8455 *Voice*
(800) 872-9992 *Voice*
(617) 723-9125 *Fax*
<http://www.dlc-ma.org>

Western Office
32 Industrial Drive East
Northampton, MA 01060
(413) 584-6337 *Voice*
(800) 222-5619 *Voice*
(413) 584-2976 *Fax*
mail@dlc-ma.org

June 15, 2020

VIA EMAIL

Monica Bharel MD, MPH, Commissioner
Margret R. Cooke, General Counsel
Margret.R.Cooke@state.ma.us
Department of Public Health
250 Washington Street
Boston, MA 02108

Joan Mikula, Commissioner
Lester Blumberg, General Counsel
Lester.Blumberg@state.ma.us
Department of Mental Health Central Office
25 Staniford Street
Boston, MA 02114

Joel Skolnick, Chief Executive Officer
Joel.M.Skolnick@state.ma.us
Lemuel Shattuck Hospital
170 Morton Street
Jamaica Plain, MA 02130

Re: Protection and Advocacy Investigation of Lemuel Shattuck Hospital

Dear Commissioners, Counsel, and Mr. Skolnick:

The Disability Law Center (“DLC”) is writing out of continuing concern for patients and staff at Lemuel Shattuck Hospital (“LSH”). As you are aware, DLC is the designated Protection and Advocacy (“P&A”) system of Massachusetts, operating pursuant to a federal mandate and legislation that gives us unique, extensive access to investigate suspected incidents of abuse or neglect at residential and non-residential facilities, both public and private.¹ In addition to investigative authority, the P&A statutes specifically authorize P&A agencies to monitor compliance with respect to the rights and safety of individuals with disabilities. Hospitals are included among the facilities to which our P&A authority extends.²

¹ See 42 U.S.C. § 10805(a)(1)(A) (PAIMI – persons with mental illness); 42 U.S.C. § 15043(a)(2)(B) (PAIDD persons with intellectual and developmental disabilities), 29 U.S.C. § 794e(f)(2) (PAIR – persons with other disabilities, including physical disabilities); 42 U.S.C. § 300d-53(k) (PATBI – persons with traumatic brain injury).

² See, e.g., 42 U.S.C. § 10802(30) (defining facility); 42 U.S.C. § 15043(B),(H)-(J) (granting access to locations in which services, supports, and other assistance are provided to persons with developmental disabilities and records

The Protection and Advocacy System for Massachusetts

On April 16, 2020, DLC and Mental Health Legal Advisors Committee (“MHLAC”) requested that the Department of Public Health (“DPH”) and the Department of Mental Health (“DMH”) provide our organizations information that fit within eight listed categories. Following an informative meeting with administrators from both agencies and discussion with Attorney Blumberg on April 22, DLC and MHLAC provided an updated request on April 24. In both the original and updated requests, we requested “at least weekly updates regarding both the number of positive COVID-19 cases in LSH patients and staff, per LSH inpatient unit and any changes to LSH policy, protocols, or practices” described in our enumerated requests. To date, DLC has received responsive documents provided by Attorney Blumberg on May 8, May 21, and May 25. However, despite receiving information from various sources concerning the continuing spread of COVID-19 at LSH, particularly in the Metro Boston Mental Health Units (“MBMHUs”), and changes in policies, protocols, and practices relative to infection control, and access to treatment, programming, and fresh air, we have not received any recent or regular updates.

Prior to and since sending the initial letter on April 16, 2020, DLC has received a number complaints about COVID-19 infection control preparations, procedures, and practices at LSH as well as about conditions, access to treatment and programming, and discharge considerations for patients within the MBMHUs. Based upon these complaints and the information gathered thus far, DLC has found probable cause to proceed with an investigation into LSH.³ While DLC is aware of certain corrective measures and new publicly available guidance presumably implemented at LSH, DLC nevertheless believes it is obliged to investigate these complaints and the sufficiency of efforts to both prevent and address COVID-19 at LSH and maintain appropriate conditions for LSH patients. This is especially true given predictions of future COVID-19 surges and unclear scientific evidence as to the nature and length of COVID-19 immunity for individuals who have recovered from the virus.

Accordingly, with this letter, DLC provides formal notice that we have opened a P&A investigation into LSH and requests documentation of the following information as part of our investigation:⁴

1. The current total number of inpatients at LSH, including the sex, race/ethnicity, and primary language self-identified by each patient;
2. The names and/or designations of all units at LSH and, for each identified unit, a very brief description of the population served and/or services provided by the unit, whether the unit is currently operational, and, for inpatient units, the current number of patients in unit, the patient capacity of the unit, and whether the unit is currently designated as COVID-positive or negative;

thereof that are relevant to an investigation), 29 U.S.C. § 794e(f)(2) (granting the same authority as 42 U.S.C. 15041 *et seq.*); 42 U.S.C. § 300d-53(k) (granting the same authority as 42 U.S.C. 15041 *et seq.*).

