



October 7, 2024

VIA U.S. Mail, Certified-Return Delivery
VIA Email – michael.j.caruso@wv.gov

Michael Caruso
Secretary
Department of Health Facilities
One Davis Square, Suite 100 East
Charleston, WV 25301

The Honorable Patrick Morrissey
State Capitol Complex, Bldg. 1, Rm E-26
1900 Kanawha Blvd. E
Charleston, WV 25305

RE: Notice of Claim – Action for Declaratory & Injunctive Relief

Dear Secretary Caruso:

Pursuant to W.Va. Code §55-17-3, please accept this letter as notice of suit against you in your capacity as Secretary of the Department of Health Facilities for failing to protect the rights of patients served by the state health care facilities, particularly William R. Sharpe, Jr., Hospital (“Sharpe”) and Mildred Mitchell-Bateman Hospital (“MMBH”).

As Secretary, you have the following relevant mandatory, nondiscretionary duties:

- ...(2) Manage, direct, control, and govern state owned health facilities;
- (3) Operate state health facilities and adopt rules pertaining to their operation;
- (4) Protect the rights of clients served by state health facilities.... See W.Va. Code §26-1-3(a).

As Secretary, you are empowered to “[t]ransfer residents between the facilities....” See W.Va. Code §26-1-3(b)(4). As such, Sharpe and MMBH are part of a multi-unit hospital system (“MUHS”) and as Secretary you have the mandatory, nondiscretionary duty to protect the rights of patients at Sharpe and MMBH.

MUHS has written and/or *de facto* policies, habits and customs, understandings, protocols, concessions, expectations, and/or informal directives that require, encourage, suggest,

Removing Barriers to Opportunity and Equality

The Protection & Advocacy System for the State of WV

*Disability Rights of West Virginia • 5088 Washington St. W, Suite 300 • Charleston, WV 25313
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and/or mandate that mandatory reporters seek and/or obtain approval, agreement, or authority from state health care facility leadership about the duty, need, and/or propriety of reporting occurrences or suspected occurrences of abuse, neglect, or harassment for fear of retaliation, retribution, or triggering reduced staffing ratios. Such written and/or *de facto* policies, habits and customs, understandings, protocols, concessions, expectations, and/or informal directives have resulted in the failure to report actual and/or suspected occurrences of abuse, neglect, or harassment and/or the consideration of patient complaints and grievances in direct violation of required operational protocols established by the Centers for Medicare and Medicaid Services (“CMS”), Patient Rights at State-Operated Mental Health Facilities codified at W.Va. C.S.R. §64-59-1 *et seq.*, and MUHS’ policies for reporting and investigating verbal abuse, physical abuse, neglect, and sexual harassment of patients.

CMS expressly prohibits employing and/or contracting with persons with a history of abuse, neglect, or harassment. *See* State Operations Manual Appendix A - Survey Protocol, Regulations and Interpretive Guidelines for Hospitals. *See* A-0145. The Department of Health Facilities, and/or its predecessor, has a history of employing and/or contracting with people with a history of abuse, neglect or harassment and retaliating against persons who highlight and/or report abuse, neglect, or harassment.¹

As you know, Disability Rights of West Virginia (“DRWV”) is the federally mandated protection and advocacy system (“P&A”) for West Virginia. *See* 42 U.S.C. § 10801(b) and 42 U.S.C. § 15001(b)(2). DRWV has been West Virginia’s P&A since 1977. P&As were established by the United States Congress in 1975 to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&As are the largest provider of legally based advocacy services to people with disabilities in the United States.

DRWV also serves as the advocate and monitor as part of the West Virginia Department of Human Services’ Intellectual and Developmental Disabilities program that is required by the state and federal court consent decrees in *E.H. v. Matin*, Civil Action 81-585, Kanawha County Circuit Court (“Hartley Decree”) and *Medley vs. Ginsberg*, Civil Action 78-2099, U.S. Dist. Ct. WV. (1981) (“Medley Decree”). As the advocate and monitor for persons with disabilities under the Medley/Hartley Advocacy Program, DRWV is required to provide an array of services related to, among other areas, “Abuse/Neglect; Financial Exploitation; Other Exploitation; Rights Violation; Criminal Charges; Failure to Implement Individual Program Plan; Inappropriate Discharge; Guardianship and Conservatorship; Medical Surrogate; Crisis Planning;

¹ <https://www.cbsnews.com/news/amelia-knisely-loses-job-reporting-abuse-allegations-west-virginias-foster-care-psychiatric-facilities/>

<https://www.npr.org/2023/02/13/1153590012/west-virginia-public-journalist-dismissed-wvpb-political-interference>

https://www.salon.com/2023/01/09/she-was-told-to-stop-reporting-west-virginia-journalist-fired-after-uncovering-abuse_partner/

Housing; Division of Rehabilitation Services (ORS); Employment Issues; Institutionalization and Unmet Needs.” (emphasis added).

DRWV’s review has identified a violation of the CMS State Operations Manual, including but not limited to, the following:

1. §482.13(a)(2), including but not limited to, A-0118, A-0119, A-0120, A-0121, A-0122, and A-0123;
2. §482.13(c)(3), including but not limited to, A-0145;
3. §482.13(e), including but not limited to, A-0154 and A-0162; and
4. §482.62, including but not limited to, A-1680.

DRWV’s review has identified a violation of Patient Rights at State-Operated Mental Health Facilities, including but not limited to, the following:

1. §64-59-3.11 Neglect
2. §64-59-3.13. Physical Abuse
3. §64-59-3.14. Seclusion
4. §64-59-3.17. State Operations Manual
5. §64-59-3.18. Verbal Abuse
6. §64-59-4. Adoption of Other Standards
7. §64-59-5. Patients’ Rights Generally
8. §64-59-12. Right to Unrestricted Communication
9. §64-59-13. Personal Clothing and Possessions
10. §64-59-15. Physical Environment
11. §64-59-18. Employee Responsibilities
12. §64-59-20. Patient Advocacy and Grievance Procedure

DRWV’s review has identified a violation of the MUHS’ policy for reporting and investigating verbal abuse, physical abuse, neglect, and sexual harassment of patients.

Accordingly, DRWV will initiate an action and seek declaratory and injunctive relief to enjoin future violations of the foregoing operational protocols, legislative rule, and policies. DRWV will further seek an injunction to enjoin mandatory reporters employed by or who contract with MUHS from not reporting required occurrences of actual or suspected abuse, neglect, or harassment. DRWV will further seek an injunction to enjoin you, MUHS, and facility leadership from requiring, encouraging, suggesting, and/or mandating that mandatory reporters seek and/or obtain approval, agreement, or authority from state health care facility leadership about the duty, need, and/or propriety of reporting occurrences or suspected occurrences of abuse, neglect, or harassment. DRWV will further seek an injunction enjoining you, MUHS, and facility leadership from directly or indirectly engaging in or threatening to engage in discriminatory, retaliatory, and retributive actions against employees or contract staff at MUHS who file or seek to file a required complaint for actual or suspected abuse, neglect, or harassment involving a patient.

Secretary Michael Caruso

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Please contact me if you have any questions about this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. Folio", with a long horizontal flourish extending to the right.

Michael J. Folio
Legal Director

Cc: Allen Campbell, Esq.