

STATE OF WEST VIRGINIA  
THIRTEENTH JUDICIAL CIRCUIT  
OFFICE OF THE COURT MONITOR  
STATE CAPITOL COMPLEX  
BUILDING 6, ROOM 850  
CHARLESTON, WEST VIRGINIA 25305



LOUIS H. BLOOM  
JUDGE

DAVID G. SUDBECK  
COURT MONITOR

## MEETING OF THE PARTIES

*In E.H., et al., v. Khan Matin, et al.*

FRIDAY NOVEMBER 20, 2015

### MINUTES

**PRESENT:** David G. Sudbeck, Kyle Blackburn, Christopher Dodrill, Regina Mayne, Lydia Milnes, Karen Villanueva-Matkovich, Allison Anderson, Kelly Morgan

#### I. COURT MONITOR REPORT

David Sudbeck started the meeting by mentioning calls and emails that his office has been receiving from staff at Bateman Hospital, dealing with the low morale of the staff and resignations and problems concerning a physician. Allison Anderson said three physicians left the hospital for other reasons but confirmed that despite ongoing vacancies, the hospital was fully staffed with psychiatrists and nurse practitioners. Also, Dr. Manish X. Parikh will be returning part-time beginning on December 7, 2015. Karen Villanueva-Matkovich was not aware of the morale and staff problems but will look into the problem. Kelly Morgan confirmed that Bateman continues to meet JCAHO standards and continues to provide quality patient care. David Sudbeck mentioned that JCAHO was to visit Bateman in the near future, which was confirmed by Karen Villanueva-Matkovich. Kelly Morgan further suggested that DHHR/BHMF investigate the concerns about the physician and provide a report to David Sudbeck as to the findings. The parties were agreeable.

David Sudbeck mentioned one new grievance that was filed in his office since the last party meeting concerning television filters being implemented. Although David Sudbeck typically does not accept Systemic Grievances, he investigated this one simply because it was signed by 10 patients. After completing an investigation, he agreed with the CEO of Sharpe Hospital concluding that TV is a privilege not a right and that it was appropriate for the staff to monitor TV for sexual content

and violence. He further agreed there did not need to be a specific policy allowing the staff to monitor or filter the TV. David Sudbeck will issue a letter denying the systemic grievance.

David Sudbeck followed up on petitioners' RFR on the number of criminal complaints against patients and whether or not DHHR/BHHR has any policies on handling patients with violent/aggressive behaviors: policies on pressing charges against patients for incidents that occur in the Hospitals; policies on discharge of patients to police custody; policies on notifying guardians prior to such discharges; and policies on discharge planning when the proposed discharge is to police custody.

David Sudbeck thanked respondents for the detailed information they provided on this matter. In investigating this information further Mr. Sudbeck identified that over the past two years 9 known criminal complaints were filed against patients, of which 5 were filed by staff, 2 were filed by other patients and 2 were listed as unknown. Mr. Sudbeck also stated that he believed that patients should have the right to file a criminal complaint against another patient if they believe they have been assaulted. Mr. Sudbeck also mentioned that in his personal experience, he was aware that employees sometimes file criminal complaints as supporting documentation for use in filing a workers' compensation claim(s) and that sometimes a spouse will file a criminal complaint on behalf of the employee. David did not believe that this was a problem as alleged by Petitioners and stated that he would have thought the numbers would have been much higher between the two hospitals over a two year period. Mr. Sudbeck stated that the numbers of complaints being filed do not suggest a problem. Therefore, David would not be filing a report or issue any formal recommendations.

With regard to the patient alleged to have been discharged without notifying the guardian, David Sudbeck noted that the guardian had been previously notified. Lydia Milnes believed there was another case. Kelly Morgan reiterated the problem that Respondents and David Sudbeck are not provided with the names or facts supporting allegations which make it impossible for DHHR/BHHR or David Sudbeck to investigate. Lydia Milnes responded generally that when people advise her of concerns, that they fear retaliation because these people hate DHHR. Kelly Morgan stated that making general allegations does not help any of the parties because there was absolutely no way for anyone to determine the validity of such allegations. David Sudbeck agreed that names and facts were absolutely necessary to investigate even if the names were just disclosed to him.