³ The P&A statutes specifically authorize P&A agencies to investigate incidents of abuse or neglect of individuals with disabilities under either of two circumstances: (1) when the agency receives a complaint; or (2) when it determines that there is probable cause – i.e., reasonable grounds to believe that individuals have been, or may be at significant risk of being subject to abuse or neglect. *See, e.g.*, 42 U.S.C. § 10805(a)(1)(A); 42 C.F.R. § 51.2; 42 U.S.C. § 15043(a)(2)(B); 45 C.F.R. § 1326.19; 29 U.S.C § 794e(f)(2); 42 U.S.C. § 300d-53(k). In this instance, DLC has received numerous complaints to the system and made a probable cause finding.

⁴ *See, e.g.*, 42 CFR § 51.41; 45 CFR § 1326.25. Confidential records and information obtained through P&A authority must be kept confidential to the same level of the original holder with limited exceptions. 42 CFR § 51.45; 45 C.F.R. § 1326.28.

3. Data concerning all LSH patient COVID-19 infection and recovery numbers broken down by unit at LSH, sex, and race/ethnicity;
4. The number of LSH patients transferred from the MBMHUs to the LSH medical units for COVID-19 care, by sex and race/ethnicity;
5. The number of LSH patients transferred to other hospitals for COVID-19 care, by sex and race/ethnicity;
6. The number of confirmed COVID-19 deaths of LSH patients, by sex and race/ethnicity;
7. Any and all death records for individuals who died from COVID-19 at LSH or died from COVID-19 after presenting symptoms and/or testing positive at LSH and being transferred from LSH to another medical facility;
8. The civil commitment status of all current MBMHU patients, including the sex, race/ethnicity, and primary language self-identified by each patient;⁵
9. Any written policies, training, guidance, or communications provided to MBMHU staff, including “SWAT” teams, concerning the purpose, meaning, and usage of DMH’s Discharge Ready COVID-19 Questionnaire;
10. Discharge Readiness and Barriers to Discharge documentation updated and maintained monthly for patients in the MBMHUs from January 2020 to the present date;⁶
11. The number of MBMHU patients discharged per month from January 2020 to the present date and, for any persons discharged, whether the individual’s discharge was due to court order, expiration of commitment, or another reason.
12. The number of admissions to the MBMHUs per month from January 2020 to the present date;
13. Any report or other documentation concerning any infection control assessments or reviews conducted regarding LSH and/or any particular LSH unit;
14. Dates of all COVID-19 testing of COVID-19 LSH patients conducted by the National Guard;
15. A description of any services, aside from administration of COVID-19 testing, provided within LSH by the National Guard;
16. Any LSH policies for patient non-compliance with COVID-19 safety precautions;
17. All data concerning restraint and seclusion of MBMHU patients with COVID-19 for the purpose of reducing the risk of exposure to the virus;
18. A description of any therapeutic programming or remote access to treatment available to LSH patients on iPads/tablets provided by the hospital;
19. Any current schedules of therapeutic programming available in the MBMHUs;
20. Any policies, protocols, or practices updated and/or implemented since May 21, 2020 concerning:

⁵ We do not seek patient names but request that other identifying information, including internal identification numbers, not be redacted.

⁶ Again, we do not seek patient names, but request that other identifying information be provided.

- a. Prevention of both COVID-19 introduction into LSH and spread to patients and staff;
- b. Quarantine, isolation, or other procedures for new admissions to LSH;
- c. Quarantine of individuals who have tested positive or present symptoms that may be indicative of COVID-19 infection;
- d. Access to mental health treatment and programming in the MBMHUs and any supplemental resources and supports made available to patients during suspensions of regular treatment and programming; and
- e. Access to fresh air and privileges, including updates and/or progress on architectural changes to the LSH patio and any outdoor time currently provided to LSH patients.

To the extent that LSH is relying on DPH or DMH guidance available online, please identify that guidance by the name by which it is labeled on the mass.gov website.

In addition, we request that DMH facilitate DLC's access to MBMHU patients via videoconference within the next two weeks.⁷ With the assistance of Vibra staff who posted a sign-up sheet and set up a computer in a private room, DLC Senior Attorney Nancy Murphy was able to hold video office hours and speak a number of Vibra patients who opted to do so on June 1, 2020. We request the opportunity to do the same with MBMHU patients while DLC continues to rely on remote access to patients, absent special circumstances, in order to protect the health and safety of patients and staff.

Please provide the requested records and information electronically by July 1, 2020. After DLC receives and reviews the requested documentation, we intend to request the opportunity to meet. Should you have any questions or wish to discuss the above requests, please do not hesitate to contact me.

Thank you in advance for your assistance in facilitating DLC's investigation.

Sincerely,



Tatum A. Pritchard
Director of Litigation

⁷ DLC is permitted to enter LSH to speak with guests at reasonable times, which includes at minimum normal working hours and visiting hours. *See, e.g.*, 42 CFR § 51.42(b); 45 C.F.R. § 1326.27(c).