Lydia Milnes felt that criminal complaints against patients violate their patient rights and that patients should not be held criminally liable for their actions which are due to their diagnoses. Kelly Morgan clarified that the Hospitals never file criminal complaints against patients and that the Hospitals neither encourage nor discourage employees to file criminal complaints against patients. She further clarified that some of the complaints mentioned above are against forensic patients who are competent and that DHHR/BHHR was unable to implement any sort of policy which would restrict an employee's constitutional right to file a criminal complaint.

Lydia Milnes still felt there was something that should be done about patients being immediately removed from the Hospital and sent to jail. Kelly Morgan further clarified that patients are never released to jail or into the public until they are discharge ready. Once discharge ready, if the patient has an outstanding warrant, they would then be sent to jail. Lydia Milnes was concerned that there was not a specific discharge policy when a patient is discharged to jail and the handling of their medication. Allison Anderson clarified that patients are sent with several days' worth of medication. Lydia Milnes believed that WVDOC does not appropriately care for inmates who have psychiatric illnesses. Kelly Morgan stated that based on Lydia Milnes' concern about patients being held criminally responsible, that a policy would not address her concerns as it sounded like she had an issue with the actual criminal statutes. David Sudbeck agreed that employees should not be

restricted in filing criminal complaints but welcomed the parties to present proposed policies on handling patients with violent and/or aggressive behaviors and suggestions as to how to work on minimizing criminal complaints being filed by staff and patients at Sharpe and Bateman Hospitals. He requested that any proposed policies or suggestions be available for review at our January 2016 meeting of the parties.

David Sudbeck noted that the census at Bateman had been down over the past few days. David Sudbeck requested an update on the American Medical Foundation and if a proposal could be produced. Kelly Morgan stated that she previously circulated a proposal from Evelyn Baram-Clothier, PhG. David Sudbeck asked Kelly Morgan to email the CV's for six doctors that could perform the audit. David Sudbeck asked if there would be a cap for expenses., Kelly Morgan suggested a \$20,000 budget without further Court order and that the expert will better be able to determine the cost once they have a total number of files for the audit. American Medical Foundation suggested 25% sample of the 172 patients be audited, which the parties were agreeable. Kelly Morgan further recommended allowing American Medical Foundation to determine the actual sample, which the parties were agreeable. The parties agreed to present the Court with a proposed Order for the upcoming Status Hearing on December 17, 2015.

## II. BHHF REPORT

Allison Anderson advised that BHHF was continuing recruitment efforts with regard to the vacancies at Bateman Hospital. Karen Villanueva-Matkovich advised that Market Study had been completed and that DOP had approved pay increases according to the Pay Plan.

## III. PETITIONER REPORT

Lydia Milnes asked for a follow up on petitioner's discovery request regarding applications, interviews and new hires for direct care employees at the two hospitals since January 2015. Karen Villanueva-Matkovich responded that with DOP, applications include everyone in the database, many of whom are not interested in that particular position. Then, few are actually interested in an interview and even less are willing to accept the position.

Lydia Milnes brought up more problems dealing with patient access for Legal Aid and how it is still was not fully restored. Kelly Morgan stated that access to the medical records had been restored within a few days of the decision. Lydia Milnes ; stated that advocates at Sharpe were previously provided with schedules for patient staffing, inpatient sheets and new admissions documents. Karen Villanueva-Matkovich responded that DHHR/BHHF is attempting to ensure consistency between Sharpe and Bateman Hospitals. Karen Villanueva-Matkovich assured Petitioners and David Sudbeck that she would look into this issue immediately.

## IV. BMS REPORT

Chris Dodrill mentioned during the TBI Waiver Update that as of October 2015 there were 52 active members living at home in their community.

Chris also distributed the current TBI waiver report copy attached below

Next Meeting: Wednesday January 14, 2015  
10:00 a.m.-12:00 noon  
One Davis Square  
Conference Room 134 Charleston, WV 25301

**WV Traumatic Brain Injury (TBI) Waiver Program  
Implementation through October 2015**

**MNER Summary:** Since February 1, 2012, the Administrative Services Organization (ASO) has received, processed and/or made initial determinations on two hundred and forty-nine (249) Medical Necessity Evaluation Request Forms (MNER)/applications.

- ❖ Of those two hundred and forty-nine (249) applications (submitted MNER):
  - 30 applications were closed - no evidence of a TBI
  - 34 applications were withdrawn
  - 7 application pending assessment
  - **178 applicants received medical eligibility determination assessments**
    - 41 applicants did not meet medical eligibility
    - 137 applicants were considered medically eligible based on their PAS and Rancho Los Amigos scores
      - 17 applicants were denied financial eligibility
      - 33 applicants withdrew their case after medical eligibility was determined
      - 7 applicants are awaiting financial eligibility
      - 2 applicants deceased prior to notification of medical eligibility
      - 20 members have discontinued their enrollment since 2/2012
      - 6 member deceased
      - 52 Active Members in October 2015

# MNER Applications Received Per Month							
2012	# MNER Received	2013	# MNER Received	2014	# MNER Received	2015	# MNER Received
January	N/A	January	6	January	9	January	5
February	4	February	5	February	6	February	7
March	2	March	10	March	4	March	5
April	4	April	4	April	8	April	5
May	3	May	9	May	9	May	3
June	1	June	4	June	7	June	6
July	2	July	10	July	6	July	7
August	5	August	10	August	2	August	4
September	7	September	5	September	7	September	6
October	1	October	10	October	8	October	9
November	3	November	5	November	4	November	
December	2	December	4	December	6	December	
<b>2012 Total</b>	<b>34</b>	<b>2013 Total</b>	<b>82</b>	<b>2014 Total</b>	<b>76</b>	<b>2015 Total</b>	<b>57</b>
<b>Total since program implementation February 2012</b>							<b>249</b>

**Outreach Efforts Summary:** In January 2012, the ASO initially sent emails to all existing Aged and Disabled Waiver Homemaker Agencies, Case Management Agencies, I/DD Waiver Providers

and Personal Care Providers. In early February 2012, all applicable referral sources including Nursing Homes, Hospitals and Licensed Rehabilitation Centers were emailed.

This correspondence announced the TBI Waiver Program, outlined eligibility requirements and supplied copies of the application (MNER) form (\*these emails are not included in 2041 Email contacts indicated below).

Since March of 2012, ASO staff has conducted statewide outreach efforts to include: scheduled face-to-face meetings within the facilities, presentations at local and statewide settings and meetings with the directors of the Aging and Disability Resource Centers.

Additionally, the ASO offers/provides training and technical assistance to the eighteen (18) enrolled provider agencies. Training topics include the Medicaid requirements for covered services (Case Management, Personal Attendant Services and Cognitive Rehabilitation Services) and general information about supporting individuals with TBI.

The ASO targets outreach for each agency selected to provide services for enrolled members. Outreach focuses on providing guidance in completing the financial eligibility process and compliance with Medicaid forms. Additionally, the ASO provides technical assistance to resolve specific member needs.

<b>Types and Numbers of Outreach Efforts Made for the WV TBI Waiver Program</b>	
<b>Type of Outreach</b>	<b># Outreach Efforts</b>
<b>General Outreach</b>	
Email	*2041
Phone	1256
Face-to-Face	526
Presentations/Outreach (ex. WV NASW Conference, local DHHR)	61
<b>For Enrolled Providers</b>	
Training-Webinar	39
Trainings-Face-to-Face	4
Face-to-Face Technical Assistance	69
Phone Technical Assistance	426
<b>Total</b>	<b>4422</b>





